The Continuing Support of Our Founding Donor

The preparations underway for our 100th anniversary give us a welcome opportunity to take stock of the many contributors who have enabled our extraordinary successes over the past century. Our very first benefactor was the Carnegie Corporation, the philanthropic organization established by Andrew Carnegie to “promote the advancement and diffusion of knowledge and understanding.” A century ago, the Carnegie Corporation’s backing underwrote the first Restatement series. This year, the Carnegie Corporation made a generous donation of $1 million in support of our work as we prepare to officially launch our 100th Anniversary campaign.

The story of the Carnegie Corporation and ALI actually begins prior to the Institute’s founding. Believing that much of American law was unnecessarily complicated, uncertain, and antiquated, leading legal academics, judges, and lawyers formed a Committee on the Establishment of a Permanent Organization for the Improvement of the Law in May 1922. Notably, the committee’s chairman was prominent New York lawyer Elihu Root, who had succeeded Andrew Carnegie as president of the Carnegie Corporation from 1919-1920 and remained on its board of trustees.

The Committee determined that it should prepare a report on a new organization to address the “general dissatisfaction with the administration of justice.” The Carnegie Corporation approved a $25,000 grant to fund the initiative. This support enabled the Committee to assemble two groups that worked through the fall of 1922: a group of Reporters developed proposals that were then carefully critiqued by a group of advisers (at that time called “Critics”). As ALI’s Council...
What’s New on Reasonably Speaking

Challenges to the 2020 Election: the Solicitors’ Perspective

On this episode, we are joined by three former U.S. Solicitors General who spent months preparing as best they could for what they anticipated would be an attack on the election outcome.

Moderated by ALI President David F. Levi, the panelists are:
- Walter E. Dellinger, O’Melveny; Duke Law School
- Donald B. Verrilli, Munger, Tolles & Olson LLP
- Seth P. Waxman, WilmerHale

The former solicitors general came to be known as SG3 by the Biden campaign. The team, coordinated by Mr. Waxman, prepared for three main scenarios: how the executive branch might use its power to disrupt the election process; what state legislatures or governors might do to delay or circumvent the election or to discount certain categories of votes; and what might happen after the election with regard to challenges to electoral college votes or certification of ballots by the states.

In the episode, Mr. Waxman explains how this enormous task could not have been done without the tireless efforts of countless volunteer lawyers, “I think it’s terribly important for the public to recognize the degree of sacrifice and real devotion that literally hundreds of volunteer lawyers made over the course of those nine months. I can speak to the lawyers and the dozens of teams that I was trying to coordinate. We’re talking about the dozens of hours as pure volunteers, no credit with their law firms, nothing to count toward anything else other than trying to do the right thing for representative democracy. And I just wished there were a better way that we could honor the people who made those sacrifices in an era of COVID. Where many of them are young lawyers working at home with spouses at home and their children at home and a full pale of law firm clients to represent, and still spending dozens of hours every week doing this. That was another aspect of the dream come true part.”

This episode is part of the podcast and video series “Beyond COVID,” produced by ALI and the Bolch Judicial Institute at Duke Law School.

REASONABLY SPEAKING NOMINATED BY THE PUBLISHER PODCAST AWARDS

Reasonably Speaking has been included on the shortlist of nominees for “Best Hobbies & Special Interest Podcast” by The Publisher Podcast Awards 2021. The winners will be revealed in a virtual celebration on April 21.

The Publisher Podcast Awards are a celebration of the best podcasts in the publishing and media industry. Formerly known as the “Specialist” category, the “Best Hobbies & Special Interest Podcast” award celebrates podcasts that are targeted at specific interests and hobbies, from entertaining a niche audience to bringing a specialty topic to a wider listenerhip.


later explained, “The Committee could not have undertaken the work of preparing the Report without financial assistance. It was a work requiring study, constructive thought, painstaking criticism and thorough discussion.”

On February 23, 1923, the Committee presented its findings to prominent members of the bench, bar, and academia, including Chief Justice and former U.S. President William Howard Taft, as well as Associate Justices Oliver Wendell Holmes Jr. and Edward Terry Sanford. The report outlined the mission, organizational structure, and process that continue to guide ALI’s work today.

But the fledgling new organization needed money to bring this program to fruition, and it again turned to the Carnegie Corporation. In requesting support, the Council pointed to “the labor, time [and] expense incurred in the research and writing of the law” and suggested that the Restatements would do for American law what Justman had done for Roman law. Impressed with the Committee’s vision and with the legal profession’s support for the new endeavor—and no doubt encouraged by Elbridge Root’s support for the initiative—in April 1923 the Carnegie Corporation approved an initial grant of $1,075,000 to be distributed over ten years. Along with the $5,111.46 left over from the original $25,000, this grant funded the first Restatements of the Law in Agency, Conflict of Laws, Contracts, and Tort

Work on these Restatements progressed more quickly than ALI had expected, however, and the Institute wanted to begin Restatements in other areas of the law. In 1926, the Carnegie Corporation agreed to speed up disbursement of the original grant to allow ALI to continue its existing work while also taking up new projects in Judgments, Property, Restitution, Security, and Trusts. But progress continued to outpace ALI’s budget, and ALI turned to the Carnegie Corporation several more times. The Corporation came to the Institute’s aid, awarding an additional $249,290.40 in February 1930, $332,987.50 in March 1933, $638,000.00 in October 1933, $95,000 in February 1940, and $164,000 in October 1940. These additional contributions more than doubled the Carnegie Corporation’s original $1,075,000 donation and amounted to almost $2.5 million dollars of support for the first Restatements—more than $43 million in today’s dollars. And the Restatements were not the only ALI projects to benefit from the Carnegie Corporation’s generosity. The Carnegie Corporation also provided $40,000 to fund the Model Code of Evidence (which in turn shaped the Federal Rules of Evidence) and $10,000 to enable smaller states to produce annotations of court decisions so that lawyers could understand how the law in their local jurisdiction related to the position taken in the Restatement.

Moreover, in 1947, the Carnegie Corporation pledged $250,000 to ALI and the American Bar Association to launch a pioneering program of continuing legal education to address the needs of veterans returning to law practice after wartime military service. Today, ALI CLE continues to provide quality continuing professional education to lawyers throughout the United States.

Overall, from 1923 to 1948, the Carnegie Corporation committed grants totaling more than $17.7 million to ALI, allowing for the establishment of the Institute and for the production of its most seminal early work. In addition to direct financial support, the Carnegie Corporation also worked to put ALI’s finances on a secure footing. For example, the Corporation supplied a consultant to survey the Institute’s activities and pressed its leadership to make the work self-sustaining.

ALI also benefitted from Andrew Carnegie’s philanthropy through other avenues. In particular, the Carnegie Endowment for International Peace provided ALI $5,000 during World War II for work that helped shape the 1948 Universal Declaration of Human Rights. The Carnegie Endowment also helped to fund a translation of the Restatement of Conflict of Laws into French so that foreign legal scholars could benefit from ALI’s work. This work planted the seeds of a global outlook that has since blossomed with projects such as the Principles of Transnational Civil Procedure, published in collaboration with UNIDRIS in 2006, and our ongoing Principles for a Data Economy project, which is being conducted jointly with the European Law Institute.

Today, we continue to build on the work made possible through the generosity of the Carnegie Corporation during ALI’s early years. My Winter 2020 Director’s Letter showed that even today the Supreme Court regularly cites the early Restatements funded directly through the Carnegie Corporation’s original series of grants, and of course we have continued to update this work in our subsequent Restatement series. We have also taken up new areas of the law not formerly considered for restatement such as Restatements on The Law of American Indians, Children and Adoption Law, Copyright as well as Principles projects on topics like Government Ethics, Data Privacy, Policing, and Election Administration.

