

DEDICATED TO CLARIFYING AND IMPROVING THE LAW

The heart of what The American Law Institute stands for is our written work, as embodied in our Restatements, Principles, and other projects. Project development is, in the first instance, the responsibility of our Director, Lance Liebman, and of the Institute's Program Committee, chaired by Paul L. Friedman. Because Judge Friedman has been and continues to be such an important intellectual leader in ALI's work, I have asked him to take over the space allotted for the President's Letter for this issue to tell our members about the Program Committee and to give us a glimpse of what lies ahead with regard to Institute projects.

After a distinguished career that began at the Department of Justice and continued in private practice at White & Case, Judge Friedman was appointed to the bench of the U.S. District Court for the District of Columbia, where he has served for the last 15 years. In December, the Bar Association of the District of Columbia named him their Judicial Honoree of the year. Judge Friedman has presided over all manner of important cases, he has been an active Adviser in our Sentencing project, and he is a valued member of the ALI Council and Executive Committee. I hope that many of you will have a chance to meet him in person at our Annual Meeting in D.C. this May.

Roberta

Roberta Cooper Ramo
President

► The President's Letter

The Program Committee's Role

Our President, Roberta Ramo, has graciously given me the space normally allotted for her President's Letter to talk to you briefly about the work of the ALI Program Committee, which I am privileged to chair,

also extending its efforts to include drafting model statutes and sponsoring studies. The most immediate tasks were to determine which previously restated subjects should be revisited and which additional subjects

After World War II, Judge Learned Hand chaired a committee of the ALI that (believe it or not) was charged with the task of deciding whether the ALI had completed its work or should undertake new projects.

and its efforts to increase the membership's participation in helping us to identify substantive projects worthy of the Institute's attention.

First, some history: The American Law Institute was created in 1923. For its first quarter-century, selecting projects meant the effort to name the fields of the common law and to define their boundaries. Accordingly, the first Restatements encompassed such traditional subjects as torts, contracts, agency, restitution, and trusts. To this day, the ALI is particularly well-known for these influential works, drafted by some of the leading experts of the day in their respective fields.

After World War II, Judge Learned Hand chaired a committee of the ALI that (believe it or not) was charged with the task of deciding whether the ALI had completed its work or should undertake new projects. The committee reached what today seems like an unremarkable conclusion: the Institute should remain in existence and carry on its mission of law reform, continuing to restate the common law and

were worthy of restatement. Thus, important work was begun on the Restatement of Foreign Relations Law and a revised Restatement of Conflict of Laws (among

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Online Registration Is Open for 87th Annual Meeting in Washington

The Annual Meeting is a combination of scholarly debate, important addresses, and networking. Over the course of three days, Meeting attendees can participate in the consideration of intellectually challenging issues related to ALI projects (Employment Law, International Commercial Arbitration, Property, Restitution, Sentencing, and UCC Article 9) and interesting conversations with the most eminent judges, lawyers, and law professors from the United States and abroad.

As always, there is no registration fee for the Meeting, and for a modest administrative fee attendees can earn up to 16 CLE credits. Tickets can be purchased to attend special luncheons, an

informal reception and buffet at The Newseum, founded to educate the public about the value of a free press, and the more formal Annual Dinner, at which

tion, see the complete Meeting Agenda on page 5, or visit www.ali.org and click on the Annual Meeting link.

Online registration is open until May 12:

www.ali.org



U.S. Solicitor General Elena Kagan will speak. ALI Director Lance Liebman and Judge Paul L. Friedman, Chair of the Program Committee, will host a session on Monday afternoon, May 17, to solicit members' ideas on project development. These special events provide members the opportunity to mingle with old friends and make new ones, as well as the opportunity to hear interesting and thought-provoking speeches. For more informa-

Online registration is open until May 12. Please contact ALI's Membership Department if you have questions (e-mail: membership@ali.org; telephone: 215-243-1623).

Make your hotel reservations now. ALI group rates are valid until April 16 or until the ALI room block is full, whichever comes first. Questions? Contact the Meetings Department (e-mail: alimeetings@ali.org; telephone: 215-243-1611. We hope you will join us in Washington, D.C.!



The Newseum, offering impressive views of Washington from its seventh-level terrace, is the site of the members' reception and buffet, to be held on Monday evening, May 17.

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others). A harder task was to identify statutory projects worthy of attention. Among the earliest and most important undertakings were the Uniform Commercial Code (a joint endeavor with the Uniform Law Commission) and the Model Penal Code.

By the early 1980s, it was already time to rethink and redo some of the achievements of the Restatement Second. Today, all or substantial portions of the Third Restatements of Torts, Agency, and Trusts have been completed, and work is nearing conclusion on the Restatement Third of Restitution and the Restatement Third of Property (Wills and Other Donative Transfers). Also in the third series are Restatements in areas that are new or newly reconceptualized by ALI, such as Suretyship and Guaranty, the Law Governing Lawyers, and Unfair Competition.

