

94TH
**ANNUAL
MEETING**

MAY 22-24, 2017
WASHINGTON, DC

PROGRAM

AGENDA AND EVENTS AT A GLANCE

Note: Although the date of a project session will not change, *times may change during the meeting. Sessions may begin or end earlier or later than shown on the agenda.* All sessions and events are in The Ritz-Carlton Ballroom unless otherwise noted.

SUNDAY, MAY 21

- 2:00 to 4:00 p.m. **Pushing the Envelope Without Tearing it Open: “Zealous” Representation, Lawyer Self-Defense, and Clients on the Edge** (Salon II)
- 4:30 to 6:00 p.m. **Organizations and Crisis Management Panel** (The Ritz-Carlton)

MONDAY, MAY 22

- 9:00 a.m. **Opening Session**
- 9:10 a.m. **Restatement of the Law Fourth, The Foreign Relations Law of the United States – Jurisdiction, Treaties, and Sovereign Immunity**
- 10:40 a.m. **Restatement of the Law, Charitable Nonprofit Organizations**
- 12:00 p.m. Adjournment for Lunch (on your own)
- 1:00 p.m. Cake and coffee (Outside The Ritz-Carlton Ballroom)
- 1:15 p.m. **Remarks by: Linda A. Klein**, American Bar Association; Baker Donelson Bearman Caldwell & Berkowitz
- 1:30 p.m. **Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes**
- 2:30 p.m. **Restatement of the Law, The U.S. Law of International Commercial Arbitration**
- 3:30 p.m. **Restatement of the Law Third, Torts: Intentional Torts to Persons**
- 5:00 p.m. **Adjournment**
- 6:30 to 8:30 p.m. **Members Reception and Buffet** (National Museum of Women in the Arts)

TUESDAY, MAY 23

- 9:00 a.m. **Reports and Business**
- 9:20 a.m. **Remarks by: David W. Rivkin**, Immediate Past President, International Bar Association; Debevoise & Plimpton
- 9:30 a.m. **Restatement of the Law, Liability Insurance**
- 12:00 p.m. Adjournment for Members Luncheon (Salon III)
Remarks by: Wesley S. Williams, Jr., Lockhart Companies Inc.
- 1:30 p.m. **Presentation of Henry J. Friendly Medal to Conrad K. Harper**
- 1:45 p.m. **Restatement of the Law, Consumer Contracts**
- 3:30 p.m. **Model Penal Code: Sexual Assault and Related Offenses**
- 5:15 p.m. **Adjournment**
- 7:00 p.m. Annual Reception
- 7:45 p.m. Annual Dinner
Associate Justice Ruth Bader Ginsburg, Supreme Court of the United States, in a conversation with *Roberta Cooper Ramo*, The American Law Institute

WEDNESDAY, MAY 24

- 9:00 a.m. **Model Penal Code: Sentencing**
- 11:30 a.m. **Awarding of ALI Early Career Scholars Medal**
- 12:15 p.m. Adjournment for Members Luncheon (Salon III)
Remarks by: Thomas C. Goldstein, Goldstein & Russell
- 1:45 p.m. **Principles of the Law, Policing**
- 4:00 p.m. **Adjournment**

REGISTRATION HOURS ROOSEVELT ROOM

- Sunday, May 21, 1:00 p.m. – 6:30 p.m.
Monday, May 22, 8:00 a.m. – 5:30 p.m.
Tuesday, May 23, 7:30 a.m. – 5:30 p.m.
Wednesday, May 24, 7:30 a.m. – 4:00 p.m.

THE RITZ-CARLTON HOTEL

- Hotel telephone: (202) 835-0500
Hotel fax: (202) 835-1588



THE AMERICAN LAW INSTITUTE

94TH ANNUAL MEETING

MAY 22-24, 2017
THE RITZ-CARLTON HOTEL
WASHINGTON, DC

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HEADQUARTERS

The Ritz-Carlton Hotel
1150 22nd Street, N.W.
Washington, DC 20037

Hotel telephone: (202) 835-0500
Hotel fax: (202) 835-1588

REGISTRATION

Where: The registration desk is located on the Ballroom Level of The Ritz-Carlton in the Roosevelt Room.

When: Sunday, May 21, 1:00 p.m. – 6:30 p.m.
Monday, May 22, 8:00 a.m. – 5:30 p.m.
Tuesday, May 23, 7:30 a.m. – 5:30 p.m.
Wednesday, May 24, 7:30 a.m. – 4:00 p.m. (or until Meeting adjourns)

All Meeting attendees, even those who have registered in advance, must visit the ALI registration desk before entering the ballroom to sign in and obtain a name badge.

There is no registration fee for the Meeting.

Your name badge must be worn for all Meeting sessions and functions.

Why are there colored dots on some badges? We use a green dot on a badge, together with a green lanyard, to indicate that the wearer is a newly elected member of the Institute, and a red dot to designate those attending an Annual Meeting for the first time. Keep an eye out for green and red dots so you can welcome fellow members to the Meeting. Officers and members of the Council are designated by a blue dot on a badge—don't hesitate to introduce yourself to them.

Hospitality: Coffee and tea will be available in the elevator foyer.

Dress code: The dress code for the Meeting and other events is business attire.

Photographs and Recording: Your registration and attendance at the Annual Meeting constitutes your agreement to ALI's use and distribution of your image and voice in photographs, video recordings, and audio recordings of the Annual Meeting.

Persons with Disabilities: Please inform ALI at least two weeks in advance about any special arrangements required for you to be able to participate fully in the Meeting or in any of the related events.

There will be WiFi access in The Ritz-Carlton Ballroom. Details will be posted in the registration area.

PROJECTS ON THE AGENDA

(IN ORDER OF PRESENTATION)

Monday, May 22

Restatement of the Law Fourth, The Foreign Relations Law of the United States

Restatement of the Law, Charitable Nonprofit Organizations

Principles of the Law, Election Administration: Non-Precinct Voting and

Resolution of Ballot-Counting Disputes

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

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

Tuesday, May 23

Restatement of the Law, Liability Insurance

Restatement of the Law, Consumer Contracts

Model Penal Code: Sexual Assault and Related Offenses

Wednesday, May 24

Model Penal Code: Sentencing

Principles of the Law, Policing

AVAILABILITY OF MEETING DRAFTS

Printed copies of Annual Meeting drafts are mailed in advance to members who requested them. Electronic versions of the drafts are available to members on the Institute's website (www.ali.org). Members for whom ALI has a working email address will be notified by email when each draft is posted.