Looking back, it is hard to see how our efforts to clarify, modernize, and improve the law could have been launched without the Carnegie Corporation’s generosity. And it is gratifying that the Carnegie Corporation recognizes the continuing value of our projects today. By allowing us to assemble teams of Associate Members, ALI Fellows, and research assistants; to upgrade our technology for virtual meetings during the pandemic and beyond; and to hold more frequent project meetings; the Carnegie Corporation’s support and the support of all of our donors will help us to do our work more effectively, improving its quality and shortening the time it takes to complete it. And we can therefore launch a greater number of new projects from our long list of compelling topics waiting to be undertaken. The enduring support of our original donor provides a wonderful foundation as we carry our work into another century.
Copyright
At its January meeting, the Council approved the following material in Council Draft No. 5: §§ 20 and 3.08-3.11 of Chapter 3 (Initial Ownership, Transfers, Voluntary Licenses, Termination of Grants, and Abandonment), with the understanding that §§ 20 and 3.11(g) and (h) will be moved to Chapter 5: §§ 5.02, 5.03, and 5.05 of Chapter 5 (Duration of Copyright); and §§ 6.02 (excluding § 6.02(b)), 6.04, and 6.06 of Chapter 6 (Copyright Rights and Limitations).

At its February meeting, the Council approved a revised draft of §§ 2.05 (Disclosure of Parts from Scope of Copyright Protection) and 6.02(b) (The Copyright Owner’s Exclusive Right of Reproduction (Fixation)). The revisions are available on the project page.

Data Economy

Government Ethics
At its January meeting, the Council approved Council Draft No. 7, containing Chapter 7 on Administration and Enforcement of Ethics Provisions.

Intentional Torts to Persons
At its January meeting, the Council approved the following material in Council Draft No. 7: revised § 18 on Consent to Sexual Conduct, revised §§ 39 and 42 in Chapter 3, Topic 4, Arrest and Prevention or Termination of Crime; §§ 45-46 in Topic 5, Privileges to Discipline Children; and §§ 50 (excluding Comment m) and 51 in Chapter 4, Miscellaneous Provisions. Comment n to § 50, on the relationship to avoidable consequences/mitigation of damages, will be completed when the applicable section in the Torts: Remedies project is approved.

At its February meeting, the Council approved a revised draft of §§ 35 and 36 (Private Actor’s Privilege to Use Force). The revisions are available on the project page.

Policing
At its January meeting, the Council approved the following material in Council Draft No. 5: §§ 1.03 and 1.09-1.11 of Chapter 1 (General Principles of Sound Policing), Chapter 2 (General Principles of Searches, Seizures, and Information Gathering), Chapter 3 (Policing with Individualized Suspicion), Chapter 8 (General Principles for Ensuring the Preservation and Reliability of Evidence for the Adjudicative Process), and Chapter 13 (Agency Role in Promoting Sound Policing). There was not enough time to discuss Chapter 12 (Informants and Undercover Agents).

Sexual Assault and Related Offenses
At its January meeting, the Council approved Section 213.8, Sexual Offenses Involving Minors, and Sections 213.11-213.11J, Sentencing and Collateral Consequences of Conviction, of Council Draft No. 11.

At its February meeting, the Council approved Section 213.12(2)(g), the definition of “registrable offense,” from Council Draft No. 11. The Council also reviewed a draft of Sections 213.11-213.11J (Sentencing and Collateral Consequences of Conviction), which the Reporters had revised based on discussion at the January Council meeting. The revisions are available on the project page.

Because these sections were approved in January, they did not require any additional approval. The Reporters will further revise the Sections based on the discussion at the February meeting.

The Council also considered the mens rea for various offenses in Article 213 and approved changing the mens rea from knowledge to recklessness in subsection (3)(a) of Section 213.7 (Offensive Sexual Conduct) and subsections (3)(a), (3)(b), and (3)(c) of Section 213.8 (Sexual Offenses Involving Minors). A document showing the changes will be posted on the project page.

Torts: Concluding Provisions
At its February meeting, the Council approved a revised draft of Illustrations 5-8 in § 2 of Chapter 11 (Liability of Medical Professionals and Institutions) from Council Draft No. 1. The revisions are included in the Reporters’ Memorandum dated February 5, 2021, posted on the project page.

In addition, the Council approved the following material from Council Draft No. 1: § 44 A (Loss of Spousal Consortium); § 44 B (Loss of Child Consortium); § 48 C (Loss of Parental Consortium); § 48 D (Alienation of Affections Abolished); and § 48 E (Criminal Conversation Abolished).

Permanent Editorial Board for the Uniform Commercial Code (PEB) Publishes New Commentary
In February, the Permanent Editorial Board for the Uniform Commercial Code (PEB) published a new PEB Commentary, No. 23: Protected Series Under the Uniform Protected Series Act (2027).

Four draft PEB Commentaries were also released for comment in March:

• Sections 9.109 and 9.322(a)(1)
• Sections 9.203(b)(2) and 9.318
• Scope of Article 9 Choice-of-Law Rules Regarding Characterization of Transactions
• Role of Section 1-305(b) in Supporting Enforcement and Obligations

Members interested in any of these projects can access drafts in the Projects section of the ALI website. Those who join a Members Consultative Group will be alerted when future project meetings are scheduled and when drafts are available online.
2021 VIRTUAL ANNUAL MEETING

Registration for this year’s virtual Annual Meeting, taking place on May 17-18 and June 7-8, is now open. Register now at www.ali.org/am2021.

The tentative agenda is included below. As additional information becomes available, it will be added to the website and emailed to members.

Please note: This is a tentative agenda. The times of project sessions may change before or during the meeting. Sessions may begin or end earlier or later than shown on the agenda.

TENTATIVE AGENDA*
(All times are in Eastern Time)

Monday, May 17
10:30 a.m. Opening Session
11:15 a.m. The Law of American Indians
1:30 p.m. Break
2:15 p.m. Compliance and Enforcement for Organizations
4:45 p.m. Break
5:15 p.m. Children and the Law
7:15 p.m. Adjournment

Tuesday, May 18
10:30 a.m. Principles for a Data Economy
12:30 p.m. Break
1:00 p.m. Intentional Torts to Persons
4:00 p.m. Break
4:30 p.m. Policing
7:00 p.m. Adjournment

Monday, June 7
10:30 a.m. Model Penal Code: Sexual Assault and Related Offenses
12:30 p.m. Break
1:00 p.m. Model Penal Code: Sexual Assault (continued)
2:30 p.m. Break
3:00 p.m. Government Ethics
5:00 p.m. Break
5:15 p.m. Conflict of Laws
7:00 p.m. Adjournment

Tuesday, June 8
10:30 a.m. Model Penal Code: Sexual Assault (continued)
12:30 p.m. Break
1:00 p.m. Model Penal Code: Sexual Assault (continued)
2:30 p.m. Break
3:00 p.m. Property
4:45 p.m. Break
5:00 p.m. Copyright
7:00 p.m. Adjournment

*It is possible that projects in the May sessions that are concluding in 2021 may need a short amount of time in the June sessions if any loose ends need to be attended to before the close of the meeting. If so, small adjustments might be made to the agenda for the June sessions.

SPECIAL EVENT
During an Annual Meeting lunch break (date to be announced), ALI President David F. Levi will host a Q&A with Chairman and CEO of Merck & Co. Kenneth C. Frazier.

