

A MESSAGE FROM ALI PRESIDENT DAVID F. LEVI:

## 2020 Annual Meeting Cancelled

Dear Members of The American Law Institute:

I hope everyone is staying safe during this challenging time. It will not surprise you that in light of all of the uncertainties and circumstances, the Executive Committee has reached the conclusion that we must cancel the 2020 Annual Meeting, originally scheduled for May 18-20 in San Francisco. We recognize that many of you have already made plans to travel to San Francisco. Our Reporters and project participants also have spent countless hours preparing drafts for discussion and review. But we know you understand why we must take this action. Thank you for your patience and understanding.

You might be interested that this is only the second time in our long history that we have cancelled an Annual Meeting. The last and only other time this happened was in 1945 due to the demands of World War II. Director William Draper Lewis explained at that time, that “our war conditions and [government restrictions] rightly prohibit[] any large meeting not directly connected with the war effort.” We find ourselves in a somewhat similar situation this year. Yet it is a testament to the important work and interactions that occur at an Annual Meeting that we so rarely have canceled it despite the various crises and challenges that may have afflicted us over the past 97 years.

I do want you to know that we carefully examined virtual meeting alternatives. Many of you are now using these alternatives in your own organizations. We concluded that we could not hold the 2020 Annual Meeting on a virtual platform and expect the kind of thoughtful decision-making and discussion that is the hallmark of our process. In our judgment, abruptly shifting to an online format for a membership body of 4,500, whose deliberations require carefully constructed debate and voting procedures, was not possible. Over the next few months, we will consider the role of on-line platforms in our future. If there is a role, it would seem most promising for smaller project meetings. Perhaps we will decide to experiment with such platforms, and we will welcome your thoughts and feedback. But to start any such experimentation with the Annual Meeting seems imprudent, were it even possible.

We had a full plate of projects to discuss this year including the Law of American Indians, Student Sexual Misconduct, Property, Intentional Torts, Sexual Assault, Copyright, Data Economy, and Conflict of Laws. Since we are losing valuable time together this year, we are currently considering an expanded Annual Meeting next year that will cover the projects we are unable to take up this May as well as the work we accomplish in the year ahead.

When the ALI reconvened in 1946, ALI President George Wharton Pepper invoked “that sense of fellowship which is not unusual among those engaged in a worthy intellectual task.” I will miss that fellowship this year. We all will. But when I see you at our next Annual Meeting in 2021, I know we will return as determined as ever to produce the work that is pivotal to supporting the rule of law and that our camaraderie will be as strong as ever.

In the meantime, I wish you good health and peace of mind in this difficult moment. I am so thankful for all you have done and will do for the ALI and our legal system. May we all be together in 2021 with a renewed sense of purpose and gratitude for one another and our wonderful organization.

I send best wishes and personal regards,



ALI President David F. Levi

THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

## A Landmark in the Field of U.S. International Arbitration Law

In a recent column published in the *New York Law Journal*, Hughes Hubbard & Reed partner John Fellas describes the forthcoming Restatement of the Law, The U.S. Law of International Commercial and Investor–State Arbitration, as “a landmark in the field of U.S. international arbitration law that displays all the characteristics of the exemplary Restatement.” Fellas should know—he is co-chair of his firm’s International Arbitration practice as well as of its International practice, and has extensive experience both as counsel and as an arbitrator. He also was one of the many distinguished practitioners who

participated on the Members Consultative Group for this project, complementing an equally distinguished group of Advisers.

The Restatement received final approval by the Institute at our 2019 Annual Meeting, and it currently is undergoing preparation for publication. As Fellas observes in his column,

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## THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

"[I]t is a testament to the diligence of the Reporters who prepared the Restatement that they have produced such a clear, comprehensive and coherent work," after more than a decade of labor.

The Restatement is a significant contribution to the field of U.S. international arbitration law and seems destined to be heavily cited for many years to come. As Fellas describes, the Restatement focuses on "the role of the U.S. courts with respect to arbitration proceedings," dealing only "incidentally" with "the procedures that govern the conduct of arbitration proceedings" themselves. In other words, this Restatement—like all Restatements—is primarily addressed to an audience of American courts. Even when parties have entered into an agreement to arbitrate disputes, they also routinely seek court intervention at critical junctures. These points of intersection often raise difficult issues of interpretation, jurisdiction, and procedure, and, up to this point in time, the field has lacked a comprehensive roadmap to shepherd judges through this complex terrain. Going forward, the Restatement will serve this vital purpose. It also will be indispensable to practitioners of U.S. international arbitration law, both as an expert guide to the field, as well as a tool that can be cited to educate judges on issues with which they may be unfamiliar. In Fellas's words, the Restatement "belongs on the shelf of everyone" who practices in the realm of international and investor-state arbitration.

The work is designed to be maximally useful to courts and practitioners. Chapter 1 introduces the reader to the "highly distinctive vocabulary" (as the Restatement puts it) of international commercial and investor-state arbitration through a comprehensive collection of definitions; lays out the basic principles of U.S. international arbitration law; and then outlines the framework for federal preemption of state law, a topic of foundational importance in this area. Chapters 2 through 4 address, in sequential order, the three phases of what one might call the life cycle of an arbitration, each of which presents particular opportunities for U.S. courts to become involved. Thus, Chapter 2 covers enforcement of the arbitration agreement; Chapter 3 addresses the role of courts in connection with ongoing arbitral proceedings; and Chapter 4 deals with post-award relief. Finally, Chapter 5 addresses the unique attributes of investor-state arbitration.

Key aspects of the organizational structure of the Restatement were settled upon in 2018, after each individual component of the project already had been approved by the Council and the ALI membership. Even though the project had not given rise to much controversy, we then took an additional year to fine-tune the work. In particular, Chapter 1 was reworked in an effort to provide a smooth introduction for readers unfamiliar with this complex field of law. The Reporters also made a number of other improvements, including some substantive changes spurred by rapidly evolving case law. This serves as a reminder of a point that I frequently make during Annual Meeting discussions—namely, that while we necessarily approve piecemeal the components of our projects, a project is never finally approved until a vote is taken on the project as a whole. In short, with a Restatement, as with baseball, it ain't over 'til it's over.

## Upcoming Meetings

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

### SEPTEMBER 2020

**September 11**  
Principles of the Law, Policing  
Philadelphia, PA

### OCTOBER 2020

**October 8**  
Principles for a Data Economy  
Philadelphia, PA

**October 9**  
Restatement of the Law Fourth, Property  
Philadelphia, PA

**October 16**  
Principles of the Law, Government Ethics  
Philadelphia, PA

**October 22-23**  
Council Meeting - October 2020  
New York, NY

### NOVEMBER 2020

**November 6**  
Restatement of the Law, Children and the Law  
Philadelphia, PA

**November 13**  
Restatement of the Law Third, Torts: Remedies  
Philadelphia, PA

**VIEW ALL UPCOMING MEETINGS  
AND EVENTS ON PAGE 19.**

The years of effort clearly paid off in this Restatement. As Fellas indicates in his column, the final product is “a majestic, comprehensive, and clear account of the U.S. law of international and investor–state arbitration.” And courts already are finding value in its scholarship. Both the Second Circuit and the D.C. Circuit have relied on Restatement definitions of international arbitration terminology. The Court of Appeals of Washington has trumpeted the “crisp summary of the development of federal law on evident partiality” provided by one of the Restatement’s numerous helpful Comments. I am confident that these judicial endorsements are harbingers of more to come once the Restatement has been published.

Most importantly, this Restatement arrives at a time when the field of U.S. international arbitration law has a significant need for the systematic and comprehensive treatment provided by a Restatement. There is a consensus among practitioners in this field that there is a great deal of uncertainty and incoherence in this body of law. Fellas, in his column, explains the driving source for this confusion—the legal framework for the U.S. law of international arbitration rests on an old and sparsely worded statute, the Federal Arbitration Act (FAA), and on two international conventions implemented through the FAA. Further, federal law does not entirely occupy the field, and thus state arbitration statutes also have some room for operation. Particularly because the FAA and convention texts leave so many important questions unanswered, “much U.S. arbitration law is judge-made, with the inevitable result that sometimes it is contradictory, contains gaps, and is unclear.” By contrast, Fellas explains, the statutory law of some countries, such as England, features more detailed treatment of key issues that frequently arise in commercial disputes. The comparative lack of predictability and coherence in American law has real business consequences, as ALI Council member and Debevoise & Plimpton partner David Rivkin explained in a 2018 column on this Restatement project, noting that: “[i]n an international context, this has long caused problems, as foreign parties considering contracts with American parties or contemplating placing an international arbitration in the United States have often had difficulty determining what U.S. law is.”

