

## In Memoriam: Geoffrey C. Hazard, Jr.

*ALI Director 1984-1999*

Geoffrey C. Hazard, Jr., Director Emeritus of The American Law Institute and one of the most brilliant legal scholars and teachers of his generation, died on January 11. He was 88.

One of the nation's foremost authorities on professional ethics, trial practice, and civil procedure, Professor Hazard was the

Thomas E. Miller Distinguished Professor of Law Emeritus at the University of California, Hastings College of the Law. He was also Emeritus Professor of Law at the University of Pennsylvania Law School and the Sterling Professor of Law Emeritus at Yale Law School.

When Professor Hazard received the Institute's Distinguished Service Award at the May 2013 Annual Meeting, his former student and research assistant at Yale, U.S. Supreme Court Associate Justice Samuel A. Alito, Jr., took time from a busy schedule to speak in Professor Hazard's honor, sharing memories of his student days. On presenting the award, given from time to time to a member who over many years has accepted significant responsibilities and played a major role in the Institute, Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit succinctly captured the astounding breadth of Professor Hazard's career:

Law professor at several great law schools, prolific scholar, author of textbooks, legendary teacher, mentor, rulemaker of procedural rules and rules of attorney conduct, and, of course, the former Director of The American Law Institute, Geoff continues to leave an indelible imprint on the American and international legal systems. He is truly one of the law's wise men.

An ALI member for 52 years, Professor Hazard served for nine years as the Reporter for the Restatement Second of Judgments, published in 1982. The experience may have prompted his wry remark at the 1999 Annual Dinner that "qualifications for Reporter in an ALI project include good health and proven stamina." He succeeded Herbert Wechsler as ALI's fourth Director in 1984, skillfully guiding the ALI's already-begun Principles of Corporate Governance and Restatement Third of Foreign Relations Law to completion.

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THE DIRECTOR'S LETTER BY  
RICHARD L. REVESZ

## A Transatlantic Collaboration

At its January meeting, the ALI Council approved a new project, tentatively entitled "Principles for a Data Economy." It differs from our 17 ongoing projects because it is being undertaken jointly with the European Law Institute (ELI), which, like the ALI, is a membership-based, independent nonprofit organization with the mission of providing guidance on legal developments. We are very excited about this transatlantic collaboration!

As the proposal for the project indicates, "the law governing trades in commerce has historically focused on assets, and on trade in items, that are either real property, or goods, or rights (including shares, contract rights, intellectual property rights, licenses, etc.). With the emergence of the data economy, however, tradeable items often cannot readily be classified as goods or rights, and they are arguably not services. They are often simply 'data', which may be considered as any piece of information recorded in any form or medium." There is uncertainty, both in the United States and in Europe, concerning the legal rules that should apply to the data economy. When our walking and running steps are recorded by our smart phone or our driving patterns are recorded by our cars, data is being generated and then aggregated across large numbers of individuals. Who owns this valuable information? Who can trade in it? What rights do the various actors have?

The project has the ambitious goal to "study, identify, and collate the existing and potential legal rules applicable to transactions in data as an asset and as a tradeable item and assess the 'fit' of those rules with these transactions." It will not address, however, the regulation of data privacy or intellectual property rights relating to data. The end-product will be a set of transnational principles that could be used

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# REGISTER NOW FOR THE ANNUAL MEETING

## EVENTS ON SUNDAY, MAY 20

This year's Annual Meeting features three speaker events on Sunday. There is no cost to attend, however, there is a fee associated with the CLE program to earn credits. Visit the Annual Meeting website to register for these Sunday events.

**Legal Minefields for Driverless Cars** 1:00 to 2:30 p.m.  
Alan B. Morrison, George Washington University Law School

Driverless cars are coming, and with them are a host of complicated and fascinating legal issues. Led by Alan Morrison of George Washington Law School, the Sunday program will include topics from how federal regulation might operate for this very different kind of vehicle; to preemption of state and local laws; to protecting the privacy of occupants in vehicles that record their every movement; to determining tort liability when there is no "driver" in the conventional sense of the word; to setting insurance rates in a world of liability uncertainty; to controlling the cybersecurity risks from computer errors to intentional hacking.

**The Path of Education Reform: Law, Politics, and Public Policy**  
2:30 to 3:30 p.m.  
Goodwin Liu, California Supreme Court  
Theodore J. Boutrous Jr., Gibson, Dunn & Crutcher LLP  
John B. King Jr., The Education Trust, former U.S. Secretary of Education  
Nina Rees, National Alliance for Public Charter Schools

Our expert panel discussion will be moderated by Goodwin Liu of the California Supreme Court. This complimentary program is open to all Annual Meeting attendees; but pre-registration is required. No CLE credit is available for this event.

**The Ethics of Ex Parte Contact: From Watergate to the Internet Era – When Can We Talk?** 4:00 to 6:00 p.m.

ALI CLE Course: 60-minute hours of instruction: 2.0 ethics; total 50-minute hours, 2.4 ethics  
M. Margaret McKeown, U.S. Court of Appeals, Ninth Circuit  
Pam Bresnahan, Vorys, Sater, Seymour and Pease LLP  
Wallace B. Jefferson, Alexander Dubose Jefferson & Townsend LLP  
Paul Fishman, Seton Hall University School of Law  
Geoff Shepard, Author, *The Real Watergate Scandal: Collusion, Conspiracy and the Plot that Brought Nixon Down*

Using examples from documents uncovered from the Watergate era as a springboard, this session will start with ethics lessons learned from these prosecutions. An experienced panel of judges, a former prosecutor, an attorney ethics authority, and a historian will then fast-forward to practical ethical issues faced by lawyers and judges today, including social contacts, in-chambers conferences, correspondence with the court, and third-party conduits to social media and internet research.

We hope you can join us at this year's Annual Meeting, taking place May 21-23 at The Ritz-Carlton in Washington, DC.

Learn more about the Meeting on page 6.

The screenshot shows the website for the 95th Annual Meeting, held from May 21-23, 2018, in Washington, DC. The navigation menu includes Agenda, Events, Speakers, Drafts, Hotels, and Project Videos. The main content area features a welcome message, registration information, and a list of speakers with their photos and names. The registration information states that registration is open and provides a link to register now. The project schedule at a glance lists the topics for each day of the meeting.

Visit the Annual Meeting website at [www.ali.org/annual-meeting-2018](http://www.ali.org/annual-meeting-2018) to register now.

The website features the most up-to-date information about the Annual Meeting, including a tentative agenda, project Drafts, event details, and speaker information.

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## THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

by participants in the data economy. And, these principles might also provide guidance to courts and legislatures worldwide.

The project will have two distinguished Reporters, one from each organization. The ELI Reporter, Christiane Wendehorst, is Professor of Private Law at the University of Vienna. She was also a founding member of the ELI and became the ELI's President in September 2017. The ALI Reporter, Neil Cohen, is the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School and the longstanding Research Director of the Permanent Editorial Board for the Uniform Commercial Code, the ALI's joint venture with the Uniform Law Commission.

To help coordinate the work of the two institutions, the project will also have co-chairs and a working group of up to 10 additional individuals, with roughly half appointed by each institution. The ELI co-chair will be Lord Thomas of Cwmgiedd, who most recently served as Lord Chief Justice of England and Wales. On the ALI side, the co-chair will be Steven Weise, a Proskauer partner and member of the ALI Council. Steve is so central to all the ALI's myriad activities concerning the UCC that I sometimes think of him as Lord Weise of Sherman Oaks (and collectively think of him, Neil, and ALI Council members Amy Boss and Teresa Harmon, who contribute so much wisdom to the ALI's work on commercial law and all of whom are already involved in this project, as the UCC's gods and goddesses). In addition to this leadership group, the project will have a group of jointly appointed Advisers and a Members Consultative Group (or equivalent) from each organization.

While the work will be conducted jointly, each organization will follow its respective approval processes. For the ALI, the Council and membership will need to approve the draft, as is the case for all our projects. We hope that a single draft will be approved on both sides of the Atlantic. But for any Principles for which agreement of this sort cannot be reached, there will be different ALI and ELI versions. The project already got off to a very good start with a productive exploratory meeting that took place in New York this winter. I am very grateful to my illustrious predecessor as ALI Director, Professor Lance Liebman, who provided guidance to the ELI at the time of its founding and now serves as our ALI "ambassador" to the ELI, for participating in the meeting.

There is only one precedent for a full project that was jointly approved by the ALI and a sister institution. In 2004, the ALI and the International Institute for the Unification of Private Law (UNIDROIT) jointly approved the ALI/UNIDROIT Principles of Transnational Civil Procedure, which set forth a code of civil procedure that would be intelligible and operable in both common law and civil law regimes and is now serving as the basis for an ELI/UNIDROIT project on European model rules. In addition, the portion of the ALI's Principles of Cooperation Among the NAFTA Countries dealing with Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases was also approved by the International Insolvency Institute.

