THE ALI
Reporter
THE QUARTERLY NEWSLETTER OF THE AMERICAN LAW INSTITUTE
VOLUME 40 NUMBER 3 SUMMER 2018

Economic Harm Torts and Liability Insurance Approved

ALI members voted at this year's Annual Meeting to approve two Restatement projects: Restatement Third, Torts: Liability for Economic Harm and Restatement of the Law, Liability Insurance. The project Reporters are Ward Farnsworth, Dean of the University of Texas at Austin School of Law (Torts), and Tom Baker of the University of Pennsylvania Law School and Associate Reporter Kyle D. Logue of the University of Michigan Law School (Liability Insurance).



Reporter Ward Farnsworth during the Economic Harm Torts project session

Liability for Economic Harm is the fourth installment of the Restatement Third of Torts to be completed. It follows on the footsteps of Products Liability, Apportionment of Liability, and Liability for Physical and Emotional Harm. Two additional projects are currently being drafted: Intentional Torts to Persons and Property Torts, which is also being undertaken as part of the Restatement Fourth of Property.

The Economic Harm Torts Restatement covers the topics of unintentional infliction of economic loss, including professional negligence, negligent misrepresentation, negligent performance of services, and public nuisance. It also addresses fraud, breach of fiduciary duty, interference with contract, unjustifiable litigation, and civil conspiracy.

THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

Restatements as Legislative Enactments

We normally think of our Restatements as being addressed to the courts and of our model codes as being addressed to legislatures. Our Style Manual makes this distinction clear. But in the 1950s, in order to jump-start their common law, two of the United States' overseas territories, the Northern Mariana Islands and the U.S. Virgin Islands, enacted legislation adopting the Restatements—all of them—as the common law of their respective jurisdictions.

After World War II, the Northern Mariana Islands, along with other Pacific territories under Japanese control, were organized under a U.N. mandate into a territorial trust controlled by the United States. The 1952 Trust Territory Code repealed "[a]ll laws, regulations, orders and ordinances" made by the previous colonial possessors (Spain, Germany, and Japan), replaced them with American federal law and "[t]he Common law of England and all Statutes of Parliament in aid thereof in force and effect

continued on page 2



ALI Director Richard L. Revesz, William C. Hubbard of Nelson Mullins, Kenneth S. Abraham of UVA School of Law, Associate Reporter Kyle D. Logue, Reporter Tom Baker, ALI Deputy Director Stephanie A. Middleton, Gary L. Sasso of Carlton Fields, and ALI President David F. Levi

continued on page 8

ALI Elects Two Council Members

During Monday's Reports and Business session at the Annual Meeting, Nominating Committee Chair Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit presented to the membership two nominees for the ALI Council. Both were approved by the membership to a five-year term. The new Council members are Donald B. Ayer of Jones Day and Abbe R. Gluck of Yale Law School. Short biographies of Council members can be found on the ALI website.



ALI's newest Council members Abbe R. Gluck and Donald B. Ayer

THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

on July 3, 1776, and as interpreted by American decisions..." In 1959, the territory's High Commissioner amended this language to provide that "[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision..." A 1975 referendum approved a Covenant with the United States to reorganize the territory as a Commonwealth. After the legislature provided a mechanism for the revision of Northern Marianas law, the Law Revision Commission promulgated Section 3401 of the Commonwealth Code:

> "In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary; provided, that no person shall be subject to criminal prosecution except under the written law of the Commonwealth."

As a result of Section 3401, the Northern Mariana Islands Supreme Court described itself as "not vested with a similar degree of freedom in formulating our own common law as that exercised by courts in other jurisdictions, because of the statutory dictate that we apply the Restatement." Moreover, the Restatements are to be followed even if they conflict with the common law of the majority of U.S. jurisdictions. In one case, the parties agreed that Restatement rule and the majority rule conflicted but disagreed about which of these rules should govern their dispute. The Northern Mariana Islands Supreme Court held that "the Restatements are the operative rules of decision in the Commonwealth, even when the relevant provision does not accord with United States common law."

Section 3401 was challenged under the territorial constitution on the grounds that the provision violates separation of powers principles, legislates without representation thus abridging the right to vote, and is void for vagueness. The Northern Mariana Islands Supreme Court rejected the challenge on jurisdictional grounds but suggested that it would have also rejected it on the merits as well.

In the Virgin Islands, the adoption of the Restatements as positive law through a legislative act had a similar genesis. After the United States bought the islands from Denmark in 1916, the new territorial code mandated that "[t]he common law of England as adopted and understood in the United States shall be in force...except as modified by this ordinance." Applying this mandate, in 1955 the District Court of the Virgin Islands resolved a conflict of laws case in accordance

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

MANAGING EDITOR
Pauline Toboulidis
(215) 243-1694
ptoboulidis@ali.org

ASSOCIATE EDITOR
Todd David Feldman
(215) 243-1682
tfeldman@ali.org

The ALI Reporter (ISSN 0164-5757) is published quarterly by The American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104-3099. Nonprofit U.S. postage paid at Langhorne, PA.

POSTMASTER: Send address changes and any other communications to 4025 Chestnut Street, Philadelphia, PA 19104-3099.

with the "generally accepted common law rule...[as] laid down in the Restatement of Conflict of Laws." The Third Circuit, which has appellate jurisdiction over this district court, affirmed in an opinion by Judge Albert Maris, an active member of The American Law Institute. It held that "the district court in applying those rules is justified in following the well considered expressions of them which the American Law Institute has incorporated in its Restatements of the Law."

Two years later, the Virgin Islands Legislature codified and extended this decision, adopting Section 4 of the territorial code:

> "The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary."

The interpretive issues proved to be less straightforward in the Virgin Islands than in the Northern Mariana Islands. In 1977, the Third Circuit considered the question of whether a dispute should be decided by reference to the Restatement provision in effect at the time of the enactment or to a later draft, which had not yet been formally adopted by the ALI. It opted for the latter approach indicating that it read Section 4 "as looking to the Restatements only as an expression of 'the rules of common law.'" It added: "[W]e do not believe it contemplates strict adherence to old Restatements which no longer accurately summarize the common law."

In 1993, then Judge Samuel Alito, concurring in an en banc decision of the Third Circuit, stated that Section 4 "does not incorporate all of the Restatement provisions in effect in 1957 as if they were actual statutory text; nor does it delegate to the American Law Institute the authority to enact changes in the law of the Virgin Islands in all of the areas covered by the Restatements." He indicated that "[w]hile some of our opinions cite provisions of the Restatements as if they were statutory law, I respectfully submit that these references (which I take to be merely a form of shorthand) are potentially misleading."

In 2005, the Superior Court of the Virgin Islands considered whether it should apply the rule in the most recent Restatement as opposed to the one in effect at the time Section 4 was enacted. In contrast to the approach in the Northern Mariana Islands, it opted for the latter approach, concluding that the statutory provision's reference "to the 'restatements' refers to the Restatement in existence at the time of its enactment in 1957."

The status of Restatements in the Virgin Islands further changed when the Virgin Islands legislature established a Supreme Court of the Virgin Islands in 2004 and conferred on it the jurisdiction's "supreme judicial power." In 2011, the Third Circuit certified to this new court a question concerning the choice between the Restatement Second of Torts (holding lessors of defective products liable only for negligence) and the Restatement Third of Torts: Products Liability (subjecting them to strict liability). In this connection, the territorial supreme court considered whether it "is bound to follow the most recent version of the Restatement approved by the American Law Institute whenever it is required to decide an issue of first impression, or whether, like other courts of last resort, this Court possesses the inherent power to shape the common law in the Virgin Islands." It decided that it was not compelled "to mechanically apply the most recent Restatement" because inherent in the idea of the "supreme judicial power of the territory" is the ability to create common law. Thus, it determined that by establishing a Supreme Court, the Virgin Islands legislature had implicitly repealed Section 4. Nonetheless, Restatements continue to be treated as persuasive authority in the Virgin Islands.

Despite similar statutes, the status of Restatements took different turns in the Northern Mariana Islands and in the Virgin Islands. But in both, they fulfilled the legislative goal of jump-starting the development of the common law in the respective jurisdictions.

Editor's Note: A version of this Director's Letter that includes a bibliography of related material with links to relevant documents is posted on the News page of the ALI website: www.ali.org/news.

Project Spotlight: Restatement of the Law of International Arbitration Is Close to Completion

By David W. Rivkin of Debevoise & Plimpton, ALI Council Member

Parties to international contracts have long chosen arbitration as the preferred method to resolve disputes; among other reasons, it provides them with a neutral decision-maker, rather than the home courts of either party, and international arbitration awards are more easily enforced than court judgments because of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention), which celebrates its 60th anniversary this year. Moreover, a web of more than 3000 bilateral and multilateral investment treaties offers arbitration if an investor believes that the state has violated a promise under that treaty, and the number of such investor-state arbitrations has grown significantly.

In this context, it is important to understand the law that governs international arbitrations, particularly enforcement of agreements to arbitrate, the proper role of the courts with respect to the proceedings, and the standards for vacating or enforcing arbitration awards. The statutory law in the United States governing international arbitrations is notably sparse, however. It is contained in the sixteen sections of the Federal Arbitration Act and in two international conventions adopted by the United States: the New York Convention and its Western Hemisphere counterpart, the Panama Convention; to a certain extent the Uniform Arbitration Act and other state laws may also be relevant. Therefore, much of the law governing international arbitration proceedings has been judicially made.





In an international context, this has long caused problems, as foreign parties considering contracts with American parties or contemplating placing an international arbitration in the United States have often had difficulty determining what U.S. law is. American parties and courts have also had to consider a plethora of decisions that have not always been clear or consistent.

For these reasons, the ALI embarked 10 years ago in drafting a first Restatement of the U.S. Law of International Commercial and Investment Arbitration. The Restatement has been designed, as with all Restatements, to provide a "clear formulation[ ] of common law and its statutory elements or variations and reflect the law as it presently stands or might plausibly be stated by a court." For the first time, U.S. courts and practitioners may thus look to this single authoritative source to understand how statutes and courts have dealt with particular issues, through the usual black letter, commentary, and Reporters' Notes.

The project has been led by Professor George A. Bermann of Columbia Law School as the Chief Reporter and by Associate Reporters Jack J. Coe Jr. of Pepperdine University School of Law, Christopher R. Drahozal of University of Kansas School of Law, and Catherine A. Rogers of Penn State Law. The Reporters have worked carefully with the ALI's Advisers and Members Consultative Group to draft sequentially the Chapters of the Restatement, and the final Sections were approved by ALI's members at the Annual Meeting in May. However, because the law has progressed over the past 10 years and because it is important to consider, now that it has been completed, the entire text to make sure that it is accurate and internally consistent, the Reporters have embarked in a careful review of the full Restatement. Any proposed changes will be presented to the Advisers and MCG in September, and the Restatement as a whole will be presented for final approval to the ALI Council and then the members at the Annual Meeting in May 2019.

