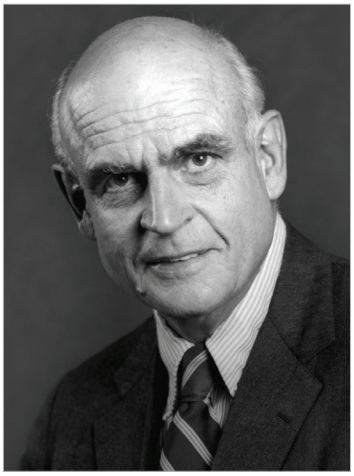
THE ALI
Reporter

THE QUARTERLY NEWSLETTER OF THE AMERICAN LAW INSTITUTE

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In Memoriam: Roswell B. Perkins

ALI President 1980-1993



Roswell B. (Rod) Perkins passed away on March 10, at the age of 92.

"Rod Perkins was a beloved and admired leader of The American Law Institute for many years," said ALI President David F. Levi. "He served as President from 1980 to 1993 and as Chair of the Council from 1993 to 2008. He led our deliberations with dignity and graciousness. In later years, he was no less supportive of the work of the ALI. He attended most Council meetings and contributed helpfully to our discussions, bringing to bear the benefit of his wisdom and unparalleled experience in private practice. He was the model of professionalism, and we will miss him very much. On behalf of our members, I express our gratitude for his remarkable career and his dedication to a fair and effective legal system."

ALI President Emeritus and Chair of the Council Roberta Cooper Ramo added, "I loved his ready laugh, enduring curiosity and incredibly open interest in diverse views."

During his presidency he played a leading role in the development of the Principles of Corporate Governance: Analysis and Recommendations. An ALI member since 1964, he served on numerous projects and committees. In recognition of his years of service, ALI presented him with the Distinguished Service Award in 2008.

"The ALI meant so much to Rod, and he was hoping to attend the Annual Meeting this May," said his wife Susan H. Perkins. Ms. Perkins regularly accompanied Mr. Perkins to ALI meetings when travel became difficult. "I am the daughter of a former ALI member, the late Henry Harfield of Shearman & Sterling, and as a lawyer's daughter and wife I loved accompanying Rod to ALI meetings. I so admire the high standard, non-partisanship, collegiality, and shared work of brilliant members from the judiciary, academia, and practicing law that continues to strengthen the American legal system."

Mr. Perkins leaves a lasting legacy at The American Law Institute. As President, he oversaw the completion of several projects, and his daughter Nancy Leeds Perkins of Arnold & Porter is currently an active member.

Mr. Perkins, a native of Boston, received his undergraduate and law degrees, *cum laude*, from Harvard University, where he was an editor of the *Harvard*

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THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

Completing the Restatement Third of Torts

At its January meeting, the Council approved the launch of the final three components of the Restatement Third of Torts. The projects tentatively are titled: Remedies; Defamation and Privacy; and Concluding Provisions. With these projects, the ALI aims to complete an effort that began nearly three decades ago, when we started work on the Restatement of the Law Third, Torts: Products Liability. And when these projects are completed, the ALI will have produced a body of work that entirely supersedes the Restatement Second of Torts.

The ALI's work on torts arguably has been the most influential of our efforts to restate the common law. Courts have cited to our Torts Restatements more than 80,000 times. No other ALI publication comes close to this mark; Contracts Restatements, the runner-up, have somewhat less than 40,000 citations. And the Restatement Second of Torts, in particular, has long held the mantle as "the most widely accepted distillation of the common law of torts," as Justice Souter described it in a 1995 opinion for the Supreme Court of the United States.

The condition of tort law in the early 20th century was part of the motivation for establishing the ALI. In its 1923 report, the Committee on the Establishment of a Permanent Organization for the Improvement of the Law lamented: "Torts is a subject which has developed unsystematically and is therefore full of the evil of uncertainty." Shortly after our founding, the Restatement of Torts was launched as one of the original nine Restatements and Francis H. Bohlen of the University of Pennsylvania Law School was selected as its Reporter. The Restatement's first

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Upcoming Meetings & Events

For more information, visit *www.ali.org*.

MAY 2019

May 20–22
96th Annual Meeting
Washington, DC

SEPTEMBER 2019

September 13
Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities
Philadelphia, PA

September 19
Restatement of the Law, The Law of American Indians
New York, NY

September 20
Restatement of the Law Third, Torts: Intentional Torts to Persons
Philadelphia, PA

September 26
Restatement of the Law Fourth, Property
Philadelphia, PA

September 27
Restatement of the Law, Children in the Law
Philadelphia, PA

VIEW ALL UPCOMING MEETINGS AND EVENTS ON PAGE 27.

ALI Launches Four New Projects

At the January 2019 Council meeting, The American Law Institute Council voted to launch four new projects: Restatement of the Law, Corporate Governance, and three Torts projects, which will complete the ongoing Restatement Third, Torts. The three Torts projects are Defamation and Privacy, Remedies, and Concluding Provisions.

RESTATEMENT OF THE LAW, CORPORATE GOVERNANCE

Restatement of the Law, Corporate Governance will be led by Reporter Edward Rock, the Martin Lipton Professor of Law at NYU School of Law. The project will follow ALI's Restatement framework, set forth when ALI was founded nearly a century ago.

The Institute first tackled the subject of corporate governance more than 25 years ago in Principles of the Law, Corporate Governance: Analysis and Recommendations. Although it provided valuable guidance in a new and unfamiliar area of law at the time, this area has evolved quite a bit in the intervening decades. This project will examine the state of the law today and reflect it in the Restatement.

RESTATEMENT OF THE LAW THIRD, TORTS

Torts: Defamation and Privacy will address torts dealing with personal and business reputation and dignity, including defamation, business disparagement, and rights of privacy. Among other issues, the updates will cover the substantial body of new issues relating to the internet. The Reporters will be Lyrissa Lidsky, dean of the University of Missouri School of Law, and Robert C. Post of Yale Law School.

Torts: Remedies will address tort damages and other remedies. It will include issues related to identifying the types of recoverable damages, such as past and future lost wages, medical expenses, disfigurement, and pain and suffering, as well as measuring damages, including discounting future earnings to present value, the effect of taxes, and structured settlements. The Reporters will be Richard L. Hasen of the University of California, Irvine School of Law and Douglas Laycock of The University of Texas at Austin School of Law and the University of Virginia School of Law.

Torts: Concluding Provisions will address topics not covered in another part of the Restatement Third of Torts that either require updating since publication of the Restatement Second or were not previously addressed but should be covered in a modern torts Restatement. These topics will include medical liability and vicarious liability, among others. The Reporters will be Nora Freeman Engstrom of Stanford Law School and Michael D. Green of Wake Forest University School of Law. Prior to his death, Professor William C. Powers Jr. of the University of Texas at Austin School of Law was named a Reporter on the project. Mark Hall of Wake Forest University School of Law and School of Medicine will serve as Associate Reporter.

ALI will next appoint additional Associate Reporters as well as a group of Advisers with diverse professional experiences.

ALI MEMBERS MAY JOIN THE MEMBERS CONSULTATIVE GROUPS FOR EACH PROJECT BY LOGGING INTO THE ALI WEBSITE AND VISITING THE INDIVIDUAL PROJECT PAGES.

THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

two volumes were published in 1934, with its final two volumes appearing in 1938 and 1939, respectively.

Work on a revision began in 1955. William Prosser, then Dean of the U.C. Berkeley School of Law, whose treatise, *Handbook of the Law of Torts*, already had gained leading status since its publication in 1941, was selected as Reporter. The first two volumes of the Restatement Second were published in 1965, and Prosser, who by that time had moved on to the U.C. Hastings College of the Law, continued his work until 1970. Stepping into his shoes was Dean John W. Wade of Vanderbilt Law School, who saw through to publication the final two volumes in 1977 and 1979, respectively.

These two Torts Restatements clearly furthered the ALI's mission to "clarify, modernize, and improve the law." Consistent with our mission, they drew from the mass of judicial decisions to set forth statements of tort law's essential rules but also pushed boundaries in some instances. In the latter category, § 402A of the Restatement Second of Torts altered our legal landscape by making available a strict-liability cause of action for defective products.

In 1991, ALI Director Geoffrey C. Hazard, Jr., proposed that work commence on a Restatement of Products Liability, as the first component of a comprehensive effort to restate modern tort law and ultimately to supersede the Restatement Second. The Institute has since published three components of this effort: Products Liability; Apportionment of Liability; and Liability for Physical and Emotional Harm. Liability for Economic Harm received its final approval at last year's Annual Meeting and is being prepared for publication. Intentional Torts to Persons and Property Torts are well underway. With the three final components launched by the Council earlier this year, the Restatement Third of Torts will eventually have nine components.

In connection with the planning for these new projects, I owe great thanks to Professor Michael Green of Wake Forest University and the late Professor William Powers of the University of Texas, who already served as the Reporters for Apportionment of Liability and Liability for Physical and Emotional Harm. At my request, they prepared a persuasive blueprint for how to bring the Restatement Third to a successful conclusion. In particular, they explained how Concluding Provisions could help avoid possible confusion about the ALI's position on issues that otherwise would be addressed by the Restatement Second but not the Restatement Third:

> "We recommend that these miscellaneous issues be combined into a final 'miscellaneous torts' project. This project should include all of the left-over issues in R2. If the Institute decides to adopt or revise one of these torts, it would occupy a new section or set of sections in this new volume. If the Institute decides to disavow a tort (as we would expect for alienation of affections), this new volume would at least explain why for those jurisdictions that have not yet abolished it. Only in this way will all of the issues addressed in R2 be considered and decided through the usual process by the Institute, which we think appropriate."

The success of all ALI projects is largely dependent on the identity of its Reporters. We seek not only leading scholars in the respective fields but also individuals with the temperament to be fair arbiters of competing positions and the humility to set aside their own deeply held views when doing so is necessary to comply with the rules governing our Restatements. I was therefore so delighted that all the extraordinary scholars I approached agreed to take on this weighty responsibility.

RESTATEMENT OF THE LAW THIRD, TORTS

The three new Torts Restatements will complete the revision of the Restatement Second of Torts that began in the early 1990s. Portions of the Restatement Second have been superseded by previously completed Restatements, and two projects are ongoing:

Products Liability (1991-1998)
James A. Henderson, Jr., and
Aaron D. Twerski

Apportionment of Liability (1993-2000)
William C. Powers, Jr., and
Michael D. Green

Liability for Physical and Emotional Harm (1996-2012)
Gary T. Schwartz (Deceased 2001),
Michael D. Green (from 2000),
William C. Powers, Jr. (from 2001),
Ellen S. Pryor

Liability for Economic Harm (2010-2018)
Ward Farnsworth

Intentional Torts to Persons (2012-)
Kenneth W. Simons,
W. Jonathan Cardi (from 2015),
Ellen S. Pryor (2014-2015)

Property Torts (2014-)
As Part of Restatement Fourth of Property
Henry E. Smith,
Sara C. Bronin,
John C. P. Goldberg,
Daniel B. Kelly,
Brian A. Lee,
Tanya D. Marsh,
Thomas W. Merrill, and
Christopher M. Newman

We are currently beginning to form the Adviser groups for the three new projects and 61 members have already signed up for their Members Consultative Groups. Work on the drafting will then proceed concurrently. I eagerly await the next steps and have no doubt that the completion of the Restatement Third of Torts will be regarded as a highlight in the ALI's distinguished history.

96TH ANNUAL MEETING

PRE-MEETING EVENTS SUNDAY, MAY 19

1:00 TO 2:30 P.M.

51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW

Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit will join Allison H. Eid of the U.S. Court of Appeals for the Tenth Circuit, Joan L. Larsen of the U.S. Court of Appeals for the Sixth Circuit, and Goodwin Liu of the Supreme Court of California to discuss the role of the state courts and state constitutions, together with the federal courts and the federal constitution, in protecting individual liberties.

Moderated by: David F. Levi, Duke University School of Law

2:30 TO 3:45 P.M.

SPECIAL PROGRAM - ARTIFICIAL INTELLIGENCE

Artificial Intelligence (AI) is quickly becoming embedded in American life, and its presence and impact are growing at an increasing rate as technology develops. Along with AI's myriad opportunities come legal challenges associated with harnessing the power of these technological tools. Thoughtful development of new and existing legal frameworks is needed to ensure that AI fulfills its potential for improving human life. This panel will address some of these exciting and difficult legal issues.

Moderated by: Mariano-Florentino Cuéllar, Supreme Court of California

4:00 TO 6:00 P.M.