Section 3.5 of the Restatement presents a nice example of the clarifying effect the Restatement will have on an important issue on which judicial authority currently is not uniform. The Section—entitled Court-Ordered Production of Evidence in Aid of Arbitration—focuses on one statute, 28 U.S.C. § 1782, and the lines of cases interpreting it. The black letter identifies the statutory foundation of the legal issue, and then sets forth in clear, workable language the factors that courts consider in determining whether to grant or deny a request that a person give testimony or produce documents or other information for use in an arbitration. The Comments lucidly identify the

division in case law regarding whether the statute applies when the arbitral tribunal has been established by party agreement, and then clearly lays out the Restatement’s position on the question (yes, the statute applies) and the analysis underlying that position, which is based both on the statute’s plain language as well as on instructive Supreme Court dictum. The exhaustive Reporters’ Notes cite case law going both ways on the question, and provide more extensive reasoning in support of the Restatement’s resolution of it. And the Section addresses a number of other points of practical interest to lawyers and courts dealing with matters under the statute.

Section 3.5’s treatment of 28 U.S.C. § 1782 not only will serve well the users of this Restatement; it also illustrates the role that Restatements can play in addressing areas of law governed by a federal statute. As I have explained in an earlier letter in *The ALI Reporter*, “[w]hat we seek to do in those areas is to provide guidance to the courts where the scope for judicial discretion is broad, which can be the case even for statutes that are very detailed.” Even though federal statutes ultimately are subject to authoritative interpretation by one Supreme Court, the practical reality is that the Court cannot and does not step in immediately to resolve every issue of federal law on which uncertainty exists. In the meantime, commercial actors need to make decisions, as informed by the best assessment of the law that their counsel can provide. And other courts, of course, can’t wait for the Supreme Court to resolve every tough issue. This Restatement offers a prime example of the assistance the Institute’s comprehensive, deliberative, and iterative drafting process can provide in areas where judge-made law overlays a federal statutory framework.

I fully agree with Fellas’s prediction that this Restatement will prove to be a landmark in the U.S. law of international commercial and investor–state arbitration. Its authority will derive from the evident quality of the work, and from readers’ knowledge that the Restatement represents the collaborative effort of the world’s experts in this field. Fellas concludes his piece by noting that, “[t]hose who practice in the field of international arbitration owe an enormous debt to the Reporters who worked diligently to prepare the Restatement.” I would add that he and other members who participated on the MCG, along with the stellar Advisers, as well as every ALI member who reviewed the various drafts and voted on them, deserve our sincere thanks too. And I greatly look forward to the imminent publication of this important work.

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

# The Importance of Gathering Together at the Annual Meeting

By ALI Deputy Director Stephanie A. Middleton

The Executive Committee decided to cancel the Annual Meeting rather than try to reschedule it in the summer or fall, or to hold the Meeting by remote participation. Our Reporters and members have full schedules and other commitments and we were concerned attendance could be low if we rescheduled. This would not give us all confidence that the drafts received our normal thorough discussion and broad-based vote. As to a virtual meeting, we feel that it is important for members to be in the room—seeing each other and ensuring that those who are voting have participated in careful discussion and debate before voting.

We had interesting and timely projects on this year's agenda. These drafts will still be produced and made available for comments that may be submitted on the ALI website project pages. Every comment will be considered by the Reporters, and Sections of the drafts will be updated as appropriate. The updated drafts will be presented at next year's Annual Meeting. We are currently exploring the possibility of expanding the Annual Meeting next year so that we do not fall behind on our projects.

So many members have told me that there is no substitute for the energy in the room, and that the people they meet are truly extraordinary. Those of us who love the law and value the rule of law should spend time together.

## Spring Project Meetings Cancelled

The Corporate Governance Restatement; Principles of Compliance, Risk Management, and Enforcement; and Copyright Restatement project meetings originally scheduled for this spring have been cancelled.

Each project meeting will be rescheduled, and participants on each project will be alerted to the new date and time.

The Preliminary Drafts that were prepared for the meetings are available on the ALI website project pages. Members and participants may review the drafts and submit comments at any time through the project page Comments tab.

We hope that all of our members and their families remain safe and well. We look forward to seeing you at a future project meeting.

It has been clear since ALI's founding that member participation at the Annual Meeting is crucial. Our founders knew that we need our members in the room.

On June 30, 1923, ALI's first Director, William Draper Lewis, addressed a gathering of the Maryland State Bar Association in a speech entitled "The Work of The American Law Institute." At the time, ALI had been in existence only for four months.

Speaking about the obligations of ALI members, Director Lewis quipped that all members should plan to attend Annual Meetings "unless some unforeseen [sic] accident prevents attendance," adding that "[n]o one should accept membership unless he expects to attend these annual meetings."

Director Lewis goes on to capture both the value of having our diverse membership review and discuss drafts, as well as the collegial nature of the "friendly yet critical" debates that take place at Annual Meetings, shaping our projects and defining ALI.

The restatement must be done by the profession. Each stage in the production of the restatement must be done with the knowledge and approval of the leading Judges, lawyers and law teachers. It is only in this way that we can secure the necessary confidence of the legal profession. The Institute will do everything in its power to bring about that result. As the various tentative drafts are produced . . . those persons whose opinion carries weight in other Bar Associations, and also the Judges of our Federal and State Courts, and the leading professors in the princip[al] law schools, must feel that it is a professional duty to examine the draft in a friendly yet critical spirit.

Until I see you at next year's Annual Meeting in Washington, D.C., in 2021, or sooner at a project meeting, I hope that you and your families remain safe and healthy. I look forward to the next time we are able to come together.

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*Editor's Note: The full text of Director Lewis's address is available at [www.ali.org/1923](http://www.ali.org/1923).*

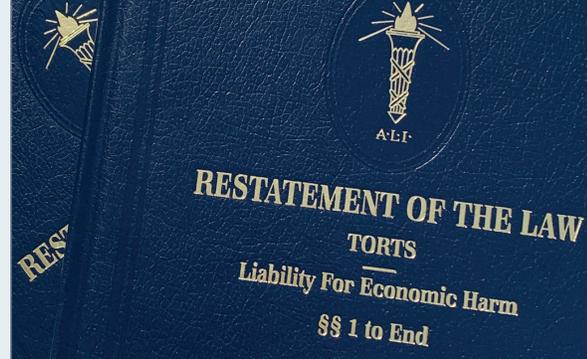
## Now Available

# Restatement of the Law Third, Torts: Liability for Economic Harm

Restatement of the Law Third, Torts: Liability for Economic Harm, completes the fourth installment of the Restatement Third of Torts. This Restatement, for which Dean Ward Farnsworth of the University of Texas at Austin School of Law served as Reporter, covers four principal areas of tort law: unintentional infliction of economic loss, liability for fraud, interference with economic interests, and misuse of legal procedure.

Recovery in tort for economic loss has been a growth area in American law over the last few decades. There has been a lot of judicial commentary on when it ought to be possible to recover in tort for a pure economic loss. In an effort to produce a comprehensive treatise on this developing area of law, this Restatement tackles issues that arise at the line between tort and contract. It establishes rules for determining if recovery in tort is available when two parties may have had a contract or could have made a contract but did not.

In addition to updating the economic torts covered in the Restatement Second, this Restatement addresses some topics not covered in prior Restatements and captures the best insights of judicial and scholarly



commentary on the topic while staying true to developments in case law. For example, the expression “Economic-Loss Rule” was not used very often in the 1970s, when the Restatement Second of Torts was completed, but is now a regularly used phrase. For that reason, this Restatement includes new Sections on the economic-loss rule outside the area of products liability, exceptions to the economic-loss rule, bad-faith breach of contract as a tort, and the application of principles of comparative responsibility to economic torts.

**ORDER ONLINE AT**  
[WWW.ALI.ORG/PUBLICATIONS](http://WWW.ALI.ORG/PUBLICATIONS).

## Torts: Concluding Provisions

*March 12 and 13 in Philadelphia, PA*

ALI held the first project meeting for one of its newest projects, Restatement Third of Torts: Concluding Provisions, in Philadelphia. In addition to submitting written comments, participants were able to provide feedback to Preliminary Draft No. 1 through in-person and virtual participation.

At the meeting, two key substantive points generated significant discussion. Both regard medical liability. From project Reporters Mike Green, Nora Engstrom, and Mark Hall:

1. Regarding § 4(b), which describes when agreements to limit the scope or content of a provider’s duty of care are enforceable: Some Advisers thought that this Subsection is not needed because the key instances where it applies (see Comment *b*) can be dealt with under either under § 2’s formation of a provider–patient relationship, or under informed consent (§ 7). Others, however, felt that some version of this Subsection would be helpful to address assumption-of-risk scenarios more directly.
2. Regarding § 7 involving informed consent: Most Advisers thought that § 7’s attempt to craft a hybrid informed consent standard was unsuccessful, and, even if revised, that a blended standard is unlikely to succeed. Accordingly, our current tentative plan is to split up § 7 and craft one Section that identifies elements of informed consent that are common to both approaches (patient-materiality and provider-centered), and then a separate Section that specifies and outlines the particular standards used in each of those two sets of jurisdictions. In other words, our current tentative plan is start on a common path but then recognize where there is a split and offer concrete guidance regarding that split.

