

# THE ALI REPORTER



## Actions Taken at the Annual Meeting\*

The following actions were taken at the 2024 Annual Meeting. In addition to the below, Membership voted to approved the final Sections of two projects, the Restatements of Children and the Law and Torts: Medical Malpractice. Read more about these projects on page 3.

### DAY ONE - MONDAY MAY 20, 2024

**Property.** Council member Carolyn B. Kuhl joined Reporter Henry E. Smith and Associate Reporters Molly E. Brady, Sara C. Bronin, Thomas W. Merrill, and R. Wilson Freyermuth to present Tentative Draft No. 5. Membership voted to approve the draft.

**Torts: Miscellaneous Provisions.** Council member Goodwin Liu joined Reporters Michael D. Green, Nora Freeman Engstrom, and Associate Reporter Guy Miller Struve to present Tentative Draft No. 3.

- A motion to replace the black letter on Medical Monitoring did not pass.
- A motion to replace the black letter on the Firefighter's Rule passed.
- A motion to replace the black letter on § 20 A, Bad-Faith Performance of First-Party Insurance Contract, did not pass.
- The membership voted to approve Tentative Draft No. 3 as amended by the motion regarding the Firefighter's Rule.

### Actions Taken continues on page 3

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

The Quarterly Newsletter of The American Law Institute  
Volume 46 Number 3 Summer 2024

### THE PRESIDENT'S LETTER BY DAVID F. LEVI

Each year, the summer edition of the *Reporter* chronicles all that we have accomplished together over the course of the past year by reporting on the Annual Meeting. This year, we met in San Francisco. We had initially planned this trip to the west coast for 2020, but that year, the pandemic forced ALI to cancel the Meeting. The pandemic also forced all of us to change the way we worked and lived and some of those changes persist. In the few years since the pandemic, we have returned to a new normal, returning to in-person events and meetings but adding hybrid capabilities for our project meetings to make it easier for members from across the country to participate in our work. Seeing so many of our members in attendance at this year's Meeting confirmed what I already knew—the ALI Annual Meeting is an extraordinary gathering.

This year, we had seven projects on the agenda. Two projects, Children and the Law and Torts: Medical Malpractice, received final membership approval and are now being prepared as Official Texts. The approval of a project is an accomplishment to be celebrated, representing the culmination of years of work and debate.

The Annual Meeting is full of great moments, beyond final project approvals and the daily “actions taken” updates. The debates on difficult legal questions are a particular highlight. Our members, including some of the greatest legal thinkers and foremost practitioners on these topics, question the Reporters and offer wisdom and insight from their years of work and experience in comments from the floor. These discussions, whether prompted by a member's motion or a particularly thorny Restatement provision,

**Continued on page 2**

**Now Available:**  
Restatement of the Law, Consumer Contracts

SEE PAGE 16 FOR MORE



## THE PRESIDENT'S LETTER

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sharpen the issues and draw out a range of considerations. And, often, a member who has listened to the debate and remained open to hearing all sides of the argument will take the microphone and synthesize competing perspectives or offer a solution to a seemingly intractable issue. Experiencing an Annual Meeting debate, and perhaps even more, experiencing the collective “aha moment” of the membership, is remarkable.

The Meeting also features special speakers and events. This year, we had an extraordinary lineup from corporate America, academia, and the judiciary. At Monday lunch, Stanford Law Professor and ALI Reporter Pam Karlan spoke with U.S. District Judge Yvonne Gonzalez Rogers about the ALI's new project on constitutional torts. At Tuesday's dinner, we were treated to a conversation between retired Supreme Court Associate Justice Stephen Breyer and two of his former clerks, New York Court of Appeals Judge Caitlin Halligan and Stanford Provost Jenny Martinez. At lunch on Tuesday, we heard about the challenges facing our court systems from current and former chief justices and judges—California former Chief Justice (ret.) Tani Cantil Sakauye, District of Columbia Chief Judge Anna Blackburne-Rigsby, and our own director, former Chief Judge of the Seventh Circuit, Diane P. Wood. And we closed out our Meeting by celebrating our new Life Members and 50-Year Members with a luncheon and talk between Microsoft President Brad Smith and Medtronic EVP and General Counsel Ivan Fong (also a Life Member class inductee and Treasurer of the ALI). You can read more about our incredible speakers on page 8 of this edition.