The 21st century has so far produced not only the increasing globalization of commerce but also the emergence of respected organizations around the world with goals similar to the ALI's. As a result, my hope is that further collaborations of this sort will emerge. For example, in recent years, members of the ALI Council and I have had conversations with Chief Justice Sundaresh Menon of the Supreme Court of Singapore concerning possible joint work with the recently launched Asian Business Law Institute, for which Chief Justice Menon chairs the Board of Governors. Perhaps one day we will be able to launch a joint ALI/ELI/ABLI project. But in any event, ALI members should feel pride that the type of work that we do is deemed valuable around the world!

**ALI MEMBERS MAY JOIN THE MCG FOR PRINCIPLES FOR A  
DATA ECONOMY AT [WWW.ALI.ORG/PROJECTS](http://WWW.ALI.ORG/PROJECTS).**

## IN MEMORIAM: GEOFFREY C. HAZARD, JR. CONTINUED FROM PAGE 1



**“FEW LAWYERS IN THE LAST HALF CENTURY HAVE HAD A MORE PROFOUND IMPACT ON THE STATE OF THE LAW, THAN GEOFF HAZARD. AND FEW HAVE HAD THE ABILITY TO BRIDGE AND CONNECT THE WORLDS OF THE ACADEMY, LAW PRACTICE, AND THE ADMINISTRATION OF JUSTICE. GEOFF WAS ONE OF THE LAW’S WISE MEN.”**

**ANTHONY J. SCIRICA, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT**

### **GEOFFREY C. HAZARD, JR.: AVE ATQUE VALE**

Having had the privilege and pleasure of celebrating Geoff’s extraordinary accomplishments as a scholar, lawyer, and citizen in prose while he was alive, now that he is no longer, I turn to poetry – alas, not my own. Those of you who are members of The Century Association, as Geoff was for 15 years, may recognize the poem as William Johnson Cory’s version of Callimachus’ elegy for Heraclitus, slightly altered for my purposes. Those of you who are classicists will recognize the Heraclitus in question as the poet from Halicarnassus, not the philosopher from Ephesus.

They told me, my dear Geoffrey, they told me you were dead,  
They brought me bitter news to hear and bitter tears to shed.  
I wept as I remembered how often you and I  
Had tired the sun with talking and sent him down the sky.

And now that thou art lying, my dear old eloquent guest,  
A handful of grey ashes, just now, just now at rest,  
Still are thy pleasant voices, thy nightingales, awake;  
For Death, he taketh all away, but them he cannot take.

Stephen B. Burbank  
January 27, 2018

Many new ALI projects were begun under his leadership, including Restatement Third works on Agency, The Law Governing Lawyers, Property, Restitution, Suretyship, Torts, Trusts, and Unfair Competition; and Principles of the Law projects on Family Dissolution, Transnational Civil Procedure, and Transnational Insolvency. It was also during his tenure as Director that the Institute first turned its attention to projects with an international scope, a trend that continues today with its ongoing work on international commercial arbitration, foreign relations law, and conflict of laws. On stepping down as Director after 15 years, Professor Hazard was elected to ALI’s Council in 1999, serving until he took emeritus status in August 2015. He also was Co-Reporter for the ALI/UNIDROIT Principles of Transnational Civil Procedure (2006), which has become a path-breaking model of civil procedure for international commercial disputes.

Born in Cleveland, Professor Hazard was a graduate of Swarthmore College and Columbia Law School, where he was Reviews Editor of the *Columbia Law Review*. He began his career in private practice in Oregon, serving also as deputy legislative counsel for the State

**“NO ONE KNEW MORE ABOUT LAWYERS’ PROFESSIONAL RESPONSIBILITIES THAN GEOFF. BUT HIS COMPASS EXTENDED BEYOND TECHNICAL REQUIREMENTS, TO MORALITY AND HUMAN NATURE. IN HIS ABSENCE, I WILL CONTINUE TO ASK MYSELF, OF TOUGH PROBLEMS, ‘HOW WOULD GEOFF HAVE VIEWED THIS? WHAT WOULD HE HAVE ADVISED?’”**

**CATHERINE T. STRUVE, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL**

of Oregon and executive secretary of the Oregon Interim Committee on Judicial Administration. Professor Hazard's teaching career spanned almost six decades, beginning at the University of California, Berkeley School of Law, in 1958, then at the University of Chicago Law School, Yale Law School, the University of Pennsylvania Law School, and the University of California, Hastings College of the Law.

While at Chicago, Professor Hazard was also executive director of the American Bar Foundation. During his tenure at Yale, he served variously as associate, acting, and deputy dean of the Yale School of Organization and Management. He also was Reporter for the American Bar Association Model Rules of Professional Conduct (promulgated in 1983) and draftsman-consultant for the ABA Model Code of Judicial Conduct (promulgated in 1972). He served since 1994 as a member and a consultant on the Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States. In recent years, he advised the European Law Institute on its proposal to develop European rules of civil procedure from the ALI/UNIDROIT Principles of Transnational Civil Procedure. Notwithstanding his many professional interests and responsibilities, Professor Hazard found time to serve as a consultant and expert witness on legal ethics, including legal malpractice, and to write. He was coauthor of a fundamental treatise and a casebook on civil procedure and also on professional ethics, as well as the author or coauthor of many other books and articles.

Professor Hazard was the recipient of several honorary degrees and many awards, including the American Bar Foundation Research Award and William Keck Foundation Award, the Columbia Law School Medal for Excellence, the American Judicature Society Justice Award, the International Insolvency Institute Gold Medal, the ABA Section of Legal Education Robert J. Kutak Award, and the ABA Center for Professional Responsibility Michael Franck Award. On January 5, Columbia Law School bestowed on him its Distinguished Columbian in Teaching Award, given to a law school graduate for excellence in teaching, scholarship, and writing — an honor, said Dean Gillian Lester, that he earned “many times over” in his long, illustrious career. He was a fellow of the American Bar Foundation, the American Academy of Arts and Sciences, and the American Philosophical Society.




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**“NOW THAT GEOFF HAS REACHED THE END OF HIS LONG ROAD, WE CAN SAY HE HAD A STUNNING LIFE. HE ALSO ENRICHED OUR LIVES. WE MISS HIM AND REMEMBER HIM WITH AFFECTION AND APPRECIATION FOR THE CHANCE THAT LIFE GAVE US TO KNOW HIM.”**

**MICHAEL TRAYNOR, COBALT LLP AND ALI PRESIDENT (2000 - 2008)**

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# 95TH ANNUAL MEETING PREVIEW

Throughout the year, participants in ALI's projects take part in thoughtful and important discussions on those projects. The collective wisdom of those discussions helps create the project drafts that are approved by Council and then presented at the Annual Meeting.

The discussion is not over. By registering to attend this year's Annual Meeting, you will become a part of the many voices that work together to create the careful and influential work for which we are known.

Don't miss this year's Meeting, where, with membership approval, the Liability Insurance and Economic Harm Torts projects will be completed.

## Tentative Project List

### MONDAY, MAY 21

**Economic Harm Torts** (*Tentative Draft for approval*)

**Intentional Torts** (*Tentative Draft for approval*)

**International Commercial and Investment Arbitration**  
(*Tentative Draft for approval*)

### TUESDAY, MAY 22

**Liability Insurance** (*Proposed Final Draft for approval*)

**Law of American Indians** (*Tentative Draft for approval*)

**Student Sexual Misconduct** (*Discussion Draft*)

### WEDNESDAY, MAY 23

**Government Ethics** (*Tentative Draft for approval*)

**UCC Articles 1, 3, 8, and 9** (*Tentative Draft for approval*)

**Children and the Law** (*Tentative Draft for approval*)



## Henry J. Friendly Medal

This year's Friendly Medal will be presented to U.S. Supreme Court Associate Justice Ruth Bader Ginsburg. John G. Roberts, Jr., Chief Justice of the United States, will present the award to Associate Justice Ginsburg on Monday, May 21.

## Speakers

**John G. Roberts, Jr.**, Chief Justice of the United States

**Elena Kagan**, Associate Justice of the United States Supreme Court

**Hilarie Bass**, American Bar Association President; Greenberg Traurig LLP

**Elizabeth J. Cabraser**, Lief Cabraser Heimann & Bernstein LLP

**Colleen V. Chien**, Santa Clara University School of Law

**Paul D. Clement**, Kirkland & Ellis LLP

**David M. Rubenstein**, The Carlyle Group

**Bryan A. Stevenson**, Equal Justice Initiative



FROM LEFT TO RIGHT  
*John G. Roberts, Jr., Elena Kagan,  
Hilarie Bass, Elizabeth J.  
Cabraser, Colleen V. Chien,  
Paul D. Clement, David M.  
Rubenstein, Bryan A. Stevenson*

FOR MORE INFORMATION OR TO REGISTER NOW, PLEASE VISIT THE ANNUAL MEETING WEBSITE AT [WWW.ALI.ORG/ANNUAL-MEETING-2018](http://WWW.ALI.ORG/ANNUAL-MEETING-2018).

# Project Spotlight: Restatement of the Law, Liability Insurance

The Restatement of the Law, Liability Insurance, is on the Annual Meeting agenda on Tuesday, May 22. A Proposed Final Draft of the project will be presented to membership, and if approved, the project will be completed. All projects follow the Institute's rigorous process, including the preparation of Preliminary, Council, and Tentative Drafts, and thoughtful discussion of those drafts at project, Council, and Annual Meetings. The suggestions, experience, and wisdom of our diverse group of Reporters, project participants, members, and Council members are incorporated along the way.

