

Actions Taken at the 2022 Annual Meeting

Children and the Law*

The membership voted to approve Tentative Draft No. 4, which includes material from Chapter 1, Parental Authority and Responsibilities, and Chapter 2, State Intervention for Abuse and Neglect, of Part I (Children in Families); Chapter 5, State Duty to Educate Children, of Part II (Children in Schools); and Chapter 12, Pre-Adjudication, Chapter 13, Delinquency Proceedings, Chapter 14, Delinquency Dispositions, and Chapter 15, Juveniles in the Criminal Justice System, of Part III (Children in the Justice System), as well as three new Comments to be added to previously approved Sections in Part II.



Children and the Law Reporters Richard J. Bonnie of UVA School of Law, Emily Buss of The University of Chicago Law School, Solangel Maldonado of Seton Hall University School of Law, and Elizabeth S. Scott of Columbia Law School with Chair Troy A. McKenzie of NYU School of Law

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ALI WELCOMES DEPUTY DIRECTOR ELEANOR BARRETT

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THE AMERICAN
LAW INSTITUTE

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THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

The Flow of Projects

The American Law Institute is defined by its substantive work, principally its Restatements of the Law, its Principles of the Law, and its Model or Uniform Codes. Eight years into my position as Director of The American Law Institute, I thought that it would be informative to provide a sense of the flow of our projects during that time. What new projects did we undertake? What projects did we complete? How much are we accomplishing? What is next on the horizon? As the following review shows, while ALI projects do take a long time to complete, we are accomplishing a large volume of important work. And the completion of existing projects opens up institutional capacity for undertaking new projects; members' suggestions on this front are always welcome.

When I became Director in 2014, I inherited 13 ongoing projects from my illustrious predecessor, Lance Liebman. Six were Restatements: Consumer Contracts; Foreign Relations Law of the United States: Selected Topics in Treaties, Jurisdiction, and Sovereign Immunity; Law of American Indians; Torts: Intentional Torts to Persons; Torts: Liability for Economic Harm; and U.S. Law of International Commercial and Investor-State Arbitration.

In addition, two were Principles projects that got subsequently redefined as Restatements during my tenure because their goal was to provide guidance to the courts based on sources of positive law: Charitable Nonprofit Organizations and Liability Insurance. Three were Principles Projects: Data Privacy, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes, and Government Ethics. And the remaining two projects were portions of the Model Penal Code: Sentencing, and Sexual Assault and Related Offenses.

Twelve of these 13 projects have now been completed. The thirteenth—Government

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ALI Group Cited in Proposals to Reform and Modernize Electoral Count Act

This July, two proposals were introduced which include legislation to reform and modernize the outdated Electoral Count Act of 1887 to ensure that the electoral votes tallied by Congress accurately reflect each state's vote for President.

Led by U.S. Senators Susan Collins (R-ME) and Joe Manchin (D-WV), the bipartisan group also includes Rob Portman (R-OH), Kyrsten Sinema (D-AZ), Mitt Romney (R-UT), Jeanne Shaheen (D-NH), Lisa Murkowski (R-AK), Mark R. Warner (D-VA), Thom Tillis (R-NC), Chris Murphy (D-CT), Shelley Moore Capito (R-WV), Ben Cardin (D-MD), Todd Young (R-IN), Chris Coons (D-DE), Ben Sasse (R-NE), and Lindsey Graham (R-SC).

Excerpted from the release:

“From the beginning, our bipartisan group has shared a vision of drafting legislation to fix the flaws of the archaic and ambiguous Electoral Count Act of 1887,” the senators said in a joint statement. “Through numerous meetings and debates among our colleagues as well as conversations with a wide variety of election experts and legal scholars, we have developed legislation that establishes clear guidelines for our system of certifying and counting electoral votes for President and Vice President. We urge our colleagues in both parties to support these simple, commonsense reforms.”

In developing the bills, the senators received input from state election officials, as well as from an ideologically diverse group of election experts and legal scholars, including the American Law Institute. Rules Committee Chairwoman Amy Klobuchar (D-MN) and Ranking Member Roy Blunt (R-MO) also provided helpful insight.

“Debates over the political ‘rules of the game’ can be fraught with suspicion and jockeying for advantage. When these rules change, there must be buy-in from both parties to maintain trust in the system,” said Matthew Weil, Executive Director of the Democracy Program at the Bipartisan Policy Center. “This bipartisan Senate framework is a critical step for shoring up ambiguities in the Electoral Count Act. These senators, especially Sens. Manchin and Collins, should be commended for finding common ground on a matter that is so foundational to our democracy: faith in the system that selects our leaders.”

“We are impressed with the draft Electoral Count Act reform legislation developed by a bipartisan Senate working group, including Senators Collins, Manchin, Romney, and Murphy,” said Bob Bauer and Jack Goldsmith, co-chairs of the Presidential Reform Project. “Our work on these reform issues, which has included co-chairing a group of experts convened by the American Law Institute (ALI), has convinced us that major improvements in the current law are both urgent and achievable. We believe the legislation as proposed will help curtail threats to future presidential elections that would erode the foundational democratic principles of our country. It merits broad support.”

[Additional information on the proposed bills as well as the work produced by the ALI-convened group on Principles for ECA Reform is available on the ALI homepage.](#)

“The American Law Institute is proud to have convened this group and to have facilitated its important work,” said ALI President David F. Levi and ALI Director Richard L. Revesz in a joint statement. “Because of the need for quick action, this project has not gone through the typical ALI bicameral process, which requires approval by both our Council and membership, and therefore cannot be considered the official work of the Institute. Our support for this project nonetheless contributes to the rule of law, which is a core priority for the ALI. We would like to extend our deepest gratitude to this group for their critical and urgent work. We also would like to thank ALI Legal Fellow Harry Larson and Professor Goldsmith’s excellent team of research assistants for providing valuable support to this project.”

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THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

Ethics—will be on the agenda for final membership approval next year, at the 2023 Annual Meeting.

During my eight years as Director, The American Law Institute launched 12 new projects. Five are new Restatements in areas in which we have worked during most of our institutional history: Conflict of Law (Third), Property (Fourth), and the three portions that will complete Torts (Third): Concluding Provisions, Defamation and Privacy, and Remedies. Two are Restatements in which we had not previously done this work: Children and the Law, and Copyright. One—Corporate Governance—is in an area in which we had previously done a Principles projects but where we now launched a Restatement because the goal was to provide guidance to the courts based on sources of positive law.

In addition to these eight new Restatements, we undertook four new Principles projects: Compliance and Enforcement for Organizations, Data Economy, Policing, and Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities. The Data Economy project was the first project undertaken jointly with the European Law Institute.

All four Principles projects launched since 2014 have now been completed. As a result, over the last eight years, The American Law Institute has completed a total of 16 projects. The average of two per year over an extended period of time is an institutional record. We sometimes note that it takes a village to produce a single ALI project: the Reporters, Advisers, Members Consultative Group, Council, Annual Meeting attendees, ALI staff, and others who contribute their learning and wisdom. It therefore should take a whole town to get 16 projects done. Everyone who played a role in this institutional accomplishment should take great pride!

During this period, the ALI, together with the Uniform Law Commission, also undertook and completed projects to amend the Uniform Commercial Code. A new Article and amendments to existing Articles to address emerging technological developments, including those relating to digital assets, were approved by both organizations this year. Amendments to Article 9 in 2018 clarified the Code's relationship to anti-assignment provisions governing ownership interests in unincorporated entities.

Of course, the ALI is not resting on its laurels. Our Projects Committee, wonderfully chaired by Justice Goodwin Liu, has greenlighted the launch of four new projects: the completion of the Restatement of the Foreign Relations Law of the United States (Fourth); a new Restatement on Section 1983 law; a Principles project in the area of elections, focused on the safeguarding of democracy; and a Principles project on the adjudication of small claims. Over the next few months, Deputy Director Eleanor Barrett and I will be seeking formal approval from the Projects Committee and the Council for the scope of these projects and for their respective Reporters.

And, I keep a long list of possible future projects. Undoubtedly, the intellectual excitement that is accompanying the preparation for our 100th anniversary celebration in 2023 will provide fertile ground for new ideas. I encourage all members to reach out to me with suggestions of areas in which the ALI might make a significant contribution.

ALI Welcomes Deputy Director Eleanor Barrett

On July 11, Eleanor Barrett joined the staff of The American Law Institute as Deputy Director. After a nationwide search, the Institute's Executive Committee unanimously approved Barrett's appointment. The Deputy Director oversees the day-to-day operations of ALI's Philadelphia headquarters and supports the Director in the Institute's work. Barrett succeeds Stephanie Middleton, who served in the role for more than a decade.