DUTY TO WHOM? ETHICS DILEMMAS CONFRONTED BY GOVERNMENT LAWYERS

ALI CLE Ethics Program
2 hours ethics credit
Open to all Annual Meeting attendees

Panelists John B. Bellnger, III, Arnold & Porter; Meredith Fuchs, Capital One; Derek P. Langhauser, Office of the Governor, Maine; Thomas D. Morgan, The George Washington University Law School; and Richard W. Painter, University of Minnesota Law School will discuss some common ethical issues confronted in the public sector, including answering the question, "Who is the client?"

Moderated by: Troy A. McKenzie, New York University School of Law

MONDAY, MAY 20

MONDAY AT A GLANCE

10:00 a.m.	**Opening Session**
10:30 a.m.	**Policing**
12:30 p.m.	New Member Orientation Luncheon (invitation only)
2:00 p.m.	**Charitable Nonprofit Organizations**
2:45 p.m.	**Presentation of Henry J. Friendly Medal**
3:15 p.m.	**Charitable Nonprofit Organizations** (continued)
4:15 p.m.	**International Commercial and Investor-State Arbitration**
5:30 p.m.	Adjournment
6:30 p.m.	Members Reception and Buffet National Museum of African American History and Culture

HENRY J. FRIENDLY MEDAL



This year's Friendly Medal will be presented to Retired U.S. Supreme Court Associate Justice Anthony M. Kennedy. John G. Roberts, Jr., Chief Justice of the United States, will present the award to Associate Justice Kennedy on Monday, May 20.

CHARITABLE NONPROFIT ORGANIZATIONS

The Restatement of Charitable Nonprofit Organizations includes six Chapters. Chapter 1 deals with Definition and Choice of Form; Chapter 2 with Governance; Chapter 3 with Changes to Purpose and Organization; Chapter 4 with Gifts: Solicitation, Restrictions on Charitable Assets, and Enforcement of Pledges; Chapter 5 with Government Regulation of Charities; and Chapter 6 with Standing of Private Parties.

Membership will be presented Chapter 4 in its entirety, as well as the remaining Sections of Chapters 2 and 5. With membership approval, this project will be completed at this year's Meeting.

Photograph of Associate Justice Anthony M. Kennedy (Retired) provided courtesy of the Collection of the Supreme Court of the United States

INTERNATIONAL COMMERCIAL AND INVESTOR-STATE ARBITRATION

At the May 2018 ALI Annual Meeting, membership approved Tentative Draft No. 6 of the Restatement of the U.S. Law of International Commercial and Investor-State Arbitration, subject to the discussion at the Meeting and usual editorial prerogative. Tentative Draft No. 6 represented the last piece of the Restatement requiring membership approval.

As a result of discussions at the Meeting, the Reporters decided to propose a small number of changes to the Restatement in the form in which it had been finally approved in May 2018. Said changes were approved by ALI Council in January 2019 and will now be presented to membership for approval in May. With membership approval, this project will be completed at this year's Meeting.



Reporter George A. Bermann with Associate Reporters Jack J. Coe Jr., Christopher R. Drahozal, and Catherine A. Rogers at the International Commercial Arbitration 2018 fall project meeting.



Charitable Nonprofits Reporter Jill R. Horwitz, Associate Reporter Nancy A. McLaughlin, and Consultant Marion R. Fremont-Smith at the 2019 January Council Meeting.

MEMBERS RECEPTION AT THE SMITHSONIAN NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE

The National Museum of African American History and Culture opened Sept. 24, 2016, on the National Mall in Washington, D.C. Occupying a prominent location next to the Washington Monument, the nearly 400,000-square-foot museum is the nation's largest and most comprehensive cultural destination devoted exclusively to exploring, documenting and showcasing the African American story and its impact on American and world history.

The museum has nearly 3,000 objects on display from its collection of nearly 37,000. Highlights include:

- Harriet Tubman collection, including her hymnal (c. 1876); lace shawl (c. 1897), given to her by Queen Victoria; and family photographs from her funeral
- Jim Crow railroad car (c. 1920)
- Chuck Berry's red Cadillac convertible (c. 1973)
- Black Fashion Museum Collection (about 1,000 items)
- Tuskegee Airmen Trainer Plane, an open-cockpit PT-13 Stearman (c. 1942) used to prepare Tuskegee Airmen for World War II combat duty
- Works of art by Charles Alston, John Biggers, Elizabeth Catlett, Jacob Lawrence, Lorna Simpson, Romare Bearden, Archibald John Motley Jr., Henry O. Tanner, and Frederick C. Flemister



Training aircraft used by Tuskegee Institute; Manufactured by: Boeing Corporation, ca. 1944.



Cabin from Point of Pines Plantation in Charleston County, South Carolina; Gift of The Edisto Island Historic Preservation Society.

- Emmett Till's casket (c. 1955)—the glass-topped coffin that held the body of 14-year-old Emmett Till, whose murder in Mississippi helped galvanize the civil rights movement
- Slave cabin from Edisto Island, S.C. (c. 1800–50)

Text above provided courtesy of the National Museum of African American History and Culture.

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TUESDAY, MAY 21

EARLY CAREER SCHOLARS MEDAL PRESENTATION

ALI will present its Early Career Scholars Medal to Michelle Wilde Anderson of Stanford Law School and David Pozen of Columbia 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. Learn more about our Early Career Scholars on page 15.

CONSUMER CONTRACTS

Restatement of the Law, Consumer Contracts will be presented as a Tentative Draft for approval, which includes all Sections of the project.



Reporters Omri Ben-Shahar and Florencia Marotta-Wurgler at the October 2018 Council Meeting

The Sections are Definitions and Scope; Adoption of Standard Contract Terms; Modification of Standard Contract Terms; Discretionary Obligations; Unconscionability; Deception; Affirmations of Fact and Promises That Are Part of the Consumer Contract; Standard Contract Terms and the Parol Evidence Rule; and Effects of Derogation from Mandatory Rules.

For a more in-depth look at the Restatement, see the Project Spotlight on page 7.

WEDNESDAY, MAY 22

DISTINGUISHED SERVICE AWARD



The Distinguished Service Award will be presented to Carol F. Lee on Wednesday. This award is given from time to time to a member who over many years has played a major role in the Institute as an institution, by accepting significant burdens as an officer, Council member, committee chair, or project participant and by helping keep the Institute on a steady course as the greatest private law-reform organization in the world.

Ms. Lee is Special Counsel at Taconic Capital Advisors, an SEC-registered investment advisor based in New York City that manages private investment funds with total assets under management of approximately $6.7 billion.

She was elected to the ALI in February 2008 and was elected to the Council in May 2012. She is a member of the Projects Committee and previously served on the Investment Committee. In addition, she devotes considerable time to closely reading Council drafts and providing comments to the Reporters. She is an Adviser for the Restatement of the Law Third, Torts: Intentional Torts to Persons and a member of the Members Consultative Group for the Restatement of the Law, Consumer Contracts.

TUESDAY AT A GLANCE

8:45 a.m.	**Early Career Scholars Medal Presentation**
9:15 a.m	**Consumer Contracts**
1:15 p.m	Members Luncheon Remarks by: Lee H. Rosenthal, U.S. District Court for the Southern District of Texas
2:30 p.m.	**Intentional Torts to Persons**
3:45 p.m.	**Children and the Law**
5:00 p.m.	Adjournment
7:00 p.m.	Annual Dinner and Reception Remarks by: William P. Barr, 85th Attorney General of the United States

WEDNESDAY AT A GLANCE

9:00 a.m	**Data Privacy**
11:15 a.m	**Presentation of Distinguished Service Award**
11:30 a.m	**Compliance, Risk Management, and Enforcement**
12:30 p.m.	Members Luncheon Remarks by: Alberto Ibargüen, John S. and James L. Knight Foundation
1:45 p.m.	**Compliance, Risk Management, and Enforcement** (continued)
3:00 p.m.	**American Indian Law**
4:30 p.m.	Adjournment

DATA PRIVACY

Principles of the Law, Data Privacy includes 14 principles divided into three chapters: Chapter 1 on Purpose, Scope, and Definitions; Chapter 2 on Data Privacy Principles; and Chapter 3 on Accountability and Enforcement.

This will be the project's first time at the Annual Meeting, where the entire project will be presented to membership for approval. With membership approval, this project will be completed at this year's Meeting.



Data Privacy Principles Reporters Paul M. Schwartz and Daniel J. Solove

The Draft Restatement of the Law, Consumer Contracts Follows the Law

By Steven O. Weise, Proskauer Rose LLP

Last fall, the ALI Council approved Council Draft No. 5 of the Restatement of the Law, Consumer Contracts, for submission to the members at the ALI Annual Meeting in May 2019, subject to the discussion at the Council meeting and the usual editorial prerogatives. The Reporters are now working on the draft to be presented in May. As is the case with any Restatement project, there have been many helpful meetings and written comments. The Consumer Contracts Restatement has received some quite spirited comments from both consumer and business interests. Some of these comments concerning the Restatement's assent provisions are discussed below.

I am a member of the ALI Council and have been extensively involved in reviewing and working with the Reporters on this Restatement. I have read every draft of this Restatement, all of the submitted comments, and every decision cited in the Reporters' Notes to § 2. Adoption of Standard Contract Terms (and all of the decisions cited in the Notes to § 5. Unconscionability and most of the decisions cited in the Reporters' Notes to the other Sections), as well as many other relevant decisions and articles. I believe that the Reporters have faithfully followed and implemented the traditional ALI process (described below).

This Restatement has followed the traditional ALI approach to Restatements

One critic calls upon this Restatement to be 'buil[t] upon a firm foundation of contract law established over hundreds of years." That is what this Restatement does.

Under the ALI's *Handbook for ALI Reporters*, the preparation of a Restatement follows four principal steps:

- "ascertain the nature of the majority rule;"
- "ascertain trends in the law;"
- "determine what specific rule fits best with the broader body of law and therefore leads to more coherence in the law;" and
- "ascertain the relative desirability of competing rules."

This Restatement reports on the law as it is. Because the common law of contracts is developed at a state level, the law is rarely identical from state to state and the decisions do not always precisely line up one with the other. The Reporters review the law, identify the baseline rules, and "restate" the law as a set of coherent and consistent rules. When a Restatement draft varies from the majority rule in any substantive way, the Restatement must carefully note that it is doing so and explain why.

Other comments have raised concerns about the Reporters' methodology for identifying and assessing the cumulative effect of court decisions in this area. I have addressed that separately in an online symposium organized by the *Yale Journal on Regulation* (*bit.ly/2CIzhSC*).

The preparation of a Restatement is an iterative process. That's why drafts are called "drafts." The Reporters receive comments from an ALI Advisers group, members of the ALI Members Consultative Group, additional ALI members, and others. These comments are taken in, reviewed, discussed, and implemented as appropriate. This Restatement has followed that approach and each succeeding draft has implemented many changes in response to comments, including in the assent rules. Each draft has been an improvement on the preceding drafts.

The draft of this Restatement includes voluminous Reporters' Notes, which are packed with case citations and surveys of state law. This is careful work. It has taken a long time. The Reporters (Omri Ben-Shahar of University of Chicago Law School, Florencia Marotta-Wurgler of NYU School of Law, and Oren Bar-Gill of Harvard Law School) are leaders in this subject. The Advisers and MCG members who have helped to guide the project are judges, academics, and practitioners (representing in their private practice both businesses and consumers) with a broad range of interests and expertise.

The Restatement applies the common law of contracts

Some critics representing business interests have stated that this Restatement has created a new body of law — consumer contract law.

As with other Restatements, this Restatement describes what the courts are doing. As such, as provided in the Handbook for ALI Reporters, this Restatement assumes the perspective of a common law court. The Introduction to this Restatement states that:

> "[the Restatement] draws on common-law principles that have antecedents in the Restatement of the Law Second, Contracts. … [t]he application of these principles in the area of consumer contracts produced the rules that are restated here."

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CONSUMER CONTRACTS CONTINUED FROM PAGE 7

Comment 14 to § 2 reaffirms this process in connection with the assent provisions of the Restatement:

> "The common-law rules restated herein are consistent with, and elaborate on, the general principles of contract formation."

The Reporters do not say this just because they are supposed to take this approach. A review of the decisions (see the discussion and chart below) confirms that the blackletter follows the common law of contracts. This Restatement does not create "an entirely new body of law for contracts between businesses and consumers" as suggested in one comment. The court decisions in this area apply the common law of contracts as developed by the courts to state a set of requirements that a process must meet to form an enforceable agreement in an online, consumer context (subject to the application of other policing provisions, such as unconscionability).

The assent provisions of § 2 have been the subject of extensive comment from both people expressing business perspectives and people expressing consumer perspectives. As explained below, there has been a convergence of (i) court decisions applying the common law of contracts to the necessary elements for the formation of a contract in the context of an online contract with (ii) leading academic and bar association articles and reports on the same subject. The case law and these writings and reports come to the same result. The black letter of § 2 embraces this convergence and implements the collective approach of these decisions, articles, and reports.