The Annual Meeting also is also a place of community and connection—an opportunity for our members to get to know our speakers, Reporters, and each other. Whether it's a new member sharing her excitement about being assigned to a dinner table with ALI members she otherwise would not have met, or a long-time ALI member joyfully congratulating a former student, now an ALI Reporter, on the approval of a Restatement. Each year, we hear numerous stories of members forging friendships, building relationships, and re-establishing connections at the Annual Meeting.

Our Meeting will return to Washington, D.C., in 2025. Recognizing that holding the meeting in San Francisco gave our west coast members the opportunity to more easily attend the Meeting, however, we are considering moving the Annual Meeting around the country more regularly. No matter where the Meeting occurs, I hope that you will do what you can to join us each year.

After more than 30 years as a member of the Institute, I still look forward to attending our Annual Meetings. If you were in San Francisco this year, I thank you for giving us your time and insights. If you were unable to join us, I ask you to consider looking ahead to next year and marking your calendars now (May 19-21, 2025).

In the meantime, I hope you will also consider joining us, whether in person or by Zoom, for a project meeting. I attended several such meetings this year, both in person and by Zoom, and found all of them intellectually invigorating. The projects address timely and challenging questions; the participants are the leading experts in their fields; and the discussions are engaging, incisive, and offer a range and depth of analysis that you won't find in many other venues. Any member can attend and help shape the projects and drafts that come before the full membership at the Annual Meeting. If you are interested in learning more, please take a look at the list of upcoming project meetings at the “Meetings” tab on our website.

Wishing you a happy, healthy, and relaxing summer, before we come together once again at a fall project meeting.

*David*

## MEETINGS AND EVENTS CALENDAR AT-A-GLANCE

Below is a list of upcoming meetings and events. For more information, visit [www.ali.org](http://www.ali.org).

### 2024

**September 26**  
**Restatement of the Law Third, Torts: Miscellaneous Provisions**  
Philadelphia, PA

**October 17-18**  
**Council Meeting - October 2024**  
Philadelphia, PA

**October 25**  
**Restatement of the Law Fourth, Property**  
Philadelphia, PA

**October 31**  
**Restatement of the Law, Copyright**  
Philadelphia, PA

**November 7**  
**Principles of the Law, High-Volume Civil Adjudication**  
Philadelphia, PA

**November 8**  
**Restatement of the Law Third, Conflict of Laws**  
Philadelphia, PA

**November 15**  
**Restatement of the Law Third, Torts: Remedies**  
Virtual

### 2025

**May 19-21**  
**2025 Annual Meeting**  
Washington, DC

## ACTIONS TAKEN AT THE ANNUAL MEETING

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### DAY TWO – TUESDAY MAY 21, 2024

**Copyright.** This session was chaired by Council member Wallace B. Jefferson. Reporter Christopher Jon Sprigman and Associate Reporters Lydia Pallas Loren, R. Anthony Reese, and Molly S. Van Houweling presented Tentative Draft No. 5. Membership voted to approve the draft.

**Torts: Remedies.** Reporters Douglas Laycock and Richard L. Hasen were joined on the dais by Council member Laura Denvir Stith. Membership voted to approve the draft.

### DAY THREE – WEDNESDAY, MAY 22, 2024

The final project session for this year’s Meeting was **Corporate Governance**. Council member Judith A. Miller joined Reporter Edward B. Rock and Associate Reporters Elisabeth de Fontenay and Marcel Kahan in the presentation of Tentative Draft No. 2.