We encourage you to review the Preliminary Draft and submit written comments to [RTCPcomments@ali.org](mailto:RTCPcomments@ali.org). You do not need to restrict your comments to the above two matters, or even include them. Members interested in joining the Members Consultative Group should visit the project page on our website.

More from the Reporters:

We would also appreciate your careful attention to the list of items identified on page xxi for coverage in this Restatement. What are we missing? Is there anything that should be deleted? In addition, do you agree with our exclusion of federal claims explained on page xxiii and the federal common-law government contractor defense?

Again, we are very grateful for your insight and engagement with this project, particularly during this exceedingly difficult time. We look forward to the next time when we may gather in person—and, in the meantime, we wish you and your families our very best.

# Member Spotlight: Molly S. Van Houweling

Molly S. Van Houweling is a member of the UC Berkeley School of Law faculty where she is the Harold C. Hohbach Distinguished Professor of Patent Law and Intellectual Property; Associate Dean, J.D. Curriculum and Teaching; as well as a Co-Director of the Berkeley Center for Law & Technology. She is an Associate Reporter of the Restatement of the Law, Copyright project. Professor Van Houweling clerked for Michael Boudin of the U.S. Court of Appeals for the First Circuit and David H. Souter of the U.S. Supreme Court. Beyond the law, she is a competitive cyclist and world-record holder.

**From synchronized swimming to crew and triathlons, you have participated in athletic competitions most of your life. What drew you to the world of competitive cycling?**

It's true that I've competed in a variety of sports since I was a teenager. But to be honest I didn't find anything I was particularly good at until I turned to cycling! That didn't happen until I started my law teaching career at the University of Michigan. My husband had been a competitive cyclist there when he was a teenager, and he convinced me to join the local racing club when we returned to our hometown of Ann Arbor as new faculty members.

**You have quite a few cycling accomplishments. Notably, in 2015, you set a *Union Cycliste Internationale* Hour Record, for cycling 46.273 km (28.753 mi) in an hour, and, in 2019, you won the Elite Women's Individual Pursuit at the USA Cycling Track National Championships. What more would you like to accomplish in the sport?**

This year I plan to compete in the Elite National Track Championships again, to try to defend my national championship. Perhaps the thing that makes me proudest of that accomplishment in 2019 is that I was older than the combined age of the competitors who finished second and third! I probably can't successfully compete with them forever. But fortunately there are many opportunities to race within age-group categories, in what is called "masters" racing. I plan to travel to Manchester, England, to compete in the Masters Track World Championships in October. And I'll compete in the Masters Road World Championships in Vancouver in September. There will be competitors there in their 80s and probably beyond. Role models like that keep me motivated.

**You have been a professor of law since 2002. What tips or insight can you give to those trying to navigate both personal passions and an ambitious career?**

Over the years I've had some periods where injuries forced me to focus more single-mindedly on my professional tasks. To my surprise, I found that I wasn't more productive—just crankier! For me, carefully planning a jam-packed schedule featuring a variety of activities that I love keeps me on task and enthusiastic about all of them. I block out time for my training and racing the same way I block out time for my teaching, faculty meetings, and work sessions with my fellow Restatement Reporters.

**You taught a course at Berkeley called "Satisfaction in Law and Life," which emphasized the need to define success on one's own terms. Can you tell us about the course and why it was important to offer this class to law students? How do you achieve harmony or balance in your own life?**

The class was part of an effort at Berkeley Law that we call the Human Centered Lawyering Initiative. The initiative provides programming connected to the human dimensions of lawyering—including both the interpersonal skills lawyers need to succeed (emotional intelligence, etc.), and the inward-facing skills they need to find satisfaction in their careers and lives. Based in part on conversations I've had with



*Molly S. Van Houweling at the 2018 October Council Meeting*

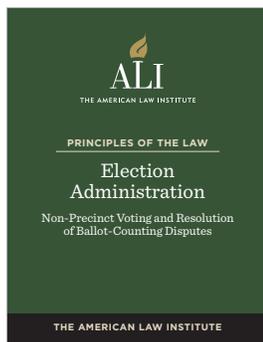
fellow ALI members who are practicing lawyers and judges, I'm convinced that these human skills are essential to our students' career success as well as their personal well-being.

**Between breaking cycling records and working a full-time position at a law school, why have you decided to devote your time to working with the ALI as an Associate Reporter?**

I have admired the work of the ALI since I first encountered it as a law student. So it was an honor to be invited to serve as an Associate Reporter on the first Restatement of Copyright. And as a scholar of copyright doctrine I know firsthand that the Copyright Act leaves many questions open to judicial interpretation. Congress clearly intended that, and yet it can lead to confusion and inconsistency. In other words, copyright is a body of law that provides many opportunities for the ALI to pursue its mission of promoting clarification of the law. I find that work intellectually challenging and rewarding.

**What about the Copyright project have you found most challenging or most rewarding?**

In addition to the intellectual challenge and reward of the substance of our work, I also really enjoy the teamwork involved in working with my fellow Reporters, Advisers, and ALI members, and staff.



## Principles of the Law, Election Administration, Now Available as an eBook

In time for the 2020 elections, ALI has converted Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes, to an eBook. Presented in three parts, the Principles are more valuable than ever this

year. The principles apply to any type of elective office and are structured to be useful to multiple audiences, including state legislatures, state courts, and state officers such as secretaries of state and local election officials.

Part I. Principles of Non-Precinct Voting: Early In-Person Voting and Open Absentee Voting outlines the ways in which states can securely and efficiently incorporate early voting and absentee voting to maximize accessibility and convenience for voters. Part I may be used by a judge in any case that involves an issue concerning early or absentee voting.

Part II. Principles for the Resolution of Ballot-Counting Disputes and Part III. Procedures for the Resolution of a Disputed Presidential Election address how states can manage post-election disputes, with Part II focusing on elections generally and Part III concentrating on the procedures necessary in disputed presidential elections in light of unique scheduling constraints.

The animating principle throughout is that government officials and institutions involved in counting ballots should neither favor, nor appear to favor, one side in the implementation of ballot-counting rules and that procedures should be adopted to promote a sense of legitimacy and integrity of the vote-counting and election process.

**VISIT THE ELECTION ADMINISTRATION PUBLICATIONS PAGE ON THE ALI WEBSITE TO LEARN MORE ABOUT PURCHASING THE EBOOK.**

## Law of American Indians ALI CLE Courses Now Available On-Demand

**Restatement of the Law, The Law of American Indians Reporter Matthew L.M. Fletcher and Associate Reporters Wenona T. Singel and Kaighn Smith Jr. recently teamed up with ALI CLE to offer two courses on the Law of American Indians, which are described below.**

**Economic Development in Indian Country: Lessons from the ALI's Draft Restatement of the Law of American Indians**, with Matthew L.M. Fletcher and Kaighn Smith Jr.

The complex topic of tribal economic development is one that rarely receives attention and is usually associated with Indian gaming. When it comes to the different forms of tribal economic development, each sovereign and the laws surrounding their economic involvement differ greatly. This course will detail the nuances of business in Indian country and how tribal nations achieve economic development while dealing with their sovereign counterparts, the federal government and the states. With more tribes doing business with U.S. companies, U.S. lawyers are crossing into Indian territory more and more.



*Matthew L.M. Fletcher, Wenona T. Singel, and Kaighn Smith Jr. at the 2018 Annual Meeting*

**American Indian Law and U.S. Law: When Two Sovereigns Collide**, with Matthew L.M. Fletcher and Wenona T. Singel

There are three kinds of sovereigns within the United States—federal, state, and tribal. The U.S. Constitution delineates the authorities, duties, and limitations of the United States in relation to the state governments, but the structure and text of the U.S. Constitution recognize Indian tribes as another kind of sovereign entity. In addition to the U.S. Constitution, there are statutes, executive orders, treaties, and other U.S. law that impact Indian tribes, and this is only complicated by each sovereign tribe's individual set of laws. This program will present the basics of how U.S. law and tribal law intersect and how to navigate this complicated area of law.

