THE ALI
Reporter

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ALI Council Approves Six Project Drafts at October Meeting

During its meeting in New York City on October 18 and 19, the ALI Council reviewed drafts for seven Institute projects. Drafts or portions of drafts for six projects received Council approval, subject to the meeting discussion and to the usual prerogative to make nonsubstantive editorial improvements.



Goodwin Liu of the Supreme Court of California (Children and the Law session)

On October 18, Reporter Barry Friedman of New York University School of Law, with Associate Reporters Tracey L. Meares of Yale Law School, Christopher Slobogin of Vanderbilt University Law School, and Brandon L. Garrett of Duke University School of Law (participating by telephone), presented Council Draft No. 2 of **Principles of the Law, Policing**, consisting of Chapter 1 on definitions and general principles, Chapter 3 on police encounters, Chapter 4 on policing in the absence of individualized suspicion, and Chapter 11 on police questioning. The Council approved Chapter 1 and §§ 3.01-3.06 of Chapter 3, but there was insufficient time to consider § 3.07 on searches incident to arrest and Chapters 4 and 11. In response to comments from project participants, the Reporters will make a number of changes that will be incorporated into their next draft. The project will be on the agenda for the Council's January 2019 meeting.



Judith A. Miller (Compliance session)

Reporter Geoffrey P. Miller of New York University School of Law and Associate Reporters Jennifer H. Arlen, also of NYU School of Law, and James A. Fanto of Brooklyn Law School submitted their first Council Draft for **Principles of the Law, Compliance, Risk Management, and Enforcement**. Council Draft No. 1 contains Chapter 1, Definitions; Chapter 2, Subject Matter, Objectives, and Interpretation; Chapter 3, Governance; and Chapter 5, Compliance. The Council discussed

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THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

Preparing for Our 100th Anniversary

In 2023, The American Law Institute will celebrate its 100th anniversary. As befits an organization better known for the meticulousness of its work than for its ability to turn on a dime, the planning efforts are already well underway under the direction of a spectacular committee co-chaired by our current President, David Levi, and our past President, Roberta Ramo. In turn, the committee is divided into three subcommittees: on commissioning a history of the ALI, chaired by Edward Cooper and Diane Wood; on planning the celebratory events, chaired by Paul Friedman and Larry Kramer; and on charting a course for our second century (or at least for the early portion of that century), chaired by Yvonne Gonzalez Rogers, Margaret Marshall, and Troy McKenzie. While many of our plans for the anniversary are still being developed, I thought that it would be useful for me to share our current thinking at this early stage. As an administrative law scholar, I am a fan of notice-and-comment proceedings and would very much welcome ideas from our members before any of the arrangements become set in stone.

Our history subcommittee is likely to ask a dozen or so historians and legal scholars to each write a chapter about some aspect of the ALI's work. Some of these chapters will probably focus on particularly influential projects, such as the Restatements of Torts and Contracts, the Model Penal Code, and the Uniform Commercial Code. Others will probably look at the role of the ALI as an institution. I am particularly interested in understanding better the role, if any, that the ALI played in some of the key legally based transformations during the 20th century, such as the civil rights movement and the New Deal. Learning more about how we

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2018 Updates to Trial Manual 6 Are Now Available

ALI Continues Its Efforts to Provide Assistance to Public Defenders

In 2016, authors Anthony G. Amsterdam and Randy Hertz released the Sixth Edition of the *Trial Manual for the Defense of Criminal Cases*, an update of the widely used guide for handling criminal court cases. The *Manual*, last published in 1988, is designed as a how-to-do-it exposition for the general practitioner of the law and practice of criminal defense. It gives the lawyer who is relatively inexperienced in criminal proceedings a compact guide through the stages of a criminal case, from arrest and investigation to appeal. It identifies critical points in the proceedings, warns of rights to be asserted and interests to be protected at each stage, describes the practices and procedures necessary or useful for the assertion of those rights and the protections of those interests, and, in both narrative and checklist form, suggests steps to be taken or considered by defense counsel at the various stages.

Professors Amsterdam and Hertz have updated the Sixth Edition with their 2018 Supplement. Public defenders may request a free electronic copy of the *Manual* and 2018 Supplement. Please email *communications@ali.org* to request the free PDF Volumes.

From the authors:

> The primary goal of the *Manual* has always been – and continues to be – to serve as a resource for criminal defense lawyers at the trial level. It covers the information a defense attorney has to know, and the strategic factors s/he should consider, at each of the stages of the criminal trial process. It is organized for easy access by practitioners who need ideas and information quickly in order to jump-start their work at any given stage.

The *Manual* is a thoughtfully conceived, well-organized, easy-to-read guidebook on the process of handling a criminal case, from arrest to appeal. Threading the needle of serving the novice and the experienced lawyer is always a challenge in the writing of professional manuals, as is finding the right balance in addressing federal and state rules of procedure and practice in a justice system that involves thousands of police departments, prosecutor offices, courts, and jails and prisons. The *Manual* does this well in providing the basic guidance, insights into complex and sophisticated issues, and references to sources with more comprehensive discussions of particular issues.

From the Trial Manual *book review by Abbe Smith of Georgetown Law and David Rudovsky of Kairys, Rudovsky, Messing, Feinberg & Lin LLP, published in* The Champion*, a magazine by the National Association of Criminal Defense Lawyers*

A BRIEF HISTORY

In 1967, *A Trial Manual for the Defense of Criminal Cases* was published by the ALI-ABA Joint Committee on Continuing Legal Education. The product of the combined effort of the ALI-ABA Joint Committee, the American College of Trial Lawyers, and the National Legal Aid and Defendant Association, the *Manual* was designed for use in Course of Study to be conducted throughout the country and as a working document for lawyers involved in the defense of persons accused of crime.

Authored by Anthony G. Amsterdam, Bernard L. Segal, and Martin K. Miller, the *Manual* consisted of three parts. The first was an Outline of the Criminal Defense Process; the second was a treatise-like discussion of the substantive content of the Outline titled 'Guidelines for Criminal Defense;' the third was a Selected Bibliography of Criminal Procedure, keyed directly to the Outline.

It was introduced in loose-leaf form to facilitate (1) local annotating and (2) periodic updating to keep it current. The planned use of the publication was for local legal educational organizations and bar associations to interfoliate local annotations covering both substantive and procedural local law, and for their cosponsorship of Courses of Study based on the *Manual*.

The American Law Institute is proud to work with authors Amsterdam and Hertz on the continued publication of this widely relied upon work, and will continue to provide free access to public defenders who may not otherwise be able to afford access to yearly updates.

To date, ALI has granted access nearly 6,000 times.

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approached these matters in the past might help us reflect on how to deal with similar transformative events in the future.

As to the anniversary events, the core of our celebration will take place in Washington, DC, during the Annual Meeting in May 2023. We will devote one of the Meeting's days for programming focusing on our past and our future and will have a large celebration reception at a spectacular venue yet to be determined. In addition, during 2022 and 2023, we plan to host four to six regional events around the country, with substantive programs examining features of our work. For these regional events, we will try to have a traveling exhibit of ALI historical materials, prepared with the assistance of the University of Pennsylvania Law School Library, which manages our archives.

Over the last year, we have been busily involved with the efforts to chart our future. In this connection, the ALI's leadership has had many conversations with members about our current work and the types of projects that the ALI should do in the future. Should we depart significantly from our current mix of Restatements, Principles, as well as our ongoing attention to the Model Penal Code and the Uniform Commercial Code? How should we deal with new technologies that have significant legal underpinning, like artificial intelligence, autonomous vehicles, and drones, but not yet much case law addressing them? Can our work benefit from the analysis of "big data"? What are the implications for the work of the ALI on increasing pressure on rule-of-law values? And we have discussed whether our deliberative process continues to be well suited for areas of law that are changing rapidly. The conversations have also explored how members, particularly those who live far from the East Coast, can become more productively engaged with the ALI's work.

The ALI primarily relies on its members for their experience, analytical abilities, and judgment. Fundraising campaigns are a rare occurrence: the last one took place in the 1980s. But it is important at this time to secure the ALI's programmatic and financial future, particularly in light of possible declines in our royalties in the future resulting from market transformations. Thus, as part of the anniversary effort we will launch an ambitious development campaign supervised by a committee chaired by Judith Miller. While the precise contours of our fundraising priorities are still being worked out, I wanted to share with you an early peek at our thinking.

In connection with our substantive work, we will want to address certain pressing social problems that have strong legal underpinnings or dimensions, even though these projects are unlikely to yield us the revenues we derive from traditional Restatements. Our Principles projects on Data Privacy, Policing, and on Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities fall in this vein. But we also need to continue focusing on our core competencies, such as completing the Restatement Third of Torts and revising the Model Penal Code. These Restatements and Codes are still of the utmost importance and complexity. We have found that the best way to assure quality and timeliness is by assembling teams comprising multiple Associate Reporters working with a Reporter—a departure from the traditional model of a single Reporter. This significant commitment of resources has proven its value. Moreover, we believe that in our global economy, undertaking transnational projects, like our ongoing Principles for a Data Economy, which we are doing jointly with the European Law Institute, will become even more compelling.