This year’s Annual Meeting includes a membership vote on new Council members. To learn about the nominees, visit the Annual Meeting website at www.ali.org/am2021.

REGISTER NOW AT WWW.ALI.ORG/AM2021.

PLATTORM PREVIEW

ALI is working with a virtual meeting technology company on a custom platform for the 2021 virtual Annual Meeting. The dual interface will allow for members to enter the speaking/comment queue, as well as to vote on any motions during a project session, or motions made to approve any portion of a draft.

Additional information and a full video walk-through of the system will be sent to all members soon.

WHAT COMES NEXT?

Test your technology sessions will be held for all members prior to the Annual Meeting to ensure that everyone has access and knows how to vote.

A ‘how-to’ video will be distributed to members and hosted on the website, so you can watch as often as you like to get comfortable with the platform.

Once you register for the meeting, you will be assigned a username and password to log into the meeting. Every login is unique; do not share your login with anyone.

Annual Meeting procedures are posted on the website at www.ali.org/am2021.

PLEASE NOTE

Mobile devices including iPhones, Androids, iPads, and other tablets are not fully supported. You must access the Meeting on a laptop or desktop.

You must use one of the following browsers: Google Chrome, Microsoft Edge, or Firefox.

DO NOT use this button to expand. You will be taken out of the Meeting. Pressing ‘Esc’ will return you to the meeting.

On the left side of the screen is the custom interface. From here you can:

1. Review the instructions and information for the Meeting.
2. Enter the queue to speak “from the floor,” in the same way that members would line up at the microphone in the Annual Meeting Ballroom.
3. Easily access all documents for each project session, including the draft and all submitted motions. These documents will also be displayed on the right side of the screen, just like on the screens in the Annual Meeting Ballroom.
4. The left hand side is where you will vote. The ballot will automatically appear on this side whenever a vote is due.

On the right side of the screen, the session draft, chair, and Reporters will be visible in a Zoom interface. So, many members will already be familiar with some of the controls.

If you do not wish to enter the speaking queue, you may expand the Zoom window to fill your screen. The Zoom window can be minimized at any time to access the left panel. (Note: Please be sure to use the proper expand button; this allows the voting prompt to appear when needed.)

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A “how-to” video will be distributed to members and hosted on the website, so you can watch as often as you like to get comfortable with the platform.
ANNUAL MEETING PROJECTS

Membership will be presented with eleven projects at this year’s virtual Annual Meeting, including four projects that may be completed with membership approval: the Law of American Indians, Compliance and Enforcement for Organizations, Data Economy, and Intentional Torts to Persons. To hear more about these four projects from the Reporters’ perspective, see below on a recent episode of Reasonably Speaking. Information about Annual Meeting Drafts is available on page 9, and drafts may be accessed on the ALI website.

THE ALI PROCESS:
REPORTERS’ PERSPECTIVES

There’s nobody better to talk about the ALI process than four veteran Reporters whose projects may be completed at the 2021 Annual Meeting.

On this episode of Reasonably Speaking, Reporter on one of our newest projects, Lyrissa Barnett Lidsky (Restatement of the Law Third, Torts: Defamation and Privacy), will moderate the panel of Matthew L.M. Fletcher (American Indian Law), Geoffrey P. Miller (Compliance and Enforcement for Organizations), Kenneth W. Simons (Intentional Torts), and Christiane C. Wendehorst (Principles for a Data Economy) as they discuss their journey from project conception to ALI membership approval and completion.

They will discuss how they came to be an ALI Reporter, how they work with project Advisers and ALI members, the draft approval process, surprises they learned along the way, and more.

THE LAW OF AMERICAN INDIANS

The Proposed Final Draft contains the entire project: Chapter 1, Federal-Tribal Relations; Chapter 2, Tribal Authority; Chapter 3, State-Tribal Relations; Chapter 4, Tribal Economic Development; Chapter 5, Indian County Criminal Jurisdiction; and Chapter 6, Natural Resources.

CHILDREN AND THE LAW

Tentative Draft No. 3 contains Sections from three Parts: Children in Families; Children in Schools; and Children in the Justice System.

COMPLIANCE AND ENFORCEMENT FOR ORGANIZATIONS

Tentative Draft No. 2 contains Chapter 4, Compliance Risk Management, and Chapter 6, Criminal and Civil Enforcement Against Individuals and Companies for Corporate Misconduct, as well as parts of Chapter 1, Definitions, and Chapter 5, The Compliance Function.

CONFLICT OF LAWS

Tentative Draft No. 2 contains Chapter 1, Introduction; Chapter 2, Domicile; and Topic 2, Foreign Law, of Chapter 5, Choice of Law. This will be the first time this project is presented to membership at an Annual Meeting.

COPYRIGHT

Tentative Draft No. 2 contains Chapter 1, Subject Matter and Standards Generally (§§ 1-9, 11); Chapter 2, Subject Matter of Copyright: Scope of Protection (§ 12 (for discussion only)); §§ 13, 14, 16, 19); and Chapter 3, Initial Ownership, Transfers, Voluntary Licenses, and Termination of Grants (§§ 20-29). This will be the first time this project is presented to membership at an Annual Meeting.

DATA ECONOMY

At the time of publication, the Principles for a Data Economy draft has not yet been distributed. We anticipate a complete draft of the project will be presented to membership. The draft will then be presented to ELI membership for approval at the ELI Annual Meeting.

GOVERNMENT ETHICS

Tentative Draft No. 3 contains additional sections of Chapter 5, Restrictions on Leaving or Entering Public Service; Chapter 6, Disclosure; and Chapter 7, Administration and Enforcement of Government Ethics.

INTENTIONAL TORTS TO PERSONS

Tentative Draft No. 6 contains §§ 17-19 from Chapter 2, Consent; §§ 20-26 and 30-46 from Chapter 3, Privileges; and §§ 50-51 from Chapter 4, Miscellaneous Provisions.

POLICING

Tentative Draft No. 3 contains additions to Chapter 1, General Principles of Sound Policing; Chapter 2, General Principles of Searches, Seizures, and Information Gathering; Chapter 9, Policing with Individualized Suspicion; Chapter 5, Policing in the Absence of Individualized Suspicion; Chapter 6, Policing Databases; Chapter 8, General Principles for Collecting and Preserving Reliable Evidence for the Adjudicative Process; Chapter 9, Forensic-Evidence Gathering; and Chapter 13, Promoting Sound Policing Within Agencies.

PROPERTY

Tentative Draft No. 2 includes material from Volumes 1, 2, and 3 on Possession, Trespass to Land, and Bailments. This will be the first time this project is presented to membership at an Annual Meeting.

MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

At the time of publication, the Model Penal Code: Sexual Assault and Related Offenses draft has not yet been distributed. We anticipate a complete draft of the project will be presented to membership.
Early Career Scholars Medal Winners:
Ashley S. Deeks and Francis X. Shen

The American Law Institute will award the 2021 Early Career Scholars Medal to Professors Ashley S. Deeks of the University of Virginia School of Law and Francis X. Shen of the University of Minnesota Law School. The award recognizes outstanding law professors whose work is relevant to public policy and has the potential to influence improvements in the law. The medalists are selected each year and presented the award at the Institute’s Annual Meeting.

“Ashley and Francis are two early-career law professors who are already making a tremendous impact on the way we think about some of the most important and topical legal issues of our day,” said Judge Diane P. Wood of the U.S. Court of Appeals, Seventh Circuit, who serves as the chair of the ALI’s Early Career Scholars Medal Selection Committee. “I am thrilled, on behalf of ALI, to award the Early Career Scholars Medal to these extraordinary professors.”

