THE ALI
Reporter

THE QUARTERLY NEWSLETTER OF THE AMERICAN LAW INSTITUTE

VOLUME 43 NUMBER 2 SPRING 2021



January and February 2021 Council Meetings Update

At its meetings on January 21, 22, and February 25, 2021, the Council reviewed and discussed Council Drafts of eight projects and approved drafts and portions of drafts as listed below. All approvals are subject to the discussion at the meeting and the usual editorial prerogative. All projects except Torts: Concluding Provisions are on the agenda for the Institute's 2021 virtual Annual Meeting scheduled on May 17-18 and June 7-8. See pages 6-9 for additional details on this year's Annual Meeting.

Compliance and Enforcement for Organizations

At its January meeting, the Council approved Council Draft No. 5, which contained Chapter 4 on Compliance Risk Management and Topic 4 of Chapter 6 on Corporate Civil and Administrative Enforcement Policy, as well as new, revised, and deleted definitions relating to Chapter 4 and new material in two previously approved Sections, 6.05 and 6.06. The Council also approved the project's new title: Principles of the Law, Compliance and Enforcement for Organizations.

continued on page 4

INSIDE: ANNUAL MEETING PREVIEW

SEE PAGE 6 FOR INFORMATION ABOUT THE 2021 VIRTUAL ANNUAL MEETING.

THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

The Continuing Support of Our Founding Donor

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

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

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

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What's New on *Reasonably Speaking*?

Challenges to the 2020 Election: the Solicitors' Perspective

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

Moderated by ALI President David F. Levi, the panelists are:

- **Walter E. Dellinger**, O'Melveny; Duke Law School
- **Donald B. Verrilli**, Munger, Tolles & Olson LLP
- **Seth P. Waxman**, WilmerHale

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

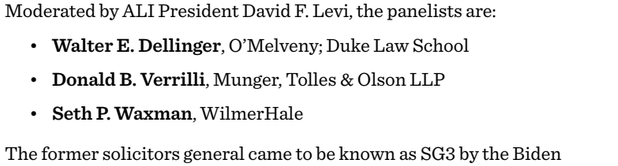
In the episode, Mr. Waxman explains how this enormous task could not have been done without the tireless efforts of countless volunteer lawyers,

"I think it's terribly important for the public to recognize the degree of sacrifice and real devotion that literally hundreds of volunteer lawyers made over the course of those nine months. I can speak to the lawyers and the dozens of teams that I was trying to coordinate. We're talking about people whose names are never going to get a platform like we did, but they spent hundreds of hours as pure volunteers, no credit with their law firms, nothing to count toward anything else other than trying to do the right thing for representative democracy. And I just wished there were a better way that we could honor the people who made those sacrifices in an era of COVID. Where many of them are young lawyers working at home with spouses at home and their children at home and a full plate of law firm clients to represent, and still spending dozens of hours every week doing this. That was another aspect of the dream come true part."

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



Clockwise from top left: David F. Levi, Donald B. Verrilli, Walter E. Dellinger, and Seth P. Waxman



THE PUBLISHER PODCAST AWARDS
SHORTLISTED

REASONABLY SPEAKING NOMINATED BY THE PUBLISHER PODCAST AWARDS

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

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

Learn more at *http://bit.ly/podcastshortlist2021.*

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THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

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

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

But the fledgling new organization needed money to bring this program to fruition, and it again turned to the Carnegie Corporation. In requesting support, the Council pointed to "the labor, time [and] expense involved in the restatement of the law" and suggested that the Restatements would do for American law what Justinian had done for Roman law. Impressed with the Committee's vision and with the legal profession's support for the new endeavor—and no doubt encouraged by Elihu Root's support for the initiative—in April 1923 the Carnegie Corporation approved an initial grant of $1,075,000 to be distributed over ten years. Along with the $3,111.46 left over from the original $25,000, this grant funded the first Restatements of the Law in Agency, Conflict of Laws, Contracts, and Torts.

Work on these Restatements progressed more quickly than ALI had expected, however, and the Institute wanted to begin Restatements in other areas of the law. In 1926, the Carnegie Corporation agreed to speed up disbursement of the original grant to allow ALI to continue its existing work while also taking up new projects in Judgments, Property, Restitution, Security, and Trusts. But progress continued to outpace ALI's budget, and ALI turned to the Carnegie Corporation several more times. The Corporation came to the Institute's aid, awarding an additional $249,290.40 in February 1930, $232,987.50 in March 1933, $638,000.00 in October 1933, $95,000 in February 1940, and $164,000 in October 1940.

These additional contributions more than doubled the Carnegie Corporation's original $1,075,000 donation and amounted to almost $2.5 million dollars of support for the first Restatements—more than $43 million in today's dollars. And the Restatements were not the only ALI projects to benefit from the Carnegie Corporation's generosity. The Carnegie Corporation also provided $40,000 to fund the Model Code of Evidence (which in turn shaped the Federal Rules of Evidence) and $10,000 to enable smaller states to produce annotations of court decisions so that lawyers could understand how the law in their local jurisdiction related to the position taken in the Restatement.

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

Overall, from 1922 to 1948, the Carnegie Corporation committed grants totaling more than $2.7 million to ALI, allowing for the establishment of the Institute and for the production of its most seminal early work. In addition to direct financial support, the Carnegie Corporation also worked to put ALI's finances on a secure footing. For example, the Corporation supplied a consultant to survey the Institute's activities and pressed its leadership to make the work self-sustaining.

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

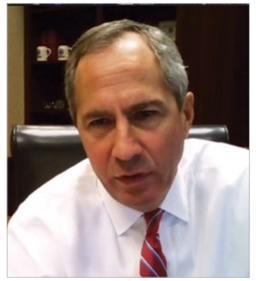
Today, we continue to build on the work made possible through the generosity of the Carnegie Corporation during ALI's early years. My Winter 2020 Director's Letter showed that even today the Supreme Court regularly cites the early Restatements funded directly through the Carnegie Corporation's original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

Looking back, it is hard to see how our efforts to clarify, modernize, and improve the law could have been launched without the Carnegie Corporation's generosity. And it is gratifying that the Carnegie Corporation recognizes the continuing value of our projects today. By allowing us to assemble teams of Associate Reporters, ALI Fellows, and research assistants; to upgrade our technology for virtual meetings during the pandemic and beyond; and to hold more frequent project meetings, the Carnegie Corporation's support and the support of all of our donors will help us to do our work more effectively, improving its quality and shortening the time it takes to complete it. And we can therefore launch a greater number of new projects from our long list of compelling topics waiting to be undertaken. The enduring support of our original donor provides a wonderful foundation as we carry our work into another century.

JANUARY AND FEBRUARY 2021 COUNCIL MEETINGS UPDATE CONTINUED FROM PAGE 1

Copyright

At its January meeting, the Council approved the following material in Council Draft No. 5: §§ 20 and 3.08-3.11 of Chapter 3 (Initial Ownership, Transfers, Voluntary Licenses, Termination of Grants, and Abandonment), with the understanding that §§ 20 and 3.11(a) and (b) will be moved to Chapter 5; §§ 5.02, 5.03, and 5.05 of Chapter 5 (Duration of Copyright); and §§ 6.02 (excluding § 6.02(b)), 6.04, and 6.06 of Chapter 6 (Copyright Rights and Limitations).