Beginning in the late 1980s and early 1990s, the Institute began to see a need for work in other areas besides restating the law as we knew it and as it was evolving. Thus, the ALI developed its concept of "Principles of the Law" in addition to its Restatements of the Law. Principles of Corporate Governance was published in 1994. Principles of the Law of Family Dissolution followed in 2002, then Principles of Transnational Civil Procedure (with UNIDROIT) in 2006. Later Principles projects have explored such diverse subjects as International Intellectual Property, Transnational Insolvency, Aggregate Litigation, Software Contracts, and Nonprofit Organizations.

Unlike Restatements, these Principles of the Law are not confined to doctrine already enunciated by judges or to doctrine that plausibly would be enunciated by an enlightened, contemporary court. They nevertheless have as their foundation the Institute's traditional and primary goals: achieving coherence, reflecting current best practices, and better adapting the law to social needs. The Institute's Principles address both domestic and transnational issues and

embrace both common law and legislative law. And the audience for Principles

The Program Committee has also thought long and hard about how to engage the Institute's members in our Committee's work and get their thoughts and advice about projects they think worthy of the Institute's attention.

comprises more than just lawyers, courts, and scholars in the United States. It now includes their counterparts in many other countries, as well as legislative and regulatory rulemakers. For example, the audience for Principles of Corporate Governance includes the Securities and Exchange Commission, the Delaware Chancery Court, and the U.S. Congress, among others. The audience for the

We live in interesting times. Entire new areas of the law have developed or are developing, including many in the international and transnational areas.

Family Dissolution Principles includes those state agencies that set guidelines for child support or spousal support. And our emerging Principles of the Law of Nonprofit Organizations should find an important audience among the executive staff and board members of philanthropic and other nonprofit organizations, as well as the lawyers who advise them.

These broad and diverse opportunities challenge the Institute's Program

Committee. The Committee's charter charges us with advising ALI's Director, Executive Committee, and Council regarding ongoing and potential projects designed to advance the purposes of the Institute. Thus, the Committee suggests specific projects and issues that might usefully be addressed in an Institute project, and it advises Director Lance Liebman with respect to priorities and policies bearing on the choice of projects. The Committee is comprised of 11 members, including judges, academics, and lawyers in diverse fields of practice. In recent years, the Committee has become more proactive, suggesting fertile areas for project development in a wide variety of subjects, including some that the Institute has never before addressed and others that are being revisited for the first time in many years. As part of this proactive approach, the Program Committee has had more frequent meetings, in person or by teleconference, to brainstorm ideas, develop lists for potential project exploration, discuss the pros and cons of project ideas, and prioritize those that deserve serious attention by the Director, the Committee, and ultimately the Council.

The Program Committee has also thought long and hard about how to engage the Institute's members in our Committee's work and get their thoughts and advice about projects they think worthy of the Institute's attention. Director Liebman and his predecessor, Geoff Hazard, welcomed written suggestions of projects from ALI members. More recently, President Ramo has joined Director Liebman in inviting members to send them suggestions. I am issuing a similar invitation. (My e-mail address is Paul_L._Friedman@dcd.uscourts.gov; please copy the Director at lliebman@law.columbia.edu.) In addition, Lance and I will host a session on Monday, May 17, at the end of the first day of the Annual Meeting in Washington, D.C., inviting members with ideas—for future Institute projects, new formats or structures for projects beyond Restatements and Principles,

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Committee Seeks Candidates for Three Institute Awards

The ALI Awards Committee, which is charged with recommending to the ALI Council candidates for the Institute's Henry J. Friendly Medal, John Minor Wisdom Award, and Distinguished Service Award, invites ALI members to suggest candidates for any of these three awards. Members who wish to propose a candidate are asked to submit a letter detailing the candidate's law-related activities and qualifications for the award to the Committee's attention by **March 31**. Letters may be mailed to The American Law Institute, Attn: Awards Committee, 4025 Chestnut St., Philadelphia, PA 19104, or emailed to awardnominations@ali.org.

The Committee's members are: Chair **Mary M. Schroeder**, U.S. Court of Appeals, Ninth Circuit, Phoenix, AZ; **Conrad K. Harper**, Simpson Thacher & Bartlett LLP, New York, NY; **D. Brock Hornby**, U.S. District Court, District of Maine, Portland, ME; **Herma Hill Kay**, University of California at Berkeley School of Law, Berkeley, CA; **Pierre N. Leval**, U.S. Court of Appeals, Second Circuit, New York, NY; **Roberta Cooper Ramo**, Modrall, Spering, Roehl, Harris & Sisk, PA, Albuquerque, NM; and **William H. Webster**, Milbank, Tweed, Hadley & McCloy LLP, Washington, DC.