"The ALI is fortunate to have found Eleanor at this time," said ALI Director Richard L. Revesz. "Her experience as a practicing lawyer, law school faculty member, and administrator makes her the ideal candidate to fill this important Institute role. The Deputy Director functions not only as ALI's chief operating officer, but also as a trusted advisor on all of the Institute's projects. I am excited to begin working with Eleanor as the ALI continues its important project work, as well as having her help to usher in ALI's second century. Although Stephanie will be impossible to replace, I'm confident that Eleanor will be an extremely worthy successor."

"It is an honor to succeed Stephanie Middleton as the next Deputy Director of the ALI," said Barrett. "I am so grateful for the warm welcome I have received from David, Ricky, the Council, members, and talented ALI staff, and I am energized by the prospect of working with you all to carry the organization's mission forward into its next century."

Barrett graduated *magna cum laude* from Princeton University with an A.B. in Public and International Affairs and received her J.D., *summa cum laude*, from the University of Pennsylvania Law School. Prior to joining ALI, she served as the Associate Dean for Curricular Affairs at the University of Pennsylvania Carey Law School. She previously developed, administered, and taught in Penn Law's Legal Practice Skills program as the Denise A. Rotko Associate Dean for Legal Practice Skills.

Barrett served as a law clerk to Marjorie O. Rendell of the U.S. Court of Appeals for the Third Circuit. She worked in private practice in Washington, DC, and Philadelphia, where she engaged in all aspects of federal- and state-court litigation, with a particular focus on writing trial- and appellate-level briefs. In between college and law school, she worked as a financial analyst.

ALI Members Vote to Approve Four Projects

This year, ALI members voted to approve four projects: Principles of the Law, Policing; Principles of the Law, Student Sexual Misconduct; Procedural Frameworks for Colleges and Universities; Restatement of the Law, Consumer Contracts; and Model Penal Code: Sexual Assault and Related Offenses.

The Reporters, subject to oversight by the Director, are each updating the project drafts to correct and update citations and other references, to make editorial and stylistic improvements, and to implement any remaining substantive changes agreed to during discussion with the membership or by motions approved at the Annual Meeting.

The Policing Reporters and Student Misconduct Reporters are preparing the official text for publication.

The Consumer Contracts Reporters produced a document containing the revisions to Tentative Draft No. 2, based on the discussion and motions that passed at the Annual Meeting. Comments received from members are now being reviewed and considered.

The Model Penal Code Reporter has revised the black letter of Tentative Draft No. 6 as a result of discussion and motions at the 2022 Annual Meeting. The Council will be asked to approve the substantive amendments made as a result of motions approved at the Meeting. The Reporter will then make conforming changes to the Comments, consistent with the revisions to the black letter.

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

ACTIONS TAKEN CONTINUED FROM PAGE 1

Conflict of Laws*

The membership voted to approve Tentative Draft No. 3, which contains Topic 1, Introduction, of Chapter 5 on Choice of Law.

Consumer Contracts*

Tentative Draft No. 2 contains the entire project.

The following actions were taken:

A motion to amend the Restatement by adding a new § 2 on interpretation and construction, and then renumbering subsequent Sections passed.

A motion to amend § 2, Adoption of Standard Contract Terms, failed.

A motion to amend § 3, Adoption of a Modification of Standard Contract Terms, failed.

A motion to remove entirely § 6, Deception, failed.

A motion to amend § 9(a) was withdrawn following the suggested revisions discussed during the project session by the membership.

A motion to amend § 9(b) was withdrawn, after the Reporters agreed to address the concerns raised by the motion in the Comments to § 9.

A motion to remove any new language added to § 1 on reasonableness, § 1(c), and current § 2, from inclusion in the Boskey motion did not pass. The membership voted to approve Tentative Draft No. 2, subject to the approved motion to add a new § 2, discussion at the Meeting, and the usual editorial prerogative.

In response to the discussion at the Meeting, revisions to Tentative Draft No. 2 have been made available on the project page (login required for access). The comparison document shows the changes made in response to the discussion at the Meeting.

Copyright*

Tentative Draft No. 3 contains material from Chapter 1, Subject Matter and Standards: Generally; Chapter 2, Subject Matter of Copyright: Scope of Protection; Chapter 3, Initial Ownership, Transfers, Voluntary Licenses, and Termination of Grants; Chapter 4, Copyright Formalities; Chapter 5, Duration of Copyright; Chapter 6, Copyright Rights and Limitations; and Chapter 9, Copyright Remedies.

The following actions were taken:

A motion to amend § 40 was withdrawn.

A motion to delete § 41, Comment *e*, was withdrawn after the Reporters agreed to remove the Comment from the material for approval, pending release of the U.S. Copyright Office's report on online publication.

A motion to amend § 46, as revised before the Meeting, was withdrawn after the Reporters agreed to clarify Comment *a* as discussed with the movant.

A motion to delete all the black letter in § 54 and move its content to the Comments to § 28 on ownership failed upon a vote by the membership.

A motion to remove § 15 from inclusion in the Boskey motion did not pass. The membership voted to approve Tentative Draft No. 3.

Corporate Governance* (Part 1)

At the conclusion of the first part of this project session, the membership voted to approve §§ 1.10, 1.23, 1.24, and 2.01 of Tentative Draft No. 1. The project discussion continued on Wednesday.

Corporate Governance* (Part 2)

At Part 2 of this project session, the membership voted to approve §§ 4.01, 4.02, 5.01, and 5.10 of Tentative Draft No. 1. After discussion at the Annual Meeting, the Reporters agreed to revisit § 5.02. Accordingly, there was no vote on § 5.02.

Policing*

Tentative Draft No. 4 was approved by the membership, marking the completion of this project. Read more about this project on page 16.

Property*

The membership voted to approve Tentative Draft No. 3, which includes material on Nuisance, Bailments, The Estate System and Related Matters, and Zoning, Planning, and Subdivision.

MPC: Sexual Assault*

The membership voted to approve Tentative Draft No. 6, subject to the amendments that were approved at the Meeting and the usual editorial prerogative.

The following actions were taken:

A motion to amend the definition of “consent” passed.

A motion to remove entirely a definition of “consent” failed.

A motion to amend a portion of § 213.9(2)(a)(ii) failed.

A motion to amend § 213.9(5) failed.

A submitted motion to amend the definition of “coercion” to include “psychological threat of legal pressure” was agreed to by the Reporter and received no opposition from ALI members.

A motion to amend § 213.9(3) and (4) was split to consider separate motions:

- The first part of the motion to make § 213.9(3) and (4) registrable failed.
- The second part of the motion to change the grading of § 213.9(4) to a felony of the third degree with a 10-year maximum sentence failed.

A motion to amend § 213.11A, Registration for Law-Enforcement Purposes, to add a new subsection (1)(e) passed.

A motion to amend § 213.11H, Access to Registry Information, was split to consider separate motions:

- The first part of the motion to edit (1)(a)(ii) failed.
- The second part of the motion to add a new subsection (1)(a)(iv) and renumber existing (1)(a)(iv) to (1)(a)(v) failed.
- The third part of the motion to add a new subsection (1)(a)(vi) failed.
- The fourth part of the motion to add a new subsection (1)(b) and (1)(b)(i) failed.

Additional motions on §§ 213.11, 213.11A, and 213.11D were agreed to by the Reporter, received no opposition from ALI members, and subsequently passed:

- § 213.11 to add a new subsection (5);
- § 213.11A to add a new subsection (4);
- § 213.11D to add a new subsection (5); and
- § 213.11D to delete subsection (1)(g).

A motion to withdraw in its entirety the revised Article 213 of the Model Penal Code from publication was discussed; members were instructed that in order to support the motion they should reject the motion to approve the draft.

Student Sexual Misconduct*

The membership voted to approve Tentative Draft No. 1, which contains the entire project. This vote marks the completion of this project.

Torts: Concluding Provisions*

A motion to amend §§ 4 A-B failed. The membership voted to approve Tentative Draft No. 1.

Torts: Remedies*

A motion to amend § 8 failed. A second motion to amend § 8 was withdrawn. The membership voted to approve §§ 1-4 and 6-8 of Tentative Draft No. 1. After discussion with the membership, the Reporters agreed to present a revised § 5 at a future Meeting.

UCC and Emerging Technologies*

The membership voted to approve Tentative Draft No. 1. This is a joint project with the Uniform Law Commission (ULC). The draft was approved by the ULC at its Annual Meeting in July 2022.

A Brief Summary of the UCC and Emerging Technologies Project

The American Law Institute and the Uniform Law Commission formed a joint committee in 2019 to review the Uniform Commercial Code with a view to recommending amendments or revisions to accommodate emerged and emerging technological developments.

At this year’s Annual Meeting, ALI membership voted to approve a new UCC Article 12 that would govern the transfer of property rights in certain intangible digital assets (“controllable electronic records”) that have been or may be created using new technologies. Amendments to Articles 1, 2, 2A, 3, 4, 4A, 5, 7, 8, and 9; and transition provisions were also approved.