Thomas M. Hardiman of the U.S. Court of Appeals, Third Circuit during the Intentional Torts to Persons session

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

Data Economy

At its January meeting, the Council approved Council Draft No. 2, which included Principles 11-15 of Part II, Data Contracts; Principles 24-27 of Part III, Data Rights; Principles 28-37 of Part IV, Third-Party Aspects of Data Activities; and Principles 38-40 of Part V, Multi-State Issues.

Government Ethics

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



Clockwise from top left: Associate Reporters Molly S. Van Houweling of the University of California, Berkeley School of Law and Lydia Pallas Loren of Lewis & Clark Law School; Teresa Wilton Harmon of Sidley Austin LLP; and Laura Denvir Stith of the Supreme Court of Missouri during the Copyright session

Intentional Torts to Persons

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

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

Policing

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

Sexual Assault and Related Offenses

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

At its February meeting, the Council approved Section 213.0(2)(g), the definition of "registrable offense," from Council Draft No. 11. The Council also reviewed a draft of Sections 213.11-213.11J (Sentencing and Collateral Consequences of Conviction), which the Reporters had revised based on discussion at the January Council meeting. The revisions are available on the project page. Because these Sections were approved in January, they did not require any additional approval. The Reporters will further revise the Sections based on the discussion at the February meeting.

The Council also considered the mens rea for various offenses in Article 213 and approved changing the mens rea from knowledge to recklessness in subsection (1)(a) of Section 213.7 (Offensive Sexual Conduct) and subsections (1)(a), (2)(a), and (3)(a) of Section 213.8 (Sexual Offenses Involving Minors). A document showing the changes will be posted on the project page.

Torts: Concluding Provisions

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

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

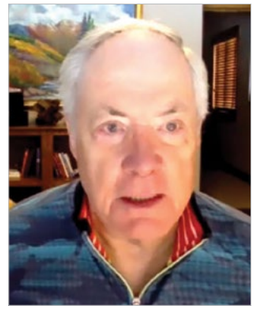
Members interested in any of these projects can access drafts in the Projects section of the ALI website. Those who join a Members Consultative Group will be alerted when future project meetings are scheduled and when drafts are available online.



Ketanji Brown Jackson of the U.S. District Court, District of Columbia during the Policing session



Clockwise from top left: Goodwin Liu of the Supreme Court of California; Marsha E. Simms of Weil, Gotshal & Manges LLP (Retired); Mariano-Florentino Cuéllar of the Supreme Court of California; and Reporter Barry Friedman of New York University School of Law during the Policing session



Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain, P.A. (Retired) during the Intentional Torts to Persons session

Permanent Editorial Board for the Uniform Commercial Code (PEB) Publishes New Commentary

In February, the Permanent Editorial Board for the Uniform Commercial Code (PEB) published a new PEB Commentary, *No. 23: Protected Series Under the Uniform Protected Series Act (2017)*.

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

- Sections 9 309 and 9-322(a)(1)
- Sections 9 203(b)(2) and 9 318
- Scope of Article 9 Choice-of-Law Rules Regarding Characterization of Transactions
- Role of Section 1-305(b) in Supporting Enforcement and Obligations

The new PEB Commentary and the draft PEB Commentaries are available on the ALI website at *www.ali.org/peb-ucc*. Those in the Members Consultative Group on UCC Issues can also access the documents on the MCG page.

The PEB acts under the authority of The American Law Institute and the Uniform Law Commission. From time to time the PEB issues supplementary commentary on the Uniform Commercial Code known as PEB Commentary. PEB Commentaries seek to further the underlying policies of the Uniform Commercial Code by affording guidance in interpreting and resolving issues raised by the Uniform Commercial Code and/or the Official Comments.

2021 VIRTUAL ANNUAL MEETING

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

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

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

TENTATIVE AGENDA*

(All times are in Eastern Time)

Monday, May 17
10:30 a.m. Opening Session
11:00 a.m. The Law of American Indians
1:30 p.m. Break
2:15 p.m. Compliance and Enforcement for Organizations
4:45 p.m. Break
5:15 p.m. Children and the Law
7:15 p.m. Adjournment

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

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

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

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

SPECIAL EVENT

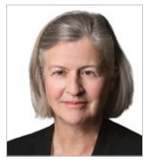
During an Annual Meeting lunch break (date to be announced), ALI President David F. Levi will have a Q&A with Chairman and CEO of Merck & Co. Kenneth C. Frazier.


David F. Levi


Kenneth C. Frazier

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







Roberto J. Gonzalez, Paul Weiss
Eric A. Posner, University of Chicago Law School
Virginia A. Seitz, Sidley Austin LLP
Laura Denvir Stith, Supreme Court of Missouri
Larry D. Thompson, Finch McCranie

REGISTER NOW AT WWW.ALI.ORG/AM2021.

PLATFORM PREVIEW

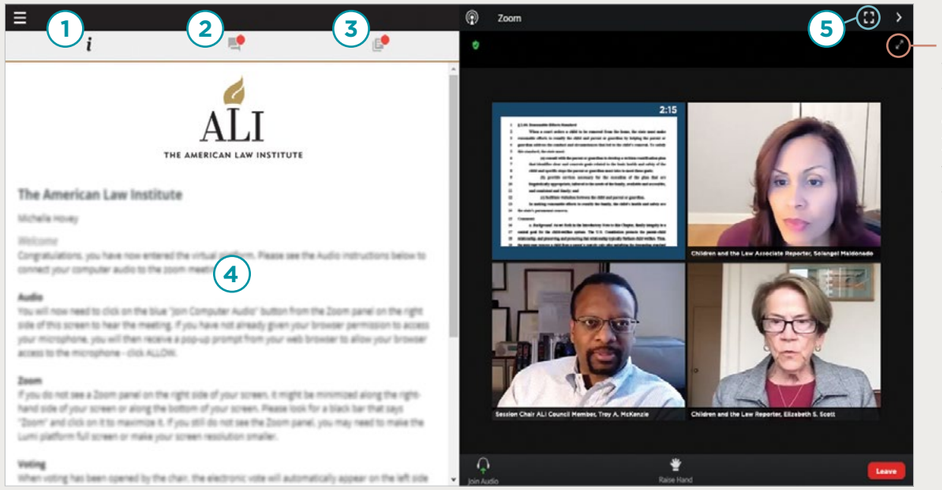
ALI is working with a virtual meeting technology company on a custom platform for the 2021 virtual Annual Meeting. The dual interface will allow for members to enter the speaking/comment queue, as well as to vote on any motions during a project session, or motions made to approve any portion of a draft.

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

PLEASE NOTE

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

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



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

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

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

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

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

WHAT COMES NEXT?

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

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

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

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

ANNUAL MEETING PROJECTS

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

THE ALI PROCESS: REPORTERS' PERSPECTIVES

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



Clockwise from top left: Lyrissa Barnett Lidsky, Geoffrey P. Miller, Christiane C. Wendehorst, Kenneth W. Simons, and Matthew L.M. Fletcher

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

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

reasonably Speaking

LISTEN NOW ON ALI'S WEBSITE OR THROUGH ANY PODCAST APP.

THE LAW OF AMERICAN INDIANS

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

CHILDREN AND THE LAW

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

COMPLIANCE AND ENFORCEMENT FOR ORGANIZATIONS

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

CONFLICT OF LAWS

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

COPYRIGHT

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

DATA ECONOMY

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

GOVERNMENT ETHICS

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

INTENTIONAL TORTS TO PERSONS

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

POLICING

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

PROPERTY

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

MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

At the time of publication, the Model Penal Code: Sexual Assault and Related Offenses draft has not yet been distributed. We anticipate a complete draft of the project will be presented to membership.

