

## October 2021 Council Meeting Update

At its meeting on October 21 and 22, 2021, the Council reviewed and discussed Council Drafts of seven projects and approved drafts and portions of drafts as listed below. All approvals are subject to the discussion at the meeting and the usual editorial prerogative.

### Children and the Law

The Council approved Council Draft No. 7, which included § 1.20 from Chapter 1, Parental Authority and Responsibilities; §§ 2.26, 2.30, and 2.40 to 2.44 from Chapter 2, State Intervention for Abuse and Neglect; §§ 12.30 to 12.32 from Chapter 12, Pre-Adjudication; and §§ 14.10 and 14.11 from Chapter 14, Delinquency Dispositions. The draft also contained four new Comments to be added to previously approved Sections in Part II (Children in Schools): Comment *i* to § 5.10 of Topic 1, State Constitutional Right; Comment *k* to § 7.10 of Topic 1, The Use of Force in Response to Student Behavior; Comment *h* to § 7.20 of Topic 2, Exclusion from School; and Comment *j* to § 8.10 of Topic 1, Student Expression.

### Conflict of Laws

The Council approved Council Draft No. 5, containing §§ 8.01 to 8.12 of Topic 1, General Choice-of-Law Rules, of Chapter 8, Contracts.

### Corporate Governance

The Council approved Council Draft No. 1, excluding Illustrations 11 to 16 in § 2.01. The Reporters may revise the excluded Illustrations in a future draft. The draft contained §§ 1.10, 1.23, and 1.24 of Chapter 1, Definitions; § 2.01 of Chapter 2, The Objective of a Corporation; §§ 4.01 and 4.02 of Chapter 4, Duty of Care and the Business Judgment Rule; and §§ 5.01, 5.02, and 5.10 of Chapter 5, Duty of Loyalty.

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### THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

## The Restatement of Liability Insurance in the Courts

A recent case in the U.S. District Court for the District of Maine considered when an insurer's duty to defend ends if only some of the underlying causes of action are covered under the insurance policy. The case arose under Maine law, but Maine's state courts had not yet addressed the issue. The court looked to § 18 (Terminating the Duty to Defend a Legal Action) of the Restatement of the Law, Liability Insurance, and quoted Comment *d*, which explains that adjudication of the covered causes of action ends the duty to defend "provided that the time for taking an appeal from that adjudication has expired, any appeals have been resolved, or the claimant has relinquished its appeal rights." Judge D. Brock Hornby recognized that one of his colleagues had previously reached a different conclusion on this question, but Judge Hornby explained that his colleague "did not have the benefit of the later Restatement analysis."

It is gratifying to see that the Restatement of Liability Insurance is proving useful to judges because it has been one of the ALI's more contentious projects. Some critics charged that the Restatement adopted several minority positions in a manner that increased liability on insurers and portended "dramatic changes to liability insurance law." In response, the Reporters took an extra year to consider feedback from stakeholders in the insurance industry and to further refine the draft. Approved by the ALI membership in 2018 and published a year later, the Restatement of Liability Insurance has now been cited in over 50 cases by state and federal courts.

For lawyers and judges (and their law clerks) who lack backgrounds in insurance, the Restatement provides a helpful orientation. Courts often cite the Restatement to explain

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SEE PAGE 10 FOR MORE INFORMATION.

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## THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

basic terms. A recent opinion by the U.S. Court of Appeals for the Fifth Circuit, for example, drew on § 33 (Timing of Events that Trigger Coverage) to distinguish “harm-based triggers of coverage” from “caused-based triggers of coverage,” and to define “deemer clauses,” which attribute a triggering event to a particular time even if reality was more complicated. Likewise, the Oregon Supreme Court used § 13 (Conditions Under Which the Insurer Must Defend) to explain the four-corners rule, noting that in the insurance context it is sometimes referred to as an “eight-corners” rule because the duty to defend is determined by the four corners of the complaint and the four corners of the insurance policy.

In addition to defining key concepts, courts are also using the Restatement to fill gaps in the law. One area in which the Restatement has been helpful involves insurers’ attempts to recoup defense costs. In these cases, the insurer defends the insured against a lawsuit despite believing that it has no duty to defend under the policy, and the insurer subsequently seeks to recoup the costs of the defense. Section 21 (Insurer Recoupment of the Costs of Defense) sets forth a default rule that “an insurer may not obtain recoupment of defense costs from the insured, even when it is subsequently determined that the insurer did not have a duty to defend or pay defense costs.” As Comment *b* to § 21 explains, this position differs from the ordinary rule for non-insurance cases set forth in § 35 of the Restatement of the Law Third, Restitution and Unjust Enrichment, which allows a party to perform a legally uncertain obligation while reserving the right to seek restitution. When the Restatement of Liability Insurance was completed, it noted that a slight majority of courts favored a default rule permitting insurers to recoup defense costs, although several recent court decisions opposed recoupment. When a Restatement adopts a minority rule, it is incumbent on the Institute to reveal that the rule is a minority rule so that courts are on notice of the split in authority. That happened here.

The divided case law reflects that recoupment is a tough issue. As the U.S. District Court for the Eastern District of Wisconsin observed, “[A] simple tally of the states on each side of this issue does not accurately reflect the controversy that underlies this question.” After carefully weighing the Restatement and other authority, that court adopted § 21’s approach opposing recoupment, as did the U.S. District Courts for the Northern District of Georgia and for the Southern District of Indiana.

The Nevada Supreme Court’s contrary decision allowing recoupment offers an instructive example of a court making a principled rejection of the ALI’s position on a legal question in light of the governing law in that state. The court noted that the Restatement of Liability Insurance opposed recoupment because of “special considerations of insurance law” that make insurance policies fundamentally different from other contracts.” But the court decided that this “reasoning is inconsistent with our precedent that ‘legal principles applicable to contracts generally are applicable to insurance policies’” and therefore favored the ordinary contract rule set forth in § 35 of the Restatement Third of Restitution and Unjust Enrichment. By carefully setting out the various positions on this issue, the Restatement of Liability Insurance helped the court make an informed decision in light of Nevada law. (A strong dissenting opinion advocated the position taken in the Restatement of Liability Insurance.)

But the principles of Nevada law that led the Nevada Supreme Court to reject the Restatement of Liability Insurance’s approach on recoupment recently spurred the court to follow the Restatement’s position on another issue. This question concerned whether the liability of an insurer that breached its duty to defend, but did not act in bad faith, should be capped by the policy limit plus any

# Meetings Calendar At-A-Glance

Below is a list of upcoming meetings and events. For the safety of our project participants and staff, we ask that unvaccinated individuals participate remotely instead of attending in person. For more information, visit [www.ali.org](http://www.ali.org).

## 2022

### January 20-21

Council Meeting - January 2022  
Phoenix, AZ

### February 24

Restatement of the Law, Corporate Governance  
Hybrid

### February 25

Restatement of the Law Third, Torts:  
Defamation and Privacy  
Hybrid

### March 25

Principles of the Law, Government Ethics  
Hybrid

### May 16-18

2022 Annual Meeting  
Washington, DC

defense costs incurred by the insured, or whether the insurer should instead be liable for consequential damages related to its breach. In this case, Nevada’s commitment to ordinary contract principles were consistent with the Restatement’s position in § 48 (Damages for Breach of a Liability Insurance Policy) allowing consequential damages.

Another area in which the Restatement has aided courts involves insureds who fail to report claims in a timely manner. Generally, the notice-prejudice rule prevents an insurer from denying coverage to an insured who fails to provide timely notice of a claim unless the failure hinders the insurer’s ability to investigate or defend the claim. But a claims-made-and-reported policy includes a term conditioning coverage on the insured reporting the claim within a specified period. The Kentucky Court of Appeals recently had to decide whether to apply the notice-prejudice rule to a claims-made-and-reported policy that conditioned coverage in this manner, a novel question under Kentucky law. Using § 35 (Notice and Reporting Conditions), the court concluded that the notice-prejudice rule does not apply to a claims-made-and-reported policy and that an insurer may deny coverage under such a policy without having to show that it was prejudiced by the insured’s failure to report during the specified period. Two separate decisions by the U.S. District Court for the District of Vermont, applying Vermont state law, cited the Restatement in reaching the same conclusion.

Meanwhile, both the Texas Supreme Court and the Georgia Supreme Court have recently cited § 27 (Remedies for Breach of the Duty to Make Reasonable Settlement Decisions) in cases involving questions about settlements. It is especially significant that the Texas Supreme Court favorably cited the Restatement because Texas is one of several states that have enacted laws singling out the Restatement of Liability Insurance. In 2019, at the instigation of a powerful insurance industry lobbyist, Texas enacted Texas Civil Practice & Remedies Code § 5.001(b), which states, “In any action governed by the laws of this state concerning rights and obligations under the law, the American Law Institute’s Restatements of the Law are not controlling.”

As the above citation would seem to demonstrate, the practical effect of § 5.001(b)’s language is very limited. Statutes like Texas’ that say the Restatement is not “controlling law” simply express a truism. No Restatement is controlling law. The legislative history makes clear that Texas courts may still “continue to read Restatements, to consider Restatements, and to cite and quote from Restatements where relevant to the adjudication of controversies,” as the Texas Supreme Court did here.

The many cases citing the Restatement of Liability Insurance illustrate its role as a resource for the courts when they must exercise discretion in interpreting the law. In no case has a federal or state court treated the Restatement as controlling law—instead, courts have used the Restatement as an informative tool for understanding a complex field of law and

for arriving at principled decisions when there are gaps in the law and no controlling precedent on point. In some contexts, the Restatement has been used by a court in a decision favoring the insurer. In other contexts, a decision favored the insured. Often, courts simply use the Restatement for useful background.