At its annual meeting in July 2022, the Uniform Law Commission voted to approve the amendments and Article 12. With both groups approving the UCC and Emerging Technologies, the amendments will now be promulgated for consideration by the states.

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

Speakers at the Annual Meeting

On Tuesday, May 17, the Distinguished Service Award was presented to **Steven O. Weise** of Proskauer Rose LLP. Read more about Weise's speech on page 8.



Steven O. Weise



Merrick B. Garland

At the Annual Dinner on Tuesday, U.S. Attorney General **Merrick B. Garland** was presented with the Henry J. Friendly Medal by **Raymond J. Lohier Jr.** of the U.S. Court of Appeals for the Second Circuit. Read more about Garland's speech on page 7.

On Wednesday, May 18, 2019 ALI Early Career Scholars Medal Co-Recipient **David Pozen** of Columbia Law School gave a presentation on the topic of constitutional polarization. Details on Pozen's presentation can be found on page 13.



David Pozen



Kim J. Askew

Wednesday's Members Luncheon, honoring new 25-Year (Class of 1997) and 50-Year (Class of 1972) members, featured speaker **Kim J. Askew** of DLA Piper US LLP. The 1997 Class Gift was presented to the Institute. Read more about Askew's speech and this year's Class Gift on pages 10-11.



Diane Orentlicher



John B. Bellinger III

The Annual Dinner also featured an after-dinner keynote discussion between ALI Council member **John B. Bellinger III** of Arnold & Porter and **Diane Orentlicher** of American University, Washington College of Law about the international and domestic law issues relating to Russia's invasion of Ukraine, and discussed the possibility of an indictment of Russian President Vladimir Putin for international war crimes.



Henry J. Friendly Medal: Merrick B. Garland

Merrick B. Garland, 86th Attorney General of the United States, was presented with the Henry J. Friendly Medal at the 2022 Annual Dinner by Raymond J. Lohier Jr. of the U.S. Court of Appeals for the Second Circuit.

Endowed by Friendly's former law clerks, the Henry J. Friendly Medal recognizes contributions to the law in the tradition of Friendly and the Institute. Several of Friendly's law clerks and Garland's law clerks attended the presentation.

"Thirty-six years after he died, Judge Henry Friendly is revered not only by his former law clerks, but also by knowledgeable jurists, lawyers, and academics, literally everywhere," said Lohier. "He was widely regarded as the greatest judge of his time, and one of the greatest federal judges of all time. Chief Justice Roberts, who clerked for Friendly, once said, 'No one today is remotely like him.'"

In his introduction, Lohier shared excerpts from the recommendation letters submitted by ALI members nominating Garland to the Institute, including Michael Boudin of the U.S. Court of Appeals for the First Circuit, William T. Coleman Jr., Secretary of Transportation during the Ford Administration, and Patricia M. Wald of the U.S. Court of Appeals for the District of Columbia Circuit. They praised Garland's long service to the administration of justice.

"What also comes through in these and other letters that I've read, and what I know from personal experience, is that Merrick is humble, unassuming, kind, and extremely generous with his time," Lohier continued. "He is foremost, as one of his ALI recommenders called him, a first-rate human being. And it's almost certainly for that reason that the fervor of Judge Friendly's law clerks for Judge Friendly is matched step-for-step by the fervor of Judge Garland's law clerks for Judge Garland."

Upon his acceptance of the award, Garland reflected on his time as Friendly's law clerk, sharing stories from his clerkship, and how he continues to carry lessons learned at that time throughout his career.

"[T]he Judge decided every case on the merits, every case by an application of law and the facts, never his personal preference, and often contrary to his personal preference. This is what he taught his law clerks. And this is what his friend Attorney General Ed Levi, John and David's father, taught the prosecutors at the Justice Department when he became the attorney general right after Watergate. If I am successful at even one thing in my tenure as attorney general, I hope it should be that I can bring back the Friendly-Levi norms about the way in which principled decision-making is made. That like cases are decided alike. There is no preference for Democrats over Republicans, friends over foes, the rich over the poor, powerful over the powerless, or that the decisions make any difference based on ethnicity. These are what they taught. This is what I am trying to teach and model to the next generation of Justice Department prosecutors."



ALI President David F. Levi, Merrick B. Garland, and Raymond J. Lohier Jr.



Garland concluded his speech by reflecting on the founding and role of the Justice Department.

"The Justice Department was founded in 1870 in the aftermath of the Civil War during Reconstruction with the first principle purpose to protect black Americans from white supremacists and particularly the Ku Klux Klan, who were trying take away their civil liberties." Garland said, "The Justice Department regards this as its legal obligation still and approaches this with the same degree of urgency as we approached it in 1870, but there is more here confronting hate and preventing hate crimes is a moral obligation of every American. If we expect to be able to continue to live in a democracy. And that is what we intend to do."

A video of Garland's remarks is available on the ALI Media Library at media.ali.org.

Steven O. Weise Receives Distinguished Service Award

The Distinguished Service Award was presented to Steven O. Weise of Proskauer Rose LLP at this year's Annual Meeting. This award is given from time to time to a member who, over many years, has played a major role in the Institute as an institution, by accepting significant burdens as an officer, Council member, committee chair, or project participant and by helping keep the Institute on a steady course.

Weise is indeed an apt recipient, as he wears many Institute hats. Elected to ALI in 1992 and to the Council in 2012, he currently serves as chair of the Investment Committee, previously having served as chair of the ALI CLE Program and Marketing Committee. His dedication to helping the Institute provide continuing legal education for lawyers has remained steady, even after his duties as chair concluded. In fact, Weise was one of our panelists at this year's Annual Meeting CLE Sunday program on Emerging Technologies (see page 9 for more information).

"Steve has played an essential role in bringing to the table his encyclopedic knowledge of this field," said ALI Director Richard L. Revesz when introducing Weise. "In my eight years as Director of the ALI, I have never seen any Adviser play a more significant role on the substance of a project. And these outsized substantive contributions are coupled with extraordinary human qualities."

As ALI co-chair for Principles for a Data Economy, completed in 2021, Weise helped to coordinate the work of this joint venture with the European Law Institute, the first transatlantic collaboration of its kind. With his wide range of UCC expertise, he has served as an ALI designee on the Permanent Editorial Board for the Uniform Commercial Code since the mid-1990s. He also serves as an Adviser for the Restatement of the Law, Consumer Contracts, and Restatement of the Law Fourth, Property, projects.



Lori Weise, Steven O. Weise, and Richard L. Revesz



Richard L. Revesz and Steven O. Weise

While Weise has contributed deeply to projects connected to his professional experience, his enthusiasm and talent in taking information from one area of law and applying it to another is demonstrated through his widespread participation in the Members Consultative Groups of countless projects, including several Restatement Third of Torts projects: Concluding Provisions, Remedies, Intentional Torts, Liability for Economic Harm, and Liability for Physical and Emotional Harm. The work produced by the Institute would not be as high caliber without this kind of generalist perspective.

Upon accepting his award, Weise thanked his family and ALI colleagues for their encouragement through the years. In his remarks, he expressed the joy he finds in looking at subjects across topics. He shared his approach to engaging in the Institute's work by looking at pieces of information in one project area and seeing if that information connects to another project area, potentially providing entirely new insights:

"Does a meaning in one Restatement contribute to, or inform, the meaning in another Restatement? It forces you to think through what's going on. And I have found that really a terrific opportunity here at ALI, and I encourage people as they work on different projects to not go down what I'm thinking of here as the vertical silos of a particular Restatement, which might correspond to a law school class you had, but rather think about the concepts and see how they play out across, and see if a concept, as used in one area, can inform or help you think about the same word—which may or may not fit in another area—because it's a different purpose that's going on."

A video of Weise's remarks is available on the ALI Media Library at media.ali.org.

Annual Meeting Sunday Programs

This year's Annual Meeting featured two Sunday programs. The day began with a Special Program on the U.S. Supreme Court. **Leondra R. Kruger** of the California Supreme Court moderated the panel discussion with former U.S. Solicitors General **Paul D. Clement** and **Seth P. Waxman**. Topics include the role of the solicitors general, their relationship with the U.S. Supreme Court, and more.

The second program of the day was the ALI CLE Ethics Program on Emerging Technologies. Planning chair and moderator **Neil B. Cohen** of Brooklyn Law School was joined by panelists **Sarah Hammer** of The Wharton School of the University of Pennsylvania, **Teresa Wilton Harmon** of Sidley Austin, and **Steven O. Weise** of Proskauer Rose LLP. This panel explored the ways emerging technologies affect how existing law governs transactions.