This feature takes a detailed look at the life of an ALI project, examining the process through the lens of the Liability Insurance Restatement.

The first Preliminary Draft was prepared in 2011. At that time, the project was formulated as Principles of the Law. The first two Chapters, Basic Liability Insurance Contract Principles and Management of Potentially Insured Liability Claims, were approved by the membership at the 2013 Annual Meeting.

In 2014, the Council approved changing the project from Principles of the Law to a Restatement of the Law. At that time, updates to the ALI Style Manual were underway to clarify the distinction between Restatements and Principles. Restatements are primarily addressed to courts and reflect the law as it presently stands or might appropriately be stated by a court, whereas Principles are primarily addressed to legislatures, administrative agencies, or private actors. Since the Liability Insurance project seeks to provide guidance primarily to the courts and there is an established body of positive law, it was determined that the project would more accurately be categorized as a Restatement.

Changing the project to a Restatement required significant changes to the previously approved Chapters. Chapters 1 and 2 were revised by the Reporters, presented to the Advisers, Members Consultative Group, and Council, and further revised before being presented to the membership for discussion at the 2015 Annual Meeting. Changes to



*Liability Insurance session at the 2017 Annual Meeting*

the black letter, Comments, and Reporters' Notes included the removal of the definition of large commercial policyholder and the removal of references to this term throughout; edits and new Comments to reflect prevailing law; and the removal of the knowledge requirement and the "quasi-reformation" remedy for innocent misrepresentations.

Around the same time that the project became a Restatement, ALI redesigned its website, adding an interface that allows written comments sent to Reporters to be shared also with project participants and the Council. The project's Advisers and Members Consultative Group have been actively involved throughout the process; more than 200 comments and 30 motions have been submitted online.

The membership approved Chapters 1 and 2 and portions of Chapter 3 at the 2016 Annual Meeting, "subject to the discussion and to the usual editorial prerogative." This is the motion made from the floor at the end of a session that calls for members to approve a draft or a specified portion of a draft with the understanding that the Reporters will make edits that reflect the way the discussion took place at the Meeting. The membership approved the remainder of Chapter 3 along with Chapter 4 at the 2017 Annual Meeting. The Reporters agreed that another year of work would include a fall project meeting and presentation of the entire project for final approval at the 2018 Annual Meeting.

## THE PROCESS: EXAMINED

It may be helpful to take a close look at a single Section of the Restatement to understand its evolution to the form that will be presented at the 2018 Annual Meeting for final approval.

Section 3, The Plain-Meaning Rule, was named "The Presumption in Favor of the Plain Meaning of Standard Form Insurance Policy

Terms" in most drafts. After the project became a Restatement, changes were made to the black letter, Comments, and Reporters' Notes. Preliminary Draft No. 1 of the Restatement was presented at a project meeting in March 2015 and,



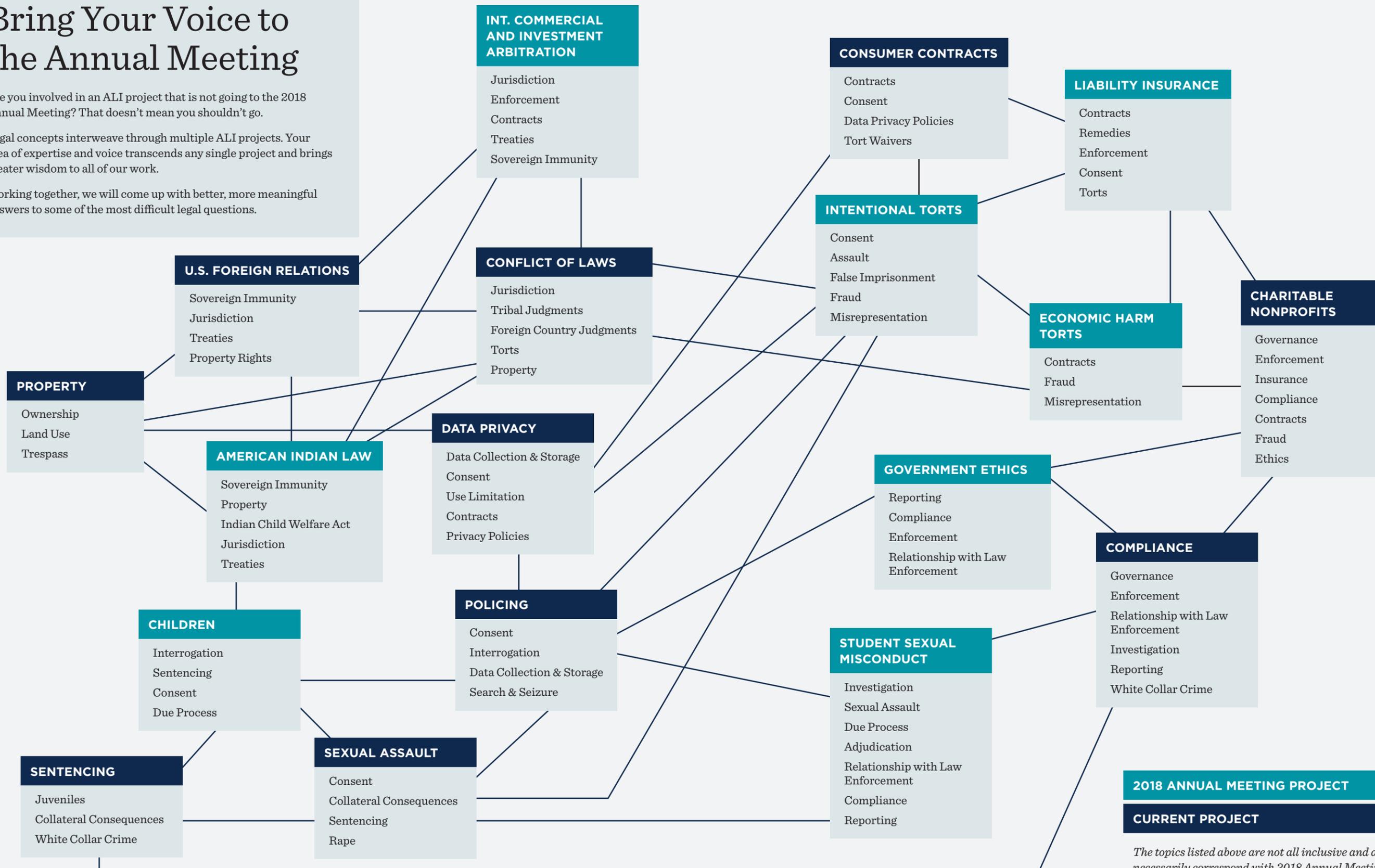
*Daniel Schwarcz of University of Minnesota Law School discusses draft materials during the March 2015 Liability Insurance project meeting.*

# Bring Your Voice to the Annual Meeting

Are you involved in an ALI project that is not going to the 2018 Annual Meeting? That doesn't mean you shouldn't go.

Legal concepts interweave through multiple ALI projects. Your area of expertise and voice transcends any single project and brings greater wisdom to all of our work.

Working together, we will come up with better, more meaningful answers to some of the most difficult legal questions.



*The topics listed above are not all inclusive and do not necessarily correspond with 2018 Annual Meeting Drafts.*

# Leaving Clients at the Door

*By ALI Deputy Director Stephanie A. Middleton*

Council Rule 4.03 states: “To maintain the Institute’s reputation for thoughtful, disinterested analysis of legal issues, members are expected to leave client interests at the door. In communications made within the framework of Institute proceedings, members should speak, write, and vote on the basis of their personal and professional convictions and experience without regard to client interests or self-interest.”

This does not mean that we leave our views, shaped by our personal and professional experience, and our expertise, often gleaned from representation of clients, at the door. The diversity of experience and opinion in our membership, as well as the character and motivation of individual members, are an important part of what makes our work influential. With such diversity, disagreement is inevitable, but the vision of the founders of the ALI was that members would view their participation as a public service, and not as in the service of the self or of clients. And this should inform members on how we are to engage in the work of the ALI.

The formation committee that conceived of the ALI had very clear ideas, which remarkably include precise descriptions of membership and what the ALI members would create in the ensuing 95 years, as well as a practical guide to the process of creation. At the first meeting of the ALI in 1923, Elihu Root recognized that the Institute’s work “must be so done as to carry authority, as to carry conviction of impartial judgment upon the most thorough scientific investigation and tested accuracy of statement. ... Participation in the enterprise must be deemed highly honorable. Selection for participation must be deemed to confer distinction; it must be recognized a great and imperative public service.”

At the second Annual Meeting of the Institute in February 1924, ALI President George Wickersham explained to the members what he hoped the Institute would produce:

Out of the welter of decision of many courts all over the land, it is the purpose of the Institute, through the labors of the foremost scholars in the law, to produce a statement of the existing state of the common law, so clear and accurate, that it will pass the criticism of the professional critics employed by the Institute, of the Council of the Institute, and of the Membership. It is our hope and belief that such a statement when finally put forth with the authority of this body, may be accepted by the bench as at least prima facie authoritative, and that it will relieve the bench and bar from repeating the arduous tasks that will have been performed by the authors of the statement, in examining the great mass of decisions of the past and gleaning from them an accurate statement of the law.