Early Career Scholars Medal Winners: Ashley S. Deeks and Francis X. Shen

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

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

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

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



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

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

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



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

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

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

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

Spring Project Meetings

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

Corporate Governance (March 25)
Preliminary Draft No. 2 includes Sections on Definitions (§§ 1.23, 1.24); The Duty of Care (§ 4.01); The Business Judgment Rule (§ 4.02); The Duty of Loyalty (§ 5.01); Transactions with a Corporation (§ 5.02); and Interested Transactions Involving a Controlling Shareholder (§ 5.10).

Torts: Defamation and Privacy (March 26)
Preliminary Draft No. 1 contains Topics on Invasions of Interest in Reputation, including Elements of a Cause of Action for Defamation (§ 1), and Defamatory Communications (§ 2).

TO JOIN THE MEMBERS CONSULTATIVE GROUP FOR THIS OR OTHER PROJECTS, VISIT THE PROJECTS PAGE ON THE ALI WEBSITE AT WWW.ALI.ORG/PROJECTS.



Lisa A. Fairfax of George Washington University Law School (Corporate Governance)



Noel L. Hillman of the U.S. District Court, District of New Jersey (Torts: Defamation and Privacy)

When Was the Last Time You Heard from ALI?

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

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

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

Did your email address change recently? If so, please be sure to update your member profile at *www.ali.org*.

Member Spotlight:
Matthew L.M. Fletcher & Wenona T. Singel

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



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



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

Matthew and Wenona are married and have two sons, Owen and Emmett.

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

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

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

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

M: We are very pleased in the areas we were able to cover and restate—federal and state powers, inherent tribal powers and how Congress regulates them, and the default interpretive rules like the canons of treaty and statutory construction and the clear statement rules. Perhaps it helped that the Supreme Court has issued a series of opinions since 2014 that roundly reaffirmed those foundational principles – *Michigan v. Bay Mills Indian Community* (2014), *Nebraska v. Parker* (2016), *United States v. Bryant* (2016), *Upper Skagit Tribe v. Lundgren* (2018), *Herrera v. Wyoming* (2019), and *McGirt v. Oklahoma* (2020).

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

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

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

M: I think the Restatement shows that Indian law really isn't as complex as newcomers think. The first step is to understand that there's a history of dispossession of lands, resources, and even people, a history rarely taught or acknowledged in American schools. The second step is to frame the question with the foundational principles in mind. We structured the Restatement with an eye toward those principles, making it a guide for following them. It is true there is a lot of clutter in Indian law cases—we hope to point judges, practitioners, and students to the guideposts that help us peer through the muck.

W: I hope that the Restatement provides a helpful starting place for orienting someone to the complexities of federal Indian law. We wrote it with the complete novice in mind, to ensure that those with little to no background would be able to read it for its concise sections as well as more detailed Reporters' Notes.



Matthew L.M. Fletcher, Wenona T. Singel, and Kaighn Smith Jr. at the 2018 Annual Meeting

Although many are not familiar with American Indian Law generally, most are aware of the recent Supreme Court decision *McGirt v. Oklahoma*. What effect do you think this decision will future questions of reservation boundaries?

M: Well, selfishly I'll point out that we had to update our own reservation boundaries comments in § 3, finalized way back in 2015, because of *McGirt* and *Nebraska v. Parker* (2016). *McGirt* really is a clarion call, though, directing the hard policy choices that have to be made in Indian law back toward Congress, states, and the tribes instead of the judiciary.

W: First, I'd like to note that Justice Gorsuch couldn't have said it better: "On the far end of the Trail of Tears was a promise. . . . Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word." These words sent shivers down my spine when I first read them. *McGirt* will always stand for the fundamental principle that only Congress can take away tribal rights.

> Read more about *McGirt v. Oklahoma*, and Prof. Fletcher's argument that it is a sea change in federal Indian law, in his latest article. Fletcher, Matthew L. M., Muskrat Textualism (January 15, 2021). Northwestern University Law Review, Vol. 115, No. 4, 2022, Available at SSRN: https://ssrn.com/abstract=3767096

Looking ahead beyond the Restatement, what are some of the ongoing issues in American Indian Law that are top of mind?

M: The really big one is the constitutional challenge to the Indian Child Welfare Act, currently pending in the Fifth Circuit. If that court strikes the entire statute, then there will be a showdown in the Supreme Court for the ages. More likely, bits and pieces of the Act will be the subject of continued scrutiny, but they are not the subject of our sections in the Restatement (§§ 38-45). Another area we really could not find clarity on involves federal statutes of general applicability that are silent as to whether they apply to Indian tribes. Examples include the National Labor Relations Act and other federal employment and environmental laws.

W: I have to agree with Matthew that my top concern right now is protection of the Indian Child Welfare Act, which the Fifth Circuit just addressed in a 325-page en banc opinion in *Brackeen v. Haaland*. An en banc majority agreed that Congress had the authority to enact ICWA under Article I of the Constitution, and a majority also agreed that ICWA's "Indian child" classification does not violate equal protection. However, the court was equally divided on other issues, including the constitutionality of ICWA's adoptive placement preference for "other Indian families" and the foster care placement preference fore a licensed "Indian foster home." Also troubling is the court's en banc majority that held that ICWA's "active efforts", expert witness, and recordkeeping requirements unconstitutionally commandeer state actors. The Supreme Court may very well deny certiorari on standing grounds, but if decides to grant a petition for review, the decision could have a profound impact on Indian child welfare law.

As parents of two sons, how are you staying busy and staying safe as a family in the time of COVID?

M: I did a series of panic shopping expeditions in March 2020, and we hunkered down. It was hard not seeing my mother for several months, but we are supremely lucky that our tribes have come through with vaccinations early this year.

W: We used this socially-distanced time to enjoy our lives together as a family, with hikes on our favorite trails and excursions to some of Michigan's most beautiful state parks and nature preserves. We are also very fortunate that Michigan's tribes have done a phenomenal job distributing COVID vaccines. Both Matthew and I were able to get the vaccine quite early through our tribes.



Wenona and Matthew with their sons, Owen and Emmett

The Institute in the Courts:

Supreme Court of New Mexico Cites Principles of the Law, Policing

Recently, in *State v. Martinez*, 478 P.3d 880 (N.M. 2020), the Supreme Court of New Mexico cited the Principles of the Law, Policing (T.D. No. 2, 2019), in abandoning the prevailing federal rule governing the admission of eyewitness-identification evidence, as articulated in *Manson v. Brathwaite*, 432 U.S. 98 (1977), in favor of adopting a new per se exclusionary rule for unnecessarily suggestive pretrial identification procedures, based on its determination that the New Mexico Constitution provided broader due-process protection in the context of eyewitness-identification evidence than the U.S. Constitution.

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

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

The New Mexico Supreme Court affirmed the district court's denial of the defendant's motion to suppress, but held, inter alia, that it would abandon the *Manson* rule on the ground that the state constitution offers broader due-process protection and would "overrule prior cases to the extent that they apply the *Manson* reliability standard to determine whether unnecessarily suggestive, police-arranged, pretrial identifications are nonetheless admissible." In its place, the court adopted a per se exclusionary rule providing that "if a witness makes an identification of a defendant as a result of a police identification procedure that is unnecessarily suggestive and conducive to irreparable misidentification, the identification and any subsequent identification by the same witness must be suppressed." In cases of disputed eyewitness identifications, the court abandoned the independent-source doctrine, which considered an in-court identification independent and untainted by an out-of-court identification and admissible at trial.