There has also been some criticism that the Restatement (in § 2 and elsewhere) adopts statutory law as common law rules and, at the same time, fails to give sufficient deference to statutory law. The Restatement does neither. As stated above and as shown below, the Restatement is solidly based on the common law of contracts, as the courts have applied it to contracts involving consumers (particularly in the online context). In addition, this Restatement carefully observes that, as a Restatement of the common law of contracts, the provisions of the Restatement are inherently subject to federal and state statutory rules.

The Restatement includes contract law elements protecting consumers, including elements suggested in leading academic and bar association materials

Some critics representing consumer interests have stated that the assent provisions do not adequately protect consumers. An influential and prescient article published in 2003 in the American Bar Association journal *The Business Lawyer* recommends that a set of four elements must exist for an online browsewrap agreement to be formed. See "Browse-Wrap Agreements: Validity of Implied Assent in Electronic Form Agreements," a product of the Joint Working Group on Electronic Contracting Practices (Christina L. Kunz, John E. Ottaviani, Elaine D. Ziff, Juliet M. Moringiello, Kathleen M. Porter, Jennifer C. Debrow), of the Electronic Commerce Subcommittee of the Cyberspace Law Committee of the Uniform Commercial Code Committee of the Business Law Section of the American Bar Association. That article built on an earlier article published in *The Business Lawyer* in 2001, "Click-Through Agreements: Strategies for Avoiding Disputes on Validity of Assent" (Christina L. Kunz, Maureen F. Del Duca, Heather Thayer, Jennifer C. Debrow). The 2003 article continues to be cited in law reviews and ABA publications, and its approach appears in the ALI Principles of the Law of Software Contracts § 2.02, where it is cited in the Reporters' Notes.



Steven O. Weise

As noted in those articles and in the decisions, the formation of online agreements takes many forms, which are often not readily pigeon-holed. This Restatement recognizes that and provides (as the courts have done) for a single, unified set of requirements, which the courts would apply based on the applicable context and circumstances. Generally the courts more closely scrutinize "browsewraps" than they review "clickwraps." A test that provides for contract formation for a "browsewrap" process would also satisfy a "clickwrap" process.

The 2003 article concluded that assent in these circumstances should require that each of the following exists:

> "Based on the precedents discussed in this Article, as well as policy arguments, the authors posit that a user validly and reliably assents to the terms of a browse-wrap agreement if the following four elements are satisfied:
>
> "(i) The user is provided with adequate notice of the existence of the proposed terms.
>
> "(ii) The user has a meaningful opportunity to review the terms.
>
> "(iii) The user is provided with adequate notice that taking a specified action manifests assent to the terms.
>
> "(iv) The user takes the action specified in the latter notice."

Convergence

The chart below demonstrates how the court decisions, the noted academic literature and reports, and the Restatement align with each other, using the four elements from the article as the specified components. It includes quotes from the leading decision of *Specht v. Netscape Communications Corp.* (2d Cir. 2002) and a selection of recent federal appellate decisions applying state law and considering the formation of contracts using browsewrap, clickwrap, shrinkwrap, and similar processes: *Register.com, Inc. v. Verio, Inc.* (2d Cir. 2004); *Schnabel v. Trilegiant Corp.* (2d Cir. 2012); *Nguyen v. Barnes & Noble Inc.* (9th Cir. 2014); *Sgouros v. TransUnion Corp.* (7th Cir. 2016); *Nicosia v. Amazon.Com, Inc.* (2d Cir. 2016); *Noble v. Samsung Electronics America, Inc.* (3d Cir. 2017); *Meyer v. Uber Technologies, Inc.* (2d Cir. 2017); *Cullinane v. Uber Technologies, Inc.* (1st Cir. 2018); *Starke v. SquareTrade, Inc.* (2d Cir. 2019); *Bekele v. Lyft, Inc.* (1st Cir. 2019).



Consumer Contracts project meeting

All emphasis below has been added, except as noted.

The decisions:

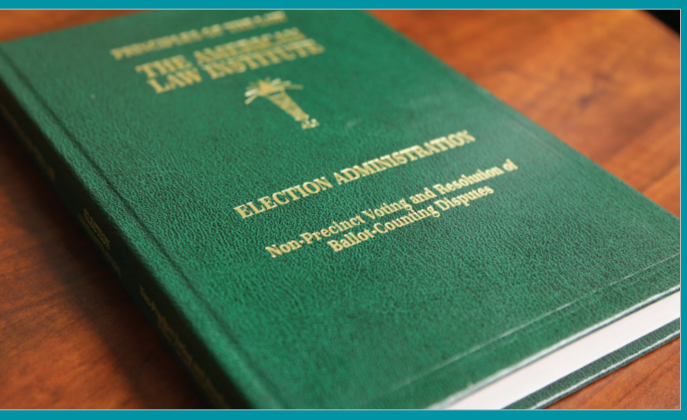
- Expressly state that they are applying general principles of *state* contract law to the formation of online agreements; for example:
  - "[A] court should generally apply *state-law* principles to the issue of contract formation." *[Specht]*
  - "While new commerce on the Internet has exposed courts to many new situations, it has not fundamentally changed the *principles of contract*." *[Register.com]*
  - "[T]here is no reason to think that *Illinois's general contract principles* do not apply." *[Sgouros]*
  - "*... general contract principles under Washington* law apply to agreements made online" *[Nicosia]*
  - "*... California state* [contract] law applies" *[Meyer]*
  - "Whether or not the parties have agreed to arbitrate is a question of *state contract law*." *[Schnabel]*
  - "We apply these same *contract law principles* to online transactions." *[Starke]*
- Cite numerous state contract law decisions (the states covered are California, Connecticut, Illinois, Massachusetts, New Jersey, New York, and Washington)
  - "The reasonable notice standard has governed online contracts *across jurisdictions* since the early days of the internet ..." *[Bekele]*
- Are often in turn cited by state courts applying state contract law
- Observe that there are not clear lines between "clickwrap" contracts and "browsewrap" contracts, and that there are "hybrid" (*Nicosia*) forms and there are an "infinite" (*Meyer*) variety of forms; so, instead, the courts take a "contextual" (*Meyer*), "contextualized" (*Cullinane*), and "context- and fact-specific" (*Bekele*) approach when applying the requirements for contract formation:
  - "*Classification* [as clickwrap or browsewrap] ... *does not resolve* the notice inquiry." (*Meyer*)
  - "Yet, our analysis regarding the existence of an arbitration agreement is *not affected by how we categorize* [clickwrap, browsewrap, or some other form of "wrap"] the online contract at issue here. 'While new commerce on the Internet has exposed courts to many new situations, it has not fundamentally changed the principles of contract.'" [*Cullinane*]
  - "Manifestation of assent to an online contract is *not meaningfully different* [from shrinkwrap agreements] ..." [*Nicosia*]
  - "We hold merely that on the *totality of the circumstances in this case*, ... [the consumer] was not on sufficient notice of the terms of the Post-Sale T&C ..." [*Starke*]
- Conclude that the subject matter of the agreement does not change the analysis:
  - "While the clauses at issue in *Ajemian* did not include an arbitration clause, '*the essential question presented was the same*: what level of notice and assent is required in order for a court to enforce an online adhesion contract?'" [*Cullinane*]
  - "*But despite the strong federal policy favoring arbitration, arbitration remains a creature of contract*.... Thus, courts must still decide whether the parties to a contract have agreed to arbitrate disputes.... That question is governed by *state-law principles of contract formation*." [*Starke*]

continued on page 10

CONSUMER CONTRACTS CONTINUED FROM PAGE 9

The following chart demonstrates how **the courts, the literature, and the Restatement align** when specifying the elements necessary to form a contract under the common law of contracts in an online context.

ISSUE	COURT DECISIONS	*THE BUSINESS LAWYER* ARTICLE	RESTATEMENT § 2(A) BLACKLETTER
Notice of terms	• Consumer must receive "*[r]easonably conspicuous* notice of the existence of contract terms ..." *[Specht]* • "existence of terms [must be] *reasonably conspicuous*" *[Nicosia]* • "... contractual terms ... will only be binding when they are '*reasonably conspicuous*'" [Noble] • Notice of terms must be "reasonably conspicuous" and "*reasonably communicated*" to the consumer [*Meyer*] • "[there must be] '*[r]easonably conspicuous* notice of the existence of contract terms ...'" [*Cullinane*] • "Where an offeree does not have actual notice of certain contract terms, he is nevertheless bound by such terms if he is on *inquiry* notice ..." (Emphasis in original) [*Starke*]	"The user is provided with a*dequate notice of the existence of the proposed terms* ..."	"A standard contract term is adopted as part of a consumer contract if the consumer manifests assent to the transaction after receiving: ... a *reasonable notice of the standard contract term* ..."
Opportunity to review	• "'... whether the circumstances surrounding the ... purchase ... permitted the ... [consumer] to become *meaningfully informed* of ... [the] contractual terms ...'" [*Sgouros*] • "A party cannot manifest assent to the terms and conditions of a contract prior to having an *opportunity to review* them ..." [*Register.com*]	"The user has a *meaningful opportunity to review* the terms ..."	"A standard contract term is adopted as part of a consumer contract if the consumer manifests assent to the transaction after receiving: ... a *reasonable opportunity to review* the standard contract term ..."



Now Available: Principles of the Law, Election Administration

Principles of the Law, Election Administration is now available at *www.ali.org*. The Principles apply to any type of elective office and are structured to be useful to multiple audiences, including state legislatures, state courts, and state officers such as secretaries of state and local election officials.

ISSUE	COURT DECISIONS	*THE BUSINESS LAWYER* ARTICLE	RESTATEMENT § 2(A) BLACKLETTER
Intent to be bound by terms	• "[consumer have] notice ... that [its] act would *manifest assent to contract terms*" [*Specht*] • "[consumer must receive] warn[ing] ... that by completing a purchase he would be *bound by the terms*" [*Sgouros*] • "[consumer must receive] reasonable notice that a click will *manifest assent to an agreement*" [*Sgouros*] • "...agreements [must] clearly inform[ ] consumers that they ... [are] *agreeing to certain terms*" [*Noble*] • "[Circumstances must be such that the consumer] should have ... understood that acceptance of the benefit would be construed by the [business] ... as an *agreement to be bound*." [*Meyer*] • "[website should contain] an explicit textual notice that continued use will act as a *manifestation of the user's intent to be bound* ..." [*Nguyen*] • "So long as the purchaser's attention is adequately directed to a conspicuous hyperlink that is *clearly identified as containing contractual terms* to which the customer *manifests assent* by completing the transaction or retaining the product or service, a hyperlink can be an effective device for specifying contract terms." [*Starke*]	"The user is provided with *adequate notice* that taking a specified action *manifests assent to the terms* ..."	"A standard contract term is adopted as part of a consumer contract if the consumer manifests assent to the transaction after receiving: ... a *reasonable notice ... of the intent to include the term as part of the consumer contract* ..."
Manifestation of assent	• "[consumer must make] *unambiguous manifestation of assent*" [*Specht*] • "[there must be] '*unambiguous manifestation of assent* to [the] ... terms ...'" [*Cullinane*] • [See reference in *Starke* in preceding row requiring that customer "manifests assent"]	"The user *takes the action* specified in the latter notice ..."	"A standard contract term is adopted as part of a consumer contract if the consumer *manifests assent* to the transaction after receiving: ..."

Conclusion

This Restatement is well-grounded on the common law rules of contract law, which have converged with the suggested approach of academic and bar association articles that look out for consumers. The black letter of § 2 implements the decisions and those suggestions in a unified text, which supports the common law.

Member Spotlight: Sarah Dodds-Brown, American Express



Sarah Dodds-Brown serves as Executive Vice President & Managing Counsel at American Express. She leads the Business Legal Group, which provides legal support for the company's U.S. consumer, commercial services and global merchant and network services businesses, as well as the Global Advertising and Brand Management organization. For several years, she also led the enterprise-wide legal Privacy & Data Governance function and helped set the agenda for the company's broader privacy organization, including the development of a principle and risk-based approach to how the company partners with third parties and the development of the governance strategy for the company's Big Data capabilities. Sarah began her career at Paul, Weiss in New York, where she practiced in the M&A and private equity groups for several years before joining American Express in 2005.

She currently serves as an Adviser to Principles of the Law, Data Privacy and Principles for a Data Economy.

How did you get into this industry? What is it like to be a woman in corporate law?

After graduating from Columbia Law School, I joined the Corporate Department of Paul, Weiss focusing on M&A. Over my years there, I developed a love for all aspects of managing big transactions – from the client relationships and coordinating with other stakeholders and specialists across the firm to training and developing the junior associates who were part of my team. I tried to create a positive and empowering culture for the people working on my deal teams even within the context of what was often an incredibly demanding lifestyle and grueling workload when we were in the heart of a transaction.