About the Awards

Established in memory of Judge Friendly and endowed by his former law clerks, the **Henry J. Friendly Medal** is not awarded on an annual basis but reserved for recipients who are considered especially worthy of receiving it. The Medal recognizes contribu-

tions to the law in the tradition of Judge Friendly and the Institute and is not limited to ALI members or those associated with its projects. The Friendly Medal was presented to former U.S. Attorney General Nicholas deB. Katzenbach at the 2009 Annual Meeting for his outstanding contributions to the law.

The **John Minor Wisdom Award**, established in 1990, is endowed by Judge Wisdom's former clerks and is given from time to time in specific recognition of a member's contributions to the work of the Institute. ALI Reporters, officers, and Council members are not eligible for the Award, the primary purpose of which is to recognize members who do not have an official role in Institute projects. The Award was last given, in 2006, to Jack B. Weinstein, Senior Judge of the U.S. District Court for the Eastern District of New York, for his exemplary, steady, and constructive participation in the Institute's work.

The **Distinguished Service Award**, established in 2006, is given from time to time to a member who over many years has played a major role in the Institute as an institution, accepting significant burdens as an officer or committee chair and helping keep the Institute on a steady course as the greatest private law-reform organization in the world. Roswell B. Perkins, who served as ALI President from 1980 to 1993 and as Chair of the Council from 1993 to 2008, received the Distinguished Service Award in 2008.

Software Contracts Official Text Now Available; Project Discussed at AALS Annual Meeting

The **Principles of the Law of Software Contracts** official text, adopted by the ALI in May 2009, was published in February. The hardbound volume covers standard-form agreements, warranties, and remedies, and it includes sections dealing with definitions, scope, and general terms. The Reporters for this volume are **Robert A. Hillman** of Cornell Law School and **Maureen A. O'Rourke** of the Boston University School of Law. The book, which costs \$87.00, may be ordered online at www.ali.org or by calling the ALI Customer Service Department at 800-253-6397.

On January 9, during the annual meeting of the Association of American Law Schools in New Orleans, the AALS Section on Commercial and Related Consumer Law held a program entitled "The Principles of the Law of Software Contracts: A Phoenix Rising from the Ashes of Article 2B and UCITA?" Featured speakers included both of the Reporters, who offered their unique insights on the drafting process, key substantive provisions, and their legal and practical implications; ALI Council member Amelia H. Boss, a professor at the Drexel University Earle Mack School of Law in Philadelphia, who added her insights about the failures of the UCC

Article 2B project and UCITA and the prospects for the Principles' success; and Professor Juliet M. Moringiello of Widener University School of Law in Harrisburg, Pennsylvania, who discussed a paper she coauthored with Professor William L. Reynolds of the University of Maryland School of Law in Baltimore, entitled "What's Software Got to Do With It?" The Tulane Law Review will publish a print symposium issue, scheduled to go to press in late summer 2010, that will include papers from most of the presenters as well as additional papers, responses, and replies.

THE AMERICAN LAW INSTITUTE

87th Annual Meeting | May 17-19, 2010 | The Mayflower Hotel | Washington, DC

TENTATIVE AGENDA *(as of February 23, 2010)*

Pre-Meeting Events

SUNDAY, MAY 16

2:00 to 4:00 p.m.

***CLE Program and Members Consultative Group Meeting: ALI Project on World Trade Law**

4:30 to 6:30 p.m.

***CLE Program: Developments in Legal Ethics**

Annual Meeting Program and Events

(All sessions and events in the Grand Ballroom unless otherwise noted.)

MONDAY, MAY 17

10:00 a.m.

Opening Session

- Speakers to be announced
- Reports and Business

11:30 a.m.

Model Penal Code: Sentencing
(Discussion Draft)
Reporter: Kevin Reitz

12:45 p.m.

***New Member Luncheon (by invitation only - State Room)**
(lunch for most members is “on your own”; list of nearby lunch places in registration area)

2:15 p.m.

Sentencing *(continued)*

3:00 p.m.

Amendments to UCC Article 9
(Tentative Draft presented for approval)
Committee Chair Edwin Smith and Reporter Steven L. Harris

4:00 p.m.

Recess regular meeting

4:15 p.m.

Side session open to ALI members:
New Project Development (room TBD)
Paul L. Friedman, Program Committee Chair and Lance Liebman, ALI Director

6:30 to 8:30 p.m.

***Members Reception** *(Newseum, transportation will be provided)*

TUESDAY, MAY 18

9:00 a.m.

Restatement of the Law Third, Property (Wills and Other Donative Transfers)

(Final Tentative Draft presented for approval)
Reporters: Lawrence W. Waggoner and John H. Langbein

11:00 a.m.

Break

11:15 a.m.