Keith Bradley of Squire Patton Boggs LLP

## Two Projects Completed at this Year’s Meeting

### RESTATEMENT OF THE LAW, CHILDREN AND THE LAW

Restatement of the Law, Children and the Law, is the first Restatement to comprehensively examine the legal regulation of children. Launched in 2015, this Restatement covers issues such as parental rights and state intervention in cases of abuse and neglect; the rights of students and the limits of state authority in public schools; the rights and special protections of youth in both the juvenile and criminal justice systems, from police contact to dispositions and sentencing; and children as legal persons, covering free-speech rights and the authority of minors to consent to certain medical decisions, among other things.

The Restatement is led by Reporter Elizabeth Scott of Columbia Law School, with Associate Reporters Richard J. Bonnie of University of the Virginia School of Law, Emily Buss of the University of Chicago Law School, Clare Huntington of Columbia Law School, and Solangel Maldonado of Seton Hall University School of Law. Martin Guggenheim of New York University School of Law and David D. Meyer of Brooklyn Law School also previously served as Associate Reporters.



Children and the Law Reporters celebrate the completion of the project with ALI President Levi and ALI members.



ALI Director Diane P. Wood, ALI Council Member Troy A. McKenzie, Associate Reporters Richard J. Bonnie and Solangel Maldonado, Reporter Elizabeth S. Scott, Associate Reporters Emily Buss and Clare Huntington, and ALI President David F. Levi

“We are thrilled to be completing this project at an ideal time in the evolution of the law of children,” said project Reporter Elizabeth Scott. “The law’s treatment of children has become very complex over the past several decades and has been in need of clarification and coherence. While traditionally children were assumed to be dependent, vulnerable and incompetent, today they are rights-bearing legal persons for some purposes—but not others. Meanwhile parental rights continue to be robust, but have been subject to growing criticism. And the past generation has seen remarkable reform of the regulation of youth in the justice system after a period of harsh policies in the late 20th century. The challenge we faced in embarking on this Restatement was to find coherence in this evolving area of law and to capture beneficial law reform. With the assistance of a wonderful Adviser group and the ALI Council, we think we have been successful.

The Restatement is organized in four Parts: Children in Families, Children in Schools, Children in the Justice System, and Children in Society.

“We hope that organizing this work into these various natural categories of the law of children makes this resource easily navigable and accessible by not just the lawyers and judges who are familiar with our Restatements, but also for the social workers, school administrators, and other child advocates looking for guidance on developments in any of these areas,” said ALI Director Diane P. Wood.

“Although jurisdictions vary in their treatment of some areas of law,” continued Scott, “our research found an underlying coherence that unifies the legal treatment of children; across the legal landscape, modern courts aim to promote child wellbeing. In pursuing this goal, modern courts increasingly turn to developmental science and other empirical research on children and families and on the parent-child relationship. This Restatement follows this trend, which has contributed to positive reforms, particularly in the realm of youth justice, but in other areas as well.

“Working closely with our amazing advisory group, which included a social science advisory panel of experts, we took on some of the most complicated issues in the law of children. For example, we sought to bring clarity to the definition of children as legal persons, and to articulate when and why they sometimes possess the same rights as adults. In areas where children are treated differently from adults, we have attempted to clarify and restate protections for children, particularly in the sections on Children in the Justice System. This was perhaps our most important goal—to capture the law’s protection of children, while incorporating its recognition that children are legal persons, whose wellbeing sometimes is advanced by having the legal rights of adults.”

“This Restatement grapples with enormously complex issues in a balanced and sophisticated manner, weaving together a deep understanding not only of legal doctrine but also of public policy and a variety of other disciplines, including developmental psychology and neuroscience to support and explain the law that governs children,” added ALI Director Wood. “It will be a useful and influential resource. For that, the Institute is enormously grateful to the Reporters as well as to their dedicated Advisers and Members Consultative Group.”