**ALI MEMBERS ENJOY COMPLIMENTARY ACCESS TO A VAST DATABASE OF ALI CLE COURSES THROUGH THE LAWPASS PORTAL (CLICK ON "CLE FOR MEMBERS" ON THE ALI.ORG MEMBERS PAGE).**

# Championing Access to Justice

One of the objectives of The American Law Institute, set forth in its certificate of incorporation, is “to secure the better administration of justice”; a justice system that efficiently delivers outcomes that are fair and accessible to all. For almost 100 years the ALI has achieved this objective through its publications, which help to clarify and improve the law, with input from some of the best judges, law professors, and attorneys in the world, who make up the Institute’s membership and project participants.

It is no surprise that our members’ dedication to the fair administration of justice goes beyond the Institute. Below are highlights from just a few of ALI’s members who have committed to ensuring fairness in and increasing accessibility to the justice system.

**Helaine M. Barnett** is the Chair of the New York State Permanent Commission on Access to Justice and former President of the Legal Services Corporation. As part of the court system’s efforts to improve access to justice, New York’s Permanent Commission on Access to Justice spent a year developing a Strategic Action Plan designed to help low-income New Yorkers access effective assistance when faced with legal challenges involving the essentials of life (housing, family matters, access to healthcare, education, and subsistence income). The Plan combines statewide access-to-justice improvements and local access-to-justice initiatives. As a result of the implementation that began in 2018, local Access-to-Justice initiatives are now underway, with the support of local judicial leadership, in all nine Judicial Districts outside of New York City, as well as those in New York City, with the goal of ensuring effective assistance to 100 percent of New Yorkers in need.



A study by **Tonya L. Brito** of the University of Wisconsin Law School informs the ongoing policy debate about how best to secure civil justice for low-income, unrepresented litigants. It

asks: How do lawyers matter? Are more limited forms of legal assistance a suitable alternative to attorney representation? And how can judges ensure that pro se litigants can effectively pursue their claims? These questions are of critical importance to the effort nationwide to improve access to justice for low-income, unrepresented civil litigants. In this project, Professor Brito examines cases involving government attorneys representing state child support agencies in their pursuit of low-income noncustodial parents for unpaid child support. The study is comparative in that the study participants and the six field sites (county courthouses) are drawn from two states that offer contrasting models of legal assistance. One state provides attorneys to child support defendants in civil contempt cases, and the other state provides limited legal assistance measures designed to help defendants represent themselves. This study employs qualitative analysis to examine how different legal assistance models shape legal access for unrepresented parties.

The study contributes to an under-theorized area in the access to justice literature. Thus far, research has focused primarily on analyzing the outcomes of civil cases in an effort to gauge the overall efficacy of representation and legal assistance in securing positive case outcomes. Because they study outcomes of civil litigation, but not the process, outcome-based, statistical models alone cannot provide the empirical base necessary for creating evidence-based policy and intervention. While they can retroactively tell us *whether or not* a legal aid intervention has affected case outcomes, they cannot tell us *how* that intervention did or did not make a difference. Those questions remain a “black box” in the model.

Professor Brito’s study examines an area that has received little attention, namely, *how* representation and other forms of legal assistance make a difference. Her analysis focuses explicitly on understanding the process of civil litigation and the mechanisms that can lead to differential outcomes. The data collected allow us to understand how key institutional players, particularly judges, understand the mechanisms by which the provision of counsel influences court hearings. The information also tells us about the culture of the court system and the institutional context in which these cases occur; how legal actors perform their roles; how they deploy power in the legal process; their goals (e.g., substantive fairness, case processing, procedural fairness, etc.); their perceptions regarding low-income litigants and how unrepresented litigants negotiate the court process; and, in the case of defense attorneys, how they shape their clients’ understanding of their situations and options. The data also reveals whether, how, and why litigants access and utilize legal assistance; how legal assistance interventions shape their experiences over time; and their views on the effectiveness of available legal

**James J. Sandman** served as President of the Legal Services Corporation (LSC) from 2011 to 2020, stepping down in February, and **John G. Levi** of Sidley Austin serves as Chairman of the Board. LSC is the single largest funder of civil legal aid for low-income Americans in the nation. Established in 1974, the nonprofit organization promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans. LSC is headed by a bipartisan board of directors whose 11 members are appointed by the President and confirmed by the Senate.



*James J. Sandman*



*John G. Levi*

assistance interventions. By examining how various legal assistance delivery models shape access to justice for low-income litigants, the study will provide the empirical base necessary for creating evidence-based policy and intervention. These findings will be useful to future random assignment studies as well, enabling those studies to address the appropriate factors and measure intervening variables that relate to the mechanisms through which representation affects outcome.

The project’s analysis draws from empirical data collected over a five-year period from 2012-2017. Data include transcripts from interviews with over 125 judges, family court commissioners, government lawyers, defense attorneys, and custodial mothers; detailed field notes generated from over 250 hours of ethnographic observations of enforcement hearings; longitudinal data gathered from 40 noncustodial fathers (defendants in these cases) that includes an initial in-depth interview, tracking their cases (and observing their court hearings) for one year, and then a follow-up interview; and a review of corresponding case file data. No other scholar has conducted such an extensive empirical examination of the experience of low-income litigants in family court. The study’s data collection plan has been supported by several competitive grants, including awards from the Russell Sage Foundation Visiting Scholars Program (2018-2019) and the National Science Foundation’s Law and Social Science Program in 2013 and 2014, awards from UW’s Graduate School in 2011, 2013, and 2015, and funding from the Institute for Research on Poverty in 2012 and 2013.

Aligning themselves with the mission of addressing the challenge of improving access to justice, ALI members **Kenneth C. Frazier**, chairman of the board and chief executive officer of Merck & Co., Inc.; **Timothy K. Lewis** of Schnader Harrison Segal & Lewis, a former judge of the U.S. Court of Appeals for the Third Circuit; **Deborah R. Willig**, managing partner of Willig, Williams & Davidson; **Mark I. Bernstein**, a retired judge now in private practice; and **Richard L. Berkman**, a retired partner of Dechert, are invested and involved in a groundbreaking project that will transform the delivery of civil legal aid. The Equal Justice Center (EJC), expected to open in 2022, will co-locate 13 Philadelphia nonprofit organizations that provide free or low-cost legal and social services into one purpose-built nonprofit center. This venture will be the first of its kind in the United States. The EJC will create operational efficiencies; leverage technology to deliver innovative solutions, designed by legal-aid experts, to critical issues; provide opportunities for collaborative programming to overcome challenges; increase delivery of direct client services; and improve responses to emergent civil legal needs of the community.



FROM LEFT TO RIGHT  
*Kenneth C. Frazier,  
Timothy K. Lewis,  
Deborah R. Willig,  
Mark I. Bernstein,  
Richard L. Berkman*

**PLEASE LET US KNOW ABOUT YOUR WORK IN THIS IMPORTANT AREA BY EMAILING COMMUNICATIONS@ALI.ORG.**

# ALI Launches Timeline

The American Law Institute is proud to celebrate the launch of the ALI Timeline. Visit [www.ali.org/timeline](http://www.ali.org/timeline) to learn more about the story of the Institute. The timeline will be updated with new entries as we continue to uncover stories from our rich history.

## The Story of ALI

1920s  
1940s

1940s  
1960s

1960s  
1980s

1980s  
2000s

2000s  
Now

PRESIDENTS

DIRECTORS

PUBLICATIONS

George W. Wickersham

William Draper Lewis

1921

### Founding of The American Law Institute

In the early 1920's, a group of prominent American judges, lawyers, and law professors formed "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law," led by *Elihu Root*, George Wickersham, and William Draper Lewis. *The Committee reported to the members of the legal profession* that the "law is unnecessarily uncertain and complex," and as a result, there is a "general dissatisfaction with the administration of justice."

According to the Committee, the law's uncertainty stemmed in part from a lack of agreement on fundamental principles of the common law, while the law's complexity was attributed to the numerous variations within different jurisdictions.

[CONTINUE READING](#)

1928

### "A Permanent Organization for the Improvement of the Law"

In 1928, ALI Director William Draper Lewis submitted to the Executive Committee of ALI "*The Future of the Institute Report No. 1 on Things to be Considered and How We Should Proceed to Consider Them.*" The report makes it clear that Lewis assumed and intended the Institute to be permanent.

In this video, Nathan L. Hecht, Chief Justice of the Supreme Court of Texas, explains common law and how it may change over time, necessitating future ALI work.



**Nathan L. Hecht**

[CONTINUE READING](#)

1931

### Tentative Draft Sales Reported

Although the Institute had yet to publish a Restatement, the volume of sales of Tentative Drafts and of the Code of Criminal Procedure reflected that the Institute's work, even in its early stages, was regarded with respect by the legal community.

It was understood at this stage that drafts were tentative and not final. Nevertheless, lawyers were purchasing these drafts and using them in preparing

"The preparation of an adequate Restatement of any Subject is a long and arduous task. There is no short cut."