Judge Wood continued, “Ashley’s work on national security, international law, and foreign relations has earned her national recognition. In fact, she is currently taking a leave from her school to serve as the White House associate counsel and deputy legal adviser to the National Security Council. Francis has been a pioneer in establishing the interdisciplinary field of law and neuroscience. His research has helped lead to the better administration of justice in areas such as criminal and elder law, and it has been essential in developing tools to improve the legal system through the responsible use of neuroscientific evidence and neurotechnology.”

The ALI normally presents the Early Career Scholar Medal to the recipients at an Annual Meeting. Since the 2021 Annual Meeting will be held virtually this year, Professors Deeks and Shen will receive their medals at a future in-person Annual Meeting.

Professor Deeks is the E. James Kelly, Jr., Class of 1965 Research Professor of Law and Senior Fellow, Miller Center at the University of Virginia School of law. She is currently on leave from the Law School to serve as White House associate counsel and deputy legal adviser to the National Security Council. Professor Deeks joined the Law School in 2012 as an associate professor of law after two years as an academic fellow at Columbia Law School. Her primary research and teaching interests are in the areas of international law, national security, intelligence and the laws of war. She has written articles on the use of force, executive power, secret treaties, the intersection of national security and international law, and the laws of armed conflict. She is a member of the State Department’s Advisory Committee on International Law and The American Law Institute, and she serves as a contributing editor to the Lawfare blog. Professor Deeks also serves on the boards of editors of the American Journal of International Law, the Journal of National Security Law and Policy, and the Texas National Security Review. She is a senior fellow at the Lieber Institute for Law and Land Warfare, and a faculty senior fellow at the Miller Center.

Before joining Columbia in 2010, she served as the assistant legal adviser for political-military affairs in the U.S. Department’s Office of the Legal Adviser, where she worked on issues related to the law of armed conflict, the use of force, conventional weapons, and the legal framework for the conflict with al-Qaeda. She also provided advice on intelligence issues. In previous positions at the State Department, Professor Deeks advised on international law enforcement, extradition and diplomatic property questions. In 2005, she served as the embassy legal adviser at the U.S. Embassy in Baghdad, during Iraq’s constitutional negotiations. Professor Deeks was a 2007-08 Council on Foreign Relations international affairs fellow and a visiting fellow in residence at the Center for Strategic and International Studies.

Professor Deeks received her J.D. with honors from the University of Chicago Law School, where she was elected to the Order of the Coif and served as comment editor on the Law Review. After graduation, she clerked for Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit.

Professor Shen is a Professor of Law and McKnight Presidential Fellow at the University of Minnesota Law School, where his scholarship focuses on empirical and interdisciplinary research at the intersection of law and the brain sciences. He is co-author of the first law coursebook on law and neuroscience (Aspen Publishers, 2014), and has explored the implications of cognitive neuroscience for criminal law, tort, and legislation in the United States. His additional research areas of focus are criminal law and crime policy, and education law and policy.

His research has been published in a variety of outlets in law, political science, psychology, and education, and he has made more than 50 professional presentations. He co-authored two books, The Education Major (Georgetown, 2007) and The Casualty Gap (Oxford, 2010), and has authored or co-authored many articles and book chapters.

Professor Shen completed his B.A. in economics and English at the University of Chicago in 2000, his J.D. at Harvard Law School in 2006, and his Ph.D. in government and social policy at Harvard University and the Kennedy School of Government in 2008. During graduate school he was a doctoral fellow in the Harvard University Multidisciplinary Program in Inequality & Social Policy, supported by the National Science Foundation. From 2007-09, he was a teaching fellow, lecturer, and assistant director of undergraduate studies in the Harvard Department of Government and received five Certificates of Distinction for Excellence in Teaching from Harvard’s Derek Bok Center.

In 2009 he joined the MacArthur Foundation Law and Neuroscience Project, at the University of California Santa Barbara, as a post-doctoral research fellow. In 2010-11 he became associate director of the Project and a visiting scholar at Vanderbilt Law School. In 2011-12 he was a visiting assistant professor at Tulane University Law School and The Murphy Institute.

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Spring Project Meetings

In March, ALI held virtual project meetings for Corporate Governance and Torts: Defamation and Privacy.

Corporate Governance (March 25)

Preliminary Draft No. 2 includes Sections on Definitions (§§ 1.23, 1.24), The Duty of Loyalty (§ 5.01), Transactions with a Corporation (§ 5.02), and The Duty of Care (§ 4.01); The Business Judgment Rule (§ 4.02); The ALI’s Early Career Scholars Medal Selection Committee.

Preliminary Draft No. 2 contains Topics on Invasions of Interest in Reputation, including Elements of a Cause of Action for Defamation (§ 1), Preliminary Draft No. 1 includes Sections on Definitions (§§ 1.23, 1.24), The Duty of Loyalty (§ 5.01), Transactions with a Corporation (§ 5.02); and Torts: Defamation and Privacy.

When Was the Last Time You Heard from ALI?

It is important to all of us at ALI that we stay in touch with our members and project participants. Our primary method of doing so is email.

You should be receiving emails about our project meetings, draft notifications, administrative notifications, and other news items of interest.

To ensure that you receive our electronic communications, please add our domain (ali.org) to your spam filter’s whitelist, also called the approved or safe-sender list. Doing so will ensure proper delivery of emails to your inbox. Because all spam filters are different, you may need to contact your technology team or service-provider helpdesk for assistance in accessing your spam settings.

Did your email address change recently? If so, please be sure to update your member profile at www.ali.org.
Member Spotlight: Matthew L.M. Fletcher & Wenona T. Singel

Matthew L.M. Fletcher is the Reporter and Wenona T. Singel is an Associate Reporter on Restatement of tribal Law, The Law of American Indians.

Matthew is Foundation Professor of Law at Michigan State University College of Law and Director of the Indigenous Law and Policy Center. He sits as the Chief Justice of the Pouch Band of Creek Indians Supreme Court and also sits as an appellate judge for the Colorado River Indian Tribes, the Grand Traverse Band of Ottawa and Chippewa Indians, the Hoopa Valley Tribe, the Lower Elwha Tribe, the Mashpee Wampanoag Tribe, the Match-E-Be-Nash-She-Wish Band of Pottawatomie Indians, the Pokagon Band of Potawatomi Indians, the Nottawasagen Huron Band of Potawatomi Indians, the Rincon Band of Luiseno Indians, the Santee Sioux Tribe of Nebraska, and the Tulalip Tribes. He is a member of the Grand Traverse Band of Ottawa and Chippewa Indians.

Wenona is an Associate Professor of Law at Michigan State University College of Law and the Associate Director of the Indigenous Law & Policy Center. She recently served as Deputy Legal Counsel for the office of Governor Gretchen Whitmer. She is an enrolled member of the Little Traverse Bay Bands of Odawa Indians, the first tribal citizen in Michigan’s history to hold that position. She previously served as the Chief Appellate Justice for the Little Traverse Bay Bands of Odawa Indians and service as the Chief Appellate Judge for the Grand Traverse Band of Ottawa and Chippewa Indians. On March 29, 2012, the United States Senate passed by unanimous consent President Barack Obama’s nomination of her to serve as a member of the Advisory Board of the Saint Lawrence Seaway Development Corporation, a position she held until 2017. Matthew and Wenona are married and have two sons, Owen and Emmett.

You are the first husband and wife team to work on a Restatement together. What was that experience like?

Matthew: It was a tremendous honor, all around. I love working and traveling with Wenona, and this project let us do both things. I always joke we are really the same person—but seriously, I couldn’t think of a smarter, more incisive brain than Wenona’s to see the big picture while drilling down deep into the Indian law crust.