For these reasons, even insurance companies that have expressed doubts about the ALI’s work have found it useful to cite the Restatement of Liability Insurance. The Nevada cases discussed above are instructive. In the case on recoupment, for example, the insurer favored the position in the Restatement Third of Restitution and Unjust Enrichment—which was ultimately adopted by the Nevada Supreme Court—rather than the approach taken by the Restatement of Liability Insurance. But the insurer’s brief cited to the Reporters’ Note for § 21 of the Restatement of Liability Insurance in discussing the key California case on which its argument relied. And all stakeholders, including insurers, can benefit when Restatements bring greater clarity to the law. For instance, in a footnote in the case regarding consequential damages, the Nevada Supreme Court relied on § 13 of the Restatement of Liability Insurance to clarify that an insurer cannot use facts outside the complaint to justify its refusal to defend. An insurance company is now relying on that discussion of § 13 in a separate case seeking contribution and indemnification for defense and settlement costs from another insurer.

Recent decisions also belie claims that the Restatement of Liability Insurance lacks support in the case law. In the U.S. District Court for the District of South Dakota, an insurer objected that the court erred in relying on § 12 (Liability of Insurer for Conduct of Defense). According to the insurer, “the American Law Institute created the section ‘out of a complete absence of precedent.’” But after reviewing the case law, the court explained that “that is simply not true” and emphasized that there “are cases supporting the Restatement’s position that insurer[s] can be liable for overriding defense counsel’s independent professional judgment.” As the court observed when it followed § 12, “[t]he authority on this point might not be overwhelming, but the American Law Institute did not fashion § 12(2) out of whole cloth” as the insurer contended.

The Reporters, members, and Advisers who worked on this project should be proud that so many courts around the country are already finding the Restatement helpful in resolving difficult legal questions. Drafting a Restatement requires making difficult judgments when the case law on a particular question is close. But our long and careful drafting process, and the commitment and expertise of our project participants, ensure that each position in a Restatement reflects the considered judgment of The American Law Institute.

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

## OCTOBER 2021 COUNCIL MEETING UPDATE CONTINUED FROM PAGE 1

**Property**

The Council approved Council Draft No. 4, containing Chapters 1 to 3 of Division Three, Accession, of Volume 1, The Basics of Property; Chapter 7 of Division One, Property Torts, of Volume 2, Interferences with, and Limits on, Ownership and Possession; and Chapters 2 to 5 of Division Four, Recording, of Volume 5, Title and Transfers of Ownership.

**Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities**

The Council approved Council Draft No. 5, which included §§ 6.7, 6.8, and 6.12 of Chapter 6, Formal Resolution of Sexual-Misconduct Complaints; Chapter 7, Sanctions; and Chapter 8, Appeals. The remainder of Chapter 6 was approved at previous Council meetings.

**Torts: Concluding Provisions**

The Council approved § 4 A, Wrongful Acts Doctrine, and § 4 B, Criminal Conduct and Other Statutory Wrongs as Plaintiff Negligence Per Se, of Topic 1, Basic Rules of Comparative Responsibility, of the Apportionment of Liability portion of Council Draft No. 1. The remainder of the draft was approved at previous Council meetings, with the exception of material on medical monitoring, which was revised and included in Preliminary Draft No. 2 for discussion by the project's Advisers and Members Consultative Group this September.

**Torts: Remedies**

The Council approved Council Draft No. 1, containing § 1, Availability of Tort Remedies, and §§ 2 to 10 and 12 to 17 of Topic 1, General Rules for Measuring Compensatory Damages, of Chapter 1.

## Principles for a Data Economy: Data Rights and Transactions

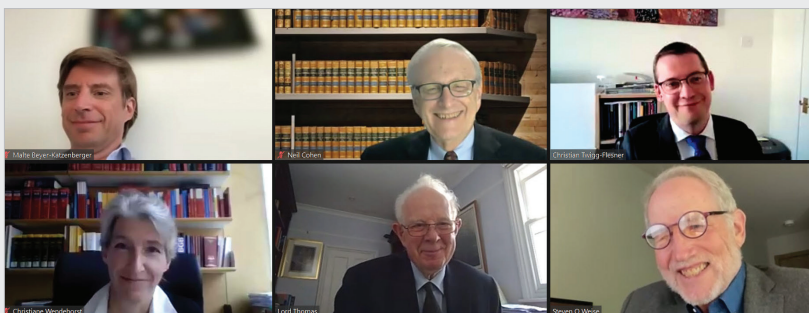
In September, the membership of The European Law Institute (ELI) voted to approve the ALI-ELI Principles for a Data Economy: Data Rights and Transactions, marking the completion of the first joint project between ALI and ELI. The ALI membership voted to approve this project at its Annual Meeting, held in May 2021.

“I have no doubt that the ALI-ELI Principles for a Data Economy will significantly impact the subjects covered on both sides of the Atlantic and beyond, especially as they have already influenced discussions internationally and will undoubtedly continue to do so,” said ELI President Pascal Pichonnaz in a letter to project Reporters Christiane C. Wendehorst of the University of Vienna and Neil B. Cohen of Brooklyn Law School, and Chairs Lord John Thomas of ELI and Steven O. Weise of Proskauer Rose. “This is certainly an important day that will be remembered given the importance of these Principles.” The letter is available on the ALI website at [www.ali.org/ltr-eli](http://www.ali.org/ltr-eli).

Following the completion of this project, ELI hosted a two-day conference on the Principles on October 18 and 19. The virtual conference included introductory remarks from ALI Director Richard L. Revesz and ELI President Pascal Pichonnaz followed by panel discussions presenting each Part of the Principles.

The conference consisted of five main sessions, during which each Part of the ALI-ELI Principles (on general provisions, data contracts, data rights, third-party aspects of data activities, and multi-state issues) were presented. Following a short presentation delivered by Reporters Cohen and Wendehorst, each Part of the Principles was discussed by a panel of experts. The conference also featured a discussion with key stakeholders, with a view to shedding light on the perspectives of businesses as well as consumers.

**Video recordings of each session can be found on the ALI Media Library at [media.ali.org/pde21](http://media.ali.org/pde21).**



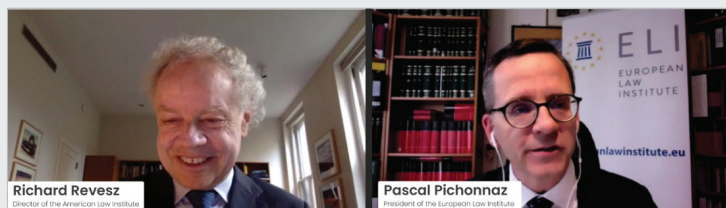
*Malte Beyer-Katzenberger, Neil B. Cohen, Christian Twigg-Flesner, Christiane C. Wendehorst, Lord John Thomas, and Steven O. Weise during the ELI Annual Conference (Sept. 6)*



**LEFT**

*October Council Meeting (Clockwise L-R): Carol F. Lee of Taconic Capital Advisors L.P., Troy A. McKenzie of New York University School of Law, Gary L. Sasso of Carlton Fields P.A., Sarah S. Vance of the U.S. District Court for the Eastern District of Louisiana, Ivan K. Fong of 3M Co., and Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York*

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



*Richard L. Revesz and Pascal Pichonnaz provide introductory remarks at the Principles for a Data Economy Conference 2021.*

**MONDAY OCT. 18****Opening Speeches & Welcome Address**

- Richard L. Revesz, Director of The American Law Institute
- Pascal Pichonnaz, President of the European Law Institute

**History of the Principles, Definitions and Underlying Concepts**

- Steven Weise: History, Aim and Structure of the Principles
- Christiane Wendehorst: Key Concepts and Scope of the Principles
- Neil Cohen: The Principles in Multi-State Settings
- Moderator: Lord John Thomas

**Data Contracts**

Presentation of Part II of the Principles by Neil Cohen, followed by panel discussion with experts:

- Atsushi Okada of the Ministry of Economy, Trade and Industry (METI)
- Moritz Hennemann of the Research Center for Law and Digitization (FREDI), University of Passau
- Henry Gabriel of the Uniform Law Commission
- Dirk Staudenmayer of the European Commission
- Moderator: Steven Weise

**TUESDAY OCT. 19****Data Rights**

Presentation of Part III of the Principles by Christiane Wendehorst, followed by panel discussion with experts:

- Teki Akuetteh Falconer of Africa Digital Rights' Hub
- Malte Beyer-Katzenberger of European Commission
- Lian Yuming of Key Laboratory of Big Data Strategy
- Teresa Rodríguez de las Heras Ballell of UNIDROIT
- Moderator: Lord John Thomas

**Third Party Aspects of Data Activities**

Presentation of Part IV of the Principles by Neil Cohen and Christiane Wendehorst, followed by panel discussion with experts:

- Josef Drexl of Max Planck Institute for Innovation and Competition
- Christian Reimsbach-Kounatze of OECD
- Alain Strowel of Université Saint-Louis
- Weixing Shen of Tsinghua University
- Moderator: Steven Weise

**Panel Discussion with Stakeholders**

- David Schönwerth of Bitkom e.V.
- Ursula Pachl of Bureau Européen des Unions de Consommateurs
- Ioana Hreninciuc of Game Analytics
- Charly Gordon of International Chamber of Commerce
- Anne Flanagan of World Economic Forum
- Moderator: Teresa Wilton Harmon of Sidley Austin

**Closing Remarks**

- Lord John Thomas
- Steven Weise

# Fall Project Meetings

## Torts: Concluding Provisions – Sept. 9 and 10

Preliminary Draft No. 2 covers several subjects, including tort claims for economic harm, immunities, firefighter's rule, liability of medical professionals and institutions, and sepulcher, among others.

## Property – Oct. 7

Preliminary Draft No. 8 includes a Section on the definition of property interest, a programmatic memo on leasing, Sections on contracts for the sale of real property, Sections on deeds of conveyance, a Section on slander of title, and a programmatic memo on servitudes.

## Copyright – Oct. 8

Preliminary Draft No. 7 includes the final remaining Section from Chapter 1; six Sections from Chapter 4 on Copyright Formalities; six Sections from Chapter 9 on Copyright Remedies; and § 20, which is the initial roadmap Section of Chapter 3.