PROVIDING COMMENTS ON ANNUAL MEETING DRAFTS

Members who wish to make comments on a draft are not required to submit a formal motion.

The ALI website provides an easy method for submitting comments. Visit the Projects page (www.ali.org/projects) and be sure that you are signed in. Click on the project name, then on the Comments tab, and follow the prompts to submit your comment. You may either type your comment directly into the text box or upload a PDF or Word document. Please note: Comments submitted online do not appear immediately; they will be visible on the project page after they are posted by ALI staff.

Unless expressed otherwise in the submission, individuals who submit comments authorize ALI to retain the submitted material in its files and archives, and to copy, distribute, publish, and otherwise make it available to others, with appropriate credit to the author.

You may also submit your comment via electronic mail or standard mail. The email address for each project is listed on the Comments tab. Mailing addresses can be found on page iv of all drafts.

MOTIONS: SUBMISSION PROCEDURE AND DEADLINES

WHO MAY SUBMIT

Only a member may make a motion on a draft.

WHAT TO INCLUDE

All written motions must identify a single movant who will be present in the ballroom to make the motion and to discuss the motion with the Reporters.

Proposed changes to the draft's text should be shown in redline format. A brief supporting statement explaining the proposed changes also should be included in the document. ALI reserves the right to refuse to post, copy, or make available materials that it deems too lengthy or not appropriate for the purpose.

WHAT MOTIONS CANNOT COVER

Motions may not be submitted on Discussion Drafts (because they are not submitted for membership approval) or on Reporters' Notes (because they are considered the sole work of the Reporters, not ALI).

HOW TO SUBMIT

Online: Visit the Projects page (www.ali.org/projects) and be sure that you are signed in. Click on the project title, then on the Motions tab, and follow the prompts. You may type your motion directly into the text box or upload a PDF or Word document. Please note that motions submitted online do not appear immediately; they will be viewable on the project page after they are posted by ALI staff.

Email: The email address for each project is listed on the Motions tab on the project's page on the ALI website. Submissions will be acknowledged upon receipt.

WHEN TO SUBMIT

We encourage members to submit their motions in writing in advance of the Meeting (please note the deadlines listed below). However, motions may be made from the floor at the Meeting.

DEADLINES

We recommend that members submit their motions by midnight (ET) on **Friday, May 12**. If that deadline is met, ALI will provide printed copies of the motion at the Meeting. ALI staff will place copies on tables outside the ballroom on the day of the project session.

After May 12: Members who submit motions after May 12 should **hand-deliver** 300 printed copies to the Meeting registration desk (Roosevelt Room). **Please do not ship or mail copies to the ALI or to The Ritz-Carlton.** ALI staff will place the movant's copies on tables outside the ballroom on the day of the project session.

After May 18: If a motion is submitted after May 18, in addition to hand-delivering printed copies as set out above, members also should **hand-deliver** a USB drive containing the motion in PDF format to the Meeting registration desk (Roosevelt Room).

AGENDA

Note: **Although the date of a project session will not change, times may change during the meeting. Sessions may begin or end earlier or later than shown on the agenda.** Events that require a paid ticket or an invitation are indicated below. All sessions and events are in The Ritz-Carlton Ballroom unless otherwise noted.

SUNDAY, MAY 21

2:00 to 4:00 p.m. **Pushing the Envelope Without Tearing it Open: “Zealous” Representation, Lawyer Self-Defense, and Clients on the Edge**
Salon II

2 hours ethics credit - Open to all Annual Meeting attendees

How zealously can an attorney represent a client without crossing ethical lines? Our panel of practitioners and judges will examine those boundaries, including: permissive legal advice vs. encouraging or assisting a client in criminal/fraudulent conduct; what you can tell clients who want direction on undercover/sting operations; and the duty of confidentiality vs. permissive or mandatory disclosures.

Planning Chair: Peter R. Jarvis, Holland & Knight LLP

Registration and course fee payment required.

4:30 to 6:00 p.m. **Organizations and Crisis Management Panel** The Ritz-Carlton

A panel of experts will discuss what in-house and outside lawyers should do to assess and manage the situation when an organization is surprised by a negative event that may be material.

MONDAY, MAY 22

9:00 a.m. **Opening Session**
Call to order and report by President Roberta Cooper Ramo

9:10 a.m. **Restatement of the Law Fourth, The Foreign Relations Law of the United States – Jurisdiction, Treaties, and Sovereign Immunity**
Tentative Drafts for Approval

10:40 a.m. **Restatement of the Law, Charitable Nonprofit Organizations**
Tentative Draft for Approval

12:00 p.m. **New Member Orientation Luncheon** (invitation only) Plaza Ballroom
Lunch for most members is “on your own.” A restaurant guide is available in the registration area.

1:00 p.m. Cake and coffee provided through the generosity of Robert H. Mundheim.
Outside The Ritz-Carlton Ballroom

1:15 p.m. **Remarks by: Linda A. Klein**, American Bar Association;
Baker Donelson Bearman Caldwell & Berkowitz

1:30 p.m. **Principles of the Law, Election Administration: Non-Precinct
Voting and Resolution of Ballot-Counting Disputes**
Tentative Draft for Approval

2:30 p.m. **Restatement of the Law, The U.S. Law of International
Commercial Arbitration**
Tentative Draft for Approval

3:30 p.m. **Restatement of the Law Third, Torts: Intentional Torts to Persons**
Tentative Draft for Approval

5:00 p.m. **Adjournment**

6:30 to **Members Reception and Buffet**

8:30 p.m. National Museum of Women in the Arts
1250 New York Ave NW, Washington, D.C. 20005
This is a ticketed event.