*If you were unable to attend the CLE program at the Annual Meeting, a webcast of the program ("Law, Ethics, and Transactions in Emerging Technologies: Are We Up to the Task?") is scheduled for September 9, 2022 at ali-cle.org. ALI members have complimentary access to ALI CLE programs. For this member-only benefit, simply add any online course to your cart and use the coupon code **ALIWEB** during checkout.*



Seth P. Waxman, Paul D. Clement, and Leondra R. Kruger



Steven O. Weise, Neil B. Cohen, Teresa Wilton Harmon, and Sarah Hammer

Welcome to the Institute's Newest Members

ALI welcomed its newest members and first-time Meeting attendees at the Welcome Reception, held Sunday evening before the Annual Meeting kicked off. The event was hosted by ALI members **David B. Goodwin** of Covington & Burling LLP, **Wendy L. Patrick** of the San Diego County District Attorney's Office, **Mary Ellen Tabor** of the Iowa Court of Appeals, **John Shepard Wiley Jr.** of the California Court of Appeal Second District, Division Eight, and **James F. Williams** of Perkins Coie LLP.



*Clockwise from left to right:
Vivian Eulalia Hamilton of William & Mary Law School,
Nancy Leong of University of Denver, Sturm College of Law,
and Alison Siegler of University of Chicago Law School, Federal
Criminal Justice Clinic*

*Arthur H. Bryant of Bailey & Glasser LLP and Alexis J. Hoag of
Brooklyn Law School*

*James F. Williams and Johnnie B. Rawlinson of the U.S. Court
of Appeals for the Ninth Circuit*

*Hosts John Shepard Wiley Jr., David B. Goodwin, Wendy L.
Patrick, James F. Williams, and Mary Ellen Tabor*



ALI Holds Celebration Honoring New Life and 50-Year Members

Each year, The American Law Institute hosts a special event during the Annual Meeting to honor its new Life Members and 50-year members for their many years of dedication to ALI's important work. Though the occasion is always momentous, this year's event, celebrating the classes of 1997 and 1972, was particularly meaningful as it marked the first time in three years that it was held in person. During the celebration, the 1997 Life Member Class Gift, totaling \$184,050, was presented to the Institute.



Kim J. Askew of DLA Piper US LLP

ALI President David F. Levi took the stage at the luncheon to express his gratitude for the Class Gift and to acknowledge the new Life and 50-year members in attendance. Among them were Kim J. Askew of DLA Piper US LLP and David W. Rivkin of Debevoise & Plimpton LLP, who served together on the Class of 1997 Class Gift committee, and Class of 1972 members Victor E. Schwartz of Shook, Hardy & Bacon LLP and Michael Traynor of Cobalt LLP.

After thanking the class members for their service, President Levi introduced Ms. Askew as the luncheon speaker, who delivered a spirited speech focusing on the importance of ALI's work. "Institutions like ours play such an important role in continuing to promote civility and collaboration, which I believe are the cornerstones of our democracy," she remarked, noting that ALI is well-positioned to continue to play this integral role in our society as it approaches its second century of existence. This, Ms. Askew explained, has been made possible by the advances the Institute has made in diversity and inclusion.

"I'm talking about diversity in all forms. Just take a look at our membership. You see it—women; lawyers of color; corporate counsel; early career scholars; lawyers, judges, and academics from states that were not as well represented in our membership. And I believe that our membership today is a more diverse and inclusive one that we should be proud of." Ms. Askew concluded that, as a result, "ALI is a stronger and more resilient institution that can withstand any challenges of the future."

Many of the advancements Ms. Askew described have been made possible in part by the infusion of support that the Class Gift program offers to ALI. Now in its 11th year, the program has raised more than \$1.7 million to fund key aspects of ALI's mission, including travel assistance programs, which are offered to ALI members outside of the private sector to ensure that there are no financial barriers to participation by the Institute's diverse membership in ALI's work, and the Early Career Scholars Medal program, which raises awareness of the Institute's work while engaging up-and-coming legal academics.

The Class Gift initiative also provides funding that allows ALI to produce works that make significant contributions to public policy even if they are unlikely to have much financial return in the form of books sold or royalties for the electronic use of the content, and to make the Institute's work more accessible by providing free public access to works that can be applied to address pressing legal and policy issues being faced in times of crisis.

The Class Gift program will continue with the 1998 Life Member Class, whose members will be honored at ALI's 2023 Annual Meeting next May in Washington, D.C.

1997 LIFE MEMBER CLASS COMMITTEE

Kim J. Askew
William T. Hangle
Roberta D. Liebenberg
Bruce A. Markell
David W. Rivkin
Daniel B. Rodriguez

CLASS OF 1997

Lady Alfonso-de-Cumpiano
Mari Carmen Aponte
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The 1997 Life Member Class Gift

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Donors as of June 30, 2022.

The ALI Development Office has made every attempt to publish an accurate list of donors for the 1997 Life Member Class Gift campaign. In the event of an error or omission, please contact Kyle Jakob at 215-243-1660 or kjakob@ali.org.

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

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John M. Steadman
John William Strong
Gerald Bard Tjoflat
Michael Traynor

Members Reception



*Clockwise from left to right:
Members and guests at The District Wharf*

Anuj C. Desai of the University of Wisconsin Law School, Stuart A. Raphael of the Court of Appeals of Virginia, and Sarah M. Kinsky of the University of Chicago Law School

Travis LeBlanc of Cooley LLP, Guy Miller Struve of Davis Polk & Wardwell LLP (retired), and Ridgway M. Hall Jr. of the Chesapeake Legal Alliance

Darrell A.H. Miller of Duke University School of Law, Anil Kalhan of Drexel University, Thomas R. Kline School of Law, Shoba Sivaprasad Wadhia of Penn State Law, Jill E. Family of Widener University Commonwealth Law School, and A. Benjamin Spencer of William & Mary Law School

Annual Dinner



*Clockwise from left to right:
Ketanji Brown Jackson of the Supreme Court of the United States and Charles E. Griffin of Butler Snow LLP*

Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas and Linda J. Silberman of NYU School of Law

Usha R. Rodrigues of University of Georgia School of Law and Larry D. Thompson of Finch McCranie LLP

Stephen John Gageler of the High Court of Australia, Daniel Mack Traynor of the U.S. District Court for the District of North Dakota, and Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit



David Pozen Uses Data Science to Explore Constitutional Discourse

At this year's Annual Meeting, 2019 ALI Early Career Scholars Medal Co-Recipient David Pozen of Columbia Law School gave a presentation on his article "A Computational Analysis of Constitutional Polarization," coauthored with Eric L. Talley of Columbia Law School and Julian Nyarko of Stanford Law School.

This research is the first to use computational methods to investigate the ideological and partisan structure of constitutional discourse outside of the courts.

The authors apply a range of machine-learning and text-analysis techniques to a newly available data set comprising all remarks made on the U.S. House and Senate floors from 1873 to 2016, as well as a collection of more recent newspaper editorials.

"The basic idea is: there's tremendous interest, as you know, in polarization in Congress, in its potential asymmetric quality, what might be driving it," explained Pozen in his presentation. "And there are a lot of reasons to suspect that there's also constitutional polarization across the main political parties and other groups—but the literature to date addressing anything we might describe as constitutional polarization, has largely been qualitative and somewhat speculative. So, we wanted to know whether we could bring an empirical perspective to study this potential phenomenon."

Pozen described the parameters for collecting data, including the process of identifying the scope and definition of constitutional remarks by creating a nested series of dictionaries. He then walks through some of the article's findings:

- (1) that constitutional discourse has grown increasingly polarized over the past four decades;
- (2) that polarization has grown faster in constitutional discourse than in nonconstitutional discourse;
- (3) that conservative-leaning speakers have driven this trend;
- (4) that members of Congress whose political party does not control the presidency or their own chamber are significantly more likely to invoke the Constitution in some, but not all, contexts; and
- (5) that contemporary conservative legislators have developed an especially coherent constitutional vocabulary, with which they have come to "own" not only terms associated with the document's original meaning but also terms associated with textual provisions such as the First Amendment.



In addition to the findings produced, Pozen called attention to the study's demonstration of the potential for computational methods to advance the study of constitutional history, politics, and culture. "The kind of data and methods that we use in this paper haven't really been used in legal scholarship before, and we think they provide lots of different ways to get at different sorts of questions, not just the constitutional and the partisan polarization on which we focus."

[I]f anyone wanted to find, from this study, that when we turn to the Constitution, we have a means of dampening polarization and transcending our partisan divides. Our results and in fact, not only don't give you comfort, but should give you heartburn because when the Constitution comes up, we find only more discrepancy, only more of a divide, and only a greater ease of guessing who's speaking, just based on the nature of the remarks. So this is a felicitous way to think about polarization. We have severe constitutional polarization, even more severe than ordinary political polarization. The Constitution is not going to get us out of the mess we're in and we're going to have to think about other ways to move on as a country.