## Policing – Oct. 14 and 15

Preliminary Draft No. 6 includes the entirety of Chapter 14 – Role of Other Actors in Promoting Sound Policing, among other Sections.

## Torts: Remedies – Oct. 29

Preliminary Draft No. 2 includes select topics from Chapters on Compensatory Damages and Injunctions.

## Consumer Contracts – Nov. 11

Preliminary Draft No. 4 includes all Sections of this project and a Reporters' Memorandum highlighting the principal changes to this draft from the Tentative Draft discussed at the 2019 Annual Meeting.

## Children – Nov. 12

Preliminary Draft No. 8 includes material from all four Parts of this project: Children in Families, Children in Schools, Children in the Justice System, and Children in Society. Topics addressed include state intervention for abuse and neglect, delinquency proceedings, and minors' obligations and responsibilities.

## Conflict of Laws – Nov. 19

Preliminary Draft No. 7 includes a projected Table of Contents, revisions of one previously submitted Chapter: Chapter 5 (Choice of Law), Topic 1 (Introduction), and a new Chapter 7, Topic 4, Succession.

Members may join the Members Consultative Group of any project that will have future drafts and project meetings by visiting individual project pages in the Projects section of the ALI website. Those who join a Members Consultative Group will be alerted when future meetings are scheduled and when drafts are available online.



*Policing project meeting*

*Clockwise L-R: Former Chief of Police of Burlington, Vermont, Brandon del Pozo; Sherrilyn Ifill of the NAACP Legal Defense and Educational Fund, Inc.; Retired Camden County Police Chief J. Scott Thomson; Hassan Aden of The Aden Group*



*Torts: Remedies project meeting*

*Clockwise L-R: Richard L. Hasen of UC Irvine School of Law; Caprice L. Roberts of George Washington University Law School; Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain, P.A. (Retired); Ellen M. Bublick of University of Arizona, James E. Rogers College of Law*



*Children and the Law project meeting*

*Clockwise L-R: Solangel Maldonado of Seton Hall University School of Law; Elizabeth S. Scott of Columbia Law School; Clare Huntington of Fordham University School of Law; Frank P. Cervone of Support Center for Child Advocates*



# Wisconsin Law Review 2021 Symposium: The Restatement of the Law of American Indians

On November 5 and 6, Wisconsin Law Review hosted its 2021 Symposium on the Restatement of the Law, The Law of American Indians.

Structured around the Chapters of the Restatement, the symposium provided a transparent and open forum for local, state, and national academics, practitioners, judges, students, and non-legal parties to engage in an informative and substantive discussion of federal Indian law, its component practice areas, and the future impact of the Restatement.

The symposium included an introduction from Reporter Matthew L.M. Fletcher and remarks from Associate Reporters Wenona T. Singel and Kaighn Smith Jr.

Panels featured leading experts in federal American Indian law discussing critical practice areas, including: the federal government's role in federal Indian law, the powers of Congress, and the federal-tribal trust relationship; the powers of Indian tribes and tribal-federal sovereignty; the power of States and the Indian Child Welfare Act; tribal economic development and activity and the Indian Gaming Regulatory Act; and tribal country resources—hunting, fishing, and water rights.

Below is a list of panel participants. Videos of the panel discussions are available on the ALI Media Library at [media.ali.org](https://media.ali.org).

## Panel One: Federal-Tribal Relations in the Restatement of the Law of American Indians

**Keith Harper**, Former U.S. Ambassador to the United Nations Human Rights Council & Partner, Jenner & Block LLP

**Diane Wood**, U.S. Seventh Circuit Court of Appeals, Senior Lecturer, University of Chicago

**Edwin Kneedler**, Former Acting U.S. Solicitor General, Department of the Interior, Deputy Solicitor General, Department of the Interior

**Moderator: David Schwartz**, Foley & Lardner Bascom Professor of Law, University of Wisconsin Law School

## Panel Two: State Powers & the Indian Gaming Regulatory Act in the Restatement of the Law of American Indians

**Gary Sherman**, Wisconsin Court of Appeals (Ret.), District IV & Former Wisconsin State Assemblyman for the 74th District

**Kevin Wadzinski**, Principal, Powers, Pyles, Sutter & Verville, P.C. & Co-Founding Member, Native American Bar Association of Washington, D.C.

**Zeke Fletcher**, Adjunct Professor, Indiana University Maurer School of Law & Founding Member, Fletcher Law, PLLC

**Moderator: Martina Gast**, Pipestone Law LLC



## Panel Three: Tribal Powers in the Restatement of the Law of American Indians

**Brian Pierson**, Shareholder, Godfrey & Kahn, S.C.

**Amanda WhiteEagle**, Senior Tribal Counsel & Former Attorney General, Ho-Chunk Nation

**Andrew Adams III**, Muscogee Nation Supreme Court (Ret.) & Founding Member, Hogen Adams LLP

**Moderator: Jason Yackee**, Professor of Law & WLR Faculty Advisor, University of Wisconsin Law School

## Panel Four: Indian Country Criminal Jurisdiction in the Restatement of the Law of American Indians

**Kevin Washburn**, Dean, University of Iowa College of Law & Former Assistant Secretary of Indian Affairs, U.S. Department of the Interior

**Angela Riley**, Supreme Court of the Citizen Potawatomi Nation (Ret.); Director, Native Nations Law and Policy Center at UCLA School of Law

**Troy A. Eid**, Former U.S. Attorney for the State of Colorado; Shareholder, Greenberg Traurig LLP

**Moderator: Cecelia Klingele**, Associate Professor, University of Wisconsin Law School & Faculty Associate, Frank J. Remington Center at UW Law School; Associate Reporter on Model Penal Code: Sentencing

## Panel Five: Reservation Economies and Resources in the Restatement of the Law of American Indians

**Dale White**, General Counsel, Saint Regis Mohawk Tribe

**John Clancy**, Shareholder, Godfrey & Kahn, S.C.

**Reid Peyton Chambers**, Founding Member, Sonosky, Chambers, Sachse, Endreson & Perry, LLP

**Moderator: Dan Lewerenz**, Staff Attorney, Native American Rights Fund; Former Attorney-Advisor, U.S. Department of the Interior

The American Law Institute would like to thank the project Reporters, University of Wisconsin Law School Dean Daniel P. Tokaji, Wisconsin Law Review Symposium Editors Dylan Ochoa and Crystal Stonewall, and all of the panelists and attendees who helped celebrate and highlight this important work.

# Institute in the Courts: Foreign Relations 4th Gains Attention

The **Restatement of the Law Fourth, The Foreign Relations Law of the United States: Selected Topics in Treaties, Jurisdiction, and Sovereign Immunity**, which was published in 2018, has been receiving significant attention in federal and state courts. The Restatement was recently cited by the U.S. Supreme Court in *Federal Republic of Germany v. Philipp*, 141 S. Ct. 703 (Feb. 3, 2021), which held that “the phrase ‘rights in property taken in violation of international law,’ as used in the FSIA’s [Foreign Sovereign Immunities Act’s] expropriation exception, refers to violations of the international law of expropriation and thereby incorporates the domestic takings rule,” such that foreign sovereigns retained immunity under the FSIA with respect to domestic takings of property from their own nationals, even when the takings constituted acts of genocide in violation of international human-rights law.

Chief Justice John G. Roberts, writing for a unanimous Court, cited § 455, Reporters’ Note 15 of the Restatement, pointing out that the expropriation exception, which permitted the exercise of jurisdiction over some public acts of expropriation in a manner that was unique to the United States, went beyond the restrictive theory of sovereign immunity that the FSIA sought to codify, consistent with the United States’ long-standing efforts “to protect the property of its citizens abroad as part of a defense of America’s free enterprise system.” The Court explained that, despite this “nonconformity” of the FSIA to the restrictive theory, the Court “take[s] seriously the Act’s general effort to preserve a dichotomy between private and public acts.”

The Restatement has been cited in 46 other cases; they are:

## U.S. SUPREME COURT

*Gamble v. United States*, 139 S. Ct. 1960 (2019), citing § 481

*Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649 (2018), citing § 456(2) of T.D. No. 2 (2016), which is now § 456(2) of the Official Text

*Bolivarian Republic of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, 137 S. Ct. 1312 (2017), citing § 455, Reporters’ Note 12, of T.D. No. 2 (2016), which is now § 455, Reporters’ Note 15, of the Official Text

## FEDERAL COURTS

*Usoyan v. Republic of Turkey*, 6 F.4th 31 (D.C. Cir. 2021), citing § 432(b) and Comment *a* thereto

*Coan v. Dunne*, 2021 WL 3012678 (D. Conn. July 15, 2021), citing § 490, Reporters’ Notes 3 and 4

*Fund for Prot. of Inv. Rights in Foreign States Pursuant to 28 U.S.C. § 1782 for Order Granting Leave to Obtain Discovery for use in Foreign Proceeding v. AlixPartners, LLP*, 5 F.4th 216 (2d Cir. 2021), citing § 458, Reporters’ Note 6

*Beierwaltes v. L’Office Federale De La Culture De La Confederation Suisse*, 999 F.3d 808 (2d Cir. 2021), citing § 455, Comment *a*

*In re PT Bakrie Telecom Tbk*, 628 B.R. 859 (Bankr. S.D.N.Y. 2021), citing § 484, Comment *d*

*Ingenico Inc. v. Ioengine, LLC*, 2021 WL 765757 (D. Del. Feb. 26, 2021), citing § 426, Comment *a*

*Earl v. Boeing Co.*, 515 F. Supp. 3d 590 (E.D. Tex. 2021), citing § 310, Comment *b*

*United States v. Aybar-Ulloa*, 987 F.3d 1 (1st Cir. 2021), citing § 402, Comment *b* and Reporters’ Note 2; § 407, Comment *c*; § 408, Comments *a* and *b* and Reporters’ Note 3; and § 413, Reporters’ Note 1