TUESDAY, MAY 23

9:00 a.m. **Reports and Business**

- Report of Director Richard L. Revesz
 - Report of Treasurer Wallace B. Jefferson
 - Report of the Membership Committee by
Chair Teresa Wilton Harmon
 - Report of the Nominating Committee (including election of
Council members) by Chair Anthony J. Scirica
-

9:20 a.m. **Remarks by: David W. Rivkin**, Immediate Past President,
International Bar Association; Debevoise & Plimpton

9:30 a.m. **Restatement of the Law, Liability Insurance**
Proposed Final Draft for Approval

12:00 p.m. **Members Luncheon** Salon III
**Honoring New Life Members (Class of 1992) and
New 50-Year Members (Class of 1967)**
Remarks by: Wesley S. Williams, Jr., Lockhart Companies Inc.
This is a ticketed event.

1:30 p.m. **Presentation of Henry J. Friendly Medal to
Conrad K. Harper**, Simpson Thacher & Bartlett LLP
Presented by: D. Brock Hornby, U.S. District Court, District of Maine

1:45 p.m. **Restatement of the Law, Consumer Contracts**
Discussion Draft

3:30 p.m. **Model Penal Code: Sexual Assault and Related Offenses**
Tentative Draft for Approval

5:15 p.m. **Adjournment**

7:00 p.m. **Annual Reception and Dinner**
Please join us in welcoming our special guest:
Ruth Bader Ginsburg, Supreme Court of the United States
In a conversation with:
Roberta Cooper Ramo, The American Law Institute
This is a ticketed event.

WEDNESDAY, MAY 24

9:00 a.m. **Model Penal Code: Sentencing**
Proposed Final Draft for Approval

11:30 a.m. **Awarding of ALI Early Career Scholars Medal to
Colleen V. Chien and Daniel Swarcz**
Introduction by: Mariano-Florentino Cuéllar,
Supreme Court of California
Address by: Daniel Swarcz. See page 16.

12:15 p.m. **Members Luncheon Salon III**
Remarks by: Thomas C. Goldstein, Goldstein & Russell
Topic: The Evolving Supreme Court through the Eyes of SCOTUSblog
This is a ticketed event.

1:45 p.m. **Principles of the Law, Policing**
Tentative Draft for Approval

4:00 p.m. **Adjournment**

RULES OF THE COUNCIL PERTAINING TO ANNUAL MEETINGS*

9.02 Annual Meetings of the Membership

- A. The President, in consultation with the Director, sets the agenda for the annual meeting of the Institute’s membership, including the time limits for each general subject, each issue, and each speaker. The President or other presiding officer may adjust the time limits during a particular session. Members may, before the meeting, submit any motions they intend to make as well as comments on issues they wish to raise at the meeting, especially with respect to items not scheduled for plenary consideration.
- B. During plenary deliberations, members should not make stylistic suggestions from the floor, but should submit them before or after the meeting or session. A maker of a main motion may speak for not more than five minutes and the reporters may respond for not more than five minutes. All other members who are recognized to speak from the floor may speak for not more than three minutes. The reporter and the maker of a main motion may each speak for one minute in closing. Notwithstanding the time limits specified here, the session’s presiding officer may allow more or less time than this Rule provides.

9.03 Rules of Procedure

Subject to the Bylaws and these Rules, the procedures for the conduct of meetings under this Rule 9 should be set by the President or other presiding officer in conformity with generally accepted standards for the conduct of similar meetings. In the event of a dispute over proper procedure, if neither the Bylaws nor these Rules resolve the matter, then the President or other presiding officer should resolve it in accord with the then-current edition of Robert’s Rules of Order.

Rule 4 Obligations of Institute Members

4.03

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. It is improper for a member to represent a client in Institute proceedings and such conduct constitutes good cause for termination of Institute membership under Rule 5.02. If, in the consideration of Institute work, a member’s statements can be properly assessed only if the client interests of the member or the member’s firm are known, the member should make appropriate disclosure, but need not identify clients.

*A complete Rules of the Council is available online at www.ali.org/about-ali/governance.

POLICY CONCERNING NONMEMBERS AT ANNUAL MEETINGS

ATTENDANCE

Members who will be accompanied by a nonmember family member or other guest can register these guests via the member's online registration form.

Members also may invite nonmember colleagues to attend the Annual Meeting and related events. Members who wish to invite a colleague should contact the Membership Department (*membership@ali.org*; (215) 243-1623) to request that an invitation be issued and to submit the invitee's contact information.

Nonmember Advisers and Liaisons may attend the Annual Meeting and related events, and can register via the online registration form.

Members of the press who are interested in attending a session should contact Jennifer Morinigo (*jmorinigo@ali.org*; (215) 243-1655). Additional instructions will be provided to members of the press upon registration.

All nonmembers who are permitted to attend must register for the Meeting and must wear the name badge that they receive upon check-in at the registration desk during all sessions and events. Persons not wearing their name badge are not permitted to enter the ballroom or other event venues.

For sessions and events where space is limited, preference will be given to members.

SPEAKING AND VOTING

Nonmembers may not make or second a motion or vote on any matter. If nonmembers are recognized to speak from the floor of the Annual Meeting, they must identify themselves as nonmembers and state their role or the nature of their interest in the project.

The President, in consultation with the Director, may extend the privilege of the floor to a nonmember who wishes to speak on a particular matter before the Meeting. A request for such privilege should be submitted in writing in advance of the Meeting to the President by email to *president@ali.org*. The following information should be included: (1) the particular issue that the nonmember wishes to address; (2) the nonmember's relevant credentials and affiliations with respect to the issue; (3) the nature of the nonmember's interest in the matter; (4) the name of any employer, client, or other person or organization that may have suggested that the nonmember address the matter at the Meeting or on whose behalf the nonmember may be speaking; and (5) a summary of the nonmember's intended comments. Whether a nonmember to whom a floor privilege is extended

at the Meeting will be recognized for subsequent comment or further discussion is subject to the discretion of the presiding officer.

Nonmember Advisers and Liaisons to a project under discussion shall have the same speaking privileges as members with respect to that project, without needing to request such privileges in advance, but may not make or second a motion or vote on any matter.