Pozen is the Vice Dean for Intellectual Life and Charles Keller Beekman Professor of Law at Columbia Law School. He teaches and writes about constitutional law, information law, and nonprofit law, among other topics. From 2010 to 2012, he served as special adviser to Harold Hongju Koh, legal adviser at the U.S. Department of State. He was a law clerk for John Paul Stevens on the Supreme Court of the United States and Merrick B. Garland on the U.S. Court of Appeals for the District of Columbia Circuit, and a special assistant to Senator Edward M. Kennedy on the Senate Judiciary Committee.

"A Computational Analysis of Constitutional Polarization" is available at SSRN: <https://ssrn.com/abstract=3351339>

The video of Pozen's remarks and the presentation slides are available on the ALI Media Library at media.ali.org.



ALI's Second Century Campaign

Celebrating Our Legacy,
Securing Our Future

With a goal of \$35 million, a successful campaign will establish a solid financial foundation for ALI's future without compromising its independence.



100th Anniversary Celebrations at the 2023 Annual Meeting

In less than a year, we will gather at the 2023 Annual Meeting to celebrate ALI's 100th Anniversary, where together we will look back with great pride on what ALI has already accomplished, as well as look ahead at what we might achieve together in our next century.

Plans for next year's Annual Meeting are already underway. We are working on putting together several special events, including the following:

- Eric E. Schmidt, former CEO of Google, will present and host a panel Monday afternoon, May 22, on the topic of technology and the future of law.
- David M. Rubenstein, Co-Founder and Co-CEO of The Carlyle Group, will present and host a panel on Monday evening on the topic of the state of democracy.
- A discussion of the collection of essays exploring the Institute's work in its first century, provisionally entitled *The ALI at 100: Essays on Its Centennial*, which we hope will be available in print at the 2023 Annual Meeting.

THE ALI AT 100: ESSAYS ON ITS CENTENNIAL

In celebration of ALI's first 100 years, a volume of essays is being produced that explores ALI's founding, examines some of the Institute's most influential projects, and contemplates adoption and criticism of our work so far. The project is led by editors Andrew S. Gold of Brooklyn Law School and Robert W. Gordon of Stanford Law School. A list of topics and authors was featured in the spring 2022 edition of *The ALI Reporter*.

On June 14, the editors and authors met at the University of Pennsylvania Carey Law School for a workshop to discuss drafts of select essays. Thirteen essays were presented for discussion in a process similar to how ALI project meetings are conducted. Each essay was allotted a segment of time where the authors could identify any parts of the paper about which they would appreciate editorial feedback. The floor was then open to comments on identified sections and general editorial advice.

SAVE THE DATE

2023 Annual Meeting

May 22-24 | Washington, D.C.

May 21: Pre-Meeting Programs
May 22-24: Project Sessions and Special Events



Join the 100 for 100

In order to ensure that ALI is prepared for its next 100 years, we have undertaken a capital fundraising effort—the Second Century Campaign—with the ambitious goal of raising \$35 million by the end of 2023. The Institute has never embarked on a capital campaign of this magnitude, and is unlikely to do so again during our lifetime. In order to secure this critical funding, we need your help.

As an important component of the Campaign, we recently launched the 100 for 100 program. The premise is simple: if 100 members who have the means, who cherish the rule of law, and who value our vital work, each commit to donating \$100,000 to the campaign, we will be within striking distance of the \$35 million goal. If you have not yet supported the campaign, every donation, no matter the size, is greatly appreciated. A successful Second Century Campaign will establish a solid financial foundation for ALI's future without compromising its independence.

100 FOR 100 DONORS

Although the 100 for 100 challenge has only begun, we would like to recognize the inaugural donors. We are profoundly grateful for their generous support. We hope that you will consider joining the growing list below.

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We are exceptionally grateful to the following major donors who have supported the Second Century Campaign.

SECOND CENTURY VISIONARY (\$2.5 million or more)

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If you are interested in becoming a donor or would like more information on making a gift to The ALI's Second Century Campaign, please contact ALI Director Richard L. Revesz at Director@ali.org.

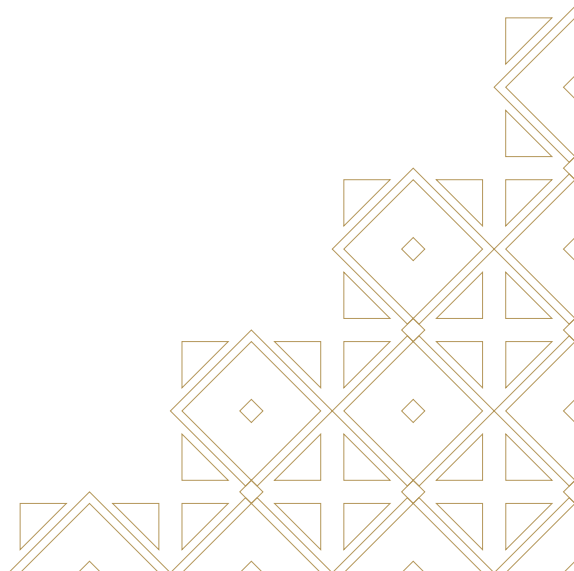
Additionally, donations can be made online at www.ali.org.

Help Us Celebrate Our Anniversary

Share your ALI story and help us celebrate this milestone anniversary. Whether it's a memory of how the Restatements helped you in law school or in your career, your favorite moment at an Annual Meeting or project meeting, or a lifelong friendship or mentor that you met through the Institute, we want to read it. Stories submitted through the online form at www.ali.org/anniversary/share may be featured on the 100th Anniversary pages of the ALI website.

Thank you for helping us commemorate this event and record our history.

We look forward to celebrating ALI's 100th Anniversary and a successful Second Century Campaign with all of you at the 2023 Annual Meeting.



Project Spotlight: Principles of the Law, Policing

At this year's Annual Meeting, ALI membership voted to approve Principles of the Law, Policing. The Policing Principles project began in 2015, under the guidance of project Reporter Barry Friedman of New York University School of Law, and Associate Reporters Brandon L. Garrett of Duke University School of Law, Rachel A. Harmon of University of Virginia School of Law, Tracey L. Meares of Yale Law School, Maria Ponomarenko of University of Minnesota Law School, and Christopher Slobogin of Vanderbilt University Law School. Christy E. Lopez of Georgetown Law Center served as Project Fellow.

"This project provides the framework on which to build just and rational policing laws, policies, and practices," explained ALI Director Richard L. Revesz. "Since this is a Principles project, rather than a Restatement, our goal is not to synthesize judicial precedent. Instead, the Reporters are working to develop best practices for issues concerning policing that have significant legal underpinnings. Our work is informed by a variety of sources, including existing policies and practices in various jurisdictions, social-science research, and constitutional norms. The audience for the project is broad, including legislatures, policing agencies, bodies that regulate or conduct oversight on policing, the public, and also, in some instances, the courts."

The Policing Principles project has been approved by members in a series of Tentative Drafts at ALI Annual Meetings. With the approval of the 2022 draft, all 14 Chapters are complete. The Chapters are:

- Chapter 1: General Principles of Sound Policing
- Chapter 2: General Principles of Searches, Seizures, and Information Gathering
- Chapter 3: Policing with Individualized Suspicion; Police Encounters
- Chapter 4: Policing in the Absence of Individualized Suspicion
- Chapter 5: Policing Databases
- Chapter 6: Use of Force
- Chapter 7: General Principles for Collecting and Preserving Reliable Evidence for the Adjudicative Process
- Chapter 8: Forensic-Evidence Gathering
- Chapter 9: Eyewitness Identifications; Police Questioning; Informants and Undercover Agents
- Chapter 10: Promoting Sound Policing within Agencies
- Chapter 11: Role of Other Actors in Promoting Sound Policing



2019 project meeting

"The goal of the project is to set out a series of principles, or best practices, for policing in the United States," said project Reporter Barry Friedman. "We assembled these principles by gathering the knowledge and guidance from a wide range of stakeholders, speaking to all of the various sides of the questions we wanted to tackle. Our hope is that legislative bodies would think that these principles provide a good benchmark for sound policing, and that policing police agencies will feel they could and would adopt these practices and policies."

These Principles already are having an impact in the world. Those that have been have already been approved by ALI's membership have been shared with legislators and additional policymakers. Some of the concepts in the Principles—around things like democratic governance, pretextual stops, use of force, and the like—already are being written into law. Said Friedman, "[t]he Reporters all are active in efforts to spread the word further, and these efforts will increase now that the project is completed."

The first Principles to be approved by ALI's membership were the Use of Force Principles approved at the 2017 Annual Meeting. Reporter Friedman, through the NYU Policing Project (of which he is the director), worked closely with the Camden County Police Department to establish a revised use of force policy, built largely from the ALI Principles. And the Policing Project has developed a model use of force statute, which is available on its website, and has been the basis for conversations with many legislators.