One of the first acts of the Council was to appoint the Reporters on projects on Torts, Agency, Contracts, and Conflict of Laws. By the time of the second Annual Meeting in 1924, several “conferences,” or project meetings, had been held. George Wickersham told the members:

I have had the privilege of attending one or two of these conferences, from which I came away with a renewed confidence in the ultimate success of the undertaking. I wish that every member of the Institute could have been present and heard the discussion had at these meetings, and have witnessed the spirit of open-mindedness with which all criticisms were received by the authors of the drafts under consideration, and the frank scholarly character of the discussion. What impressed me most favorably was the utter absence of any dogmatic attitude on the part of scholars of world-wide repute in these discussions. No attitude of resentment, or even impatience at even the most destructive criticism was exhibited at any time, but only the keenest desire for accuracy and for clarity; a welcoming of all helpful criticism and a patient weighing and analysis of every suggestion that any part of the draft under consideration was susceptible of improvement or required modification. It is in this spirit alone that the work properly can be performed. It is the presence of this attitude and this spirit in the midst of the great scholars who are addressing themselves to the task that affords an earnest success in their efforts. No one who has not taken part in these discussions or devoted himself in some measure to an effort to ascertain and state in clear form the existing law on any given subject, can appreciate the difficulty of extracting from the great mass of precedents a statement of the actual law, which will be accepted generally as a final authoritative declaration. The work from its very nature cannot be hurried. It is better that we produce only one book which will successfully run the gamut of professional criticism and find acceptance as the correct formulation of existing law, than that we should produce twenty treatises, concerning the accuracy and authority of which the best informed and most competent lawyers should differ. ... Unlike the great commentaries of the Roman law...the work of this Institute will not have behind it the force of Imperial mandate, nor of legislative sanction. It must appeal to the professional sense of the American bar as accurate and adequate, and to the judge of the bar we must commit the result of our labors.

The Director, William Draper Lewis, spoke next:

As I conceive it, the person for whom primarily we are writing the Restatement is the judge engaged in the actual decision of a case—not the judge desiring to make profitable use of his leisure moments. It is by such judicial use that the object of the Restatement can be most effectively accomplished. The judge, in deciding a case, does not need long discussions of the conflicts in existing decisions; ... What the judge needs is a direct, and as far as possible, simple statement of the law as the Institute declares it. Back of these statements will be the reputation of the Institute; and supporting them will be the reasoning in the accompanying Treatise. It is for us to make each as strong as possible. ... [I]t also presupposes that the Institute, because of its personnel, organization and care used in the creation of the restatement, has a right to speak with authority.

Over the decades the ALI has had many controversial projects. There have been campaigns and criticisms. The heat in the discussion often has been in proportion to the expected degree of influence. ALI members have always managed to coalesce. This may be because clients are left at the door and careful reading, courteous criticism, and cooperation are not.

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**WITH SUCH DIVERSITY,  
DISAGREEMENT IS INEVITABLE,  
BUT THE VISION OF THE  
FOUNDERS OF THE ALI WAS  
THAT MEMBERS WOULD VIEW  
THEIR PARTICIPATION AS A  
PUBLIC SERVICE, AND NOT AS  
IN THE SERVICE OF THE SELF  
OR OF CLIENTS.**

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*Group photo from ALI's Second Annual Meeting in 1924*



## Member Spotlight: Ivan K. Fong

*3M Co. Senior Vice President, Legal Affairs and General Counsel*

**You have taken a variety of paths throughout your career. How do you determine which career ventures to pursue? What drives these decisions?**

I've had the great fortune to work in private practice, in government, and now as a general counsel. The truth is that there was no "grand plan." My parents taught me that "service is the rent we pay for being," and coming from an immigrant family, I've always felt indebted to the generosity and hard work of those who came before us, and particularly to this great country. As a result, public service and pro bono work have consistently been important themes in deciding which career opportunities to pursue.

**Why did you decide to make the move to in-house?**

Moving in-house was one of the best career decisions I've made. As lawyers, we want to be close to our clients, and going in-house is a terrific way to be a trusted counselor and business partner. I particularly enjoy contributing to a client's broader mission and being proactive, strategic, and a guardian of the company and its reputation. Indeed, the professional challenges and opportunities offered in today's large, sophisticated law departments are second to none. Although it's not for everyone, and every company is different, it's been a great fit for me.

**You have led several large legal departments with great success. What makes a great legal team? How do you inspire others?**

A great legal team is, in my view, client-focused, innovative, collaborative, professionally excellent, and performance-driven. My aspiration as a leader is to articulate a clear mission and compelling vision for the team, work with the team and our clients to develop a set of strategic objectives, and then empower and develop the team to achieve those goals. Inspiration comes from leading by example and leading with integrity. Although there are important differences between leading in the public sector as compared to the private sector, many of the core elements—such as integrity, collaboration, being a change-agent, and building a great team—are common to both.

**What brought you to ALI and why is it important to you to be an active member in the Institute?**

The ALI is one of the few organizations that brings together the most prominent leaders of our profession—whether from private practice, large companies, the legal academy, or the judiciary—for a significant, common purpose: to clarify, simplify, and harmonize the law. Not only have I enjoyed learning about numerous substantive areas of the law, being active in ALI has also given me an unparalleled opportunity to get to know many amazing, accomplished lawyers who share our devotion to ALI's mission. It's




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**INSPIRATION COMES FROM LEADING BY EXAMPLE AND LEADING WITH INTEGRITY. ALTHOUGH THERE ARE IMPORTANT DIFFERENCES BETWEEN LEADING IN THE PUBLIC SECTOR AS COMPARED TO THE PRIVATE SECTOR, MANY OF THE CORE ELEMENTS—SUCH AS INTEGRITY, COLLABORATION, BEING A CHANGE-AGENT, AND BUILDING A GREAT TEAM—ARE COMMON TO BOTH.**

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particularly important for corporate general counsel to be involved, because we are often on the front lines of how changes in law, technology, and business drive a need for legal reform and harmonization.

**As a member of the ALI Council, you review, comment on, and vote on all project drafts before they are presented at the Annual Meeting. How does your perspective contribute to the ALI process?**

I think my perspective as a corporate general counsel, who has also worked at a senior level in government and in private practice, enables me to view an issue through several lenses. There are always others who are far more expert than I am on any given issue, but in terms of the practical impact of how a proposed rule or comment might be interpreted or implemented, I may be able to bring a unique perspective that I hope adds value to the overall process.

**Throughout your career, you have advocated for the advancement of Asian American attorneys within the profession. Can you share some of the professional obstacles that you have observed or encountered? What are some of the ways that we can combat them?**

In my experience, and consistent with the findings of social-science research, diverse and inclusive teams tend to be more creative and innovative, and thus tend to perform better, than those that are not. Despite the competitive advantage that diversity and inclusion bring, certain groups continue to face difficulties rising to the senior-most roles in our profession. For Asian American lawyers, for example, a recent study led by fellow ALI Council member Justice Goodwin Liu (“A Portrait of Asian Americans in the Law”) found that Asian American lawyers report a lack of mentoring and “soft skills” as a primary barrier to career advancement. Working to overcome stereotypes and providing leadership development to Asian Americans are good ways to help break the so-called bamboo ceiling.

**You’ve worked and studied all over the country. Now based in St. Paul, what makes Minnesota a special place?**

We love living in the Twin Cities! There is so much to do—people here really embrace the outdoors, and there are world-class art, theater, music, restaurants, sports, and other offerings. Where else can you find over 10,000 lakes, over a dozen Fortune 500 companies, and a place that’s home to the likes of Prince, Bob Dylan, and the Mayo Clinic? As for the cold, just remember that “there’s no such thing as bad weather, only bad clothing!” [It’s just too bad the Vikings didn’t get to play at home in the Super Bowl!]

## Law of American Indians

*November 30 in New York, NY*

Preliminary Draft No. 6 includes the entire current draft of the Restatement. The discussion focused on § 33 of Chapter 2: Tribal Authority; Chapter 3: State–Tribal Relations; Chapter 5: Indian Country Criminal Jurisdiction; and § 10 of Chapter 1: Federal–Tribal Relations. This project is on the 2018 Annual Meeting agenda.



*Associate Reporter Kaighn Smith Jr. of Drummond Woodsum*

## Children and the Law

*December 1 in Philadelphia, PA*

This project is on the 2018 Annual Meeting agenda. Project participants examined Preliminary Draft No. 4, which presented topics from Chapter 2: Parental Authority and Responsibilities; Chapter 3: State Intervention for Abuse and Neglect; Chapter 9: Student Speech Rights; Chapter 15: Delinquency Proceedings; Chapter 17: Juveniles in the Criminal Justice System; and Chapter 24: Minors’ Obligations and Responsibilities.