In evaluating the defendant's argument that the test established in *Manson* is outdated, the court confirmed that, since *Manson*, a substantial body of scientific literature on human memory and perception has been developed, including research showing that most of *Manson*'s "reliability" factors do not correlate with the reliability of an eyewitness's identification, as well as research regarding the influence the administration of identification procedures has on a witness. Furthermore, legal literature is also "replete with discussions of the doctrinal and scientific shortcomings of the *Manson* reliability test and the significant threat posed to the integrity of our criminal justice system by misidentifications engendered by the *Manson* rule." The court explained that "commentators have expressed the view that the United States Supreme Court's two-part test—which relegates unnecessary suggestiveness to a threshold inquiry and focuses primarily on five fixed 'reliability' factors—is untethered to any sound scientific knowledge," and "'does not comport with scientific research,' which 'has called into question the validity of many of the Supreme Court's so-called 'reliability' factors,'" citing and quoting the Reporters' Notes to Principles of the Law, Policing § 10.01 (T.D. No. 2, 2019). The court noted that the Reporters' Notes to § 10.01 called for the replacement of the *Manson* standards with the adoption of "'laws and policies that adhere to our best understanding of the reliability of eyewitness testimony and the factors that in fact heighten or diminish reliability in any given case.'"

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

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

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

Projects in Action: *The ALI Adviser*

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

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

In its Decision and Order on Cross-Motions for Summary Judgment (2021 WL 681119), the District Court of Maine was presented with the issue of when a duty to defend terminates. The court looked to Section 18 of Restatement of the Law, Liability Insurance (Restatement) for guidance.

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

Privacy Harms

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

U.S. Supreme Court Cites Restatement of Torts

In *Torres v. Madrid*, No. 19-292 (Mar. 25, 2021), the U.S. Supreme Court held that "the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued," and cited the Restatement of the Law, Torts, in reasoning that the common law considered the mere touching of an arrestee to be a seizure by force.

A Partisan Battle In An Overreach of A Case

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

Maine Lawmakers Consider Bill to Prevent Prosecution of Youth Under 12

State lawmakers in Maine are looking at a bill that would ban the prosecution of young children. If the plan passes, Maine would be one of only three states to set a minimum age of 12 years old for people who can face criminal prosecution.

ALI Looks Abroad *By Stephanie A. Middleton and Benjamin Brady*

When The American Law Institute was established in 1923, its founders identified a lack of agreement on the fundamental principles of the common law as "the most important cause of uncertainty in the law." Through Restatements in common law fields such as torts, contracts, agency, and trusts, the new Institute sought "to produce agreement on the fundamental principles of the common law, give precision to use of legal terms, and make the law more uniform throughout the country." The success of this work also created opportunities for ALI to clarify and improve other aspects of American law. As globalization raises important questions about the relationship between the United States and other legal systems, ALI has increasingly taken up projects that look beyond U.S. borders.

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

But despite the involvement of these leading internationalists, the Committee on the Establishment of a Permanent Organization for the Improvement of the Law Proposing the Establishment of an American Law Institute decided that international law was not a suitable topic for the first Restatements. The committee's 1923 report concluded that ALI's efforts would be better spent on topics whose development was within the direct control of the American bar. While stressing that areas like international law were not "permanently outside the scope of the Institute," ALI's founders believed that other subjects deserved more immediate attention.

Nonetheless, international law did appear to some extent in the Restatement First of Conflict of Laws (1934), which was applicable to international as well as U.S. cases. This project attracted the attention of the French jurist Jean-Paulin Niboyet and other scholars, who prepared a French translation. At that time, ALI's leadership hoped that translations of other ALI Restatements would give foreign lawyers and scholars a richer understanding of American law. By providing access to the Institute's publications, ALI could help to promote the rule of law around the world in addition to clarifying and simplifying the law for U.S. judges and lawyers at home.

The outbreak of World War II provided the occasion for ALI's first real foray into international law. On the eve of the attack on Pearl Harbor, the Institute "decided to attempt to produce a draft of a model International Bill of Rights for public education and for possible use in the peace settlement or post-war arrangements because we believe that the recognition of the minimum protection of the individual from arbitrary governmental action is essential if the peace established is to have a reasonable chance of permanency." Funded by the Carnegie Endowment for International Peace and the American Philosophical Society of Philadelphia, ALI established a drafting committee with representatives from around the world. While the ALI never formally approved the International Bill of Rights, it served as a model for the United Nation's 1948 Universal Declaration of Human Rights. Indeed, the Canadian jurist John P. Humphrey, who served as the first Director of United Nations Division of Human Rights and was responsible for the Universal Declaration's first draft, later explained that "[t]he best of the texts from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it."

After the war, the Institute's growing interest in international law and statutory law came together in the Restatement Second of the Foreign Relations Law of the United States, which was published in 1965 and is credited with creating a new field within American law. This field has remained a focus of ALI's ongoing attention. The Restatement Third of Foreign Relations Law was published in 1987 and became one of the most influential of ALI's projects, cited more than 1,000 times by courts, including more than 30 times by the U.S. Supreme Court. And in 2018, ALI published portions of the Restatement Fourth of Foreign Relations Law, which inaugurated the Restatement Fourth series. This year, ALI will publish the Restatement of Law, The U.S. Law of International Commercial and Investor-State Arbitration, which takes up issues such as the enforcement of international arbitral awards rendered in the United States and the power of U.S. courts over international arbitral proceedings rendered abroad. These works follow the traditional Restatement template and focus on U.S. law and U.S. courts, but they examine international law and consider the work of international tribunals and the laws of other nations.

Besides Restatements, ALI has undertaken other projects on international topics, often working in partnership with other organizations like the International Insolvency Institute, UNIDROIT, and the European Law Institute. Such projects include Principles of Cooperation Among the NAFTA Countries (2003); Principles of Transnational Civil Procedure (with UNIDROIT, 2006); Principles of the Law, Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes (2008); Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases, Report to ALI (with the International Insolvency Institute, 2012); and the Legal and Economic Principles of World Trade Law (2012), along with a series of studies of World Trade Organization case law. ALI is currently working with the European Law Institute on Principles for a Data Economy, and the recently published Principles of the Law, Data Privacy (2020) analyzes the European Union's General Data Protection Regulation alongside relevant state and federal law from the United States. Moreover, ALI's Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute (2006) has been influential in the practice of international civil procedure.

In addition, ALI has also resumed its earlier efforts to aid foreign legal scholars hoping to understand U.S. law by authorizing translations of Restatements and other publications into other languages. Several translations have been published or are underway. Chinese translations include Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes (2020); The Genesis of the GATT (2020); A Concise Restatement of Torts, Third (2016); Restatement of the Law Second, Contracts; Restatement of the Law Fourth, The Foreign Relations Law of the United States; and Restatement of the Law of Liability Insurance. Japanese translations include Restatement of the Law Third, Trusts (2018); Restatement of the Law Fourth, The Foreign Relations Law of the United States; and the Restatement of the Law, Charitable Nonprofit Organizations. Likewise, the Restatement of the Law Third, Torts, Liability for Physical and Emotional Harm is being translated into Spanish, the Principles of Transnational Civil Procedure are being translated into Georgian, the Principles of the Law of Aggregate Litigation was translated into Portuguese (2018), and the Restatement of the Law Third, The Foreign Relations Law of the United States was translated into Russian (2016).