*J. Scott Thomson,
2016 project meeting*



*Sherrilyn Ifill,
2016 project meeting*



*Samuel Sinyangwe,
2019 project meeting*



ALI Director Richard L. Revesz, Reporter Barry Friedman, and Associate Reporters Rachel A. Harmon, Tracey L. Meares, and Brandon L. Garrett at the 2016 project meeting



*Sylvia M. Moir and Hassan Aden,
2017 project meeting*



*Craig Iscoe,
2019 project meeting*



Goodwin Liu, 2018 October Council meeting

Friedman explained, “Like the Use of Force Principles found in the ALI project, Camden’s revised use of force policy goes beyond the Supreme Court’s minimal constitutional principles regarding use of force—that an officer may only use force that a reasonable officer would when facing similar circumstances—to clearly state that officers must do everything possible to respect and preserve the sanctity of all human life, avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.”

“This project is so useful and so practical because of the breadth of experiences of its Advisers,” said Director Revesz. “The group includes police chiefs and leaders of organizations that have expressed concern about policing practices, including those dealing with racial justice and civil liberties, as well as judges, prosecutors, and defense attorneys. As all close observers of the ALI’s work know, it takes a village to produce an ALI project. I am therefore very grateful to the team of Reporters and to the very dedicated Advisers and Members Consultative Group. At a time when our society appears unusually divided, observing individuals from very different walks of life approach very difficult issues civilly and constructively is a real privilege!” The full list of project Advisers and other participants can be viewed on the project page.

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



Raymond J. Lohier Jr. and Associate Reporters Christopher Slobogin and Brandon L. Garrett at the 2019 October Council meeting



Raymond J. Lohier Jr., ALI President David F. Levi, Associate Reporter Maria Ponomarenko, Reporter Barry Friedman, ALI Director Richard L. Revesz, and ALI Deputy Director (retired) Stephanie A. Middleton at the 2022 Annual Meeting

The Institute in the Courts: Supreme Court of Nevada Adopts Sections of Restatement of the Law Third, Property (Servitudes)

Recently, in *Moretto Trustee of the Jerome F. Moretto 2006 Trust v. ELK Point Country Club Homeowners Ass'n, Inc.*, 507 P.3d 199 (Nev. 2022), the Supreme Court of Nevada adopted Restatement of the Law Third, Property (Servitudes) §§ 6.7 and 6.9 “to govern issues concerning an association’s authority to enact rules regarding the restriction of individually owned property.”

The case arose when a homeowners association governing a common-interest community exercised its rulemaking authority to establish a regulation creating an architectural review committee and to adopt a set of guidelines creating restrictions on individually owned lots that required landowners wanting to develop their lots to submit any proposed plans to the architectural review committee, which would then recommend to the association’s executive board whether or not to approve the proposed plans. An owner of property in the community filed a complaint against the association, seeking, among other things, a declaration that the new guidelines exceeded the association’s rulemaking authority. The association argued that the guidelines were in accordance with its bylaws, which required individual owners to seek approval from the association’s executive board before commencing construction of any structure on their property and provided the executive board with the general rulemaking authority to adopt rules and regulations necessary for it to carry out its powers. The district court granted the association’s motion for summary judgment, finding, *inter alia*, that the association had the authority to adopt rules to control the design of properties owned by individuals, and did not exceed the scope of its authority by adopting the guidelines.

The Supreme Court of Nevada reversed and remanded to the district court to determine whether the association’s guidelines were reasonable under Restatement of the Law Third, Property (Servitudes) §§ 6.7 and 6.9, which “provide well-reasoned limits on construing an association’s implied power to act with respect to individually owned property.” The court agreed with the district court’s conclusion that the association was authorized to adopt the guidelines, because its bylaw—which stated that “[n]o structure of any kind shall be erected or permitted upon the premises of any Unit Owner, unless the plans and specifications shall have first been submitted to and approved by the Executive Board”—was the type of express provision required by § 6.9 to allow an association to adopt design restrictions for individually owned property. The court remanded, however, for the district court to consider whether the guidelines were valid under § 6.9, because “neither party addressed whether the [association’s] exercise of its design-control power was reasonable, which is a central tenet of section 6.9.”

In making its decision to adopt §§ 6.7 and 6.9, the court reasoned that it had previously adopted other Sections of the Restatement “when doing so furthered public policy and was consistent with Nevada law,” that “the Restatement’s approach is consistent with the importance and high value Nevada law places on private property ownership and use,” and that “the Restatement’s approach is consistent with NRS 116.31065[, the state statute governing rules applicable to management of common-interest communities]’s requirement that an association’s rules be reasonably related to the specified purpose for which they are adopted, sufficiently explicit in their prohibition, and in all other aspects consistent with the association’s governing documents.” The court considered the rationale for the two Sections “particularly persuasive,” noting that the Restatement’s approach “protects the traditional expectations of landowners, ensures landowners are afforded proper notice before restrictions are imposed on their individual property, and prevents an association from circumventing the procedural protections landowners would be afforded if the association had adopted the design-control restrictions as covenants in the association’s declaration.”

The court pointed out that both §§ 6.7 and 6.9 stemmed from the recognition that tradition supported the expectation that individuals were free to use their property in any manner not expressly prohibited, and had the right to determine their property’s design aesthetic, within limits imposed by zoning and building codes. The court observed that § 6.7, Comment *b*, examined the difference between restrictions imposed as part of an association’s declaration and those imposed through an association’s rulemaking power, and was concerned that a broadly construed implied power to act could allow an association to adopt restrictions without the notice and safeguards usually needed for an amendment to the declaration. Quoting § 6.7, Comment *b*, the court noted that, “[w]hile ‘an association enjoys an implied power to make rules in furtherance of its power over the common property,’ it ‘has no inherent power to regulate use of the individually owned properties in the community. . . . except as implied by its responsibility for management of the common property.’”

The court explained that the reasonableness requirement described in § 6.9, Comment *d*, was imposed to address concerns that arise when an association has discretionary power over design-control restrictions, and that it “strikes a balance between ensuring an association’s action is not beyond the scope of its authority while otherwise deferring to the substance of the association’s action,” with the initial burden on the property owner to establish a *prima facie* showing that the association’s restrictions were unreasonable. “[U]nder a

reasonableness standard, the court's focus is on whether 'the committee informs itself of the facts and is consistent in its treatment of community members,' as opposed to focusing on whether the court agrees with the 'aesthetic judgment' of the association's decision." The court concluded that the parties did not present sufficient evidence for it to evaluate the reasonableness of the guidelines, and thus remanded for the district court to do so.

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

ALI CLE: UW Law Symposium on Restatement of American Indians

On April 21 and 22, The University of Washington School of Law held its 34th Annual Indian Law Symposium 2022, cosponsored by ALI. The symposium examined the development of the Restatement of the Law, The Law of American Indians, and the future of Indian law practice. Panel discussions were structured around the chapters of the Restatement and featured over 30 expert panelists, including several ALI members and project participants who participated in the project's drafting.

The symposium is available for CLE credit at ali-cle.org. As always, ALI members have free access to ALI CLE programs through ali-cle.org. For this member-only benefit, simply add any online course to your cart and use the coupon code **ALIWEB** during checkout.



Matthew L.M. Fletcher, Reporter for Restatement of the Law, The Law of American Indians, provided introductory remarks on the Restatement project.

ALI Elects Four Council Members

During Monday's Reports and Business session at the Annual Meeting, President David F. Levi presented to the membership four nominees for the ALI Council, who were approved by the membership to a five-year term.

The new Council members are **Thomas A. Balmer** of the Oregon Supreme Court, **Richard R.W. Brooks** of New York University School of Law, **Michael J. Garcia** of the New York State Court of Appeals, and **Cristina M. Rodríguez** of Yale Law School. Short biographies of the new Council members can be found on the ALI website.



Balmer

Brooks

Garcia

Rodríguez

The following incumbent Council members were reelected to Council for a five-year term effective at the close of the Annual Meeting:

Nathan L. Hecht, Texas Supreme Court
Michele C. Kane, The Walt Disney Company
Carolyn B. Kuhl, Superior Court of California, County of Los Angeles
Carol F. Lee, Taconic Capital Advisors
Troy A. McKenzie, New York University School of Law
Stephanie E. Parker, Jones Day
Daniel B. Rodriguez, Northwestern University Pritzker School of Law
Robert H. Sitkoff, Harvard Law School
Jeffrey S. Sutton, U.S. Court of Appeals for the Sixth Circuit
Steven O. Weise, Proskauer Rose LLP

Additionally, Kim J. Askew of DLA Piper US LLP, Kenneth C. Frazier of Merck & Co. Inc., Paul L. Friedman of the U.S. District Court for the District of Columbia, William C. Hubbard of the University of South Carolina School of Law, Jane Stapleton of Christ's College, University of Cambridge, Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain (retired), and Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit took emeritus status. Emeritus Council members often continue to participate in Council meetings.