*Aguasvivas v. Pompeo*, 984 F.3d 1047 (1st Cir. 2021), citing § 306(1)

*El Bey v. Dominguez*, 2020 WL 7658088 (N.D. Tex. Nov. 23, 2020), citing § 311(1)

*Rodriguez v. Pan Am. Health Org.*, 502 F. Supp. 3d 200 (D.D.C. 2020), citing § 310, Comment *b*

*Cayuga Indian Nation of N.Y. v. Seneca Cnty.*, 978 F.3d 829 (2d Cir. 2020), citing § 456, Reporters’ Note 2; and § 464, Reporters’ Note 1

*Nahl v. Jaoude*, 968 F.3d 173 (2d Cir. 2020), citing § 413

*TIG Ins. Co. v. Republic of Argentina*, 967 F.3d 778 (D.C. Cir. 2020), citing § 464, Comment *c*

*Fulmen Co. v. Off. of Foreign Assets Control*, 2020 WL 1536341 (D.D.C. Mar. 31, 2020), citing § 487, Comment *d*

*Simon v. Republic of Hungary*, 443 F. Supp. 3d 88 (D.D.C. 2020), citing § 455, Reporters’ Note 6

*United States v. Garcia Sota*, 948 F.3d 356 (D.C. Cir. 2020), citing § 412

*In re del Valle Ruiz*, 939 F.3d 520 (2d Cir. 2019), citing § 404, Comment *a* and Reporters’ Note 3



## FEDERAL COURTS (CONT.)

*United States v. Park*, 938 F.3d 354 (D.C. Cir. 2019), citing § 402(1)(c) and Comment *g* and Reporters' Note 7 thereto

*Mountain Crest SRL, LLC v. Anheuser-Busch InBev SA/NV*, 937 F.3d 1067 (7th Cir. 2019), citing § 441, Reporters' Notes 2 and 3

*United States v. Dávila-Reyes*, 937 F.3d 57 (1st Cir. 2019), citing § 409; § 412 and Comments *a* and *b* and Reporters' Note 1 thereto; and § 413 and Reporters' Note 1 thereto

*Mulugeta v. Ademachew*, 407 F. Supp. 3d 569 (E.D. Va. 2019), citing § 483, Comment *b*; and § 484, Comments *e* and *j*

*Cont'l Transfert Tech., Ltd. v. Federal Government of Nigeria*, 2019 WL 3562069 (D.D.C. Aug. 6, 2019), citing § 464, Reporters' Note 8

*In re Sealed Case*, 932 F.3d 915 (D.C. Cir. 2019), citing § 442

*United States v. Prado*, 933 F.3d 121 (2d Cir. 2019), citing § 401; § 405, Comment *a*; and § 406, Comment *a*

*Doe v. Mattis*, 928 F.3d 1 (D.C. Cir. 2019), citing § 211 and Comments *c* and *f* thereto; § 213; and § 214 and Comment *a* thereto of T.D. No. 2 (2016), which are now § 407 and Comments *c* and *f* thereto; § 409; and § 410 and Comment *a* thereto of the Official Text

*In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705*, 381 F. Supp. 3d 37 (D.D.C. 2019), citing § 426, Comment *a*

*KT Corp. v. ABS Holdings, Ltd.*, 2018 WL 3364390 (S.D.N.Y. July 10, 2018), citing § 401 and Comment *e* thereto and § 404 of T.D. No. 1 (2014), which are now § 481 and Comment *f* thereto and § 484 of the Official Text

*Philipp v. Federal Republic of Germany*, 894 F.3d 406 (D.C. Cir. 2018), citing § 455, Reporters' Note 9, of T.D. No. 2 (2016), which is now § 455, Reporters' Note 11, of the Official Text

*Doe v. Mattis*, 889 F.3d 745 (D.C. Cir. 2018), citing § 211 and Comment *f* thereto; § 213; and § 214, Comment *a*, of T.D. No. 2 (2016), which are now § 407 and Comment *f* thereto; § 409; and § 410, Comment *a*, of the Official Text

*Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213 (D.C. Cir. 2018), citing § 420 of T.D. No. 3 (2017), which is now § 490 of the Official Text

*Simon v. Republic of Hungary*, 277 F. Supp. 3d 42 (D.D.C. 2017), citing § 455, Reporters' Note 7, of T.D. No. 2 (2016), which is now § 455, Reporters' Note 6, of the Official Text

*Republic of Marshall Islands v. United States*, 865 F.3d 1187 (9th Cir. 2017), citing § 110 and Comment *b* thereto of T.D. No. 2 (2017), which are now § 310 and Comment *b* thereto of the Official Text

*De Csepel v. Republic of Hungary*, 859 F.3d 1094 (D.C. Cir. 2017), citing § 455 and Reporters' Note 6 thereto of T.D. No. 2 (2016), which are now § 455 and Reporters' Note 8 thereto of the Official Text

*Jerez v. Republic of Cuba*, 775 F.3d 419 (D.C. Cir. 2014), citing § 463, Reporters' Note 2, of Preliminary Draft No. 2 (2014), which is now § 463, Reporters' Notes 3 and 4, of the Official Text

## STATE COURTS

*Perry v. KLCC Holdings 1 Ltd.*, 489 P.3d 916 (table) (Nev. 2021), citing § 483, Reporters' Note 8

*Lathigee v. British Columbia Sec. Comm'n*, 477 P.3d 352 (Nev. 2020), citing § 489, Comment *d* and Reporters' Note 4

*Ward v. United Airlines, Inc.*, 466 P.3d 309 (Cal. 2020), citing § 402

*Jiménez v. Palacios*, 250 A.3d 814 (Del. Ch. 2019), citing § 441, Comments *a* and *b* and Reporters' Note 1

*AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 160 A.D.3d 93 (N.Y. App. Div. 2018), citing § 402, Reporters' Note 3, of T.D. No. 1 (2014), which is now § 482, Reporters' Note 3, of the Official Text

*JPMorgan Chase Bank, N.A. v. Herman*, 168 A.3d 514 (Conn. App. Ct. 2017), citing § 302, Comment *a*, of T.D. No. 2 (2016), which is now § 422, Comment *a*, of the Official Text

## NORTHERN MARIANA ISLANDS COURTS

*Kim v. Park & Globuil Holdings*, No. 15-0131-CV (N. Mar. I. Commw. Super. Ct. 2019), citing §§ 481, 483(a), 484(h), and 489

## U.K. COURTS

*R (on the Application of The Freedom and Justice Party) v. Secretary of State for Foreign and Commonwealth Affairs*, [2018] EWCA (Civ) 1719 (Eng. & Wales) (July 19, 2018), citing generally

# Preparations for ALI's 100th Anniversary Have Begun

The American Law Institute will celebrate its 100th Anniversary in 2023.

If you have visited the ALI website lately, you may have noticed a new logo and a menu on the site full of pages to help us celebrate our legacy. In this edition of *The ALI Reporter*, we highlight just a few of the pages and projects that we have built to commemorate our centennial. As we move toward the 2023 Annual Meeting, we'll continue to update our members and colleagues on additional plans and progress toward our goal to secure our second century.

Please visit the website to learn more or contribute to our Second Century Campaign and to peruse new areas like our timeline that celebrates our leaders, publications, and landmark events from our first century, as well as a newly launched ALI Video Library. We also hope you'll share your ALI experience with us, so your story can be part of our celebration.

## The Story of ALI

Visit [www.ali.org/timeline](http://www.ali.org/timeline) to learn more about the history of the Institute. Read about our publications, Presidents, and Directors, and watch videos that explore some of our most influential work.

## The Uniform Commercial Code

The Uniform Commercial Code (UCC) is a comprehensive set of laws governing commercial transactions in the United States. It is a uniform code addressed to legislatures with a view toward legislative enactment and written in prescriptive statutory language. The UCC is a modernization of various statutes relating to commercial transactions including sales, leases, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, bulk sales, documents of title, investment securities, and secured transactions.

The UCC is a joint project of the Uniform Law Commission (ULC) and The American Law Institute. In 1942, ALI accepted an invitation from the ULC to undertake this massive project. ALI named Karl Llewellyn Chief Reporter and Soia Mentschikoff Assistant Reporter. For the next 10 years, the two organizations worked together to produce the first volume. Published in 1952, the UCC was ALI's first publication post-WWII.

Because the UCC has been universally adopted, businesses can enter into contracts with confidence that the terms will be enforced in the same way by the courts of every American jurisdiction. The resulting certainty of business relationships allows businesses to grow and the American economy to thrive. For this reason, the UCC has been called "the backbone of American commerce."



**Watch:** Learn how the UCC has promoted safe, predictable, reliable commerce for businesses and consumers throughout the United States in the video available at [www.ali.org/timeline](http://www.ali.org/timeline).

Updated regularly, the UCC is maintained by the Permanent Editorial Board for the Uniform Commercial Code (PEB). The PEB, a joint committee of ALI and the Uniform Law Commission, discourages nonuniform amendments or additions to the UCC by the states, assists in attaining and maintaining uniformity in state statutes governing commercial transactions, and monitors the law of commercial transactions for needed modernization or other improvement.


# ALI's Video Library

The American Law Institute has launched a comprehensive video library, found at [media.ali.org](https://media.ali.org). This new site organizes and makes searchable ALI's more than 200 videos that were previously stored in various locations throughout the ALI website and Vimeo library.