The Restatement's Chapters deal chronologically with the course of an international arbitration: from general provisions such as federal preemption of state law, to the enforcement of the arbitration agreement, to the judicial role during an arbitration proceeding, to post-award issues involving enforcing

or vacating the arbitration award. A separate Chapter covers specific issues that may arise in investor-state arbitration to the extent they may differ from other international arbitrations. While the Restatement deals with cases that are by definition international, it presents only the U.S. law on such issues.

Of course, it is not always easy to discern what law to "restate" given the occasionally conflicting decisions by courts and the views of commentators. For example, the Supreme Court held in *First Options of Chicago v. Kaplan* that a party challenging the arbitration tribunal's jurisdiction may have that issue finally decided by a court unless the parties "clearly and unmistakably" reserved the issue for the arbitration tribunal. Courts have differed whether adopting institutional rules stating that the tribunal may decide its own jurisdiction is such a "clear and unmistakable" choice. In one of the few instances in which the Restatement does not adopt the view expressed by a numerical majority of cases, it follows the logic of *First Options* to state that incorporation by reference to institutional rules does not satisfy the "clear and unmistakable" test.

Another difficult and controversial issue involves the standards to be applied by a U.S. court in considering a motion to vacate an "international" award that was rendered in the United States. The Restatement holds that "manifest disregard of the law" is not specifically identified in Chapter 10 of the Federal Arbitration Act or in the New York Convention and therefore, based on statements by the Supreme Court, should not be viewed as a separate ground for vacatur. The Restatement also currently takes the position that, in considering a motion to vacate an international award, the court should refer to the standards set forth in the New York Convention.

The Restatement also deals with such important and controversial issues as the availability of 28 USC Section 1782 for production of evidence in an international arbitration proceeding, arbitration class actions, potential enforcement of an award that has been vacated by a court at the seat of arbitration, and whether *forum non conveniens* may be raised as a defense to enforcement of an award covered by the New York Convention.

As with so many other ALI Restatements, the Restatement of the U.S. Law of International Commercial and Investment Arbitration is bound to be an extremely useful source of the law for practitioners, both domestic and foreign, and courts alike.

ASIL CONFERENCE: WHAT EVERY INTERNATIONAL ARBITRATION AND LITIGATION PRACTITIONER NEEDS TO KNOW

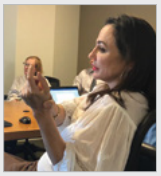
The 2018 Annual Conference of the Section of International Law included a session on the Restatement of the U.S. Law of International Commercial and Investment Arbitration. The conference took place in New York from April 17 to 21. Session participants included ALI members **Christopher R. Drahozal** of University of Kansas School of Law, Associate Reporter; **Brent O. E. Clinkscale** of Womble Bond Dickinson (US) LLP; **David W. Rivkin** of Debevoise & Plimpton LLP, Immediate Past President of the International Bar Association; and **Delissa A. Ridgway** of the U.S. Court of International Trade.

The speakers briefed audience members on key provisions of the Restatement, highlighting both areas of consensus and areas of controversy. With the use of handheld technology, audience members took part in fact patterns addressed in the Restatement.

PENN STATE LAW: BROWN BAG LUNCH

Project Reporters **George A. Bermann**, **Jack J. Coe Jr.**, **Christopher R. Drahozal**, and **Catherine A. Rogers** joined in a summer discussion with Penn State Law students on the process of drafting the International Commercial and Investment Arbitration Restatement and how the forthcoming Restatement may be relied on by courts, lawyers, and arbitral institutions in the future.







HOUSTON LUNCH EVENT: A RESTATEMENT IN A WORLD OF TREATY AND STATUTE



Lee H. Rosenthal of the United States District Court for the Southern District of Texas and **Carolyn Dineen King** of the United States Court of Appeals for the Fifth Circuit hosted a luncheon and program on the Restatement of the Law, the U.S. Law of International Commercial and Investment Arbitration. Project Reporter **George A. Bermann** of Columbia Law School and **Carolyn B. Lamm** of White & Case led a discussion on the areas of controversy and how the Restatement will be helpful to courts and lawyers.

Actions Taken at the 95th Annual Meeting



Richard G. Feder of the City of Philadelphia Law Department



Yvonne Gonzalez Rogers of the U.S. District Court, Northern District of California



Thomas H. Lee of Fordham University School of Law



Kaighn Smith Jr. of Drummond Woodsum, Wenona T. Singel and Matthew L.M. Fletcher, both of Michigan State University College of Law, and Mary M. Schroeder of the U.S. Court of Appeals, Ninth Circuit



Katharine B. Silbaugh of Boston University School of Law



Carolyn B. Kuhl of the Superior Court of California, County of Los Angeles

MONDAY, MAY 21

Economic Harm Torts*

The membership voted to approve Tentative Draft No. 3, marking the completion of the project. It is expected that the official text for this project will be published in 2019. See page 1 for details.

Intentional Torts*

Sections 7, 8, 9, and 10 of Chapter 1 were approved by the membership, which includes materials on false imprisonment and on participation in an intentional tort, except that approval was not sought on the black letter of § 7(d) and Comment *k*.

International Commercial and Investment Arbitration*

The membership voted to approve Tentative Draft No. 6, marking the approval of all of the individual Sections of the project. The Reporters plan to use the next year to update a few of the Sections and will then present the full project for final approval by the membership at the 2019 Annual Meeting.

TUESDAY, MAY 22

Liability Insurance*

The first project session of the day was Liability Insurance. The membership voted to approve Proposed Final Draft No. 2, thereby completing the project. It is expected that the official text for this project will be published in 2019. See page 1 for details.

Law of American Indians*

Tentative Draft No. 2 was approved by the membership. The draft includes Chapter 2, Tribal Authority, with the exception of § 33, which was not presented.

Student Sexual Misconduct

Student Sexual Misconduct was the third and final project session held on Tuesday. A Discussion Draft containing Chapters 1-3 was presented; as planned, no vote was taken.

WEDNESDAY, MAY 23

Government Ethics*

The membership approved Tentative Draft No. 2, which contains Chapter 2, Gifts from and Financial Relationships with Prohibited Sources, and four Sections of Chapter 5, Post-Government Employment Restrictions. It was announced at the session that Associate Reporter Richard W. Painter will recuse himself from this project for the duration of his candidacy for the U.S. Senate (with the exception of this session).

Amendments to UCC Articles 1, 3, 8, and 9*

Tentative Draft No. 1 was approved by the membership. The draft contains amendments to Articles 1, 3, 8, and 9, considering in detail the substance of the rules that would govern rights with respect to electronic mortgage notes and related mortgage notes. A separate set of amendments in the draft would revise §§ 9-406 and 9-408 on anti-assignment overrides. These Amendments must also be approved by the Uniform Law Commission at its annual meeting in July 2018. If approved by the ULC, the Drafting Committee plans to seek enactment of amendments to Articles 1, 3, 8, and 9 in the states only if and when the federal Repository Act is adopted. This will not affect the enactment of the amendments to §§ 9-406 and 9-408.

Children and the Law*

The membership approved all Sections contained in Tentative Draft No. 1, including five Sections of Children in Families (parents' duty to provide reasonable economic support, parental authority and responsibility for medical care, physical abuse, parental privilege to use reasonable corporal punishment, and medical neglect) and four Sections of Children in the Justice System dealing with the interrogation of juveniles. This was the first Annual Meeting appearance and vote for this project.

**All approvals by the membership at the Annual Meeting are subject to the discussion at the Meeting and the usual editorial prerogative.*



From left to right: John B. Bellinger III of Arnold & Porter, Richard Briffault of Columbia Law School, Richard W. Painter of University of Minnesota Law School, and Kathleen Clark of Washington University School of Law in St. Louis during the Government Ethics project session



ALI Director Richard L. Revesz, Teresa Wilton Harmon of Sidley Austin, Steven L. Harris of IIT Chicago-Kent College of Law, Edwin E. Smith of Morgan Lewis, and Steven O. Weise of Proskauer Rose after the UCC amendments session



Children and the Law Project Reporters talk to members after the session adjourns.

ECONOMIC HARM TORTS AND LIABILITY INSURANCE APPROVED CONTINUED FROM PAGE 1

The Liability Insurance project was launched in 2010. Working closely with a diverse team of Advisers and a Members Consultative Group that include lawyers who represent insurance companies, lawyers who represent policyholders, law professors, and judges, nearly 30 drafts have been produced through the life cycle of the project.

The Liability Insurance Restatement has four Chapters covering a range of liability insurance law topics, including basic contract-law doctrines that have special application in the insurance-law context; insurance-law doctrines relating to duties of insurers and insureds in the management of potentially insured liability actions; general principles relating to the risks insured that are common to most forms of liability insurance; and enforceability and remedies.

"Liability insurance law was a natural area of law for ALI to tackle in a Restatement," said Professor Baker. "Liability insurance is an important meeting place between tort and contract law, legal fields in which the ALI has a long tradition of involvement. Liability insurance case law can also vary from one jurisdiction to the next. By closely examining the existing common law, we believe that the membership approved a product that will be quite valuable to the courts."

The Reporters, subject to oversight by the Director, will now prepare the Institute's official texts for publication. At this stage, the Reporters are authorized to correct and update citations and other references, to make editorial and stylistic improvements, and to implement any remaining substantive changes agreed to during discussion with the membership or by motions approved at the Annual Meetings. Until the official texts are published, the drafts approved by the membership are the official position of ALI, and may be cited as such.

ALI would like to thank the Reporters, project participants, and ALI members who contributed their time, wisdom, and guidance to these projects.

Reporter's Perspective

At the Annual Meeting, Dean Farnsworth addressed the participants on the project, reflecting on his time as an ALI Reporter.

I am deeply grateful to be part of a group that has such a commitment to reasoned, patient discourse. It is a value that anyone can see is eroding in our culture. I would like to mention a couple of features that I especially value in the culture of the ALI.

The first is humility on the part of everyone, including—when it's going right—the members, the Advisers, the Reporter, all who are involved, because a central principle of the ALI is that everybody is smarter than anybody. No matter who you are, you're probably no match for the collective wisdom of a large number of intelligent, well-informed people. That ethic is implied in the ALI's general project of distilling the accumulated conclusions of the courts. It's also found in the way we try to talk about any particular project in our meetings. There's typically a spirit of accommodation and deference. Not deference all the time, of course, because then nothing gets resolved; but respect for the fact that everyone in the discussion probably has experience and talent that others don't. The "sense of the room" is a very powerful thing when the people in the room are all smart and knowledgeable.