This impressive array of internationally oriented projects is fundamental to ALI's mission to clarify, modernize, and otherwise improve the law. In 2003, former Irish President and United Nations High Commissioner for Human Rights Mary Robinson addressed the Annual Dinner. "Today, we are confronted with a fundamental question," she said. "Will the normative global system that restored peace and security after the Second World War be seen by future generations as an idealistic dream that was unable to respond to the realities of a changing international landscape? Or will it instead be viewed as the essential foundation of a more just and secure world based on respect for the international rule of law?" Almost two decades later, this fundamental question has become even more acute. By taking on an array of challenging projects concerning international law and the rule of law around the world, in areas ranging from human rights to international economic law, ALI is working to ensure that this essential foundation remains secure.

ALI'S WORK PROVIDES GUIDANCE IN DRAFTING OF CROSS-BORDER INSOLVENCY PROTOCOLS

The ALI and International Insolvency Institute (ALI-III) *Global Guidelines for Court-to-Court Communications in International Insolvency Cases* (2012) play a prominent role in a cross-border airline restructuring. In the ongoing restructuring of the LATAM Airlines group, a cross-border insolvency protocol has been approved by the Grand Court of the Cayman Islands in July 2020.

The protocol should enable direct court-to-court communication between the courts in the U.S. (New York), Chile, Columbia, and the Cayman Islands. The idea for approval of the protocol on court-to-court cooperation and communication was raised by the Chilean court.

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

THE PRESIDENT'S DELEGATED FOREIGN AFFAIRS POWERS

UVA School of Law and Duke Law School hosted a roundtable discussion on "The President's Delegated Foreign Affairs Powers." The event was organized by Kristen Eichensehr, current director of UVA Law's National Security Law Center, and **Curtis A. Bradley** of Duke Law School and **Ashley Deeks**, the former director of the center who is on leave working for the White House.

Other ALI members who participated include:

Jean Galbraith, University of Pennsylvania Carey Law School
Jack Landman Goldsmith, Harvard Law School
Oona A. Hathaway, Yale Law School
Timothy Meyer, Vanderbilt Law School
Saikrishna B. Prakash, University of Virginia School of Law
Paul B. Stephan, University of Virginia School of Law
Edward T. Swaine, George Washington University Law School
Ingrid Brunk Wuerth, Vanderbilt Law School

Edward H. Levi: A Model in the Rule of Law

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

Attorney General Garland is not alone in pointing to President Gerald R. Ford's Attorney General as a model for the nation's top law enforcement official. Senate Judiciary Committee Chairman Dick Durbin observed that Levi had "assumed office at a time of great turmoil" and pledged to keep the administration of justice above partisan politics. Washington Post columnist E.J. Dionne likewise noted that Levi had earned the admiration of both conservatives such as Justice Antonin Scalia and liberals such as Senator Edward Kennedy.

In his address to the DOJ employees, Attorney General Garland urged them to embrace these qualities that made Levi beloved on both sides of the aisle. "At his swearing in," Garland observed, "Attorney General Levi said: 'If we are to have a government of laws and not of men, then it takes dedicated men and women to accomplish this through their zeal and determination, and also through fairness and impartiality. And I know that this Department always has had such dedicated men and women.'"

This same commitment and service to the rule of law also defines The American Law Institute. It is no wonder, then, that Edward Levi chose to give so much of his time to the ALI.

Levi became a member of the Institute in 1951, and was elected to our Council in 1965, on which he served for more than 20 years. During his tenure on ALI's Council, the Institute completed nearly 20 projects. He was dutiful in attendance and looked forward eagerly to the meetings of the Council as well as the Annual Meeting. Besides his work at ALI, Levi also had a storied career in higher education. After serving as a special assistant to the Attorney General and in the antitrust division of the Department of Justice during World War II. He returned to the University of Chicago Law School in 1945, where he quickly became recognized as one of the top law scholars in the nation. He was one of the leading scholars of jurisprudence—his short book, *An Introduction to Legal Reasoning*, is a classic—and he was one of the founders of the law and economics movement that has been so influential particularly in fields like antitrust. He eventually became the school's dean, serving from 1950 until 1962, when he took the position of university provost. In 1968, he became President of the University during the tumultuous years of the Vietnam War.

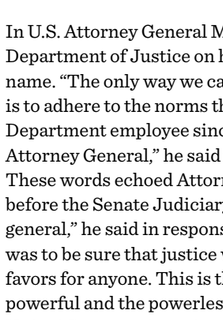
In prepared remarks read at the October 2000 Council meeting, Council member Gerhard Casper (former president of Stanford University from 1992 to 2000 and former dean of the law school and Provost of the University of Chicago in the period from 1979 to 1992) reflected on Levi's extraordinary service: "While as experienced and aware as anybody, Edward was, as Hannah Arendt once commented in a letter to a friend, 'rather old-fashioned' in his commitment to 'the search for truth,' in the case of the [University of Chicago], and, we might add, the search for justice in the case of law and legal institutions. He viewed this as a demanding and complex undertaking. . . . :

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

To enjoy his sheer intellectual brilliance was one of the privileges that came with Council membership."

After his death in 2000, President Ford, who appointed him the 71st Attorney General in 1975, reflected on his service. "With each passing year," Ford said, "it becomes more and more self-evident--Ed Levi is the Attorney General against whom all others are measured."

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



RESTORING JUSTICE: THE SPEECHES OF EDWARD H. LEVI

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

Restoring Justice: The Speeches of Edward H. Levi, edited by Jack Fuller, with a Foreword by Larry D. Kramer (University of Chicago Press, 2013), is available at *bit.ly/restoring-justice*.

"When I took the oath of office almost two years ago in this Hall before some of you, among other things I said was the following: 'The law is a servant of our society. Its enforcement administration can give more effective meaning to our common goals.'

Among these common goals are: domestic tranquility, the blessings of liberty, the establishment of justice.

These goals do not bring themselves into being. If we are to have a government of laws and not of men, then it takes particularly dedicated men and women to accomplish this through their zeal and determination, and also their concern for fairness and impartiality."

Excerpted from Farewell Remarks by Edward H. Levi before the employees of the U.S. Department of Justice (January 17, 1977).

SPEECHES OF ATTORNEY GENERAL LEVI ARE AVAILABLE ON THE DOJ WEBSITE AT BIT.LY/REMARKSLEVI.

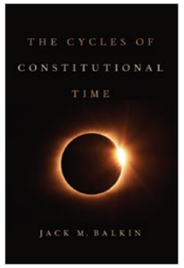


Photo courtesy of University of Chicago Library

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

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

Notes About Members and Colleagues



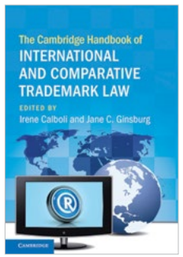
Jack M. Balkin of Yale Law School has written *The Cycles of Constitutional Time*, an examination of the U.S. constitutional system, why it has broken down, and where its future may be headed.

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

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

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

Elizabeth Chamblee Burch of the University of Georgia School of Law, **John H. Beisner** of Skadden, **Abbe R. Gluck** of Yale Law School (temporarily on leave), and **Shanin Specter** of Kline and Specter participated as panelists in the ALI CLE program, "Multidistrict Litigation Today: Is It Time for Reform?"



