

A Message from ALI President David F. Levi

Last month's 96th Annual Meeting was a wonderful example of what our remarkable membership can accomplish when we get together. Our members from across a wide spectrum of experience, expertise, and viewpoints, in their collective wisdom, voted to complete three projects at this year's meeting: Restatement of the Law, Charitable Nonprofit Organizations, Restatement of the Law, The U.S. Law of International Commercial and Investor-State Arbitration, as well as Principles of the Law, Data Privacy.

The time and knowledge that our Reporters, members, and project participants have contributed to these projects cannot be overstated. In these three projects, more than 50 drafts were produced, each incorporating changes suggested to the Reporters by members, participants, and the ALI Council. The completion of these projects is a testament to ALI members' dedication to the Institute and our mission.

Six additional projects at varying stages were also on the Annual Meeting agenda. The membership discussed drafts on Policing; Consumer Contracts; Intentional Torts; Children and the Law; Compliance, Risk Management, and Enforcement; and American Indian Law. Several of these projects have Sections that garnered motions from our members, which led to spirited and helpful debate on all sides of the issues.

These debates are one of the hallmarks of The American Law Institute. All members are encouraged and expected to state their views, to listen to the perspectives of others, and to share the collective goal of finding the best answer. We do so collegially and respectfully. And, as we think through these issues together, we often find that later drafts bear only superficial resemblance to the tentative first thoughts that our superb Reporters offer as a starting point.



Chief Justice Roberts with Henry J. Friendly Medal recipient Retired Associate Justice Kennedy and ALI President David F. Levi

We were honored this year to welcome Chief Justice of the United States John G. Roberts, Jr., who presented ALI's Friendly Medal to Retired Supreme Court Justice Anthony M. Kennedy. In presenting the medal, Chief Justice

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THE DIRECTOR'S LETTER BY
RICHARD L. REVESZ

The Debate Over the Role of Restatements

In the past few years, we frequently have seen the charge that the ALI's mission is to state what the law "is," rather than what the Institute thinks the law "ought to be," and that we recently have strayed from this mission and should right the ship. This charge most often is made when the ALI chooses to restate a minority rule. As one commentator wrote in criticizing the Restatement of the Law, Liability Insurance (which, despite the criticism, followed majority rules in nearly all of its Sections): The adoption of a minority rule in a Restatement "is fundamentally inconsistent with the purpose of a Restatement of Law project." Such comments rest on the notion that the ALI's mission is simple, uncontested, and has always been so. That, however, is not the case.

The debate over the role of Restatements is as old as the Institute itself. The 1923 Report on the Institute's establishment makes clear that Restatements never were meant merely to be simple summaries of undisputed legal rules. Rather, Restatements were meant to "be at once analytical, critical and constructive." Their "object should not only be to help make certain much that is now uncertain and to simplify unnecessary complexities, but also to promote those changes which will tend better to adapt the laws to the needs of life." This Report also recognized that the Restatements sometimes might set forth minority rules: "Where the statement of the law set forth [in a Restatement] is against the weight of authority in most of the states, but the matter has not been the subject of a prior decision by the courts in some one or more of the states, the courts in these jurisdictions . . . without waiting for any legislative authority, may follow the law as set forth in the restatement."

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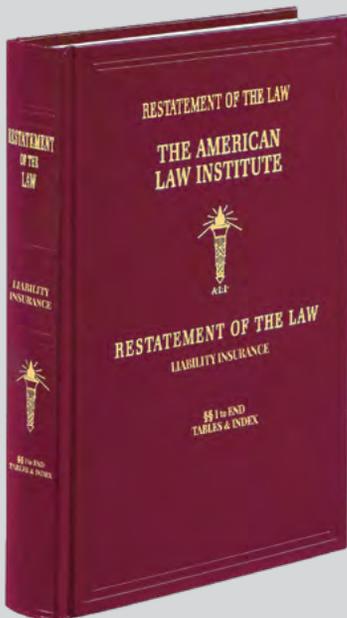
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Restatement of the Law, Liability Insurance, Now Available



ORDER ONLINE AT
WWW.ALI.ORG/PUBLICATIONS.

ALI Elects Four Council Members

During Monday's Reports and Business session at the Annual Meeting, Nominating Committee Chair Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit presented to the membership four nominees for the ALI Council, who were approved by the membership to a five-year term.

The new Council members are **Allison H. Eid** of the U.S. Court of Appeals for the Tenth Circuit, **Daniel C. Girard** of Girard Sharp, **Thomas M. Hardiman** of the U.S. Court of Appeals for the Third Circuit, and **Pamela S. Karlan** of Stanford Law School. Short biographies of Council members can be found on the ALI website.



Eid



Girard



Hardiman



Karlan

The following incumbent Council members were reelected to Council for a five-year term effective at the close of the Annual Meeting:

Scott Bales, Arizona Supreme Court
John H. Beisner, Skadden, Arps, Slate, Meagher & Flom
Evan R. Chesler, Cravath, Swaine & Moore
Mariano-Florentino Cuéllar, California Supreme Court
Teresa Wilton Harmon, Sidley Austin
Derek P. Langhauser, Office of the Governor, State of Maine
Lance Liebman, Columbia Law School
Raymond J. Lohier, Jr., U.S. Court of Appeals, Second Circuit
Gerard E. Lynch, U.S. Court of Appeals, Second Circuit
M. Margaret McKeown, U.S. Court of Appeals, Ninth Circuit
David W. Rivkin, Debevoise & Plimpton
Elizabeth S. Stong, U.S. Bankruptcy Court, Eastern District of New York
Seth P. Waxman, WilmerHale

Additionally, at the Annual Meeting, Elizabeth J. Cabraser of Lief Cabraser Heimann & Bernstein, Carolyn B. Lamm of White & Case, Douglas Laycock of the University of Virginia School of Law and the University of Texas at Austin School of Law, and Margaret H. Marshall of Choate Hall & Stewart took emeritus status. Emeritus Council members often continue to participate in Council meetings.

ALI Council has elected Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas as the First Vice President and Teresa Wilton Harmon of Sidley Austin as the Second Vice President. Paul L. Friedman was reelected as Secretary for a three-year term.

THE PRESIDENT'S LETTER CONTINUED FROM PAGE 1

Roberts extolled Justice Kennedy's wisdom, prescience, and kindness, and his dedication to civility in our national dialogue. In turn, in accepting the medal, Justice Kennedy lauded the ALI for its process and its dedication to civility. Justice Kennedy's recognition of the Institute's painstaking process and culture of respectful debate is a tribute to each of our Reporters, members, and project participants who commit their time and their voice to our projects. I share with you here an extended excerpt of his address to the membership because it was so inspiring to all who attended. You may also view the full Friendly Medal presentation on our website.

Justice Anthony M. Kennedy:

[Judge Friendly] was a powerful figure in preserving and advancing and providing respect for the judicial process that's part of the Anglo-American legal system, . . . the common-law method. Now it's not a method that's necessarily designed to survive. If you had lived . . . toward the end of the . . . 18th century . . . in England, and you were a member of the legal profession or you were a well-informed person, suppose someone asked you to wager, at those times, whether the common law could really survive or whether the code system that was so apparent on the continent would take its place.

It might have been a good prediction, a good wager for you to say that the common law could not survive because it was simply not accessible. It took months to find controlling precedents. . . . Enter William Blackstone. Blackstone began his life thinking he wanted to be a poet. He didn't quite make it that way, so he took his second choice, and he wrote the *Commentaries*, . . . published between 1765 and 1770. Suddenly, the principles, the traditions, the teachings of the common law became accessible.

. . . Fast forward from 1770 just over 150 years to the 1920s. In this nation, we had 48 state judicial systems, 48 legislatures, and obviously the federal government. We had this great outpouring of case decisions and statutes. The law was becoming inaccessible. Enter the ALI.

The ALI did for the Anglo-American judicial process and for the law in the 1920s what Blackstone had done 150 years earlier. Sometimes during my tenure on the Court when the clerks came in and we first began to discuss a case, my suggestion was get the Restatement on Contracts, Agency, whatever the underlying problem was . . .

And this would often be the beginning of a very, very important part of a discussion and sometimes even the end. . . . It's important, it seems to me, for our fellow members in the profession—members of the academy, of the bar, and of the bench—to know the process by which you come to your conclusions on issues that are very controversial.

You do so in a way that is civil. You have a civility in your tradition, in your methods, in your debates as part of your history. We must know this civility.

It was not at all anticipated by me, but some years ago, Charles Alan Wright wanted to talk with me. . . . And we found out that we were both going to be in San Francisco . . .



And . . . he said, "I've arranged for you to come tomorrow to the ALI meeting on Corporate Governance." And he said, "We are going to preside."

. . . This was a debate with lawyers, about this many lawyers in the room, and it went on for three hours. It was one of the most principled, decent, thoughtful, instructive debates that it had ever been my pleasure to encounter. And it was done with the utmost of civility.

In a way, The American Law Institute, by its history and by its traditions and by its ethics, make [ALI] itself a restatement of civility. It's never been needed more than it is today.

. . . In just about four years, Dean [Levi], you're going to have the 100th anniversary of the ALI. And it should be our aspiration and our hope that at that point, we will have made some recovery in restoring decency and thoughtfulness and honor to our civic discourse.

Democracy presumes that there will be a consensus based on thoughtful debate. . . . This award will inspire me in future years to bring again the message of civility and decency and progress to all those who, like you, revere the law.

The civility and thoughtfulness of our process was more evident than ever at this year's Annual Meeting. I am honored to serve as the President of The American Law Institute and proud to work with such a dedicated group of members.

Thank you for all that you have done and will do for The American Law Institute.

- David F. Levi, ALI President

THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

Despite these admonitions, it appears that the first round of Restatements, completed between 1923 and 1944, almost always restated majority legal rules. As described by the ALI's first Director, William Draper Lewis, "[t]he Restatement states the law as it would be today decided by the great majority of courts." But the approach was not monolithic. In 1948, after completion of the Restatement First series, then-Director Herbert Goodrich explained in his Report to the ALI Membership that "[o]ver and over again the statement was made that we were endeavoring to state the law as it was, not as some of us would like it to be. All the time we recognized that there were places for a give and take even within that limitation; in cases of division of opinion a choice had to be made and naturally we chose the view we thought was right." Moreover, participants in this process and prominent commentators lamented that the Restatements were "substantially limited to[] a statement of the law as it is" and therefore departed from "the original conception," as Professor Hessel E. Yntema of the University of Michigan put it in 1936. Similarly, Yale Law School Dean Charles E. Clark noted in 1933 that many ALI participants had come to view the Restatement First's approach as a "straitjacket," characterized by an undue emphasis on "announc[ing] a more or less binding and final rule of law," and being "caught between stating the law which should be and the law which is," ultimately "often end[ing] by stating only the law that was."