We also need to enhance the opportunities for our members to participate in our substantive work. In this connection, a very high priority is to significantly increase the resources we provide for members of the judiciary, the public sector, and private nonprofits to attend our meetings; indeed, we derive our legitimacy from the broad participation of members across the whole breadth of the legal profession and we absolutely cannot let financial barriers stand in the way of representing diverse sectors of the profession in our deliberations. We also are committed to exploring uses of technology that might help our members engage more productively with our substantive work.

Another important priority is to increase our work's influence. We need to make sure that our Restatements are available to courts, particularly trial courts in certain states that no longer can afford electronic subscriptions that include our materials. We also need to effectively raise the awareness of our work in the legal profession—for example, through conferences and other events focusing on recently completed projects—and engage with the next generation of legal scholars, which we currently do through our Early Career Scholars Medal.

As in all fundraising campaigns, we will eventually have an official launch, when we will announce the campaign's goal. But, also as in all campaigns, this public phase is preceded by a silent phase. For us, the silent phase started on July 1, 2016. So, any financial contributions that we currently receive, including annual fund gifts, sustaining member dues, and bequests will count towards the campaign's goals.

Being able to plan for a second century is, by itself, a significant sign of success. Most institutions do not find ways of remaining relevant and influential for such a long period of time. And it is a success for which we should all take great pride. It is also a wonderful opportunity to think about how to ensure that our successors, a hundred years from now, will be in at least as good a position as we are to plan for their next century.

ALI COUNCIL APPROVES SIX PROJECT DRAFTS AT OCTOBER MEETING CONTINUED FROM PAGE 1

Chapters 1 through 3 but did not have time to consider Chapter 5, and no vote was taken on the draft. The Reporters will revise Chapters 1 through 3 pursuant to the meeting discussion and include the revised Chapters in their draft for the January 2019 Council meeting.

Reporters Florencia Marotta-Wurgler of NYU School of Law and Omri Ben-Shahar of the University of Chicago Law School presented Council Draft No. 5, containing all nine provisions of the proposed **Restatement of the Law, Consumer Contracts**. The Council approved Council Draft No. 5, subject to the discussion at the meeting and the usual editorial prerogative. The Reporters agreed to revise the draft to address comments received from project participants as well as comments made during the Council's discussion; the revised material will be submitted at the 2019 Annual Meeting.

On October 19, Council Draft No. 3 of **Restatement of the Law, Children and the Law**, was presented by Reporter Elizabeth S. Scott of Columbia Law School and Associate Reporters Richard J. Bonnie of the University of Virginia School of Law, Emily Buss of the University of Chicago Law School, Clare Huntington of Fordham University School of Law, Solangel Maldonado of Seton Hall University School of Law, and David D. Meyer of Tulane University Law School. Council Draft No. 3, comprising three Sections on parental authority to make decisions about a child's associations with a third party, one Section on state intervention for parental neglect, two Sections on school authority to exercise control over students for misbehavior, and two Sections on juveniles' right to counsel in delinquency proceedings, was approved by the Council.

Reporter Christopher Jon Sprigman of NYU School of Law and Associate Reporters Lydia Pallas Loren of Lewis & Clark Law School, R. Anthony Reese of University of California, Irvine School of Law, and Molly S. Van Houweling of University of California, Berkeley School of Law, submitted Council Draft No. 2 of **Restatement of the Law, Copyright**, containing five Sections from Chapter 1, Subject Matter and Standards, and three Sections from Chapter 2, Scope of Protection. Section 1.01, Basic Requirements for Copyright Protection, was presented for discussion only. The Reporters explained their planned revisions to the draft in response to comments received prior to the meeting. The Council approved §§ 1.02, 1.06, 1.07, and 1.08, covering types of works protected by copyright law and the basic requirement of originality, including independent creation and minimal creativity; it also approved §§ 2.01 and 2.02, covering copyright protection of expression. The Council discussed, but did not vote on, § 2.07 on scènes à faire. The Reporters will revise the approved Sections pursuant to the meeting discussion, and the revised material will be included for reference in the next Council Draft.

The Council also approved Council Draft No. 5 of **Restatement of the Law Third, Torts: Intentional Torts to Persons**, presented by Reporter Kenneth W. Simons of the University of California, Irvine School of Law, and Associate Reporter W. Jonathan Cardi of Wake Forest University School of Law. Sections submitted for approval were § 1, Comment H (battery and implied-in-law consent), §§ 1, 4, 5, and 7 (excerpts of consent provisions for specific torts), § 12 (categories of consent that preclude liability), §§ 13-15 (actual consent), § 16 (apparent and presumed consent), § 17 (emergency doctrine), § 18 (consent to sexual conduct), § 19 (medical treatment without legally effective consent as battery), § 20 (general principles for privileges), and §§ 30-34 (privilege to defend land or personal property).

Reporter Matthew L.M. Fletcher and Associate Reporter Wenona T. Singel, both of Michigan State University College of Law, and Associate Reporter Kaighn Smith, Jr., of Drummond Woodsum submitted Council Draft No. 5 of **Restatement of the Law, The Law of American Indians**, consisting of §§ 44-46 and 47-51 on the Indian Child Welfare Act and similar state laws, §§ 58-62 and 64-66 on Indian tribes as economic actors, and §§ 100-108 on Indian Country criminal jurisdiction. The Council approved Council Draft No. 5, subject to the meeting discussion and the usual editorial prerogative.



Janet Napolitano of University of California (Policing session)



Carol F. Lee of Taconic Capital Advisors (Children and the Law session)



Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit (Copyright session)



José I. Astigarraga of Reed Smith and Kenneth C. Frazier of Merck & Co. between project sessions

The Institute in the Courts: State Supreme Courts Adopt Restatement Sections

The highest courts of two states recently adopted Sections of the Restatement of the Law Second, Torts and Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm. Summaries of those opinions follow.

In *Rublee v. Carrier Corporation*, 428 P.3d 1207 (Wash. 2018), the Supreme Court of Washington adopted the "apparent manufacturer" doctrine as set forth in Restatement Second, Torts § 400 for common-law product-liability claims predating Washington's 1981 Tort and Product Liability Reform Act ("WPLA").

In that case, the surviving spouse of a machinist who died of mesothelioma, individually and as the personal representative of decedent's estate, converted decedent's personal-injury action into a wrongful-death action against, among others, the parent corporation of the entity that had manufactured, sold, and distributed asbestos-containing products decedent had used. The spouse sought to impose liability on the parent corporation as an apparent manufacturer under Restatement Second, Torts § 400, alleging that the parent corporation represented itself as a manufacturer of the products that caused decedent's mesothelioma. The trial court granted the defendant's motion for summary judgment, finding that a reasonable purchaser would not have been induced to believe that the defendant was an apparent manufacturer of the products within the meaning of § 400. The court of appeals affirmed.

Reversing the court of appeals and remanding for further proceedings, the Supreme Court of Washington held that genuine issues of material fact existed as to whether a reasonable consumer could believe that the defendant was a manufacturer of the asbestos products that caused decedent's illness and death. The court "formally adopt[ed] § 400 and recognize[d] the apparent manufacturer doctrine for claims arising before the WPLA's effective date," and explained that, in determining whether a nonmanufacturing entity such as the defendant was an apparent manufacturer under § 400, it would adopt the "objective reliance" test, which depended on the perception of a reasonable consumer who actually used the products such as decedent, rather than a sophisticated industrial purchaser of the products such as decedent's workplace. The court explained that its adoption of this Section built on the court's general acceptance of Restatement principles in similar contexts, including its adoption of §§ 402A and 388, was in accord with the clear majority of jurisdictions to consider § 400 and to formally adopt it, and was consistent with Washington statutory law, given that apparent-manufacturer liability was adopted in the WPLA and "[t]he apparent manufacturer doctrine articulated in § 400 is entirely compatible with our state's statutory product liability law."

The dissent noted that it agreed with the majority that, in the right case, Washington should adopt § 400's "apparent manufacturer" doctrine and that the "objective reliance" test was the correct test under Washington law, but disagreed with the way the majority applied that test, arguing that, where the ordinary consumer of the product was not the ordinary purchaser, the test should be applied from the perspective of the ordinary purchaser.

In *State v. Roache*, 2018 WL 6004927 (Iowa, Nov. 16, 2018), the Supreme Court of Iowa adopted the scope-of-liability analysis in Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm §§ 29 and 33 for criminal restitution cases.