I was motivated in large part by my interest in understanding the industries and business realities that my clients operated in, so when I was contacted by a friend who was working in-house with American Express, I was intrigued. American Express' legal department is dynamic with highly skilled and talented attorneys who support a range of businesses and dimensions within the payments landscape. Working here has afforded me the opportunity to have a very varied career, to develop a deep and textured understanding of the payments industry, and to serve as a legal and strategic adviser to the talented professionals who lead our businesses. The company invests heavily in its people, with a keen focus on honing leadership skills at all levels of the organization, and this includes members of the legal department. Having the ability to focus on development as a leader, and to think strategically beyond the legal function has been very rewarding aspects of my career.

The world of electronic data and security is ever-changing. Our society has to regularly adapt to this constant flood of new information regularly. How do you keep up with such a rapidly changing field? And has your approach to managing these developments changed since you first joined Amex?

I spend a fair amount of time looking to understand, and personally use and be a consumer of, new technologies and services that leverage data. We share information about our experiences across the department and watch for new developments in the payments space, but also in adjacent fields to stay on top of emerging trends and evolving customer expectations and behaviors. I have become much more willing to be a consumer of these services over the years and also am very interested to see the evolving relationship that my kids have with technology and devices. Their expectations and usage is so different from mine and the people I work with, so being mindful of and accounting for those broader experiences with technology and data is important as well.

A common thread among ALI members is the influence of a mentor in the law. Did you have someone like that in your career or during your legal education? If so, how did he/she influence you?

I have had a number of mentors during my career, both at the law firm and at American Express. One of the most formative mentors for me has been Ted Wells, who joined Paul, Weiss as a partner in the litigation department when I was a junior associate. Although I was in the Corporate Department and did not work directly with Ted, he and his wife, Nina, were and have been key strategic mentors to me, providing advice on navigating the politics of the firm, challenging me to take an expansive view of the impact that I could have within my department and on the careers of others, and ultimately encouraging me to be patient and seek out the right opportunity with a large company where I could have a broad experience and the opportunity to grow and be impactful as a leader.

At American Express, Louise Parent was a critical mentor for me. She had risen through the ranks over a 35-year career to serve for more than two decades as the company's General Counsel. She was brilliant, principled and a strategic partner to the company's senior business leaders, and I appreciated her intellectual rigor and high expectations. She recognized my interest in data and privacy, and saw that I could make a difference for the company in leading our thinking during the advent of behavioral advertising and "Big Data." She entrusted the privacy legal function to me, in addition to my business line responsibilities, while also giving me room to innovate and be a thought leader in helping evolve how the company thought about data privacy.

What makes a great legal team? How do you inspire others? And what qualities do you consider most important for people working in this industry?

A major cultural focus has been to prioritize context and information sharing and collaboration both within and across teams in order to be as effective and efficient as we can in our individual work and more agile and fluid in how we work together. This has allowed us to improve the quality of our work product and advice, and keeps us from operating in an overly siloed or territorial way about our work or ideas and to contribute positively to our collective brand. Perhaps most critical has been to encourage an atmosphere where people feel comfortable providing candid, constructive feedback and maintaining open lines of communication with team members to make sure that we take advantage of opportunities to iterate and make adjustments based on what strategies have worked well within the team and the learnings from what hasn't been effective.

As a woman of color in a leadership position, what advice do you have for fellow leaders when it comes to ensuring that diverse voices are represented and heard? What advice or words of wisdom do you have for people looking to reach a similar goal?

Woe is the person who ignores the quiet – or the junior or the female or the minority – voices in the room! I do not believe in 'hero culture' or that the best ideas all come from one person, and I reinforce this thinking with the members of my leadership team. We need the input and insights and perspectives of people from across the team to inform our thinking, innovate, and make ideas better. Not getting the most from everyone on the team does a disservice to the team, and the more diversity we can achieve in terms of perspectives and experiences, the better our advice and end product will be. I believe this strongly and have seen the benefits of having not only diverse but also inclusive work environments where members feel empowered to actively participate. These teams are more effective at identifying issues early on, generating new ideas, and avoiding unintended consequences of potential decisions. Leaders who are intolerant of different work styles or who don't see the value of having diverse voices within their teams can limit success over the long term.

My advice is to 'act like an owner' by developing a vested and personal interest in, and a sense accountability for, the success of the organization. This may mean being willing to take some risk and put yourself out there by speaking up and thinking broadly about the contribution you can make, expressing your informed perspective in the room, and not waiting and assuming that others will make the point or observation. To do this effectively, you need to understand what strengths and qualities you have that others may not have, and build confidence in your ability to add unique value and insight. It is important not to be daunted by people whose first reaction may be to not hear your voice or who may assume that you don't have anything new or worthwhile to add, and it may take a lot of practice to get to a point where you feel comfortable. A mentor once told me after I was first promoted to always bring a curious mind and make sure to speak in meetings – even if it is only to ask a question or to clarify a point – until I was used to hearing my own voice and others were used to hearing it as well. This advice has helped me to quickly acclimate to new situations and focus on how I can add constructively to the discourse.

You give your time to two ALI projects that address the issues facing this expansive field which is undergoing constant development. What engages you the most about these projects? What makes you want to participate? And what do you hope to see as a result of your work on these projects?

The work on the Principles of Law, Data Privacy project has been an amazing experience that began a few years ago when I was leading American Express' privacy legal function. The highlight has been the ability to interact with the lawyers, jurists and academics who are leading the thinking in this field as we grapple with issues relating to the protection of personal information and the patchwork of laws across the United States. I have sought to contribute a practical view from a global corporate perspective that is shaped by the rapid evolution of technology and the increasing convergence of traditional financial service providers and fintech startups. I take back the substantive dialogue and engagements we have over the drafts and it enriches our discussions internally and helps to inform our own principles as we pressure test our thinking.

The Principles of a Data Economy project is more recent and has generated a lot of excitement within my team. It is an ambitious project that looks to tackle many of the ambiguities in the law that exist with respect to data, but it is also a validation of a lot of work and thinking that we have been doing internally as we strive as a company to become more essential in our customers' digital lives. The quality of the discussion and debate has been very good, and hopefully the output will provide a framework for jurists, lawmakers, and industry in the U.S. and the EU as the environment continues to evolve.

An interesting element in the new world of data and commerce is that while it affects all of us, most of us know very little about it. For those who know very little about the electronic data and commerce world, what would you want them to know?

Be curious and be interested! There are many new technologies out there that are designed to help make our lives easier and more interesting. But we should also be discerning and have high expectations of the companies who we trust to protect our information and only use it in ways that we would expect given our relationship with them.

Council Considers Six Project Drafts at January Meeting

At its meeting in Philadelphia on January 17 and 18, the ALI Council reviewed six project drafts. Drafts or portions of drafts for all six projects received Council approval, subject to the discussion at the meeting and to the usual prerogative to make nonsubstantive editorial improvements. Five of these projects—Policing, Data Privacy, Charitable Nonprofit Organizations, International Commercial and Investor–State Arbitration, and Compliance, Risk Management, and Enforcement—will be on the agenda at the Institute's Annual Meeting in Washington, DC, May 20-22. They join the projects on Children and the Law, Consumer Contracts, Intentional Torts, and the Law of American Indians, previously approved by the Council for submission to the membership.

On January 17, Reporter Barry Friedman of New York University School of Law, with Associate Reporters Tracey L. Meares of Yale Law School, Christopher Slobogin of Vanderbilt University Law School, and Brandon L. Garrett of Duke University School of Law, presented Council Draft No. 3 of **Principles of the Law, Policing**. The Council approved Council Draft No. 3, consisting of § 3.07 on searches incident to lawful custodial arrest, Chapter 5 on Policing in the Absence of Individualized Suspicion, Chapter 10 on Eyewitness Identifications, and Chapter 11 on Police Questioning. The Reporters will submit material from Council Draft No. 3, along with Chapter 1, General Principles, and Chapter 3, Police Encounters, from Council Draft No. 2, for membership approval at the 2019 Annual Meeting.

Reporter Geoffrey P. Miller of New York University School of Law and Associate Reporters James A. Fanto of Brooklyn Law School and Claire A. Hill of the University of Minnesota Law School submitted Council Draft No. 2 of **Principles of the Law, Compliance, Risk Management, and Enforcement**. Council Draft No. 2 contains revisions of Chapter 1, Definitions; Chapter 2, Subject Matter, Objectives, and Interpretation; Chapter 3, Governance; and Chapter 5, Compliance. The Council approved the following portions of Council Draft No. 2 for submission to the membership: Chapter 1 (excepting the definitions pertaining to Chapters 4 and 6 listed on pages xxvi-xvii of the draft); Chapters 2 and 3; and §§ 5.01-5.08 and 5.10-5.17 of Chapter 5. A revised version of § 5.09 and the remainder of Chapter 5 (§§ 5.18-5.39) will be considered at the October 2019 Council meeting, along with Chapters 4 and 6.

The Council also reviewed and approved Council Draft No. 3 of **Principles of the Law, Data Privacy**, presented by Reporters Paul M. Schwartz of UC Berkeley School of Law and Daniel J. Solove of George Washington University Law School. The draft includes Chapter 1, § 2, Definitions; §§ 4-5, 7, and 9-12 of Chapter 2, Data Privacy Principles; and Chapter 3, Accountability and Enforcement. This material, along with sections of Chapters 1 and 2 previously approved by the Council, will be presented for approval at the Annual Meeting.

On January 18, the Council approved Council Draft No. 4 of **Restatement of the Law, Charitable Nonprofit Organizations**; this subject will also be on the Annual Meeting agenda in May. Submitted by Reporter Jill R. Horwitz of UCLA School of Law, Associate Reporter Nancy A. McLaughlin of the University of Utah, S.J. Quinney College of Law, and Consultant Marion R. Fremont-Smith of Harvard University, Kennedy School of Government, the draft comprises two sections from Chapter 2 on Governance, all of Chapter 4 on Restrictions on Charitable Assets, Pledges, and Solicitation, and two sections from Chapter 5 on Government Regulation of Charities.

Reporter George A. Bermann of Columbia Law School and Associate Reporters Jack J. Coe, Jr., of Pepperdine University School of Law, Christopher R. Drahozel of the University of Kansas School of Law, and Catherine A. Rogers of Penn State University, Penn State Law, presented Council Draft No. 7 of **Restatement of the Law, The U.S. Law of International Commercial and Investor–State Arbitration**, containing previously approved sections that the Reporters have reorganized for greater clarity or revised in light of new case law. The Council's approval of these revisions sets the stage for the entire project to be presented as a Proposed Final Draft for membership approval at the 2019 Annual Meeting.

Lastly, Council Draft No. 8 of the **Model Penal Code: Sexual Assault and Related Offenses**, consisting of §§ 213.0-213.7 and 213.9-213.10 of Article 213, was presented by Reporter Stephen J. Schulhofer and Associate Reporter Erin E. Murphy, both of NYU School of Law. The Council reviewed and approved definitions in § 213.0 for "sexual contact," "force," and "actor," as well as §§ 213.1 through 213.6 defining Sexual Assault in the First and Second Degrees, Sexual Assault in the Third Degree, Sexual Assault of a Vulnerable Person, Sexual Assault by Extortion, Sexual Assault by Exploitation, and Sexual Assault in the Fourth Degree. There was insufficient time to discuss the remainder of Council Draft No. 8. The Model Penal Code project is expected to be on the Annual Meeting agenda in 2020.



Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit (MPC: Sexual Assault session)

ALI Announces Early Career Scholars Medal Winners

The American Law Institute will present the Early Career Scholars Medal to Professors **Michelle Wilde Anderson** of Stanford Law School and **David Pozen** of Columbia Law School at this year's Annual Meeting. 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 every other year.

"I am pleased that we chose to award the Early Career Scholars Medal to these extraordinary professors," said Justice Mariano-Florentino Cuéllar of the Supreme Court of California, who serves as the chair of ALI's Early Career Medal Selection Committee. "Michelle and David have crafted remarkable pieces of legal scholarship as timely as they are learned, and as creative and thought-provoking as they are nuanced and precise. By underscoring the importance not only of intelligence but practicality, their work embodies the ideals of The American Law Institute. Michelle's scholarship on regions facing economic dislocation and concentrated poverty has the potential to improve conditions in these communities, and David's work on government accountability, transparency, and secrecy has proven widely influential at a time when these topics are especially salient."