The proper role of Restatements received more sustained attention under the leadership of the eminent Herbert Wechsler, who served as the ALI's Director between 1963 and 1984. Consistent with the 1923 Report, Wechsler embraced the idea that restating the law involves some measure of normative judgment. And, he believed in making this approach explicit. As we now quote in our Style Manual, as well as on the walls of the ALI Conference Room where we meet to discuss projects, Wechsler described a "working formula" under which "we should feel obliged in

our deliberations to give weight to all of the considerations that the courts, under a proper view of the judicial function, deem it right to weigh in theirs." Under this view, "a preponderating balance of authority would normally be given weight, as it no doubt would generally weigh with courts, but it would not be thought to be conclusive." The ALI Council in 1968 endorsed Wechsler's vision of restating the law by unanimously adopting Resolution No. 2061—"approv[ing] the statement of policy by the Director in his 1966 Annual Report (pp. 5-9) governing the latitude and scope of the formulations of black-letter and comments in the Restatement of the Law, Second"—and this vision has since provided the guiding light for the Institute's Restatement work.

Over the years, we have continued to refine this formulation. Most importantly, in our 2015 revisions to the ALI Style Manual, the Council articulated a clear requirement that, "if a Restatement declines to follow the majority rule, it should say so explicitly and explain why." That way, if a particular black-letter provision reflects a minority position, a judge choosing to follow it would be on notice that the majority of jurisdictions had decided the issue differently. This explicit admonishment properly reflects the view that the ALI, as an institution focused on promoting clarity in the law, must doggedly pursue such clarity in its own work.

Moreover, those who argue that restating a minority rule entails saying what the law "ought to be," rather than what it "is," ignore that in those jurisdictions that already have adopted the minority position, this *is* the law that "is." Viewed from the perspective of such a jurisdiction, the ALI's restatement of the competing majority position amounts to a recommendation to change its law; we would be telling such a jurisdiction what its law "ought to be." And if the ALI were to recommend such a change, we should be able to offer a reasoned explanation why the majority position is the better rule; counting noses, without further analysis, is unlikely to persuade the minority jurisdiction to abandon its

approach. Likewise, if a minority rule is chosen, the rationale for selecting it over the majority rule should be clearly articulated.

This transparency also should allay concern over instances where a Restatement distills a rule that is latent in a body of case law, but which never has been expressly announced by a court; or times where a Restatement offers new terminology to describe what courts are doing; or circumstances where a Restatement anticipates issues that have not yet arisen in decided cases and offers a view on how the law should be extended to decide those issues. To be sure, these are matters of judgment, similar to the kind of judgment exercised by a common-law judge.

In this connection, it is instructive to look at the criticism of one of our Restatements in partially dissenting opinions by Justices Scalia and Thomas. While the Court is usually a consistent and approving consumer of Restatements and frequently cites to the Restatements for support, on this occasion we came in for some criticism from two Justices who often have relied on the Restatements over their long tenures. The criticism was directed at § 39 of the Restatement Third, Restitution and Unjust Enrichment, a Section described by Justice Thomas in the principal partial dissent (also joined by Scalia) as "lack[ing] support in the law."

An examination of the Comments to § 39, as well as a look at the proceedings from the ALI Annual Meeting where it was discussed, reveal the care with which the Section was developed. The idea was to distill—from a collection of cases that reached generally consistent outcomes, but which were, on the whole, unclear and undertheorized—a rule for future courts to apply. The Comments explicitly explained the approach. In my view, that is an example of the ALI carrying out its responsibility, set forth in its Certificate of Incorporation, "to promote the clarification and simplification of the law."

I end this letter with three thoughts. First, the debate over whether Restatements should reflect what the law “is” as opposed to what the law “ought to be” has been a core part of the ALI’s focus since its founding. And, for more than half a century, we have followed a fairly consistent approach of generally restating majority rules but not necessarily being wedded to them, especially when ignoring better rules or trends would cast ALI into the role of being a roadblock to change. Second, equating what the law “is” with majority approaches and what the law “ought to be” with minority approaches is a category mistake. It would certainly surprise a minority jurisdiction that its law is aspirational but not real. And, third, instances in which critics claim that a Restatement provision has no support are often examples of the ALI articulating a rule that explains a pattern developing in the case law.

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.

Annual Meeting Sunday Events



Jeffrey S. Sutton, Joan L. Larsen, Goodwin Liu, Allison H. Eid, and David F. Levi (*51 Imperfect Solutions*)

This year’s Annual Meeting featured three Sunday events. The day began with *51 Imperfect Solutions: States and the Making of American Constitutional Law*. This panel discussion featured **Jeffrey S. Sutton** of the U.S. Court of Appeals for the Sixth Circuit, with **Allison H. Eid** of the U.S. Court of Appeals for the Tenth Circuit, **Joan L. Larsen** of the U.S. Court of Appeals for the Sixth Circuit, and **Goodwin Liu** of the California Supreme Court in discussion of topics from Judge Sutton’s book, *51 Imperfect Solutions: States and the Making of American Constitutional Law*. ALI President **David F. Levi** moderated the discussion.



Mariano-Florentino Cuéllar, Tom Lue, Cary Coglianese, and Kristin Johnson taking questions from the audience (*Artificial Intelligence*)

The programs continued with *Artificial Intelligence (AI)*, a panel discussion led by **Mariano-Florentino Cuéllar** of the California Supreme Court. The panel addressed some of the exciting and difficult legal issues surrounding the use of AI as it becomes more complexly woven into our daily life. **Cary Coglianese** of University of Pennsylvania Law School, **Kristin Johnson** of Tulane University Law School, and **Tom Lue** of DeepMind joined Justice Cuéllar as panelists.



From Left to Right: Derek P. Langhauser, Thomas D. Morgan, Richard W. Painter, Meredith Fuchs, John B. Bellinger III, and Troy A. McKenzie (*ALI CLE Ethics Program*)

The final program on Sunday was the ALI CLE course, *Duty to Whom? Ethics Dilemmas Confronted by Government Lawyers*. Planning chair and moderator **Troy A. McKenzie** of New York University School of Law was joined by panelists **John B. Bellinger III** of Arnold & Porter Kaye Scholer; **Meredith Fuchs** of Capital One; **Derek P. Langhauser** of Office of the Governor, Maine; **Thomas D. Morgan** of The George Washington University Law School; and **Richard W. Painter** of University of Minnesota Law School. This panel addressed some common ethical issues confronted in the public sector.

ACTIONS TAKEN AT THE 96TH ANNUAL MEETING

MONDAY, MAY 20

POLICING*

The membership voted to approve Tentative Draft No. 2, which contains portions of four Chapters addressing General Principles, Police Encounters, Eyewitness Identifications, and Police Questioning.

CHARITABLE NONPROFIT ORGANIZATIONS*

Tentative Draft No. 3 was approved by the membership. The draft includes Chapter 4, Restrictions on Assets; Pledges; Solicitation, in its entirety, as well as the remaining Sections of Chapter 2, Governance and Management of Assets, and Chapter 5, Government Regulation of Charities. This vote marks the completion of this project. See page 9 for details.

INTERNATIONAL COMMERCIAL AND INVESTOR-STATE ARBITRATION*

The membership voted to approve the Proposed Final Draft, thereby completing the project. See page 9 for details.

TUESDAY, MAY 21

CONSUMER CONTRACTS*

A Tentative Draft containing all nine Sections of the project was presented to the membership. After a spirited discussion, the members voted to approve § 1 of the draft. For additional details, please see page 7.

INTENTIONAL TORTS TO PERSONS*

With the exception of Chapter 3 (Privileges) and §§ 17-19 of Chapter 2 (Consent), Tentative Draft No. 4 was approved by the membership. There was not enough time to review the aforementioned portions.

CHILDREN AND THE LAW*

Tentative Draft No. 2 was approved by the membership. The draft includes Sections from all four Parts of the project (Children in: Families, Schools, the Justice System, and Society).



CLOCKWISE FROM THE LEFT

Nancy S. Kim of California Western School of Law

Donald B. Ayer of Jones Day

Stephen Yee Chow of Hsuanyeh Law Group

Meredith Fuchs of Capital One

WEDNESDAY, MAY 22

DATA PRIVACY*

The membership approved a Tentative Draft that included all portions of the project, marking the completion of this Principles project. See page 9 for additional information.

COMPLIANCE, RISK MANAGEMENT, AND ENFORCEMENT*

Tentative Draft No. 1 was approved by the membership. The draft includes Chapters on Governance and Compliance. This was the first Annual Meeting vote for this project.

LAW OF AMERICAN INDIANS*

The membership approved Tentative Draft No. 3. The draft includes Sections on The Indian Child Welfare Act and Similar State Laws, Indian Tribes as Economic Actors, and Indian Country Criminal Jurisdiction.



Nancy Leeds Perkins of Arnold & Porter Kaye Scholer



Linda Sheryl Greene of University of Wisconsin Law School



Project Reporters Matthew L.M. Fletcher and Kaighn Smith Jr. speak to Meeting attendees after the project session.

CONSUMER CONTRACTS PROJECT SESSION

A motion was made to § 1 to clarify that to the extent the UCC applies to a transaction and provides a rule, the Restatement does not apply—this was already stated in the Restatement but reinforced by the amendment. The Reporters did not oppose the motion. The motion passed by voice vote.

A consumer-oriented amendment to replace § 2 was made. After extensive discussion, the motion was defeated 206-144.

A consumer-oriented motion made to add Restatement Second, Contracts § 211(3) on to § 2 was defeated (the show-of-hands vote was clear, so there was no vote count).