In that case, the state charged a suspect with 11 counts after he was apprehended in possession of property stolen from several victims' parked vehicles. The trial court accepted the suspect's guilty pleas to one count of criminal mischief and one count of burglary, and sentenced him to an indeterminate prison term not to exceed five years for criminal mischief and two years for burglary, with the sentences to run concurrently and with credit for time served. The trial court dismissed the remaining counts but ordered the defendant to pay restitution on all 11 counts. The defendant filed a written objection to two items, including $1,900 for a stolen paperback study guide for a training course for commercial-truck drivers that was in a victim's stolen backpack, which was the amount of the fine for loss of the study guide that the operator of the training course had assessed against the victim but not yet collected from the victim. The trial court ordered, among other things, the defendant to pay the $1,900 for the study guide. The court of appeals affirmed the trial court's restitution award in full.

The Supreme Court of Iowa vacated the court of appeals' decision and reversed the trial court's restitution order as to the $1,900 award for the study guide. The court expressly adopted the risk standard in §§ 29 and 33, which limited the scope of an actor's liability by requiring consideration of, among other things, whether the harm at issue was a result of any of the risks created by the actor's tortious conduct, in the context of criminal-restitution determinations. The court noted that, previously, in *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009), it had adopted Restatement Third, Torts: Liability for Physical and Emotional Harm § 29's risk standard for civil tort actions, and explained that "[l]iability for intentional torts extends to a broader range of harms than merely negligent conduct," as provided in § 33. In examining the defendant's challenge to the $1,900 award, the court concluded that the trial court erred by awarding the amount without substantial evidentiary support, explaining that, among other things, this unpaid fine alone was insufficient to support the restitution award, because there was no evidence that the operator of the training course intended to attempt to collect any amount from

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Annual Report and Appeal

By now you should have received The American Law Institute's Annual Report in the mail, which highlights the most notable achievements of our 2017–2018 fiscal year. Letters from President David F. Levi and Director Richard L. Revesz reflect on the Institute's recently completed and ongoing projects and thank the dedicated Reporters, Advisers, and members who play a crucial role in the drafting process. President Levi and Director Revesz also look toward the future with ALI's 100th anniversary celebration.

As ALI approaches its second century of law-reform work, financial support from our members is key. One of ALI's greatest strengths is our ideological and financial independence, which we are able to maintain because of broad, enthusiastic support from our limited membership.

We hope every member, with the future in mind, will make an end-of-year charitable contribution to ALI by completing and returning the gift card that accompanied the Annual Report, or the envelope that is included in this edition of *The ALI Reporter*. Donations to the Institute can also be made online at *www.ali.org/makeagift*, or by calling Kyle Jakob, Development Manager, at 215-243-1660.

Thank you in advance for your generosity. Best wishes for a happy and healthy 2019.

You may view the Annual Report online at *www.ali.org/AnnualReport*.

Project Spotlight: Restatement of the Law, Charitable Nonprofit Organizations

A great deal of wealth in the United States is controlled by charitable nonprofit organizations. These entities dominate fields such as education, health care, religion and social services, while they play prominent roles in the arts and many other areas. Applicable legal structure descends from the law of wills, the law of trusts, and the law of for-profit partnerships and corporations, among others. Yet, an authoritative statement of the law in charitable nonprofit organizations does not exist. The law of charities, drawn as it is from various other parts of the law, in many aspects remains confusing and incomplete. It is difficult for somebody who has not worked in this field to manage all these sources. This is the basis for the Restatement.

The Restatement of Charitable Nonprofit Organizations is designed to provide guidance on the legal issues faced by nonprofit institutions. The Council approved the start of this project as a Principles project in 2000. It later approved changing the project to a Restatement in 2014. The change was appropriate for several reasons. During the drafting process, it became clear that the drafts were primarily reflecting the law as it is, noting where there are conflicts, explaining alternative approaches, and discussing the rationale for the decision when one approach was chosen over another. The Council decided that, consistent with ALI's traditional practice, the Restatement label should be used for projects that seek to provide guidance to the courts and where there is an established body of positive law. In contrast, the Principles label is appropriate for projects where the main intended audiences for the Institute's guidance are institutions other than the courts, such as legislatures, administrative agencies, or private actors. Under this categorization, this project belonged on the Restatement side of our ledger and the Council approved the name change.

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

Pending approval by ALI Council in January 2019, the remaining Sections of this project will be presented at the 2019 Annual Meeting for membership approval, marking the completion of this project. We look forward to comments from our members at the Annual Meeting, and if approved, congratulating our Reporters and project participants on their extraordinary work on this important and timely project.

Below is a more detailed projected Table of Contents with notes on which Sections have been approved. The colored text denotes Sections that have not been presented to the membership for approval.

Projected Overall Table of Contents (As of Preliminary Draft No. 5 (August 17, 2018))

CHAPTER 1. DEFINITION AND CHOICE OF FORM
(*approved at 2016 Annual Meeting*)

Introductory Note

§ 1.01. Definition of a Charity

§ 1.02. Choice of Legal Form

§ 1.03. Charities with Members

CHAPTER 2. GOVERNANCE*

§ 2.01. Fiduciary Defined and Scope of Duties (*approved at 2016 Annual Meeting*)

§ 2.02. Duty of Loyalty (*approved at 2016 Annual Meeting*)

§ 2.03. Duty of Care and the Business Judgment Rule (*approved at 2016 Annual Meeting*)

§ 2.04. Management and Expenditure of Investment Assets

§ 2.05. Definition and Duty of the Governing Board (*approved at 2016 Annual Meeting*)

§ 2.06. Delegation to Board Committees (*approved at 2016 Annual Meeting*)

§ 2.07. Fiduciaries' Rights to Information (*approved at 2016 Annual Meeting*)

§ 2.08. Modification of Fiduciary Duties and Exculpation of Fiduciaries (*approved at 2016 Annual Meeting*)

§ 2.09. Immunity, Indemnification, and Insurance

CHAPTER 3. CHANGES TO PURPOSE AND ORGANIZATION

§ 3.01. Procedures for Changing a Charity's Purposes in its Governing Documents and the Application of Existing Assets to New or Additional Purposes (*approved at 2016 Annual Meeting*)

§ 3.02. The Doctrine of Cy Pres (*approved at 2016 Annual Meeting*)

§ 3.03. The Doctrine of Deviation (*approved at 2016 Annual Meeting*)

§ 3.04. Change of Structure: Fundamental Transactions (*approved at 2016 Annual Meeting*)

§ 3.05. Insolvency and Bankruptcy (*approved at 2017 Annual Meeting*)

§ 3.06. Termination and Dissolution (*approved at 2016 Annual Meeting*)

CHAPTER 4. GIFTS: SOLICITATION, RESTRICTIONS ON CHARITABLE ASSETS, AND ENFORCEMENT OF PLEDGES

§ 4.01. Restrictions on Charitable Assets

§ 4.02. Creation and Interpretation of a Specific Restriction on a Charitable Asset

§ 4.03. Release or Modification of a Specific Restriction on a Charitable Asset

§ 4.04. Enforcement of Pledges

§ 4.05. Solicitation of Charitable Assets (TBD, possibly § 4.01 if section remains freestanding)

CHAPTER 5. GOVERNMENT REGULATION OF CHARITIES

§ 5.01. Role of the State Attorneys General (*approved at 2017 Annual Meeting*)

§ 5.02. Role of the State Courts and Remedies

§ 5.03. Role of the Federal Government

§ 5.04. Choice of Law

CHAPTER 6. STANDING OF PRIVATE PARTIES
(*approved at 2017 Annual Meeting*)

Introductory Note

§ 6.01. Standing of a Private Party to Commence or Intervene in a Direct Suit Against a Charity

§ 6.02. Standing of a Private Party to Commence an Action on Behalf of a Charity: The Derivative Suit

§ 6.03. Standing of a Private Party to Enforce the Purposes to Which Charitable Assets are Devoted and Administrative Terms Governing Charitable Assets

§ 6.04. Standing of a Private Party to Commence or Intervene in a Cy Pres or Deviation Proceeding

§ 6.05. Definition of a Private Party with a Special Interest for Purposes of Standing

**Approved at 2016 Annual Meeting as §§ 2.01-2.07; § 2.08 was previously numbered § 2.04*

Project Meeting Updates

Property

October 11 in Philadelphia, PA

Preliminary Draft No. 4 includes portions of Volume 1 (Basics of Property), Volume 2 (Interferences with, and Limits on, Ownership and Possession), and Volume 3 (Powers and Duties Associated with Ownership). Among the topics discussed were Accession, Possession, Defenses to Trespass, Trespass to Personal Property, Conversion, and Bailments. Members may access the Draft online to learn more about the topics addressed at this project meeting.