A related point I've come to appreciate is: there's a right amount to care about everything. Of course everyone who works on a project should want to get every answer right. But there's such a thing as being overinvested in a position. It can happen when you've taken a stance in print, even tentatively. Or it can happen because you have a dog in the fight, or a relevant personal experience, or strong priors. And then some people are always sure they're right on general principle. You just have to remember that you might be wrong, because you're wrong often enough. Everyone is. It's okay to lose an argument, it's okay to change your mind, it's okay to agree to something that wasn't your preference. And in fact if you aren't having those experiences sometimes, especially as a Reporter, that's a sign of trouble.

Those two kinds of humility are getting harder to find in our political culture. We should be glad that there's still remarkably wide acceptance of their value at the ALI. Everyone—okay, just about everyone—is open to persuasion on the basis of careful argument. Most of us, most of the time, are mindful that the result of our labors will be an expression of collective judgment, not what any one person thought. These are, in my view, the most important qualities in our institutional culture. They are the reasons why courts take our work seriously, and they are essential for the creation of writings that will have enduring use and value to the legal profession, which is our mission in a nutshell.

Henry J. Friendly Medal: Ruth Bader Ginsburg



Chief Justice Roberts presents the Friendly Medal to Associate Justice Ginsburg.

Supreme Court Associate Justice Ruth Bader Ginsburg was presented the Henry J. Friendly Medal at this year's Annual Meeting by John G. Roberts, Jr., Chief Justice of the United States. The Medal recognizes contributions to the law in the tradition of Judge Friendly and the Institute.

"... [A] cultural icon who knows much about music, nothing about football, and more than is reasonable about jabots," said Chief Justice Roberts of Justice Ginsburg in his presentation of the Friendly Medal.



Chief Justice Roberts with Henry J. Friendly Medal recipient Associate Justice Ginsburg and ALI President David F. Levi

Chief Justice Roberts shared his admiration for Judge Friendly's legacy of work stating, "Almost 60 years since he started writing them, Judge Friendly's opinions retain a distinctive power to make us better lawyers and better judges." He commented on Justice Ginsburg's close association with Judge Friendly, while highlighting the many similarities between them, and sharing his admiration and respect for her vitality of spirit as well as the significance of her contributions to the law.

When describing Justice Ginsburg, Chief Justice Roberts said, "Most important, she is a friend who, like Judge Friendly, makes all of us better at our common calling. Like Judge Friendly, Ruth is equal parts careful scholar and evenhanded jurist. And like Judge Friendly, she derives her authority from the strength of her contribution to a conversation, and never from its volume."



Associate Justice Ginsburg addresses the membership at the Annual Meeting.

In her acceptance, Justice Ginsburg said, "Receiving the Henry J. Friendly Medal is a huge honor. And receiving it from my Chief is a pleasure beyond measure." She then spoke of her personal and professional relationship with Judge Friendly, his insightful contributions to the law, and his lasting legacy.

Justice Ginsburg shared her reflections on the changing times, her own journey to judicial appointment, and the need for "our Congress to engage again in lawmaking and fulfilling other responsibilities for the good of all of the people law exists (or should exist) to serve."

In closing, she reflected on ALI and her work with the Institute:

> "Finally, a few words about the ALI. My affiliation with the Institute, as Council member and Adviser to the Restatement Second of Judgments, provided the best learning experiences I have had since law school. The Supreme Court, as other courts, state and federal, often turns to Restatements and other ALI publications for enlightenment and guidance. The Supreme Court has done so since 1933, when an opinion of the Court cited a Tentative Draft of the Restatement of Trusts. In common with jurists across the U.S.A. and abroad, I look forward to continuing aid from ALI products.
>
> A thousand thanks for an award I treasure and every best wish for the discussions and deliberations ahead."

Speakers at the Annual Meeting

On Monday, May 21, ABA President **Hilarie Bass** of Greenberg Traurig spoke to the ballroom attendees about the future of legal education, diversity in the profession, availability of legal services for all, and public confidence in the justice system.

Monday concluded with the Members Reception and Buffett, where ALI President **David F. Levi** was joined by U.S. Supreme Court Associate Justice **Elena Kagan** and **Paul D. Clement** of Kirkland & Ellis. Justice Kagan and Mr. Clement remarked on their experiences as U.S. Solicitors General.

On Tuesday, May 22, Early Career Scholars Medal Co-Recipient **Colleen V. Chien** of Santa Clara University School presented her scholarship on patent law and policy issues, and her work on criminal justice reform. Read more about Professor Chien's speech on page 20.

Tuesday concluded with the Annual Reception and Dinner, where **David M. Rubenstein** of The Carlyle Group discussed his dedication to "patriotic philanthropy" and the importance of philanthropy in general. He also talked about his connection to three documents that are not official legal documents but influential much like ALI's Restatements and Codes: the Magna Carta, the Declaration of Independence, and the Emancipation Proclamation.

Wednesday's Members Luncheon featured speaker **Bryan A. Stevenson** of the Equal Justice Initiative. He talked about the power and insight in proximity, changing narratives, staying hopeful, and the significance of doing uncomfortable things in an effort to improve justice for all.



Hilarie Bass



Bryan A. Stevenson

"YOU CAN LOVE HUMANITY BY GIVING YOUR TIME, YOUR ENERGY OR IDEAS, OR YOUR MONEY, IF YOU HAVE IT. BUT WHEN YOU GIVE YOUR TIME, THAT'S THE MOST PRECIOUS THING BECAUSE THAT'S THE ONLY THING WE CAN'T RECOVER."

DAVID RUBENSTEIN



David M. Rubenstein



David F. Levi, Justice Kagan, and Paul D. Clement

ALI: Law For A Lifetime

By Elizabeth J. Cabraser of Lieff Cabraser, ALI Council Member

Adapted from a speech presented at the 95th Annual Meeting Members Luncheon Honoring New 25-Year and 50-Year Members



The ALI's new life and 50-year members are the members that best and most literally exemplify the profound essence of the ALI itself, a permanent organization dedicated to the unending mission of clarifying, improving, and simplifying the law. Ours is a project that, by its very nature, should never be completed, and a mission of which we should be proud to say can never be fully accomplished.

We know, from our study of ALI's origins, that our organization arose from a study, in the early 1920s, by a committee whose very title was propitious: "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law." Out of this Committee's recommendations, our hopefully "permanent organization," The American Law Institute, was founded: with a mission, boldly set forth in its charter, "to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work."

Over more than nine decades, the members of the ALI have advanced this mission through projects, including Restatements and Principles, that, in their turn, have become the guideposts of American common law. And, because the law is an ongoing project that strives to meet, and often anticipates, societal needs, the ALI has not been satisfied with one generation of Restatements. Recent and current projects of the ALI include the Restatements Third of Agency, Torts, and Conflict of Laws, and many other, more specialized Restatement and Principles projects that reflect the contemporary concerns and needs of modern law and society, including projects on the Law of American Indians, Children and the Law, Election Administration, principles for better policing, and inevitably controversial and ambitious projects regarding Consumer Contracts, Liability Insurance, Copyright, and Data Privacy. [BTW – a little-known fact: a Restatement Third is technically a "Threestatement"]

The fact that the ALI takes its mission seriously is reflected in the vigor and enthusiasm of its often lively, sometimes sharp, but always respectful debates. These attributes are essential as we strive, collectively, to articulate a clear and sufficiently certain "black letter" law, that nonetheless retains the flexibility needed to effectively serve our diverse society's need for law that is at once clear, simple, complete, and inclusive.

This would seem a daunting, if not impossible task, but for the demonstrable fact that the ALI has been pursuing it, on mission, and on message, for the past 95 years. The ALI has endured precisely because it has evolved; and it has indeed grown, slowly yet perceptibly, ever more relevant and ever more inclusive. As a result, for nearly a century, the life and the spirit of our common law has largely been entrusted to the ALI and its membership, a trust reflected in the wide citation, by federal and state courts, of ALI Restatements and Principles.

The genius of our American legal system is that it is inescapably democratic. It is a common law system, and, more to the point, our common law is one not made solely by exalted law lords, but by every dedicated practitioner and scholar of the law who devotes his or her time and energy to its clarification and improvement. Much like home improvement channels, American law is a DIY project. The ALI provides the preeminent channel for that professional urge to improve and clarify the law, welcoming the laws' daily practitioners, whether they are judges, academic scholars, or public and private advocates. We are the builders of our American common law, and the endless project to which we lend our energies changes, expands, and—we hope—fashions a common law that becomes ever more fair and inclusive with the passage of time.

Members should not blush in taking credit for what the ALI has become over the past few decades. Indeed, it is to your credit that the ALI has more than met the challenges to the law in our rapidly changing society, and has expanded both the number and nature of its projects, just as it has striven to expand the reach of its membership to every area of the country, to every age group, and to every group that still struggles toward inclusion in our law.

This is not a matter of facile self-congratulation, although I do want to make sure that you take at least a second to congratulate yourselves and each other. You have undertaken the performance of the duty to make sure, every day, that the law continues on a path of progress so that, buffeted by unceasing change, it does not become brittle, static, or hollowed out, but rather that it grows and flourishes to meet the ever more compelling demands of our society.

Fifty years ago, the ALI was even younger than it is today, and the year 1968 was one of tumult, tragedy, and protest. We suffered the assassinations of inspiring and beloved leaders, and we were torn by a polarizing war. Many of us, especially the young, feared for the life of our nation. Loyalties and ideals were under siege. We survived, because the rule of law endured. We owe a debt to the 50-year members who joined the ALI that year, in service to the law.

continued on page 12

ALI: LAW FOR A LIFETIME CONTINUED FROM PAGE 11

Thanks to you, the ALI has maintained and enhanced its relevance. The increasing energy of the debates at the past few Meetings, and of this Meeting itself, are living proof of the centrality of the ALI to the legal life of this country, and of ALI's role in sharing with and learning from the legal systems and ideals of others. Relevance isn't always comfortable, and it is rarely sedate, but it is essential, and here the ALI can count itself a success. We are not among those organizations that have struggled to deal with, denied, or resisted, the demands of the 21st century. We have boldly gone into this century, both as conservators of what is best in our law and builders of what is better.

After all, the ALI's founding committee envisioned a "permanent organization" not merely to enshrine then-existing law. Many shrines are also tombs. Rather, these founders were distinctly dissatisfied with the status quo, and were frustrated and impatient with what they saw as the incoherence, disorganization, and inconsistencies of the common law. But they did not envision a quick fix. They wanted a "permanent organization" in recognition that the law must unceasingly evolve; that the project of building a better law is never completed.