There was insufficient time to complete discussion of the draft. The first motion to approve the Sections of the draft that were discussed was to approve §§ 1 and 2. After it was pointed out that the discussion on § 2 had not been completed, the motion was amended to seek approval of § 1 only. A motion to defer the motion to approve § 1 until a subsequent Annual Meeting was defeated 144-142. The motion to approve § 1 passed by voice vote.

A final motion was made to change the project to a Principles project. The vote would have been an indication to ALI's Council of the sense of the membership, as this change can only be made by the ALI Council per the Institute's Bylaws. A motion was made to postpone the "Principles" motion indefinitely, which passed by voice vote.

The project remains a Restatement. Review will be resumed at a subsequent Annual Meeting.

*All approvals by the membership at the Annual Meeting are subject to the discussion at the Meeting and the usual editorial prerogative.

Speakers at the Annual Meeting



Michelle Wilde Anderson

On Monday, May 20, retired U.S. Supreme Court Associate Justice **Anthony M. Kennedy** was presented with the Henry J. Friendly Medal by **John G. Roberts, Jr.**, Chief Justice of the United States. Read more about Justice Kennedy's speech on page 10.

On Tuesday, May 21, Mariano-Florentino Cuéllar of the California Supreme Court presented the Early Career Scholars Medal to Co-Recipient **Michelle Wilde Anderson** of Stanford Law School. Read more about Professor Anderson's speech on page 18. Co-Recipient **David Pozen** of Columbia Law School was unable to attend the Meeting.



Lee H. Rosenthal

Tuesday's Members Luncheon, honoring new 25-Year (Class of 1994) and 50-Year (Class of 1969) members, featured speaker **Lee H. Rosenthal**, Chief Judge of the U.S. District Court for the Southern District of Texas. Read more about Chief Judge Rosenthal's speech on page 12.



William P. Barr

Tuesday concluded with the Annual Dinner at which **William P. Barr**, 85th Attorney General of the United States, discussed the topic of nationwide injunctions.

On Wednesday, May 22, **Carol F. Lee** of Taconic Capital Advisors was presented with the Distinguished Service Award. Read more about Ms. Lee's speech on page 11.

Videos of the speeches are available at www.ali.org.



Wednesday's Members Luncheon featured speaker **Alberto Ibarguen**, president and CEO of the John S. and James L. Knight Foundation. He discussed the role that the decline of reliable news at the local level and the rise of social media have played in the crisis of trust in American institutions.

"Society puts things in order through law, but that's hard work under the best of circumstances, and it's really hard work when things keep changing. The volume and speed of change in media, fueled by artificial intelligence, fueled by technology, begs for a fresh look at issues across the board, including the law of defamation, product liability, antitrust, free speech, and privacy. And it may require a different way to think about regulation so that the reality of evolving technology doesn't almost immediately make regulation obsolete."

Watch the video of Mr. Ibarguen's speech at www.ali.org.

Membership Approves Three Projects at this Year's Annual Meeting

Charitable Nonprofit Organizations, Data Privacy, and International Commercial and Investor–State Arbitration

ALI members voted at this year's Annual Meeting to approve two Restatement projects: Restatement of the Law, Charitable Nonprofit Organizations, and Restatement of the Law, The U.S. Law of International Commercial and Investor–State Arbitration. Membership also voted to approve Principles of the Law, Data Privacy.

Restatement of the Law, Charitable Nonprofit Organizations, addresses legal issues faced by nonprofit institutions, including choice of form, governance, changes to purpose and organization, restrictions on charitable assets, government regulation of charities, and standing of private parties.

Jill R. Horwitz, Professor of Law at the UCLA School of Law, served as project Reporter. In addition to Professor Horwitz, Nancy A. McLaughlin, Robert W. Swenson Professor of Law at the University of Utah S.J. Quinney College of Law, served as the project's Associate Reporter, and Marion R. Fremont-Smith of Harvard University, John F. Kennedy School of Government, served first as a Reporter on the project before taking on the role of Consultant.

Restatement of the Law, The U.S. Law of International Commercial and Investor–State Arbitration, identifies the role of the courts over the life cycle of an arbitral proceeding, including enforcement of the arbitration agreement, the judicial role in arbitral proceedings, and post-award relief. It also addresses the ways in which the basic principles governing U.S. court involvement in investor–State arbitration in some instances are different from those applicable to international commercial arbitration generally.

This is the first time that ALI has produced a Restatement on this area of the law. Work began in 2007 under the leadership of Reporter George A. Bermann of Columbia Law School and Associate Reporters Jack J. Coe, Jr., of Pepperdine University School of Law, Christopher R. Drahozal of the University of Kansas School of Law, and Catherine A. Rogers of both Penn State Law at University Park and Queen Mary, University of London.

Principles of the Law, Data Privacy, seeks to provide a set of best practices for entities that collect and control data concerning individuals and guidance for a variety of parties at the federal, state, and local levels, including legislators, attorneys general, and administrative-agency officials.

The project launched in 2013 and is led 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 Reporters, subject to oversight by the Director, will now prepare the Institute's official texts for publication. At this stage, the Reporters are authorized to correct and update citations and other references, to make editorial and stylistic improvements, and to implement any remaining substantive changes agreed to during discussion with the membership or by motions approved at the Annual Meetings. Until the official texts are published, the drafts approved by the membership are the official position of ALI, and may be cited as such.



Nancy A. McLaughlin, Marion R. Fremont-Smith, and Jill R. Horwitz (Charitable Nonprofit Organizations)



George A. Bermann, Christopher R. Drahozal, Catherine A. Rogers, and Jack J. Coe Jr. (Arbitration)



Lori A. Martin of WilmerHale, Paul M. Schwartz, and Daniel J. Solove (Data Privacy)

ALI WOULD LIKE TO THANK THE REPORTERS, PROJECT PARTICIPANTS, AND ALI MEMBERS WHO CONTRIBUTED THEIR TIME, WISDOM, AND GUIDANCE TO THESE PROJECTS.

Henry J. Friendly Medal: Anthony M. Kennedy



Chief Justice Roberts presents the Friendly Medal to Retired Associate Justice Kennedy.

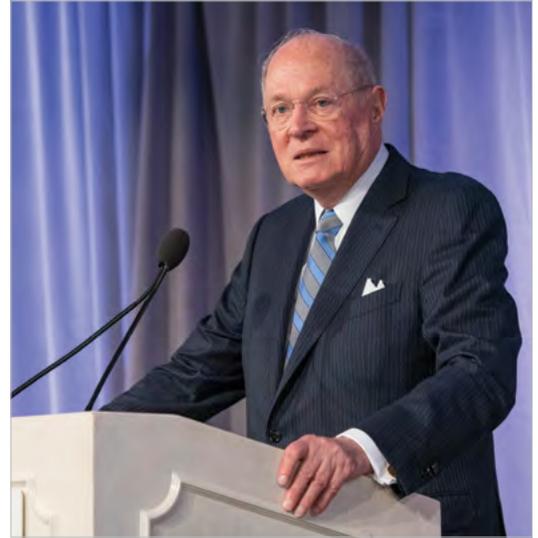
Retired U.S. Supreme Court Associate Justice Anthony M. Kennedy was presented with the Henry J. Friendly Medal at the Institute's 96th Annual Meeting. The Honorable John G. Roberts, Jr., Chief Justice of the United States, presented the award. The Medal recognizes contributions to the law in the tradition of Judge Friendly and the Institute.

ALI President David F. Levi opened the presentation with some thoughtful words before giving the stage to Chief Justice Roberts, who began by expressing his admiration and respect for Justice Kennedy as a friend and colleague during the course of his extensive legal career, including his position on the U.S. Supreme Court for 30 years:

“Justice Kennedy ‘brought to the Court a special combination of legal acumen, collegiality, and kindness. He leaves behind an imposing body of judicial opinions to guide our future deliberations.’ He is also a wise and generous man who possesses the gift of prescience.”

Chief Justice Roberts highlighted Justice Kennedy's dedication to his family, his considerate nature, and above all his devotion to the rule of law. “Justice Kennedy deserves this medal today because, like Judge Friendly, his career on the bench has been one of complete devotion to this vision of public service.” Chief Justice Roberts expressed his belief in Justice Kennedy's embodiment of the spirit of the Friendly Medal saying:

“[H]e has made the judicial branch one on which all of his colleagues can feel proud to serve with him. Certainly, Justice Kennedy has helped shape a judicial branch and Supreme Court on which I am proud to serve. Certainly, I have been proud and grateful for the chance to serve alongside Justice Kennedy. And certainly, today I am proud to present the Henry J. Friendly Medal to Justice Kennedy for his contribution to the law in the tradition of Judge Friendly and The American Law Institute.”



Justice Kennedy then took the stage to accept the award, express his thanks, and discuss the important work of the Institute and its influence on his many dedicated years of service on the nation's highest court. He spoke of his particular admiration for the methods of the Institute, citing its commitment to civility and how that same civility should be mirrored throughout the general practice of law. He also looked towards the future of the Institute, and his hopes for its influence in shaping a better future for the law and legal interpretation.

AN EXTENDED EXCERPT OF JUSTICE KENNEDY'S REMARKS MAY BE FOUND IN ALI PRESIDENT DAVID F. LEVI'S MESSAGE, BEGINNING ON PAGE 1. THE FULL VIDEO OF THE MEDAL PRESENTATION IS AVAILABLE ON THE ALI WEBSITE.

Distinguished Service Award: Carol F. Lee



Carol F. Lee accepts the Distinguished Service Award.

Council member Carol F. Lee was presented with the Distinguished Service Award at this year's Annual Meeting. She was introduced by Awards Committee Chair Raymond J. Lohier, Jr., of the U.S. Court of Appeals for the Second Circuit.

The Distinguished Service Award is given intermittently to a member who over many years has played a major role in ALI's work. The previous award was given to Council member Robert H. Mundheim of Shearman & Sterling in 2015.

Judge Lohier began his introduction by expressing his sincere and overwhelming admiration for Ms. Lee's work and her tireless dedication to the Institute:

"Few of us can match the depth of her commitment and devotion to the ALI or the scope of her contributions to its work or its projects. . . . Carol's tenure on the ALI has been remarkable. Since her election to the ALI 11 years ago and to the Council seven years ago, she has attended every single Council Meeting and all but one Annual Meeting."