Professor Anderson is a Professor of Law and Robert E. Paradise Faculty Fellow for Excellence in Teaching and Research at Stanford Law School. She is a scholar of state and local government law, and regional governance. Her work combines legal analysis, empirical research, and a deep understanding of institutions and communities to shed light on phenomena such as geographically-concentrated poverty and municipal fiscal distress. Her recent publications explore, among other topics, restructuring (such as bankruptcy, disincorporation, and receiverships) in cities and counties facing chronic poverty related to deindustrialization. As Professor Andersen shows, these issues affect not only Rust Belt capitals such as Detroit, but also post-industrial cities in California, rural counties in the West and South, and small towns across the country. She is currently completing a book about what we need most from local governments in America's high-poverty, post-industrial areas.

Prior to joining Stanford Law School in 2014, Professor Anderson was an assistant professor of law at the University of California Berkeley Law School. She has been a research fellow at the European Commission's Urban Policy Unit in Brussels and an environmental law fellow at Shute, Mihaly & Weinberger. She clerked for Judge Guido Calabresi on the U.S. Court of Appeals for the Second Circuit and Judge Marilyn Hall Patel on the U.S. District Court for the Northern District of California. Professor Anderson is the Chair of the Board of Directors of the National Housing Law Project and a Member of the Board of Directors of the East Bay Community Law Project in Oakland, California.



Professor Pozen is a Professor of Law at Columbia Law School. He teaches and writes about constitutional law and information law, among other topics. His scholarship on the political economy and sociology of government transparency has been featured in dozens of media stories and multiple international conferences and described as "changing the way we think about a subject that had grown stale." Much of his constitutional scholarship identifies situations in which public law practices are not working as desired—situations of "bad faith," "self-help," "uncivil obedience," "constitutional hardball," methodological "impurification"—and tries to help legal actors understand them better and respond in more candid and constructive ways. He is currently working on an empirical analysis of constitutional polarization, a critique of information fiduciaries, and a historical study on the rise of the nonprofit sector and its implications for constitutional law.

For the 2017-2018 academic year, Professor Pozen was the inaugural visiting scholar at the Knight First Amendment Institute at Columbia University. From 2010 to 2012, he served as special advisor to Harold Hongju Koh at the Department of State. Previously, he was a law clerk for Justice John Paul Stevens on the U.S. Supreme Court and for Judge Merrick B. Garland on the U.S. Court of Appeals for the District of Columbia Circuit, and a special assistant to Senator Edward M. Kennedy on the Senate Judiciary Committee.

In addition to Justice Cuéllar, the members of the Early Career Scholars Medal Committee are ALI President David F. Levi of Duke University School of Law; ALI President Emeritus and Chair of the Council Roberta Cooper Ramo of Modrall Sperling; Katharine T. Bartlett of Duke University School of Law; Curtis A. Bradley of Duke University School of Law; Rochelle C. Dreyfuss of New York University School of Law; Christine M. Durham of Utah Supreme Court (retired); Allison Eid of the U.S. Court of Appeals, Tenth Circuit; Paul Engelmayer of the U.S. District Court, Southern District of New York; Howell E. Jackson of Harvard Law School; Miguel Márquez of the County of Santa Clara; Eric A. Posner of University of Chicago Law School; Patti B. Saris of the U.S. District Court, District of Massachusetts; Randall T. Shepard of Indiana Court of Appeals; and Stuart H. Singer of Boies, Schiller & Flexner.

The Institute in the Courts: U.S. Circuit Courts Cite Torts 3d

Two U.S. Courts of Appeals recently cited the Restatement of the Law Third, Torts: the First Circuit cited the Restatement of the Law Third, Torts: Products Liability § 4 and the Seventh Circuit cited Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm §§ 27 and 34. Summaries of those opinions are provided below.

The first case, *In re Celexa and Lexapro Marketing and Sales Practices Litigation*, 2019 WL 364019 (1st Cir. Jan. 30, 2019), involved consolidated appeals arising out of "off-label" prescription-drug-marketing cases, in which the plaintiffs alleged that the defendants, pharmaceutical corporations that manufactured and marketed the antidepressant medications Celexa and Lexapro, "engaged in fraud to push their antidepressant drugs on unsuspecting minors" from 1998 to 2009, even though the FDA had not approved the use of Lexapro for the "treatment of depression in adolescents" until 2009, "never approved Celexa for any pediatric use," and never approved Lexapro as a "treatment for depression in children." Two plaintiffs, a consumer and a health-and-benefit fund, appealed, among other things, the U.S. District Court for the District of Massachusetts's entry of summary judgment dismissing their claims.

The First Circuit reversed the district court's entry of summary judgment for the defendants on the two plaintiffs' claims, holding, inter alia, that the fact that the FDA later approved Lexapro for lawful sales did "not preclude a jury from concluding that the off-label uses of Celexa and Lexapro at issue in this case were ineffective in treating pediatric depression," and that the plaintiffs provided "competent and sufficient evidence . . . to raise a genuine issue of material fact as to the efficacy of these drugs for pediatric use."

In making its decision, the court rejected the defendants' argument that two of its prior decisions, *D'Agostino v. ev3, Inc.*, 845 F.3d 1 (1st Cir. 2016) and *In re Celexa and Lexapro Marketing and Sales Practices Litigation*, 779 F.3d 34 (1st Cir. 2015), "deem[ed] FDA approval dispositive" and therefore the FDA's "various pronouncements or actions" involving this case precluded plaintiffs from convincing a jury that either Celexa or Lexapro was ineffective. The court noted, however, that the FDA's subsequent approval of Lexapro could be relevant to the case, reasoning that a jury could view it as strong evidence confirming that Lexapro, and perhaps also Celexa, "ha[d] always been efficacious in treating pediatric depression." The court quoted **Restatement of the Law Third, Torts: Products Liability § 4** in explaining that, while the common law had long recognized that "agency approval of this type [was] relevant in tort suits," such evidence was not always preclusive, and, in this case, "the FDA's subsequent approval of Lexapro [did] not preclude proving that pre-approval uses of these drugs were ineffective."

After Brexit, The ALI-III Transnational Insolvency Report May Serve as a Safety Net

By Gert-Jan Boon, Adjunct Secretary of CERIL, and Bob Wessels, Reporter for Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases

The Conference of European Restructuring and Insolvency Law (CERIL) is an independent nonprofit, nonpartisan, self-supporting organisation of approximately 75 lawyers and other restructuring and insolvency practitioners, law professors, and insolvency judges committed to the improvement of restructuring and insolvency laws and practices in the European Union and in its Member States and their operation. See *www.ceril.eu*.

In December 2018, CERIL issued its Report on 'Cross-border Restructuring and Insolvency post-Brexit'. The Report (CERIL Report 2018-2) was written by Professor Francisco Garcimartín, Spain, and Professor Michael Veder, the Netherlands, with the support of a CERIL working group investigating the possible consequences of Brexit on cross-border restructuring and insolvency in relation to the remaining EU. CERIL argues for the development of a bilateral agreement between the EU and the UK in the field of insolvency and restructuring.

A bilateral agreement between the EU and the UK would mirror, with certain safeguards, the structure and content of the EIR Recast. It would cover international jurisdiction of courts, applicable law, a mutual system of recognition and enforcement, and rules on cooperation and communication between UK and EU insolvency practitioners and courts. CERIL submits that a future agreement should be developed as a 'parallel instrument', like the Lugano Convention, which basically extends the framework of the Brussels I Regulation vis à vis EFTA States, or the bilateral agreement extending the Brussels I Regulation to Denmark may be used as a model. In this way, conflicting interpretations by courts in matters of restructuring and insolvency in the UK and the EU can be prevented. Without such an instrument, post-Brexit leads to a patchwork of divergent, unaligned, and fragmented rules in the field of cross-border insolvency and restructuring between the EU and the UK. The Report can be freely downloaded from the CERIL website.

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In *Kemper v. Deutsche Bank AG*, 911 F.3d 383 (7th Cir. 2018), a mother of a U.S. Army Specialist who was killed by a roadside bomb while serving in Iraq brought an action under the Anti-Terrorism Act ("ATA") against a German bank with U.S. affiliates, alleging that "the bomb that killed her son was a signature Iranian weapon that traveled from the Iranian Revolutionary Guard Corps . . . to Hezbollah to Iraqi militias, who then placed it in the ground," and that the defendant was connected to the bomb because it was a member of "an Iranian conspiracy to commit acts of terror" since it "instituted procedures to evade U.S. sanctions and facilitate Iranian banking transactions."

The U.S. District Court for the Southern District of Illinois dismissed the plaintiff's complaint for failure to state a claim, finding that she failed to plead facts that plausibly indicated that the defendant's actions caused her son's death. The Seventh Circuit affirmed, holding, inter alia, that the defendant's "procedures to evade U.S. sanctions and facilitate Iranian banking transactions" were not the proximate cause of the death of the plaintiff's son.

The court explained that previously, in *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685, 695-699 (7th Cir. 2008), it had recognized that strict "but for" causation was not necessary to prove ATA liability, because providing material support to terrorists was a wrongful act that created liability regardless of literal "but for" causation, since it was done in the context of others committing similar wrongful acts. It cited **Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm § 27**, Comments *f* and *g*, for additional support. The court pointed out that it did not need to address the defendant's argument that *Boim* was no longer good law on this point because of subsequent U.S. Supreme Court decisions, given that the plaintiff's complaint failed plausibly to allege proximate causation.

The court went on to discuss how the plaintiff's complaint "fail[ed] to suggest how her theory might overcome the traditional tort doctrine of superseding or intervening cause," pointing to the number of criminal intervening acts separating the defendant from the terrorist attack that killed her son. Citing **Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm § 34, Comment *e***, the court noted that "We have recognized, consistently with the Restatement (Third) of Torts, that although 'criminal acts are not superseding causes *per se*[,] . . . acts that are either criminal or intentionally tortious . . . are more likely to be adjudged superseding causes.'"

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

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

LISTEN NOW

The American Law Institute is pleased to announce the first season of the new podcast, *Reasonably Speaking*, which features interviews with legal experts on some of the most important legal topics of our time. Each episode takes listeners through the law in action, beyond courtrooms and casebooks, examining the relationship between our laws and our society.

The first half of the season is currently live with episodes on a variety of topics, including recognizing the value of state and federal courts; the death penalty; the U.S. Supreme Court; children in the justice system; American Indian law; consent; and race and policing.

Listen to the first half of the season now, and catch up before the second half of the season when our experts explore consumer contracts; corporate compliance challenges and solutions; responding to sexual assault on campus; government ethics; and U.S. foreign relations in the 21st century.

LISTEN ON THE ALI WEBSITE NOW OR SUBSCRIBE TO *REASONABLY SPEAKING* THOUGH ANY PODCAST APP.

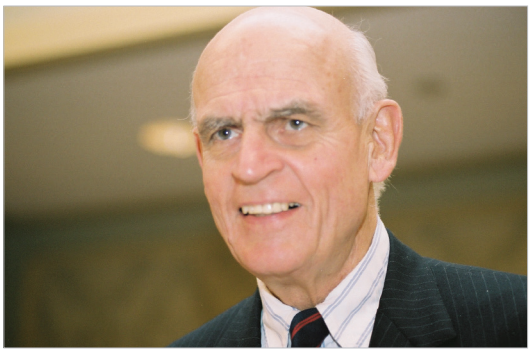
reasonably Speaking

IN MEMORIAM: ROSWELL B. PERKINS CONTINUED FROM PAGE 1

Law Review. He retired from partnership in Debevoise & Plimpton in 2001 – 52 years after joining the firm as an associate in 1949. In addition to his work at the firm, he also served in the government, chiefly as Assistant Secretary of the newly created Department of Health, Education, and Welfare during the Eisenhower administration, and as Counsel to New York Governor Nelson A. Rockefeller.

Following travel to Russia in 1985, Mr. Perkins spearheaded the inauguration of a Russian practice for the firm. Upon the decision of the firm to open an office in Moscow, Mr. Perkins relocated to Moscow in December 1997 to head up the new office, as Resident Partner of Debevoise in Moscow. He served in that capacity for three-and-a-half years, representing companies based in Russia, the U.S., UK, Europe, Scandinavia and the Far East. Among the projects included in the Russian practice of the firm in those years were project financings for three Russian oil refineries under U.S. Ex-Im Bank loan guarantee programs, two large investment funds targeted at Russia, joint ventures and extensive investment and general corporate activity.

In the course of his practice, he served on numerous committees of the Association of the Bar of the City of New York and the New York State Bar Association. He received a Special Merit Citation of the American Judicature Society in 1989, the Harvard Law School Association Award in 1994 and the Fifty-Year Award of the Fellows of the American Bar Foundation in 2002. Mr. Perkins received an Honorary Doctor of Laws from Bates College in 1988.



MR. PERKINS WAS A GUIDING FORCE AND A TREMENDOUS INFLUENCE ON THE LEGACY OF THE INSTITUTE. HE WILL BE REMEMBERED FOR HIS WARMTH, WISDOM, THOUGHTFUL COMMUNICATIONS, AND DEDICATION TO ALI'S MISSION.