ALI DIRECTOR WILLIAM DRAPER LEWIS  
1929 ANNUAL REPORT

[CONTINUE READING](#)

1932

### ALI's First Restatement Is Published

In the below video, Liability Insurance project Reporter Tom Baker explains the various parts of a Restatement. Black letter, Comments, and Illustrations can all be seen even in the earliest draft of Contracts. Reporter's (or Reporters') Notes were included in the Appendix Volumes within the second Restatement series.

### Roswell B. Perkins

An ALI's sixth president, Roswell B. Perkins was a guiding force and a tremendous influence on the legacy of the Institute. During his presidency he played a leading role in the development of the *Principles of Corporate Governance: Analysis and Recommendations*. An ALI member since 1961, he served on numerous projects and committees. In recognition of his years of service, ALI presented him with the Distinguished Service Award in 2008.

Perkins, a native of Boston, received his undergraduate and law degrees from Harvard University, where he was an editor of the *Harvard Law Review*. He retired from partnership in Debevoise & Plé in 2001, 50 years after joining the firm as an associate in 1948.

Following travel to Russia in 1985, Perkins spearheaded the inauguration of a Russian practice for the firm. Upon the decision of the firm to open an office in Moscow, Perkins relocated to Moscow in December 1987 to head up the new office, an Resident Partner of Debevoise in Moscow. He served in that capacity for three-and-a-half years, representing companies based in Russia, the U.S., U.K., Europe, Scandinavia and the Far East. Among the projects included in the Russian practice of the firm in those years were project financings for three Russian oil refineries under U.S. Ex-Im Bank loan guarantee programs, two large investment funds targeted at Russia, joint ventures and extensive investment and general corporate activity.

Perkins' ALI Presidency ended in 1965. The Institute's Annual Report featured a *memorial address* by Erwin N. Griswold.



PRESIDENT  
1961-1965

**Did You Know?**

In addition to his work at Debevoise, Perkins also served in the government, chiefly as Assistant Secretary of the newly created Department of Health, Education, and Welfare during the Eisenhower administration, and as Counsel to New York Governor Nelson A. Rockefeller.



Perkins (left) with Gyena Chup Hobbs, First U.S. Secretary of Health, Education, and Welfare, and President Dwight D. Eisenhower (right) (1954).  
Photo Credit: Alamy.com, Courtesy National Park Service

Learn more about the Institute's Presidents, Directors, and Publications.

1920s  
1940s

1940s  
1960s

1960s  
1980s

1980s  
2000s

2000s  
Now

PRESIDENTS

DIRECTORS

PUBLICATIONS

1941

### ALI and 'Humanity's Magna Carta'

One of the lesser known, but important and influential projects undertaken by The American Law Institute is the *Statement of General Principles of Law*. In the spring of 1941, William Draper Lewis, Director of the Institute, and *William H. Sweeney*, Reporter for the Restatements of Agency, Judgment, Negligence, and Tort, began a correspondence that would span four years.

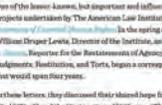
In these letters, they discussed their shared hope for an end to World War II and the destruction of Hitlerism. They also discussed the issue of Germany's future, as well as the broader question of what role the United States should take in the postwar world.

These discussions led Lewis and Sweeney to a shared belief that a joint and permanent project required the recognition of basic human rights, and that the Institute should draft a Statement of Essential Human Rights. Funded by the Carnegie Endowment for International Peace and the American Philosophical Society of Philadelphia, a drafting committee was formed, with representatives from Britain, Canada, China, France, the Near East, Germany, India, Italy, Latin America, Poland, Soviet Russia, Spain, and Syria. Its goal was to draft the indispensible human rights to which all people should be entitled.

Committee members researched the constitutions of other countries and other primary documents existing in individual rights. Throughout the drafting process Lewis and Sweeney disagreed passionately about which human rights should be classified as fundamental. Ultimately they were unable to come to an agreement on the topic.

The Statement was never presented to the ALI membership for a vote, as the ALI Council did not feel that it was advisable for the Institute to draft an international bill of rights. The Council did divert that copies of the committee's report be distributed to ALI members in 1946.

In 1948, *John P. Humphrey* was appointed as the first Director of the Human Rights Division in the United Nations Secretariat, and one of his first undertakings was to draft the *Universal Declaration of Human Rights*. In his 1968 memoir *Human Rights and the United Nations: A Great Adventure*, he says that "the best of the best from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it."



After its adoption in 1948, the UN's *Universal Declaration of Human Rights* went on to become the best-known and most-cited human rights document in the world. It has been translated into over 500 languages and has been incorporated into the constitutions of many countries to help solidify their human rights.

In her 2000 Annual Dinner speech to ALI membership, *Mary Robinson*, former President of Ireland and United Nations High Commissioner for Human Rights, stated the following: "The Declaration of Human Rights is the 'Magna Carta' of the 20th century."

"The Statement broke new ground in identifying not only civil and political liberties, but also education, food, housing, and social security as human rights, and..."

Entries expand to provide additional information.

# The Institute in the Courts: Connecticut Supreme Court Relies on Principles of Corporate Governance

Recently, in *Saunders v. Briner*, 221 A.3d 1 (Conn. 2019), the Supreme Court of Connecticut relied on the approach set forth in Principles of the Law, Corporate Governance: Analysis and Recommendations § 7.01(d) in holding that, under certain circumstances, a member of a single-member limited-liability company could bring derivative claims in a direct action for injuries suffered by the company.

In that case, the plaintiff, who was the sole member and owner of a limited-liability company, brought an action against, among others, the co-owner of a lending business that had sought financing from the plaintiff, alleging, inter alia, claims for breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing for failure to repay the remainder owed on a bridge loan that the plaintiff's limited-liability company had made to the lending business. Following a bench trial, the trial court entered judgment in part for the plaintiff, awarding him a payment for his direct claims for the failure to repay the loan. On appeal, the defendants argued that the plaintiff lacked standing to bring direct claims, and the Supreme Court of Connecticut addressed the question of “whether to exempt single-member limited liability companies from the direct and separate injury requirements necessary to bring a direct action.”

Affirming in part, the Supreme Court of Connecticut determined that the plaintiff had standing to bring his direct claims regarding the bridge loan, holding that, “when the unique circumstance arises in which the sole member of a limited liability company [sought] to remedy a harm suffered by it, a trial court [could] permit such a member to bring his claims in a direct action, as long as doing so [did] not implicate the policy justifications that underlie the distinct and separate injury requirement.” Citing Principles of Corporate Governance § 7.01(d) and § 7.01, Comment *d*, the court explained that there were policy reasons for the general rule prohibiting shareholders from bringing a direct action for an injury to the company that a derivative action could avoid. However, § 7.01(d) provided trial courts discretion to treat a derivative action as a direct action if to do so would not “(i) unfairly expose the corporation or the defendants to a multiplicity of actions, (ii) materially prejudice the interests of creditors of the corporation, or (iii) interfere with a fair distribution of the recovery among all interested persons,” quoting § 7.01(d) (i)-(iii). As discussed in § 7.01, Comment *e*, § 7.01(d) followed the position taken by the Ninth Circuit in *Watson v. Button*, 235 F.2d 235 (9th Cir. 1956), which “recognized that, in some circumstances, the policy reasons for requiring shareholders to bring an action on behalf of the corporation [might] not be present even though the action allege[d] in substance a corporate injury,” observing that the policy concerns were not always applicable to a closely held corporation.

Persuaded by § 7.01(d) and numerous other jurisdictions that had followed § 7.01(d)'s rationale, the court concluded that “a narrowly tailored exception [could] provide a more flexible mechanism for addressing member standing,” such as here, when “both the parties and the court system expended time and resources to litigate these matters and the ‘concept of a corporate injury that [was] distinct from any injury to [its sole member]’ approach[e]d the fictional,” quoting § 7.01, Comment *e*. The court determined that the trial court’s exercise of jurisdiction over the plaintiff’s direct claims “implicitly relie[d] on and [was] supported by the three factors set forth by the American Law Institute,” reasoning that allowing the plaintiff to recover directly would not lead to a multiplicity of actions, prejudice the interests of other creditors, or interfere with the fair distribution of recovery, because the trial court found, and neither party disputed, that the plaintiff was the sole member of the limited-liability company and had funded the loan with his personal funds, and neither party claimed that any creditors of the limited-liability company existed.

The dissent disagreed with the majority’s decision to follow § 7.01(d) and adopt the “single-member limited-liability company” exception to the rule prohibiting shareholders from bringing direct claims for injuries suffered by the company, arguing, among other things, that the exception “invade[d] our legislature’s primary role in the formulation of public policy—in an arena that [was] purely statutory” and “[could] open the door to gamesmanship with the LLC corporate form.”