PROCEDURES FOR ANNUAL MEETINGS

- All attendees must wear their name badge during all sessions and events. Persons not wearing their name badge are not permitted to enter the ballroom or other event venue.
- All speakers from the floor must state their name, city, and state each time they speak.
- A speaker making a comment or asking a question may speak for up to three minutes.
- A maker of a main motion may speak for up to five minutes and the Reporter may respond for up to five minutes. The maker of the main motion and the Reporter each may speak for one minute in closing.
- Speakers should look for the light on the dais to help keep track of their time limits. When the green light turns yellow, speakers should wrap up their comments; the red light marks the expiration of time.
- Speakers should not make stylistic suggestions from the floor, but should submit them before or after the session.
- Presubmitted motions are ordinarily given priority over other motions. Members should review the Submission Procedures and Deadlines (see page 4).
- Nonmembers may attend the Annual Meeting, but restrictions apply. If nonmembers are recognized to speak from the floor, they must identify themselves as nonmembers and state their role or the nature of their interest in the project. Nonmembers may not make or second a motion or vote on any matter. See the Policy on Nonmembers at Annual Meetings on page 10 for additional restrictions and requirements.
- The procedures for the Annual Meeting are set by the President or other presiding officer. In the event of a dispute over proper procedure, if neither the Bylaws nor the Council Rules resolves the matter, then the President or other presiding officer should resolve it in accord with Robert's Rules of Order.

For more information, see Council Rules 9.02 and 9.03 on page 9.

LEAVE CLIENTS AT THE DOOR

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. It is improper for a member to represent a client in Institute proceedings and such conduct constitutes good cause for termination of Institute membership. If, in the consideration of Institute work, a member's statements can be properly assessed only if the client interests of the member or the member's firm are known, the member should make appropriate disclosure, but need not identify clients. (Council Rule 4.03)

CLE CREDIT

Most mandatory-CLE states award credit for attendance at the Annual Meeting. Information about CLE credit for this year's Meeting will be available in the Roosevelt Room. **There is a \$100 administrative fee for those seeking CLE credit for any portion of the Annual Meeting.** This fee—which may be paid in advance on the ticket-order form on paper or online, or in person at the ALI registration desk at The Ritz-Carlton—includes any state-required assessment to be paid by ALI. **See ALI staff in the Roosevelt Room, during registration hours, to apply for CLE credit for this Meeting.** (The fee referenced here is separate from tuition for the ALI CLE ethics course on Sunday, May 21. See page 13.)

PRE-MEETING CLE COURSE

PUSHING THE ENVELOPE WITHOUT TEARING IT OPEN: “ZEALOUS” REPRESENTATION, LAWYER SELF-DEFENSE, AND CLIENTS ON THE EDGE

Sunday, May 21 | 2:00 - 4:00 p.m.

How zealously can an attorney represent a client without crossing ethical lines? Our panel of practitioners and judges will examine those boundaries, including: permissive legal advice vs. encouraging or assisting a client in criminal/fraudulent conduct; what you can tell clients who want direction on undercover/sting operations; and the duty of confidentiality vs. permissive or mandatory disclosures.

Planning Chair

Peter Jarvis, Partner, Holland & Knight LLP

Panelists

Mitchell A. Lowenthal, Partner, Cleary Gottlieb Steen & Hamilton LLP

Brian A. Nelson, Vice President, General Counsel & Secretary,
Los Angeles 2024 Exploratory Commission

Christina C. Reiss, Chief Judge, U.S. District Court of Vermont

Laura Stein, Executive Vice President & General Counsel, The Clorox Company

**Total 60-minute hours of instruction: 2.0 ethics; total 50-minute hours,
2.4 ethics.**

Tuition for this program is \$150 for ALI members and ALI project Advisers, \$195 for all others. To register, use the ALI Annual Meeting registration form (online or in print). Registrations will be accepted at the door if space permits.

CANCELLATIONS

If your plans to attend this program change, please contact us by **5:00 p.m. (EDT) on Wednesday, May 17**, via fax to (215) 243-1636, or email membership@ali.org.

SPECIAL EVENTS

MEMBERS RECEPTION AND BUFFET

Members and guests are invited to a reception and buffet on Monday, May 22, from 6:30 p.m. to 8:30 p.m. at the National Museum of Women in the Arts. Enjoy cocktails, a buffet, and plenty of time to socialize with other ALI members at this year's Members Reception.

Founded in 1987, the museum is the only major museum in the world solely dedicated to recognizing women's creative contributions. The museum displays remarkable women artists of the past while also promoting the best women artists working today.

Attendees of the reception are encouraged to tour the museum to explore the more than 4,500 objects and the special exhibitions of women artists that will be on display.

Transportation will be provided from The Ritz-Carlton Hotel to the museum and returning to the hotel after the reception. The museum is located at 1250 New York Ave NW, Washington, D.C. 20005.

Tickets are \$75 per person.

MEMBERS LUNCHEON

HONORING NEW LIFE MEMBERS (CLASS OF 1992)
AND NEW 50-YEAR MEMBERS (CLASS OF 1967)

All members are welcome to attend this luncheon on Tuesday, May 23, at noon in Salon III, honoring ALI members who have achieved Life Member status after serving 25 years as elected members, along with those rare individuals celebrating 50 years as an ALI member.

Wesley S. Williams, Jr., President and Co-Chairman of Lockhart Companies Incorporated, will be our featured speaker. See page 23 for Mr. Williams' full biography. The class gift will be presented by the 1992 Life Member Class Gift Committee: Steven O. Weise of Proskauer Rose LLP, Gail B. Agrawal of the University of Iowa College of Law, Mitchell A. Lowenthal of Cleary Gottlieb Steen & Hamilton LLP, and Gregory K. Palm of Goldman, Sachs & Co.

Tickets are \$65 per person.

ANNUAL DINNER

The Institute's Annual Dinner will be held on Tuesday, May 23, at 7:45 p.m. in The Ritz-Carlton Ballroom, preceded by a reception in the Ballroom Prefunction area beginning at 7:00 p.m. Following dinner, Associate Justice Ruth Bader Ginsburg of the Supreme Court of the United States will address the members. See page 17 for Justice Ginsburg's full biography.