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

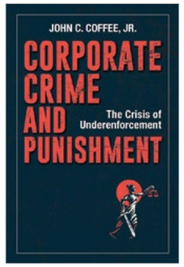
In honor of **Gerhard Casper**'s lifelong commitment to academic excellence and scholarly research, The American Academy of Berlin announced the establishment of the Gerhard Casper Fellowship.

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

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

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

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



John C. Coffee Jr. of Columbia Law School has written *Corporate Crime and Punishment: The Crisis of Underenforcement*. The book delivers an intensive analysis of the securities law enforcement landscape and a look at what choices could lie ahead. **Jed S. Rakoff** of the U.S. District Court for the Southern District of New York wrote a review of Professor Coffee's book for *The New York Review*, entitled "Getting Away With Murder."

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

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

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

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



Albert Diaz and Luke Bierman
Credit: Matt LaPenna, Drum Creative

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

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

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

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

The American Lawyer has named the legal department of 3M Co. Best Legal Department of the Year. The legal team, led by **Ivan K. Fong**, faced a huge demand for its N95 respirator masks in the wake of the coronavirus pandemic.

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

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The American Museum of Tort Law has launched a virtual version of the museum, including a full tour and interactive elements. The new platform features interviews with scholars about particularly important tort cases, available on the museum's YouTube channel.

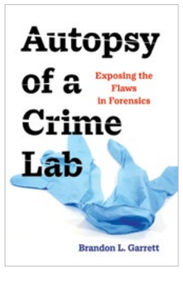
ALI members who participated include:
Kenneth S. Abraham, UVA School of Law
Anita Bernstein, Brooklyn Law School
W. Jonathan Cardi, Wake Forest Law
Mary J. Davis, UK College of Law
Nora Freeman Engstrom, Stanford Law School
Donald G. Gifford, Maryland Carey Law
John C. P. Goldberg, Harvard Law School
Benjamin C. Zipursky, Fordham Law
Michael D. Green, Wake Forest Law
Leslie Carolyn Kendrick, UVA School of Law
Frank M. McClellan, Temple Law
Robert L. Rabin, Stanford Law School
Christopher John Robinette, Widener Law Commonwealth
Michael L. Rustad, Suffolk Law School
Anthony J. Sebok, Cardozo School of Law
Catherine M. Sharkey, NYU School of Law
Kenneth W. Simons, UC Irvine School of Law

NOTES CONTINUED FROM PAGE 21

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

Kem Thompson Frost of Houston, Texas has received the 2021 Outstanding Law Review Article Award from the Texas Bar Foundation for her article "Unclaimed Treasure: Greater Rule-of-Law Benefits for the Taking in Texas," published in *Houston Law Review.* The Texas Bar Foundation will publicly recognize her at the organization's Annual Dinner on June 18, 2021, and will present The University of Houston Law Center with a $1,000 scholarship donation in her honor.

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



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

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

Abbe R. Gluck of Yale Law School will take a temporary public service leave to join the Office of White House Counsel as Special Counsel on COVID-19 and other health care issues. Gluck was elected to ALI Council in 2018. She will also take a temporary leave of absence from the Council during her service as Special Counsel.

Brooklyn Law School hosted a conversation with **Andrew Gold** of Brooklyn Law School on his latest book, *The Right of Redress*. **Edward J. Janger** of Brooklyn Law School, **John C.P. Goldberg**, and **Henry E. Smith**, both of Harvard Law School, participated as panelists.

A new commission in New York that will oversee the creation of a statue honoring the late Justice Ruth Bader Ginsburg has been formed. The commission includes members of Justice Ginsburg's family, close friends, esteemed colleagues, and other leaders. The commission will provide recommendations to the Governor regarding the artist, design, location and installation of the memorial statue.

The commission includes the following ALI members:
Jane C. Ginsburg, Columbia Law School
Fatima Goss Graves, National Women's Law Center
Trevor W. Morrison, NYU School of Law
William D. Savitt, Wachtell, Lipton, Rosen & Katz
Nina Totenberg, Legal Affairs Correspondent at NPR
Janet DiFiore, Chief Judge of the Court of Appeals and the State of New York
Sonia Sotomayor, Associate Justice of the Supreme Court of the United States

Suzanne B. Goldberg of Columbia Law School has been appointed Deputy Assistant Secretary for Strategic Operations and Outreach, Office for Civil Rights in the U.S. Department of Education. Accordingly, Goldberg has stepped down as Associate Reporter for Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities.

UVA School of Law has appointed Dean **Risa L. Goluboff** to a second term.

Michele Brachter Goodwin of UC Irvine School of Law authored an op-ed for *Newsweek* entitled, "Dear President-Elect Biden: It's Time to Actually Abolish Slavery in America."

Linda S. Greene has been selected as the inaugural dean of the MSU College of Law, effective June 1, pending approval by the Michigan State University Board of Trustees.

President Biden has nominated **Anton G. Hajjar**, former general counsel of the American Postal Workers Union, to serve on the governing board of the United States Postal Service.

Nathan L. Hecht of the Texas Supreme Court, **Bridget M. McCormack** of the Michigan Supreme Court, **Tani-Cantil Sakauye** of the California Supreme Court, and **Kristina Pickering** of the Nevada Supreme Court participated in a virtual panel discussion hosted by the Legal Service Corporation on how the pandemic has affected access to justice.

The Nonprofit & Philanthropy Law Section held a virtual session at the American Association of Law Schools Annual Meeting. Reporter for Restatement of the Law, Charitable Nonprofit Organizations **Jill R. Horwitz** of UCLA Law presented "Discussion of ALI Restatement on Charitable Nonprofit Organizations." Additional ALI members who participated include **Ellen Patricia Aprill** of Loyola Law School Los Angeles and **Lloyd H. Mayer** of Notre Dame Law School.

Sherrilyn Ifill of the NAACP Legal Defense and Educational Fund has been named "Attorney of the Year" as part of The American Lawyer 2020 Industry Awards. **Pamela S. Karlan** of Stanford Law School was among the four finalists.

Pamela S. Karlan of Stanford Law School has joined the U.S. Justice Department Civil Rights Division as principal deputy assistant attorney general. Karlan was elected to ALI Council in 2019. She will take a temporary leave of absence from the ALI Council during her time with the DOJ.

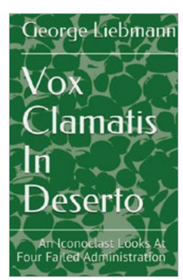
Curtis E.A. Karnow of the Superior Court of California, County of San Francisco, has authored "Scholars as Amici" in *The Green Bag*'s Autumn 2020 issue. In the piece, Karnow offers a unique definition of a scholarly paper and compares their purpose and use to briefs of amici curiae.

Randall L. Kennedy of Harvard Law School was a guest on the podcast *Common Law*, hosted by **Risa L. Goluboff** and **Leslie C. Kendrick** of the UVA School of Law. In the episode "What Happened to the 'Promised Land'?" Kennedy discusses past and present visions for a "promised land" on race, and what law can do to shape it.

Leondra R. Kruger of the Supreme Court of California was profiled the Law360 article "California Justice Leondra Kruger Sees Spotlight Amid Biden Transition" about the possibility of being selected as a U.S. Solicitor General candidate or a future nomination as a U.S. Supreme Court associate justice under the Biden administration.

In "Supreme Court Says a Claim for Nominal Damages Avoids Mootness—But When Does That Matter?" **Douglas Laycock** of UVA School of Law delves into the U.S. Supreme Court's recent holding in *Uzuegbunam v. Preczewski* that a claim for nominal damages, standing alone, satisfies the redressability requirement for standing.