Restatement of the Law Third, Employment Law

(Tentative Draft presented for approval)
Reporters: Samuel Estreicher and Stewart J. Schwab

12:30 p.m.

***Luncheon honoring 2010 Life (25-year) and 50-year Members**
(State Room)

Speaker: Bennett Boskey, ALI Treasurer

2:00 p.m.

Employment Law *(continued)*

3:00 p.m.

Restatement of the Law Third, The U.S. Law of International Commercial Arbitration

(Tentative Draft presented for approval)
Reporters: George A. Bermann, Jack J. Coe, Jr., Christopher R. Drahozal, Catherine A. Rogers

5:00 p.m.

Adjournment

7:00 p.m.

***Annual Reception** *(State Room)* and

7:45 p.m.

Dinner *(black tie optional)*

Speaker: The Honorable Elena Kagan, Solicitor General of the United States

WEDNESDAY, MAY 19

9:00 a.m.

International Commercial Arbitration
(continued)

10:30 a.m.

Restatement of the Law Third, Restitution and Unjust Enrichment

(Final Tentative Draft presented for approval)
Reporter: Andrew Kull

12:30 p.m.

***Luncheon** *(State Room)*

Speaker: Dean Christopher F. Edley, Jr., University of California, Berkeley School of Law

2:00 p.m.

Restitution and Unjust Enrichment
(continued)

3:30 p.m.

Adjournment

Note: This agenda, current as of the date shown, is subject to change before or during the Meeting. Annual Meeting sessions are open to ALI members and guests all of whom must be registered to attend the Meeting. Sunday's CLE and WTO programs are open to the public. Events that require a paid ticket or an invitation are marked with an asterisk ().*

Bloggers Wanted

Would you like to blog about your experiences at the Annual Meeting? Our second annual Members' Blog will contain descriptions and photos of the sessions and events, as well as offer members' commentary on them. Whether you're a first-time attendee or a “regular,” your blog posts will provide others with insight into what the Meeting is all about. To volunteer, e-mail ddissinger@ali.org.

William H. Erickson, Former Colorado Chief Justice, Is Dead

Justice William H. Erickson, former Chief Justice of the Colorado Supreme Court, died on January 13 at the age of 85. An ALI member for nearly 40 years, he was a member of the Institute's Council from 1972 to 2003, when he transferred to emeritus status. While on the ALI Council, he served for many years on the Nominating Committee.

Justice Erickson, a native of Denver, earned a petroleum-engineering degree at the Colorado School of Mines but worked only briefly in that career before attending law school at the University of Virginia. He was a trial lawyer in Denver for 21 years until his appointment to the Colorado Supreme Court in 1971, where he served until 1996; he was chief justice from 1983 to 1985. Known for his integrity and hard work, Justice Erickson was appointed by then-Governor Bill Owens to chair the Columbine Review Commission, which criticized Jefferson County deputies' response to the 1999 shootings at Columbine High School and their failure to fully investigate prior complaints about shooters Dylan Klebold and Eric Harris. He is survived by his wife of 56 years, Dorie, four children, and nine grandchildren.

A Memorial Minute in remembrance of Justice Erickson will be read when the ALI Council meets in May; it will be reprinted in its entirety in a subsequent issue of *The ALI Reporter*.

ALI Project on Aggregate Litigation Is Focus of Conference at George Washington Law School

On March 12, the four Reporters for the ALI's soon-to-be-published **Principles of the Law of Aggregate Litigation**—Professors **Samuel Issacharoff** of NYU, **Richard A. Nagareda** of Vanderbilt University, and **Charles Silver** of the University of Texas and Dean **Robert H. Klonoff** of Lewis and Clark Law School in Portland, Oregon—will serve as moderators and respondents at a conference entitled “Aggregate Litigation: Critical Perspectives” sponsored by and held at the George Washington University Law School in Washington, D.C. The conference will seek to answer important questions on the subject and will include discussion of the Institute's Aggregate Litigation project and its potential influence on developments in this growing area of litigation.

The panel topics include Issues in the Certification of Class Actions, Other Issues Attending the Use of Class Actions, Non-Class Aggregate Litigation, and Ethics in Aggregate Litigation. For additional information on the conference, please visit <http://www.law.gwu.edu/News/20092010Events/Pages/AggregateLitigationCriticalPerspectives.aspx>.

The approved text of the Institute's Principles of the Law of Aggregate Litigation will be published later this spring. Order information will be included in the next issue of the *Reporter* and will also be available on ALI's website, www.ali.org.