The metaphors of craft and construction find ready application to the nature of American law. We are, by definition, a work in progress. We do not have a detailed blueprint, beyond our very brief Constitution, and our common law legacy. Building the law is a human endeavor, and humans make mistakes. The law is not immune from error. But there is a wisdom in crowds – and our ALI crowd possesses an unsurpassed collective wisdom of experience and training, combined with a collective desire for improvement, that brings focus and direction to our endeavor. The ALI uniquely combines the mature judgment of its senior members with an eternally young spirit of inquiry, to animate our quest to restate, to refine, and to reconstruct the law, and to articulate the principles that ought to guide it.

The ALI's Restatements have served as the quintessential blueprints for the common law, and we exist to continuously revise and refine those blueprints—in every generation—three and counting—to guide the endless renovation, and indeed the sometimes disruptive remodeling, of the common law. To borrow the famous saying of California Supreme Court Justice Roger J. Traynor "the law will never be built in a day, and with luck it will never be finished." With luck, all of you will continue, with vigor and longevity, to promote and pursue the ongoing project of building the law in America. As you do, I want to remind you of the challenge, and a very serious piece of unfinished business, that our law has yet to accomplish, although the ALI has, I believe, largely been moving in this direction since its inception.

Let me go back to our American Constitution. We have a document that has served as a model for many nations. It fits in a thin and tiny pocket pamphlet. Many of us carry it with us daily, close to our hearts, but not simply or mainly as a protective talisman. We carry it in our hearts not for what it is, but for what it may become. What it is, is a seriously flawed blueprint, circumscribed by the limitations of the late 18th century, for an edifice that collapsed in bloody civil war less than 80 years after signoff. It is a document that frankly incorporates racism and the concept of people as property. It is a document that literally excluded over one-half of the population, women, from full participation in the social contract. And so, the history of law and of legal progress in America has been a history of progress toward an ideal, embodied in our Declaration of Independence, that all are created equal. It has been an endless and tenacious campaign for inclusion. So many Americans have battled for their entire lives, to invade the

95th Annual Meeting Members Reception and Buffet



Members and guests gathered at the Ronald Reagan Building and International Trade Center for the annual Members Reception.



Jennifer S. Martin of St. Thomas University School of Law, Julia D. Mahoney of UVA School of Law, and Laura D. Stith of the Supreme Court of Missouri

Constitution, to gain entry to its rights and privileges, and to force an acknowledgement, by the law itself, that the law includes them fully.

Women gained an acknowledgment of their right to vote only a few years before the ALI was founded. At the time of the ALI's founding our nation was segregated. African Americans were categorically excluded from the vote and from full citizenship. We had, in the not too recent past, nearly completed a heedless obliteration of the nations of American Indians that inhabited what became this country long before we arrived. Our law has a lot to make up for, in terms of the way we have treated each other in this country, and it is a heartening and inspiring story that those who battled for rights, for recognition, and for inclusion throughout our history most often chose the path of the law. They chose litigation. They chose legislation. They loved the law when the law did not love them back.

Like the rest of our legal project, in a mission far from accomplished, slowly, over the years, rights were acknowledged and recognized and inclusion was gained. For women, for people of color, for American Indians, for lesbian, gay, and transgender people, the history of the law is a history of institutions and of power that excluded us. It is also a story of those who, while ensconced and empowered within the edifice of law, gradually and ultimately began to listen to us.

When we speak of the law it is thus both with reverence and frustration, because it is our hope as well as our barrier. The ALI has, and I hope will, continue to play a pivotal role in building the edifice of the law outward and upward, toward embracing all of us in this country, whether our people were born here, whether they were brought here against their will, whether they were exiles, or whether they simply came here with hopes and dreams to work for. The law is our touchstone because no other force in this country has been invested with so much power and so much promise to accomplish the ultimate incorporation of all people in the social contract, which is the basis of our country's very existence.

Our nation is not, and has never been, harmonious. But here we achieve harmony through respectful debate. We are privileged to do so. So many Americans do not possess this privilege, yet they depend on the law. As Justice Ginsburg reminded us yesterday when she was presented with the Henry J. Friendly Medal, "Law exists to serve all the people." What is a luxury for us is a necessity for the law and for the people it serves.

I am proud to be a member, and now a Life Member, of The American Law Institute. I am proud that, during my lifetime, the recognition of the civil rights of my fellow Americans, and my own, has increased—although equal rights remain embattled. I am proud that through the law marriage equality has been recognized, enabling more of us to participate more fully, through our own choices, in the institutions of citizenship and society. I am proud because the ALI stands ready to take on the new challenges faced by all of us: to our privacy, to the security of our personal and financial data, to our rights of contract, and to access to our courts, the place where the common law is made and where justice is publicly administered.

Whatever your personal philosophy, whatever your politics, whatever your stance on the particular issues that come before The American Law Institute, please take this opportunity to renew the challenge within yourself, to reaffirm as your lifetime project, the mission of our 95-year-young, "permanent organization": to build the law for *all*. It will never be built in a day. But, with luck, and with your support for the ALI, it will continue to be clarified, simplified, and become better adapted to social needs. And it will never be finished.



Stephen Calkins of Wayne State University Law School and Charles E. Griffin of Butler Snow



Janet Napolitano of University of California and David B. Goodwin of Covington & Burling



Associate Justice Elena Kagan, ALI Director Richard L. Revesz, Paul D. Clement of Kirkland & Ellis, and ALI President David F. Levi

Annual Dinner

Members attended the Annual Dinner on the second night of the Meeting. In addition to networking with new and old friends, members were treated to remarks from David M. Rubenstein, Co-Founder and Co-CEO of The Carlyle Group.



Wilbur E. Johnson of Young Clement Rivers, Anna Williams Shavers of University of Nebraska College of Law, and Linda Sheryl Greene of University of Wisconsin Law School



John J. McKetta III of Graves Dougherty Hearon & Moody and Conrad K. Harper, retired partner of Simpson Thacher



Judith Leonard of the Smithsonian Institution, ALI Chair of the Council Roberta Cooper Ramo, and Merrick Brian Garland of the U.S. Court of Appeals, District of Columbia Circuit

New Record in Giving Set as ALI Honors the Classes of 1993 and 1968

ALI celebrated its new Life Members and 50-Year Members—the Classes of 1993 and 1968—at a luncheon on Tuesday, May 22 in Washington, D.C. At this year's luncheon, the Class Gift set another record for Class giving. 1993 Life Member Class Committee Chair Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain, P.A. presented the Institute with an astonishing Class Gift of $251,275.

Mr. Stewart was joined on the stage by his fellow 1993 Life Member Class Committee members Charles J. Cooper of Cooper & Kirk, PLLC, Joan Sidney Howland of University of Minnesota Law School, and David W. Ichel of X-Dispute LLC, as Mark S. Mandell of Mandell Schwartz & Boisclair, Ltd, and Bettina B. Plevan of Proskauer Rose LLP, were unable to attend the event. Mr. Stewart congratulated the Class of 1993 on their career achievements and thanked his fellow Committee members for their fundraising efforts. Mr. Stewart then explained that while the Class originally aimed to raise just $200,000 for their gift, they surpassed that goal so quickly that the Committee decided to aim even higher.

"Then we got to $240,000," Mr. Stewart said, "and I started thinking there's a nice symmetry between the fact that this is our 25th reunion and $250,000 is a quarter of a million dollars." After announcing the 1993 Class Gift total, Mr. Stewart closed his remarks with a friendly challenge to the 1994 Life Member Class to surpass this year's Class Gift total.

The $251,275 raised by the Class of 1993 will be used to fund several important aspects of the Institute's mission, including financial-assistance programs that ensure judges and public-sector attorneys can attend ALI's meetings and participate in its work, and the Early Career Scholars Medal and annual conference, a program that engages the next generation of eminent legal minds. This is all part of the Class Gift Initiative, a program that is now in its seventh year.

J. William Doolittle and Earl M. Colson represented the Class of 1968 at the luncheon. Mr. Doolittle of Washington, D.C., is now retired, but was previously with Prather, Seeger, Doolittle & Farmer. Also now retired, Mr. Colson of Chevy Chase, Maryland, was previously with Arent Fox LLP. Both were presented with medallions honoring their 50 years as members of the Institute by past ALI president Roberta Cooper Ramo. Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein, LLP served as the luncheon's speaker. Ms. Cabraser, a 1993 Life Member, has led Lieff Cabraser to be one of the country's largest law firms seeking redress for financial and consumer fraud, anti-competitive practices, harmful drugs and products, and illegal employment practices. She was elected to ALI's Council in 1999 and has served as an Adviser on several ALI projects. After congratulating her fellow 1993 classmates and the 50-year members, Ms. Cabraser praised the Institute for all it has done so far for the American legal system, but also challenged it to do even more going forward. An adaptation of her prepared remarks is available on page 11 of this issue, and a video of her remarks is available online at www.ali.org/annual-meeting-2018.

The Class Gift program will continue with the 1994 Life Member Class that will be honored at ALI's 96th Annual Meeting next May.

The 1993 Life Member Class Gift

The American Law Institute celebrates each gift that contributed to the success of this campaign. We deeply appreciate your generosity.

The 1993 Life Member Class Gift will be used to fund important aspects of the Institute's mission, including the Members Consultative Group Travel Assistance program, the Early Career Scholars Medal and annual conference, the Judges and Public-Sector Lawyers Expense Reimbursement program, and the Institute's influential law-reform projects.