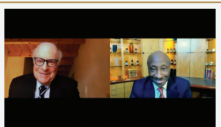
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### Annual Meeting



Henry J. Friendly Medal: Anthony M. Kennedy




In Conversation: Kenneth C. Frazier




Distinguished Service Award: Carol F. Lee

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### Projects and Publications




Understanding the Restatement of Copyright Law



Christiane C. Wendehorst

Data Economy in the Real World




PROJECT FEATURE

CHILDREN IN THE JUSTICE SYSTEM


Children in the Justice System

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### Inside the ALI




The Anatomy of a Restatement



Nathan L. Hecht

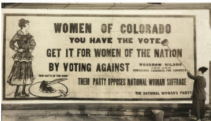
Nathan L. Hecht on Common Law




Visionaries: ALI Documentary Trailer

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### Special Features




The 100th Anniversary of the Passage of the 19th Amendment



Protecting Individual Liberties: Recognizing the Value of State and Federal Courts

Reasonably Speaking: Protecting Individual Liberties



What is the Uniform Commercial Code?

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### In Conversation: Kenneth C. Frazier



**RELATED VIDEOS**

-  Kenneth C. Frazier, 2021 Annual Distinguished Service Award
-  Henry J. Friendly Medal: Anthony M. Kennedy
-  Distinguished Service Award: Carol F. Lee

Kenneth C. Frazier (Merck & Co.) is joined by ALI President David F. Levi in conversation at the 2021 virtual Annual Meeting. Frazier talks about his professional journey, providing mentorship for young lawyers, the importance of public service, and overseeing a public health organization during a pandemic, among other things.

**FEATURING:** Kenneth C. Frazier, David F. Levi

**PUBLISHED:** 2021


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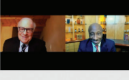
### Annual Meeting



Virtual Class Celebration: Q&A Session with Kenneth Frazier and Remarks by the 1995 and 1996 Class Gift Committee Chairs

2021 | H. Rodgan Cohen, Kenneth C. Frazier, William C. Hubbard, David F. Levi


Class Gift Committee Chairs provide remarks honoring new life members, followed by a conversation with Frazier.



In Conversation: Kenneth C. Frazier

2021 | Kenneth C. Frazier, David F. Levi

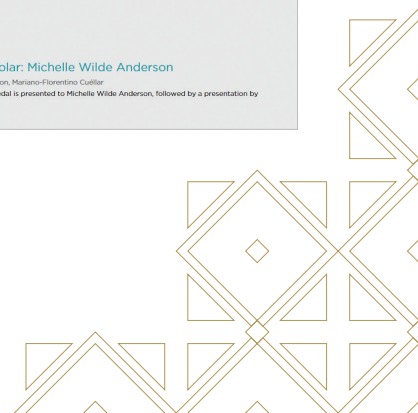
Frazier talks with ALI President Levi about his professional journey in a conversation at the 2021 virtual Annual Meeting.



Early Career Scholar: Michelle Wilde Anderson

2019 | Michelle Wilde Anderson, Mariano-Florentino Cuellar

The Early Career Scholars Medal is presented to Michelle Wilde Anderson, followed by a presentation by Anderson.





# Donor Spotlights

## Andréa and Ken Frazier



The American Law Institute counts itself lucky to have Ken Frazier as a member (since 1996) and as a Council member (since 2003). Through the years, the Institute has been fortunate to have many of our projects benefit from his keen insight, not only as a Council member, but also an Adviser on the recently completed Restatement of the Law, Charitable Nonprofit

Organizations, as well as on the ongoing Restatement of the Law, Corporate Governance and Principles of the Law, Policing projects. As we move toward our 100th Anniversary celebration, we couldn't be more honored that he and his wife, Andréa, have made the Institute a part of their legacy through a donation to our Second Century Campaign from the Andréa W. and Kenneth C. Frazier Family Foundation.

Andréa was born in New York City, where she graduated from Fiorello H. LaGuardia High School of Music & Art and Performing Arts and was also a member of the Youth Symphony Orchestra of New York. She earned her B.A. in political science and international relations from Tufts University and her M.A. in international relations and international law from the Graduate Center of the City University of New York. Ken was born in Philadelphia. He graduated from Northeast High School, earned his B.A. at Pennsylvania State University followed by his J.D. at Harvard Law School.

After graduating, Andréa worked at New York University School of Law, where she met Ken, as she describes, "Ken and I met when I was an administrator at NYU School of Law, and I hosted programs nationwide in cities where our students wanted to work. Ken attended the program I hosted in Philadelphia and interviewed candidates for his law firm ... and the rest, as they say, is history."

She then became a recruitment administrator at Fox Rothschild, and later managed recruitment programs at Cigna. In addition, she started her own interior design firm where she specialized in designing residential, commercial, and historical houses, including the homes of Betsy Ross and George Washington. Andréa was an adjunct professor at St. Joseph's University where she taught international law and politics.

After law school, Ken began working at Drinker Biddle & Reath in Philadelphia. In 1988, he became a founding board member of the Cornerstone Christian Academy in Philadelphia where he continues serving today.

The Fraziers are particularly proud of their founding and support of Cornerstone Academy in Philadelphia. Andréa explained, "Cornerstone Christian Academy is very important to us because it provides children from under-served and under-resourced areas in Philadelphia with an opportunity to get a better education. We understand firsthand the impact that education can have on one's life. Ken and I were the beneficiaries of educational opportunities which gave us exposure to life outside of our respective communities. These opportunities and experiences changed the trajectory of our lives and brought us to where we are today. We feel strongly about the promise that education holds and wanted to provide others with the same opportunity and exposure that we were given."

Ken joined Merck 1992 and held positions of increasing responsibility, including General Counsel, President and Chief Executive Officer. He is currently Executive Chairman of Merck's board of directors. Under Ken's leadership, Merck delivered innovative lifesaving medicines and vaccines as well as long-term and sustainable value to its multiple stakeholders. Ken substantially increased Merck's investment in research, including early research, while refocusing the organization on the launch and growth of key products that provide far-reaching benefits to society. He also led the formation of philanthropic and other initiatives that build on Merck's 130-year legacy.

During his 2013 ALI Annual Meeting speech, Ken aptly described the work of the ALI as such, "The law is not simply a form of logical or deductive reasoning. The content of the rules matters. The methods by which the rules are developed matters. This is where The American Law Institute has made countless important contributions."

In addition to his service as an ALI member and on ALI's Council, Ken sits on the boards of PhRMA, Weill Cornell Medicine, Exxon Mobil Corporation, Catalyst, the National Constitution Center, and Cornerstone Christian Academy in Philadelphia, PA. He is co-founder and co-chair of OneTen, a coalition of leading organizations committed to upskilling, hiring, and promoting one million Black Americans into family-sustaining jobs. Ken also is a member of the American Academy of Arts and Sciences, the American Philosophical Society, The Business Council, the American Bar Association, and a Fellow of the College of Physicians of Philadelphia. Additionally, Ken is co-chair of the Legal Services Corporation's Leaders Council.

Andréa has also served on multiple boards, including the Vickie and Jack Farber Institute for Neuroscience at Jefferson Health, the Ellis Marsalis Center for Music, Pratt Institute in New York, and Amsale Couture. Her professional affiliations include the American Society of Interior Designers, Children's Hospital of Philadelphia, Cornerstone Christian Academy, and The HistoryMakers. She is a long-time volunteer and supporter of the American Heart Association and recently joined the Southeastern Pennsylvania Board of Directors.

Andréa and Ken have two children, Lauren and James.

## Victor E. Schwartz

Victor E. Schwartz is a familiar face to ALI members new and old, having attended numerous project meetings, Annual Meetings, and even helping to introduce new members to the Institute at member receptions.

A life member of the Institute, Victor has been involved in every portion of the Restatement Third of Torts, either as an Adviser or in the Members Consultative Group. Completed portions of this Restatement for which Victor served as an Adviser include Products Liability, Apportionment of Liability, Liability for Physical and Emotional Harm, and Liability for Economic Harm. He currently serves as an Adviser for two Restatement of the Law Third, Torts projects: Concluding Provisions and Remedies.

“The ALI is a great fountain for learning after law school,” said Victor about his involvement in the Institute’s work. “One learns as one participates in the development of Restatements of Law, Principles projects, and other ALI work products. One learns from ALI Leadership and Reporters. One learns from other ALI Members. One builds lifelong friendships of mutual respect, including with those whose views about the law may sharply differ from your own.”

Victor received his B.A. from Boston University and went on to earn his J.D. from Columbia Law School. Prior to entering the full-time practice of law, he was a professor and dean at the University of Cincinnati College of Law. He currently serves on the College of Law’s Board of Visitors. In 2012, the College established the Professor Victor E. Schwartz Chair in Tort Law. Victor is a frequent speaker at judicial education state and university programs. He continues to lecture to law students on tort law and how the court system interacts with the law. A coauthor of the most widely used torts casebooks in the United States, Prosser, Wade and Schwartz’s Torts (14th ed. 2020), Victor continues to write law review articles on almost every major subject of modern tort and civil justice policy issues, which are frequently cited in state and federal courts. Victor recounted how he met Dean Wade through the ALI, “The ALI Membership provided a gateway me to meet and team up with Restatement of Torts Second Reporter and brilliant scholar, Dean John W. Wade. Dean Wade enlisted me, a young and not well-known professor, as the third coauthor of Prosser, Wade & Schwartz’s Torts. Coauthoring that casebook opened many opportunities in my professional life.”

When asked what drew him to the field of tort law after law school, Victor explained, “I had two Columbia law professors whose views about tort law and teaching style were very different. Professor Willis M. Reese, a prominent ALI member, projected tort law as hard rule, albeit with some ambiguity. Professor Alfred E. Hill saw torts law as a foggy mist and only ambiguity. My own teaching style combined both perspectives. I added a bit of my own. Both professors were entertainers and saw students as persons were bored of school for 16 years (or more) and needed that element in class. I totally agreed with that perspective. We are there to serve the students not the other way around.”

Today, Victor is a partner in the Washington office and co-chair of the Public Policy Practice Group at Shook Hardy & Bacon, where he has an active appellate practice and advises product manufacturers on liability prevention, litigation and public relations issues. He has blended scholarship with practical results, leading more than 200 state initiatives, passing bills in Congress, and filing amicus briefs that have affected U.S. Supreme Court cases.