Black tie is optional. Detailed information about reservations and seating arrangements for the dinner can be found on the ALI website.

Tickets are \$125 per person.

MEMBERS LUNCHEON

The Members Luncheon on Wednesday, May 24, at 12:15 p.m. in Salon III will feature an address by Thomas C. Goldstein, co-founder and publisher of SCOTUSblog. Thomas C. Goldstein is an appellate advocate, best known as one of the nation's most experienced Supreme Court practitioners. He has served as counsel to one of the parties in roughly 10 percent of all of the Court's merits cases for the past 15 years (more than 100 in total), personally arguing 38. Only three lawyers in the Court's modern history have argued more cases in private practice. See page 19 for Mr. Goldstein's full biography.

Tickets are \$65 per person.

REGISTRATION AND TICKET ORDERS

Those who plan to attend the Annual Meeting are requested to register in advance. Registration for scheduled events, including the pre-Meeting sessions, may be made at the same time. Please use the online link on the Annual Meeting website. Tickets for the paid events must be picked up, in advance of the event, at the ALI registration desk in the Roosevelt Room of The Ritz-Carlton Hotel. The Institute realizes no profit from our ticketed events; the ticket price covers only a portion of the cost for our members and guests.

CANCELLATIONS AND REFUNDS

Cancellation of a paid order for any function must be submitted in writing by fax to (215) 243-1636 or email to membership@ali.org (for cancellation guidelines on the ALI CLE Ethics course, please see page 13). **Refunds will be made provided that the cancellation is received no later than 5:00 p.m. (EDT) on Wednesday, May 17.** After that time, refunds will not be provided, although we would still appreciate knowing if you are not able to use your ticket.

SPECIAL SESSIONS DURING THE MEETING

PRESENTATION OF HENRY J. FRIENDLY MEDAL

This year, the Henry J. Friendly Medal will be presented to Conrad K. Harper, retired partner at Simpson Thacher & Bartlett LLP. Established in memory of Judge Friendly and endowed by his former law clerks, the Medal recognizes contributions to the law in the tradition of Judge Friendly and the Institute. The Medal is not awarded on an annual basis but reserved for recipients who are considered especially worthy of receiving it. The award will be presented by Judge D. Brock Hornby of the U.S. District Court for the District of Maine on Tuesday, May 23, at 1:30 p.m., in The Ritz-Carlton Ballroom. See page 19 for Mr. Harper's full biography and page 20 for Judge Hornby's full biography.

PRESENTATION OF THE EARLY CAREER SCHOLARS MEDAL

Every other year, The American Law Institute awards the Early Career Scholars Medal to one or two outstanding law professors whose work is relevant to the real world and has the potential to influence improvements in the law. The 2017 recipients are Colleen V. Chien of Santa Clara University School of Law and Daniel Schwarcz of University of Minnesota Law School.

Chair of the Early Career Scholars Medal Selection Committee, Justice Mariano-Florentino Cuéllar of the Supreme Court of California, will present the medals on Wednesday, May 24 at 11:30 a.m. Professor Schwarcz will address the membership. See page 22 for Professor Schwarcz's full biography and page 17 for Professor Chien's full biography. Justice Cuéllar's biography can be found on page 18.

SPEAKERS, PRESENTERS, AND AWARD RECIPIENTS



Ruth Bader Ginsburg, Associate Justice, was born in Brooklyn, New York, March 15, 1933. She married Martin D. Ginsburg in 1954, and has a daughter, Jane, and a son, James. She received her B.A. from Cornell University, attended Harvard Law School, and received her LL.B. from Columbia Law School. She served as a law clerk to the Honorable Edmund L. Palmieri, Judge of the United States District Court for the Southern District of New York, from 1959 to 1961. From 1961 to 1963, she was a research associate and then associate director of the Columbia Law

School Project on International Procedure. She was a Professor of Law at Rutgers University School of Law from 1963 to 1972, and Columbia Law School from 1972 to 1980, and a fellow at the Center for Advanced Study in the Behavioral Sciences in Stanford, California from 1977 to 1978. In 1971, she co-founded the Women's Rights Project of the American Civil Liberties Union, and served as the ACLU's General Counsel from 1973 to 1980, and on the National Board of Directors from 1974 to 1980. She served on the Board and Executive Committee of the American Bar Foundation from 1979 to 1989, on the Board of Editors of the American Bar Association Journal from 1972 to 1978, and on the Council of The American Law Institute from 1978 to 1993. She was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1980. President Clinton nominated her as an Associate Justice of the Supreme Court, and she took her seat August 10, 1993.



Colleen V. Chien, Associate Professor of Law at Santa Clara University School of Law, is a co-recipient of the 2017 Early Career Scholars Medal.

She is nationally known for her research and publications surrounding domestic and international patent law and policy issues. She has testified before Congress, the Department of Justice, the Federal Trade Commission, and the US Patent and Trademark Office on patent issues. From 2013-2015 she served in the Obama Administration

as White House Senior Advisor, Intellectual Property and Innovation, working on a broad range of patent, copyright, technology transfer, open innovation, educational innovation, and other issues. She frequently lectures at national law conferences and has published several in-depth empirical studies of the patent system, including of patent-assertion entities (PAEs) (a term she coined), patent litigation, and the secondary market for patents. Her work has been featured in the *WSJ*, the *New York Times*, *Washington Post*, and numerous other outlets.

Prior to joining the Santa Clara University School of Law faculty in 2007, Professor Chien prosecuted patents at Fenwick & West LLP in San Francisco, as an associate and then Special Counsel. She has been a Fellow at the Stanford Center for Law and the Biosciences, and Visiting Senior Scholar at Berkeley Law's Center for Law and Technology. She also did stints as a strategy consultant at Dean and Company, a spacecraft engineer at NASA/Jet Propulsion Lab, and an investigative journalist at the Philippine Center for Investigative Journalism (as a Fulbright Scholar). She lives in the east bay with her husband and their two sons.