MPC: Sexual Assault

October 12 in Philadelphia, PA

Project participants discussed Preliminary Draft No. 9, which includes definitions of "force" and "serious bodily injury"; and Sections on assault involving physical force, sexual assault of a vulnerable person, and human trafficking, among others. The draft as well as the agenda of topics covered at the meeting is available to members on the project page online.



Compliance, Risk Management, and Enforcement

October 25 in Philadelphia, PA

Participants discussed Chapter 4 on Risk Management and Chapter 6 on Liability and Enforcement. Several Chapters were presented at the October Council Meeting. See page 1 for our Council Meeting update. Members may access the Preliminary Draft No. 4 online to learn more about the topics addressed at this project meeting.



Data Privacy

November 2 in Philadelphia, PA

Preliminary Draft No. 3 includes the entire draft of this Principles project. The discussion focused on § 12 (Onward Transfer) and § 14 (Remedies). The Council approved §§ 1, 2, and 3 in October 2016. It then approved §§ 6, 7, and 8 in October 2017. Pending Council approval in January 2019, the full project will be presented for final approval by the membership at the 2019 Annual Meeting. Members may access Preliminary Draft No. 3 online to learn more about the topics addressed at this project meeting.





FROM TOP TO BOTTOM

C. Scott Maravilla of the U.S. Federal Aviation Administration (Property)

Jennifer G. Long of AEquitas (Sexual Assault)

Bruce E. Yannett of Debevoise & Plimpton (Compliance)

Susan Lyon-Hintze of Hintze Law (Data Privacy)

David B. Goodwin of Covington & Burling (Conflict of Laws)



Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit, Carol A. Beier of the Kansas Supreme Court, and Leondra R. Kruger of the Supreme Court of California (American Indians)

American Indians

November 8 in New York, NY

Among the Sections discussed were § 33 on Tribal Official Immunity, Chapter 3, Subchapter 1, on State Authority, and Chapter 4 on Tribal Economic Development, which included discussions on Indian gaming. Additionally, Chapter 6 on Natural Resources was presented for the first time. Sections 1-9 on Federal–Tribal Relations were approved at the 2015 Annual Meeting. Sections 15-16, 20-32, and 34-35 on Tribal Authority were approved at the 2018 Annual Meeting. Several portions of this project were presented at the October Council Meeting. See page 4 for our Council Meeting update. Members may access Preliminary Draft No. 7 online to learn more about the topics addressed at this project meeting.

Conflict of Laws

November 9 in Philadelphia, PA

Participants discussed revisions of previously submitted Chapter 8 on Contracts, and one new Topic from Chapter 5 on Choice of Law (Topic 3, Procedure). The Council approved §§ 2.08-2.09 and 5.01-5.08 in October 2017. Chapter 1 and §§ 2.01-2.07 were approved by the Council in January 2017. Members may access Preliminary Draft No. 4 online to learn more about the topics addressed at this project meeting.

Join an MCG Today

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



Terry L. Fromson of Women's Law Project and Susan Frelich Appleton of Washington University School of Law (Student Sexual Misconduct)

Student Sexual Misconduct

November 15-16 in New York, NY

Revised versions of Chapter 5 on Informal Resolution, Chapter 6 on Formal Resolution, and Chapter 7 on Sanctions were presented for discussion. The Council reviewed and approved Chapters 1-3 in October 2017, and those Chapters were presented to the membership for discussion only at the 2018 Annual Meeting. Members may access the Preliminary Draft No. 5 online to learn more about the topics addressed at this project meeting.

THE INSTITUTE IN THE COURTS

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the victim beyond whatever the defendant was required to pay in court-ordered restitution.

The dissent argued that the trial court's restitution award should be upheld as supported by substantial evidence, noting that, "[a]s the court ultimately recognizes, this is an issue of damages, not scope of liability." The dissent pointed out that the Restatement Third, Torts: Liability for Physical and Emotional Harm did not address damages for intentional torts to property, and thus relied on Restatement Second, Contracts § 356 and Restatement Second, Torts § 927 for support, as did the majority.

The Institute is currently working on portions of the Restatement Third of Torts: Intentional Torts to Persons.

Member Spotlight: Neil B. Cohen

We sat down with Neil B. Cohen, the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School. An ALI member since 1987, Neil's contribution to the Institute's work comes in many forms.

He currently serves as a Reporter for Principles for a Data Economy, a joint project of the ALI and the European Law Institute, and served as the Reporter for Restatement of the Law Third, Suretyship and Guaranty, for which he held the R. Ammi Cutter Reporter's Chair from 1994 to 1997. Established in honor of R. Ammi Cutter, the Cutter Chair is occupied by an active Reporter of proven effectiveness.

Neil serves as the Director of Research of the Permanent Editorial Board for the Uniform Commercial Code and has been a member of several drafting committees for revising various articles of the UCC, including the most recent revisions of Articles 1, 3, 8, and 9, and was Reporter for the complete revision of Article 1 completed in 2001.

In 2014, ALI presented Professor Cohen with the John Minor Wisdom Award, given in recognition of a member's contributions to the work of the Institute.



Adviser Neil B. Cohen comments during the Conflict of Laws project meeting held in November 2018.

How did you first become interested in commercial law?

I don't think I knew the field of commercial law existed when I started law school. In fact, it wasn't until my second or third year that I took some courses in the field that got my attention. I probably took the first course almost by accident, not really knowing what it was about; but then I found the area interesting and that the type of legal thought and methodology required was something that I really liked, especially the use and application of rather complex statutes.

The methodology of commercial law seemed to mesh well with the way I approached a lot of legal matters, so it resonated with me. After law school, I went into practice for a few years with a law firm in Boston. About half of what I did at the firm involved commercial law: secured lending, sales of goods, and the like. I was able to take what I had learned in law school and then apply it in the practical context in which those legal doctrines are used. This was very educational for me – in law school I had learned quite a few rules and principles of commercial law, but in the absence of the context in which the world uses them.

When were you introduced to the Uniform Commercial Code (UCC)?

I started studying the UCC in law school, when it was still relatively new. I went to law school in the 1970s and, while the UCC was primarily written in the late '40s and into the 1950s, it wasn't widely enacted until the 1960s. In fact, it wasn't until the mid and late '60s that it had swept the U.S. I was in law school in the '70s, so the UCC was considered a recent innovation. I found it interesting both for the matters it governs and how it does so; I found the internal logic of the Code and the types of interconnection between various doctrines interesting and very timely.

Then, when I went into private practice, I had the opportunity to apply the rules and principles of the UCC, and I saw how they could be used not only retrospectively in the context of solving problems or resolving disputes about situations that had already arisen, but also prospectively in the context of advising clients about the legal rules governing transactions still in the planning stages. This enabled me to gain a much better sense of how well-crafted legal rules can give predictability and certainty to the law, something that reduces costs of transactions, reduces risks, and is pretty good for all of us.

While I was practicing commercial law, the world of commerce was changing all around us because that's the nature of innovation. As a result, when I went into academia, and had a chance to look at things from a broader perspective, I was able to see that some of the rules that I thought were modern and cutting-edge were actually falling behind the developments of commerce and technology.

I became a member of the ALI in the 1980s, which was very fortunate for me. That was when the sponsoring organizations of the UCC (the ALI and the Uniform Law Commission) were recognizing that, while the UCC was a great advance when it was drafted and enacted, it was becoming a bit musty and out of date. After all, 20 years is a long time in a world of transactions. Accordingly, an effort had recently begun to modernize the UCC – to examine every Article of it to determine if it needed tweaking, adjustment, large scale amendment or total rewriting. Because I was lucky enough to become involved in the ALI while that process was ongoing, I had the opportunity to participate in that generation's modernization of the UCC.

This was not only tremendously exciting but quite an opportunity to see the process of modernization of law. We had to face questions such as: How do you take old doctrines that worked in the past but may not be well-adapted to current transactions and current technology and

adapt them to work in the present and survive into the future? How do you learn about what needs to be changed and what should stay constant? If changes are necessary, how do you make decisions about what the changes should be? How do you craft changes that are acceptable enough to be enacted and accepted on a substantially uniform basis across the country? It was quite an education for me.

You served as the Reporter on Restatement of the Law Third, Suretyship and Guaranty. How did that come about?

One of the very prominent members of the ALI in the 1980s and 1990s was a gentleman named Donald Rapson. He was primarily a commercial finance lawyer, very public spirited and committed to the development of commercial law in a manner that served the public interest. He and the ALI Director at the time, Geoffrey Hazard, knew each other quite well. Don convinced Geoff Hazard that the ALI ought to consider restating the law of suretyship and guaranty because it was an area that was quite important in commerce but had largely disappeared from law school curricula and was not well understood by most lawyers, yet it was something that many transactional lawyers used every day without a great understanding of it.