AFTER BREXIT CONTINUED FROM PAGE 16

During the development of such an instrument (or failing to conclude it), practitioners and judges could rely on the Global Principles for Cooperation in International Insolvency Cases (2012), Reporters: I. F. Fletcher and B. Wessels. A Report to ALI on the Global Principles was circulated for discussion at the 2012 Annual Meeting of ALI and in that same year the Global Principles were approved by III. Such matters did not belong to the remit of Reporters Garcimartín and Veder for the CERIL Report 2018-2. Therefore, practitioners may consider relying on the ALI-III Report, particularly in the case when there is no deal, where a legislative vacuum might arise.

The ALI-III Report contains several principles for cooperation in international insolvency cases, including principles on recognition, equality of arms, nondiscriminatory treatment, international jurisdiction, and cooperation and communications between courts. They could provide a safety net during the interim period. In late 2017, the UK's Chancery Guide, in ch. 25 at p. 116, discussing 'Court-to-Court communications in cross-border insolvency cases', explained that there is an 'increasing international recognition that communication between courts in different jurisdictions may be of assistance in the efficient conduct of cross-border insolvency cases.' The Chancery Guide sets out that there are three principal sets of guidelines for court-to-court communications that might be adopted, with appropriate modifications, one of them being The American Law Institute/International Insolvency Institute Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases. These Guidelines, revised in light of subsequent developments and renamed 'Global Guidelines for Court-to-Court Communications in International Insolvency Cases', are an integral part of the ALI-III Report. See *bit.ly/2OyyQiO*.

GLOBAL PRINCIPLES REPORT

The text of the Global Principles Report can be viewed via *bit.ly/2CGsSri*.

A version containing only the black-letter text was published in August 2017. See *bit.ly/2OtmrMO*.

Notes About Members and Colleagues

In an article for *UVA Lawyer* entitled "The Future of Law," **Kenneth S. Abraham** and **A. Benjamin Spencer** of UVA School of Law predicted, respectively, whom one can sue if injured by a driverless car, and whether there will be fewer class actions in federal court and more forced arbitration.

Mark D. Agrast, Executive Director of the American Society of International Law, received two awards from the American Bar Association at its midyear meeting in January—the Robert F. Drinan Award, conferred by the Section of Civil Rights and Social Justice, and the ABA Stonewall Award, presented by the Commission on Sexual Orientation and Gender Identity.

Susan A. Bandes of DePaul University College of Law has been selected by the Fulbright Commission to serve as a Fulbright Specialist for a project at Uppsala University in Sweden in May 2019.

Publishers Weekly, the international news website of book publishing and bookselling, reviewed Prisoners of *Politics: Breaking the Cycle of Mass Incarceration*, by **Rachel E. Barkow** of NYU School of Law.

In the *Financial Post* article titled "Trump leveraging USMCA as he reopens debate over presidential powers," **Curtis A. Bradley** of Duke Law School shares his thoughts on the President's threats to withdraw from the North American Free Trade Agreement.

Evelyn Brody of Chicago-Kent College of Law accepted the 2018 Distinguished Achievement in Leadership and Nonprofit and Voluntary Action Research Award from ARNOVA during the organization's 47th annual conference.

Charles N. Brower was appointed by the United States of America to sit as Judge *ad hoc* at the International Court of Justice in two cases against the Islamic Republic of Iran.

Harvey Brown of the First Court of Appeals, District of Texas joined The Lanier Law Firm after serving on the First Court of Appeals bench from 2010-2018.

Stephen B. Burbank of University of Pennsylvania Law School, Director of the Federal Judicial Center **John S. Cooke**, **Michael J. Gerhardt** of UNC School of Law, President and CEO of the National Constitution Center **Jeffrey Rosen**, and **Diane P. Wood** of the U.S. Court of Appeals for the Seventh Circuit participated in a series of panels hosted by the National Constitution Center that explored the evolution of judicial independence from the founding of the nation to today.

Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein, **Ivan K. Fong** of 3M Co., and **Angela Onwuachi-Willig** of Boston University School of Law spoke in an episode of *Legal Speak*, a podcast powered by *Law.com*, about the people who shaped their careers and the lessons they learned from past and present mentors.

Elissa F. Cadish and **Kristina Pickering** of the Nevada Supreme Court were featured in an article by the *Las Vegas Review-Journal*, which highlighted that for the first time in Nevada history, more women than men sit on the state's highest court.

Mariano-Florentino Cuéllar of the California Supreme Court was elected as a member of the Harvard Corporation. He will assume his role on July 1, 2019.

Judith F. Daar was selected by Northern Kentucky University as dean of the Salmon P. Chase College of Law. She will assume the role on July 1.

Ward Farnsworth of University of Texas at Austin School of Law discussed the relationship between happiness and stoicism in connection with his book, *The Practicing Stoic: A Philosophical User's Manual*, on the blog of Gretchen Rubin, an author who got to know him during the year they both clerked for the U.S. Supreme Court.

Richard M. Gergel of the U.S. District Court for the District of South Carolina published *Unexampled Courage: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring*. The book tells the inspirational account of Sergeant Isaac Woodard, a returning, decorated African American veteran who was forcibly removed from a Greyhound bus in Batesburg, South Carolina, and beaten and blinded while in custody.

Fatima Goss Graves of the National Women's Law Center and **Eric A. Posner** of University of Chicago Law School were included on the second annual listing of the Bloomberg 50, a look at the people in business, entertainment, finance, politics, and technology and science whose 2018 accomplishments were particularly noteworthy.

Stanford Law Review hosted a symposium on Feb. 8-9 entitled "The Independence of the American Judicial System: Politics and Separation of Powers." Participants at the event included keynote dinner speaker **Stephen B. Burbank** of University of Pennsylvania Law School, **Linda Greenhouse** of Yale Law School, **Ketanji Brown Jackson** of the U.S. District Court for the District of Columbia, **Leondra R. Kruger** of the California Supreme Court, keynote lunch speaker **Patricia A. Millett** of the U.S. Court of Appeals for the District of Columbia Circuit, **Erin E. Murphy** of Kirkland & Ellis, **Jed S. Rakoff** of the U.S. District Court for the Southern District of New York, **Donald B. Verrilli Jr.** of Munger, Tolles & Olson, and **Albert H. Yoon** of University of Toronto Faculty of Law.

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LARRY KRAMER ON EMPHATIC LISTENING

Larry Kramer, President of the William & Flora Hewlett Foundation, authored a piece for the organization entitled "Listening to the people who think we are wrong." In the piece Mr. Kramer breaks down some of biggest communication issues in the current political and social landscape. He discusses listening with empathy, listening without hearing, and the Hewlett Foundation's commitment to developing the discipline needed to listen emphatically by making the effort to engage with people of differing opinions.

Below is an excerpt.

> *Among the most corrosive developments of recent years—one that predates the election of Donald Trump—has been a breakdown in our ability to debate and reason with others with whom we disagree. The term du jour, "tribalism," replaced the earlier "polarization" precisely to capture the added ingredient of animosity that has made even conversation across partisan divides difficult. Mistrust and hostility have been grafted onto disagreement about ideas.*
>
> *Political scientists differ about how widespread the phenomenon is—some seeing it shared broadly across American society, while others believe it confined to activist elites. I lean toward the latter view, though the disease seems to be spreading awfully fast. The difference hardly matters, because activists drive and shape public debates. And, either way, the resulting take-no-prisoners politics threatens the future of democratic government, which presupposes disagreement and depends on willingness to work through and across differences from a sense of shared community.*
>
> *We need to do better.*

Image Credit: Mike Austin/CCBY-NC-ND

Phoebe A. Haddon of Rutgers University–Camden was selected as the recipient of the 2019 Ruth Bader Ginsburg Lifetime Achievement Award from the Association of American Law Schools Section on Women in Legal Education. Chancellor Haddon was also named the recipient of a 2019 Smith College Medal, which recognizes alumnae who exemplify in their lives and work the ability of a liberal arts education to transform lives and communities.

Melissa Hart of the Colorado Supreme Court gave an interview to University of Colorado Law School in which she answered questions about her role as a judge and shared personal and professional influences in her career.

Renée McDonald Hutchins has been selected to serve as dean of University of the District of Columbia David A. Clarke School of Law. She is expected to begin her term on Apr. 17.

Vicki C. Jackson of Harvard Law School has been elected President of the Association of American Law Schools. With her election, for the first time in AALS's 119-year history, all three officers of the organization are women. Wendy Collins Perdue, dean of University of Richmond School of Law, is the immediate past president of AALS and Dean **Darby Dickerson** of John Marshall Law School has been named 2019 President-Elect.

Michael A. Kahn of Crowell & Moring was appointed by Sacramento Governor Gavin Newsom to the Commission on Catastrophic Wildfire Cost and Recovery, one of the state's energy policy, planning, and utility oversight agencies.

Neal Katyal of Hogan Lovells US, a former Acting U.S. Solicitor General who has argued before the U.S. Supreme Court more times than any other minority attorney in U.S. history, gave a talk at the University of Chicago Law School about what it means to be a lawyer and why working in law is a "personal calling."

Linda A. Klein of Baker Donelson, a past president of the State Bar of Georgia and the ABA, was honored with the 2018 Marshall-Tuttle Award, presented by the State Bar of Georgia during its fall meeting. She received the award in recognition of her leadership in mobilizing lawyers on behalf of enhanced legal services for the nation's veterans.

Renee Newman Knake of University of Houston Law Center has been awarded the Fulbright Distinguished Chair in Entrepreneurship and Innovation at Royal Melbourne Institute of Technology in Australia. Fulbright Distinguished Chair Awards are viewed as among the most prestigious appointments in the Fulbright Scholar Program.

Lucy H. Koh of the U.S. District Court for the Northern District of California, **Mark A. Lemley** of Stanford Law School, and **Pamela Samuelson** of UC Berkeley School of Law were included on Managing Intellectual Property's list of the 50 Most Influential People in IP. The list recognizes individuals who are shaping IP law, policy, and business throughout the world.

Maine Governor Janet T. Mills appointed **Derek P. Langhauser** to serve as chief legal counsel in the Office of the Governor.

Douglas Laycock of UVA School of Law and University of Texas at Austin School of Law and **Richard L. Hasen** of UC Irvine School of Law published the fifth edition of the leading casebook, *Modern American Remedies: Cases and Materials*, in regular and concise versions.

John G. Levi, chairman of the board of directors of the Legal Services Corp. (LSC) and partner at Sidley Austin, co-authored an article with Robert Malionek of Latham & Watkins for *Law360* entitled "Civil Legal Aid's Essential Role in Wildfire Response."

"Searching for Clarity Amid Confusion: An Examination of the Standard for Determining Waiver and Revival of the Right to Arbitrate" by **John Lewis** of Baker & Hostetler LLP was published in Volume 67 of the Kansas Law Review.

The New York State Bar Association presented **Raymond J. Lohier Jr.** of the U.S. Court of Appeals for the Second Circuit with the 2019 Distinguished Jurist Award at its 2019 Annual Meeting.



Raymond J. Lohier Jr. accepting the 2019 Distinguished Jurist Award
Credit: New York State Bar Association

Tracey L. Meares of Yale Law School participated in the Emanuel Emroch Lecture Series at University of Richmond School of Law. She spoke on her theories of community in popular legitimacy and the social psychology of how people come to conclusions about the fairness of police, prosecutors, and judges.

Access to Justice

"Access to Justice," the first open-access issue of *Dædalus*, features a variety of contributions from ALI members. Founded in 1955, *Dædalus* is a quarterly journal from the American Academy of Arts and Sciences that embodies the spirit of its ancient Greek namesake by pushing boundaries, exploring uncharted areas of knowledge, and examining issues of public importance.

The issue is co-edited by former ALI Director **Lance Liebman** of Columbia Law School and features a collection of 24 essays examining the national crisis in civil legal services faced by poor and low-income Americans. The *Introduction* to the issue was authored by ALI member **John G. Levi** of Sidley Austin and **David M. Rubenstein** of the Carlyle Group, ALI's 2018 Annual Meeting dinner speaker. The following members contributed articles to the publication:

ALI President **David F. Levi** of Duke Law School and **Dana A. Remus** of North Carolina School of Law (now with the Barack Obama Foundation) – *Reclaiming the Role of Lawyers as Community Connectors*

Tonya L. Brito of University of Wisconsin Law School – *The Right to Civil Counsel*

Kenneth C. Frazier of Merck & Co., Inc. – *Why Big Business Should Support Legal Aid*

Robert W. Gordon of Stanford Law School – *Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History*

Gillian K. Hadfield of University of Toronto Law School – *More Markets, More Justice*

Nathan L. Hecht of the Supreme Court of Texas – *The Twilight Zone*

James J. Sandman of the Legal Services Corporation – *The Role of the Legal Services Corporation in Improving Access to Justice*

Colleen F. Shanahan of Columbia Law School – *Simplified Courts Can't Solve Inequality*

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Erin E. Murphy of NYU School of Law was quoted in the *New York Times* article "Coming Soon to a Police Station Near You: The DNA 'Magic Box,'" which discusses the groundbreaking technology used by police departments in the nearly automated processing of DNA.