In 2013, Professor Chien was named the inaugural Eric Yamamoto Emerging Scholar. She has also been named one of the 50 Most Influential People in Intellectual Property and one of Silicon Valley's "Women of Influence."



Justice **Mariano-Florentino Cuéllar** began serving on the Supreme Court of California in January 2015. He was nominated by Governor Jerry Brown, confirmed unanimously by the Commission on Judicial Appointments, and retained by the voters for a full term in November 2014. His previous career was in public service, university administration, and legal academia, with a focus on administrative, criminal, and international law. He currently serves on ALI's Council.

A full-time member of the Stanford University faculty from 2001 to 2015, he was the Stanley Morrison Professor of Law and Professor (by courtesy) of Political Science. Justice Cuéllar also served in the federal executive branch. In 2009 and 2010, while on leave from Stanford, he worked at the White House as Special Assistant to the President for Justice and Regulatory Policy. He negotiated provisions in food safety, tobacco, and crack-powder cocaine sentencing reform legislation; convened the White House's food safety working group and coordinated its response to the BP oil spill; set up the President's Equal Pay Task Force; worked on the bipartisan repeal of the military's Don't Ask/Don't Tell policy; and led efforts to support community-based crime prevention and immigrant integration. He was a presidential appointee, between 2010 and 2015, to the governing council of the U.S. Administrative Conference, an agency designed to improve fairness and efficiency in federal administrative procedures. He co-chaired the U.S. Department of Education's National Equity and Excellence Commission from 2011 to 2013. Before that, in 2008 and early 2009, he co-chaired the presidential transition team on immigration, borders, and refugees.

Justice Cuéllar serves as an Adviser for the ALI projects on Principles of Law: Policing, and Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis; and on the Members Consultative Groups for the Restatement Fourth, The Foreign Relations Law of the United States, Principles of Government Ethics, and Model Penal Code: Sentencing.



Thomas C. Goldstein is an appellate advocate, best known as one of the nation's most experienced Supreme Court practitioners. He has served as counsel to one of the parties in roughly 10 percent of all of the Court's merits cases for the past 15 years (more than 100 in total), personally arguing 38. Only 3 lawyers in the Court's modern history have argued more cases in private practice. He has been counsel on more successful petitions for certiorari over the past decade than any other lawyer in private practice. Over the past 15 years, the firm's petitions for certiorari have been granted at a higher rate than any private law firm or legal clinic.

Perhaps more than any other advocate in practice, Mr. Goldstein represents the complete spectrum of litigants before the Court; his work is not associated with any particular perspective or ideology. For example, as arguing counsel, Mr. Goldstein has prevailed on behalf of bond purchasers, corporate civil defendants (three times), corporate civil plaintiffs (three times), a debtor, employees (twice), a habeas petitioner (three times), an immigrant, investors, an individual civil defendant, an individual criminal defendant, a local government, persons with disabilities, and shareholders.

In addition to practicing law, Mr. Goldstein has taught Supreme Court Litigation at Harvard Law School since 2004, and previously taught the same subject at Stanford Law School for nearly a decade. Mr. Goldstein is also the co-founder and publisher of SCOTUSblog – a web-site devoted to comprehensive coverage of the Court – which is the only weblog ever to receive the Peabody Award.

Mr. Goldstein is involved in a variety of professional organizations. Among other things, he is a member of ALI, Secretary-Elect of the ABA Labor and Employment Section, Vice Chair of the Amicus Committee of the ABA Intellectual Property Section, and an elected Fellow of the Academy of Appellate Lawyers.



This year, the Henry J. Friendly Medal will be presented to **Conrad K. Harper**.

Mr. Harper is a retired partner at Simpson Thacher & Bartlett. He received his bachelor's degree from Howard University in 1962 before graduating from Harvard Law School in 1965. Mr. Harper spent the first five years of his career as a staff lawyer for the NAACP Legal Defense and Educational Fund in New York. He joined Simpson Thacher in 1971, and became its first African American partner in 1974. In 1993, Mr. Harper was appointment Legal Adviser for the U.S. Department of State. From 1993 to 1996 and from 1998 to 2004, he also served as U.S. representative to the Permanent Court of Arbitration at The Hague. In 1996, he returned to Simpson Thacher, and became of counsel to the firm in 2003.

In 1990, Mr. Harper was elected the first African American president of the New York City Bar Association, where he worked to increase diversity within the Association's committees and governance.

Mr. Harper was the first African American appointed to the Harvard Corporation, Harvard University's highest governing body, serving from 2000 to 2005. He has served as an officer or on the board of numerous organizations, including the Metropolitan Museum of Art, the William Nelson Cromwell Foundation, and the American Philosophical Society. He is a former Chancellor of the Episcopal Diocese of New York and a member of the Modern Language Association, the Jane Austen Society of North America, the Johnsonians, the Johnson Society of London, and the Henry James Society.

A member of ALI since 1977, Mr. Harper will attend his 35th Annual Meeting this year. Elected to the Institute's Council in 1985, he served as Second Vice President from 1998 to 2000 and as First Vice President from 2000 to 2004, taking Council Emeritus status in 2011. Mr. Harper was a member of ALI's Executive Committee from 1987 to 2005; he has also served on the Nominating Committee, the Committee on Institute Program, the Awards Committee, the Special Committee on the ALI Young Scholars Medal, the Special Committee on Strategic Communication, and the Ad Hoc Committee on Membership Process. He chaired the Style Manual Committee that oversaw publication of the Institute's first style manual for project Reporters in 2005, and he also served on the committee tasked with revising the manual in 2015. He was an Adviser for the ALI's Principles of Transnational Rules of Civil Procedure and its project on Recognition and Enforcement of Foreign Judgments. He currently serves as a Counselor on the Restatement Fourth, The Foreign Relations Law of the United States.



D. Brock Hornby has been a Judge of the U.S. District Court for the District of Maine since 1990, and served as Chief Judge from 1996 to 2003. He formerly was a Justice of the Maine Supreme Judicial Court and a U.S. Magistrate for the U.S. District Court for the District of Maine. Before joining the bench, he was a partner at the firm of Perkins, Thompson, Hinckley & Keddy in Portland, Maine, and a professor at the University of Virginia School of Law.