1993 Class Gift committee members David W. Ichel of X-Dispute, Committee Chair Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain, Joan Sidney Howland of University of Minnesota Law School, and Charles J. Cooper of Cooper & Kirk

GIVING CIRCLE DONORS

Founders Circle *($50,000 and above)*
Elizabeth J. Cabraser, San Francisco, CA

Benjamin N. Cardozo Circle *($25,000 – $49,999)*
David W. Ichel, Miami, FL
In honor of David F. Levi and Roberta Cooper Ramo
Harry C. Sigman
In honor of Neil B. Cohen, Steven L. Harris, Charles W. Mooney, Jr., Edwin E. Smith, and Steven O. Weise; and in memory of Peter F. Coogan, Homer Kripke, and Donald J. Rapson
Larry S. Stewart, Miami, FL

Learned Hand Circle *($15,000 – $24,999)*
Charles J. Cooper, Washington, DC
In memory of Mark R. Kravitz
Gary L. Sasso, Tampa, FL *(Five-year pledge)*

Charles Alan Wright Circle *($10,000 – $14,999)*
Mark S. Mandell, Providence, RI
Bettina B. Plevan, New York, NY

Herbert Wechsler Circle *($5,000 – $9,999)*
Caryl S. Bernstein, Washington, DC *(Five-year pledge)*
Stephen L. Carter, New Haven, CT *(Five-year pledge)*
R. James George, Jr., Austin, TX
Lynne Z. Gold-Bikin, Norristown, PA
James A. Williams, Austin, TX *(Five-year pledge)*
Michael M. Wiseman, New York, NY

Soia Mentschikoff Circle *($2,000 – $4,999)*
Eric R. Cromartie, Dallas, TX *(Ten-year pledge)*
William J. Davey, Champaign, IL
Susan M. Freeman, Phoenix, AZ
In memory of John P. Frank
Joan Sidney Howland, Minneapolis, MN *(Five-year pledge)*
Louise A. LaMothe, Santa Barbara, CA
Hugh G. E. MacMahon, Falmouth, ME *(Five-year pledge)*
M. Margaret McKeown, San Diego, CA *(Five-year pledge)*
Edward M. Posner, Philadelphia, PA

DONORS

Sustaining Life-Plus Donors *($251 – $1,999)*
Joseph R. Bankoff, Atlanta, GA
Molly S. Boast, Brooklyn, NY
Hildy Bowbeer, St. Paul, MN
Lung-chu Chen, New York, NY
Norman L. Epstein, Los Angeles, CA
Jean C. Hamilton, St. Louis, MO
Arnette R. Hubbard, Chicago, IL *(Five-year pledge)*
Paul F. Jones, Buffalo, NY
Bruce P. Keller, Newark, NJ
Martin A. Kotler, Wilmington, DE
John B. Lewis, Cleveland, OH
James C. McKay, Jr., Washington, DC
Beverly McQueary Smith, Jersey City, NJ *(Five-year pledge)*
Thomas E. Plank, Knoxville, TN
Donald J. Polden, Santa Clara, CA
Daniel M. Schneider, Chicago, IL
Nicholas J. Wittner, East Lansing, MI
In honor of Aaron D. Twerski (Five-year pledge)

Sustaining Life Donors *($125 – $250)*
Jennifer H. Arlen, New York, NY
Bernard F. Ashe, Delmar, NY
D. Benjamin Beard, Moscow, ID
Ira Mark Bloom, Albany, NY
Michael A. Cardozo, New York, NY
Earl M. Colson, Washington, DC
Karen Czapanskiy, Baltimore, MD
Warren W. Eginton, Bridgeport, CT
Francesco Francioni, Siena, Italy
Richard D. Friedman, Ann Arbor, MI
Patricia Brumfield Fry, Edgewood, NM
Susan Marie Halliday, McLean, VA
Vicki C. Jackson, Cambridge, MA
Douglas W. Kenyon, Raleigh, NC
Colleen A. Khoury, Portland, ME
Paul A. LeBel, Williamsburg, VA
Steven L. Schwarcz, Durham, NC

continued on page 16

THE 1993 LIFE MEMBER CLASS GIFT CONTINUED FROM PAGE 15

Christina A. Snyder, Los Angeles, CA
Robert N. Weiner, Washington, DC
David S. Willenzik, New Orleans, LA

Friends of ALI
R. Lawrence Dessem, Columbia, MO
Susan P. Graber, Portland, OR
Catherine M. A. McCauliff, Newark, NJ
Margaret D. McGaughey, Portland, ME
Alice E. Richmond, Boston, MA

Giving Circle Donors, Sustaining Life-Plus Donors, and Sustaining Life Donors are Sustaining Life Members for the 2018–2019 fiscal year.

Donors as of June 29, 2018

The ALI Development Office has made every attempt to publish an accurate list of donors for the 1993 Life Member Class Gift campaign. In the event of an error or omission, please contact Amanda Bintz at 215-243-1610 or abintz@ali.org.

This list is produced exclusively for the ALI community. The Institute prohibits the distribution of this list to other commercial or philanthropic organizations.

CLASS OF 1968
Charles C. Allen, Jr., St. Louis, MO
Milo G. Coerper, Chevy Chase, MD
Earl M. Colson, Washington, DC
J. William Doolittle, Washington, DC
Shulamith Simon, St. Louis, MO
Edwin P. Wiley, Milwaukee, WI

CLASS OF 1993
Jennifer H. Arlen, New York, NY
Bernard F. Ashe, Delmar, NY
Joseph R. Bankoff, Atlanta, GA
D. Benjamin Beard, Moscow, ID
Caryl S. Bernstein, Washington, DC
Richard M. Blau, Tampa, FL
Ira Mark Bloom, Albany, NY
Molly S. Boast, Brooklyn, NY
Hildy Bowbeer, St. Paul, MN
Elizabeth J. Cabraser, San Francisco, CA
Michael A. Cardozo, New York, NY
Stephen L. Carter, New Haven, CT
Lung-chu Chen, New York, NY
Charles J. Cooper, Washington, DC
LaDoris H. Cordell, Palo Alto, CA
J. Donald Cowan, Jr., Raleigh, NC
Yvonne Cripps, Bloomington, IN
Eric R. Cromartie, Dallas, TX
Karen Czapanskiy, Baltimore, MD
William J. Davey, Champaign, IL
Robert C. Denicola, Lincoln, NE
R. Lawrence Dessem, Columbia, MO
Warren W. Eginton, Bridgeport, CT
Norman L. Epstein, Los Angeles, CA
Victoria L. Eslinger, Columbia, SC
Charlotte Moses Fischman, New York, NY
Francesco Francioni, Siena, Italy
Susan M. Freeman, Phoenix, AZ
Richard D. Friedman, Ann Arbor, MI
David Joel Frisch, Richmond, VA
Patricia Brumfield Fry, Edgewood, NM
Marc Galanter, Madison, WI
R. James George, Jr., Austin, TX
Lynne Z. Gold-Bikin, Norristown, PA
Susan P. Graber, Portland, OR
Susan Marie Halliday, McLean, VA
Jean C. Hamilton, St. Louis, MO
V. Nathaniel Hansford, Lexington, GA
Ronald J. Hedges, Hackensack, NJ
J. Michael Hennigan, Los Angeles, CA
Gregory Alan Hicks, Seattle, WA
Joan Sidney Howland, Minneapolis, MN
Arnette R. Hubbard, Chicago, IL
David W. Ichel, Miami, FL
Vicki C. Jackson, Cambridge, MA
James W. Jones, Reston, VA
Paul F. Jones, Buffalo, NY
Craig Joyce, Houston, TX



1993 and 1968 Class members gathered to celebrate 25 and 50 years with the Institute.

James E. Kaplan, Brunswick, ME
Bruce P. Keller, Newark, NJ
Douglas W. Kenyon, Raleigh, NC
Colleen A. Khoury, Portland, ME
David G. Klaber, Pittsburgh, PA
Martin A. Kotler, Wilmington, DE
Sim Lake, Houston, TX
Louise A. LaMothe, Santa Barbara, CA
Paul A. LeBel, Williamsburg, VA
John B. Lewis, Cleveland, OH
Hugh G. E. MacMahon, Falmouth, ME
Mark S. Mandell, Providence, RI
Barbara W. Mather, Philadelphia, PA
Catherine M. A. McCauliff, Newark, NJ
Margaret D. McGaughey, Portland, ME
James C. McKay, Jr., Washington, DC
M. Margaret McKeown, San Diego, CA
Beverly McQueary Smith, Jersey City, NJ
Barry J. Nace, Washington, DC
Kevin F. O'Malley, St. Louis, MO
Alan C. Page, St. Paul, MN
Thomas E. Plank, Knoxville, TN
Bettina B. Plevan, New York, NY
Donald J. Polden, Santa Clara, CA
Edward M. Posner, Philadelphia, PA
Alice E. Richmond, Boston, MA
Brett A. Ringle, Dallas, TX
Edward B. Rock, New York, NY
Peter M. Saparoff, Boston, MA
Gary L. Sasso, Tampa, FL
Daniel M. Schneider, Chicago, IL
Steven L. Schwarcz, Durham, NC
Richard W. Shepro, Chicago, IL
William C. Slusser, Houston, TX
Christina A. Snyder, Los Angeles, CA
Larry S. Stewart, Miami, FL
H. Woodruff Turner, Pittsburgh, PA
Lea S. VanderVelde, Iowa City, IA
Ruth Wedgwood, Washington, DC
Robert N. Weiner, Washington, DC
Michael Wells, Athens, GA
David S. Willenzik, New Orleans, LA
James A. Williams, Austin, TX
Michael M. Wiseman, New York, NY
Nicholas J. Wittner, East Lansing, MI
Ben Woodward, San Angelo, TX
Marie R. Yeates, Houston, TX
Eric M. Zolt, Los Angeles, CA

1993 WAS A VERY GOOD YEAR

In 1993, The American Law Institute inducted 96 new members who now, after 25 years of service, are becoming Life Members. Each of them is distinguished, as evidenced by their election to this prestigious institution. Their achievements are many, diverse, and remarkable.

The Class of 1993 inductees came from 30 different states and three different countries. They attended 47 different law schools. At their various schools, 24 served as review editors. Twenty-eight graduated with honors, 11 were Order of the Coif, and three graduated top of their class. One was a Fulbright Scholar, and another a Rhodes Scholar.

After graduation, 25 went on to clerk for the judiciary, with seven having clerked at the U.S. Supreme Court. A number later became members of the judiciary. Six served as judges of a U.S. Court of Appeal, six as U.S. District Court Judges, and two as state Supreme Court justices, one of whom was also inducted into the NFL Hall of Fame.

Thirty-seven went on to join law school faculties; five went on to serve as law school deans. Thirty-eight entered private practice and rose to the tops of the profession. Three became presidents of a national bar association and five became presidents of state or local bar associations. In the wake of the Sept. 11 terrorist attacks, one created a national pro bono organization which represented over 1,700 victims and victim families. Another became the U.S. Ambassador to Ireland, and yet another was a delegate to the United Nations Human Rights Committee. Many became trailblazers by breaking barriers of race and gender in their respective professions.

Not surprisingly, their careers were marked by impressive distinctions. Three were recipients of the American Bar Association's Margaret Brent Women Lawyers of Achievement Award. Others received awards for their legal and academic work, their public and community service, and their humanitarian involvement. They have been published and become authors hundreds of times over.

The Class of 1993 also contributed greatly to ALI's work. Four became members of the ALI Council and three became members of the Executive Committee. Four served as Project Reporters, 20 served as Advisers, and the great majority served on Members Consultative Groups.

We would like to thank the members of the Class of 1993 for your 25 years of service to The American Law Institute. Your intellectual and financial contributions have been invaluable, and we hope for your continued participation in our important work.

Become a Special Kind of ALI Member

Every year, a generous group of ALI members become, or maintain their status as, Sustaining Members. Sustaining Members support The American Law Institute's mission by voluntarily doubling their annual dues payments. **We cannot express enough gratitude for the more than 900 members who opted to become Sustaining Members during the 2017–2018 fiscal year—our highest number ever!** These special members are instrumental to advancing ALI's important law-reform work. Their yearly contributions help the Institute to fund its current operations and to undertake new and exciting initiatives. We proudly recognize all Sustaining Members for supporting the Institute's objective of clarifying and improving the law in our Annual Report and on our website.