He further spoke about Ms. Lee's work on the project drafts, praising her efforts in reading the drafts cover to cover. Her insightful comments, thoughtful revisions, and commitment rise to a standard of excellence and clarity that is hard to match:

"Every ALI Restatement or Principles [draft] over the last several years has been touched by Carol's exacting eye, improved by her pointed suggestions, or stumbled under the force of her precise and very careful criticism.

Carol's incredible contributions to the Institute's academic work, her unrivaled level of civil participation in meetings, and her painstaking review of project drafts all set a nearly impossible example for her many friends and colleagues in this room, including me. Her remarkable dedication and profound commitment to the ALI's work reflects the Institute's founding purpose of clarifying, modernizing, and improving the law."

Ms. Lee took the stage to a standing ovation and began by explaining her impulsive drive for perfectionism which, she shared, has been an undeniable part of her personality since the third grade. She spoke on how being a part of the ALI gave her the chance to channel that need for perfection into the important work of the Institute. She expressed her gratitude for the award, and its symbolic connection to not just the content the Institute produces but to the people without whom it would not be possible:

"This award is not so much a tribute to me personally, although it is a great honor, as it is a sign of the importance that our Institute places on all of us working together to produce the best possible Restatements of the Law, Principles of the Law, and model statutes. Every member can and ought to participate in the collective enterprise of the ALI."

To watch the video of Ms. Lee's remarks please visit the [ALI website](#).

96th Annual Meeting Members Reception and Buffet



Members and guests gathered at the National Museum of African American History and Culture for the annual Members Reception.



Terrance Mason and Anthony E. DiResta of Holland & Knight



Nelly N. Khouzam of the Florida Second District Court of Appeal, Virginia M. Kendall of the U.S. District Court for the Northern District of Illinois, and Morris Silberman of the Florida Second District Court of Appeal

New Life and 50-Year Members Present the Institute with Class Gift

On Tuesday, May 21, The American Law Institute held a luncheon to honor its new Life Members and 50-Year Members—the Classes of 1994 and 1969. During the event, a \$200,000 Class Gift was presented to the Institute on behalf of the two classes by 1994 Class Committee Chair and ALI Council member John H. Beisner of Skadden, Arps, Slate, Meagher & Flom LLP.

Joining Mr. Beisner for the presentation were fellow 1994 Class Committee members Mark R. Killenbeck of University of Arkansas School of Law and William J. Perlstein of BNY Mellon. Each took a moment to thank their fellow class members, as well as the Class of 1969, for their efforts in reaching the fundraising goal. The Class of 1969—chaired by Robert H. Mundheim of Shearman & Sterling and consisting of just 12 members—contributed \$15,000 toward the Class Gift total.

Attending the luncheon from the Class of 1969 was Martin F. Richman of New York, NY, who was presented with a special medallion by ALI Chair of the Council and Past President Roberta Cooper Ramo in honor of his 50 years of service to the Institute. Mr. Richman, now retired, was previously with K&L Gates LLP and has served on Members Consultative Groups for a number of ALI projects.

Following the presentations of the Class Gift and 50-year medallion, Class Speaker Lee H. Rosenthal, Chief Judge of the U.S. District Court for the Southern District of Texas, took the stage. A 1994 Class Member who currently serves as ALI's First Vice President, Chief Judge Rosenthal spoke about aspiration, ambition, and her 25 years with the ALI.



Lee H. Rosenthal

“[A]spiration,” Chief Judge Rosenthal explained, is “a distinctive form of purposeful action . . . directed at acquiring new values [that] are . . . deeply practical . . . and active.” By contrast, “[a]mbition tries to acquire what we already know we value—money, power, publication, tenure, [or] promotion,” but it does not help us explore a new path or get to a new place. After applying these concepts within the world of judges and judging, Chief Judge Rosenthal described how they come together in the work of the ALI: “I am ambitious, but I also aspire . . . to work on really interesting and important issues . . . that matter, with people who are smarter than I am, who I respect and admire The ALI completely fits this bill.” Chief Judge Rosenthal’s remarks can be viewed at www.ali.org/annual-meeting-2019.

The Class Gift program, now in its eighth year, provides funding for several important aspects of the Institute’s mission, including financial-assistance programs that ensure judges and public-sector attorneys can attend ALI’s meetings and participate in its work and the Early Career Scholars Medal and annual conference, a program that engages the next generation of eminent legal minds.

The Class Gift will continue with the 1995 and 1970 Life Member Classes, who will be honored at ALI’s 97th Annual Meeting next May in San Francisco.

The New Life and 50-Year Member Class Gift

Presented by the Class of 1994 and the Class of 1969

The American Law Institute celebrates each gift that contributed to the success of this campaign. We deeply appreciate your generosity.

The new Life and 50-Year Member Class Gift will be used to fund important aspects of ALI's mission, including the Judges and Public-Sector Lawyers Expense Reimbursement program, the Members Consultative Group Travel Assistance program, the Early Career Scholars Medal and annual conference, and the Institute's influential law-reform projects.

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1994 Class Committee Chair John H. Beisner, with committee members Mark R. Killenbeck and William J. Perlstein, presents the New Life and 50-Year Member Class Gift to the Institute.

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THE NEW LIFE AND 50-YEAR MEMBER CLASS GIFT CONTINUED FROM PAGE 13

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Donors as of June 19, 2019

The ALI Development Office has made every attempt to publish an accurate list of donors for the New Life and 50-Year Life Member Class Gift campaign. In the event of an error or omission, please contact Kyle Jakob at 215-243-1660 or kjakob@ali.org.

This report is produced exclusively for the ALI community. The Institute prohibits the distribution of this booklet to other commercial or philanthropic organizations.

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1994 and 1969 Class members gathered to celebrate 25 and 50 years with the Institute.

About the Class of 1994

A quarter of a century ago, the Class of 1994 was elected to The American Law Institute. Now they are becoming Life Members, a distinction earned by completing 25 years of service to ALI and its mission. All 90 members of the Class of 1994 have accomplished much in their chosen fields since their election to the Institute. Their achievements are as diverse as they are remarkable.

The Class of 1994 hails from 30 different states and three different countries. As undergraduates their fields of study included anthropology, biology, computer science, journalism, Latin, mathematics, and sociology, among others. They attended 45 different law schools. While there, 39 served as law review editors and nine as editor-in-chief. Eight graduated in the top ten percent of their class, four graduated first in their class, and 18 attained the distinction of Order of the Coif. One was a National Merit Scholar, and another a Fulbright Scholar. One graduated law school at age 21.

After receiving their law degrees, 39 went on to clerk for the judiciary, with four having clerked for a member of the U.S. Supreme Court. Twelve later became members of the judiciary themselves. A third of the class returned to academia to join law school faculties; two became law school deans for a time. Almost half entered private practice, and there rose to the heights of the profession. Five, at some point in their career, have been presidents of state bar associations.

All of their careers were marked by impressive distinctions. One was awarded the Thomas Jefferson Foundation Medal in Law and the American Bar Association's Margaret Brent Women

Lawyers of Achievement Award. Others received awards for their academic achievement and humanitarian involvement, including the Eleanor Roosevelt Award for Human Rights. Collectively, they have been published hundreds of times over. One has even been published in English, French, German, and Spanish, while another has published more than 50 books.

They became trailblazers, breaking barriers of race and gender in their respective professions. One was the first black woman to graduate from the University of Virginia School of Law, as well as the first woman to head the Legal Defense Fund. Another was one of the first two women to become a U.S. Attorney. One was the commissioner of the Securities Exchange Commission from 1985 to 1990. Their achievements extend beyond their law careers, and include serving in the Peace Corps, volunteer firefighting, being a Scoutmaster for the Boy Scouts of America, and playing the French horn in the Billings Symphony.

Members of the Class of 1994 have contributed much to ALI's work in their 25 years of membership. Three joined the ALI Council. One served as a Project Reporter, 18 have served as Advisers, and the great majority of them have participated in Members Consultative Groups, with eight having served on 10 or more MCGs. Four serve on Regional Advisory Groups.

The American Law Institute would like to thank the Class of 1994 for their 25 years of dedicated service to our mission. Your intellectual and financial contributions have been invaluable. We hope for your continued participation in our important work for another 25 years and more.

Welcome to the Institute's Newest Members

ALI welcomed its newest members during two special events at this year's Annual Meeting. New members gathered at a dinner the evening before the Annual Meeting kicked off, as well as at a luncheon on Monday.



Welcome Dinner Committee: Thomas C. Goldstein of Goldstein & Russell, Christina C. Reiss of the U.S. District Court, District of Vermont, Stacey Putnam Geis of Earthjustice, Laura D. Stith of the Missouri Supreme Court, and Richard F. Boulware II of the U.S. District Court, District of Nevada



Marjorie A. Meyers of the Federal Public Defender's Office, Southern District of Texas, Monica M. Marquez of the Colorado Supreme Court, and Jodie Adams Kirshner of New York University, Marron Institute on Urban Affairs



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Kannon K. Shanmugam of Paul, Weiss, Rifkind, Wharton & Garrison, Paul Fishman of Arnold & Porter Kaye Scholer, Amanda L. Tyler of University of California, Berkeley School of Law, Mary H. Murguia of the U.S. Court of Appeals, Ninth Circuit



LEFT
Tonya L. Brito of University of Wisconsin Law School and Richard F. Boulware II of the U.S. District Court, District of Nevada

CENTER
Helen P. Pudlin and Kannon K. Shanmugam of Paul, Weiss, Rifkind, Wharton & Garrison



ALI's newest members at the Annual Meeting

Annual Dinner

Members attended the Annual Dinner on the second night of the Meeting. In addition to networking with new and old friends, members heard remarks from William P. Barr, 85th Attorney General of the United States.



John G. Malcolm of The Heritage Foundation, Mark D. Martin of Regent University School of Law, Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit, and Marc T. Amy of Jones Walker



Matthew C. Powers of Graves Dougherty Hearon & Moody, Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit, and Anupam Chander of Georgetown University Law Center



Rosemary Hart of the U.S. Department of Justice, Craig Iscoe of the Superior Court of the District of Columbia, Kate Stith of Yale Law School, José A. Cabranes of the U.S. Court of Appeals for the Second Circuit, and ALI Deputy Director Stephanie A. Middleton



John G. Levi of Sidley Austin and Nathan L. Hecht of the Texas Supreme Court

Sustaining Members Are Critical to Our Success

We cannot express enough gratitude for our Sustaining Members, who provide critical funding to the Institute by voluntarily doubling their annual dues payments. Last year, a new record was set when nearly 1,000 members generously chose to become Sustaining Members. As we enter our 2019–2020 fiscal year, we hope to break that record yet again.