Before asking the Council to formally approve the preparation of a Restatement, though, Geoff asked a few academics, including me, to prepare an analysis of the area highlighting where the ALI could add value. In his letter to me about this project, Geoff informed me that I was not the only person from whom he was seeking such an analysis and that he would use the analyses he received as part of his process of deciding who the Reporter should be. That added an extra element to the assignment, because the prospect of being a Reporter was both daunting and exciting at the same time. I submitted my analysis in the spring of 1990. Then, in early July, when I was on a family vacation, Geoff tracked me down at a motel in Ohio, where I was visiting relatives. (I never found out how he knew I was there.) The phone rang, and it was a call from Geoff asking me to be the Reporter for the project. I was honored and excited, and had no idea how much it would affect the rest of my career.

Being a Reporter is very time consuming work. It's very challenging work, but it's also very exciting work. You get to think about things at both a detailed level and a broad level; you immerse yourself in concepts enough to get an understanding of them and then try to find a way to organize them in a way that's consistent with the traditions of the legal system, yet improves them, states them clearly, and identifies



Robert A. Stein presenting Neil B. Cohen with the John Minor Wisdom Award.

the direction in which the law is heading. The drafting process is exciting and terrifying at the same time.

How is being a Reporter on a Restatement different than being a Reporter on a Principles project?

Well, it's really quite different from a number of perspectives. First of all a Principles project speaks in a different voice than a Restatement does. A Restatement is restating the existing law. It's an endeavor that is more progressive, perhaps, than that word suggests, but it is produced largely by immersing ourselves in the law and doing our best to state it, or restate it, in the most effective way. But it's based primarily on the legal system as it is.

A Principles project, though, is almost by its very nature a reform project of sorts. Unlike a Restatement, it can't be implemented solely by the force of its intellectual power. Rather, it may require legislation or other sorts of changes in the law. A Principles project is the ALI speaking more openly about how the law should develop, or the directions the law *should* go in in order to effectively govern an area.

The current project is different than most Restatements for another reason—this is very new topic. The data economy is now a multi-billion dollar endeavor, but if we talked about it 10 years ago, it would have drawn a blank stare from most people. It was a smaller portion of the economy then, and hadn't risen to the level of consciousness that it has today. Yet, this massive component of the modern economy is largely governed by rules that were crafted for other purposes, such as the general law of contracts, commercial law, property law, and intellectual property law.

In this Principles project, we're doing the best we can to adapt those venerable principles to this new field. We are thinking not only about what the current legal rules are but what the rules of

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MEMBER SPOTLIGHT: NEIL B. COHEN CONTINUED FROM PAGE 11

the future could or should be, especially for a segment of the economy in which transactions cross borders with ease.

As a Reporter you assist in the selection of Advisers. What were you looking for when selecting Advisers for Data Economy?

One of the nice things about the way we do these projects is that we look far and wide for the people who are most likely to provide expertise and insight to the project. We don't limit ourselves just to familiar faces, or just to ALI members. Rather, we do everything we can to try to get the people who will make the project better. The Advisers for the data economy project are a great group. They are excited and interested; they don't hesitate to tell us where we can do better, but they are also supportive. When there is criticism, it is useful constructive criticism.

Project meetings generally run a full work day. From a Reporter's perspective, why are these meetings so important?

One of the enjoyable things about being a Reporter is that you not only *need* to pay attention to everything the Advisers say, but it's so exciting that you *want* to pay attention to everything they say. Christiane Wendehorst (the co-reporter from the ELI) and I learn something from every question someone asks and every comment someone makes. Sometimes we learn that we didn't say something as effectively as we thought. Sometimes we learn that we didn't address an issue that people think needs addressing. And sometimes when we have posed a legal question and answered it with a yes, we learn that some thoughtful Advisers think that the answer should be no, so we need to rethink things. The result is a project that is a lot better than if the two of us locked ourselves in a room and wrote it alone.

"The Genius of the Restatements"

As the fall meeting season comes to an end, we now begin preparation for the 96th Annual Meeting.

This year's Meeting agenda will feature several Restatement projects, including two that will likely be presented for final approval by the membership. Although approval at the Meeting marks the completion of our members' hard work on the debate and drafting of Restatements, it is only the beginning of the Restatements' contribution to supporting the rule of law.

The Right Honourable Lord Woolf of Barnes, then-Master of the Rolls of the Royal Courts of Justice, spoke to the ALI membership at the 77th Annual Dinner in 2000. He reflected on Restatements' importance and influence within the United States and abroad. Below is an abridged version of Lord Woolf's Dinner speech. The full speech is available at www.ali.org.

I had, of course, read about the distinction of the Institute without coming here, but the time I have spent—and it has been a very short time that I have spent with you—has made me realize that the Institute is an extraordinary institution. It is quite remarkable the interplay which takes place between the members of the Institute who are judges, the members of the Institute who are academic lawyers, and above all, the members of the Institute who are practitioners. The Institute, in my belief, is performing a unique role, a role which I do not believe is performed in the same way by any comparable institution. You have something here which you really should treasure.

...

Why I think the Institute is respected in the United Kingdom is because of its publications on American law. The Restatements have a huge reputation. It is the first source to which a foreign lawyer turns if he wants to know about United States law.

The Restatements help us to develop our own law. This morning I was attending the discussion on the paper on Restitution, and I learned, which I fully accept, that until you published your paper on Restitution we did not even know that we had a law of restitution. You, of course, may have forgotten since that time that you have a law of restitution, but the fact of the matter is that it is the buzz subject in my jurisdiction.

...

I know that the Restatements will not be to everybody's taste. Lewis Carroll's *Alice's Adventures in Wonderland*, as you will remember, asked, "What is the use of a book ... without pictures or conversation?" I have been searching, but I have yet to find a Restatement which has either pictures or conversations. I hope that next year that state of affairs will be remedied.

However, all legal systems today suffer from at least two complaints: The law is overcomplex, and the position is that it is too uncertain. One of the real problems facing appellate courts today is information overload. More and more decisions are being reported, and more and more authorities are being cited, so there is a real danger of courts being drowned in a sea of authorities. To have a bible to which you can cling, a sort of life belt, for lawyers and appellate judges must be marvelous. Oh that I was a judge of your Supreme Court and only needed to look at the Restatements.

The great achievement, as it seems to me, of the Restatements is that in an area of the law they provide a code, but they do not provide it in the form of legislation which is inflexible and

Data Economy *October 26 in Philadelphia, PA*

Participants met for this project's first ALI meeting and discussed Preliminary Draft No. 1, which includes six Chapters: (1) Purpose, Definitions, and Scope; (2) Entitlements with Regard to Data; (3) Control and Processing of Data; (4) Data Transactions; (5) User-Generated Data; and (6) Multi-State Issues. The next project meeting will be held in spring 2019. Members may access the Draft online to learn more about the topics addressed at this meeting.



ALI Director Richard L. Revesz, Reporters Neil B. Cohen of Brooklyn Law School and Christiane Wendehorst of University of Vienna, with Project Chairs Lord Thomas of Cwmgiedd of Essex Court Chambers and Steven O. Weise of Proskauer Rose



Ahmed Ghappour of Boston University School of Law

rigid. They provide it in a form which allows it to develop and therefore does not stultify the strength and the greatness of the common law, and that, it seems to me, is the genius of the Restatements. They carry conviction because of the consultative process which takes place in their production, the sort of discussions that I have been able to witness while I have been here. It is remarkable that these Restatements are being continuously produced.

...

As the economy becomes global, and the United States, of course, has been a leader in bringing that about, so must our legal systems. There is more that we have in common than that which divides us. We have to continue to learn from each other. There are today bigger challenges facing the legal systems of the world than probably ever before. I have already referred to the fact that our citizens are demanding more from us than ever before. They are concerned by problems of access to the legal systems. They are concerned about the problems of rising crime, to which we seem not to have the right answers. I do not believe they are happy when they see more and more people being incarcerated for longer and longer at greater expense, depriving other services of the community of the resources which they need.

We are going to have to be able to meet these challenges. They are important for our citizens, they are even more important for those

The great achievement, as it seems to me, of the Restatements is that in an area of the law they provide a code, but they do not provide it in the form of legislation which is inflexible and rigid. They provide it in a form which allows it to develop and therefore does not stultify the strength and the greatness of the common law, and that, it seems to me, is the genius of the Restatements.

jurisdictions which have not the good fortune to have the advantages we have. The common law applies in a great number of countries where, unfortunately, the legal system is under huge pressure. Some of those countries are former colonies of the United Kingdom, where judges and members of the profession are trying to maintain the standards which they learned from us, and we have to set them an example and provide them with support. It can be an extremely lonely job being a judge, or even a practitioner, in some of these countries if you are trying to do your best to maintain the standards to which I have referred. If they are to maintain their integrity, if they are to maintain their independence, by setting them an example we can help them. We can provide them with the courage or help them to have the courage that they need to perform their difficult tasks.