Wenona: It was wonderful! It was an incredible experience to work closely with Matthew on this important project. We’re both constantly immersed in Indigenous Law issues, so it was an exciting opportunity to extend that interest and commitment to the Restatement project.

In your proposal for the project your stated goal was to “cement the foundational principles of American Indian law.” Are you pleased with everything you were able to include in the project? Is there anything you wish you could have covered that was unable to?

Matthew: We are very pleased in the areas we were able to cover and restate—federal and state powers, inherent tribal powers and how Congress regulates them, and the default interpretive rules like the canons of treaty and statutory construction and the clear statement rules. Perhaps it helped that the Supreme Court has issued a series of opinions since 2014 that roundly reaffirmed those foundational principles—Michigan v. Bay Mills Indian Community (2014), Nebraska v. Parker (2016), United States v. Bryant (2014), Upper Skagit Tribe v. Lundgren (2018), Herrera v. Wyoming (2018), and McGirt v. Oklahoma (2020).

Wenona, you took a leave of absence from MSU Law (January 2019- January 2021) to serve as Deputy Legal Counsel for the office of Governor Gretchen Whitmer, advising her on tribal-state affairs. This was an unprecedented time for so many reasons. What were a few of the issues where you directed your time?

Wenona: During my time in the Governor’s office, I was able to develop a strengthened, mandatory tribal consultation policy for state agencies. I also worked with the Governor to require training for state employees on tribal-state relations, including the basics of tribal sovereignty, sovereign immunity, Indian treaty rights, and the history of Indian boarding schools.

American Indian Law is an area of law that a lot of our membership, and much of the bar generally, is unfamiliar with. What do you hope the Restatement provides to practicing lawyers, judges, and even law students?

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The Institute in the Courts: Supreme Court of New Mexico Cites Principles of the Law, Policing

Recently, in State v. Martinez, 478 P.3d 880 (N.M. 2020), the Supreme Court of New Mexico cited the Principles of the Law, Policing (T.D. No. 2, 2019), in abandoning the prevailing federal rule governing the admission of eyewitness identification evidence, as articulated in Masson v. Bruton, 448 U.S. 80 (1980), and, instead, adopting a new per se exclusionary rule for unnecessarily suggestive pretrial identification procedures, based on its determination that the new New Mexico Constitution provided broader due-process protection in the context of eyewitness-identification evidence than the U.S. Constitution.

In that case, the defendant was arrested for two murders based on an eyewitness’s identification. The eyewitness testified that, after the detectives investigating the murders stopped recording his interview, the detective showed him five or six “jail photos” of individuals, including a photo of the defendant, and that he identified the individual he saw walking away from the crime scene as one of the individuals in the photos. Two days later, at the county sheriff’s office, the detective showed the eyewitness a photo array of six photographs, some of which were reportedly the same jail photos previously shown to him. The eyewitness identified the defendant’s photograph as a photograph of the person he saw at the crime scene, stating that the photograph was of the same individual he had identified in the jail photos.

The district court denied the defendant’s motion to suppress the photo identification and any subsequent in-court identification after it applied the federal standards set forth in Masson, which New Mexico had adopted. Under the Masson test, a court rules on the admissibility of eyewitness-identification evidence by determining “whether police identification procedures were unnecessarily suggestive and, if so, weighing specified factors in deciding the ‘linchpin’ issue of whether the eyewitness identification was nonetheless sufficiently reliable to satisfy federal due process requirements.” At trial, the eyewitness identified the defendant as the individual he saw walking away from the crime scene, and the defendant was convicted by the jury of two counts of first-degree murder and sentenced to consecutive life terms.

In evaluating the defendant’s argument that the test established in Masson is outdated, the court confirmed that, since Masson, a substantial body of scientific literature on human memory and perception has been developed, including research showing that most of Masson’s “reliability” factors do not correlate with the reliability of an eyewitness’s identification, as well as research regarding the influence the administration of identification procedures has on a witness. Furthermore, legal literature is also “replete with discussions of the doctrinal and scientific shortcomings of the Masson reliability test and the significant threat posed to the integrity of our criminal justice system by misidentifications engendered by the Masson rule.”

The court explained that “commentators have expressed the view that the United States Supreme Court’s two-part test—which relates unnecessary suggestiveness to a threshold inquiry and focuses primarily on fixed ‘reliability’ factors—is unfounded to any sound scientific knowledge,” and “does not comport with scientific research, which ‘has called into question the validity of many of the Supreme Court’s so-called ‘reliability’ factors,’” citing and quoting the Reporters’ Notes to Principles of the Law, Policing § 10.01 (T.D. No. 2, 2019). The court noted that the Reporters’ Notes to § 10.01 called for the replacement of the Masson standards with the adoption of “‘laws and policies that comport with an understanding of the reliability of eyewitness testimony and the factors that in fact heighten or diminish reliability in any given case.’”

Citing the Reporters’ Notes to Principles of the Law, Policing § 10.02, the court explained that, in addition to some state courts reforming the Masson standards, “[a] number of state legislatures have also taken measures to ensure that current scientific standards are taken into account in regulating the manner in which identification procedures are administered.” For example, New Mexico enacted the Accurate Eyewitness Identification Act, NMSA 1978, §§ 29-3B-1 to 29-3B-4 (2019), which requires law-enforcement agencies to adopt policies on eyewitness-identification procedures that are supported by science. The court concluded that the criticisms of the Masson decision by scientific and legal literature “compe us to conclude that the federal reliability standard set forth in Masson is both scientifically and jurisprudentially unsound and hence flawed under our interstitial review.”

Applying its new standards, the Supreme Court of New Mexico affirmed the district court’s decision denying the defendant’s motion to suppress, holding that the defendant “failed to establish prima facie that some aspect of the identification procedure used by [the detective] was suggestive in nature.” The court reasoned, among other things, that, while the defendant’s expert witness testified as to the influence suggestive identification procedures have on an eyewitness’s memory and the general best practices law-enforcement agencies should use when administering the procedures, he did not testify about how the best practices related to those used in the defendant’s case or “whether, or to what extent, a failure to follow one or more of these ‘best practices’ would result in an unnecessarily suggestive identification procedure conducive to an irreparable identification.”

The Institute is currently working on the Principles of the Law, Policing, to join the Members Consultative Group for this or other projects, visit the Projects page on the ALI website at www.ali.org/projects.

Projects in Action: The ALI Adviser

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

District of Maine Seeks Guidance on Duty to Defend from Restatement of Liability Insurance

In its Decision and Order on Cross-Motions for Summary Judgment (2021 WL 681193), the District Court of Maine was presented with the issue of when a duty to defend terminates. The court looked to Section 18 of the Restatement of the Law, Liability Insurance (Restatement) for guidance.

The central issue in the case, Burke v. Garrison Property and Casualty Insurance, is whether an insurer has a duty to defend the insured, a doctor, against two lawsuits.

Privacy Harms

Privacy harms have become one of the largest impediments in privacy law enforcement. In most tort and contract cases, plaintiffs must establish that they have been harmed. Even when legislation does not require it, courts have taken it upon themselves to add a harm element.

U.S. Supreme Court Cites Restatement of Torts

In Torres v. Madrid, No. 19-292 (Mar. 23, 2021), the U.S. Supreme Court held that “the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued,” and cited the Restatement of the Law, Torts, in reasoning that the common law considered the mere touching of an arrestee to be a seizure by force.