## Join the MCG

The Institute is currently working on **Restatement of the Law, Corporate Governance**. Now is the perfect time for interested members to join the Members Consultative Group (MCG). The first Preliminary Draft is now available, and the recently cancelled project meeting will be rescheduled.

To join the MCG for this or other projects, sign in to the ALI website and visit the project’s page. From there, you’ll see an option to join the MCG. MCG members will be alerted when the project meeting is rescheduled.

# January 2020 Council Meeting Update

*At its meeting in Philadelphia on January 16 and 17, 2020, the Council reviewed and discussed Council Drafts of 10 projects and approved drafts and portions of drafts as listed below. All approvals are subject to the discussion at the meeting and the usual editorial prerogative.*

## American Indian Law

The Council approved Council Draft No. 6, containing all portions of the Restatement not yet approved by the ALI membership. The material included § 10 on Suits by Indian Tribes Against the United States Under the Tucker Act; § 33 on Immunity of Tribal Officials and Employees in Federal and State Courts; Chapter 3, Subchapter 1, on State Authority; §§ 52-55, 63, 67-68, and 75-82 of Chapter 4 on Tribal Economic Development; and Chapter 6 on Natural Resources.

## Children and the Law

The Council approved Council Draft No. 5, which included §§ 3.10-3.30 of Chapter 3 on Child in Need of Services.

## Conflict of Laws

The Council approved §§ 6.01-6.02 of Chapter 6 on Torts, General Rules, in Council Draft No. 3. There was insufficient time to discuss the remainder of the Chapter.

## Copyright

The Council approved §§ 3.02-3.07 of Chapter 3 on Initial Ownership, Transfers, Licenses, Termination of Grants, and Abandonment in Council Draft No. 4. Section 3.01 was included in the draft only for discussion.

The Council discussed § 2.05 on Exclusion of Facts from Scope of Copyright Protection but no vote was taken. The Reporters will revise the Section in accordance with the discussion and include it in a future Council Draft.

## Data Economy

The Council approved Council Draft No. 1, which included Principles 1-4 of Part I, General Provisions; Principles 5-10 of Part II, Data Transactions; and Principles 15-22 of Part III, Data Rights.

## Government Ethics

The Council discussed §§ 601-602 and 611-614 of Chapter 6 on Disclosure in Council Draft No. 5. Because there was not enough time to discuss the remainder of the draft, no vote was taken on any Sections. The Reporters will revise §§ 601-602 and 611-614 in accordance with the discussion.

## Intentional Torts

The Council approved Council Draft No. 6, which contained the following material from Chapter 3 on Privileges: Topic 1, Definitions for Privileges (§ 20); Topic 2, Self-Defense and Defense of Third Persons (§§ 21-26); and Topic 5, Arrest and Prevention or Termination of Crime (§§ 35-44). The version of § 26 recommended by the Reporters was approved rather than the alternative version also included in the draft.



*Thomas M. Hardiman of the U.S. Court of Appeals for the Third Circuit (Intentional Torts session)*



*Patricia Ann Millett of the U.S. Court of Appeals for the District of Columbia Circuit (Student Sexual Misconduct session)*



*Anton G. Hajjar (Law of American Indians session)*



*Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California (Student Sexual Misconduct session)*



*Gary L. Sasso of Carlton Fields (MPC: Sexual Assault session)*



*Goodwin Liu of the California Supreme Court (Data Economy session)*



*Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York (Student Sexual Misconduct session)*

**Property**

The Council approved Council Draft No. 2, containing §§ 1.1-1.18 of Chapter 1 on Trespass to Land, from Volume 2, Division One.

**Sexual Assault**

The Council approved Section 213.8 on Sexual Offenses Involving Minors in Council Draft No. 10, along with the material in Part II on Grading of Sections Previously Approved, as summarized in the first two columns of the chart attached as Appendix A to the Reporters’ Memorandum, subject to the Reporters grading Section 213.2 as a felony of the third degree, consistent with the first option listed in the second footnote on page 13 of the draft.

The material on Grading: General Considerations in Part I of the draft will be a Reporters’ Introduction in the next draft. There was insufficient time to discuss Section 213.11 on Procedural and Evidentiary Principles Applicable to Article 213 or Sections 213.12 and 213.12A-213.12J on Collateral Consequences of Conviction.

**Student Sexual Misconduct**

The Council approved §§ 6.1-6.6 of Chapter 6 on Formal Resolution of Sexual-Misconduct Complaints in Council Draft No. 3, subject to the Reporters moving certain material from Reporters’ Notes to Comments as requested at the meeting. There was insufficient time to discuss the remainder of the Chapter.

Members interested in any of these projects can access drafts in the Projects section of the ALI website. Those who join a Members Consultative Group and current project participants will be alerted when future meetings are scheduled and when drafts are available.

## Notes About Members and Colleagues

The Administrative Conference of the United States (ACUS) hosted a forum entitled “Nationwide Injunctions and Federal Regulatory Programs” that included several ALI members: **Loren L. AliKhan**, Solicitor General for the District of Columbia; **Ronald A. Cass** of Cass & Associates; **Emily Hammond** of the George Washington University Law School; **Ronald M. Levin** of Washington University in St. Louis School of Law; **Alan B. Morrison** of the George Washington University Law School; **Jeffrey A. Rosen**, Deputy Attorney General of the United States; ACUS Acting Chairman, Vice Chairman, and Executive Director **Matthew Lee Wiener**; and **Stephen F. Williams** of the U.S. Court of Appeals for the District of Columbia Circuit.



Southwestern Law School hosted the *Southwestern Law Review* Symposium, “New Frontiers in Torts: The Challenges of Science, Technology, and Innovation,” which featured panels on a variety of important topics.

The event included participation from the following ALI members: **Ronald G. Aronovsky** of Southwestern Law School, **Mark A. Behrens** of Shook, Hardy & Bacon, **John H. Beisner** of Skadden, Arps, Slate, Meagher & Flom, **Michael D. Green** of Wake Forest University School of Law, **Gregory C. Keating** of USC Gould School of Law, **Richard L. Marcus** of UC Hastings College of the Law, **Linda S. Mullenix** of The University of Texas at Austin School of Law, **Christopher John Robinette** of Widener University Commonwealth Law School, **Victor E. Schwartz** of Shook, Hardy & Bacon, **Anthony J. Sebok** of Yeshiva University, Benjamin N. Cardozo School of Law, **Catherine M. Sharkey** of NYU School of Law, and **Kenneth W. Simons** of UC Irvine School of Law.

*Photo courtesy of Richard Manirath/Southwestern Law School*

**Katharine T. Bartlett** retired from Duke University School of Law after more than 35 years on the faculty, including seven years as dean.

**Elizabeth Chamblee Burch** of the University of Georgia School of Law and **Brandon L. Garrett** of Duke University School of Law are among the guest authors who contributed 2019’s most-read articles on *Access to Justice*, a free weekly Law360 newsletter that delivers stories on trends affecting the justice gap, pro bono programs, and difference makers helping citizens with the fewest resources gain access to the courts.

**Elizabeth J. Cabraser** of Lief Cabraser Heimann & Bernstein has received *The American Lawyer’s* Lifetime Achievement Award.

**Colleen V. Chien** of Santa Clara University School of Law curated a collection of essays for *The Regulatory Review* on “Using Rigorous Policy Pilots to Improve Governance,” which included contributions from **Omri Ben-Shahar** of University of Chicago Law School, **Reeve T. Bull** of the Administrative Conference of the United States, and **Sally Katzen** of NYU School of Law. Professor Chien also published, for the *Review*, “A Proposal for PolicyPilots.gov” (coauthored with Neel U. Sukhatme), in which the authors proposed the creation of an open, online networking platform for rigorous policy pilots.

**Erin Nealy Cox**, U.S. Attorney for the Northern District of Texas, was elevated from Vice Chair to Chair of the Attorney General’s Advisory Committee.

**Bernice B. Donald** of the U.S. Court of Appeals for the Sixth Circuit reviewed *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System* by Alec Karakatsanis, as part of a *Law360* Expert Analysis series of book reviews from judges.

**Michael R. Dreeben** was interviewed in a piece for Law.com, “From SCOTUS to the Classroom, Dreeben Makes an Impact,” about his new role as partner in O’Melveny & Myers’s appellate and white-collar practices, after working for 30 years in the U.S. Solicitor General’s Office.

**Christopher L. Eisgruber** of Princeton University delivered the inaugural Hon. Arlin M. Adams Lecture in Law, Religion and the First Amendment, at the University of Pennsylvania Carey Law School, on “Contested Civility: Free Speech and Inclusivity on Campus.”



*Christopher L. Eisgruber | Credit-Sameer Khan fotobuddy*

**Thomas P. Gallanis** of the University of Iowa College of Law delivered the 2019 Amakasu Lectures in Trust Law, on November 25 and 28 in Tokyo. The Amakasu Lectures bring world-leading scholars to Tokyo to deliver lectures on trust law.