As a member of The American Law Institute, you are tasked with the unique responsibility of supporting our never-ending mission to improve the law. Members do this by participating in our Restatement, Principles, and Model Penal Code projects, but also by providing financial resources to make the work possible. By supporting our day-to-day operations as well as exciting new initiatives, Sustaining Members are often considered the backbone of the ALI.

To join this special group of members, select the Sustaining Member option when completing your 2019–2020 dues statement, or visit www.ali.org/sustaininggift. If you are a Life Member, simply make a contribution equal to or exceeding your previous dues amount.

We are truly grateful to each and every one of our Sustaining Members. Your support is essential to ALI's success.

We proudly recognize all of our Sustaining Members in our Annual Report and on our website. For questions, please contact Development Manager Kyle Jakob at 215-243-1660 or kjakob@ali.org. Thank you for your support.

Michelle Wilde Anderson Urges Investment in America's Marginalized Communities

The Tuesday morning session of the Annual Meeting began with remarks from 2019 Early Career Scholars Medal Co-Recipient Michelle Wilde Anderson of Stanford Law School. She was introduced by ALI Early Career Scholars Medal Committee Chair Mariano-Florentino Cuéllar of the California Supreme Court.



Michelle Wilde Anderson

Professor Anderson is a scholar of state and local government law, and regional governance. Her work combines legal analysis, empirical research, and a deep understanding of institutions and communities to shed light on phenomena such as geographically concentrated poverty and municipal fiscal distress. She writes about the difficulties faced in uniting and aiding economically challenged and legally stunted areas of the country such as Detroit, Stockton, Western Oregon, and deindustrialized Pennsylvania. She is currently writing a book about what is needed most from local governments in America's high-poverty, post-industrial areas.

In his introduction, Justice Cuéllar applauded Professor Anderson's efforts to shed light on some of the most urgent issues facing our legal system:

"Her insights arise from an uncommon eye for humanity, as much as from an uncommon ability to describe in detail and analyze the historical forces shaping jurisdictions. They leave the reader with a mix of consternation and hope, which is maybe appropriate for the times in which we live."

Upon taking the podium, Professor Anderson spoke passionately about her understanding and experiences with members of these marginalized communities. Using vivid narratives recounted from interviews with members of the local population, she painted a picture of the personal struggles, geographical disadvantages, and legal and financial limitations that residents of these communities are challenged with every day. She stressed that while these stories are heartbreaking they are not uncommon, and that the problem is deeply rooted in issues of poverty and funding mismanagement.

She noted that while the private sector, nonprofits, volunteers, and local churches can assist in easing the burden these communities face, they are unable to match the scale of need in places of border-to-border poverty.

"The fix is actually not as hard as it looks. It starts with just two words. Those words are 'political will.' We have to decide that it's worth it to care about these places. That means celebrating the good work there so it's worth doing, and sending in reinforcements of money and talent.

It means investing in their infrastructure, their community colleges, and their youth. Instead of writing eulogies for so-called dying places, we need to focus on the millions of people who live there."

To watch the video of Professor Anderson's remarks please visit the [ALI website](http://www.ali.org).

Project Spotlight: Restatement of the Law, Corporate Governance

The first meeting on the Restatement of the Law, Corporate Governance project was held this spring. The objective of the meeting was to define an initial scope of the project. ALI Director Richard L. Revesz welcomed the new Project's Advisers, comprising a diverse set of experts in this area of law: firm and in-house lawyers, judges, and academics, as well as Reporter Edward B. Rock, and Associate Reporters Jill Fisch and Marcel Kahan. Professor Rock led the day's discussion.

The group began by reflecting on the Sections included in Principles of Corporate Governance: Analysis and Recommendations, which launched in 1978. The Principles project took 16 years to complete, and was the recipient of heated debate. In the 25 years since its publication, the corporate world has changed. With quite a bit of new case law in this area, now is the ideal time to launch a Restatement.

In reviewing the Principles, project participants identified many Sections that would be updated to reflect case law and included in the Restatement. Professor Rock pointed out that corporate governance is characterized by a mix of legally binding provisions and best practices. In reviewing the Principles table of contents, many of the Sections were not, at the time of publication, matters of positive law, but were matters of "best practices" that were finding increasing acceptance. Today, many of the "principles" articulated have been adopted as binding legal standards. Professor Rock suggested to the group that as they proceed through the project, they should ask two questions, 1) What is the appropriate standard of conduct? and 2) How is that conduct enforced? If it is legally enforced, it is a proper subject for the Restatement. If it is enforced through market norms of "best practice," it should not be part of the Restatement text but may be addressed in the Comments or the Reporters' Notes.

The afternoon was dedicated to a discussion of two of the biggest changes in corporate governance law in the last 25 years. The first is the changing role of shareholders. Professor Rock pointed out that the Principles had almost nothing covering the topic of active but noncontrolling shareholders and their role/responsibility. Yet in today's world, shareholders play a central role. In many public companies, the five or 10 largest institutional investors will own more than 30 percent of the shares. At the same time, active, well-capitalized hedge funds target underperforming firms, and push new strategies. The Restatement will have to address the role of both types of investors.

The second biggest change in corporate governance law since the publication of the Principles is the increasing attention to environmental, social, and governance (ESG) questions and considerations, an issue currently on the mind of every large firm or investor.

Members interested in the project can find background information on these topics on the project's page at www.ali.org/projects/show/corporate-governance. Those who join the Members Consultative Group will be alerted when future meetings are scheduled and when drafts are available.



From left to right: ALI Deputy Director Stephanie A. Middleton, Kenneth C. Frazier of Merck & Co., ALI Past President Roberta Cooper Ramo of Modrall Sperling, and Guy Miller Struve of Davis Polk



Kathleen L. Casey of Patomak Global Partners



Roberta Cooper Ramo and Anne E. Robinson of The Vanguard Group



Associate Reporter Jill Fisch of University of Pennsylvania Law School, Mark Lebovitch of Bernstein Litowitz Berger & Grossmann, and Brian L. Schorr of Triam Fund Management

The Institute in the Courts

State Supreme Courts Adopt Torts 2d Provisions

The Supreme Judicial Court of Maine and the Supreme Court of Rhode Island recently adopted Sections of the Restatement of the Law Second, Torts. Summaries of those opinions follow.

In *Cianchette v. Cianchette*, 2019 WL 2345434 (Me. June 4, 2019), the Supreme Judicial Court of Maine adopted the formulation of fraudulent misrepresentation set forth in the Restatement of the Law Second, Torts. In that case, the owner of a car dealership offered the plaintiff, the general manager of the dealership, the opportunity to purchase the dealership and the land on which it sat. The plaintiff sought financing from his stepmother and father, the defendants, and together the parties formed a limited-liability company to “purchase, own, and operate the dealership.” After completing the purchase of the real estate and dealership, the parties subsequently executed agreements under which the plaintiff was to purchase the real estate and the defendants’ interests in the company, but the defendants purported to terminate the agreements, and the plaintiff was fired as general manager. The plaintiff filed claims for, among other things, fraudulent misrepresentation against the defendants, alleging that the defendants never intended to perform their obligations under the agreements. The trial court entered judgment following a jury verdict for the plaintiff, awarded him damages, and denied the defendants’ motions for a new trial and judgment as a matter of law. The Supreme Judicial Court of Maine affirmed, holding, inter alia, that the trial court did not err in denying the defendants’ motion for judgment as a matter of law as to the plaintiff’s fraudulent-misrepresentation claim, because “a reasonable view of the evidence and all justifiable inferences support[ed] the jury’s finding that [the defendants] entered into the membership agreement with the intent of never performing their obligations under that contract” and that the plaintiff “justifiably relied upon that false representation to his detriment,” satisfying Restatement of the Law Second, Torts § 525.

The court rejected the defendants’ argument, which relied on *Shine v. Dodge*, 157 A. 318 (Me. 1931), that “an intention not to perform a contract, even when such an intention existed at the time of the execution of the contract, [could not] support an action for fraudulent misrepresentation because it [was] not a false representation of a material fact.” In *Shine*, the court stated that it was “well settled in this state that the breach of a promise to do something in the future [would] not support an action of deceit, even though there [could] have been a preconceived intention not to perform.” The court took “this opportunity to explicitly adopt the Restatement’s formulation of fraudulent misrepresentation and overrule the contrary rule stated in *Shine*.” The court explained that, pursuant to the Restatement of the Law Second, Torts § 530(1), “[a] representation of the maker’s own intention to do or not to do a particular thing [was] fraudulent if he [did] not have that intention.’ . . . This [was] true regardless of whether there [was] an express statement of intent because ‘a promise necessarily carri[ed] with it the implied

assertion of an intention to perform.’ *Id.* § 530(1) cmt. c.” The court noted that a “fact” could include a state of mind, citing § 525, Comment *d*, and § 530, Comment *a*, and that §§ 538A, 539, and 542-543 “acknowledge[d] that a misrepresentation of opinion [could] be actionable in the appropriate circumstances.” In this case, the jury found that the defendants entered into an agreement with the plaintiff with no intention of actually performing, which constituted a false representation that was a fact material to the formation of the agreement. The court reasoned that, under § 538(2)(a), the intention to never perform a contract at the time of its execution was material because a reasonable person would attach importance to that fact, and that, under § 530, Comment *b*, “the intent to not perform [had to] be present *at the time* the parties [were] entering into the contract.”