By all standards, the Institute's annual dues are modest. They have not increased in 13 years. We strive for inclusivity in our membership and respect our members' differing financial situations. That is why we are so thankful for our Sustaining Members and other generous donors who provide the critical funding necessary to help us remain free and independent from outside influence.

If you would like to become a Sustaining Member this year, simply select the Sustaining Member option when you receive your 2018-2019 dues statement. If you are a Life Member, you can join by voluntarily contributing your previous dues category amount of $125 or $250. We hope you will consider joining this special group of ALI members. Thank you for your support.

Welcome to the Institute's Newest Members

ALI welcomed its newest members during two special events at this year's Annual Meeting. New members gathered at a dinner the evening before the Annual Meeting kicked off, as well as at a luncheon on Monday.



Welcome Dinner Committee: Travis LeBlanc of Boies Schiller Flexner, Jean K. FitzSimon of the U.S. Bankruptcy Court for the Eastern District of Pennsylvania, Jennifer Walker Elrod of the U.S. Court of Appeals for the Fifth Circuit, and Brian E. Nelson of Los Angeles 2028



Sharon Stern Gerstman of Magavern Magavern Grimm, Nancy Scott Degan of Baker Donelson, Palmer Gene Vance II of Stoll Keenon Ogden, and Michelle A. Behnke of Michelle Behnke & Associates



Travis LeBlanc addresses members at Sunday's Welcome Dinner.



ALI's newest members at the Annual Meeting







ABOVE
Philip A. Brimmer of the U.S. District Court for the District of Colorado and David E. Skaggs of Dentons US

TOP RIGHT
Carlton Wayne Reeves of the U.S. District Court for the Southern District of Mississippi and Anupam Chander of UC Davis School of Law

RIGHT
John G. Malcolm of The Heritage Foundation, Charlene Sachi Shimada of Morgan Lewis, and Alan Van Etten of Deeley King Pang & Van Etten

Patent Assertion Entities and Second Chances

Tuesday morning's Annual Meeting began with remarks from 2017 Early Career Scholars Medal Co-Recipient Colleen V. Chien of Santa Clara University School of Law. She was introduced by Early Career Scholars Medal Committee Chair Mariano-Florentino Cuéllar of the California Supreme Court. Professor Chien writes and teaches about intellectual property, technology, and a series of other related topics, ranging from privacy to international trade.

Describing her work as "accessible, thoughtful, creative, insightful, principled, and practical," Justice Cuéllar noted that Professor Chien is "widely recognized as one of the most prolific and interesting new voices in the field of intellectual property."

Professor Chien first spoke to the membership about her scholarship on domestic and international patent law and policy issues. She explored how her research development on "patent assertion entities," a term used for firms that use their patents primarily to sue others rather than to support the development of technology, has contributed to a much-needed correction in the patent system and a refocus on innovation.

In the second half of her remarks, Professor Chien talked about her work in criminal justice reform. She discussed her efforts in documenting the "second chance gap," the difference between those eligible for and those receiving second chances. Characterizing the Annual Meeting audience as "a roomful of people who can make a difference," she urged that the application burden for second chances be reduced, that economies of scale be increased, and that two kinds of code, computer code and legal code, must work together to deliver justice for those seeking to restore their second chances.



Colleen V. Chien

The Early Career Scholars Medal was presented to Professors Chien and Schwarcz at last year's Annual Meeting.

Annual Meeting Sunday Events

This year's Annual Meeting featured three events on Sunday. The day began with the panel discussion, *Legal Minefields for Driverless Cars*, featuring **Alan B. Morrison** of George Washington University Law School, **Anne Marie Lewis** of Alliance of Automobile Manufacturers, **Bryant Walker Smith** of South Carolina University School of Law, **Lorelie S. Masters** of Hunton Andrews & Kurth, and **Victor E. Schwartz** of Shook, Hardy & Bacon. Some of the topics covered include federal regulation of driverless cars, the distinction between testing and employment, automation capabilities, liability issues, and thinking through the existing insurance construct when considering insurance and driverless cars.

Sunday's programs continued with *The Path of Education Reform: Law, Politics, and Public Policy*, with **Goodwin Liu** of the Supreme Court of California, **Theodore J. Boutrous Jr.** of Gibson, Dunn & Crutcher, **John B. King Jr.** of The Education Trust, and **Nina Rees** of National Alliance for Public Charter Schools. The discussion began with an overview of education statistics on race, language, economic means, and charter and private schools. Panelists shared their thoughts on the importance of providing children with strong reading and math foundations, and the need to evaluate both student and teacher performances.



The final program on Sunday was the ALI CLE course, *The Ethics of Ex Parte Contact: From Watergate to the Internet Era - When Can We Talk?*, with **M. Margaret McKeown** of the U.S. Court of Appeals for the Ninth Circuit, **Pam Bresnahan** of Vorys, Sater, Seymour and Pease, **Wallace B. Jefferson** of Alexander Dubose Jefferson & Townsend, **Paul Fishman** of Seton Hall University School of Law, and **Geoff Shepard**, Author of *The Real Watergate Scandal: Collusion, Conspiracy and the Plot that Brought Nixon Down.* Panelists tackled practical ethical issues faced by lawyers and judges today, including social contacts, in-chambers conferences, correspondence with the court, and third-party conduits to social media and internet research.

Early Career Scholars Medal Conference: The Future of Insurance Law and Regulation

ALI Early Career Scholars Medal recipient Daniel Schwarcz of University of Minnesota Law School organized a conference in Washington, DC, on The Future of Insurance Law and Regulation. The April 6th event evaluated developments in insurance law and regulation over the last decade and explored competing visions for mediating the relationships among courts, regulators, and insurance-market participants in the future.

The conference began with a keynote address by Roy Woodall, a former member of the Financial Stability Oversight Council, and was followed by four panel discussions:













Panel 1: Balancing State and Federal Regulation of Insurance Markets

Moderator: Howell E. Jackson, Harvard Law School

Panelists: Martin Grace, Temple University Fox School of Business; Mike McRaith, former Director of the U.S. Department of the Treasury's Federal Insurance Office; Patricia A. McCoy, Boston College Law School; Ted Nickel, Wisconsin Commissioner of Insurance (Immediate Past NAIC President); Thomas Sullivan, Federal Reserve System

Panel 2: Modernizing Insurance Rate and Market Regulation

Moderator: William H. McCartney, former director of insurance for Nebraska and President of NAIC

Panelists: Birny Birnbaum, Center for Economic Justice; Da Lin, Harvard Law School; Dave F. Snyder, Property Casualty Insurers Association of America; Rick Swedloff, Rutgers Law School – Camden

Panel 3: The Role of Courts and Regulators in Policing Insurance Policy Terms

Moderator: Daniel Schwarcz, University of Minnesota Law School

Panelists: Michelle Boardman, George Mason University Antonin Scalia Law School; Omri Ben-Shahar, University of Chicago Law School; Erik S. Knutsen, Queen's University Faculty of Law; Jeffrey W. Stempel, University of Nevada, Las Vegas, William S. Boyd School of Law

Panel 4: Key Unresolved Issues in the Restatement of Liability Insurance Law and Designing a Restatement of First-Party Insurance Law

Moderator: Jay M. Feinman, Rutgers Law School – Camden

Panelists: Kenneth S. Abraham, University of Virginia School of Law; Robert F. Cusumano, formerly General Counsel of ACE Ltd.; Kyle D. Logue, University of Michigan Law School; Lorelie S. Masters, Hunton Andrews Kurth

The Institute in the Courts: U.S. Supreme Court Cites Judgments 2d and Torts 2d

Associate Justice Neil M. Gorsuch cited the Restatements of the Law in two recent U.S. Supreme Court opinions. Summaries of those opinions follow.

In *Currier v. Virginia*, No. 16–1348 (U.S. June 22, 2018), Justice Gorsuch discussed principles of claim preclusion and issue preclusion as set forth in Restatement of the Law Second, Judgments §§ 19 and 28, in which the Court decided that a criminal defendant who initially agreed to sever three related charges against him into two separate trials could not subsequently argue, after being acquitted of two of the charges in the first trial, that proceeding with the second trial on the third charge would violate his constitutional rights under the Fifth Amendment's Double Jeopardy Clause, which applied to the States through the Fourteenth Amendment.

The defendant, who was suspected of stealing a safe containing guns and cash, was charged with burglary, grand larceny, and unlawful possession of a firearm by a convicted felon in violation of Virginia law. In order to avoid prejudicing the jury's consideration of the burglary and larceny charges by allowing the prosecution to introduce evidence of the defendant's prior convictions (also for burglary and larceny) to prove the felon-in-possession charge, the defendant and the government entered into an agreement under which the defendant would be tried for burglary and larceny first. After a jury acquitted the defendant of both of those charges in the first trial, the defendant argued that he could no longer be tried on the third charge. The Virginia Court of Appeals disagreed with the defendant, as did the Virginia Supreme Court, which summarily affirmed the jury's conviction of the defendant on the felon-in-possession charge in the second trial.

Justice Gorsuch, writing for the majority, also affirmed the conviction. The Court explained that the protections of the Double Jeopardy Clause, which provided that no person could be tried more than once for the same offense, did not apply, because the defendant consented to separate trials of the charges against him, which were originally severed for his benefit and at his behest.

In an opinion joined by Chief Justice John G. Roberts, Jr., Justice Clarence Thomas, and Justice Samuel A. Alito, Jr., Justice Gorsuch rejected the defendant's argument that his consent to a second trial did not extend to the relitigation of any issues that the first jury had already resolved in his favor, arguing that principles of issue preclusion applicable in civil cases could not be imported into the criminal law through the Double Jeopardy Clause.

Justice Gorsuch reasoned, in part, that, while Restatement of the Law Second, Judgments § 19 generally precluded litigation of a claim that arose out of the "same transaction" or "common nucleus of operative facts" as a different claim that had already been tried, the Double Jeopardy Clause precluded a trial on an offense only if a court had previously heard the same offense, as measured by its statutory elements.

Further, Justice Gorsuch pointed out that, under § 28 of the Restatement, the doctrine of issue preclusion often did not bar the relitigation of issues when the party against whom preclusion was sought could not, as a matter of law, have obtained review of the judgment in the initial action, and that, in a criminal case, the government could not obtain appellate review of acquittals.

He concluded by explaining that civil preclusion principles and double jeopardy were different doctrines, with different histories, serving different purposes; while historically, claim preclusion and issue preclusion were intended to promote judicial economy by preventing needless litigation, the aim of the Double Jeopardy Clause was to balance vital interests against abusive prosecutorial practices with consideration of the public's safety.