Alan C. Page was one of seven distinguished recipients of the 2018 Presidential Medal of Freedom, the United States' highest civilian honor, on Nov. 16.



ALI LUNCHEON IN TAMPA, FLORIDA

On February 8, 2019, Stetson University College of Law held a local ALI luncheon in Tampa, Florida. Interim Dean **Kristen Adams** recognized new ALI members, with ALI Council Member **Gary L. Sasso** of Carlton Fields accepting a plaque on behalf of new member **Morris Silberman**, Florida Second District Court of Appeal. **James E. Felman** of Kynes, Markman & Felman spoke to the group about the ALI's Model Penal Code: Sentencing and how this project relates to the recent Florida Bar's Criminal Justice Summit. ALI members attending this event included **Kristen David Adams** of Stetson University College of Law, **Stacy D. Blank** of Holland & Knight, **Michael B. Colgan** of Bradley Arant Boult Cummings, **Donna Lee Elm** of the Federal Defender's Office for the District of Florida, **James E. Felman**, **Leonard H. Gilbert** of Holland & Knight, **Tracy Raffles Gunn** of Gunn Appellate Practice, **Kevin Michael McLaughlin** of Wagner McLaughlin, **Rebecca C. Morgan** of Stetson University College of Law, **Ellen S. Podgor** of Stetson University College of Law, **Theresa J. Pully Radwan** of Stetson University College of Law, **Gary L. Sasso**, and **Bill Wagner** of Wagner McLaughlin. Hillsborough Bar President John Schifino joined the group, as well as some Stetson faculty and alums.

Visit *www.ali.org* to watch videos of panel discussions from **UVA School of Law's 31st Sokol Colloquium**, held in January 2019. The event examined several Sections of Restatement of the Law Fourth, The Foreign Relations Law of the United States.

Robert C. Post of Yale Law School delivered the inaugural Thurgood Marshall Lecture, on Marshall's legacy as a judge, at the Second Circuit Court of Appeals in New York City on Dec. 12.

Saikrishna Prakash of UVA School of Law spoke at the symposium "Emergency Powers in the Trump Era and Beyond" in Washington, DC, hosted by the Brennan Center for Justice on Jan. 16. Professor Prakash discussed what the Constitution says about emergency powers, and what previous presidents have done to test the reach of their executive powers.

Omri Ben-Shahar of University of Chicago Law School and **Florencia Marotta-Wurgler** of NYU School of Law were participants at the Humboldt European Law School conference "An ALI Restatement on Consumer Contract Law – the European Perspective" in Berlin on Nov. 23-24.

Sharon K. Sandeen of Mitchell Hamline School of Law was awarded the Fulbright-Hanken Distinguished Chair in Business and Economics for 2019-20, sponsored by the Fulbright Finland Commission. Her host institution is the Hanken School of Economics, Department of Accounting and Commercial Law, located in Helsinki, Finland.

The Association of American Law Schools Section on Torts and Compensation Systems presented **Kenneth W. Simons** of UC Irvine School of Law with the 2019 William L. Prosser Award for his outstanding contributions to the field of torts.

Coauthored for the first time by **A. Benjamin Spencer** of UVA School of Law (an updated version of) Volume 5A of Wright & Miller's *Federal Practice and Procedure* was published in November 2018. This treatise also included contributions from **Vikram D. Amar** of University of Illinois College of Law, **Edward H. Cooper** of University of Michigan Law School, **Richard D. Freer** of Emory University School of Law, **Victor James Gold** of Loyola Law School, Los Angeles, **Peter J. Henning** of Wayne State University Law School, **Mary Kay Kane** of UC Hastings College of the Law, **Andrew D. Leipold** of University of Illinois College of Law, **Richard L. Marcus** of UC Hastings College of Law, **Arthur R. Miller** of NYU School of Law, **Adam N. Steinman** of the Hugh F. Culverhouse Jr. School of Law at the University of Alabama, **Joan E. Steinman** of Chicago-Kent College of Law, Illinois Institute of Technology, **Catherine T. Struve** of University of Pennsylvania Law School, and **Sarah N. Welling** of University of Kentucky College of Law.

ALI Director **Richard L. Revesz** of NYU School of Law was quoted in a *New York Times* article entitled "For Trump Administration, It Has Been Hard to Follow the Rules on Rules."

Robert H. Sitkoff of Harvard Law School coauthored an op-ed piece for *The Wall Street Journal* entitled "'Investing for Good' Meets the Law - A fiduciary can't escape the obligation to invest for the client's best returns."

The Southern Center for Human Rights presented **Virginia E. Sloan**, founder and former president of The Constitution Project, with its Equal Justice Award at the 22nd Annual Frederick Douglass Awards Dinner in Washington, DC.

Sonia Sotomayor of the Supreme Court of the United States, **Jennifer Walker Elrod** of the U.S. Court of Appeals for the Fifth Circuit, and **Susan L. Carney** of the U.S. Court of Appeals for the Second Circuit presided over the 2018 Ames Moot Court Competition at Harvard Law School.

Michael I. Sovern of Columbia Law School was one of the "2018 Living Landmarks" honored at the 25th Living Landmarks Celebration on Nov. 1. The gala, hosted by the New York Landmarks Conservancy, recognizes distinguished New Yorkers who have made outstanding contributions to New York City.

Bryan Stevenson, founder and executive director of the Equal Justice Initiative, gave an interview in *The New York Times* entitled "Bryan Stevenson Wants the U.S. to Face Its History." Noting the "history of racial inequality" in this country, that "one in three black male babies born in this country is expected to go to jail and prison," the high level of poverty, and some of the rhetoric we often hear, he concluded that we must create a world where if Rev. Dr. Martin Luther King, Jr., emerged, "he would be so proud to say his dream has finally been realized. We're not in that world yet."

Kate Stith of Yale Law School authored a piece for the *Interactive Constitution*, a free online collaborative platform supported by the National Constitution Center, in which she discusses the Appropriations Clause and the constitutional separation of powers; limits on the amount, object, and duration of appropriations; whether "backdoor spending" is constitutional; and the Statement and Accounts Clause.

Elizabeth S. Stong gave the keynote address at the Ugandan Registration Bureau's Insolvency Week conference on Business Rescue and Cross-Border Insolvency in Kampala.

Michael Traynor of Cobalt LLP published a booklet entitled *Extraction: Art on the Edge of the Abyss, Preview of a Glorious Ruckus*. The booklet acts as both an introduction and an in-depth explanation to the motivation, intention, and overall vision behind *EXTRACTION: Art on the Edge of the Abyss*, a self-proclaimed "multimedia, multi-venue, cross-border art intervention that will investigate extractive industry in all of its forms (from mining and drilling to the reckless exploitation of water, soil, trees, marine life, and other natural resources)."

William H. Webster, former director of the FBI and the CIA, was featured in an article in *The Washington Post* for his assistance in catching the culprit behind a Jamaican-based telephone scam.

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

In Memoriam: William Charles Powers Jr.



William Charles Powers Jr. passed away on March 10 at the age of 72. A member of ALI since 1992, Professor Powers served twice with Michael D. Green of Wake Forest University School of Law as Co-Reporters on Restatement of the Law Third, Torts: Apportionment of Liability and Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm. Prior to his death, Professor Powers was named to serve as a Reporter for a third time on of one of ALI's newest projects, the Restatement of the Law Third, Torts: Concluding Provisions.

"Bill really had the ideal makeup for an ALI Reporter—he was smart as a whip, but he was flexible of mind," said Professor Green. "There were times when we were working on a Section of the Restatement when he would come into a project meeting on one side of an issue with one idea, and the discussion with the project participants would take us in a different direction. He would realign his perspective as the discussion informed and provided additional details on the issues that we had been thinking about." Green added: "He was also a precise, careful, and rigorous wordsmith."

Professors Powers and Green were jointly named the R. Ammi Cutter Chair from 2001 to 2006, for their work as Reporters on the Restatement Third, Torts: Liability for Physical and Emotional Harm.

The second-longest serving president of the University of Texas at Austin, serving from 2006 to 2015, Professor Powers was a member of the university's law school faculty for over 40 years, serving as dean for six of those years.

In 2003, he received the ABA's Robert B. McKay Law Professor Award, and in 2012, he and fellow ALI Reporter Michael Green were awarded UC Berkeley's John G. Fleming Memorial Prize for Torts Scholarship. He served as Chair of the Special Investigation Committee, Enron Corp. In 2002, the committee produced its findings in what is now known as the "Powers Report."

Professor Powers received his B.A. from UC Berkeley in 1967, and his J.D., *magna cum laude*, from Harvard Law School in 1973. From 1973 to 1974 he was law clerk to Judge Eugene Wright, U.S. Court of Appeals for the Ninth Circuit.

The Texas State Senate honored Professor Powers with the adoption of SR No. 420. To read the resolution, visit *www.ali.org*.

Photo courtesy of Wyatt McSpadden

In Memoriam: Patricia M. Wald

On January 17, 2019, the following Minute in Remembrance was read at a meeting of the ALI Council by ALI Secretary Paul L. Friedman of the U.S. District Court for the District of Columbia:

Last Saturday, January 12, 2019, Patricia McGowan Wald died at home peacefully in her sleep. She was 90 years old. Judge Wald was an iconic judge here and abroad, a trailblazer and role model for women lawyers, and our beloved colleague on this Council.

As most of you know, Pat Wald was a woman of many "firsts." She was the first female Assistant Attorney General for Legislative Affairs at the Department of Justice; the first woman ever appointed to the United States Court of Appeals for the District of Columbia Circuit; the first (and thus far only) female Chief Judge of the D.C. Circuit; and (except for the four-month term of Judge Florence Allen as Chief Judge of the Sixth Circuit decades before), the first woman Chief Judge of any U.S. Court of Appeals for any Circuit.

Judge Wald was a giant in the law, with a powerful intellect, a get-to-the-heart-of-the-matter approach to legal problems, and a simultaneously elegant and down-to-earth writing style. She had a largeness of vision that is all too rare in our profession. When she spoke and when she wrote, everyone paid attention—because her reasoning was so clear, her ideas so right, her thoughts so well-articulated. Yet, she was a person with little ego, genuine humility, and a great sense of humor. As our former president, Michael Traynor, put it: "Pat [was] unassuming, unpretentious, modest, approachable and open, as all of us who have worked with her in the ALI have come to appreciate."

The breadth of the topics on which she wrote and spoke with substance and clarity—both in her prolific scholarly writings and in her judicial opinions—is staggering: bail reform, poverty and criminal justice, children's rights and juvenile law, mental-health law and drug abuse, environmental regulation, the judicial process, the administrative process, morality in judging, and women in the law.

All of this is well known. What many people may not know about Pat Wald, however, is that she never knew her father. He left their home when she was two. She was raised by her mother and her aunt and uncle in the factory town of Torrington, Connecticut. She was the valedictorian of her high-school class and the first ever in her family to go to college. She attended Connecticut College for Women and then Yale Law School entirely through scholarships and by waiting tables and working summers in the ball-bearing factory that employed her mother. She graduated from college Phi Beta Kappa and was Order of the Coif and a member of the law review at Yale Law School. Happily, she also met Bob Wald at Yale, and they married in 1952. After law school, Pat obtained a clerkship with Judge Jerome Frank on the United States Court of Appeals for the Second Circuit, one of the very few women of her generation to have had such an opportunity.

After a short stint as the first woman associate at Arnold, Fortas & Porter, she left the practice of law for 10 years to raise her five children. She believed that women could have it all, but—in her own case, at least—not necessarily simultaneously. As she wrote in a 1983 article: "Each of us, in our personal life, has choices to make. We are not likely to get back more than we put in. Neither families nor careers flourish on neglect, and everyone strikes the balance differently."

A decade later, she returned to the law, first part time and then full time, devoting herself to public-interest law and to those least able to help themselves. She worked at Neighborhood Legal Services, the Mental Health Law Project (now the Bazelon Center for Mental Health Law), and the Center for Law and Social Policy. With Daniel Freed, she wrote *Bail in the United States — 1964*, a book rightly credited with spurring the Bail Reform Act of 1966, which largely eliminated money bail in the federal courts. For



decades, Pat Wald was at the cutting edge of virtually every legal inroad to justice for children, the poor, the mentally ill, the drug addicted, those accused of crime, and women.