Judge Hornby was elected to ALI in December 1979 and was elected to the Council in May 1996. He serves as Chair of the Awards Committee, and was previously an Adviser on the Restatement Third, Agency project and the Restatement Third, Restitution and Unjust Enrichment project.

He received his undergraduate degree from the University of Western Ontario and his law degree from Harvard. After law school, he clerked for Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit.



Linda A. Klein, senior managing shareholder at Baker Donelson Bearman Caldwell & Berkowitz, is president of the American Bar Association. Her practice, based in Atlanta, includes most types of business dispute resolution, including contract law, employment law and professional liability. She was the first woman to serve as president of the State Bar of Georgia, and she was one of the first women to lead a prominent Georgia law firm.

Ms. Klein served as chair of the ABA's House of Delegates from 2010 to 2012. She has also served as chair of the ABA Tort Trial and Insurance Practice Section, chair of the Committee on Rules and Calendar of the House of Delegates, chair of the Coalition for Justice, and chair of ABA Day, the ABA's congressional outreach effort. In 2004, the ABA honored Klein with the prestigious Margaret Brent Women Lawyers of Achievement Award. She is an elected member of The American Law Institute.

Ms. Klein earned her J.D. at Washington & Lee Law School in Virginia and her B.A. at Union College in New York.



ALI President **Roberta Cooper Ramo** is a shareholder in the law firm of Modrall Sperling, where she concentrates her practice in the areas of mediation, arbitration, business law, real estate, probate, and estate planning. She has been a member of the Institute since 1991 and was elected to the Council in 1997. She has served as ALI's President since 2008 and she previously served as First Vice President from 2004 to 2008.

On August 1, 2015, Roberta received the American Bar Association's highest award, the ABA Medal. Roberta previously served as president of the American Bar Association from 1995 to 1996, the first woman in history to lead the largest nationwide organization of attorneys. She also serves as the first woman president of The American Law Institute, elected in 2008. In 2011, she was elected into the American Academy of Arts and Sciences, adding her name to a prestigious list of members including George Washington and Albert Einstein, among other notables.

A Fellow of both the American College of Trust and Estate Counsel and the American Bar Foundation, Roberta also has served as a panel member for the American Arbitration Association. In 2013, Roberta was elected Board Chair of Think New Mexico, a non-partisan think tank, and she serves as a member of the Board of the Santa Fe Opera and Albuquerque Economic Development.

Roberta was appointed by the United States Senate and served as co-chair of a committee to review governance issues of the U.S. Olympic Committee in 2003.

She was named an honorary member of the Bar of England and Wales, and of Gray's Inn in 2000. She served on the Board of Regents for the University of New Mexico from 1989 to 1995, and as President of the Board from 1991 to 1993. She also served on the New Mexico Board of Finance.



David W. Rivkin is a partner in the New York and London offices of Debevoise & Plimpton and Co-Chair of the firm's International Dispute Resolution Group. He practices primarily in the areas of international litigation and arbitration. He is the Immediate Past President of the International Bar Association, the first American to serve in that position in 25 years.

Subjects of arbitrations handled by Mr. Rivkin include long-term energy concessions, investment treaties, joint venture agreements, insurance coverage, construction contracts, distribution agreements, and insurance coverage. Mr. Rivkin also represents companies in transnational litigation in the United States, including the enforcement of arbitral awards and arbitration agreements.

Mr. Rivkin was elected to ALI in 1997 and to ALI Council in 2009. He chairs ALI's advisory group on international members and serves as one of eight Counselors for the Restatement of the Law Fourth, The Foreign Relations Law of the United States. He is also an Adviser for the Restatement of the Law, The U.S. Law of International Commercial Arbitration project. Previously, he was an Adviser for the Transnational Rules of Civil Procedure project. He received his undergraduate and law degrees from Yale.



Daniel Schwarcz, Professor of Law at University of Minnesota Law School, is a co-recipient of the 2017 Early Career Scholars Medal.

He focuses his research on insurance law and regulation, spanning issues such as solvency regulation, consumer protection, employer-sponsored health insurance, and insurance coverage litigation. His articles have been published in a wide range of leading law reviews and journals, such as the *University of Chicago Law Review*, *Virginia Law Review*, and *Journal of Empirical Legal Studies*. Professor Schwarcz is also a co-author of the leading insurance law casebook in the country, *Insurance Law and Regulation* (6th edition), which has been used as the principal text in courses on insurance law in more than 100 American law schools. Media outlets such as the *New York Times*, *Wall Street Journal*, and National Public Radio have covered Professor Schwarcz's scholarship. His work has also received various awards, including the Liberty Mutual Prize, awarded annually for the most

outstanding article on property and casualty insurance law. Professor Schwarcz regularly testifies to U.S. Congressional committees on insurance matters, and he has served as an expert witness in a wide range of insurance disputes. From 2007 to 2014, Professor Schwarcz served as a consumer representative at the National Association of Insurance Commissioners.

Professor Schwarcz teaches courses on insurance law, health care regulation and finance, the regulation of financial institutions, contract law, and commercial law. He was named the Stanley V. Kinyon Overall Teacher of the Year for 2011-2012 and the Stanley V. Kinyon Tenure-Track Teacher of the Year for 2007-2008.

Professor Schwarcz earned his A.B., *magna cum laude*, from Amherst College and his J.D., *magna cum laude*, from *Harvard Law School*. While in law school, he was an articles editor for the Harvard Law Review and a John M. Olin Fellow in Law and Economics. After law school, he clerked for Judge Sandra Lynch of the United States Court of Appeals for the First Circuit and practiced at the law firm Ropes & Gray, where he worked mainly on insurance law matters. He subsequently spent two years as a Climenko Fellow and Lecturer on Law at Harvard Law School. He is an Adviser on the Liability Insurance project.



The Rev. Dr. **Wesley S. Williams, Jr.**, has had a lengthy and esteemed legal career as both a practicing attorney and a law professor since completing his J.D. from Harvard Law School in 1967. He has also earned a B.A., *magna cum laude*, M.A., an LL.M., and a D.Min. degree.