A Partisan Battle In An Overreach of A Case

Brnovich v. Democratic National Committee is a strange voting rights case. Rather than the typical case, in which a voting rights group representing minority voters sues a state or locality for engaging in electoral discrimination, this case pits the two major political parties against each other, and Republican officials in Arizona against Democratic officials. Amicus briefs from voting rights groups filed in Brnovich exhibit strong concern about preserving Section 2 of the Voting Rights Act as a tool to tackle discriminatory voting laws. Doing so will be tough before a new conservative supermajority on the Supreme Court.

Maine Lawmakers Consider Bill to Prevent Prosecution of Youth Under 12

State lawmakers in Maine are looking at a bill that would ban the prosecution of young children. If the bill passes, Maine would be one of only three states to set a minimum age of 12 years old for people who can face criminal prosecution.
When The American Law Institute was established in 1923, its founders identified a lack of agreement on the fundamental principles of the common law as “the most important cause of uncertainty in the law.” Through Restatements in common law fields such as torts, contracts, agency, and trusts, the new Institute sought “to produce agreement on the fundamental principles of the common law, give precision to the use of legal terms, and make the law more uniform.”

The success of this work also created opportunities for ALI to clarify and improve other aspects of American law. As globalization raises important questions about the relationship between the United States and other legal systems, ALI has increasingly taken up projects that look beyond U.S. borders.

This global outlook has roots in ALI’s earliest days. Many of the Institute’s founders and first members were notable for their robust commitment to international law. Henry Stimson, for example, was the chairman of the committee that established ALI, had served as U.S. Secretary of State, promoted international arbitration at The Hague, and later served as President of the Carnegie Endowment for International Peace. Others founding members included current Secretary of State Charles Evans Hughes, former Secretary of State Robert Lansing, future Secretary of State Henry Stimson, and international law scholars like James Brown Scott and Joseph P. Chamberlain.

But despite the involvement of these leading internationalists, the Committee on the Establishment of a Permanent Organization for the Improvement of the Law Proposing the Establishment of an American Law Institute decided that international law was not a suitable topic for the first Restatements. The committee’s 1923 report concluded that ALI’s efforts would be better spent on topics whose “permanent cultural and social nature is evident.”

Nonetheless, international law did appear to some extent in the Restatements First of Conflict of Laws (1934), which was applicable to international as well as U.S. cases. This project attracted the attention of the French jurist Jean-Paulin Niboyet, who was a member of the committee that established ALI. Niboyet had helped create the first International Law Institute, which published a report on international law and jurisdiction in 1925. Niboyet also served as a member of the International Law Association’s council.

By 1952, the American Law Institute had approved 13 Restatements, with a fourth scheduled for 1956. The ALI’s founders believed that a new foundation for ALI’s work was necessary if the Institute wanted to continue its efforts to clarify and improve other aspects of American law. As a result, the ALI decided to form a committee with representatives from around the world to produce a model International Bill of Rights for public education and for possible use in the peace settlement or post-war arrangements because we believe that the recognition of the minimum protection of the individual from arbitrary governmental action is essential if the peace established is to have a reasonable chance of permanence.” Funded by the Carnegie Endowment for International Peace and the American Philosophical Society of Philadelphia, ALI established a drafting committee with representatives from around the world. While the ALI never formally approved the International Bill of Rights, it was a model for the United Nation’s 1948 Universal Declaration of Human Rights. Indeed, the Canadian jurist John P. Humphrey, who served as the first Director of United Nations Division of Human Rights and was responsible for the Universal Declaration’s first draft, later explained that “[o]ne of the best of the texts from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it.”

After the war, the Institute’s growing interest in international law and statutory law came together in the Restatement Second of the Foreign Relations Law of the United States, which was published in 1965 and is credited with creating a new field within American law. This field has since come to be known as international law.

The Restatement Third of Foreign Relations Law was published in 1987 and was one of the most influential of ALI’s projects, cited more than 1,000 times by courts, including more than 30 times by the U.S. Supreme Court. In 2018, ALI published portions of the Restatement Fourth of Foreign Relations Law, which was inaugurated the Restatement Fourth series. This year, ALI will publish the Restatement of the Law: The U.S. Law of International Commercial and Investor-State Arbitration, which takes up issues such as the enforcement of international arbitral awards rendered in the United States and the power of U.S. courts over international arbitral proceedings.

These works follow the traditional Restatement template and focus on U.S. law and U.S. courts, but they examine international law and consider the work of international tribunals and the laws of other nations. Besides Restatements, ALI has undertaken other projects on international topics, often working in partnership with other organizations like the International Chamber of Commerce, the European Union’s General Data Protection Regulation, and the International Tribunal for the Former Yugoslavia. ALI has also undertaken other projects on international topics, including the project on the role of the United States in international law.

ALI’s work provides guidance in drafting of cross-border insolvency protocols

The ALI and its International Insolvency Institute (ALI-III) Global Guidelines for Court-to-Court Communications in International Insolvency Cases (2012) play a prominent role in a cross-border airline restructuring. In the ongoing restructuring of the LATAM Airlines group, a cross-border insolvency protocol has been approved by the Grand Court of the Cayman Islands in July 2020. The protocol should enable direct court-to-court communication between the courts in the U.S. (New York), Chile, Columbia, and the Cayman Islands. The idea for approval of the protocol on court-to-court cooperation and communication was raised by the Chisun court.

It was the first time for the Grand Court of the Cayman Islands to review the jurisdictional basis for entering into the protocol. When doing so, Kamaly J identifies as an emerging source of soft law the ALI-III Global Guidelines for Court-to-Court Communications in International Insolvency Cases (2012). In its approval of the protocol they play a prominent role. Bob Wessels of the University of Leiden acted as co-author of these guidelines.
Edward H. Levi: A Model in the Rule of Law

In U.S. Attorney General Merrick Garland’s address to the employees of the Department of Justice on his first day in office on March 11, he invoked a familiar name: “The only way we can succeed and retain the trust of the American people is to adhere to the norms that have become part of the DNA of every Justice Department employee since Edward Levi’s stint as the first post-Watergate Attorney General,” he said in his speech to more than 100,000 DOJ employees. These words echoed Attorney General Garland’s comments during his testimony before the Senate Judiciary Committees. “Ed Levi is my model for the attorney general,” he said in response to a question from Senator John Cornyn. “His role was to be sure that justice was meted out fairly and impartially, without any special favors for anyone. This is the definition, in my view, of the rule of law that the powerful and the powerless, one party and another party, one community in the United States and another community in the United States, all are treated equally in the administration of justice.”

Attorney General Garland is not alone in pointing to President Gerald R. Ford’s Attorney General as a model for the nation’s top law enforcement official. Senate Judiciary Committee Chairman Dick Durbin observed that Levi had “assumed office at a time of great turmoil” and pledged to keep the administration of justice “in the best traditions of the American Law Institute.”

Levi’s speeches a selection that sets us forward, sometimes in opposition to this wisdom and complex undertaking. Law builds upon and, I should like to claim, is one of the liberal arts. It uses words of persuasion and changing definitions for practical ends. It has absorbed within itself a view of the nature of human beings, and of how their acts and the incidents which overtake them may be classified for favor or penalty, or for rights, permission or negation. Law, itself, is a mediating discipline, not only among the passions and needs of human beings, sometimes viewed several and sometimes in groups or associations, but with respect to the craftsmanship which is useful, and to the relevance of what is perceived as current knowledge or opinion. As an instrument for practical action, law is responsive to the wisdom of its time, which may be wrong, but it carries forward, sometimes in opposition to this wisdom or passion, a memory of received values.