**Richard M. Gergel** of the U.S. District Court for the District of South Carolina spoke to students at Duke University School of Law about his book, *Unexampled Courage: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring*, which tells the story of a Southern judge's critical role in early civil-rights history. Judge Gergel also participated in a Q&A session, moderated by ALI President **David F. Levi**, following the presentation.



*Richard M. Gergel with David F. Levi | Courtesy of Duke Law School*

Associate Justice **Ruth Bader Ginsburg** of the Supreme Court of the United States was awarded the 2019 Berggruen Prize for Philosophy & Culture. Established by philanthropist Nicolas Berggruen, the \$1 million award is given annually to thinkers whose ideas “have profoundly shaped human self-understanding and advancement in a rapidly changing world.” Justice Ginsburg also participated in a Q&A session at the Association of American Law Schools (AALS) 2020 Annual Meeting, moderated by AALS President **Vicki C. Jackson** of Harvard Law School. During the conversation, Justice Ginsburg discussed her life, career, and commitment to law and to legal education.



*Ruth Bader Ginsburg | Getty Images for The 2019 Berggruen Prize for Philosophy & Culture*



*Vicki C. Jackson with Justice Ginsburg | Courtesy of the Association of American Law Schools*

**Teresa Wilton Harmon** of Sidley Austin is among the 25 executives selected for the second cohort of the Daniel Burnham Fellowship by Leadership Greater Chicago (LGC). The Fellowship is designed to inspire leaders to mobilize and exert their combined influence and intellect to positively impact Chicago, its future, and the continued economic progress of the region.

**Richard L. Hasen** of UC Irvine School of Law published a new book, *Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy*. The book shares stories illustrating four factors increasing the mistrust of the fairness and accuracy of American elections.

In honor of **William C. Hubbard** of Nelson Mullins Riley & Scarborough, the American Bar Foundation has established the William C. Hubbard Law & Education Conference Endowment, which will fund conferences that recognize and disseminate innovative and significant scholarship on law and education.

**Edwin E. Huddleson** published an article titled “Chevron Under Siege” in 58 *University of Louisville Law Review* 17 (2019).

**Renée McDonald Hutchins** took office as dean of University of the District of Columbia David A. Clarke School of Law in April 2019.

In December, **Nancy S. Kim** of California Western School of Law, San Diego, presented a segment on “Social and Business Problems Created by Ubiquitous Wrap Contracts: Cautionary Tales from Silicon Valley,” at the first Zagreb International Conference on the Law of Obligations. The event was organized by the Department of Law at the University of Zagreb, Faculty of Economics and Business, in Croatia, in cooperation with the Global Private Law SIG of the European Law Institute. In January, Professor Kim delivered a talk at Queen’s University Faculty of Law, in Kingston, Ontario, Canada, on the topic of “Redefining Consent,” drawing from themes raised in her recent book *Consentability: Consent and its Limits*. The book considers the complexities surrounding consent and proposes a framework for evaluating consentability.



*Nancy S. Kim*

## NOTES CONTINUED FROM PAGE 15

**Jodie Adams Kirshner** of NYU Marron Institute of Urban Management published *Broke: Hardship and Resilience in a City of Broken Promises*, which provides readers with insight into the lives of seven struggling Detroiters in the wake of the city's devastating bankruptcy.

**Renee Knake** of the University of Houston Law Center was appointed by Michigan Governor Gretchen Whitmer to the Michigan State University Board of Trustees.

**Ronald J. Krotoszynski Jr.** of the University of Alabama School of Law published *The Disappearing First Amendment*. The book challenges the prevailing wisdom, which holds that the scope of expressive freedoms has consistently expanded over time since the days of the Warren Court, and posits that in many important First Amendment areas, free-speech rights have actually declined under the Roberts and Rehnquist Courts.

**Gillian L. Lester** of Columbia Law School delivered the 2019-20 annual David B. Goodman Lecture, at University of Toronto Faculty of Law, on "The Evolving Role of the University in Civil Society."



*Gillian L. Lester pictured with Professor Brian Langille (left) and University of Toronto Faculty of Law Dean Edward Iacobucci*

The Bolch Judicial Institute, in Durham, NC, launched its new podcast *Judgment Calls*, which features interviews with federal and state judges about their work, their lives, and the challenges and opportunities they face in the U.S. courts. The podcast is hosted by ALI President and Director of the Bolch Judicial Institute **David F. Levi**, and the first four episodes featured interviews with ALI members: **Richard M. Gergel** of the U.S. District Court for the District of South Carolina; **Jon O. Newman** of the U.S. Court of Appeals for the Second Circuit; **Marjorie O. Rendell** of the U.S. Court of Appeals for the Third Circuit; and **Jeffrey S. Sutton** of the U.S. Court of Appeals for the Sixth Circuit.

The following ALI members were confirmed to judicial appointments: **Lewis J. Liman** to the U.S. District Court for the Southern District of New York; **Daniel M. Traynor** to the U.S. District Court for the District of North Dakota; and **Mary Kay Vyskocil** to the U.S. District Court for the Southern District of New York.

**Martin Lipton** of Wachtell, Lipton, Rosen & Katz and **Edward B. Rock** of NYU School of Law participated in a forum, hosted by the law school and organized by Latham & Watkins, entitled "For Whom is the Corporation Managed?"



*Edward B. Rock (left) and Martin Lipton (second from left)*  
©Hollenshead: Courtesy of NYU Photo Bureau

**Laura E. Little** of Temple University Beasley School of Law published *Guilty Pleasures: Comedy and Law in America*, which explores the rich and interesting relationship between comedy and the law.

**Catharine A. MacKinnon** of the University of Michigan Law School delivered the McCorkle Lecture at UVA School of Law on "The First Amendment: An Equality Reading."

**Randy J. Maniloff** of White and Williams authored an Op-Ed for *The Wall Street Journal*, "Is Football Violence a Crime?" in which he discussed several notable NFL lawsuits and the complex legality that surrounds violence in sports.



*Catharine A. MacKinnon*  
Credit: Julie Davis/UVA Law

**Margaret H. Marshall**, Senior Fellow of the Yale Corporation and Senior Counsel at Choate, Hall & Stewart, spoke at Duke University School of Law as the Spring 2020 Bolch Judicial Institute Distinguished Judge in Residence. ALI President and Director of the Bolch Judicial Institute **David F. Levi** sat down with Justice Marshall for a discussion of her trailblazing life in the judiciary, including her 11 years as Chief Justice of the Massachusetts Supreme Judicial Court.

# In Memoriam

## Marshall L. Small



Marshall L. Small, former Chair of Morrison & Foerster, and a Reporter on Principles of Corporate Governance: Analysis and Recommendations, the Institute's first Principles project, has died. He was 92. Mr. Small, a life member of

ALI, served for more than a decade on the Corporate Governance project, as Reporter on Chapters 1, 2, and 3 of Part V and Chapter 3 of Part VII, and Co-Reporter for Chapter 4 of Part V, Part VI, and §§ 7.24 and 7.25. Professionally, Mr. Small began working with the firm now known as Morrison & Foerster in 1954 and remained with the firm until his death. The first Jewish lawyer hired by the firm, he was responsible for bringing more women and minorities into the firm, and he was instrumental in expanding the firm, which now has more than 1000 lawyers in more than a dozen offices. In the Winter 2020 issue of the firm's Alumni News, Mr. Small was described, in an In Memoriam article, as "a preeminent lawyer in corporate and securities law," whose "legal acumen, leadership talent, patience, and compassion made him one of the most beloved and important people in the firm's history."

### ELECTED MEMBERS

**Robert E. Dalton**, Washington, DC;  
**James Robertson**, Washington, DC

### LIFE MEMBERS

**Charles C. Allen, Jr.**, St. Louis, MO; **David L. Gregory**, Jamaica, NY; **Andrew Peter Leggatt**, Surrey, England; **George Theodore Lowy**, New York, NY; **Hugh G. E. MacMahon**, Falmouth, ME; **John Andrew Martin**, Dallas, TX; **Francis E. McGovern**, Durham, NC; **Powell McHenry**, Cincinnati, OH; **David L. Shapiro**, Cambridge, MA; **Marshall L. Small**, San Francisco, CA; **Michael I. Sovern**, New York, NY; **William Griffith Thomas**, Richmond, VA

### EX OFFICIO

**Mark S. Cady**, Des Moines, IA

**Dayna Bowen Matthew** of UVA School of Law has been named the next dean of George Washington University Law School, effective July 1. She is the first woman to hold this post.

**James A. McKenna**, formerly of the Consumer Protection Division of the State of Maine Office of the Attorney General, authored "Mr. Joad and the Repossessed Car," published in the Summer 2019 issue of the *Maine Bar Journal*.