In a separate criminal action, *Carpenter v. United States*, No. 16–402 (U.S. June 22, 2018), the Supreme Court concluded that the government conducted a search under the Fourth Amendment when it accessed historical cell-phone records that provided a comprehensive chronicle of the user's past movements.

Prosecutors, acting on information provided by an arrestee who confessed to robbing a series of stores along with several other accomplices over a four-month period, applied for court orders under the Stored Communications Act to obtain cell-phone records—in the form of time-stamped cell-site location information—for another suspect who called the arrestee or received calls from the arrestee around the time of the robberies. Based on the records, which revealed that the suspect's cell phone was located near four of the robberies, the suspect was charged with six counts of robbery and six counts of carrying a firearm during a federal crime of violence. After the district court denied the suspect's motion to suppress the records supplied by his wireless carriers on the ground that they had been obtained without a warrant supported by probable cause, the suspect was convicted and sentenced. The Sixth Circuit affirmed, finding that the suspect lacked a reasonable expectation of privacy in the location information contained in the records obtained by the prosecution, because he had shared that information with the wireless carriers.

Chief Justice Roberts, writing on behalf of the Court, reversed and remanded, holding that the government's acquisition of the suspect's cell-phone records was a search, and that the government generally had to obtain a warrant supported by probable cause before acquiring such records. The Court reasoned that the third-party doctrine, which stemmed in part from the notion that an individual had a reduced expectation of privacy in information knowingly shared with another, could

not be mechanically applied to this case, given the unique nature of cell-phone location information. The Court pointed out that, apart from disconnecting the phone from the network, there was no way to avoid leaving behind a trail of location data; thus, in no meaningful sense did a user of a cell phone voluntarily assume the risk of turning over a comprehensive dossier of his or her physical movements.

Justice Gorsuch, in one of four dissenting opinions, expanded on the majority's conclusion that the doctrine of assumption of risk, which developed in tort law, did not apply in this context. Citing Restatement of the Law Second, Torts §§ 496B and 496C(1) and Comment *b*, which required either an express agreement to accept a risk of harm or a manifestation of willingness to accept the risk in order for the doctrine to apply, Justice Gorsuch argued that knowing about a risk did not mean that one assumed responsibility for it, and that consenting to give a third party access to one's records was not the same thing as consenting to a search of those records by the government. Justice Gorsuch concluded by suggesting that, instead of looking to the doctrine of assumption of risk under tort law, the suspect could potentially have argued that the records at issue were his, and that his interest in the records rose to the level of a property right that was protected under the common law.

The Institute is currently working on portions of the Restatement Third of Torts: Intentional Torts to Persons. To join the Members Consultative Group for this or other current projects, visit the projects page on the ALI website at www.ali.org/projects.

Notes About Members and Colleagues

Kristen D. Adams was selected as the interim dean of Stetson University College of Law, effective June 1.

Enrique Armijo of Elon University School of Law spoke at the Yale Law School Floyd Abrams Institute for Freedom of Expression's First Amendment Salon entitled "Rethinking Reno and Section 230: How should we regulate social media?" The salons are a series of discussions on current free-speech issues for academics, practitioners, journalists, and other members of the First Amendment community. And Professor Armijo's paper, "The Freedom of Non-Speech," was discussed at the Floyd Abrams Institute's annual Freedom of Expression Scholars Conference.

John B. Attanasio, president of The International Academic Institute of Legal Process and Procedure, is the author of *Politics and Capital: Auctioning the American Dream* (Oxford University Press 2018).

Oren Bar-Gill of Harvard Law School was awarded the Best Paper Prize from the American Law and Economics Association for his paper "(Mis)perceptions of Law in Consumer Markets."

Hilarie Bass of Greenberg Traurig highlighted the importance of the mental well-being of lawyers in an issue of the *American Lawyer*.



Liability Insurance Project Reporter **Tom Baker** of Penn Law and **Randy J. Maniloff** of White and Williams presented "The ALI Restatement – What Lies Ahead" at an event hosted by White and Williams. They discussed with the audience the practical impact of the Restatement, which was approved at the 2018 Annual Meeting.

Mr. Maniloff explained to the audience that he believes that the Restatement will be most influential when either case law exists nationally, but the relevant state law is silent; or where some relevant case law exists in a jurisdiction, but no clear rule has yet emerged. The presenters then walked the audience through many of the Restatement's Sections including the duty to make reasonable settlement decisions, long-tail claims, and bad faith.

Charles L. Becker, **Thomas R. Kline**, and **Shanin Specter** of Kline & Specter authored a chapter in the new book, *The Supreme Court of Pennsylvania – Life and Law in the Commonwealth, 1684-2017*. The chapter examines the high court's role in shaping medical malpractice law over the last 200 years.

On April 17, **Helen I. Bendix** of Los Angeles was appointed by Governor Jerry Brown as associate justice of the California Court of Appeal, Second District, Division One.

continued on page 24

NOTES ABOUT MEMBERS AND COLLEAGUES CONTINUED FROM PAGE 23

Sheila L. Birnbaum, co-chair of Quinn Emanuel's global product-liability and mass-torts practice, was honored with the Judith S. Kaye Achievement Award.

Tomiko Brown-Nagin of Harvard Law School was named dean of Harvard's Radcliffe Institute for Advanced Study, effective July 1.

Samuel W. Buell of Duke Law School provided insight on lawyer–client privilege regarding the FBI raid of the office of President Trump's lawyer, Michael Cohen, in a *New York Times* article.

The Berkeley Center for Consumer Law and Economic Justice was established by a $3.5 million gift from **Elizabeth J. Cabraser** of Lieff Cabraser Heimann & Bernstein. The center will deliver research and analysis to fuel meaningful policy change.

McKool Smith and *Benchmark Litigation* have collaborated to produce "Behind the Trial," a podcast series featuring thoughtful discussions with the nation's most iconic trial lawyers. **Evan R. Chesler** of Cravath, Swaine & Moore was featured in a two-part episode. He also has received the *New York Law Journal*'s 2018 Lifetime Achievement Award.

The American Academy of Arts & Sciences has announced the election of its newest members, which include fellows **Mariano-Florentino Cuéllar** of the California Supreme Court, **Risa L. Goluboff** of University of Virginia School of Law, **Mark A. Lemley** of Stanford Law School, and Associate Justice **Sonia M. Sotomayor** of the U.S. Supreme Court.

Mark A. Cymrot of Baker & Hostetler, **Harold Hongju Koh** of Yale Law School, **Michael Mattler** of the U.S. Department of State, and **David P. Stewart** of Georgetown University Law Center participated in panels for a conference on Litigating Foreign Relations Law in a Changing Treaty Landscape at Georgetown University Law Center.

Former Utah Supreme Court Justice **Christine M. Durham**, the first woman appointed to that court and to serve as its chief justice, addressed Westminster College's 2018 graduating class.

Data Privacy

April 5, 2018 in Washington, DC

Sections 4-11 and 13 were presented for review and comment, with particular focus on § 9, Data Retention and Disposal; § 10, Data Portability; § 11, Data Security; and § 13, Accountability. The next project meeting will be held on November 2, 2018, in Philadelphia.



Ward Farnsworth of the University of Texas School of Law has released a new book, *The Practicing Stoic: A Philosophical User's Manual* (David R. Godine, Inc. 2018).

John N. Fellas of Hughes Hubbard & Reed has written an article for the *New York Law Journal* titled "Enforcing New York Convention Awards in the United States: Getting It Right." The article discusses the U.S. Court of Appeals for the Second Circuit's decision in *CBF Indústria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58 (2d Cir.), cert. denied, 138 S. Ct. 557 (2017), including the various distinctions made by the court and their implications for parties applying to U.S. courts to reduce an arbitration award to judgment.

James Forman Jr. of Yale Law School won the 2018 Pulitzer Prize in General Nonfiction for his book *Locking Up Our Own: Crime and Punishment in Black America* (Farrar, Straus and Giroux 2017).

Kenneth C. Frazier of Merck was fifth on Fortune's 2018 list of "The World's 50 Greatest Leaders."

Eric M. Freedman of the Maurice A. Deane School of Law at Hofstra University is the author of *Making Habeas Work: A Legal History* (NYU Press 2018), which examines the writ of habeas corpus through a lens of current issues.

Pamela B. Gann of Claremont McKenna College was appointed to the Board of Directors for the Scholarship Foundation of Santa Barbara.

Michele B. Goodwin of the University of California, Irvine School of Law has received the Sandra Day O'Connor Legacy Award, from the Women's Journey Foundation, at its second annual "Making HERstory" event.

On August 4, **Michael D. Green** of Wake Forest University School of Law will receive from the ABA Tort Trial and Insurance Practice Section the Robert B. McKay Law Professor Award, during the section's annual meeting in Chicago. The award was created to honor those law professors who have shown commitment to the advancement of justice, scholarship, and the legal profession, and who have made outstanding contributions to the fields of tort, trial practice, or insurance law.

Kevin J. Hamilton of Perkins Coie has written a review in *The Seattle Times* for the book *Eat the Apple* (Bloomsbury Publishing 2018) by Matt Young. The book is Young's memoir recounting his time in the Marine Corps during the Iraq War.

Zachary J. Harmon, formerly a partner with King & Spalding, has been appointed chief of staff to FBI Director Christopher Wray.

William C. Hubbard of Nelson Mullins Riley & Scarborough wrote an op-ed article for the *ABA Journal* in which he discusses the ever-increasing need for vigilance in protecting the independence of the judiciary.

Richards Kibbe & Orbe announced that **Christopher A. Jarvinen** has joined the firm as a partner in its New York office.

Jeh C. Johnson of Paul, Weiss provided the opening keynote at Rutgers University's forum, "Fighting Hate while Preserving Freedom: A Best Practices Forum." The daylong symposium focused on best practices in confronting hate in various social settings. **Ronald K. Chen** of Rutgers Law School–Newark and **Paul Fishman** of Seton Hall University School of Law also participated in the forum, taking part in the Reactive Panel.

In "Cross-Enforcement of the Fourth Amendment," forthcoming in the *Harvard Law Review*, **Orin S. Kerr** of the University of Southern California Gould School of Law tackles the complexity of identifying who can enforce what law under the Fourth Amendment.

Immediate ABA past president **Linda A. Klein** of Baker Donelson, the first woman to serve as president of the Georgia State Bar, was the 2018 commencement speaker for Atlanta's John Marshall Law School.

William J. Leahy of the Office of Indigent Legal Services has written "The Right to Counsel in the State of New York: How Reform Was Achieved After Decades of Failure," 51 Ind. L. Rev. 145 (2018).