To enjoy his sheer intellectual brilliance was one of the privileges that came with Council membership.” After his death in 2000, President Ford, who appointed him the 81st Attorney General in 1977, reflected on his service. “With each passing year,” Ford said, “it becomes more and more self-evident—Ed Levi is the Attorney General against whom all others are measured.”

We should consider ourselves lucky to have been the recipients of so much of Edward’s Levi’s time and knowledge. In fact, we continue to benefit from his lessons today. As many ALI members are no doubt aware, Levi’s legacy of careful consideration, fairness, and wisdom continues through his son, ALI President David F. Levi. Son John G. Levi is also a proud member of the ALI and is the longstanding and much admired Chair of the Legal Services Corporation.

When I took the oath of office almost two years ago in this Hall before some of you, among other things I said was the following: “The law is a servant of our society. Its enforcement administration can give more effective meaning to our common goals.” Among these common goals are: domestic tranquility, the blessings of liberty, the establishment of justice. These goals do not bring themselves into being. If we are to have a government of laws and not of men, then it takes particularly dedicated men and women to accomplish this through their zeal and determination, and also through fairness and impartiality. I know that this Department always has had such dedicated men and women.”

RESTORING JUSTICE: THE SPEECHES OF EDWARD H. LEVI

For Restoring Justice, Jack Fuller has carefully chosen from among Levi’s speeches a selection that sets out the attorney general’s view of the considerable challenges he faced: restoring public confidence through discussion and acts of justice, combating the corrosive skepticism of the time, and ensuring that the executive branch would behave judicially. Also included are addresses and Congressional testimonies that speak to issues that were hotly debated at the time, including electronic surveillance, executive privilege, separation of powers, antitrust enforcement, and the guidelines governing the FCPA—many of which remain relevant today.

Reprinted with permission from the American Law Institute. The American Law Institute does not just simply clarify itself. The clarification requires a willingness to raise issues, to confront problems, to articulate principles, to test these principles through their meaning in application. Many of the problems with which the law deals raise the most complex social issues; they have been surrounded with controversy. They must be approached with care and responsibility. The difficulties can be enormous. But if our law is to be a vital and responsive force—if indeed it is to be a rule of law—then we must not hide from the hard questions. We can only hope that the spirit of candor and thoughtfulness with which these issues are approached will be understood. Let me add that for many of these areas, the work of The American Law Institute itself has helped and can help to lead the way. There is, I think, a great deal for all of us to do.”

Excerpted from Address by Edward H. Levi at The American Law Institute 1976 Annual Meeting

“I need hardly tell The American Law Institute that the law
Notes About Members and Colleagues

Jack M. Balkin of Yale Law School has written *The Cycles of Constitutional Time*, an examination of the U.S. constitutional system, why it has broken down, and where its future may be headed.

Jayne W. Barnard of William & Mary Law School was granted an Honorary Degree at the University’s 328th Charter Day in February, in company with three other community builders.

Roger Williams University School of Law, Emory University School of Law, and Wake Forest University School of Law hosted a virtual panel discussion on “Incitement, Insurrection, and Impeachment: Inside the Second Trump Impeachment Trial.” The event featured Gregory W. Bowman and David A. Logan, both of Roger Williams University School of Law, and Michael J. Gerhardt of North Carolina School of Law.

Abundant Housing Massachusetts hosted a webinar on “How Can Academia Support Activists?” featuring Associate Reporters for Restatement of the Law Fourth, Property Maureen E. Brady of Harvard Law School and Sara C. Bronin of UConn Law, along with John Infranca of Suffolk University Law School. The event featured discussion on how the professors are working to support housing and land use activism in Massachusetts and Connecticut, and what role academia plays in successful advocacy campaigns.

Elizabeth Chamblee Burch of the University of Georgia School of Law, John H. Beisner of Skadden, Abbe, Reiner & Gluck of Yale Law School (temporarily on leave), and Shahnin Spetzer of Kline & Spetzer participated as panelists in the ALI CLE program, “Multidistrict Litigation Today: Is It Time for Reform?”

Published in November 2020, The Cambridge Handbook of International and Comparative Trademark Law, edited by Irene Calboli of Texas A&M School of Law and Jane C. Ginsburg of Columbia Law School, offers an important and comprehensive study of global trademark law. The Handbook serves as an invaluable resource for diverse stakeholders, including attorneys, policy makers, lawyers and academics. Additionally, Calboli has been awarded a Fulbright-Hanken Distinguished Chair in Business and Economics. She will be lecturing and researching at Hanken School of Economics in Helsinki, Finland in 2021-22.

In honor of Gerhard Casper’s lifelong commitment to academic excellence and scholarly research, The American Academy of Berlin announced the establishment of the Gerhard Casper Fellowship.

The Support Center for Child Advocates, led by Executive Director Frank P. Cervone, was profiled by Variations, a documentary series. The Support Center’s mission is to advocate for victims of child abuse and neglect with the goal of securing safety, justice, well-being and permanently nurturing environment for every child.

Guy-Uriel E. Charles will join the Harvard Law faculty as the inaugural Charles J. Ogletree, Jr. Professor of Law, effective July 1.

Danielle K. Citron was interviewed by UVA School of Law about her work in cybersecurity and digital privacy over the last decade. Citron shared insight into her recent work advising lawmakers on how to reform Section 230 of the Communications Decency Act of 1996.

Paul D. Clement of Kirkland & Ellis LLP and Neal Katyal of Hogan Lovells US LLP participated in an event, hosted by Georgetown Law, on “Constitutional Priorities in the First 100 Days.” The event featured discussion on how the new Biden administration could affect future Supreme Court cases and former President Trump’s impeachment defense strategy.


James B. Crenn III of Durham North Carolina has been on the Criminal Justice Act panels for court appointments in the U.S. District Court for the Middle District of North Carolina and the U.S. Court of Appeals for the Fourth Circuit for 52 years now, since 1969, and encourages other Institute members to join him.

Angela J. Davis of American University Washington College of Law has been named the recipient of the 33rd Annual Charlotte E. Ray Medal Award from the Greater Washington Area Chapter of the Women Lawyers Division of the National Bar Association. Named in honor of Charlotte E. Ray, the award recognizes those who have demonstrated a strong commitment to community involvement, mentorship, advocacy, and excellence in the Metropolitan Washington community.

Ashley S. Deeks of UVA School of Law, and 2021 co-recipient of ALI’s Early Career Scholars Medal, has been named White House associate counsel and deputy legal advisor to the National Security Council in the new presidential administration.

Albert Diaz of the U.S. Court of Appeals for the Fourth Circuit is the recipient of Elion Law’s 2020 Leadership in the Law Award. He was presented with the award by Elion Law Dean Luke Bierman at a virtual event hosted by North Carolina Lawyers Weekly.

Shay Kovetzky joined Skadden’s Washington, D.C. office as a partner, where he launched the firm’s Supreme Court and Appellate Litigation Group.

Stanford Law School has appointed David Freeman Engstrom and Nora Freeman Engstrom as the new faculty co-directors of the Stanford Center on Legal Profession (CLP). The mission of the CLP is to advance the profession through research, policy and advocacy, teaching, and public programs.

Robin C. Feldman of the UC Hastings College of the Law has been honored with the 2020 Leon I. Goldberg Memorial Lecture Award by the University of Chicago’s Committee on Clinical Pharmacology and Pharmacogenomics for her work in pharmacological policy and law. Feldman is the first person from outside the field of medicine to receive the award.

Edward R. Foley of The Ohio State University Moritz College of Law and Guy-Uriel Charles of Duke Law School participated as panelists in the National Constitution Center event “The Past, Present, and Future of Presidential Elections.”