In *Rhode Island Industrial-Recreational Building Authority v. Capco Endurance, LLC*, 203 A.3d 494 (R.I. 2019), the Supreme Court of Rhode Island adopted Restatement of the Law Second, Torts § 552 in determining whether there was a duty of care between a third party and an accountant/auditor in the context of a negligence claim. In that case, an insurer of bonds that were issued to limited-liability companies as part of an agreement between the companies and a lender for a revolving line of credit brought an action against, among others, an accounting firm that prepared audited annual financial statements for the companies, alleging that, in approving a temporary 17.5 percent increase in the companies’ credit in 2011, it relied on a 2009 audit report for the companies that the defendant negligently prepared. The trial court rendered a bench decision granting summary judgment for the defendant, finding that, under Restatement of the Law Second, Torts § 552, the defendant did not owe a duty to the plaintiff with respect to the 2009 audit report. The Supreme Court of Rhode Island affirmed and remanded, holding that, under § 552, when the defendant produced the 2009 audit report, it did not owe a duty to the plaintiff with respect to the plaintiff’s use of that report in approving the 2011 credit increase. It explained that § 552 “limit[ed] an accountant’s liability for negligent misrepresentation to those third parties who the accountant actually kn[ew would] receive the information, and then, only for transactions that [were] the same as, or substantially similar to, the ones which the accountant actually kn[ew would] be influenced by the supplied information.” The court determined, among other things, that there was “no basis whatsoever for holding that the hearing justice erred in concluding that the [2011] credit increase was not substantially similar, under the Restatement rule, to the original line of credit and bond transactions.”

The court noted that “both parties agree[d] that the Restatement rule was correctly chosen by the hearing justice as the best analytical approach” in determining whether a duty of care existed in an action by third parties against auditors, and explained that “[a]fter careful consideration of the three

different standards relied upon by other courts, [the court was] in wholehearted agreement with the hearing justice and the parties as to the preferability of the Restatement rule” over the near-privity test and the reasonable-foreseeability rule. In adopting Restatement of the Law Second, Torts § 552, the court reasoned that “the Restatement rule is the most sensible middle-of-the-road approach to the question of the extent of potential liability to third parties to which an accountant/auditor should be exposed for alleged negligence on his or her part.” The court pointed out that it agreed with the statement of

the Supreme Judicial Court of Massachusetts in *Nycal Corp. v. KPMG Peat Marwick LLP*, 688 N.E.2d 1368 (Mass. 1998) that “the Restatement test properly balances the indeterminate liability of the foreseeability test and the restrictiveness of the near-privity rule. Section 552 recognizes commercial realities by avoiding both unlimited and uncertain liability for economic losses in cases of professional mistake and exoneration of the auditor in situations where it clearly intended to undertake the responsibility of influencing particular business transactions involving third persons.”

U.S. Supreme Court Cites the Second and Third Torts Restatements in its “Common Law” Torts Decision

by Ellen M. Bublick, Dan B. Dobbs Professor of Law and Faculty Director, Arizona Law Phoenix Program
James E. Rogers College of Law, The University of Arizona

Ever since *Erie v. Tompkins*, there has been no “federal general common law,” or so the mantra goes. But in *Air and Liquid Systems Corp. v. DeVries*, 139 S. Ct 986 (2019), the United States Supreme Court sat as “a common-law court” to resolve a maritime torts case. *Id.* at 991. Indeed, “[w]hen a federal court decides a maritime case, it acts as a federal ‘common law court,’ much as state courts do in state common-law cases.” *Id.* at 992. And as state courts often do in Torts cases, the Supreme Court also placed great weight on the ALI’s Torts Restatements.

The *Air and Liquid Systems* case involved negligence and strict products-liability suits brought by families of deceased Navy sailors against manufacturers of equipment for Navy ships that required asbestos insulation or parts in order to function as intended. The families claimed their loved ones had developed cancer as a result of their onboard asbestos exposure. The Navy was immune from suit and the asbestos product makers had gone bankrupt. The focus of the suit was the equipment manufacturer’s obligation. The specific issue presented in the case was “whether a manufacturer has a duty to warn when the manufacturer’s product requires later incorporation of a dangerous part—here, asbestos—in order for the integrated product to function as intended.” *Id.* at 993. The Court held that a manufacturer does have such a duty.

In its opening iteration of “basic tort-law principles” the Court turned to the Restatement Third of Torts: Liability for Physical and Emotional Harm § 7. From the Restatement, the Court invoked the principle that tort law imposes a duty to exercise reasonable care “on those whose conduct presents a risk of harm to others.” *Id.* at 993. From that general principle, the Court cited a compatible principle from the Restatement Second of Torts § 388—that a product manufacturer’s duty of care includes a duty to warn when the manufacturer “‘knows or has reason to know’ that its product ‘is or is likely to be dangerous for the use for which it is supplied’ and the manufacturer ‘has no reason to believe’ that the product’s users will realize that danger.” Applying this duty-to-warn principle in the case of a product that requires later incorporation of a dangerous part, the Court was presented with three different judicial approaches to when a warning is required—1) there is a duty to warn when it is foreseeable that the



Ellen M. Bublick at the 96th Annual Meeting (Intentional Torts)

manufacturer’s product would be used with a dangerous part, 2) there is no duty to warn when the manufacturer did not itself incorporate the part into its product (a doctrine termed the “bare-metal defense”), and 3) a middle path in which there is a duty to warn but only when the manufacturer’s product requires incorporation of a part, the manufacturer knows or has reason to know that the integrated product is likely dangerous for its intended uses, and the manufacturer has no reason to believe the product’s users will realize the danger. *Id.* at 993-994.

In selecting the third of these three options, the Court’s reasoning cited Comments from both the Restatement Third and Restatement Second of Torts. Moreover, in declaring “similar” the situation in which a “manufacturer’s product is dangerous in and of itself” and the situation in which the manufacturer’s product “requires incorporation of a part” that it has

Notes About Members and Colleagues

Bruce A. Ackerman of Yale Law School gave a lecture at the National Constitution Center on June 3 about his new book, *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law*.

Jane H. Aiken was appointed dean of Wake Forest University School of Law, effective July 1.



Jane H. Aiken
Credit: Wake Forest University/Ken Bennett

Catherine M. Amirfar of Debevoise & Plimpton was elected President-Elect of the American Society of International Law. She will take office as President in 2020.

William D. Araiza of Brooklyn Law School was quoted in *The New Yorker* preview of playwright Heidi Schreck's autobiographical play, *What the Constitution Means to Me*.

Donald B. Ayer of Jones Day delivered the 2019 Higgins Distinguished Visitor Lecture at Lewis & Clark Law School entitled "The Subversive Side of Textualism and Original Intent."

Thomas E. Baker of Florida International University College of Law published two books, *Constitutional Analysis in a Nutshell* and *First Amendment Law: Freedom of Expression and Freedom of Religion* (coauthored with **Arthur D. Hellman**, **William D. Araiza**, and **Ashutosh A. Bhagwat**).

Scott Bales of the Arizona Supreme Court was appointed Executive Director of the Institute for the Advancement of the American Legal System at the University of Denver, effective September 15, 2019. His last day on the Arizona Supreme Court was July 31.

The American Academy of Arts & Sciences announced the election of its newest members, including **Rachel E. Barkow** of NYU School of Law, **Merrick B. Garland** of the U.S. Court of Appeals for the District of Columbia Circuit, **Sherrilyn Ifill** of the NAACP Legal Defense and Educational Fund Inc., **Goodwin Liu** of the California Supreme Court, **Tracey L. Meares** of Yale Law School, and **Nathaniel Persily** of Stanford Law School.

Michael M. Baylson of the U.S. District Court for the Eastern District of Pennsylvania coauthored an article with Sandra A. Jeskie entitled "Overseas Obligations: An Update on Cross-Border Discovery" that was featured in the Spring 2019 issue of *Judicature*.

Jeffrey A. Beaver of Miller Nash Graham & Dunn was presented with the 17th Annual Frohnmayer Award for Public Service from the University of Oregon Law School Alumni Association in April.

Vicki L. Been of NYU School of Law was appointed deputy mayor for housing and economic development by New York City Mayor Bill de Blasio, effective May 6.

In a *Law360* interview, **Sheila L. Birnbaum** of Dechert discussed the changes in product-liability laws she has seen over her career, her proudest achievement as a lawyer, and her most difficult cases.

Gary L. Bledsoe of Texas Southern University, Thurgood Marshall School of Law was awarded the 2019 Virgil C. Lott Medal. The medal is presented every two years by the University of Texas at Austin School of Law to recognize those who uphold the values of Virgil Lott, the school's first African American graduate.

Former Texas Court of Appeals Justice **William J. Boyce** has joined Alexander Dubose & Jefferson as a partner in the firm's Houston office.

David A. Brennan of the University of Kentucky College of Law was selected to participate in the American Council on Education's Fellows Program, the longest running leadership development program in the United States.

Richard Briffault of Columbia Law School spoke before the 2019 NYC Charter Revision Commission as part of a discussion on possible charter amendments.

Sara C. Bronin of UConn School of Law has won the 2019 Pro Bene Meritis Young Alumna Award. The award, bestowed by the College of Liberal Arts at the University of Texas at Austin, recognizes a young alumnus/alumna who has been successful in his or her field and who has demonstrated interest and loyalty to the College of Liberal Arts.

Karen C. Burgess of Burgess Law and **Robert A. Zauzmer** of the U.S. Attorney's Office were elected to the American College of Trial Lawyers at its 2019 Spring Meeting in La Quinta, California.

In February, **J. Brett Busby** was appointed to the Texas Supreme Court.

Hannah L. Buxbaum of Indiana University Maurer School of Law was elected to the Curatorium of The Hague Academy of International Law.



Wallace B. Jefferson of Dubose & Jefferson, Gary L. Bledsoe, and Ward Farnsworth of University of Texas School of Law at the Medal Presentation

Credit: Brian Birzer Photography/University of Texas School of Law

THE INSTITUTE IN THE COURTS

CONTINUED FROM PAGE 21

In March, the University of Colorado Law School and the Native American Rights Fund hosted a conference entitled “Implementing the UN Declaration on the Rights of Indigenous Peoples in the United States.” ALI participants at the event included **Kristen A. Carpenter** of University of Colorado Law School, **Matthew L.M. Fletcher** of Michigan State University College of Law, **Angela R. Riley** of UCLA School of Law, **Wenona T. Singel** of the Office of Michigan Governor Gretchen Whitmer, and **Rebecca Tsosie** of University of Arizona, James E. Rogers College of Law.

Gilbert F. Casellas served as Co-Editor-in-Chief and a contributing author of Bloomberg Law’s treatise, *Workplace Harassment Law, Second Edition* (2018).