*Naomi R. Cahn of George Washington University Law School*

# The Institute in the Courts: State Supreme Courts Adopt Torts Second Provisions

In *Howard v. Aspen Way Enterprises, Inc.*, 406 P.3d 1271 (Wyo. 2017), the Supreme Court of Wyoming adopted the elements of the invasion-of-privacy tort of intrusion upon seclusion as set forth in Restatement of the Law Second, Torts § 652B, with damages as defined by § 652H. In that case, lessees of computers from a rent-to-own franchise filed separate actions against the owner of the franchise, alleging that the defendant installed software on their leased computers, without the plaintiffs' knowledge, that enabled the defendant to track the leased computers' locations, remotely activate the computers' webcams, and capture screen shots and key strokes. The circuit court granted in part the defendant's motions for summary judgment, finding that the plaintiffs' privacy claims were not recognized in Wyoming, and the state district court affirmed. The supreme court reversed the circuit court's entry of summary judgment and remanded, holding that Wyoming recognized a cause of action for the invasion-of-privacy tort as defined by Restatement Second of Torts § 652B as intrusion upon seclusion and damages as defined by § 652H. The court considered the fact that a majority of jurisdictions recognized a cause of action for the intrusion-upon-seclusion tort and supported the Restatement's formulation of the tort. The court explained that the Wyoming legislature had adopted the common law, making it the rule of decision when it was not inconsistent with the laws of the state, and concluded that the legislature had not repealed any of the common-law privacy torts and that the tort of intrusion upon seclusion was consistent with Wyoming law. The court concluded "that the Restatement version of the tort is the approach best suited to our common law," because it had relied on the Restatement on numerous occasions to develop its common law and the Restatement's formulation of the tort "is longstanding, represents the majority rule, and provides an established body of precedent to guide its application."

In *McElhaney v. Thomas*, 405 P.3d 1214 (Kan. 2017), the Supreme Court of Kansas adopted the standards set forth in the Restatement of the Law Second, Torts, that defined two separate categories of injurious intent. In that case, a high-school student brought, inter alia, an intentional-tort claim against her classmate who drove over her feet with a truck in the high-school parking lot and caused her significant injury, alleging that the defendant had intended to run into her with the truck and had admitted that he only intended to bump her. The trial court dismissed most of the plaintiff's claims, the defendant conceded that he was negligent, and the case was submitted to a jury solely on the appropriate measure of the plaintiff's actual damages. The court of appeals affirmed the trial court. The supreme court reversed in part, holding, inter alia, that the trial court erred when it dismissed the plaintiff's intentional-tort claim, because the plaintiff satisfied her initial burden of pleading and producing some evidence that the defendant acted with an intent to injure. The court noted that "Kansas has long followed the definition of intent found in the Restatement (Second) of Torts [§ 8A]" and that the object of that intent was the focus of its inquiry in this case. The court explained that Restatement Second of Torts §§ 13 and 18 defined two separate categories of injurious intent, and it adopted those standards as its own, concluding that the "'intent to injure' element of a civil battery claim can be satisfied in alternative ways—either by (1) an intent to cause a harmful bodily contact, that is, to cause the other physical injury; or by (2) an intent to cause an offensive bodily contact, that is, to invade the other's reasonable sense of personal dignity." The court determined that, even if the defendant did not intend to cause the plaintiff any harm, the intent to bump the plaintiff with a truck was sufficient to allow a reasonable jury to conclude that he acted with an intent to offend.

To join the Members Consultative Group for current projects, visit the projects page on the ALI website at [www.ali.org/projects](http://www.ali.org/projects).

Restatement of the Law Third, Torts: Intentional Torts to Persons and Economic Harm are active ALI projects.

Both projects will be on the Annual Meeting agenda on Monday, May 21. With membership approval, the Economic Harm Torts project will be completed.

# ALI Establishes Fund in Memory of Daniel J. Meltzer

The American Law Institute is pleased to announce the creation of a special fund established in memory of longtime ALI member Daniel J. Meltzer, who died in May 2015.

The Daniel J. Meltzer Fund, which will help to carry on Professor Meltzer's dedication to advancing the Institute's mission, was initiated through a major gift provided by ALI President David F. Levi. Professor Meltzer and President Levi were first cousins and close friends, growing up four houses apart and attending school as classmates all the way through Harvard College. Together they shared a love for their family and the law, as well as a deep commitment to the Institute.

"Dan was an extraordinary person and lawyer who is remembered for his intellect, for the rigor and integrity of his legal analysis, and for his generosity, kindness, and commitment to public service," said President Levi. "He was dedicated to law reform and was looking forward to serving as ALI's Director, so establishing the Daniel J. Meltzer Fund to honor and continue Dan's legacy of support of ALI seemed like the right fit."

The fund will provide ALI Director Richard L. Revesz and future directors the necessary resources to execute special initiatives that will further the Institute's important and influential work of clarifying and improving the law for the better administration of justice.

From January 2009 to June 2010, Professor Meltzer served as the Principal Deputy Counsel to President Obama. When he announced in May 2010 that he would be leaving that post to return to Harvard, *The New York Times* noted that Professor Meltzer had "worked on nearly every major legal issue the White House has handled, a sprawling portfolio that ranged from domestic policies to national security matters."

The *Times* report said Professor Meltzer "played a leading role" in the administration's efforts to close the military prison at Guantanamo Bay, Cuba, and that he had helped to prepare U.S. Supreme Court Associate Justice Sonia Sotomayor for her confirmation hearings.

He was also the White House's primary liaison to the Justice Department's Office of Legal Counsel, which evaluates the legality of proposed policies, the *Times* reported, as well as a key figure in the Obama Administration's efforts to overhaul health care, "by negotiating and helping to draft an executive order Mr. Obama signed as part of a deal to persuade anti-abortion rights Democrats to back the bill."

After he left the White House, Professor Meltzer was appointed as a member of the President's Intelligence Advisory Board and of the Intelligence Oversight Board.



Professor Meltzer received an A.B. in Economics from Harvard College in 1972 and a J.D. from Harvard Law School, where he was President of the *Harvard Law Review*. Upon graduation, he served as a law clerk to Judge Carl McGowan of the U. S. Court of Appeals for the District of Columbia circuit and to U.S. Supreme Court Justice Potter Stewart.

From 1977 to 1978, he was Special Assistant to the Secretary of the Department of Health, Education, and Welfare. After that, he worked three years in private practice with the District of Columbia firm of Williams & Connolly. A member of the Harvard Law School faculty since 1982, Professor Meltzer was named the Story Professor of Law in 1998.

Revered as an expert in the fields of federal courts and criminal procedure, Professor Meltzer also taught and published in the fields of constitutional law, remedies, and comparative U.S./European federalism. He is the coauthor of several editions of Hart & Wechsler's *The Federal Courts and the Federal System* and has published widely in law journals.

Elected to The American Law Institute in 1989 and to the ALI Council in 1999, Professor Meltzer served on the Executive and Nominating Committees and as an Adviser on the Model Penal Code: Sentencing; the Model Penal Code: Sexual Assault and Related Offenses; and the Federal Judicial Code Revision projects. In May 2013, he was named ALI's Director Designate and was expected to succeed then retiring Director Lance Liebman, but withdrew from the position less than five months later for health reasons. He remained devoted to law reform, participating in the Institute's work whenever possible until his passing in 2015.

"We are pleased that a fund has been established to honor the memory and involvement of Dan," said ALI Deputy Director Stephanie A. Middleton. "He was loved and admired by many, including the ALI staff and his colleagues on the Council. It is our hope that the fund will continue to grow and have a long-term positive impact on ALI's mission."

The Daniel J. Meltzer Fund is currently accepting initial gifts from friends, colleagues, and anyone else inspired by Professor Meltzer's extraordinary dedication to the law. For more information or to contribute to the fund, please contact ALI Development Manager Kyle Jakob at 215-243-1660 or [kjakob@ali.org](mailto:kjakob@ali.org).

# Council OKs Work on New Project and Considers Nine Project Drafts

At its meeting in Philadelphia on January 18 and 19, the ALI Council reviewed nine project drafts, six of which will appear on the 2018 Annual Meeting agenda. It also approved the start of a project, tentatively entitled **Principles for a Data Economy**. This new project will be conducted jointly with the European Law Institute and will identify existing legal rules applicable to transactions in data, with the goal of enunciating a common set of transnational principles that could provide guidance to courts and legislators worldwide. Learn more about this project on page 1 (The Director's Letter).

On January 18, Reporter Vicki C. Jackson and Associate Reporter Suzanne Goldberg presented Chapters 3 and 4 of Council Draft No. 1 of **Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities**; the Council had approved Chapters 1 and 2 of this draft during its meeting in October 2017. The Council approved Chapter 3 on the reporting of sexual assault and related misconduct, but there was insufficient time to discuss Chapter 4 on inquiries and investigations. Student Sexual Misconduct will be on the Annual Meeting agenda for discussion only.

Council Draft No. 6 of the **Restatement of the Law, The U.S. Law of International Commercial and Investment Arbitration**, also received Council approval. The draft, presented by Reporter George A. Bermann and Associate Reporters Jack J. Coe, Jr., Christopher R. Drahozal, and Catherine A. Rogers, includes Chapter 3 on the judicial role in arbitral proceedings and Chapter 1, Topic 2, on federal preemption of state law. This material will be presented for approval at the Annual Meeting. A Proposed Final Draft of the entire Restatement is expected to be presented for approval in 2019.