He started as an instructor at Columbia University Law School, while commuting for a year and a half to work for the Washington Office of the Southern Christian Leadership Conference and as counsel to the then newly-formed District of Columbia City Council. He spent a year and a half as legal counsel to the U.S. Senate Committee on the District of Columbia.

Dr. Williams is the recipient honoris causa of the LL.D. degree from his parents' alma mater, Virginia Union University, and by command of the Sovereign Prior, Her Royal Britannic Majesty Queen Elizabeth II, he was dubbed a Knight of Grace (honorary) of the Most Venerable Order of the Hospital of St. John of Jerusalem.

After his retirement from law practice in 2004, he prepared for and was subsequently ordained to priesthood in The Episcopal Church. He now serves as the Bishop of the Virgin Islands' Sub-Dean for the islands of St. Thomas and St. John, as Priest-in-Charge of the Cathedral Church of All Saints and All Saints Cathedral School, and as Vicar of Nazareth By The Sea Episcopal Church. He is the Co-Chairman and Co-CEO of Lockhart Companies Incorporated.

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This year, The American Law Institute honors 12 members of the Class of 1967 on becoming 50-Year members.

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FREQUENTLY ASKED QUESTIONS

Can nonmembers attend the Meeting?

Yes, members may invite nonmember colleagues to attend the Meeting and related events. Nonmembers must register and/or purchase tickets in advance or on site at The Ritz-Carlton. Note that the Policy Concerning Floor Privileges for Nonmembers (see page 10) provides that nonmembers may not make or second a motion and may not vote on any matter before the Meeting.

Where can I pick up my badge on site?

You should pick up your badge at the ALI registration desk. You must pick up your badge before entering The Ritz-Carlton Ballroom and wear it for all Meeting sessions and events.

Why are there colored dots on some badges?

We use a green dot on a badge, together with a green lanyard, to indicate that the wearer is a newly elected member of the Institute, and a red dot to designate those attending an Annual Meeting for the first time. This year the new members will also be wearing a green lanyard. Keep an eye out for these members, so you can welcome them to ALI and to the Meeting.

Officers and members of the Council are designated by a blue dot on a badge—don't hesitate to introduce yourself to them.

Are there any special events for new members?

Yes. ALI will hold a luncheon for members elected since May 2016. In addition, there is a dinner organized by newer members on Sunday, May 21. If you are in that group, you should receive an invitation. Pre-registration is required. Please contact Beth Goldstein at bgoldstein@ali.org or (215) 243-1666 for more information.

How can I find information on the status of the projects being presented at the Meeting?

The agenda will note whether projects are being presented for approval or for discussion. You also can visit the Projects section (www.ali.org/projects) of our main website for more information on the projects.

How can I get copies of the Meeting drafts?

You will receive by mail in advance of the Meeting any drafts that you requested via our draft-selection invitation. You also can download drafts in PDF format after they are posted on our website (access is free for members and project participants). If we have a working email address for you, we will notify you by email when each draft is posted. In addition, printed copies of the drafts will be available at the Meeting.

Can I make comments on Meeting drafts?

Yes. In addition to comments and suggestions made from the floor at the Meeting, written comments on Annual Meeting Drafts are welcome. Please submit your comment in accordance with the procedure described on page 3.

Submitted comments are posted by ALI staff as soon as possible.

I'd like to present a motion at the Meeting. How do I go about doing so?

Please submit your motion in accordance with the procedure described on page 4.

Submitted motions are posted by ALI staff as soon as possible.

Is CLE credit available?

Yes. For a \$100 administrative fee, CLE credit is available for attendance at the project sessions at the Annual Meeting. In addition, a program by ALI CLE on Sunday, May 21, offers two hours of ethics credits. The tuition for the program is \$150 for ALI members and ALI project Advisers and \$195 for all others. Advanced registration is required.

I have a disability. How can I make special arrangements to participate in the Meeting?

Please inform our Meetings Department (by phone at (215) 243-1675 or by email to meetings@ali.org) at least two weeks in advance of any special arrangements required for you to participate fully in the Meeting or any of the related events.

Is financial assistance available?

Financial assistance is available for the following members:

- Government attorney (local, state, or federal)
- Legal service lawyer
- Judge (local, state, or federal)
- Public Defender (local, state, or federal)
- Prosecutor (local, state, or federal)
- Nonprofit lawyer focused on legal services for the indigent
- Lawyer in the Armed Forces

Please contact the Membership Department by email to membership@ali.org or by phone to (215) 243-1666 for more information.

Will there be wireless access at the Meeting?

Yes. Free wireless access will be available in The Ritz-Carlton Ballroom.

What is the dress code for the Meeting and related events?

The dress code is business attire. The Annual Reception and Dinner are semi-formal (black tie optional).

I cannot attend, but would like to know what happens at the Meeting. Is there a way to see daily project updates? Will the Meeting be available by webcast?

A steady stream of news about the Meeting will be posted on the Annual Meeting website, and email updates will be sent daily after the meeting adjourns. We'll also provide a report on the Meeting in next issue of *The ALI Reporter*.

The Annual Meeting will not be broadcast online, but videos of speeches and remarks at events will be posted on ALI's website after the Meeting.

If your question isn't covered here, please contact ALI Membership Manager Jane Giacinto at jgiacinto@ali.org or (215) 243-1623.

CONTACT

If you have any questions or need additional information, please contact us as set forth below.

Registration, ticket purchases, cancellations, and general meeting information

membership@ali.org
(215) 243-1623

Hotel and travel information

meetings@ali.org
(215) 243-1675

Drafts, comments, and motions

publications@ali.org
(215) 243-1626

Media inquiries

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

FUTURE ANNUAL MEETING DATES

May 21-23, 2018	Washington, DC
May 20-22, 2019	Washington, DC
May 18-20, 2020	San Francisco, CA
May 17-19, 2021	Washington, DC
May 16-18, 2022	Washington, DC
May 22-24, 2023	Washington, DC



The particular business and objects of the society are educational, and are to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.

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