Victor’s work in tort law intertwines with other institutions and organizations. While working for the U.S. Department of Commerce, he served as chair of the Federal Inter-Agency Task Force on Product Liability and the Federal Inter-Agency Council on Insurance. He was the principal author of the Uniform Product Liability Act and the Federal Risk Retention Act, and received the Professional Excellence Award from the Secretary of Commerce.

Looking to ALI’s next 100 years Victor expressed the hope, “that it is a positive influence on the law and encourages respect for the law among persons who may not agree on its content.”

The American Law Institute is forever grateful to Victor for all that he gives to the Institute’s work and membership.

**VISIT THE 100TH ANNIVERSARY PAGES ON ALI’S WEBSITE TO READ FULL PROFILES.**

## Help Us Celebrate Our Anniversary

Share your ALI story and help The American Law Institute 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](http://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.

[WWW.ALI.ORG/ANNIVERSARY/SHARE](http://WWW.ALI.ORG/ANNIVERSARY/SHARE)

# Your Support Matters: Make a Year-End Gift Today

If you are reading this edition of *The ALI Reporter*, you understand how crucial The American Law Institute's work is to the legal profession and to society. In the last year alone, ALI publications—including Restatements of the Law, Principles of the Law, the Model Penal Code, and the Uniform Commercial Code—were cited more than 2,450 times by federal and state courts, including citations in nine U.S. Supreme Court cases. The careful guidance provided by our work, including four new projects completed in 2021, would not be possible without the generous financial support of members like you. As 2022 approaches, we ask that you help protect and promote the rule of law by including the Institute in your year-end giving plans.

Your gift to ALI will provide critical funding to support all aspects of our work and our mission, while also ensuring our continued independence. This includes allowing us to continue investing in new technology as we look to expand the accessibility of our work to members who might otherwise be unable to attend our meetings. A year-end gift to the ALI will also serve as a first line of defense in preparing for what we expect to be a steady decline in print revenues over the next 100 years.

You can make an end-of-year charitable contribution to ALI by returning the envelope enclosed in this newsletter, visiting [www.ali.org/support](http://www.ali.org/support), or calling 215-243-1660. Your gift will help us continue our work through which we serve the legal profession, the judiciary, and society as a whole, both now and in the future.

Thank you in advance for your generosity and best wishes for a happy and healthy 2022.

## Bequest Society: Mary Kay Kane



Mary Kay Kane passed away in June 2021, at age 74. She was elected to the Institute in 1978 and to the ALI Council in 1998, taking emeritus status in 2018.

“She approached every project, meeting, and decision with keen intellect and grace,” said ALI President David F. Levi. “I was fortunate to come to know Mary Kay because of her service on the Standing Committee for the Rules of Practice and Procedure and because of our joint service on the Council of the ALI. She was also a wonderful role model for me and others as a law dean. She was such a smart and lovely person, such a kind and balanced commenter. We will all miss her very much.”



*Mary Kay Kane chairs discussion of Student Sexual Misconduct, 2018 Annual Meeting.*

A life member of the Institute, she generously gave countless hours to all of ALI's projects, and additionally served as an Adviser on Restatement Third, Conflict of Laws; Restatement Third, Torts: Apportionment of Liability; and Principles of Transnational Civil Procedure. She also served as the Co-Reporter for the Complex Litigation Project, as well as chairing or being a member of various Council committees, including the 100th Anniversary, Development, Membership, and Executive Committees, among others.



*2014 October Council meeting*

“The list of ALI activities is daunting in itself,” said ALI Council Emeritus Edward H. Cooper in his remarks honoring Mary Kay at the October 2021 ALI Council meeting. “The commitment of time, energy, and learning required for any one of these activities is familiar to all within the ALI. Her work in each was exceptional. In whole, it was extraordinary.”

Her generosity to the Institute also provided for the Institute's projects to continue through the establishment of the Geoffrey C. Hazard, Jr. fund, which was established to provide the current director with the resources necessary to take advantage of any and all opportunities to further ALI's important work, as well as through a bequest to the Institute of approximately \$4.3 million.

The American Law Institute is forever grateful for the time we were able to spend with Mary Kay and for her incredible generosity to the Institute.



## Notes About Members and Colleagues

**Jonathan H. Adler** of Case Western Reserve University School of Law, **Ellen M. Bublick** of University of Arizona, James E. Rogers College of Law, **Sarah Keeton Campbell** of the Tennessee Office of the Attorney General, **Philip S. Goldberg** of Shook, Hardy & Bacon, **Alberto R. Gonzales** of Belmont University College of Law, **Harris L. Hartz** of the U.S. Court of Appeals for the Tenth Circuit, **Donald J. Kochan** of George Mason University Antonin Scalia Law School, **Julia D. Mahoney** of UVA School of Law, **J.B. Ruhl** of Vanderbilt Law School, **Victor E. Schwartz** of Shook, Hardy & Bacon, **Christopher A. Seeger** of Seeger Weiss, and **Catherine M. Sharkey** of NYU School of Law took part in the “Symposium on Novel Liability Theories and the Incentives Driving Them,” hosted by the Law & Economics Center Judicial & Attorneys General Education Programs at George Mason University Antonin Scalia Law School.

**Loren L. AliKhan** has been nominated by President Biden to the District of Columbia Court of Appeals. She has served as the Solicitor General for the District of Columbia since 2018.

**José E. Alvarez** of New York University School of Law became faculty director of NYU’s US-Asia Law Institute and recorded a set of lectures for the UN’s audiovisual library on “The United States’ Contribution to the International Investment Regime.” His recent article, “Biden’s International Law Restoration,” was published in the *NYU Journal of International Law and Politics*.

**José F. Anderson** presented the talk “Thurgood Marshall, Charles H. Houston and the Maryland Professional School Legal Battle that Changed the Nation” describing a landmark civil rights case that he explores in his upcoming book *Genius for Justice: Charles Hamilton Houston and the Reform of American Law* (Carolina Academic Press 2021).

**Susan A. Bandes** of DePaul University College of Law was interviewed by *Law360* on her new article “Empathy and Remote Legal Proceedings” discussing the virtual adaptations courthouses and legal bodies have had to make as a result of the COVID-19 pandemic and what potential side effects these changes may have had on litigants.

The Federalist Society hosted a teleforum featuring **Rachel E. Barkow** of NYU School of Law discussing potential federal clemency reform.

At this year’s ABA Annual Meeting, several past female presidents of the ABA, including **Martha W. Barnett** of Martha W. Barnett LLC, **Hilarie Bass** of the Bass Institute for Diversity and Inclusion, **Carolyn B. Lamm** of White & Case, **Judy Perry Martinez** of Simon, Peragine, Smith & Redfearn, **Roberta Cooper Ramo** of Modrall Sperling, and **Patricia Lee Refo** of Snell & Wilmer, participated in a panel on progress in the advancement of women in the legal profession and the obstacles that still remain.

**Shawn J. Bayern** of Florida State University College of Law has published *Autonomous Organizations* (Cambridge Univ. Press 2021), addressing the growing area of autonomous, robotic-run organizations and the law.

The William & Mary Law School Property Rights Project awarded **Vicki L. Been**, New York City’s Deputy Mayor for Housing and Economic Development, the 2021 Brigham-Kanner Property Rights Prize.

The State Bar of Wisconsin, Senior Lawyers Division, awarded the Leonard L. Loeb Award to **Michelle A. Behnke** of Michelle Behnke & Associates. This award recognizes a lawyer who has made significant contributions to the legal community, shown respect for the legal system, and demonstrated a love for the law and what it seeks to accomplish.

The Law & Economics Center at George Mason University Antonin Scalia Law School hosted “Civil Justice Preview of the Supreme Court’s 2021-2022 Term,” a webinar discussing civil-justice issues in the U.S. Supreme Court’s October Term 2021, with **John H. Beisner** of Skadden, Arps, Slate, Meagher & Flom, **Robert S. Peck** of the Center for Constitutional Litigation, and **Donald J. Kochan** of GMU Antonin Scalia Law School.

The Center on Civil Justice at NYU School of Law hosted a two-panel event commemorating the life of Judge Jack B. Weinstein. ALI members **Sheila L. Birnbaum** of Dechert, **Elizabeth J. Cabraser** of Loeff Cabraser Heimann & Bernstein, **Denise L. Cote** of U.S. District Court for the Southern District of New York, **Kenneth R. Feinberg** of The Law Offices of Kenneth R. Feinberg, **John Gleeson** of Debevoise & Plimpton, **John C.P. Goldberg** of Harvard Law School, **Samuel Issacharoff** of NYU School of Law, **Troy A. McKenzie** of NYU School of Law, **Arthur Raphael Miller** of NYU School of Law, and **Christopher A. Seeger** of Seeger Weiss were speakers at the event.

The University of Chicago Law School hosted “Non-Binding International Agreements: A Comparative Assessment,” co-hosted by **Curtis A. Bradley** of University of Chicago Law School, **Jean Galbraith** of University of Pennsylvania Carey Law School, **Oona A. Hathaway** of Yale Law School, **Duncan B. Hollis** of Temple University Beasley School of Law, **Michael Mattler** of the U.S. Department of State, and **Jide Okechuku Nzelibe** of Northwestern University Pritzker School of Law participated in the conference.

“How UChicago’s ‘innovative community’ caught the eye of a top legal scholar,” by *UChicago News*, profiles **Curtis A. Bradley**, who joined the faculty of University of Chicago Law School this summer.

**Maureen E. Brady** has joined the tenured faculty at Harvard Law School.



## NOTES CONTINUED FROM PAGE 15

The State & Local Government Law Blog conducted an interview with **Richard Briffault** of Columbia Law School discussing localism, federalism, and governance.

**Stephen B. Burbank** of the University of Pennsylvania Carey Law School has retired. Burbank has worked with the University since 1975 and held various positions from General Counsel to Acting Dean.