Steven P. Lehotsky left U.S. Chamber Litigation Center to become a founding partner of Lehotsky Keller LLP, a national litigation boutique with offices in Washington, D.C. and Austin, TX.



George W. Liebmann of Liebmann & Shively, P.A. has published *Vox Clamatis In Deserto: An Iconoclast Looks At Four Failed Administrations*. This collection of 110 articles and book reviews offers a look at the last four presidential administrations.

The National Academies of Sciences, Engineering, and Medicine hosted "The Science of Implicit Bias: Implications for Law and Policy," a workshop that explored the scientific basis of implicit bias, its prevalence and impact, and implications for policy and law. **Goodwin Liu** of the California Supreme Court co-chaired the ad hoc planning committee. **Ivan K. Fong** of 3M Co. and **Tanya K. Hernandez** of Fordham University School of Law participated in the workshop.



"The Science of Implicit Bias: Implications for Law and Policy" workshop

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

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

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

Theodore A. McKee of the U.S. Court of Appeals for the Third Circuit spoke with National Constitution Center President and CEO **Jeffrey Rosen** to discuss slavery in America from the Constitution to Reconstruction as part of the Constitution Center's "Scholar Exchange" series.

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

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

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NOTES CONTINUED FROM PAGE 23

The Birnbaum Women's Leadership Network hosted its 2021 symposium on Politics, Power, and Women's Leadership. The symposium explored how to transform 2020's historic levels of civic engagement into long-term gains through sustained work in the political and legal spheres and featured **Melissa Murray** of NYU School of Law in its keynote conversation.

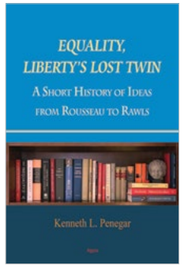
In light of recent events which have raised concerns surrounding domestic terrorism, *The Boston Globe* published a piece reflecting upon findings made by **Janet Napolitano** of UC Berkeley during her time as U.S. Secretary of Homeland Security from 2009 to 2013.

Jacqueline Nguyen of the U.S. Court of Appeals for the Ninth Circuit was "virtual visitor" to Duke Law School in February 2021 as part of the Bolch Judicial Institute's Distinguished Judge in Residence program.

Angela Onwuachi-Willig of Boston University School of Law has been named the inaugural Ryan Roth Gallo and Ernest J. Gallo Professor. The professorship is the first of its kind to support a faculty member whose research focuses on critical race theory.

The North St. Paul-Maplewood-Oakdale School Board voted to name a new Maplewood elementary school in honor of former Associate Justice of the Minnesota Supreme Court and retired professional football player **Alan C. Page**.

The Board of Governors of the Investment Company Institute (ICI) has unanimously elected **Eric J. Pan** as ICI's next president and chief executive officer. ICI is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide.

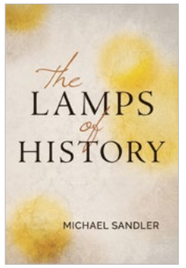


Kenneth L. Penegar of Nashville, Tenn. has written *Equality, Liberty's Lost Twin: A Short History of Ideas from Rousseau to Rawls.* The book explores the understandings of the ideal of equality and the steps and policy initiatives taken to advance it over time.

Elizabeth Prelogar has been appointed Acting Solicitor General for the U.S. Department of Justice.

The College of the Holy Cross has named **Vincent D. Rougeau** its 33rd president, effective July 1. Rougeau is the first lay and first Black president in the history of the College.

Patricia E. Salkin has been promoted to Senior Vice President for Academic Affairs of the Touro College and University System where she also serves as Provost of the Touro College Graduate and Professional Divisions. Salkin is the former dean of the Jacob D. Fuchsberg Touro Law Center where she remains a Professor of Law.

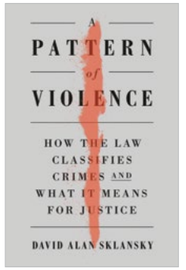


Michael D. Sandler of Sandler Arbitration & Mediation LLC has written *The Lamps of History*, a collection of poems exploring our nuanced and often-complicated relationship with the past.

Leigh I. Saufley of the University of Maine School of Law was inducted into the Maine Women's Hall of Fame. Established in 1990 by the Maine Federation of Business and Professional Women, the Maine Women's Hall of Fame is dedicated to women whose achievements have had a significant statewide impact, have significantly improved the lives of women, and whose contributions provided enduring value for women.

Kannon K. Shanmugam of Paul, Weiss, Rifkind, Wharton & Garrison was profiled by Law.com about his work with the firm and the news that they secured five certiorari grants from the Supreme Court of the United States over the course of a year when the Court has taken up fewer than 50 cases.

Robert H. Sitkoff of Harvard Law School has been appointed chair of the Uniform Law Commission's drafting committee for an Act on Conflict of Laws in Trusts and Estates.



David Alan Sklansky of Stanford Law School has written *A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice.* This new book reveals how inconsistent ideas about violence, enshrined in law, are at the root of the problems that plague our entire criminal justice system—from mass incarceration to police brutality.



Abbe Smith of the Georgetown University Law Center has written *Guilty People*. In this new work, Smith explores the nuanced definition of guilt and how guiltiness relates to criminality.

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New Members Elected

On December 17, the Council elected the following 41 persons.

Mira Baylson, Philadelphia, PA
Lara Bazelon, San Francisco, CA
Cheri L. Beasley, Raleigh, NC
Daniel A. Bress, San Francisco, CA
Charles R. Breyer, San Francisco, CA
Jennifer Gerarda Brown, Hamden, CT
Eric C. Chaffee, Toledo, OH
Elizabeth Chambliss, Columbia, SC
Douglas K. Chia, Princeton, NJ
Theodore D. Chuang, Greenbelt, MD
Michael G. Colantuono, Grass Valley, CA
Sarah Rudolph Cole, Columbus, OH
Terrence J. Dee, Chicago, IL
Meera E. Deo, San Juan Capistrano, CA
Christopher S. Elmendorf, San Francisco, CA
Todd Espinosa, Redwood City, CA
Manuel Farach, West Palm Beach, FL
Paul A. Gowder, Jr., Chicago, IL
Hillary M. Hoffmann, South Royalton, VT
Melinda K. Holmes, Washington, DC
Lea Johnston, Gainesville, FL
Andrew W. Jurs, Des Moines, IA
Gregory G. Katsas, Washington, DC
Brian Charles Lea, Atlanta, GA
Cathy Lesser Mansfield, Cleveland, OH
J. Nicholas Murdock, Casper, WY
Peter F. Neronha, Providence, RI
Jacqueline Nguyen, Pasadena, CA
John V.H. Pierce, New York, NY
John A. E. Pottow, Ann Arbor, MI
Thomas L. Riesenberg, Arlington, VA
Jonathan Rosenbloom, South Royalton, VT
Darren Rosenblum, New York, NY
Timothy R. Schnabel, Chicago, IL
Linda S. Stein, Washington, DC
Catherine E. Stetson, Washington, DC
Karen L. Stevenson, Los Angeles, CA
Ben Trachtenberg, Columbia, MO
Joanna Visser Adjoian, Philadelphia, PA
Bret Wells, Houston, TX
W. Bradley Wendel, Ithaca, NY

In Memoriam: Shirley S. Abrahamson



Shirley Abrahamson, longest-serving member of Wisconsin Supreme Court, died on December 19 at the age of 87.