The Council approved Council Draft No. 4 of the **Restatement of the Law, Liability Insurance**, submitted by Reporter Tom Baker and Associate Reporter Kyle D. Logue, with the exception of § 3 on plain meaning and ambiguity, § 4 on interpretation of ambiguous terms, and § 12 on the insurer's liability for the conduct of the defense of a covered claim. The Reporters revised §§ 3, 4, and 12 in accordance with the discussion at the meeting and presented the revisions to the Council in April, which approved them, subject to the discussion. In addition, on fee shifting, the Reporters agreed to remove subsection (4) of § 47 and revise subsection (3) of § 48. The material, constituting the entire Restatement, will be presented as a Proposed Final Draft for membership approval at the Annual Meeting.

The Council also approved proposed amendments to **Uniform Commercial Code Articles 1, 3, and 9**, intended to accommodate the tracking of electronic promissory notes in a central mortgage registry. The proposed amendments, which include separate revisions to §§ 9-406 and 9-408 on anti-assignment overrides, will be presented for approval at the Annual Meeting.

Reporters Omri Ben-Shahar and Florencia Marotta-Wurgler presented Council Draft No. 4, containing all nine provisions of the proposed **Restatement of the Law, Consumer Contracts**. The Council concentrated its discussion on § 1, Definitions and Scope, and § 2, Adoption of Standard Contract Terms; the Reporters will revise the draft pursuant to the discussion. The project is expected to be on the Annual Meeting agenda in 2019.



*John B. Bellinger III of Arnold & Porter and David W. Rivkin of Debevoise & Plimpton*



*Patricia Ann Millett of the U.S. Court of Appeals for the District of Columbia Circuit*

On January 19, the Council approved Council Draft No. 5 of the **Restatement Third, Torts: Liability for Economic Harm**, submitted by Reporter Ward Farnsworth. The Tentative Draft, containing Chapter 4 on the misuse of legal procedure, Chapter 5 on secondary liability, and a Section on breach of fiduciary duty, will be presented for approval at the 2018 Annual Meeting, along with Chapter 3 on interference with economic interests, which was previously approved by the Council. Membership approval of this material would complete the project.

Reporter Stephen J. Schulhofer and Associate Reporter Erin E. Murphy presented Council Draft No. 7 of the **Model Penal Code: Sexual Assault and Related Offenses**, as well as revisions to Sections 213.0 and 213.1 that they posted prior to the meeting. The Council approved Sections 213.1, Forcible Rape; 213.2, Rape or Sexual Assault of a Vulnerable Person; and 213.9, Permission to Use Force; and subsections (1)(b)-(d) and (2) of Section 213.3, Sexual Assault by Coercion or Exploitation. As planned, no vote was taken on the remaining Sections in the draft. The project is expected to be on the Annual Meeting agenda in 2019.

Reporter Christopher Jon Sprigman and Associate Reporters Lydia Pallas Loren, R. Anthony Reese, and Molly S. Van Houweling submitted Council Draft No. 1 of **Restatement of the Law, Copyright**, containing Chapter 1 on subject matter and standards. The Council's discussion focused on the appropriate scope and format for the Copyright project, and Director Richard L. Revesz has requested the Projects Committee to consider whether the project should employ a format that differs from the typical Restatement format.

Finally, the Council approved Council Draft No. 4 of **Principles of the Law, Government Ethics**, presented by Reporter Richard Briffault and Associate Reporters Kathleen Clark and Richard W. Painter. The material in this draft, consisting of a Chapter on gifts and a Chapter on post-government employment restrictions, will be presented for approval at the Annual Meeting this May.



*Sheila L. Birnbaum of Quinn Emanuel*



*Scott Bales of the Arizona Supreme Court*



*Council members discuss Consumer Contracts Council Draft No. 4.*



*Thomas R. Kline of Kline & Specter, Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit, and David F. Levi of Duke University Law School at Council Dinner*

## LIABILITY INSURANCE CONTINUED FROM PAGE 7

after further revision, a Discussion Draft was submitted for the 2015 Annual Meeting.

The Council approved § 3 (among others) in October 2015. The Council's feedback was reflected in Tentative Draft No. 1 at the 2016 Annual Meeting, where a motion was made to remove significant portions of the Section that permit extrinsic evidence. The motion failed and the draft was approved by the membership under a Boskey motion.

The Reporters then prepared drafts for another cycle of project, Council, and Annual Meetings. Section 3 was included in the Proposed Final Draft and was the subject of written comments; however, approval of the draft by the membership at the 2017 Annual Meeting covered only the new and revised material.

The Reporters took into consideration the comments and discussion at the Meeting and the additional feedback on the draft prepared for a fall 2017 project meeting. A draft of the entire project was discussed at the January 2018 Council meeting, after Council members had a chance to review posted comments. At the meeting, several judges on the Council suggested changes to simplify §§ 3 and 4. The Council approved the draft, with the exception of §§ 3, 4, and 12; it approved a revised version of these Sections in April, subject to the discussion.

As approved by the Council, these Sections will be included in Proposed Final Draft No. 2 for membership approval at the Annual Meeting. By that time, a version of § 3 will have been in 14 previous drafts.

- i. The motion to approve a draft is coined the "Boskey motion," named after longtime ALI Treasurer Bennett Boskey. This phrase will often appear in Annual or Council Meeting updates after a vote has been taken to approve any portion of a project.



*Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas addresses the Liability Insurance Reporters and fellow Council members during the January 2017 Council Meeting.*



*Reporter Tom Baker of University of Pennsylvania Law School and Associate Reporter Kyle D. Logue of University of Michigan Law School listen to Council feedback at the January 2017 Council Meeting.*

## Copyright December 7 in Philadelphia, PA

Project participants discussed Preliminary Draft No. 3, which includes Chapter 2: Scope of Protection; and portions of Chapter 3: Ownership.



*David Nimmer of Irell & Manella and Shyamkrishna Baganesh of University of Pennsylvania Law School*



*Pamela Samuelson of UC Berkeley School of Law and Sarang Damle of the U.S. Copyright Office*

# Notes About Members and Colleagues

**Gregory S. Alexander** of Cornell Law School has published a new book, *Property and Human Flourishing* (Oxford University Press 2018).

**Diane Marie Amann** of University of Georgia School of Law, **David Alan Sklansky** of Stanford Law School, and **Christopher Slobogin** of Vanderbilt University Law School were featured in a *Vox* article discussing whether Donald Trump Jr. could successfully invoke the attorney-client privilege regarding a phone conversation he had with his father, while his and his father's lawyers were also on the phone call, about the June 2016 meeting in Trump Tower with a Russian lawyer with ties to the Kremlin.

In a *Washington Post* article, **Shyamkrishna Balganesh** of University of Pennsylvania Law School and **Eugene Volokh** of UCLA School of Law provide insight on copyright infringement in light of a WikiLeaks tweet containing a link to the full text of *Fire and Fury* by Michael Wolff.

**Anna Bartow** of University of New Hampshire School of Law presented her lecture, "Copyright Misuse," at part of Indiana University Robert H. McKinney School of Law's Center for Innovation Distinguished Lecture Series.

**William Baude** of University of Chicago Law School participated in a discussion on "Qualified Immunity: The Supreme Court's Unlawful Assault on Civil Rights and Police Accountability," hosted by the Cato Institute. The panel discussion addressed the law and history of qualified immunity, its effect on civil rights litigation, and the implications for police accountability.

Effective July 1, **Theresa M. Beiner** will become the next dean of UA Little Rock William H. Bowen School of Law. She will be the first permanent female dean of the law school.

**John B. Bellinger III** of Arnold & Porter Kaye Scholer testified before the Senate Foreign Relations Committee regarding domestic and international law applicable to the use of military

force against North Korea. Mr. Bellinger was also featured at this year's Hauser Global Law School Program Annual Dinner at NYU School of Law. He gave the keynote address, entitled "The Trump Administration's Approach to International Law: Will It Get Better or Worse?"

**Omri Ben-Shahar** of University of Chicago Law School wrote the *Forbes* op-ed "Are Uber Drivers Employees? The Answer Will Shape The Sharing Economy."

NYU School of Law's 2018 Alumna of the Year award was presented to **Sheila L. Birnbaum** of Quinn Emanuel Urquhart & Sullivan at a special reception commemorating more than 125 years of women at NYU Law.

**Anthony J. Bocchino** and **David A. Sonenshein** of Temple University Beasley School of Law published a book on a new paradigm for deposition practice entitled *The Modern Deposition* (CreateSpace Independent Publishing Platform 2017), an article of the same name in the *International Society of Barristers Quarterly* (2017), and an article entitled *Preparing Deponents in Modern Litigation*, 90 *Temple L. Rev.* (forthcoming 2018), which won the Annual Edward D. Ohlbaum Paper in Advocacy award.

UVA Today sat down with **Richard J. Bonnie** of UVA School of Law to discuss the recommendations provided by the National Academies of Science study on combating the national opioid crisis.

**Hannah L. Buxbaum** of Indiana University Maurer School of Law has been named the next vice president for international affairs at Indiana University, effective July 1.

**Erwin Chemerinsky** of UC Berkeley School of Law and **David F. Levi** of Duke University Law School were among the featured speakers for the panel "Academic Freedom and the Mission of the University" during the Provost Forum on Inquiry, Expression, and Community in the University.