In Memoriam

Elected

John P. Driscoll, Jr., Boston, MA; **R. Nicholas Gimbel**, Philadelphia, PA;
D. Burke Kibler III, Lakeland, FL; **Gordon O. Pehrson, Jr.**, Rockville, MD

Life

David Carliner, Washington, DC; **Nicholas Conover English**, Hightstown, NJ;
William H. Erickson, Englewood, CO; **Lawrence J. Latto**, Washington, DC;
John Lovell Moore, Jr., Vero Beach, FL;
Judd N. Poffinberger, Jr., Pittsburgh, PA

The Institute in the Courts

by Aron Goldschneider, Case Citations Director

In a recent tort case, the Iowa Supreme Court has adopted key negligence principles on the elements of duty and causation as set forth in the **Restatement Third, Torts: Liability for Physical and Emotional Harm**. *Thompson v Kaczinski*, 774 N.W.2d 829 (Iowa, 2009). The case was brought by a motorist who lost control of his car and was injured after encountering a trampoline on the road that had been displaced by wind gusts from an adjacent yard. The court concluded that the trial court erred in determining that the owners of the yard owed plaintiff no duty as a matter of law. Adopting the approach taken by §§ 6 and 7 of the new Restatement, the court held that consideration of foreseeability was to be removed from the determination of duty, and that a

no-duty ruling by the court was to be based solely on “articulated policy or principle in order to facilitate more transparent explanations of the reasons for a no-duty ruling and to protect the traditional function of the jury as factfinder.” (quoting § 7, comment j). The court explained that the foreseeability of a risk was instead allocated by the Restatement Third to the factfinder, to be considered when the jury decided if the defendant failed to exercise reasonable care—i.e., breached a duty to the plaintiff. Turning to its causation analysis, the court further approved of the Restatement Third’s use of the term “scope of liability” in place of “proximate cause” (a term causing confusion for juries) and the Restatement’s separation of factual cause and scope of liability such that the “substantial factor” requirement be addressed only within the

factual-cause determination and not as an aspect of the scope-of-liability determination. The court adopted the Restatement Third’s “risk standard” over the similar “foreseeability test” utilized by most jurisdictions, citing with approval the Institute’s explanation that the former “provides greater clarity, facilitates clearer analysis in a given case, and better reveals the reason for its existence.”

Iowa’s highest court also recently adopted a Restatement Third position in a case in which a bank sought to enforce a guaranty against an alleged secondary obligor,

the cosureties to the obligee divided by the number of cosureties (§ 57(1)); and a cosurety was entitled to the reasonable costs of performing, including incidental expenses (§§ 23(1), 55(2)). *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764 (Iowa, 2009).

Does Nevada law require the consent of both parties to move an easement, or does it allow, under certain conditions, the unilateral relocation of an easement by the servient estate owner? Adopting § 4.8 of the **Restatement Third, Property (Servitudes)**, the Nevada Supreme Court

chose the latter position in a case in which a servient estate owner sought to relocate an easement in order to facilitate the development of its property into a planned community. The

court held that application of § 4.8 was warranted when the creating instrument did not define the easement through specific reference to its location or dimensions and the unilateral relocation would not materially inconvenience the dominant estate owner. The court reasoned that public policy would be significantly furthered by implementing the more flexible and modern Restatement rule, in that it would permit the development of the servient estate while still preserving the rights of the dominant estate owner. The court nonetheless affirmed the trial court’s order dismissing the servient estate owner’s complaint, because the deed at issue, while not prohibiting relocation of the easement, contained a metes-and-bounds description of the easement. *St. James Village, Inc. v. Cunningham*, 210 P.3d 190 (Nev. 2009).

In a recent tort case, the Iowa Supreme Court has adopted key negligence principles on the elements of duty and causation as set forth in the Restatement Third, Torts: Liability for Physical and Emotional Harm.

and the secondary obligor sought reimbursement from an alleged primary obligor. The court declared, pursuant to § 22 of the **Restatement Third, Suretyship and Guaranty**, that “when a principal obligor has notice of the secondary obligation, the principal obligor has the duty to reimburse the secondary obligor to the extent the secondary obligor is called upon to perform, or if the secondary obligor settles with the obligee.” The court further approved the Restatement’s treatment of contribution between cosureties, declaring that each cosurety had the right of contribution against other cosureties (§ 55); the amount of contribution between cosureties was limited by any express or implied agreement between cosureties and, absent such an agreement, each cosurety’s contributive share was equal to the aggregate liability of

Thank You for Your Generosity

THANK YOU to all who contributed to The American Law Institute’s 2009 Year-End Appeal! The appeal was a wonderful success and raised more money than any other past annual appeal.

A comprehensive Donor Report will be published after the fiscal year end.