When she came to the Bench, Pat necessarily was less proactive but no less influential. At her portrait ceremony in the D.C. Circuit in 2003, Judge Wald's former colleague and good friend Judge David Tatel took note of what Pat had said years earlier at a similar ceremony for her late colleague, Judge Harold Leventhal, a personal hero of Pat's. Her description of Judge Leventhal, Judge Tatel said, applied to Pat's approach to judging as well: a "shining example of a judge who could comprehend the deepest problems of our society, feel strongly about them, explore the universe of options, and act with courage on the right one."

Judge Wald wrote over 800 opinions as a D.C. Circuit judge. Time will not permit me to discuss or even list the most significant of her many, many important opinions for the court. For that I refer you to the obituaries in *The New York Times* and *The Washington Post* and to Judge Harry Edwards's remarks at the Henry J. Friendly Medal presentation at the ALI Annual Meeting in 2016. Judge Edwards characterized Judge Wald's 1981 opinion in *Sierra Club v. Costle* as

still "one of the greatest administrative law opinions ever issued in the D.C. Circuit." And at Judge Wald's portrait ceremony, Judge Tatel—noting that "it is often through dissents that judges bare their souls,"—quoted from Judge Wald's dissent from an *en banc* decision in 1994, an unsuccessful challenge to the constitutionality of "don't ask, don't tell," *Steffan v. Perry*, where she wrote:

> For the government to penalize a person for acknowledging his sexual orientation runs deeply against our constitutional grain. It has . . . no precedent or place in our national traditions, which spring from a profound respect for the freedom to think and to be what one chooses. . . . Pragmatism should not be allowed to trump principle or the soul of a nation will wither.

In presenting the Friendly Medal to Judge Wald at our 2016 Annual Meeting, her friend and former colleague Judge Harry Edwards called her "an artist in crafting opinions" and "masterful in calling out injustices that she perceived in cases that she heard, but without ever straying beyond the strictures of appellate decision making." In 2013, when President Obama awarded Judge Wald the Presidential Medal of Freedom, the nation's highest civilian honor, he called her "one of the most respected appellate judges of her generation."

And the global reach of her influence was only enhanced after she left the D.C. Circuit in 1999 and became a judge on the International Criminal Tribunal for the Former Yugoslavia. Among other decisions, she wrote the landmark judgment in the case of Bosnian Serb General Radislav Krstic, which found that the massacre of 8,000 men and boys in Srebrenica constituted genocide. Remarking on her work, our colleague Harold Koh described Judge Wald as an "exuberant pioneer" as a judge in both the United States and abroad and said she "fought for human rights and civil liberties everywhere long after many others would have laid down their pens." But she was not done.



Patricia M. Wald accepting the Henry J. Friendly Medal at the Annual Meeting in 2016

Upon her return from The Hague in 2002, she served first as a member of the bipartisan Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, appointed by President George W. Bush, and then as a member of the Privacy and Civil Liberties Oversight Board, appointed by President Barack Obama. And in both roles, she was an important voice and a difference-maker on significant issues of public policy and national concerns at critical moments in our history.

While the terms "role model" and "mentoring" have in some ways become clichés, they hold real meaning when one thinks of Pat Wald. As one of her longest-standing friends put it, before there was a women's movement there was a women's movement—a women's movement led by Pat Wald. Women's rights may have come to the forefront in the 1980s, but Pat was there much earlier, first carving out her own nontraditional path and then showing the way for others. She was never too busy to share her insights and experience, never too tired to listen, too self-concerned to consider the problems of others, or too preoccupied to offer wise counsel to women facing difficult career or personal choices. For women lawyers and women judges, she was a source of leadership and a symbol of possibilities.

When Pat Wald was elected to this Council in 1978—over 40 years ago—she was not the first woman. Shirley Hufstedler was. Pat was the second. (Justice Ginsburg was elected at the same time.) But Pat Wald was the first female officer of the ALI, elected as Second Vice President in 1987 and then as First Vice President beginning in 1993. She brought great leadership skills to those positions, as well as her usual good judgment, analytical ability, and remarkable insight. As a member of the Nominating Committee for 25 years, she worked hard and successfully to increase the number of women and minorities serving on the Council— though I am happy to say that she, along with Vester Hughes, was largely responsible for my own election to the Council as well. Over the years, Pat also served this Institute in so many important ways in its substantive legal work—as an Adviser to the Federal Judicial Code Revision Project; the Principles of the Law, Election Administration; and, with utmost dedication, the Model Penal Code: Sentencing Project. I can tell you, from being at many Advisers meetings and Council meetings with her on the Sentencing Project—and she never missed a Council meeting when Sentencing was on the agenda—that her good judgment and unique national and international perspective made Pat an immensely important and influential contributor to the work of that Project. Her insistence that we include collateral consequences as an essential part of the Sentencing Project and that the concept of general deterrence *not* be endorsed by the ALI carried the day with the Council and later the membership—in large part because it was Pat Wald who was making the arguments. As our president, David Levi, recently put it, in all of her work for the ALI, Pat "had a way of disagreeing or making a point persuasively but without in any way diminishing those who disagreed with her. We need that!"

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IN MEMORIAM: PATRICIA M. WALD CONTINUED FROM PAGE 25

Pat Wald died last Saturday of pancreatic cancer. Almost to the very end, she was still generously giving wise counsel and encouragement to the many friends and colleagues who counted on her over the years and loved her. She had decided over a year-and-a-half ago to undergo a regimen of radiation and chemotherapy, but no surgery. She was, she said at the time, 89 years old and had had a great life: a wonderful husband—the late, great Bob Wald— wonderful children and grandchildren, and a very satisfying life in the law. As she put it when accepting the Friendly Medal:

> I have been privileged to have a great run in my professional as well as my personal life, due in greatest part to a supportive husband and tolerant kids. I have worked in the government, in the executive branch and with Congress, on the courts, here and abroad, in legal services and public interest law, a short turn in private practice. In all of that, my judicial service – here and at the international court at The Hague – were the best part. That was largely because the courts were peopled by strong, but certainly not always moderate or even tightly restrained, intellects. It was the struggles and often the dissents that breathed life into decisions aimed at governing a heterogeneous world out there.

Finally, as Pat said in 2015 at the Yale Law School Annual Dinner in Washington:

> After sixty years I have come to the conclusion that no matter what the pattern of a lawyer's career, she learns early on how modest is the niche in history she inhabits, and how limited the sphere of events she can influence. A big world out there is constantly interconnecting and reinventing itself, and the best she can do is grab hold of a few or even a single issue or movement she thinks is headed in the right direction, and then hang on and try to make a tangible difference in advancing its course. This holds true whether you are a storefront legal services lawyer or a Supreme Court Justice. Looking back, I do not regret the times I stuck my neck out or departed from the prevailing view. My regrets are confined to the times I didn't.

We will miss you, Pat. Rest in peace.

Visit *www.ali.org* to watch the video of the Friendly Medal presentation to Judge Wald by Harry T. Edwards of the U.S. Court of Appeals for the D.C. Circuit. Judge Edwards's remarks and Judge Wald's acceptance speech are also available in pdf.

In Memoriam

ELECTED MEMBERS

James G. Apple, Washington, DC; **John J. Bouma**, Phoenix, AZ; **Nicolas C. H. Browne-Wilkinson**, London, England; **Eleanor DeArman Kinney**, Indianapolis, IN: **Frederick W. Lambert**, San Francisco, CA; **David Williams, II**, Nashville, TN

LIFE MEMBERS

Patrick S. Atiyah, Hampshire, England; **R. Franklin Balotti**, Wilmington, DE; **Marvin E. Barkin**, Tampa, FL; **James Henry Bratton, Jr.**, Atlanta, GA; **Sol Neil Corbin**, New York, NY; **Francis R. Croak**, Milwaukee, WI; **Laurence S. Fordham**, Weston, MA; **John L. Garvey**, Silver Springs, MD; **John J. Gibbons**, Newark, NJ; **Philip A. Gruccio**, Vineland, NJ; **John H. Hardie**, Pittsburgh, PA; **Thaddeus Holt**, Point Clear, AL; **Herbert M. Klein**, Coral Gables, FL; **Seymour Kurland**, Philadelphia, PA; **Ralph I. Lancaster, Jr.**, Portland, ME; **Thomas P. Lewis**, Lexington, KY; **Richard S. T. Marsh**, Washington, DC; **Barbara Taylor Mattis**, Santa Rosa, CA; **John E. Merow**, New York, NY; **John A. Perkins**, Concord, MA; **Roswell B. Perkins**, New York, NY; **Robert Pitofsky**, Washington, DC; **William Charles Powers**, Austin, TX; **David W. Robertson**, Austin, TX; **Anthony van Westrum**, Golden, CO; **Patricia M. Wald**, Washington, DC; **Lester Ray Woodward**, Denver, CO

New Members Elected

On December 14, the Council elected the following 68 persons.

Christopher Edward Appel, Washington, DC
Amy Coney Barrett, South Bend, IN
Stephanos Bibas, Philadelphia, PA
Richard A. Bierschbach, Detroit, MI
John Bies, Washington, DC
Tonya L. Brito, Madison, WI
Michael A. Brown, Baltimore, MD
Karen C. Burgess, Austin, TX
Consuelo M. Callahan, Sacramento, CA
Sarah Keeton Campbell, Nashville, TN
Penelope L. Christophorou, New York, NY
Linda T. Coberly, Chicago, IL
Jayne Conroy, New York, NY
J. Gordon Cooney, Jr., Philadelphia, PA
Barbara J. Dawson, Phoenix, AZ
Kelly Dermody, San Francisco, CA
Nikola R. Djuric, Atlanta, GA
Jennifer Dorsey, Las Vegas, NV
Amy Poehling Eddy, Kalispell, MT
Felicia H. Ellsworth, Boston, MA
Allan H. Erbsen, Minneapolis, MN
Katie R. Eyer, Camden, NJ
Alice S. Fisher, Washington, DC
Gregory R. Fox, Seattle, WA
Anthony J. Gaughan, Des Moines, IA
Sharon Stern Gerstman, Buffalo, NY
Elizabeth Goff Gonzalez, Las Vegas, NV
Cisselon Nichols Hurd, Houston, TX
Deirdre N. Hykal, New York, NY
Bill Jones, Dallas, TX
Nekia Hackworth Jones, Atlanta, GA
Jodie Adams Kirshner, New York, NY
Erik Knutsen, Kingston, Canada
Nina A. Kohn, Syracuse, NY
David N. Kragseth, Princeton, NJ
Máximo Langer, Los Angeles, CA
Joseph N. Laplante, Concord, NH
Leandra Lederman, Bloomington, IN
John Elliott Leighton, Miami, FL
Susan C. Levy, Chicago, IL
Elbert Lin, Richmond, VA
John Linarelli, Durham, England
Demetrius McDaniel, Austin, TX
Douglas Earl McLaren, Washington, DC
Kevin Michael McLaughlin, Tampa, FL
Roy W. McLeese III, Washington, DC
Erin E. Murphy, Washington, DC
Andre E. Owens, Washington, DC
John B. Owens, San Diego, CA
Sharon Reich Paulsen, Burlington, VT
Karl-Nikolaus Peifer, Cologne, Germany
Douglas J. Pepe, New York, NY
Paige Petersen, Salt Lake City, UT
Gregory G. Pinski, Great Falls, MT
Lisa R. Pruitt, Sacramento, CA
Helen P. Pudlin, Bryn Mawr, PA
Alan Scott Rau, New York, NY
Phillip T. Rollock, New York, NY
Matthew Sag, Chicago, IL
Colleen F. Shanahan, New York, NY
Dena Sharp, San Francisco, CA
Rick Swedloff, Camden, NJ
Lord Thomas of Cwmgiedd, London, England
Stacey A. Tovino, Las Vegas, NV
Alison M. Tucher, San Francisco, CA
Vicki O. Tucker, Richmond, VA
Karol Corbin Walker, Newark, NJ
Jennifer Zachary, Kenilworth, NJ

Meetings and Events Calendar At-A-Glance

For more information, visit www.ali.org.

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

2019

May 1 - Advisers Meeting
Restatement of the Law, Corporate Governance
New York, NY

May 20-22
96th Annual Meeting
Washington, DC

September 13
Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities
Philadelphia, PA

September 19
Restatement of the Law, The Law of American Indians
New York, NY

September 20
Restatement of the Law Third, Torts: Intentional Torts to Persons
Philadelphia, PA

September 26
Restatement of the Law Fourth, Property
Philadelphia, PA

September 27
Restatement of the Law, Children in the Law
Philadelphia, PA

October 17-18
Council Meeting - October 2019
New York, NY

October 24
Model Penal Code: Sexual Assault and Related Offenses
Philadelphia, PA

November 15
Restatement of the Law Third, Conflict of Laws
Philadelphia, PA

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