ALI Council has reelected Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas as First Vice President and Teresa Wilton Harmon of Sidley Austin as Second Vice President. In addition, the Council elected Laura D. Stith of the Missouri Supreme Court as Secretary—replacing Paul L. Friedman, who took emeritus status.

Notes About Members and Colleagues

At the ABA Litigation Section Annual Conference, **Floyd Abrams** of Cahill Gordon & Reindel and **David A. Logan** of Roger Williams University School of Law participated in a CLE on whether the U.S. Supreme Court should revisit *New York Times v. Sullivan*.

Donald B. Ayer was a guest on *Skullduggery*, a Yahoo! News podcast, to discuss the U.S. Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization*.

The Hollywood Reporter interviewed **Tom Baker** of University of Pennsylvania Carey Law School for an article discussing Covid-19 insurance claims and the legal battles surrounding paying out these claims.

The Pennsylvania Supreme Court hosted 'The Pennsylvania Supreme Court at 300: Past, Present & Future,' a symposium to honor the court's 300-year history and achievements and how it paved the way for courts nationwide. **Max Baer** of the Pennsylvania Supreme Court, **Donald W. Beatty** of the South Carolina Supreme Court, **Charles L. Becker** of Kline & Specter, **Steven L. Chanenson** of Villanova University Charles Widger School of Law, **John C. Dernbach** of Widener University Commonwealth Law School, **JoAnne A. Epps** of Temple University Beasley School of Law, **Pamela S. Karlan** of Stanford Law School, **Anthony M. Kennedy** of the Supreme Court of the United States, **Cheryl A. Krause** of the U.S. Court of Appeals for the Third Circuit, **Seth F. Kreimer** of University of Pennsylvania Carey Law School, **Maureen O'Connor** of the Ohio Supreme Court, **Thomas G. Saylor** of the Pennsylvania Supreme Court (retired), **D. Brooks Smith** of the U.S. Court of Appeals for the Third Circuit, **Paul A. Suttell** of the Rhode Island Supreme Court, **Debra McCloskey Todd** of the Pennsylvania Supreme Court, **David N. Wecht** of the Pennsylvania Supreme Court, and **Amy J. Wildermuth** of University of Pittsburgh School of Law participated in the events.

Honoring the late U.S. Supreme Court Associate Justice John Paul Stevens, **David J. Barron** of the U.S. Court of Appeals for the First Circuit, **Jamal Greene** of Columbia Law School, **Carol F. Lee** of Taconic Capital Advisors, and **Teresa Wynn Roseborough** of Home Depot were among the event committee chairs for the special session held by the U.S. Supreme Court. **Elizabeth Prelogar** of the U.S. Department of Justice provided opening remarks during the session.

KETANJI BROWN JACKSON, 104TH ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Ketanji Brown Jackson was sworn in as the 104th Associate Justice of the Supreme Court on June 30. Chief Justice **John G. Roberts Jr.** administered the Constitutional Oath and Associate Justice **Stephen G. Breyer** administered the Judicial Oath in a ceremony in the West Conference Room before a small gathering. A formal investiture ceremony will take place at a special sitting of the Court in the Courtroom at a later date.

A video of the ceremony is available on the Court's website at www.supremecourt.gov.



Ketanji Brown Jackson, Patrick Jackson, and John G. Roberts Jr.
Credit: Collection of the Supreme Court of the United States

Susan Bisom-Rapp is the new Vice Dean for Academic Affairs at California Western School of Law.

President Biden has nominated **Rachel S. Bloomekatz** to the U.S. Court of Appeals for the Sixth Circuit and **Florence Y. Pan** to the U.S. Court of Appeals for the District of Columbia Circuit.

The American Academy of Arts & Sciences has elected **Richard R. W. Brooks** of NYU School of Law, **Guy-Uriel E. Charles** of Harvard Law School, **Justin Driver** of Yale Law School, and **Robert W. Gordon** of Stanford Law School.

Duke University School of Law has announced the recipients of the 2022 Alumni Awards. **J. Michelle Childs** was awarded the Charles S. Murphy Award for achievement in civic service and **David F. Levi** of Duke Law received the A. Kenneth Pye Award for excellence in education. In July, the U.S. Senate confirmed Childs to the U.S. Court of Appeals for the D.C. Circuit.

Danielle Citron of UVA School of Law and **Neil M. Richards** of Washington University School of Law were panelists for the workshop 'Location Data in the Context of Public Health, Research, and Law Enforcement: An Exploration of Governance Frameworks,' hosted by the National Academies of Sciences, Engineering, and Medicine.

The 2022 Robert E. Dalton Award for Outstanding Contribution to the Field of Foreign Relations Law from the American Society of International Law has been awarded to **Sarah H. Cleveland** of Columbia Law School and **Paul B. Stephan** of UVA School of Law for their work as editors on *The Restatement and Beyond: The Past, Present, and Future of U.S. Foreign Relations Law*.

The Brooklyn Journal of Corporate, Financial, & Commercial Law at Brooklyn Law School hosted its annual symposium, titled 'Commercial Law Harmonization: Past as Prologue,' analyzing the work done to balance commercial law in the past half-century. They explored how this work may apply to future commercial law endeavors. The symposium also celebrated the career of **Neil B. Cohen** of Brooklyn Law School for his teaching and participation in law reform efforts. Participants in the event included Brooklyn Law School faculty members **Michael T. Cahill**, **Edward J. Janger**, **Roberta S. Karmel**, **Brian A. Lee**, and **Aaron D. Twerski**, as well as **Carl S. Bjerre** of University of Oregon School of Law, **Richard R. W. Brooks** of NYU School of Law, **Henry D. Gabriel** of Elon University School of Law, **Larry T. Garvin** of Ohio State University, Moritz College of Law, **William H. Henning** of Texas A&M University School of Law, **Lance Liebman** of Columbia Law School, **Charles W. Mooney Jr.** of University of Pennsylvania Carey Law School, **Juliet M. Moringiello** of Widener University Commonwealth Law School, **Sandra M. Rocks** of Cleary Gottlieb Steen & Hamilton, **Timothy R. Schnabel** of the Uniform Law Commission, **Stephen L. Sepinuck** of Paul Hastings, **Edwin E. Smith** of Morgan, Lewis & Bockius, and **Steven O. Weise** of Proskauer Rose LLP.

President Biden has nominated **Roopali H. Desai** of Coppersmith Brockelman to the U.S. Court of Appeals for the Ninth Circuit.

Joshua Dressler of the Ohio State University Moritz College of Law has authored the ninth edition of his criminal law treatise *Understanding Criminal Law* (Carolina Academic Press 2022) and has coauthored the ninth edition of *Criminal Law: Cases and Materials* (West Academic 2022) with **Stephen P. Garvey** of Cornell Law School. Dressler also authored *Kahler v. Kansas: Ask the Wrong Question, Get the Wrong Answer*, 18 Ohio St. J. Crim. L. 409 (2020).

Chai R. Feldblum, former commissioner of the U.S. Equal Employment Opportunity Commission, gave the 2022 James A. Thomas Lecture at Yale Law School, examining the transition from charity to civil rights for people with disabilities.

Kimberly Kessler Ferzan of University of Pennsylvania Carey Law School was featured in a *Talks On Law* interview where she discussed self-defense and the use of deadly force.

Bernard K. Freamon of Seton Hall University School of Law and adjunct professor at New York University School of Law has been appointed as director of the Roger Williams School of Law's course on Race and the Foundations of American Law. The course will be mandatory for all second-year students at Roger Williams and is one of the first mandatory courses on the topic in American legal education.

Laura E. Gómez, Rachel F. Moran Endowed Chair in Law Endowed Chair in Law at UCLA School of Law, has been appointed to the scholarly advisory committee for the new Smithsonian National Museum of the American Latino. She is the only legal scholar on the 18-member committee. Her book *Inventing Latinos: A New Story of American Racism* (The New Press 2020) will be published in paperback this summer.

Michele Bratcher Goodwin of UC Irvine School of Law gave the keynote speech at the 2022 Advocates For Justice awards from the American Civil Liberties Union Foundation of Southern California. Goodwin and **Myra C. Selby** of Ice Miller will receive the 2022 Margaret Brent Women Lawyers of Achievement Award from the American Bar Association at the ABA Annual Meeting in August. The recipients were chosen for their work in carrying on the legacy of Margaret Brent, the first woman lawyer in America.

The University of Pennsylvania cosponsored the "Health Law and Anti-Racism: Reckoning and Response" symposium, exploring aspects of health law and anti-racist teaching and practice. **Michele Bratcher Goodwin** of UC Irvine School of Law, **Elizabeth Pendo** of Saint Louis University School of Law, and **Theodore W. Ruger** and **Christopher S. Yoo**, both of University of Pennsylvania Carey Law School, participated in the event's panel discussions.