The 8th edition of *Cases and Materials on Land Use* (West Academic 2021), coauthored by **David L. Callies** of University of Hawaii at Manoa, William S. Richardson School of Law, has been published.

**Danielle K. Citron** of the UVA School of Law participated in a discussion with *The American Prospect* about fixing Section 230 of the Communications Decency Act to protect the public while promoting free expression.

**Sarah H. Cleveland** of Columbia Law School has been nominated by President Biden as Legal Adviser of the U.S. Department of State.

**Thomas L. Cubbage III** was appointed President of The Center for American and International Law, founded by former Nuremberg prosecutor Robert G. Storey.

**Mariano-Florentino Cuéllar**, formerly of the California Supreme Court, has been named the 10th president of the Carnegie Endowment for International Peace, effective November 1.

**Josiah M. Daniel III** of Vinson & Elkins LLP (Retired) has authored “What I Said Was ‘Here Is Where I Cash In’”: the Instrumental Role of Congressman Hatton Sumners in the Resolution of the 1937 Court-Packing Crisis, 54 UIC J. Marshall L. Rev. 379 (2021). Daniel is a Visiting Scholar in the History Department of University of Texas at Austin.

St. John’s College Board of Visitors and Governors has appointed **Nora V. Demleitner** as the next president of the college’s Annapolis campus, effective January 2022. She is the first woman to serve as president of the college.

The Law & Economics Center at George Mason University Antonin Scalia Law School hosted the corporate governance panel “Business Roundtable v. Milton Friedman: Reflections on the Second Anniversary of ‘Redefining’ the Purpose of the Corporation” with **Lisa M. Fairfax** of University of Pennsylvania Carey Law School, **Donald J. Kochan** of GMU Antonin Scalia Law School, **David J. Porter** of the U.S. Court of Appeals for the Third Circuit, and **Ken Randall** of GMU Antonin Scalia Law School.

**Richard S. Frase** of the University of Minnesota Law School has retired. A member of the law faculty since 1977, Frase made significant contributions to the understanding of sentencing guidelines and systems.

**Kenneth C. Frazier** of Merck was honored by *Philadelphia Business Journal* with the 2021 Diversity Leaders in Business Awards Lifetime Achievement. In November, he was honored at the 2021 Brennan Legacy Awards, hosted by the Brennan Center for Justice. *Time* has named Frazier and **Sherrilyn Ifill** of the NAACP Legal Defense and Educational Fund, Inc. to its *100 Most Influential People 2021* list.

**Sharon Stern Gerstman** of Magavern Magavern Grimm has been appointed by New York Governor Kathy Hochul to the state’s Joint Commission on Public Ethics.

**Joseph M. Getty** has been appointed chief judge of the Maryland Court of Appeals. The appointment also makes him the Maryland Judiciary’s chief administrator.

**Leonard H. Gilbert** of Holland & Knight has been elected to the American Bar Association Board of Governors for a three-year term where he will help oversee general ABA operations and develop specific plans of action.

**Eric Goldman** of Santa Clara University School of Law was a guest on the Arnold & Porter podcast *TMT Time*, discussing the reanimated initial interest confusion doctrine, internet censorship, and Section 230.

**Risa L. Goluboff** of UVA School of Law was honored by the Women’s Bar Association of the District of Columbia, at its “Stars of the Bar” event, as a trailblazer for becoming the first woman dean of the law school.

**Christopher S. Gontarz** of Lynch & Pine was elected Secretary of the Rhode Island Bar Association.

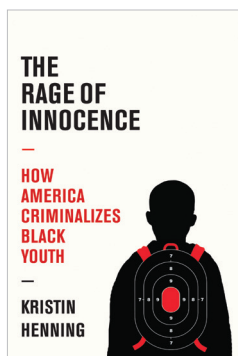
**Jane Cutler Greenspan** of the Pennsylvania Supreme Court (Retired) was featured on a JAMS podcast discussing Title IX adjudication and resolving campus disputes.

After serving as interim dean since 2019, **Katheleen R. Guzman** has been appointed dean of the University of Oklahoma College of Law, making her the first woman to serve in full capacity as dean at OU Law.

The University of Virginia School of Law’s Center for Criminal Justice will launch the Project for Informed Reform next year. **Rachel A. Harmon** of UVA School of Law will serve as co-director of the Center.

The American Constitution Society hosted “Founding Failures: Indian Country’s Sovereignty and Subordination,” a panel discussion featuring **Keith M. Harper** of Jenner & Block as moderator and Restatement of American Indian Law Reporter **Matthew L.M. Fletcher** of MSU College of Law as speaker.

**Richard L. Hasen** of UC Irvine School of Law is co-director of the school’s new Fair Elections and Free Speech Center. A number of ALI members are serving on the advisory board: **Floyd Abrams** of Cahill Gordon & Reindel, **Dan L. Burk** of UC Irvine School of Law, **Guy-Uriel E. Charles** of Harvard Law School, **Erwin Chemerinsky** of UC Berkeley School of Law, **Danielle K. Citron** of UVA School of Law, **Edward B. Foley** of Ohio State University, Moritz College of Law, **Michele Bratcher Goodwin** of UC Irvine School of Law, **Nathaniel Persily** of Stanford Law School, and **Richard H. Pildes** of NYU School of Law.



**Kristin Nicole Henning** of Georgetown University Law Center has authored *The Rage of Innocence: How America Criminalizes Black Youth* (Penguin Random House 2021), analyzing the foundations of racist policing in America.

**William H. Henning** of Texas A&M University School of Law has been appointed to the newly formed Work Group on Blockchain Matters to develop a plan for the expansion

of Texas' blockchain industry and recommend policies and investments in blockchain technology for the state.

**Chris Jay Hoofnagle** of UC Berkeley School of Law is the next Faculty Director of the Center for Long-Term Cybersecurity at UC Berkeley.

UCLA School of Law has established the Program on Philanthropy and Nonprofits. **Jill R. Horwitz** of UCLA Law, Reporter on Restatement of the Law, Charitable Nonprofit Organizations, will serve as the program's inaugural faculty director.

**David Hricik** has been appointed associate dean for faculty research and development at Mercer University School of Law.

**Kristin N. Johnson** of Emory University School of Law has been nominated by President Biden for Commissioner of the Commodity Futures Trading Commission.

**Olatunde C.A. Johnson** of Columbia Law School was featured on the school's final episode of the *Defending the Planet* podcast discussing the disproportionate impact of climate change on low-income communities and communities of color, and legal strategies and tools to be used to effectively advance environmental justice.

**Michael E. Keasler**, retired judge of the Texas Court of Criminal Appeals, is the 2021 recipient of the State Bar of Texas Judicial Lifetime Achievement Award.

**Lucy H. Koh** was nominated by President Biden to the U.S. Court of Appeals for the Ninth Circuit. If confirmed, Koh would be the first Korean-American woman to serve as a federal appellate judge and the second AAPI woman to serve on the Ninth Circuit from California.

The Kurtz Distinguished Law Fellowship has been established in honor of **Paul M. Kurtz** of the University of Georgia School of Law. The merit-based fellowship is for students with strong academic records and a passion for supporting the survivors of child sexual abuse and exploitation.

**Carolyn B. Lamm** of White & Case presented the 2021 Annual International Commercial Arbitration Lecture, hosted by American University Washington College of Law, in November.

## In Memoriam: Steven L. Harris

Steven L. Harris passed away on November 6. An ALI member since 1986, Harris served as Reporter for the Uniform Commercial Code (UCC) Article 9 Drafting Committee with Charles W. Mooney Jr., which was enacted into law in all 50 states and the District of Columbia.



Insight into the success of this effort was shared in *The ALI Reporter* (Summer 2001) by William M. Burke, who served as ALI Chair to this project. In the piece, Burke notes the important role of Reporters in such a project, writing, "The Co-Reporters came to the project with great energy, enthusiasm, and expertise and with no fixed preconceived notions as to the scope or content of the revision effort. They were solicitous and respectful of the views and votes of the Study Committee and the Drafting Committee. The Co-Reporters were also excellent draftsmen. This last factor is extremely important, since even the most necessary and worthwhile drafting project will fail if the statutory text is not solid and tight." (A copy of this piece is available on the ALI website.)

In recognition of this important work, in 2002, Harris was honored by the American College of Commercial Finance Lawyers for his work revising Article 9. He continued to participate in updating Article 9, including presenting proposed amendments at the 2018 ALI Annual Meeting.

Harris earned his bachelor's degree with high honors from the University of Chicago and law degree from the University of Chicago Law School. He was a professor of law emeritus at Chicago-Kent College of Law specializing in commercial and bankruptcy law, where he began teaching in 1997. Before joining Chicago-Kent, Harris worked at Wayne State University Law School, where he met his wife Barbara, and after that at the University of Illinois College of Law. He was widely published in scholarly journals, including *Cornell Law Review*, *Minnesota Law Review*, *Virginia Law Review*, *UCLA Law Review*, and *Vanderbilt Law Review*. He was coauthor of *Cases, Problems, and Materials on Security Interests in Personal Property*.

Harris is survived by his wife of 36 years, Barbara Bruno; his children, Jacob (Taylor) and Molly; his sister, Sunny (Douglas) Rome; his sisters- and brothers-in-law, Mary and Jeff Ehret and Donna Kase and Curt Paloupis; and many nieces and nephews.



## NOTES CONTINUED FROM PAGE 17

**Douglas Laycock** of UVA School of Law participated in the National Constitution Center America's Town Hall event on the topic of "Religious Exemptions From the Founding to Today."

**Thomas S. Leatherbury** has been appointed to the Texas Access to Justice Commission for a three-year term.

**David A. Logan** of Roger Williams University School of Law was a guest on NPR's *On Point* podcast discussing American libel law. Logan's article "Rescuing Our Democracy by Rethinking *New York Times Co. v. Sullivan*" was cited 16 times in U.S. Supreme Court Associate Justice Gorsuch's dissent in *Berisha v. Lawson* (2021). A *Washington Post* op-ed discussed Logan's argument and potential implications the dissent may have on future libel cases.