Vice Chancellor of NYU Shanghai **Jeffrey S. Lehman** was named one of "The Most Influential Foreign Experts During 40 Years of China's Reform and Opening-Up." The award was announced at the opening ceremony of the 16th Conference on International Exchange of Professionals, on April 14, in Shenzhen, China.

In "A Singular Dean," Duke Law reflects on **David F. Levi**'s accomplishments during his 11-year tenure as dean of the law school and highlights the ways in which he has helped students prepare for leadership roles in their careers and communities. Dean Levi was also featured in a *Politico* article that discusses the partnership between Duke Law's Civil Justice Clinic and Legal Aid of North Carolina to reduce the number of housing evictions.

Wilma A. Lewis of the District Court of the Virgin Islands delivered the commencement address for Penn State Law School.

Roberta D. Liebenberg of Fine, Kaplan and Black has received the Hortense Ward Courageous Leader Award from the Center for Women in Law at the University of Texas School of Law. This award, which is bestowed once every two years, recognizes an "outstanding woman lawyer" who displays "tenacity, courage, and commitment in her efforts to achieve gender parity in positions of leadership, influence, and responsibility in the legal profession."

In May, **Goodwin Liu** of the California Supreme Court delivered Yale Law School's commencement address.

The Illinois State Senate passed a proclamation on May 1 expressing gratitude to **Ann M. Lousin** of John Marshall Law School for her many contributions to the state of Illinois.

Margaret C. Love wrote an article for *The Washington Post*, titled "Trump's pardons really aren't out of the ordinary" in which she provides some much-needed perspective on President Trump's use of executive power to grant pardons.

Gerard E. Lynch of the U.S. Court of Appeals for the Second Circuit was presented Columbia Law School's Medal for Excellence during its Winter Luncheon. The award is presented to alumni and past or present faculty members "who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students."

Randy J. Maniloff of White and Williams interviewed ABC News chief legal affairs anchor Dan Abrams for *Law360* to take an exclusive look into the past, present, and future of Abrams's career in law and media while providing a first look between the pages of his new book, *Lincoln's Last Trial: The Murder Case That Propelled Him to the Presidency* (Hanover Square Press 2018).

The *Daily Journal*, a periodical dedicated to providing California attorneys with updates on the courts and the legal community, published a judicial profile on **M. Margaret McKeown** of the U.S. Court of Appeals for the Ninth Circuit.

Luz E. Nagle of Stetson University College of Law was appointed co-chair of the Crimes Against Women Subcommittee of the International Bar Association. She will serve through December 2019.

At the ABA Annual Meeting in Chicago in August, **Cynthia E. Nance**, the first woman and first African American to be dean of the University of Arkansas School of Law, will receive the 2018



Goodwin Liu | Credit: Jessica Hill



Ann M. Lousin

continued on page 26

NOTES ABOUT MEMBERS AND COLLEAGUES CONTINUED FROM PAGE 25

Margaret Brent Women Lawyers of Achievement Award. Established in 1991 by the ABA Commission on Women in the Profession, the award recognizes the accomplishments of women lawyers who have excelled in their field and paved the way for other women lawyers.

Janet Napolitano of the University of California was chosen by the Independence Harry S. Truman Award Commission as the 2018 recipient of the Harry S. Truman Public Service Award. Established by the City of Independence, Missouri in 1974, the award is presented annually to an outstanding American citizen who best typifies and possesses the qualities of dedication, industry, ability, honesty, and integrity that distinguished President Truman.

J. Thomas Oldham of the University of Houston Law Center published several new works this year titled, "A Survey of Lawyers' Observations About the Principles Governing the Award of Spousal Support throughout the United States," 51 Family Law Quarterly 1 (2017), "The Financial Provision Bill and the American Experience," Family Law (London) (Jan. 2018) at 82, and a new edition of *Family Law: Cases, Comments and Questions* (West 2018).

Richard W. Painter of the University of Minnesota Law School has announced that he will run for the U.S. Senate in Minnesota.

Robert L. Parks of Miami has been designated a Distinguished Fellow by the International Academy of Trial Lawyers (IATL). The IATL "seeks out Fellows who have achieved a career of excellence as shown by their skills in trial, and as demonstrated by their integrity and professionalism."

Rafael A. Porrata-Doria Jr. of Temple University Beasley School of Law was inducted into the *Academia Puertorriqueña de Jurisprudencia y Legislación* (the Puerto Rican Academy of Jurisprudence and Legislation). The Academy is dedicated to the promotion of research that contributes to law reform and progress in Puerto Rico.

Judith Resnik of Yale Law School was selected as a member of the 2018 class of Andrew Carnegie Fellows. She is among the 31 scholars and writers to each receive up to $200,000 over a one- or two-year period that enables them to devote time to significant research, writing, and publishing in the humanities and social sciences.

Daniel B. Rodriguez of Northwestern University Pritzker School of Law was featured in an *American Lawyer* article detailing the university's initiative to invest in faculty and curriculum changes to prepare its students for the legal market. He also sat down with Valerie Jarrett, during a conference on law-school fundraising organized by the ABA, for a fireside chat to discuss the recent controversy surrounding Mrs. Jarrett and comedian Roseanne Barr.

Catherine A. Rogers of Penn State Law School and Queen Mary University of London delivered the keynote address at Cambridge Arbitration Day, which was held at the University of Cambridge in the United Kingdom. Her address was titled "Competition in the International Arbitration Market: A Race to the Top?"

Jeffrey Rosen of the National Constitution Center was interviewed by Douglas H. Ginsburg of the U.S. Court of Appeals for the D.C. Circuit as part of the National Constitution Center's *The American Presidents Series*. At the event, Professor Rosen launched his new book, *William Howard Taft* (Times Books 2018), in which he argues that Taft was the most judicial president and presidential Chief Justice.

Jennifer E. Rothman of Loyola Law School has published her book *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard University Press 2018). She also submitted an amicus brief in a California Court of Appeal case, Olivia de Havilland v. FX Networks, and argued on behalf of constitutional-law and intellectual-property-law professors in the case. Her op-ed on the case, "What Does Olivia de Havilland Have Against Allison Janney," was published in the *L.A. Times*.

Christopher A. Seeger of Seeger Weiss was featured in *Law360*'s 2018 listing of Titans of the Plaintiffs Bar for his work on a drug lawsuit that won heart-attack patients over $300 million.

Harvard Law School's **Robert H. Sitkoff** was cited in both majority and dissenting opinions in *Sveen, et al. v. Melin*, a U.S. Supreme Court case holding that the retroactive application of Minnesota's revocation-on-divorce statute, which automatically nullifies an ex-spouse's beneficiary designation on a life-insurance policy or other will substitute, does not violate the Constitution's contracts clause.

Stewart E. Sterk of Benjamin N. Cardozo School of Law was named the recipient of the 2018 Brigham-Kanner Property Rights Prize from the William & Mary Law School Property Rights Project.

Bryan A. Stevenson of the Equal Justice Initiative appeared on *60 Minutes*, interviewed by Oprah Winfrey, highlighting The National Memorial for Peace and Justice in Montgomery, Alabama.

Geoffrey R. Stone of University of Chicago Law School wrote an article for *Rolling Stone* in which he discussed the recent controversy surrounding comedian Roseanne Barr and the NFL and their connection to the First Amendment and free speech.

The Brooklyn Bar Association's Volunteer Lawyers Project honored **Elizabeth S. Stong** of the U.S. Bankruptcy Court for the Eastern District of New York with the Terri and Nick Letica Award during its Volunteer Recognition Event. At the event, Terri Letica praised Judge Stong for her commitment over many years towards pro bono work and her work within the community.

Willard K. Tom of Morgan Lewis is one of five attorneys to receive The National Asian Pacific American Bar Association's highest honor—the Daniel K. Inouye Trailblazer Award. The award recognizes the outstanding achievements, commitment, and leadership of lawyers

who have paved the way for the advancement of other Asian Pacific American attorneys and made substantial and lasting contributions to the Asian Pacific American legal profession, as well as to the broader Asian Pacific American community.

Barbara D. Underwood has been confirmed as Attorney General for New York. She is the first woman to hold that post.



Barbara D. Underwood's confirmation

Stephen I. Vladeck of the University of Texas School of Law wrote an op-ed for *The New York Times* titled "Our Increasingly Unenforceable Constitution."

Effective June 15, **Kevin K. Washburn** of the University of New Mexico School of Law became the N. William Hines dean of the University of Iowa College of Law.

William A. Worthington of Conner & Winters has received the Marquis Who's Who Albert Nelson Marquis Lifetime Achievement Award. He will be profiled in the Marquis Who's Who biographical volume.

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

In Memoriam

ELECTED MEMBERS

Peter J. Levin, Washington, DC

LIFE MEMBERS

Roger J. Goebel, New York, NY; **Diana E. Murphy**, Minneapolis, MN; **Raymond T. Nimmer**, Houston, TX; **Ronald D. Rotunda**, Orange, CA; **Leonard L. Silverstein**, Washington, DC; **Herbert D. Sledd**, Lexington, KY

Meetings and Events Calendar At-A-Glance

(for more information, visit www.ali.org)

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

2018

September 14
Restatement of the Law, The U.S. Law of International Commercial and Investment Arbitration
Philadelphia, PA

September 21
Restatement of the Law, Charitable Nonprofit Organizations
Philadelphia, PA

October 4
Principles of the Law, Government Ethics
Philadelphia, PA

October 5
Restatement of the Law, Children and the Law
Philadelphia, PA

October 11
Restatement of the Law Fourth, Property
Philadelphia, PA

October 12
Model Penal Code: Sexual Assault and Related Offenses
Philadelphia, PA

October 18–19
Council Meeting - October 2018
New York, NY

October 25
Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations
Philadelphia, PA

October 26
Principles for a Data Economy
Philadelphia, PA

November 2
Principles of the Law, Data Privacy
Philadelphia, PA

November 8
Restatement of the Law, The Law of American Indians
New York, NY

November 9
Restatement of the Law Third, Conflict of Laws
Philadelphia, PA

November 15–16
Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities
New York, NY

(ISSN 0164-5757)
THE AMERICAN LAW INSTITUTE
4025 CHESTNUT STREET
PHILADELPHIA, PA 19104-3099

NONPROFIT ORG
U.S. POSTAGE
PAID
ALI

Visionaries Documentary to Highlight ALI's Work

The American Law Institute has been selected to be profiled by Visionaries Inc. for its upcoming 23rd season. Since 1995, Visionaries has been producing a series highlighting nonprofit organizations that are working to make a positive difference in their community and beyond. The documentary will be featured on 100 PBS stations throughout the United States. In the meantime, visit www.ali.org to view the promotional video.

ALI and Visionaries would like thank all of the donors who made this project possible.