I think this Institute has a huge contribution to make. Perhaps when I leave tomorrow to go back to England the thing that I will take away with me that is most important is the fact that the Institute is looking outside the United States. It is looking at the impact of what it is doing on the reforms in other jurisdictions. It is not taking an insular view but taking a broad view. That, I believe, is what we must continue to do.

ALI to Celebrate Its New Life Members: the Class of 1994

In May, The American Law Institute will welcome a new class of Life Members—the Class of 1994. Each year, ALI members who have contributed 25 years of service to the Institute are granted Life Member status. Life Members are no longer required to pay dues or adhere to the Institute's participation requirement, but they continue to enjoy all the rights and privileges of elected membership.

The Class of 1994 will be honored at a special luncheon held during the 96th Annual Meeting, which will feature remarks by 1994 Class Member **Lee H. Rosenthal**, Chief Judge of the U.S. District Court of the Southern District of Texas. New Life Members are given the opportunity to commemorate this quarter-century milestone by contributing to the 1994 Life Member Class Gift, which will be presented to the Institute by the 1994 Life Member Class Gift Committee during the luncheon.

The 1994 Life Member Class Gift campaign will be chaired by 1994 Class Member **John H. Beisner** of Skadden, Arps, Slate, Meagher & Flom, LLP. As of the publication of this article, fellow class members **Mark R. Killenbeck** of University of Arkansas School of Law, **William J. Perlstein** of BNY Mellon, and **Stuart H. Singer** of Boies Schiller Flexner LLP, have joined Mr. Beisner on the special committee for the campaign.

Now in its eighth year, the Class Gift program has raised more than $1,000,000 to support key aspects of ALI's mission, including the MCG Travel Assistance program and the Judges & Public-Sector Lawyers Expense Reimbursement program—two vital components of the Institute's efforts to minimize financial barriers to member participation. These important programs have thus far provided 326 members more than $290,000 in assistance to attend project meetings and Annual Meetings.

The Class Gift initiative also provides funding for the Early Career Scholars Medal and annual conference program, which raises awareness of the Institute's work while engaging up-and-coming legal academics. Additionally, as ALI continues to expand the breadth of its law-reform endeavors, the Class Gift program helps cover some of the costs associated with maintaining the high level of quality that distinguishes the Institute's work.

The 1994 Life Member Class Gift campaign is now underway. For more information about the campaign, please contact Development Manager Kyle Jakob at 215-243-1660 or *kjakob@ali.org*. To learn about ALI's other ongoing fundraising initiatives, please visit *www.ali.org/support*.

1994 LIFE MEMBER CLASS

Dennis B. Arnold, Los Angeles, CA; Gibson, Dunn & Crutcher LLP
Larry Catá Backer, University Park, PA; Penn State Law
John H. Beisner, Washington, DC; Skadden, Arps, Slate, Meagher & Flom LLP
Martin H. Belsky, Akron, OH; University of Akron, C. Blake McDowell Law Center
Christopher L. Blakesley, Las Vegas, NV; University of Nevada, William S. Boyd School of Law
John J. Bouma, Phoenix , AZ; Snell & Wilmer L.L.P.
Russell J. Bruemmer, Washington, DC; WilmerHale (Retired)
Marilyn Blumberg Cane, Fort Lauderdale, FL; Nova Southeastern University, Shepard Broad College of Law (Retired)
William B. Chandler III, Georgetown, DE; Wilson Sonsini Goodrich & Rosati
Carol L. Chomsky, Minneapolis, MN, University of Minnesota Law School
Dan T. Coenen, Athens, GA, University of Georgia School of Law
Thomas A. Cole, Chicago, IL; Sidley Austin LLP
Roxanne B. Conlin, Des Moines, IA; Roxanne Conlin and Associates
Robert A. Creamer, Cambridge, MA
Margaret Ellen Curran, Providence, RI
Patrick D. Daugherty, Chicago, IL; Foley & Lardner LLP
Anthony E. DiResta, Washington, DC; Holland & Knight LLP
Allan G. Donn, Norfolk, VA; Willcox & Savage, PC
Adriane J. Dudley, St. Thomas, VI; Dudley Rich Davis LLP
David M. English, Columbia, MO; University of Missouri-Columbia School of Law
Stephen F. Fink, Dallas, TX; Thompson & Knight LLP
C. Allen Foster, Washington, DC; Whiteford Taylor Preston, LLP
Henry D. Gabriel, Greensboro, NC; Elon University School of Law
Helen A. Garten, Newark, NJ; Rutgers Law School
Nancy J. Gellman, Philadelphia, PA; Conrad O'Brien PC
Martin Glenn, New York, NY; U.S. Bankruptcy Court, Southern District of New York
Robert W. Gordon, Stanford, CA; Stanford Law School
Ilene Knable Gotts, New York, NY; Wachtell, Lipton, Rosen & Katz
Marvin L. Gray, Jr., Seattle, WA; Davis Wright Tremaine LLP
Joseph W. Grier, III, Charlotte, NC; Grier Furr & Crisp, PA
Horacio A. Grigera Naón, Washington, DC; American University, Washington College of Law
Joseph A. Grundfest, Stanford, CA; Stanford Law School
Arthur S. Hartkamp, The Hague, Netherlands; Supreme Court of the Netherlands
Robert Harlan Henry, Oklahoma City, OK; Oklahoma City University
Maria Tankenson Hodge, St. Thomas, VI; Hodge & Hodge
Mark R. Hornak, Pittsburgh, PA; U.S. District Court, Western District of Pennsylvania

Alan D. Hornstein, New York, NY; University of Maryland, Francis King Carey School of Law (Retired)
Richard Hyland, Camden, NJ; Rutgers Law School
Richard L. Jacobson, Washington, DC; Whitestone Strategic Partners (Retired)
Melvin F. Jager, Sanibel, FL
Elaine R. Jones, Washington, DC; NAACP Legal Defense & Educational Fund, Inc. (Retired)
John E. Keefe, Little Silver, NJ; Keefe Law Firm
Mark R. Killenbeck, Fayetteville, AR; University of Arkansas School of Law, Leflar Law Center
Howard Langer, Philadelphia, PA; Langer, Grogan & Diver P.C.
John K. Lawrence, Ann Arbor, MI; Dickinson Wright PLLC
Charles F. Lettow, McLean, VA; U.S. Court of Federal Claims
Lynne Liberato, Houston, TX; Haynes and Boone, LLP
Charisse R. Lillie, Philadelphia, PA; Comcast Corporation (Retired)
William Joseph Linkous, Jr., Atlanta, GA; Bryan Cave Leighton Paisner LLP
Kermit V. Lipez, Portland, ME; U.S. Court of Appeals, First Circuit
Carl H. Lisman, Burlington, VT; Lisman Leckerling, P.C.
Kathryn V. Lorio, New Orleans, LA; Loyola University New Orleans College of Law (Retired)
Margaret Colgate Love, Washington, DC; Law Office of Margaret Love
John B. Magee, Washington, DC; Morgan, Lewis & Bockius LLP
Raymond C. Marshall, San Francisco, CA; Sheppard, Mullin, Richter & Hampton LLP
Joanne Martin, Chicago, IL; American Bar Endowment
Philip R. Martinez, El Paso, TX; U.S. District Court, Western District of Texas
James T. McCartt, Houston, TX; Triangle Peak Partners LP
Frank M. McClellan, Philadelphia, PA; Temple University Beasley School of Law
Mary A. McLaughlin, Philadelphia, PA; U.S. District Court (Retired)
Gregory G. Murphy, Billings, MT; Greg Murphy Law Firm
Irvin B. Nathan, Washington, DC; Arnold & Porter Kaye Scholer LLP (Retired)
Richard L. Neumeier, Boston, MA; Morrison Mahoney LLP
Virginia E. Nolan, del Mar, CA
Joseph J. Norton, Dallas, TX; Southern Methodist University, Dedman School of Law
Charles J. Ogletree, Cambridge, MA; Harvard Law School
Charles H. Pelton, Clinton, IA
Pamela D. Perdue, St. Louis, MO; Pamela D. Perdue, P.C.
William J. Perlstein, New York, NY; BNY Mellon
John R. Price, Seattle, WA; University of Washington School of Law (Retired)
Cathy L. Reece, Phoenix, AZ; Fennemore Craig, PC
Joe R. Reeder, Washington, DC; Greenberg Traurig, LLP
Eduardo Roberto Rodríguez, Brownsville, TX; Atlas Hall Rodriguez
Anthony Z. Roisman, Montpelier, VT; Vermont Public Utilities Commission
Lee H. Rosenthal, Houston, TX; U.S. District Court, Southern District of Texas
Victoria P. Rostow, Washington, DC; National Association of Real Estate Investment Trusts
Michael L. Rustad, South Burlington, VT; Suffolk University Law School
Cynthia Ann Samuel, New Orleans, LA; Tulane University School of Law (Retired)
Anthony J. Scirica, Philadelphia, PA; U.S. Court of Appeals, Third Circuit
Stuart H. Singer, Fort Lauderdale, FL; Boies Schiller Flexner LLP
Charles J. Tabb, Champaign, IL; University of Illinois College of Law
Michele Taruffo, Pavia, Italy; Universita Di Pavia, Facolta Di Giurisprudenza
Carl W. Tobias, Richmond, VA; University of Richmond School of Law
Howard P. Walthall, Birmingham, AL; Samford University, Cumberland School of Law