Works from **Erwin Chemerinsky** of UC Berkeley School of Law, **Leslie C. Kendrick** of University of Virginia School of Law, **Peter M. Shane** of Ohio State University Moritz College of Law, and **Rodney A. Smolla** of Widener University Delaware Law School were featured in the 2018-2019 edition of the *First Amendment Law Handbook*, published annually by Thomson Reuters.

Danielle M. Conway was named the new dean of Penn State Dickinson Law, effective July 1.

Mariano-Florentino Cuéllar of the California Supreme Court discussed his work as chair of California’s Language Access Plan Implementation Task Force in a *CALmatters* commentary. The task force is responsible for the operations, oversight, and reform of language access in California’s court system.

The Qatar International Court and Dispute Resolution Centre appointed **Lord Thomas of Cwmgiedd** as its new President.

Justin Driver of University of Chicago Law School presented his talk, “Are Public Schools Becoming Constitution-Free Zones?” at the University of Oregon’s last event of the 2019 African American Workshop and Lecture Series.

Ward Farnsworth, of the University of Texas at Austin School of Law, was interviewed by Lawdragon about his publications, deanship, and contributions to the school’s ongoing success.

Kenneth C. Frazier of Merck & Co. was interviewed by **Conrad K. Harper** for the Barbara Paul Robinson Series, hosted by the New York City Bar Association, which features leaders in the law sharing their life stories to inspire others in the profession. Mr. Frazier also received the Harvard Law School Association Award at a Fall reunion luncheon in October, and he delivered a keynote address at the event entitled “Civil Nationalism: The Role of Law and Institutions.”

Michele Bratcher Goodwin of UC Irvine School of Law and the Center for Biotechnology and Global Health Policy was named a Hastings Center Fellow.

reason to know will make the product dangerous, the Court invoked both the Restatement Third of Torts: Products Liability § 2, Comment *i* and several Sections of the Restatement Second.

Although the dissent disagreed with the majority’s conclusion—preferring the bare-metal defense—it too cited an arguably analogous provision in the Restatement Third of Torts. Specifically, § 5 of the Restatement Third of Torts: Products Liability. One can disagree with the citation of particular Restatement Sections as binding on the propositions for which they are employed, and yet embrace the valuable perspective the Restatements provide.

The Court’s use of the Restatements, in both the majority and dissenting opinions, highlights the importance of the ALI’s work in tort law, where it remains one of the most influential forces in the field. It also displays the ability of courts to embrace new doctrines from the Third Restatement of Torts, while retaining aspects of past Restatements that have provided a key foundation to existing law. As T.S. Eliot famously concluded in his essay *Tradition and the Individual Talent* circa 1919, the poet must live “in what is not merely the present, but the present moment of the past,” and must be conscious “not of what is dead, but of what is already living.” In the case of Restatements, we often write that the Restatement Third has “replaced” provisions of the Restatement Second. Yet perhaps it is more accurate to say that the Restatement Third operates in the present alongside the present moment of the still-living past Restatements. It does no injury to the potency of the Institute’s work to say that not only are its current views influential but also that its past works have made an indelible impression that can still be traced in the present law. Indeed, in *Air and Liquid Systems*, the Supreme Court highlights the importance of both Restatements to its own current Torts decisions.

The Institute is currently working on several projects that will complete the Restatement of the Law Third, Torts. Ongoing Restatement of the Law Third, Torts, projects include: Defamation and Privacy, Intentional Torts to Persons, Remedies, and Concluding Provisions. The subject of property torts, also discussed in the Restatement Second and Third of Torts, will be addressed in the Restatement of the Law Fourth, Property. The Liability for Economic Harm project was concluded at the 2018 Annual Meeting and will be published later this year.

To join the Members Consultative Group for these or other projects, visit the projects page on the ALI website at www.ali.org/projects.

NOTES CONTINUED FROM PAGE 23

The *Hastings Law Journal* published a series of tributes to Geoffrey C. Hazard Jr., ALI Director Emeritus, who died on January 11, 2018. The Foreword was written by **David L. Faigman**, chancellor and dean of UC Hastings College of the Law. Other ALI members from UC Hastings College of the Law who wrote tributes include: **Mary Kay Kane**, **Evan Tsen Lee**, and **Richard L. Marcus**. Other members of the Institute who contributed tributes include: **Neil H. Andrews** of University of Cambridge; **Edward H. Cooper** of University of Michigan Law School; **William A. Fletcher** of the U.S. Court of Appeals for the Ninth Circuit; **W. William Hodes**, Professor Emeritus of Indiana University School of Law; **Peter R. Jarvis** of Holland & Knight; **John Leubsdorf** of Rutgers Law School – Newark; **Anthony J. Scirica** of the U.S. Court of Appeals for the Third Circuit; **Catherine T. Struve** of University of Pennsylvania Law School; **Michele Taruffo** of Università degli Studi di Pavia, Italy, who was Co-Reporter for the ALI/UNIDROIT Principles of Transnational Civil Procedure, for which Professor Hazard served as Co-Reporter; and **Michael Traynor**, ALI's President Emeritus. **Antonio Gidi** of Syracuse University College of Law, who was the Associate Reporter for the ALI/UNIDROIT Principles, contributed an article.

In March, **Nathan L. Hecht** of the Texas Supreme Court delivered the Institute of Judicial Administration's 25th Annual Brennan Lecture on State Courts and Social Justice at NYU School of Law.

Also in March, **Tanya Katerí Hernández** of Fordham University School of Law delivered the annual Yale L. Rosenberg Memorial Lecture at the University of Houston Law Center. Her topic was "Multiracials and Civil Rights: Mixed-Race Stories of Discrimination."

D. Brock Hornby of the U.S. District Court for the District of Maine authored an article entitled "Can Federal

Spring 2019 Project Meetings

The following project meetings were held during the spring of 2019. Materials from the meetings, including drafts and slides, are available on www.ali.org/projects.

DATA ECONOMY

February 22 in Philadelphia, PA

Preliminary Draft No. 2 is the result of guidance received at the meetings on September 8, 2018 (ELI) in Riga and on October 26, 2018 (ALI) in Philadelphia and includes a reordering of the Chapters and Principles and a clearer focus on the transactional aspects. The next project meeting will be held on October 31 in Philadelphia.

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March 8 in Philadelphia, PA

Preliminary Draft No. 4 includes §§ 3.01 to 3.07 of Chapter 3 on Initial Ownership, Transfers, Licenses, and Termination of Grants. The next project meeting is scheduled for March 27, 2020 in Philadelphia.

PROPERTY

March 19 via Conference Call

Project participants discussed Preliminary Draft No. 5, covering Volume 8 – Land Use. The next project meeting will be held on September 26 in Philadelphia.

UNIFORM COMMERCIAL CODE

March 25 via Conference Call

Project participants discussed how the UCC should address ever-changing technology in commerce, such as the digitization of assets and electronic promissory notes.

GOVERNMENT ETHICS

March 29 in Philadelphia, PA

Project participants discussed Preliminary Draft No. 4, covering Chapter 3 on Conflicts of Interest and Outside Activities of Public Servants and Chapter 5 on Revolving Door Restrictions. The next project meeting will be held on September 12 in Philadelphia.



Charles H. Ramsey, former Commissioner of the Philadelphia Police Department

POLICING

April 4 in Philadelphia, PA

Preliminary Draft No. 4 contains materials on the topics of evidence gathering, searches, policing databases, and internal and external accountability guidance. The next project meeting will be held on April 2, 2020 in Philadelphia.

CORPORATE GOVERNANCE

May 1 in New York, NY

For coverage on this inaugural project meeting, turn to the Project Spotlight feature on page 19.

Sentencing Remain Transparent?” that was featured in the Spring 2019 issue of *Judicature*.

Beryl A. Howell and **Tanya S. Chutkan**, both of the U.S. District Court for the District of Columbia, were featured in an article from NPR.org as part of a profile on female federal judges from Washington, D.C. and the key part they have played in the aftermath of Russia’s attack on the 2016 election.

Keith N. Hylton of Boston University School of Law was hired as an affiliate by Analysis Group, one of the largest international economics consulting firms.

David W. Ichel of X-Dispute LLC published an article entitled “How Will Recent Supreme Court Decisions on Personal Jurisdiction Impact the Legacy of *International Shoe* and the Future of Complex Litigation?” that was featured in the Spring 2019 issue of *Judicature*.

Roderick L. Ireland, of Northeastern University and former Chief Justice of the Massachusetts Supreme Judicial Court, was profiled by Columbia Law School about his experience as a law student there at a time when fewer than one percent of the nation’s lawyers were African American.

The Bolch Judicial Institute of Duke Law School presented Retired U.S. Supreme Court Justice **Anthony M. Kennedy** with the inaugural Bolch Prize for the Rule of Law on April 11.

Leondra R. Kruger of the California Supreme Court was the keynote speaker at this year’s Tom Homann LGBT Law Association Awards and Installation Dinner.



THLA Co-President Ellen L. Smith of Perkins Coie interviews Leondra R. Kruger

Carolyn B. Lamm of White & Case was named to the 2019 Lawdragon 500 Leading Lawyers in America “Hall of Fame.”

Douglas S. Lang, former Justice of the Fifth District Court of Appeals in Texas, joined Dorsey & Whitney’s Commercial Litigation practice group in Dallas.

Thomas S. Leatherbury of Vinson & Elkins was inducted as a Fellow of the American Academy of Appellate Lawyers.

Benjamin Lerner of the Pennsylvania Court of Common Pleas was profiled by *The Philadelphia Inquirer* about his lifelong love of baseball and his close relationship with his brother Alan.

RECENT BOOKS FROM ALI MEMBERS

Revolutionary Constitutions: Charismatic Leadership and the Rule of Law, **Bruce A. Ackerman** of Yale Law School explores “the origins, successes, and threats to revolutionary constitutionalism around the world.”

In *Prisoners of Politics: Breaking the Cycle of Mass Incarceration*, **Rachel E. Barkow** of NYU School of Law discusses the United States as the world leader in incarceration rates and argues for an institutional shift toward data and expertise, following the model used to set food and workplace safety rules.

In *The Cult of the Constitution*, **Mary Anne Franks** of University of Miami School of Law explores “the thin line between constitutional fidelity and constitutional fundamentalism.”