Notes About Members and Colleagues

- In January, **Kim J. Askew**, a member of the Institute's Council, received the Martin Luther King Jr. Justice Award from the Dallas Bar Association at a luncheon in Dallas. The keynote speaker for the luncheon was **Robert J. Grey, Jr.**, of Richmond, Virginia.
- **Lynne B. Barr** of Boston has been elected Chair-Elect of the Business Law Section of the American Bar Association for a one-year term. She will become the Chair of the Section in August 2010.
- **Andrew M. Coats**, dean of the University of Oklahoma College of Law since 1996, has announced plans to step down as dean in June 2010. He will remain on the school's faculty as dean emeritus.
- In October, a research initiative led by **Christopher R. Drahozal**, professor at the University of Kansas School of Law in Lawrence, Kansas, and an Associate Reporter for ALI's Restatement Third of the U.S. Law of International Commercial Arbitration, was honored by the U.S. Chamber of Commerce Institute for Legal Reform, at its Legal Reform Summit in Washington, D.C. The 2009 Research Award, presented to the Searle Civil Justice Institute at Northwestern University School of Law for its research on consumer arbitrations, was accepted by both Professor Drahozal, the chair of Searle's Consumer Arbitration Task Force, and Henry N. Butler, executive director of the Searle Center on Law, Regulation and Economic Growth.
- **Walter A. Effross**, a professor at the American University Washington College of Law, is the author of *Corporate Governance: Principles and Practices* (Aspen Publishers 2009), the first casebook devoted specifically to this topic.
- In December, Judge **Paul L. Friedman** of the U.S. District Court for the District of Columbia, a member of the Institute's Council, was the judicial honoree at the 138th Annual Banquet of the Bar Association of the District of Columbia, held at the Capitol Hilton. **Jamie S. Gorelick**, a former Deputy Attorney General of the United States, introduced him.
- **Bryan A. Garner** of Dallas, president of LawProse Inc., published *The Winning Oral Argument* (Thomson/West 2009), the third edition of *Garner's Modern American Usage* (Oxford University Press 2009), *Ethical Communications for Lawyers* (LawProse 2009), *Garner on Language and Writing* (ABA 2009), and an audiobook (reading with Justice Antonin Scalia) of *Making Your Case: The Art of Persuading Judges* (2009). As editor in chief of *Black's Law Dictionary*, he also brought out the much-amplified ninth edition in June 2009.
- **Donald Wayne Glazer** of Newton, Massachusetts, received the James J. Fuld Award from the ABA's Working Group on Legal Opinions at the WGLO's annual meeting in New York. The award is presented to an individual or entity that has made a significant contribution to the field of legal opinions in business transactions.
- **Richard R. Goldberg** has been selected as the 2010 Philadelphia Real Estate Lawyer of the Year by *Best Lawyers*, the oldest peer-review publication in the legal profession.
- **Eva M. Guzman**, an associate justice on the 14th Court of Appeals in Houston, was appointed by Governor Rick Perry as the first Hispanic woman to serve on the Texas Supreme Court. She has been recognized by The Hispanic National Bar Association as "Latina Judge of the Year" and by the Mexican American Bar Association of Texas Foundation as "2009 Judge of the Year."
- ALI Council member **William C. Hubbard**, who was the inaugural chairman of the World Justice Project, has been asked to serve as the first chairman of the organization in its new status as a free-standing nonprofit entity.
- **Jeffrey S. Kinsler**, a professor and senior scholar at Elon University School of Law in Greensboro, North Carolina, has been named the founding dean of Belmont University's College of Law in Nashville, Tennessee, the first new law school in middle Tennessee in nearly 100 years. Dean Kinsler was previously dean of Appalachian School of Law in Grundy, Virginia, which he led to full ABA approval during his time there.
- In November, the Honorable **A. Kodzo Paaku Kludze** of Hohoe, Ghana, a Distinguished Professor Emeritus of Rutgers School of Law – Camden, was elected a Fellow of the Ghana Academy of Arts and Sciences.
- In the fall of 2010, **Douglas Laycock**, a member of the Institute's Council and a professor at the University of Michigan Law School in Ann Arbor, will join the faculty of the University of Virginia School of Law in Charlottesville, after his wife, Teresa Sullivan, joins the University as president on August 1.
- In October, ALI Council member **Gerard E. Lynch**, Judge of the U.S. Court of Appeals for the Second Circuit, received the Edward Weinfeld Award for distinguished contributions to the administration of justice, presented annually by the New York County Lawyers' Association.
- In February, Professor **Myles V. Lynk** of Tempe, Arizona, a member of the Institute's Council, received the 2010 Outstanding Faculty Award of the Sandra Day O'Connor College of Law Alumni Association at the Association's annual luncheon.