The American Lawyer has named the legal department of JM Co. Best Legal Department of the Year. The legal team, led by Ivan K. Fong, faced a huge demand for its N95 respirator mask in the wake of the coronavirus pandemic.

Kenneth C. Frazier will retire as CEO of Merck, effective June 30, 2021. Frazier will continue to serve on Merck’s board of directors as executive chairman for a transition period to be determined by the board.
NOTES CONTINUED FROM PAGE 21

The Cosmos Club, a private social club in Washington D.C. hosted an event which featured Paul L. Friedman of the U.S. District Court for the District of Columbia and Thomas C. Goldstein of Goldstein & Russell in conversation on the Supreme Court of the United States. Friedman and Goldstein, along with the other participants, discussed the Court’s members, influence, and future.

Krist Thompson Frost of Houston, Texas has received the 2021 Outstanding Law Review Article Award from the Texas Bar Foundation for her article “Unclaimed Treasure: Greater Rule-of-Law Benefits for the Taking in Texas,” published in Houston Law Review. The Texas Bar Foundation will publicly recognize her at the organization’s Annual Dinner on June 18, 2021, and will present her the University of Houston Law Center with a $12,000 scholarship donation in her honor.

On Mar. 21, Merrick Brian Garland was sworn in as the 86th Attorney General of the United States. Garland joins the Department of Justice after serving on the U.S. Court of Appeals for the District of Columbia Circuit since 1997.

Brandon L. Garrett of Duke Law School has written Autopsy of a Crime Lab: Exposing the Flaws in Forensics. In this book, Garrett unvels the sources of error and the faulty science behind a range of well-known forensic evidence, while posing important questions about why some of these long-standing practices have been so reluctant to see change.

Joshua A. Goltzer joined the Biden administration as Special Assistant to the President and Special Advisor to the Homeland Security Advisor on Countering Domestic Violent Extremism.

Abbé R. Gluck of Yale Law School will take a temporary public service leave to join the Office of White House Counsel as Special Counsel on public service leave to join the Office of White House Counsel as Special Counsel on


Columbia Law School profled Debra Ann Livingston in a piece about her dual roles as professor and the first woman to serve as chief judge of the U.S. Court of Appeals for the Second Circuit.

Myles V. Lynk moderated an installment of The Sandra Day O’Connor Institute For American Democracy’s online public forum, the Constitution Series: Equality And Justice For All, featuring Kenneth M. Starr, President of the Frederick Douglass Family Foundation, and sufragette descendant Coline Jenkins, the founder and President of the Elizabeth Cady Stanton Trust.

Bridge M. McCormack of the Michigan Supreme Court and Eva M. Guzman of the Texas Supreme Court, along with Rhonda Wood of the Arkansas Supreme Court and Beth Walker of the West Virginia Supreme Court of Appeals, have launched a new podcast, Lady Justice: Women of the Court. In each episode, the justices discuss their experiences, the law and its real-world implications.

Theodore A. Mckee of the U.S. Court of Appeals for the Third Circuit spoke with moderator and President and CEO Jeffrey Rosen to discuss slavery in America from the Constitution to Reconstruction as part of The Constitution Center’s “Scholar Exchange” series.

Ronald W. Meister was elected to serve a second term as President of the Westchester County Magistrates Association, the professional association of Town and Village Judges in Westchester, NY.

Lisa Monaco of NYU School of Law has been nominated by President Biden to serve as deputy attorney general of the Department of Justice.


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In Memoriam: Shirley S. Abrahamson

Shirley Abrahamson, longest-serving member of Wisconsin Supreme Court, died on December 29, 2021, at the age of 97.

Justice Abrahamson was elected to the ALI in 1977 and to Council in 1985. During her time on Council, she served on both the Membership and Executive Committees, as well as an Adviser on Restatement of the Law Third, Property (Wills and Other Donative Transfers) and Principles of the Law, Family Disposition.

She was the first woman to serve on the Wisconsin Supreme Court, appointed by Governor Patrick Lucey in 1976. She served as the chief justice from August 1996 to April 2015, and retired in 2019.

Justice Abrahamson is remembered for her commitment to making the judiciary more transparent and accessible. She supported and helped launch the “Court with Class” program, which brings high school students into the court’s hearing room for arguments, as well as the “Justice on Wheels” program, which sends the justices to other parts of the state to hear arguments.

In addition to her service to ALI and the Wisconsin Supreme Court, she sat on the board of directors of the Dwight D. Oppenmister of Judicial Administration at New York University School of Law; was president of the Conference of Chief Justices; chaired the board of directors of the National Center for State Courts; was a member of the United States National Academies Committee on Science, Technology, and Law. Justice Abrahamson was also elected a Fellow of the American Academy of Arts and Sciences and a member of the American Philosophical Society. She received the ABAs Margaret Brent Award in 1995 and was awarded the Oppenmister Award for Judicial Excellence by the American Judicature Society in 2004.

Justice Abrahamson is remembered for her lifelong dedication to preserving the rule of law, her generosity, and for her legacy in paving and lighting the way for the many women and others who follow her.

On January 5, per the executive order signed by Wisconsin Governor Tony Evers, the Flag of the United States and the Flag of the State of Wisconsin were flown at half-staff as a mark of respect for former Chief Justice Abrahamson.

The American Law Institute extends our sincerest condolences to her son and daughter-in-law, Daniel and Tsan Abrahamson.
The Essential Scalia: On the Constitution, the Courts, and the Rule of Law, edited by Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit and Edward Whelan, with a foreword from U.S. Supreme Court Associate Justice Elena Kagan.

Robert H. Thomas of Dunham Key Leong Kupchak Hastert was a guest on Episode 40 of The Eminent Domain Podcast. He discussed what attendees could expect at the 2021 ALI CLR Eminent Domain and Land Value Litigation Conference, including the conference’s switch to a virtual format.

Written in collaboration with the late Justice Ruth Bader Ginsburg, Amanda L. Tyler of Berkeley Law has published Justice, Justice Thou Shalt Pursue: A Life’s Work Fighting for a More Perfect Union. Inspired by Justice Ginsburg’s delivery of the Inaugural Herma Hill Kay Memorial Lecture, this collection brings together that conversation and other materials that share important details from Justice Ginsburg’s family life and career.

Joyce White Vance of the University of Alabama School of Law is a co-host of a new podcast from Politico, #SistersInLaw. In each episode, Professor Vance, Jill Wine-Banks, Barb Joy White Vance of the University of Alabama School of Law, and Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit delivered the 2020 Madison Lecture at NYU School of Law. Vance offered his definition of judicial activism and why it applies to the U.S. Supreme Court ruling in Rucho v. Common Cause, which determined that partisan gerrymandering claims were outside of the jurisdiction of federal courts.

Published in 2020, Energy Justice and Economic Justice is an edited collection by Donald N. Zillman of University of Maine School of Law (Retired), Ilango del Guay, Lee Golden, Milton Fernando Montoya, and José Juan González. The collection explores four kinds of energy justice: distributive, procedural, reparative (or restorative), and social.

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

The University of Chicago Law Review published a special edition (Volume 87, December 2020) dedicated to the life and work of Justice Ruth Bader Ginsburg. The online version also published a companion series of short essays about Judge Wood written by her former clerks, including a contribution from Zachary D. Clpton of Northwestern University Pritzker School of Law.

James A. Wynn Jr. of the U.S. Court of Appeals for the Fourth Circuit delivered the 2020 Madison Lecture at NYU School of Law. Wynn offered his definition of judicial activism and why it applies to the U.S. Supreme Court ruling in Rucho v. Common Cause, which determined that partisan gerrymandering claims were outside of the jurisdiction of federal courts.

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