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

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

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

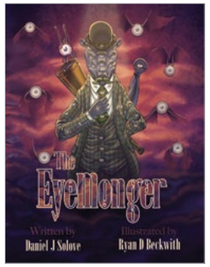
In addition to her service to ALI and the Wisconsin Supreme Court, she sat on the board of directors of the Dwight D. Opperman Institute of Judicial Administration at New York University School of Law; was president of the Conference of Chief Justices; chaired the board of directors of the National Center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

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

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

The American Law Institute extends our sincerest condolences to her son and daughter-in-law, Daniel and Tsan Abrahamson.

NOTES CONTINUED FROM PAGE 25



Daniel J. Solove of George Washington University Law School has written *The Eyemonger*, an illustrated children's book that discusses the importance of privacy in a way that children can understand.

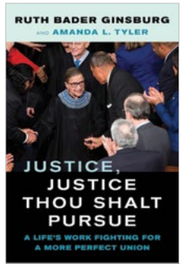
A. Benjamin Spencer of William & Mary Law School was featured in the Member Spotlight section of the November/December 2020 issue of the *Washington Lawyer*. In the piece, "A. Benjamin Spencer: Continuing A Legacy of Service," Dean Spencer reflects on his family legacy, his military and teaching career, and the significance of his latest appointment of dean of the oldest law school in the country.

Mondelēz International has named **Laura Stein** as its new EVP, General Counsel, Corporate & Legal Affairs.

Adam N. Steinman of The University of Alabama School of Law has published "Rethinking Standards of Appellate Review" (*Indiana Law Journal*, Vol. 96, No. 1, 2020). The article examines the Supreme Court of the United States' selection of the standard of appellate review for particular issues and argues the core functions of appellate courts are better served by a single template for review.

The *New York Review* published "The Battle Over Scalia's Legacy" by Noah Feldman, an insightful and reflective look at *The Essential Scalia: On the Constitution, the Courts, and the Rule of Law*, edited by **Jeffrey S. Sutton** of the U.S. Court of Appeals for the Sixth Circuit and Edward Whelan, with a foreword from U.S. Supreme Court Associate Justice **Elena Kagan**.

Robert H. Thomas of Damon Key Leong Kupchak Hastert was a guest on Episode 60 of *The Eminent Domain Podcast*. He discussed what attendees could expect at the 2021 ALI CLE Eminent Domain and Land Value Litigation Conference, including the conference's switch to a virtual format.

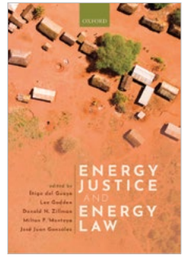


Written in collaboration with the late Justice Ruth Bader Ginsburg, **Amanda L. Tyler** of Berkeley Law has published *Justice, Justice Thou Shalt Pursue: A Life's Work Fighting for a More Perfect Union*. Inspired by Justice Ginsburg's delivery of the Inaugural Herma Hill Kay Memorial Lecture, this collection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

Joyce White Vance of the University of Alabama School of Law is a co-host of a new podcast from Politicon, *#SistersInLaw*. In each episode, Professor Vance, Jill Wine-Banks, Barb McQuade, and Kimberly Atkins "pull back the curtain on how our government actually works, take on the corrupt, share their wisdom and give us their rulings on the latest in politics, law, and culture."

The University of Chicago Law Review published a special edition (Volume 87, December 2020) dedicated to the life and work of **Diane P. Wood** of the U.S. Court of Appeals for the Seventh Circuit. The online version also published a companion series of short essays about Judge Wood written by her former clerks, including a contribution from **Zachary D. Clopton** of Northwestern University Pritzker School of Law.

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



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

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

The Association of American Law Schools announced the winners of its 2021 section awards for excellence in legal education. ALI members who received awards included:

Section on Election Law John Hart Ely Prize in the Law of Democracy
Richard Briffault – Columbia Law School

Section on Family & Juvenile Law Achievement Award
Susan Frelich Appleton – Washington University School of Law

Section on Federal Courts Best Article on the Law of Federal Jurisdiction
Merritt Ellen McAlister – University of Florida Fredric G. Levin College of Law

Section on Federal Courts Daniel J. Meltzer Award
Richard H. Fallon Jr. – Harvard Law School
Martin H. Redish – Northwestern University Pritzker School of Law

Section on Jurisprudence Article Award
Deborah S. Hellman – University of Virginia School of Law

Section on Legal Writing, Reasoning, and Research Award
Cassandra Hill – Northern Illinois University College of Law

Section on Pro Bono & Public Service Opportunities Deborah L. Rhode Award
Erwin Chemerinsky – University of California, Berkeley School of Law

Section on Remedies Lifetime Scholarly Achievement Award
Doug Rendleman – Washington and Lee University School of Law

Section on Torts and Compensation Systems Prosser Award
Jack B. Weinstein – U.S. District Court, Eastern District of New York

In Memoriam

ELECTED MEMBERS

Rennard Strickland, Eugene, OR; **Dick Thornburgh**, Pittsburgh, PA; **Harry A. Woods, Jr.**, Oklahoma City, OK

LIFE MEMBERS

Herschel Lee Abbott, Jr., New Orleans, LA; **Shirley S. Abrahamson,** Madison, WI; **Phillip I. Blumberg**, Hartford, CT; **George L. Cohen**, Hilton Head, SC; **Donald J. Evans**, Cohasset, MA; **Carl Felsenfeld**, New York, NY; **Richard A. Freling**, Dallas, TX; **B. J. George, Jr.**, Castle Pines, CO; **Mark I. Harrison**, Phoenix, AZ; **William T. Harrison, Jr.**, Sarasota, FL; **Alan D. Hornstein**, New York, NY; **Keith A. Jones**, Palm Beach, FL; **Vernon E. Jordan, Jr.**, Washington, DC; **Charles L. Levin**, Detroit, MI; **Carl. D. Liggio**, Chevy Chase, MD; **Peter Linzer,** Houston, TX; **Frank Hampton McFadden**, Montgomery, AL; **John K. McNulty**, Berkeley, CA; **Tim O'Brien**, Ponte Vedra Beach, FL; **George W. Pugh**, Baton Rouge, LA; **Mark P. Schlefer**, Putney, VT; **Dom H. Wyant**, Atlanta, GA

Meetings and Events Calendar At-A-Glance

Below is a list of upcoming meetings and events. For more information, visit *www.ali.org.*

2021

May 17-18
2021 Annual Meeting
Virtual

June 7-8
2021 Annual Meeting
Virtual

September 9-10
Restatement of the Law Third, Torts: Concluding Provisions
Hybrid*

September 24
Principles of the Law, Government Ethics
Hybrid*

October 7
Restatement of the Law Fourth, Property
Hybrid*

October 8
Restatement of the Law, Copyright
Hybrid*

October 14 (Advisers)
October 15 (MCG)
Principles of the Law, Policing
Hybrid*

October 21-22
Council Meeting - October 2021
New York, NY

October 29
Restatement of the Law Third, Torts: Remedies
Hybrid*

November 12
Restatement of the Law, Children and the Law
Hybrid*

November 19
Restatement of the Law Third, Conflict of Laws
Hybrid*

** We are unsure about the format for fall meetings at this time; they may be hybrid or virtual.*

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REGISTER NOW

2021 VIRTUAL
ANNUAL MEETING
MAY 17-18 | JUNE 7-8

Register now at www.ali.org/am2021