- **Paul Marcus**, a professor at William & Mary Law School in Williamsburg, Virginia, has received a 2010 Outstanding Faculty Award from the State Council of Higher Education in Virginia, the highest faculty honor conferred by the Commonwealth of Virginia.
- In November, Massachusetts Chief Justice **Margaret H. Marshall**, a member of the Institute's Council, spoke on "State Courts and the Balance of Power" at the New York City Bar Association.
- Intel Corporation in Santa Clara, California, has announced the appointment of **A. Douglas Melamed**, formerly a partner in the Washington, D.C., office of WilmerHale, to serve as senior vice president and general counsel.
- **Lizabeth A. Moody**, Dean Emeritus and Distinguished University Professor at Stetson University College of Law in Gulfport, Florida, has been inducted into the Stetson Law Hall of Fame.
- In October, ALI Council member **Robert H. Mundheim**, Chair of the ABA Standing Committee on Ethics and Professional Responsibility, was a featured speaker at a conference at Hofstra University School of Law entitled "Power, Politics, and Public Service: The Legal Ethics of Lawyers in Government."
- In January, **Michael A. Olivas**, a professor at the University of Houston Law Center and Director of the University's Institute for Higher Education Law and Governance, was voted in as President-elect of the Association of American Law Schools. At the end of the 2011 Annual Meeting, he will become President of the Association.
- **Harry M. Reasoner** of Houston was one of seven lawyers named a Lifetime Achiever in the September issue of *The American Lawyer*. He was recognized for combining a distinctive career in the private sector with a longtime commitment to public service.
- **Doug Rendleman**, a professor at Washington and Lee University School of Law in Lexington, Virginia, has published *Complex Litigation: Injunctions, Structural Remedies, and Contempt* (Foundation Press 2010). Professor Rendleman serves as an Adviser to the Restatement Third of Restitution and Unjust Enrichment.
- In January, the Association for Women Attorneys, presented **Janet Leach Richards**, a professor at the University of Memphis Cecil C. Humphreys School of Law in Tennessee, with the Marion Griffin-Frances Loring Award, given for outstanding achievement in the legal profession. Professor Richards recently completed her one-year term as chair of the section of Family Law of the Association of American Law Schools and also was appointed to a three-year term on the Tennessee Supreme Court's Advisory Commission on the Rules of Practice and Procedure.
- Justice **Bruce Robertson** of Wellington, New Zealand, who retired from both the High Court of New Zealand and the Court of Appeal at the beginning of February, has received a knighthood.
- **Helene S. Shapo** and **Marshall S. Shapo** of Evanston, Illinois, who are both professors at Northwestern University School of Law, are the coauthors of the third edition of *Law School Without Fear: Strategies for Success* (Foundation Press 2009). This edition contains a new final chapter on law school and lawyering from colleagues of the Shapos, including ALI members Judge **D. Brock Hornby** of Portland, Maine, a member of the Institute's Council; **Robert S. Peck** and **Carter G. Phillips** of Washington, D.C.; and **Larry S. Stewart**, an ALI Council member, and **Gerald T. Wetherington** of Miami, Florida.
- Harvard Law School Professor **Robert H. Sitkoff** has been reappointed to serve a new five-year term on the Uniform Law Commission by Massachusetts Governor Deval Patrick. Professor Sitkoff has served as an interim commissioner since March 2008.
- President Barack Obama has nominated **Gloria Valencia-Weber**, a professor at the University of New Mexico School of Law in Albuquerque, to be one of 11 members of the Legal Services Corporation's board of directors.
- **Elizabeth Warren**, a professor at Harvard Law School and the chair of the Congressional Oversight Panel monitoring the Troubled Asset Relief Program, has been named Bostonian of the Year by *The Boston Globe*.
- **Robin Fretwell Wilson** of Lexington, Virginia, a professor at Washington and Lee University School of Law, has been named Class of 1958 Law Alumni Professor of Law.
- In November, ALI Council member **Diane P. Wood** and **William J. Bauer**, judges of the U.S. Court of Appeals for the Seventh Circuit, participated in a panel on "Laughter and the First Amendment," discussing comedians and cases that tested the boundaries of the First Amendment, at Northwestern University School of Law as part of the Chicago Humanities Festival. **Geoffrey R. Stone**, a professor at the University of Chicago Law School, served as the moderator.



ALI Reception Held in San Francisco

On February 19 a reception for Bay-area ALI members and guests was hosted by Lief Cabraser Heimann & Bernstein, LLP, the firm of Council member Elizabeth Cabraser. The event provided an opportunity for members and prospective members to meet with Institute leaders and learn about ALI's work. The Hon. Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit spoke; ALI President Roberta Ramo and Director Lance Liebman also made brief remarks. Enjoying the reception are Jill Horwitz, Lisa Runquist, Marian Fremont-Smith, and Pamela Mann, all of whom also attended the meeting the following day on the Principles of the Law of Nonprofit Organizations project.

Electronic Records: The “New Norm” in Historical Research Is on the Horizon

By Jordon Steele

Archivist, Biddle Law Library, University of Pennsylvania Law School

Dusty reports, yellowed letters, and brittle books—these are the images conjured when one normally thinks about archives. However, as communication increasingly shifts online, archivists are facing new challenges in the preservation of electronic records. The ALI Archives is no exception.