**John S. Cooke** of the Federal Judicial Center, **Jeffrey R. Howard** of the U.S. Court of Appeals for the First Circuit, **M. Margaret McKeown** of the U.S. Court of Appeals for the Ninth Circuit, **Jeffrey P. Minear**, Counselor to Chief Justice John G. Roberts, Jr., and **Sarah S. Vance** of the U.S. District Court for the Eastern District of Louisiana are among the seven members elected to the Federal Judiciary Workplace Conduct Working Group.

**Charles B. Craver** of George Washington University Law School was named the 2018 recipient of the ABA Section of Dispute Resolution Award for Outstanding Scholarly Work.

The U.S. Senate confirmed **Allison H. Eid** to the U.S. Court of Appeals for the Tenth Circuit, filling the vacancy created by Justice Neil Gorsuch's addition to the U.S. Supreme Court.

**Eleanor M. Fox** of NYU School of Law was honored with the Antitrust Lifetime Achievement Award from the Association of American Law Schools.

**Kenneth C. Frazier** of Merck & Co. Inc. talked with *The New York Times* about his decision to resign from President Trump's American Manufacturing Council.

**Barry Friedman** of NYU School of Law was quoted in *The New York Times* op-ed "Cops, Cellphones and Privacy at the Supreme Court." The piece examined whether law enforcement should be required to obtain warrants before collecting long-term location data.

**Kenneth S. Gallant** of UA Little Rock William H. Bowen School of Law has been named the Ben J. Alzheimer Professor of Law.

**Brandon L. Garrett** of UVA School of Law was interviewed by *Vox* on the decline of the death penalty and what it means for the criminal-justice system.

## NOTES ABOUT MEMBERS AND COLLEAGUES CONTINUED FROM PAGE 19

**David Allan Gates** of Mitchell, Williams, Selig, Gates & Woodyard was named president-elect of the American College of Environmental Lawyers at the college's annual meeting in Charleston, South Carolina. He will become president after serving one year as president-elect.

**Suzanne Goldberg** of Columbia Law School was among the team of Columbia University researchers interviewed for *The New Yorker* article, "Is There

a Smarter Way to Think About Sexual Assault on Campus." In the article, Professor Goldberg addresses how SHIFT can contribute to combating sexual assaults committed on campus.

**Risa L. Goluboff** of UVA School of Law won the 2017 John Phillip Reid Book Award from the American Society for Legal History for *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (Oxford University Press 2016).

**Charles E. Griffin** of Butler Snow has been appointed to serve on the Defense Research Institute's insurance roundtable steering committee.

**Richard L. Hasen** of UC Irvine School of Law wrote *The Justice of Contradictions: Antonin Scalia and the Politics of Disruption* (Yale University Press 2018).

**Michael J. Holston** is the new Senior Vice President, General Counsel and Secretary of General Electric. Mr. Holston will lead the company's global legal, compliance and ethics, corporate secretary, and environment health & safety organizations.

The Association of American Law Schools has elected **Vicki C. Jackson** of Harvard Law School as its president-elect. **Mark C. Alexander** of Villanova University Charles Widger School of Law and **Gillian L. Lester** of Columbia Law School have been elected to serve three-year terms on the Executive Committee.

**Douglas Laycock** of UVA School of Law co-wrote, with Professor Thomas C. Berg, an op-ed for *The New York Daily News* titled "How to slice the Masterpiece Cakeshop case: The narrow ruling that will preserve religious liberty without overreaching."

**Thomas S. Leatherbury** of Vinson & Elkins was selected by the Dallas Bar Foundation Board of Trustees to receive the 2018 Justinian Award. The award recognizes attorneys who have adhered to the highest principles and traditions of the legal profession.

A grant from The Duke Endowment has established a named chair for the dean's position at Duke University Law School. The first James B. Duke and Benjamin N. Duke Dean of the School of Law is **David F. Levi**, who has served as Duke Law's dean and a professor of law since 2007.

## 2018 AALS SECTION AWARDS

The Association of American Law Schools presented the section awards during its 2018 Annual Meeting. These awards recognize outstanding faculty in their academic discipline or topic of interest. Section award winners include the following ALI members:

### Section on Business Associations Outstanding Mentor Award

James D. Cox – Duke University Law School  
 Jill Fisch – University of Pennsylvania Law School  
 Lyman P.Q. Johnson – Washington and Lee University School of Law  
 Joan M. Heminway – University of Tennessee College of Law  
 Donna M. Nagy – Indiana University Maurer School of Law  
 Robert B. Thompson – Georgetown University Law Center

### Section on Clinical Legal Education William Pincus Award

Carol L. Izumi – University of California, Hastings College of the Law

### Section on Evidence Award

Roger Park – University of California, Hastings College of the Law

### Section on Federal Courts Daniel J. Meltzer Award

David L. Shapiro – Harvard Law School

### Section on Law and Sports Award

Timothy Davis – Wake Forest University School of Law

### Section on Law, Medicine and Health Care Award

Charity Scott – Georgia State University College of Law

### Section on Legal Writing, Reasoning and Research Award

Darby Dickerson – The John Marshall Law School

### Section on Minority Groups Clyde Ferguson Award

Dorothy A. Brown – Emory University School of Law  
 Guy-Uriel Charles – Duke University Law School

### Section on Professional Responsibility Fred C. Zacharias Memorial Prize

Robert W. Gordon – Stanford Law School

### Section on Torts and Compensation Systems

#### William L. Prosser Award

Marshall S. Shapo – Northwestern University Pritzker School of Law

### Section on Women in Legal Education Ruth Bader Ginsburg Lifetime Achievement Award

Tamar Frankel – Boston University School of Law

**George W. Liebmann** of Liebmann & Shively, P.A. has published *America's Political Inventors: The Lost Art of Legislation* (I.B. Tauris 2018).

**Goodwin Liu** of the California Supreme Court was honored at the Asian American Bar Association of New York 2018 Annual Dinner on February 28 in New York City.

**Catherine Peek McEwen** of the U.S. Bankruptcy Court for the Middle District of Florida has been appointed to serve a two-year term as the non-voting bankruptcy judge observer at the Judicial Conference of the United States.

**Carrie J. Menkel-Meadow** of UC Irvine School of Law is the 2018 recipient of the American Bar Foundation Fellows Outstanding Scholar Award.

**Roberta Cooper Ramo** of Modrall Sperling was elected Chair of the Board of Directors of Albuquerque Economic Development Inc. for a one-year term.

**Patricia Lee Refo** of Snell & Wilmer has been inducted into the Maricopa County Bar Association Hall of Fame. The Hall of Fame honors individuals who have made extraordinary contributions to the law and justice, and who have distinguished themselves at the highest levels of public service.

*Marquis Who's Who* has presented **Edward S. Reid** of Davis Polk with the Albert Nelson Marquis Lifetime Achievement Award.

**Kevin R. Reitz** of University of Minnesota Law School published a new book as editor and author, *American Exceptionalism in Crime and Punishment* (Oxford University Press 2018).

**L. Song Richardson** is the new dean of UC Irvine School of Law. Dean Richardson is the only woman of color to serve as a dean among *U.S. News & World Report's* top 30 law schools.

**Anthea Roberts** of Australian National University was awarded the 2018 Certificate of Merit by the American Society of International Law for a preeminent contribution to creative scholarship for her book *Is International Law International?*

**Daniel B. Rodriguez** of Northwestern University Pritzker School of Law was a presenter at the University of Arkansas School of Law during its Hartman Hotz Lecture in Law and Liberal Arts. His lecture, "Federalism During and After Trump," examined topics such as immigration,

# Institute Receives Bequest from Member Harry C. Sigman

The American Law Institute would like to express its gratitude to Harry C. Sigman, who passed away on August 19, 2017. He was 78 years old. Mr. Sigman generously chose to make the Institute part of his legacy by including ALI in his estate plans, bequeathing \$25,000 to ensure that our work continues.

A member of ALI's 1993 Life Member Class, Mr. Sigman made the bequest in memory of Donald J. Rapson, Homer Kripke, and Peter F. Coogan, and in honor of Neil B. Cohen, Steven L. Harris, Charles W. Mooney, Jr., Edwin E. Smith, and Steven O. Weise—Mr. Sigman's colleagues in the development of the Uniform Commercial Code (UCC).

"Harry was passionately dedicated to creating the best law possible," said Steven O. Weise, ALI Council member and Proskauer Rose LLP partner, who worked closely with Mr. Sigman on the UCC. "For those of us who worked with him on these projects, he held us to the same standard and pushed us not to be satisfied until we all got everything exactly right. Everyone who practices commercial law owes Harry a debt of gratitude for the superb laws that we have the opportunity to work with."

Mr. Sigman developed expertise in Article 9 of the UCC and was an ALI appointee to UCC drafting committees or an ABA Adviser from 1999 to 2001. He also taught commercial law at UCLA and the University of Southern California, as well as at universities in Europe and Israel. He served as a U.S. Adviser to the ALI's Transnational Insolvency Project, published in 2003.