**M. Margaret McKeown** of the U.S. Court of Appeals for the Ninth Circuit delivered the 35th annual Nathaniel L. Nathanson Memorial Lecture at the University of San Diego on "The Trees are Still Standing: The Backstory of Justice William O. Douglas as a Citizen Justice and Environmentalist." She also wrote a Law360 book review of *Conversations with RBG: Ruth Bader Ginsburg on Life, Love, Liberty, and Law* by **Jeffrey Rosen**. On Feb. 10, Judge McKeown moderated a conversation with Justice **Ruth Bader Ginsburg**—"Searching for Equality: The 19th Amendment and Beyond." The event was sponsored by Georgetown University Law Center and the ABA Commission on the 19th Amendment.



M. Margaret McKeown | Credit: Grace Goodale



Margaret H. Marshall with David F. Levi

## NOTES CONTINUED FROM PAGE 17

**Ronald W. Meister** of Cowan, Liebowitz & Latman has been elected President of the Westchester County Magistrates Association, the professional association of Town and Village Judges in Westchester County, New York.

**John Norton Moore** retired from UVA School of Law after 53 years on the faculty. Among his major accomplishments, he helped lay the groundwork for the Law of the Sea Treaty, currently in force for 168 countries and the European Union.

An essay titled “The Inter Vivos Branch of the Worthier Title Doctrine,” by **Joseph W. Morris** of GableGotwals, was published in the summer issue of Volume 68 of the *Oklahoma Law Review*. The essay was followed by an article titled “Response: Worthier for Whom?” written by **Katheleen R. Guzman** of the University of Oklahoma College of Law.

The ABA Center for Professional Responsibility announced that **Robert H. Mundheim** of Shearman & Sterling will receive the 2020 Michael Franck Professional Responsibility Award during the 2020 Professional Responsibility Fall Leadership Conference in October.

**Kathleen M. O’Sullivan** of Perkins Coie has been appointed Chair of the firm’s 16-member Executive Committee. Ms. O’Sullivan will lead the Executive Committee’s strategic, policymaking, and oversight functions, and will work closely with the firm’s Management Committee.

**William J. Perlstein** was appointed as Senior Managing Director and Vice Chair of Client Services at FTI Consulting, Inc.

**Norman M. Powell** of Young Conaway Stargatt & Taylor was appointed to a two-year term on the Board of Directors of the Working Group on Legal Opinions Foundation (WGLO). WGLO’s mission is to bring together all constituencies concerned with giving and receiving legal opinions in order to foster a national opinion perspective, broaden the consensus that exists, and provide a continuing forum for discussion of opinion issues.

**L. Song Richardson** of UC Irvine was a speaker on the subject “The Case for Women’s Leadership: Do Our Societies Need It & Why?” as part of the 2nd Athena40 Global Conversation on Female Leadership honoring International Women’s Day.

## New Members Elected

On December 20, the Council elected the following 45 persons.

**Andrew D. Bradt**, Berkeley, CA

**Maureen E. Brady**, Cambridge, MA

**Daniel P. Collins**, Pasadena, CA

**Christine Nero Coughlin**, Winston-Salem, NC

**Ashley S. Deeks**, Charlottesville, VA

**Robert L. Fischman**, Bloomington, IN

**Jean Galbraith**, Philadelphia, PA

**Marialuisa S. Gallozzi**, Washington, DC

**Joseph M. Getty**, Annapolis, MD

**Andrew Gold**, Brooklyn, NY

**Joshua P. Groban**, San Francisco, CA

**Paul R. Hage**, Southfield, MI

**Valerie P. Hans**, Ithaca, NY

**Deborah S. Hellman**, Charlottesville, VA

**Jennifer Bruch Hogan**, Houston, TX

**Lolita Buckner Inniss**, Dallas, TX

**David Michael Jaros**, Baltimore, MD

**Garry W. Jenkins**, Minneapolis, MN

**Peter Douglas Keisler**, Washington, DC

**Amy Keller**, Chicago, IL

**Jayanth K. Krishnan**, Bloomington, IN

**Paula E. Litt**, Chicago, IL

**Craig C. Martin**, Chicago, IL

**Walfrido J. Martinez**, New York, NY

**Brian R. Martinotti**, Trenton, NJ

**Mary Kathryn Nagle**, Washington, DC

**Judith K. Nakamura**, Santa Fe, NM

**Anne Joseph O’Connell**, Palo Alto, CA

**Lee S. Otis**, Washington, DC

**Todd Edward Pettys**, Iowa City, IA

**Connor N. Raso**, Washington, DC

**Lori Ringhand**, Athens, GA

**Leigh R. Schachter**, Basking Ridge, NJ

**Ann A. Scott Timmer**, Phoenix, AZ

**Ganesh Sitaraman**, Nashville, TN

**Deirdre M. Smith**, Portland, ME

**Paul Brian Taylor**, Washington, DC

**Michael A. Troncoso**, Redwood City, CA

**Anne M. Tucker**, Atlanta, GA

**Joyce White Vance**, Birmingham, AL

**Paul J. Van de Graaf**, Burlington, VT

**Julian Velasco**, Notre Dame, IN

**Gavin R. Villareal**, Austin, TX

**Helgi C. Walker**, Washington, DC

**Ken Wise**, Houston, TX

**Shanin Specter** of Kline & Specter is teaching Torts at UC Hastings College of the Law; Evidence at University of Pennsylvania Carey Law School and UC Berkeley School of Law; and “How to Ask a Question” at Stanford Law School for the 2019-20 academic year.

**Jane Stapleton** of Christ’s College, University of Cambridge, has been appointed as an Honorary Queen’s Counsel. The title of Honorary Queen’s Counsel is awarded to those who have made a major contribution to the law of England and Wales, outside practice in the courts.

**Adam N. Steinman** of the University of Alabama School of Law was a co-recipient of The Pound Institute’s 2020 Civil Justice Scholarship Award. Professor Steinman received the award in recognition of his article “Access to Justice, Rationality, and Personal Jurisdiction,” 71 Vand. L. Rev. 1401 (2018).

**Carl E. Stewart** of the U.S. Court of Appeals for the Fifth Circuit has received the 2019 Edward J. Devitt Distinguished Service to Justice Award, the nation’s highest honor bestowed upon an Article III federal judge. Retired Associate Justice **Anthony M. Kennedy** of the Supreme Court of the United States chaired this year’s award selection committee, which also included ALI members **Raymond M. Kethledge** of the U.S. Court of Appeals for the Sixth Circuit and **Lucy H. Koh** of the U.S. District Court for the Northern District of California.

**Elizabeth S. Stong** of the U.S. Bankruptcy Court, Eastern District of New York, participated in a panel on comparative judicial perspectives at the 2019 Africa Round Table on insolvency reform, hosted by INSOL International and World Bank Group. The theme for this year’s event was “Celebrating a decade of insolvency reform in Africa and anticipating what lies ahead.”

**Frank Sullivan Jr.** of Indiana University, Robert H. McKinney School of Law, was interviewed in the February 2020 issue of *The Judges’ Journal*, a quarterly publication for members of the ABA’s Judicial Division. The interview touches on his almost 19 years as a justice on the Indiana Supreme Court and his transition from the bench to being an award-winning law professor at Indiana University.

At age 98, **Jack B. Weinstein** of the U.S. District Court for the Eastern District of New York has announced his retirement after serving for over 50 years on the bench. Judge Weinstein was interviewed by *The New York Times* following his announcement and discussed, among other things, his faith in the judicial system, how he would like to see his legacy described, his focus on sentencing reform, and his plans for post-retirement.

**Charles W. Wirken** of Gust Rosenfeld received the State Bar of Arizona President’s Award and was named the Maricopa County Bar Association Member of the Year.

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

# Meetings and Events Calendar At-A-Glance

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

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

## 2020

### September 11

Principles of the Law, Policing  
Philadelphia, PA

### October 8

Principles for a Data Economy  
Philadelphia, PA

### October 9

Restatement of the Law Fourth, Property  
Philadelphia, PA

### October 16

Principles of the Law, Government Ethics  
Philadelphia, PA

### October 22-23

Council Meeting - October 2020  
New York, NY

### November 6

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

### November 13

Restatement of the Law Third, Torts: Remedies  
Philadelphia, PA

## 2021

### January 21-22

Council Meeting - January 2021  
Philadelphia, PA

### May

2021 Annual Meeting  
Washington, DC



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# 97TH ANNUAL MEETING CANCELLED

Due to the global COVID-19 pandemic, our Executive Committee has decided to cancel the 2020 Annual Meeting, originally scheduled for May 18-20 in San Francisco.

We hope to see you next year at the 2021 Annual Meeting in Washington, DC.