Outbreak: Foodborne Illness and the Struggle for Food Safety by **Timothy D. Lytton** of Georgia State University College of Law provides an up-to-date history and analysis of the U.S. food safety system while paying particular attention to important but frequently overlooked elements of the system, including private audits and liability insurance.

In *How Safe Are We?: Homeland Security Since 9/11*, **Janetropolitano** of the University of California looks into the foundation of the Department of Homeland Security, which was created in the wake of the September 11 attacks, and considers how homeland security efforts have changed our country and society.

Sovereign Immunity Law, coauthored by **Marilyn E. Phelan**, provides “knowledge and understanding of the sovereign immunity doctrine” as well as “awareness and understanding of the important legal problems and road blocks that confront attorneys who represent victims of improvident government actions.”

Heroes, Rascals, and the Law: Constitutional Encounters in Mississippi History by **James L. Robertson** of Wise Carter Child & Caraway recounts 10 occasions from statehood to the late 1940s when the Mississippi constitution impeded or impelled justice.

Potential on the Periphery by **Omari S. Simmons** of Wake Forest University School of Law illuminates the underlying factors thwarting student achievement, while identifying policy solutions and pragmatic strategies that college-access organizations can adopt to address them.

NOTES CONTINUED FROM PAGE 25

John G. Levi of Sidley Austin received the ABA's John Minor Wisdom Public Service and Professionalism Award in recognition of his commitment to access to justice as Chairman of the Board of the Legal Services Corporation.



ABA President Bob Carlson, John G. Levi, Kenneth C. Frazier, and ABA Section of Litigation Chair Palmer Gene Vance II

Nancy S. Marder, director of the Justice John Paul Stevens Jury Center at IIT Chicago-Kent College of Law, was selected as a senior fellow of the Baldy Center for Law & Social Policy. Housed at the University at Buffalo School of Law, the Baldy Center supports interdisciplinary research on law, legal institutions, and social policy.

Andrew J. Markus of Carlton Fields was appointed as the Honorary Consul of the Republic of Bulgaria. His consular jurisdiction is the state of Florida, with the seat of the Consulate in Miami.

Jenny S. Martinez became dean of Stanford Law School on April 1.

In March, Michigan Supreme Court Chief Justice **Bridget M. McCormack** delivered the Ross Lecture in Litigation at Temple University Beasley School of Law.

Catherine Peek McEwen, U.S. Bankruptcy Judge for the Middle District of Florida at Tampa, was reappointed by the U.S. Court of Appeals for the Eleventh Circuit to a second 14-year term, beginning August 22, 2019.

Martha L. Minow of Harvard Law School gave a final lecture to the 2019 graduating class that focused on the art of asking good questions.

Robert H. Mundheim of Shearman and Sterling received an honorary degree from The New School, for his distinguished law career and extraordinary record of service to the profession, education, and civic and cultural life.

In March, **Janet Napolitano**, president of the University of California, spoke at the Carnegie Council for Ethics in International Affairs about her book *How Safe Are We?: Homeland Security Since 9/11*.



Janet Napolitano

Marilyn E. Phelan of Texas Tech University School of Law published the 2019 edition of a three-volume treatise—*Nonprofit Organizations: Law and Taxation, 2d*—and the 2019 edition of *Representing Nonprofit Organizations*.

H. Jefferson Powell of Duke Law School authored an article entitled “The Emergence of the American Constitutional Law Tradition” that was featured in the Spring 2019 issue of *Judicature*.

Norman M. Powell of Young Conaway has been elected President of The Fellows of the American College of Commercial Finance Lawyers for the 2019-2020 year.

In April, **Sidney K. Powell**, former federal prosecutor-turned-author, participated in the ICON Lecture Series on UNC-Chapel Hill’s campus. Ms. Powell’s talk was entitled “Mueller Report meets the Rule of Law.”

Stuart Rabner of the New Jersey Supreme Court, the keynote speaker at Seton Hall Law School’s 2019 Hobbs-Larson Lecture, spoke on criminal-justice reform.



Stuart Rabner | Credit: Sean Sime



Carlton W. Reeves | Credit: Sanjay Suchak/UVA Communications

In April, **Carlton W. Reeves** of the U.S. District Court for the Southern District of Mississippi received the Thomas Jefferson Foundation Medal in Law.

Joel R. Reidenberg of Fordham University School of Law received the BCLT Privacy Award from the Berkeley Center for Law & Technology, which was presented at the BCLT Privacy Lecture in March.

Richard L. Revesz of NYU School of Law coauthored an article with Bethany Davis Noll entitled “Regulation in Transition” that will be published later this year in the *Minnesota Law Review*.

In February, **L. Song Richardson** of UC Irvine School of Law delivered a seminar on innovation, creativity, and the brain at Bond University in Queensland, Australia. The presentation was part of the Bond University Faculty of Law Twilight Seminar Series.

Clifford A. Rieders of Rieders, Travis, Humphrey, Waters & Dohrmann was appointed as a member of the Supreme Court of Pennsylvania Civil Procedural Rules Committee for a term of five years, commencing July 1.

In April, NYU School of Law hosted “Progress and Challenges in Criminal Justice and National Security,” an event that featured a series of panels honoring the academic contributions of **Stephen J. Schulhofer**. Other ALI members at the

event included **Michelle J. Anderson** of Brooklyn College, **Rachel E. Barkow** of NYU School of Law, **Deborah W. Denno** of Fordham University School of Law, **Gerard E. Lynch** of the U.S. Court of Appeals for the Second Circuit, **Anne M. Milgram** of NYU School of Law, **Jed S. Rakoff** of the U.S. District Court for the Southern District of New York, **David Rudovsky** of Kairys, Rudovsky, Messing, Feinberg & Lin and University of Pennsylvania Law School, **Geoffrey R. Stone** of University of Chicago Law School, **Deborah Tuerkheimer** of Northwestern University Pritzker School of Law, **Michael Vitiello** of University of the Pacific, McGeorge School of Law, and **Peter L. Zimroth** of Arnold & Porter Kaye Scholer (retired).

Omari S. Simmons of Wake Forest University School of Law was interviewed on WBOC 16 about his work as executive director of the Simmons Memorial Foundation and his new book, *Potential on the Periphery*.

Michigan Governor Gretchen Whitmer appointed **Wenona T. Singel** as the deputy legal counsel to the Office of the Governor. Professor Singel is the first American Indian to hold this post in Michigan.

HBO premiered in June a documentary entitled, *True Justice: Bryan Stevenson's Fight for Equality*, about the life and work of **Bryan Stevenson** of the Equal Justice Initiative.

Deborah Tuerkheimer of Northwestern University Pritzker School of Law was named recipient of the 13th annual Dorothy Ann and Clarence L. Ver Steeg Distinguished Research Fellowship Award.

Kevin K. Washburn of the University of Iowa College of Law began a two-year term as Chairman of the Board of Trustees of the Law School Admission Council on June 1.

Mary Jo Wiggins's article "Access Anxiety" was published in Volume 54 of the *Real Property, Trust and Estate Law Journal*. Professor Wiggins, who teaches at the University of San Diego School of Law, also revised and updated five chapters in *Collier on Bankruptcy*, the leading scholarly treatise in the field of bankruptcy law.

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

In Memoriam

ELECTED MEMBERS

Dennis J. Braithwaite, Camden, NJ; **Michael D. Coper**, Canberra, Australia

LIFE MEMBERS

Alex A. Alston, Jr., Jackson, MS; **George T. Bogert**, Savannah, GA; **J. Donald Cowan, Jr.**, Raleigh, NC; **Edwin Jason Dryer**, Washington, DC; **Fred N. Fishman**, New York, NY; **Allen Martin**, Hanover, NH; **William M. Saxton**, Chandler, AZ; **Robert S. Summers**, Ithaca, NY; **Walter J. Wadlington**, Charlottesville, VA; **Virginia G. Watkin**, Washington, DC; **David E. Watts**, New York, NY

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.

2019

September 12

Principles of the Law, Government Ethics
Philadelphia, PA

September 13

Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities
Philadelphia, PA

September 19

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

September 20

Restatement of the Law Third, Torts: Intentional Torts to Persons
Philadelphia, PA

September 26

Restatement of the Law Fourth, Property
Philadelphia, PA

September 27

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

October 17-18

Council Meeting - October 2019
New York, NY

October 24

Model Penal Code: Sexual Assault and Related Offenses
Philadelphia, PA

October 31

Principles for a Data Economy
Philadelphia, PA

November 15

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

2020

May 18-20

97th Annual Meeting
San Francisco, CA



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First Season of *Reasonably Speaking* Podcast Available

Protecting Individual Liberties: State and Federal Courts

Goodwin Liu, California Supreme Court
Jeffrey S. Sutton, U.S. Court of Appeals, Sixth Circuit

The Decline of the Death Penalty

Brandon L. Garrett, Duke Law School
Roberta Cooper Ramo, Modrall Sperlring and ALI Past President
Christine M. Durham, Utah Supreme Court (retired)

May It Please the Court Part I: SCOTUS Advocates

Douglas Laycock, Texas Law and UVA School of Law
Seth P. Waxman, WilmerHale
Nicole A. Saharsky, Mayer Brown

May It Please the Court Part II: A Closer Look

Paul D. Clement, Kirkland & Ellis

Protecting Children in Criminal Procedures

Marsha Levick, Juvenile Law Center
Elizabeth S. Scott, Columbia Law School

American Indian Law

Matthew L.M. Fletcher, MSU Law
Wenona T. Singel, Office of the Governor, Michigan

Coming to Terms with Consumer Contracts

Omri Ben-Shahar, University of Chicago Law School
Florecia Marotta-Wurgler, NYU School of Law

Race and Policing

Sherrilyn Ifill, NAACP Legal Defense and Educational Fund
Barry Friedman, NYU School of Law
John G. Malcolm, The Heritage Foundation

Consent and Sexual Assault in Criminal v. Tort Law

Erin E. Murphy, NYU School of Law
Kenneth W. Simons, UC Irvine School of Law

Long Road to Hard Truth

Paul L. Friedman, U.S. District Court, District of Columbia
Robert L. Wilkins, U.S. Court of Appeals, District of Columbia

Creating a Strong Corporate Compliance Program

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