Roger L. Gregory of the U.S. Court of Appeals for the Fourth Circuit received an honorary doctorate from Albright College. Gregory offered remarks at the college's commencement ceremony on May 15.

Richard L. Hasen of UCLA School of Law appeared on an episode of the National Constitution Center's *We The People* podcast to discuss election law. **Jeffrey Rosen** of the National Constitution Center moderated the event. Hasen joined the faculty of UCLA School of Law on July 1.

The University of Maryland Francis King Carey School of Law has announced **Renée McDonald Hutchins** as its next dean, effective August 1.

Ketanji Brown Jackson was sworn in as the 104th Associate Justice of the Supreme Court on June 30.

Randall L. Kennedy of Harvard Law School delivered the McCorkle Lecture at UVA School of Law, speaking on racial justice and the civil rights movement from 1950 to 1970.

Robert H. Klonoff of Lewis & Clark Law School has been appointed coauthor of the Wright & Miller treatise, *Federal Practice and Procedure*. The multi-volume treatise covers federal rules of civil, criminal, and appellate procedure, and more. Klonoff is responsible for updating and revising the three volumes devoted to class actions.

The Creative Arts Agency, a talent and sports agency based in Los Angeles, California, has hired **Hilary K. Krane** as its chief legal officer.

At the University of South Carolina School of Law Commencement, the Board of Trustees awarded **Carolyn B. Lamm** of White & Case an honorary Doctor of Laws.

NOTES CONTINUED FROM PAGE 21

Derek P. Langhauser recently published “Legislative Amendment of Citizen Initiatives: Where the ‘Will of the Voter’ Meets the ‘Consent of the Elector’” in Volume 30.1 of *The Maine Policy Review*, on the constitutional limitations and policy implications of citizen-initiated legislation.

As a part of Michigan State University’s fall 2021 Commencement, **Douglas Laycock** of UVA School of Law addressed the Colleges of Arts and Letters, Communication Arts and Sciences, and Social Science. Following his speech, MSU awarded him the honorary degree of Doctor of Laws.

President Biden has announced his intent to nominate **Travis LeBlanc** of Cooley for member of the Privacy and Civil Liberties Oversight Board, a position he has held since 2019.

The Center on the Legal Profession at Harvard Law School’s *The Practice*, a digital newsletter that engages in discussion on various topics in the legal profession worldwide, featured **David F. Levi** of Duke University School of Law in an interview about the judicial profession.

Lyrissa Barnett Lidsky will join the faculty of the University of Florida Levin College of Law as a Raymond & Miriam Ehrlich Chair in U.S. Constitutional Law, effective August 2022.

Roberta D. Liebenberg of Fine, Kaplan and Black, served as co-chair of the Practitioners Reading Group for the ABA’s Standing Committee on the Federal Judiciary to evaluate the nomination of **Ketanji Brown Jackson** to the U.S. Supreme Court.



An updated edition of *Three Generations, No Imbeciles: Eugenics, the Supreme Court, and Buck v. Bell* (Johns Hopkins University Press 2022) by **Paul A. Lombardo** of Georgia State University College of Law has been released with a new afterword discussing the influence of *Buck* on the U.S. Supreme Court’s review of state laws limiting access to abortion.

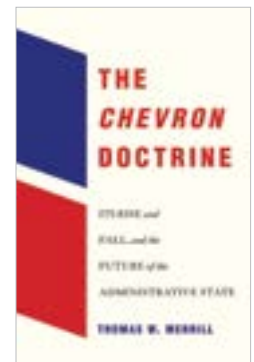
High Point University has announced that **Mark D. Martin** will serve as the founding dean of HPU’s School of Law, expected to open in 2024.

Bridget M. McCormack of the Michigan Supreme Court has been awarded the 2022 Alumna of the Year award by NYU Law Women. The award is given annually to an alumna that has broken new ground in the legal field.

Troy A. McKenzie has been appointed dean of New York University School of Law.

Thomas W. Merrill of Columbia Law School has authored *The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State* (Harvard University Press 2022), discussing the implications of the U.S. Supreme Court decision in *Chevron v. Natural Resources Defense Council*.

The University of Wisconsin-Madison has named **Jennifer L. Mnookin** as its next chancellor, effective August 4.



President Biden has announced the appointment of **Janet A. Napolitano** of UC Berkeley, Goldman School of Public Policy as secretary to the President’s Intelligence Advisory Board. This board is used to assist the president with independent sources of advice on the effectiveness of the intelligence community.

The University of California Irvine School of Law has announced that **Austen L. Parrish** will join the faculty as the law school’s third dean, effective August 3.

Kermit Roosevelt III of University of Pennsylvania Carey Law School has authored *The Nation That Never Was, Reconstructing America’s Story* (The University of Chicago Press 2022), a book exploring the perception of American values over time.

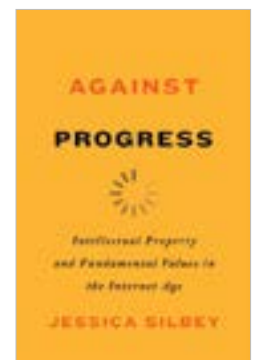
Sudha Setty is the new dean of City University of New York School of Law. She is the first person of South Asian descent to lead a CUNY school.



Jessica Silbey of Boston University School of Law has authored *Against Progress, Intellectual Property and Fundamental Values in the Internet Age* (Stanford University Press 2022), analyzing contemporary issues surrounding intellectual property and the internet.

The 2022 Annual Lecture by the Supreme Court Historical Society featured **Jeffrey S. Sutton** of the U.S. Court of Appeals for the Sixth Circuit and **Leondra Kruger** of the California Supreme Court. They discussed Sutton’s recent book *Who Decides? States and Laboratories of Constitutional Experimentation*.

Joseph Thai of University of Oklahoma College of Law was interviewed for a Wall Street Journal article exploring the U.S. Supreme Court ruling *McGirt v. Oklahoma* and the effect the decision has had on the Oklahoma justice system.



Meetings and Events Calendar At-A-Glance

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

2022

September 15-16

Restatement of the Law Third, Torts: Concluding Provisions
Philadelphia, PA

September 22

Restatement of the Law Fourth, Property
Philadelphia, PA

October 14

Restatement of the Law, Copyright
Philadelphia, PA

October 20-21

Council Meeting - October 2022
New York, NY

November 11

Restatement of the Law Third, Torts: Remedies
Philadelphia, PA

November 18

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

In Memoriam

ELECTED MEMBERS

Randy J. Holland, Georgetown, DE;

Browne C. Lewis, Durham, NC;

Lee D. Powar, Cleveland, OH

LIFE MEMBERS

Kenneth W. Dam, Chicago, IL;

Laurance M. Hyde, Jr., Reno, NV;

Howard Lesnick, Philadelphia, PA;

Michael A. Olivas, Santa Fe, NM

To celebrate the Bar Association of San Francisco's (BASF) 150th anniversary, **Michael Traynor** of Cobalt, former BASF president, has authored *The Emergence of BASF as a Public Interest Force*, a letter reflecting on the organization's civil rights actions during the early 1960s and 70s.

Pierre-Hugues Verdier of UVA School of Law explores the financial effect of the ongoing war with Russia and Ukraine in a feature published by the university.

Shoba Sivaprasad Wadhia of Penn State Law has coauthored an op-ed in The Washington Post discussing the history of Asian immigration policies in the United States. Wadhia was recently honored with the Centre Foundation's Mimi Barash Coppersmith Women in Leadership Award, given to women who have made a significant impact on the community through their leadership.

Donald J. Weidner of Florida State University College of Law has authored *The Unfortunate Role of Special Litigation Committees in LLCs* 77 Bus. Lawyer 381 (2022).

CERIL Statement and Report on Cross-Border Effects in European Preventive Restructuring

The Conference on European Restructuring and Insolvency Law (CERIL), a nonprofit dedicated to the improvement of European insolvency laws, has released the CERIL Statement and Report 2022-2, the latest publication on Cross-Border Effects in European Preventive Restructuring.

The Statement and Report, prepared by Reporters Stephan Madaus of Martin Luther University and **Bob Wessels** of University of Leiden, identify and assess the benefits and shortcomings of selecting the European Insolvency Regulation 2015 to govern proceedings in preventive restructuring frameworks. Wessels also served as Co-Reporter for Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases, an ALI Report published in 2012.

The CERIL Statement 2022-2 and CERIL Report 2022-2 is available at www.ceril.eu/news.

Notes related to nominations are up to date as of July 27.

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

Share Your ALI Story

Join us in celebrating the Institute's milestone anniversary by sharing a story, from how Restatements helped you in law school or in your career, to a lifelong friendship you made or mentor that you met through the Institute, we want to hear from you.

Stories and photos can be submitted through our online form at www.ali.org/anniversary/share, and may be featured on the 100th Anniversary pages of the ALI website.

WWW.ALI.ORG/ANNIVERSARY/SHARE