The 2021 Jay Healey Teaching Award from the American Society for Law, Medicine & Ethics was awarded to **Paul A. Lombardo** of Georgia State University College of Law. This award recognizes scholarship, passion for teaching health law, mentoring of students and faculty, and being an inspiration to colleagues and students. Lombardo was quoted in the *Los Angeles Times*, *The New York Times*, and the *Associated Press* on California's legislation to compensate survivors of eugenic sterilization.

**Florencia Marotta-Wurgler** was quoted in a *New York Times* article discussing Amazon's changes to its customer legal-complaints process.

**Theodore A. McKee** of the U.S. Court of Appeals for the Third Circuit received the A. Leon Higginbotham Jr. Lifetime Achievement Award from the Pennsylvania Bar Association. The award recognizes the accomplishments of a lawyer or judge who has demonstrated dedication to the legal profession and the minority community through civil, community, or legal service.

**M. Margaret McKeown** of the U.S. Court of Appeals for the Ninth Circuit received the President's Award from the Washington Women Lawyers (WWL) in recognition of her founding role in WWL, service as the first co-president, and her work on gender equality.

**Cynthia E. Nance** of University of Arkansas School of Law is chair of the Fellows of the American Bar Foundation.

**Christopher K. Odinet** was quoted in *Morning Consult* on the potential consequences for nonbank and fintech mortgage companies as forbearance protections come to an end. Additionally, he has been appointed the Michael and Brenda Sandler Faculty Fellow in Corporate Law at the University of Iowa College of Law.

Serving as interim dean since January 2021, **Jens David Ohlin** is now the Allan R. Tessler Dean of Cornell Law School.

The U.S. Senate has confirmed **Florence Y. Pan** to the U.S. District Court for the District of Columbia, making her the first Asian American woman to ever serve on that court.

From September 15 to 17, Indiana University Maurer School of Law hosted "Extraterritoriality in International Law," a three-day conference consisting of workshops focused on the forthcoming *Elgar Research Handbook on Extraterritoriality and International Law*. **Austen L. Parrish** of Indiana University Maurer School of Law co-hosted the event. **Hannah L. Buxbaum** of Indiana University Maurer School of

Law, **William S. Dodge** of University of California, Davis School of Law, **Timothy R. Holbrook** of Emory University School of Law, **Chimène Keitner** of University of California, Hastings College of the Law, and **Ralf C. Michaels** of the Max Planck Institute for Comparative and International Private Law participated in the workshops.

In *How Antitrust Failed Workers* (Oxford Univ. Press 2021), **Eric A. Posner** of University of Chicago Law School explains why antitrust law has failed to address labor-market concentration, and how it can be reformed to do a better job. Posner has also published "The Antitrust War's Opening Salvo," in *Project Syndicate*, in which he assesses President Biden's executive order calling for stronger enforcement of antitrust laws and speculates that a vigorous federal response to labor-market abuses could make significant progress in helping workers.

**Norman M. Powell** of Young Conaway Stargatt & Taylor, LLP recently authored the definitive, comprehensive explication of the nuanced interface of Delaware alternative entity series and secured transactions law.

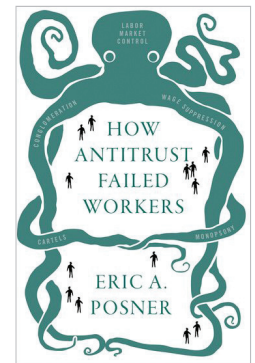
The U.S. Senate has voted to confirm **Elizabeth B. Prelogar** as Solicitor General of the United States.

The U.S. Senate has voted to confirm **Beth Robinson** to the United States Court of Appeals for the Second Circuit. Robinson is the first openly LGBTQ+ woman to serve on any federal circuit court.

**Stephen A. Saltzburg** received the 2021 John H. Pickering Achievement Award, presented by the ABA Senior Lawyers Division. The award recognizes a lawyer or judge who demonstrates outstanding legal ability and has compiled a distinguished record of service to the profession and his or her community, resulting in a significant contribution to improving access to justice for all.

**Chad T. Sarchio** of George Washington University Law School has been installed as the 50th president of the D.C. Bar.

**Sudha Narayana Setty** of Western New England University School of Law received the 2021 Human Relations Award given by the National Conference for Community and Justice.



## New Members Elected

On October 11, the Council elected the following 24 persons:

**June Rose Carbone**, Minneapolis, MN  
**Michael S. Coffee**, Washington, DC  
**Kevin J. Doyle**, Burlington, VT  
**John Fitzgerald Duffy**, Charlottesville, VA  
**Muhammad U. Faridi**, New York, NY  
**Karolyne Hu Cheng Garner**, Dallas, TX  
**Elizabeth Barrowman Gibson**, Dallas, TX  
**Gretchen Hoff Varner**, San Francisco, CA  
**Marin K. Levy**, Durham, NC  
**Ruth Mason**, Charlottesville, VA  
**Grace Lee Mead**, Miami, FL  
**Kevin T. Merriman**, Buffalo, NY  
**Robert T. Miller**, Iowa City, IA  
**Michael T. Morley**, Tallahassee, FL  
**Audrey Byrd Mosley**, Washington, DC  
**Randy Papetti**, Scottsdale, AZ  
**Michael Andrew Hartland Payton**, London, England  
**E. Farish Percy**, Oxford, MS  
**Jennifer K. Robbennolt**, Champaign, IL  
**Andrea L. Roth**, Berkeley, CA  
**Shirin A. Sinnar**, Palo Alto, CA  
**Duston J. Slinkard**, Topeka, KS  
**Victor P. Stabile**, Harrisburg, PA  
**Jennifer S. Taub**, Springfield, MA

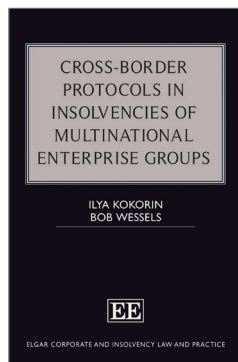
**John S. Skilton** of Perkins Coie was interviewed for a “Fellows Spotlight,” part of a series by the American Bar Foundation on its Fellows. Skilton became a fellow in September 1993.

**Larry W. Sonsini** of Wilson Sonsini Goodrich & Rosati, **Kathleen M. Sullivan** of Quinn Emanuel Urquhart & Sullivan, **Seth P. Waxman** of WilmerHale, and **Benjamin F. Wilson** of Beveridge & Diamond are recipients of the 2021 Lifetime Achievement Award, presented by *The American Lawyer*.

**Geoffrey R. Stone** of the University of Chicago Law School received the 2021 Norman Maclean Faculty Award, from the Alumni Association and the Alumni Board, during a ceremony on November 5.

**Michael Traynor** of Cobalt LLP was interviewed by KWMR radio station, where he discussed his Extraction Art project and Earth Day essay.

**Bob Wessels** of the University of Leiden coauthored *Cross-Border Protocols in Insolvencies of Multinational Enterprise Groups* (Edward Elgar Publishing 2021). It is an in-depth study on 50 insolvency protocols, bringing together their common foundations for resolution of international corporate insolvencies.



**Don R. Willett** of the U.S. Court of Appeals for the Fifth Circuit delivered the 2020 B. Kenneth Simon Lecture at the Cato Institute’s annual Constitution Day symposium, discussing how Americans’ civics illiteracy imperils the rule of law. Willett also published an article in the *University of Pennsylvania Law Review*, “Supreme Stalemates: Chalice, Jack-O’-Lanterns, and Other State High Court Tiebreakers,” 169 U. Pa. L. Rev. 441 (2021), examining how state supreme courts use various substitute-justice mechanisms to avert or break legal logjams.

Notes related to nominations are up to date as of November 29.

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

## In Memoriam

### ELECTED MEMBERS

**Pamela A. Bresnahan**, Washington, DC; **Mark F. Clark**, Boston, MA; **Micalyn Shafer Harris**, Ridgewood, NJ; **Michael J. Leech**, Philadelphia, PA; **Ronald Turner**, Houston, TX

### LIFE MEMBERS

**Joseph D. Becker**, New York, NY; **Paul DeWitt Carrington**, Mitchellville, MD; **James H. Cheek, III**, Nashville, TN; **Drew S. Days, III**, New Haven, CT; **Arthur A. Feder**, New York, NY; **William B. Fisch**, Columbia, MO; **Barry H. Garfinkel**, New York, NY; **Egon Guttman**, Washington, DC; **Steven L. Harris**, Wilmette, IL; **Thaddeus T. Hutcheson, Jr.**, Houston, TX; **Rudolph Kass**, Boston, MA; **Kathryn V. Lorio**, New Orleans, LA; **Lawrence Newman**, Sands Point, NY; **Bettina B. Plevan**, New York, NY; **Carlyle C. Ring, Jr.**, Washington, DC; **Howard J. Trienens**, Chicago, IL

## ALI CLE Is Discontinuing LawPass

ALI CLE is discontinuing the use of LawPass for all CLE online courses for ALI members. Complimentary CLE courses will continue to be available to all ALI members through [ali-cle.org](http://ali-cle.org). For this member-only benefit, simply add any online course to your cart and use the coupon code **ALIWEB** during checkout. Moving forward, ALI members must use this code.

LawPass will expire at the end of this year. To ensure there is no disruption to your ALI CLE access, please begin using the [ali-cle.org](http://ali-cle.org) website with the coupon code immediately.

MCLE certificates must be downloaded and saved before **December 31, 2021**. Please contact ALI CLE Customer Service at [custserv@ali-cle.org](mailto:custserv@ali-cle.org) if you need assistance or have any questions.

## 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](http://www.ali.org/anniversary/share), and may be featured on the 100th Anniversary pages of the ALI website.

[WWW.ALI.ORG/ANNIVERSARY/SHARE](http://WWW.ALI.ORG/ANNIVERSARY/SHARE)