A few years ago, the ALI transferred to the Archives a selection of meeting minutes from the 1990s. These minutes provide a record of discussion and deliberation among members of the Institute's Council and Executive Committee, as well as the Permanent Editorial Board of the Uniform Commercial Code. Captured in Word Document format, they might lack the patina of paper—but the information contained in these bits and bytes is no less important than that of their analog predecessors. And for this reason, they must be managed, and managed well.

Electronic-records management is about more than just storage. The Penn Law School—where the print and, now, electronic records of the Institute are located—boasts state-

of-the-art computer servers and an information technology staff dedicated to a variety of data protection procedures. However, just because something is stored well does not mean it can be retrieved or used just as easily—which is where the Archives comes in.



Currently the Archives is working on a project to embed the ALI meeting minutes with appropriate metadata that describes, in clear and consistent language, when they were written and what keywords will help researchers locate relevant information. Adding good metadata will facilitate digital searching of these records and ensure that they are accessible for the next generation of historical scholarship.

If you are interested in learning more about the Institute's electronic records management initiatives, you can contact me at the Archives (e-mail: steelej@law.upenn.edu; telephone: 215-898-5011).

Second Circuit Overrules *Winter Storm*, Cites PEB Commentary

On July 1, 2009, the Permanent Editorial Board for the Uniform Commercial Code issued PEB Commentary 16 - §§ 4A-502(d) and 4A-503 (available on the ALI website under Projects/PEB). The PEB acts under the authority of The American Law Institute and the Uniform Law Commission. The PEB Commentary disapproved the reasoning on a UCC Article 4A funds-transfer issue in a Second Circuit decision, *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263 (2d Cir. 2002). On October 16, 2009, the Second Circuit, expressly taking note of the PEB Commentary, overruled its own decision in *Winter Storm* in the new decision of *The Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009).

President's Letter

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or views on projects already on the Program Committee's long list (which will be made available to you in advance)—to share their thoughts with us in person.

We live in interesting times. Entire new areas of the law have developed or are developing, including many in the international and transnational areas. For example, we are currently at the early stages of drafting a Restatement of the U.S. Law of International Commercial Arbitration, a chapter of which will be presented at the Annual Meeting in May. Our work over the last decade on sentencing provisions of the Model Penal Code (ALI's first criminal law work since the early 1970s, when its Model Code of Pre-Arrest Procedure was completed) has suggested to us that there may be other areas of the criminal law that deserve the Institute's attention in this second decade of the 21st Century. The Council has approved undertaking a project on government ethics and public integrity, the Director is actively developing a project on election law, and we are considering projects in the areas of transmission of wealth, preemption, liberty and security, financial regulation, water law, and Indian law. We want and need your input and involvement. I personally hope to hear from many of you, whether by e-mail or on May 17 at The Mayflower.

Paul L. Friedman
Chair, Program Committee



Calendar of Forthcoming Meetings

March 2010

- 26-28 **UCC Article 9 Review Committee.** The Iberville Suites, New Orleans, La.
- 31 **CLE Luncheon with Judge Paul L. Friedman Speaking on the Change in the Model Penal Code regarding the Death Penalty and the Proposed Revisions as to Sentencing, Cosponsored by ALI and the Georgia State Bar Judicial Procedure and Administration Committee.** Jones Day law firm, Atlanta, Ga.

May 2010

- 16 **Principles of World Trade Law. Members Consultative Group.** The Mayflower, Washington, D.C.
- 16 **Ethics CLE Program Sponsored by ALI and ALI-ABA.** The Mayflower, Washington, D.C.
- 17 **Council Meeting.** The Mayflower, Washington, D.C.
- 17-19 **Annual Meeting.** The Mayflower, Washington, D.C.

June 2010

- 7 **WTO Case Analyses.** The World Trade Organization, Geneva, Switzerland.
- 21 **Restatement of the Law Third, Employment Law.** Advisers. ALI Headquarters, Philadelphia, Pa.
- 22 **Restatement of the Law Third, Employment Law.** Members Consultative Group. ALI Headquarters, Philadelphia, Pa.

October 2010

- 21-22 **Council Meeting.** New York, N.Y.

January 2011

- 20-21 **Council Meeting.** ALI Headquarters, Philadelphia, Pa.

May 2011

- 16-18 **Annual Meeting.** The Westin St. Francis, San Francisco, Calif.



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Future ALI Annual Meeting Dates

May 17-19, 2010	Washington, DC - The Mayflower
May 16-18, 2011	San Francisco – Westin St. Francis
May 21-23, 2012	Washington, DC - The Mayflower
May 20-22, 2013	Washington, DC
May 19-21, 2014	Washington, DC
May 18-20, 2015	Chicago