A singularly dedicated CLE course planning chair and faculty member, from 1981 to 2017 Mr. Sigman chaired or taught 67 UCC, banking, and lending course presentations for ALI-ABA and ALI CLE. Between 1981 and 1985 alone, he led 14 solo presentations of ALI-ABA's two-day Secured Transactions course in cities across the country—an extraordinary (and, for ALI-ABA at least, unique) feat of CLE endurance. His tireless work ethic and exacting standards enhanced the quality of his teaching and raised the bar for the rest of the faculty at the courses he chaired.

Mr. Sigman ran his law firm in Los Angeles, where he was a member of the California State Bar for more than 50 years and a recipient of its Business Law Section's Lifetime Achievement Award. He worked as a consultant to governments and NGOs worldwide, and represented the U.S. at the United Nations, The Hague, and UNIDROIT (the International Institute for the Unification of Private Law) in multilateral commercial-law treaty negotiations.

Mr. Sigman was an avid collector of decorative art objects and established a collection at the Neue Galerie in New York.

The Institute is immensely grateful to Mr. Sigman, and to all members who have generously named ALI as a beneficiary in their estate plans. Planned gifts such as this allow members to make a significant impact in furthering the Institute's work, without affecting their current assets. If you are interested in learning more about including The American Law Institute in your estate plans, please contact Development Manager Kyle Jakob at 215-243-1660, or [kjakob@ali.org](mailto:kjakob@ali.org).

## NOTES ABOUT MEMBERS AND COLLEAGUES CONTINUED FROM PAGE 21

medical care and insurance, marijuana policy, and other issues that have caused tension between national, state, and municipal governments during the first year of the Trump administration.

**Catherine A. Rogers** of Penn State Law School delivered the keynote address at Cambridge Arbitration Day held at the University of Cambridge in the United Kingdom.

The *Houston Chronicle* profiled **Lee H. Rosenthal** of the U.S. District Court for the Southern District of Texas in “Rosenthal rules federal courts in Houston region with firm hand.”

**Elyn R. Saks** of USC Gould School of Law has been appointed Distinguished Professor. The honor of Distinguished Professor is awarded very selectively to those whose accomplishments have brought special renown to USC.

In a *Pacific Standard* interview, **Bryan Stevenson** of the Equal Justice Initiative explores the effects of institutionalized racism in America and shares his thoughts on achieving racial and economic justice.

*Marquis Who's Who* presented **David P. Stewart** of Georgetown University Law Center with the 2017 Albert Nelson Marquis Lifetime Achievement Award.

**Elizabeth S. Stong** of the U.S. Bankruptcy Court for the Eastern District of New York received the Association of Insolvency and Restructuring Advisors 2017 Judicial Service Award at the AIRA annual conference.

On January 30, **David R. Stras** was confirmed by the U.S. Senate to the Eighth Circuit Court of Appeals, and he received his commission the next day. He had served on the Minnesota Supreme Court since 2010.

The American Society of International Law will present **Peter D. Trooboff** of Covington & Burling with the Hudson Medal during its 112th ASIL Annual Meeting in April. The medal recognizes scholarship and achievement in international law.

**Don R. Willett**, a justice on the Supreme Court of Texas since 2005, joined the U.S. Court of Appeals for the Fifth Circuit on January 2, after being confirmed by the Senate on December 13.

**David Williams II**, vice chancellor for athletics and university affairs and athletics director, was named “2017 Man of the Year” by *The Tennessee Tribune* for his influence and leadership at Vanderbilt University.

**Christopher S. Yoo** of University of Pennsylvania Law School was featured in a panel that explored the FCC’s Restoring Internet Freedom Order. The event was held at Harvard University and touched on the implications of the order, the outcome of the judicial challenge, and the possibility of legislative reform.

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

## In Memoriam

### ELECTED MEMBERS

**Roderick Glen Ayers**, San Antonio, TX; **David D. Caron**, The Hague, Netherlands; **Von G. Keetch**, Salt Lake City, UT; **Martin E. Lybecker**, Washington, DC; **Richard M. Mosk**, Los Angeles, CA; **R. Terrence Ney**, Fairfax, VA; **Ben H. Sheppard, Jr.**, Houston, TX; **Johan Steyn**, London, England

### LIFE MEMBERS

**Howard J. Aibel**, Weston, CT; **William Dorey Andrews**, Cambridge, MA; **Lawrence Bilder**, Teaneck, NJ; **Regis W. Campfield**, Dallas, TX; **Irvin B. Charne**, Milwaukee, WI; **Lovida H. Coleman, Jr.**, McLean, VA; **Camille W. Cook**, Tuscaloosa, AL; **Harold Cramer**, Philadelphia, PA; **Garnett Thomas Eisele**, Little Rock, AR; **Samuel S. Freedman**, Westport, CT; **Robert W. Hamilton**, Austin, TX; **Geoffrey C. Hazard, Jr.**, Wallingford, PA; **Michael Patrick King**, Westmont, NJ; **William C. Lance**, Sudbury, MA; **Charles W. Lane, III**, New Orleans, LA; **Leon D. Lazer**, Dix Hills, NY; **James E. Meeks**, Columbus, OH; **Marygold Shire Melli**, Madison, WI; **Richard A. Merrill**, Charlottesville, VA; **Richard T. Nassberg**, Williamsport, PA; **John E. Nolan**, Washington, DC; **Thomas N. O’Neill, Jr.**, Philadelphia, PA; **James Dickson Phillips, Jr.**, Chapel Hill, NC; **Peter Preiser**, Albany, NY; **Charles B. Renfrew**, San Francisco, CA; **Charles B. Roscoff**, Helena, AR; **William Schwartz**, New York, NY; **John S. Stump**, McLean, VA; **Parker D. Thomson**, Miami, FL

## New Members Elected

On December 14, the Council elected the following 47 persons:

**James M. Anderson**, Pittsburgh, PA  
**Shawn J. Bayern**, Tallahassee, FL  
**Spyridon V. Bazinas**, Vienna, Austria  
**Theresa M. Beiner**, Little Rock, AR  
**Michelle Browdy**, Armonk, NY  
**Jennifer Chacón**, Irvine, CA  
**Cynthia K. Ching**, Honolulu, HI  
**Leon F. DeJulius**, Pittsburgh, PA  
**Brackett B. Denniston, III**, Boston, MA  
**W. Neil Eggleston**, Washington, DC  
**Daniel M. Filler**, Philadelphia, PA  
**Paul Fishman**, Newark, NJ  
**Angel A. Garganta**, San Francisco, CA  
**Robert J. Gilson**, Newark, NJ  
**Risa L. Goluboff**, Charlottesville, VA  
**Roberto Jose Gonzalez**, Washington, DC  
**Steven C. González**, Olympia, WA  
**Britt C. Grant**, Atlanta, GA  
**Fatima Goss Graves**, Washington, DC  
**James E. Gritzner**, Des Moines, IA  
**Caitlin Halligan**, New York, NY  
**Michael J. Harrington**, Indianapolis, IN  
**Adam L. Hoeflich**, Chicago, IL  
**Sharona Hoffman**, Cleveland, OH  
**Marie Oh Huber**, San Jose, CA  
**Leslie Carolyn Kendrick**, Charlottesville, VA  
**Renee Newman Knake**, Houston, TX  
**William K. Kroger**, Houston, TX  
**Suzette Malveaux**, Washington, DC  
**Lisa Monaco**, New York, NY  
**Anne M. Patterson**, Morristown, NJ  
**Ramona E. Romero**, Princeton, NJ  
**Jeremy Ledger Ross**, Seattle, WA  
**Yaakov Moshe Roth**, Washington, DC  
**Bruce Sewell**, Atherton, CA  
**Anna Williams Shavers**, Lincoln, NE  
**Charlene Sachi Shimada**, San Francisco, CA  
**Peggie R. Smith**, St. Louis, MO  
**Steven Davidoff Solomon**, Berkeley, CA  
**Evan B. Stephenson**, Denver, CO  
**Aaron M. Strett**, Houston, TX  
**Elizabeth Trujillo**, Fort Worth, TX  
**Palmer Gene Vance II**, Lexington, KY  
**Alan Van Etten**, Honolulu, HI  
**Christine A. Varney**, New York, NY  
**Beth A. Wilkinson**, Washington, DC  
**Marc Owen Wolinsky**, New York, NY

## Meetings and Events Calendar At-A-Glance

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

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

### 2018

#### May 21-23

95th Annual Meeting  
Washington, DC

#### September 14

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

#### September 21

Restatement of the Law, Charitable Nonprofit Organizations  
Philadelphia, PA

#### October 4

Principles of the Law, Government Ethics  
Philadelphia, PA

#### October 5

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

#### October 11

Restatement of the Law Fourth, Property  
Philadelphia, PA

#### October 12

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

#### October 18-19

Council Meeting - October 2018  
New York, NY

#### October 25

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

#### November 8

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

#### November 9

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

#### November 15-16

Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities  
New York, NY



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# Many Voices. Collective Wisdom.

Don't miss the opportunity to connect with fellow ALI members, project participants, and other guests at this year's Annual Meeting.

Here's a glimpse of the breakdown of our diverse registrants (as of March 2018):



Visit the Annual Meeting website at [www.ali.org/annual-meeting-2018](http://www.ali.org/annual-meeting-2018).