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Class of 1994 Facts & Figures



45% PRACTITIONERS

32% ACADEMICS

13% JUDGES OR JUSTICES

10% OTHER

39 SERVED ON THEIR LAW SCHOOL'S LAW REVIEW, INCLUDING 9 AS EDITOR-IN-CHIEF

35 HELD JUDICIAL CLERKSHIPS, INCLUDING 4 FOR U.S. SUPREME COURT JUSTICES

18 WERE ORDER OF THE COIF

5 HAVE SERVED IN THE UNITED STATES MILITARY, REPRESENTING ARMY, MARINES, AND NAVY

3 ARE ALI COUNCIL MEMBERS

1 WAS AWARDED THE ELEANOR ROOSEVELT AWARD FOR HUMAN RIGHTS

1 WAS COMMISSIONER OF THE SECURITIES EXCHANGE COMMISSION

1 GRADUATED LAW SCHOOL AT AGE 21



30 DIFFERENT STATES, DISTRICTS, OR TERRITORIES

3 DIFFERENT COUNTRIES

45 DIFFERENT LAW SCHOOLS ATTENDED

ALI TO CELEBRATE ITS NEW LIFE MEMBERS

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Lesley Brooks Wells, Cleveland, OH; U.S. District Court, Northern District of Ohio
Wendy S. White, Philadelphia, PA; University of Pennsylvania
Jacques L. Wiener, Jr., New Orleans, LA; U.S. Court of Appeals, Fifth Circuit
Carolyn B. Witherspoon, Little Rock, AR; Cross, Gunter, Witherspoon & Galchus, P.C.
William J. Woodward, Oakland, CA; Temple University School of Law (Retired)
Douglas R. Young, San Francisco, CA; Farella Braun + Martel LLP
Gordon G. Young, Washington, DC; University of Maryland, Francis King Carey School of Law (Retired)

NEW 50-YEAR MEMBERS

Sherman Louis Cohn, Washington, DC; Georgetown University Law Center
Kenneth W. Dam, Chicago, IL; University of Chicago Law School
Joseph F. Johnston, Jr., Alexandria, VA
Donald Barnett King, St. Louis, MO; St. Louis University School of Law
Robert J. Levy, Sunny Isles Beach, FL; University of Minnesota Law School (Retired)
Richard B. Mayor, Houston, TX
Arthur Raphael Miller, New York, NY; New York University School of Law
Robert H. Mundheim, New York, NY; Shearman & Sterling LLP
F. Herbert Prem, Jr., Hanover, NH
Martin F. Richman, New York, NY, K&L Gates LLP (Retired)
Harry R. Sachse, Washington, DC; Sonosky, Chambers, Sachse, Endreson & Perry, LLP
Thomas P. Sullivan, Chicago, IL; Jenner & Block, LLP

Effective May 2019

Every attempt has been made to publish an accurate list of each member's location and company. If a change is required, please contact the ALI Membership Department at 215-243-1623 or membership@ali.org.

Notes About Members and Colleagues

Bruce A. Ackerman of Yale Law School received an honorary doctorate in jurisprudence from the University of Trieste in Italy in recognition of his distinguished contributions to comparative constitutional law.



Bruce A. Ackerman signs his name as recipient of honorary doctorate from the University of Trieste.

In *Property Law and Human Flourishing* (Oxford University Press), **Gregory S. Alexander** of Cornell Law School develops a theory that connects ownership and human flourishing with obligations, and discusses the implications for a wide variety of property issues of importance both in the literature and in modern society.

On Oct. 1, Lady Justice **Mary Arden** DBE joined the Supreme Court of the United Kingdom. She is one of three new appointments to the Court.

Omri Ben-Shahar of the University of Chicago Law School and **Florencia Marotta-Wurgler** of NYU School of Law presented the welcome address at the Humboldt European Law School's conference "An ALI Restatement on Consumer Contract Law – The European Perspective." The event included a series of lectures addressing topics related to the Restatement of the Law, Consumer Contracts.



Florencia Marotta-Wurgler and Omri Ben-Shahar at the Humboldt European Law School's conference "An ALI Restatement on Consumer Contract Law – The European Perspective"

NYU Law Review, the Guarini Institute for Global Legal Studies, and the Institute for International Law and Justice at NYU School of Law held a symposium entitled "Data Law in a Global Economy" on Nov. 9. ALI participants at the event included NYU School of Law faculty **Richard R.W. Brooks**, **Rochelle C. Dreyfuss**, **Jeanne C. Fromer**, **Florencia Marotta-Wurgler**, **Jason M. Schultz**, **Christopher Jon Sprigman**, and **Katrina M. Wyman**, as well as **Paul M. Schwartz** of UC Berkeley School of Law.



Paul M. Schwartz participates in a panel at the Data Law in a Global Economy symposium at NYU School of Law. | Credit: NYU School of Law

Each year, *NACD Directorship* magazine identifies the most influential people in the boardroom community, including directors, corporate governance experts, regulators, and advisors. This year's list includes ALI members **Gilbert F. Casellas** of Prudential Financial (Directors), **Andre G. Bouchard** of the Delaware Court of Chancery (Governance Professionals and Institutions), and **Leo E. Strine Jr.** of the Supreme Court of New Jersey (Governance Professionals and Institutions).

Cedric C. Chao of DLA Piper was named one of the Top 100 Lawyers in California by the *Daily Journal* in recognition of his representation of one of China's largest state-owned enterprises in an international arbitration matter conducted in Texas.

Boston University School of Law hosted a conference on Oct. 19-20, entitled "Property Works in Progress," which featured papers and presentations from several ALI members including **Eric R. Claeys** of The Antonin Scalia Law School at George Mason University, **Hanoch Dagan** of Tel Aviv University Faculty of Law, **Thomas W. Merrill** of Columbia Law School, and **Katrina M. Wyman** of NYU School of Law.

The American Academy of Arts & Science hosted its 2018 induction weekend on Oct. 5-7. The ceremony honored the Academy's newest members, which include ALI members **Mariano-Florentino Cuéllar** of the California Supreme Court, **Risa L. Goluboff** of UVA School of Law, **Mark A. Lemley** of Stanford Law School, and **Sonia M. Sotomayor** of the U.S. Supreme Court.

Frank J. Daily was appointed by the Wisconsin Supreme Court to another term on the Wisconsin Judicial Commission. The Commission investigates and prosecutes allegations of misconduct or disability on the part of Wisconsin judges and court commissioners. Its mission is to protect the integrity of the judicial process and promote public confidence in the integrity of the court system at all levels.

Bernice B. Donald of the U.S. Court of Appeals for the Sixth Circuit delivered the 2018 James Madison Lecture "Judicial Independence: Collegiality and Dissent in Multi-Member Courts" at NYU School of Law.

Michael E. Flowers of Steptoe & Johnson received the Diversity in Business award presented by the publishers of *Columbus Business First*. Mr. Flowers was named Outstanding Diversity Champion, which recognizes individuals "who have shown outstanding initiative to promote diversity and inclusion either in the organization or community, making a positive difference in others' lives through contributions to social justice, equality and diversity."

An article by **Brandon L. Garrett** of Duke Law School entitled, "Using the Constitution to End Punishment of the Poor," appeared in *Access to Justice*, a new public access feature by *Law360*.

Ruth Bader Ginsburg of the U.S. Supreme Court spoke to the first-year class at Georgetown Law about the 2017 Supreme Court Term before sitting down for a conversation and audience Q&A with Georgetown Law Dean **William M. Treanor**.

Linda Greenhouse of Yale Law School was elected an Honorary Bencher of the Middle Temple.

Aya Gruber of University of Colorado Law School spoke on the meaning of sexual consent at the final lecture of the 2018 Colorado Law Talks series.

Mark I. Harrison of Osborn Maledon was elected to the Board of Counselors of Equal Justice Works in Washington, D.C. He was also the recipient of the Emeritus Board Inductee Award as the First Board Chair of Teach for American Phoenix (1994-96).

Sherrilyn Ifill of the NAACP Legal Defense and Educational Fund spoke at the AI Now 2018 Symposium in New York City. The symposium focused on questions of ethics, organizing, and accountability in the field of artificial intelligence technologies.

Former Delaware Supreme Court Justice **Jack B. Jacobs** has rejoined Young Conaway as senior counsel in the Wilmington firm's corporate section.

Harold Hongju Koh of Yale Law School published *The Trump Administration and International Law* (Oxford University Press). The book addresses issues surrounding the Trump administration's impact on international law. Professor Koh presented his new book at the Politics and Prose bookstore in Washington, D.C. on Oct. 28.



Thomas Merrill presents his paper "Choice of Law in Resolving Takings Claims" at the Property Works in Progress Conference hosted by Boston University School of Law. | Credit: BU School of Law



Risa L. Goluboff at the American Academy of Arts & Science's 2018 induction ceremony



Bernice Bouie Donald delivers the 2018 James Madison Lecture.

Carolyn B. Lamm of White & Case was honored by the President of Uzbekistan, Shavkat Mirziyoyev, in a decree awarding her the order of Dostlik, a high distinction conferred for achievements in promoting friendship, mutual understanding, and harmony among all nations and nationalities living in Uzbekistan, and the development of friendship and comprehensive cooperation of the people of Uzbekistan with the peoples of other countries.

Gerard (Jerry) Lewis of Comcast was recently appointed Senior Vice President, Deputy General Counsel & Chief Technology Counsel, supporting the company on intellectual property, technology, e-commerce, Internet, commercial transactions, and new business opportunities.

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New Members Elected

On October 18, the Council elected the following 32 persons.

Mauro Bussani, Trieste, Italy
James W. Christie, Philadelphia, PA
E. Donald Elliott, Washington, DC
Theodore J. Folkman, Boston, MA
Mary Anne Franks, Miami, FL
Leigh S. Goodmark, Baltimore, MD
David C. Gray, Baltimore, MD
Mark D. Janis, Bloomington, IN
Susan R. Jones, Washington, DC
Emily Kadens, Chicago, IL
Andres W. Lopez, San Juan, PR
Andrew D. Manitsky, Burlington, VT
Steven M. Marks, Washington, DC
Timothy J. McEvoy, Melbourne, Australia
Mark McKenna, Notre Dame, IN
Anne M. Milgram, New York, NY
Darren B. Moore, Fort Worth, TX
Malini Moorthy, Minneapolis, MN
Mary H. Murguia, Phoenix, AZ
Donal Nolan, Oxford, England
Beverly A. Pohl, Fort Lauderdale, FL
Robert W. Pratt, Des Moines, IA
Elizabeth A. Renuart, Boston, MA
Carol Marguerite Rose, New Haven, CT
Janis Lynn Sammartino, San Diego, CA
Kannon K. Shanmugam, Washington, DC
Katherine C. Spelman, Redmond, WA
Lucy L. Thomson, Washington, DC
Anthony John Trenga, Alexandria, VA
Lois Weithorn, San Francisco, CA
Ellen Wertheimer, Villanova, PA
Barbara Bennett Woodhouse, Atlanta, GA

In Memoriam

ELECTED MEMBERS

Mark Eric Gebauer, Harrisburg, PA; **J. David Kirkland, Jr.**, Houston, TX; **Noël Anketell Kramer**, Washington, DC; **Robert Marchant O'Neil**, Charlottesville, VA; **Janet Leach Richards**, Austin, TX

LIFE MEMBERS

Neil P. Cohen, San Rafael, CA; **A. Daniel Feldman**, Chicago, IL; **Lynne Z. Gold-Bikin**, Norristown, PA; **Charles Hansen**, St. Louis, MO; **Michael L. Jamieson**, Cashiers, NC; **Barbara B. Lewis**, Louisville, KY; **James J. McClure, Jr.**, Chicago, IL; **Alfred J. Olsen**, Phoenix, AZ; **William Hall Painter**, Yarmouth Port, MA

NOTES CONTINUED FROM PAGE 17

Paul A. Lombardo of Georgia State University College of Law was a featured commentator in the Oct. 16 broadcast of the PBS program *American Experience: The Eugenics Crusade* and in "Finding Carrie Buck," a graphic article published online to accompany the program. He was also interviewed on the NPR program and podcast *Hidden Brain: Emma, Carrie, Vivian: How A Family Became A Test Case For Forced Sterilization.*

Catharine A. MacKinnon of University of Michigan Law School participated in a Harvard Law School Library book talk to discuss her latest book *Butterfly Politics* (Harvard University Press), where she explores how seemingly minor interventions in the legal realm can have a "butterfly effect" that generates major social and cultural transformations.

Ray D. Madoff of Boston College Law School testified on the subject of charitable tax policy before the Canadian Senate.

Margaret H. Marshall of Choate was awarded the Yale Medal.

Sundaresh Menon of the Supreme Court of Singapore delivered the 2018-2019 Bernstein Lecture in Comparative Law at Duke Law School titled "Executive Power: Rethinking the Modalities of Control."

Paul Mogin of Williams & Connolly published an article in *The Champion*, the magazine of the National Association of Criminal Defense Lawyers, entitled "Justice Scalia and the Interpretation of Criminal Statutes."

Michael A. Olivas of University of Houston Law Center is the recipient of the 2018 AALS Triennial Award for Lifetime Service to Legal Education and to the Legal Profession, the association's highest honor. The award will be presented to Professor Olivas at the 2019 AALS Annual Meeting in January 2019.

Saikrishna Bangalore Prakash of UVA School of Law participated in a panel discussion, hosted by the American Enterprise Institute, dedicated to understanding the role of the Constitution in the ongoing Mueller investigation.

Roberta Cooper Ramo of Modrall Sperling presented the lecture "American Lawyers: Defending Democracy and the Rule of Law" at The American Academy in Berlin. The lecture



Roberta Cooper Ramo sits down with American Academy in Berlin President Terry McCarthy after her "Defending Democracy" lecture. Credit: Ralph K. Penno/American Academy in Berlin

was part of The Lloyd Cutler Distinguished Visitorship at the Academy.

John G. Roberts Jr., Chief Justice of the United States, sat down in conversation with **Robert A. Stein** of University of Minnesota Law School to discuss the recent appointment of U.S. Supreme Court Associate Justice **Brett M. Kavanaugh**.

The University of Chicago Law School published a feature on **Lee H. Rosenthal** of the U.S. District Court for the Southern District of Texas entitled "Lee Hyman Rosenthal, '77: A Lifetime Committed to the Law on and beyond the Bench." The article focuses on Judge Rosenthal's contributions to the content of American jurisprudence.

Thomas E. Rutledge of Stoll Keenon Ogden has been named 2018 recipient of the Martin I. Lubaroff Award by the ABA's Section of Business Law LLCs, Partnerships and Unincorporated Entities Committee.

The Southern Center for Human Rights, one of the nation's leading criminal justice reform nonprofits and advocacy law firms, honored **Virginia E. Sloan**, Founder & Former President of The Constitution Project with its Equal Justice Award.

Paul B. Stephan of UVA School of Law was presented with the Roger and Madeleine Traynor Faculty Achievement Award for his work as Coordinating Reporter on Restatement of the Law Fourth, The Foreign Relations Law of the United States.

Bryan Stevenson of the Equal Justice Initiative was honored with the first ever People's Champion Award at the 2018 People's Choice Awards.

Reggie B. Walton of the U.S. District Court for the District of Columbia contributes his recollections as the presiding judge in *United States v. I. Lewis 'Scooter' Libby in the new book Tough Cases: Judges Tell the Stories of Some of the Hardest Decisions They've Ever Made* (The New Press).

Don R. Willett of the U.S. Court of Appeals for the Fifth Circuit wrote an op-ed piece for the *Wall Street Journal* titled "Happy Constitution Day, if You Can Keep It." The piece discusses the ratification of the U.S. Constitution and role of civic engagement in the preservation the republic.

Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit was interviewed by *High School SCOTUS*, a blog written by high school students that focuses on current events related to the U.S. Supreme Court. She spoke about the importance of civic engagement, the judiciary's role in a functioning democracy, and the past Supreme Court justice she would most like to have dinner with.

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

Meetings and Events Calendar At-A-Glance

For more information, visit www.ali.org.

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

2019

January 17–18
Council Meeting - January 2019
Philadelphia, PA

February 22
ALI-ELI Principles for a Data Economy
Philadelphia, PA

March 7–8
Restatement of the Law, Copyright
Philadelphia, PA

March 29
Principles of the Law, Government Ethics
Philadelphia, PA

April 4
Principles of the Law, Policing
Philadelphia, PA

May 3
Restatement of the Law Third, Torts: Intentional Torts to Persons
Philadelphia, PA

May 20–22
96th Annual Meeting
Washington, DC

COMING SOON:

reasonably Speaking

ALI will be launching its podcast, *Reasonably Speaking*, in Early 2019. In this podcast, ALI members and project participants share their thoughts on legal trends on current topics in the law.

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SAVE THE DATE
96TH ANNUAL MEETING
MAY 20-22, 2019
WASHINGTON, DC