## RESTATEMENT OF THE LAW THIRD, TORTS: MEDICAL MALPRACTICE

Led by Reporters Nora Freeman Engstrom of Stanford Law School, Michael D. Green of Washington University School of Law, and Mark A. Hall of Wake Forest University School of Law, Torts: Medical Malpractice was launched as part of Restatement of the Law Third, Torts: Concluding Provision (now “Miscellaneous Provisions”), in January 2019. Beginning with the drafts prepared for the 2023 Annual Meeting, the Medical Malpractice portion of the project was produced separately as the Restatement of the Law Third, Torts: Medical Malpractice

“As work on the then-named Concluding Provisions progressed, it became clear that the material on medical malpractice was sufficiently complex, significant, and voluminous to warrant independent treatment,” said ALI Director Diane P. Wood. “As a result, last year we spun off the provisions dealing with medical liability into a distinct volume, Restatement of the Law Third, Torts: Medical Malpractice.”



ALI Council Member Jeffrey S. Sutton of the U.S. Court of Appeals, Sixth Circuit, Reporters Michael D. Green, Mark A. Hall, and Nora Freeman Engstrom, ALI Director Diane P. Wood, and ALI President David F. Levi



Jon B. Streeter of the California Court of Appeal, First Appellate District, Division Four (Children and the Law session)



Laura Denvir Stith of the Supreme Court of Missouri (Medical Malpractice session)

The Restatement of Torts is nearly as old as the Institute itself. The Institute was founded in 1923, and that same year the ALI began working on its first four Restatements: Agency, Conflict of Laws, Contracts, and Torts.

“Since the continued reassessment of the law and the Restatements is at the core of the Institute’s function, a Second Restatement of Torts was completed in 1979, and we are now engaged in the Third Restatement,” added Director Wood. The Institute has published four components of the latest Restatement, which has been broken up into a set of volumes focused on particular areas, including Products Liability; Apportionment of Liability; Liability for Physical and Emotional Harm; and Liability for Economic Harm. Intentional Torts has received its final approval and is being prepared for publication. The Torts provisions within the Property Restatement are well underway, as are distinct projects on Remedies; Defamation and Privacy; and Miscellaneous Provisions. When these ongoing projects are completed, the ALI will have produced a body of work that entirely supersedes the Restatement Second of Torts.”

Restatement of the Law Third, Torts: Medical Malpractice focuses on distinct liability issues that arise when a patient seeks or obtains medical care. It focuses on the doctrinal core that distinguishes medical liability from other areas of tort law, leaving to other portions of the Restatement Third of Torts coverage of the many generally applicable topics and doctrinal elements that can arise across a range of tort actions, including medical malpractice.

The project is organized into fifteen sections:

- § 1. Patient and Provider Defined
- § 2. Patient-Care Relationship
- § 3. Duties to Patients and Others
- § 4. Liability for Breach of Duty
- § 5. Standard of Reasonable Medical Care
- § 6. Establishing Breach of the Standard of Care
- § 7. Res Ipsa Loquitur
- § 8. Lost Chance
- § 9. Agreements Affecting Medical Liability
- § 10. No Waiver of Liability
- § 11. Agreements to Take a Nonstandard Approach to Care
- § 12. Informed Consent: Duty and Exceptions
- § 13. Informed Consent: Factual Cause and Scope of Liability
- § 14. Medical Institutions' Duties
- § 15. Vicarious Liability

“As we wrap up our work, we gratefully acknowledge the invaluable contributions of the many members who have assisted us in this challenging endeavor,” said Reporters Engstrom, Green, and Hall in a joint statement. “We are particularly indebted to the many dedicated Advisers and MCG members, who have volunteered their time and expertise to this effort—and to the Council members who have suggested revisions to key portions of our draft with diligence, attention, and focus.”

The American Law Institute would like to thank the Reporters, Advisers, Liaisons, Social Science Advisory Panel members, dedicated ALI members, and ALI Council members who gave their time and wisdom to these projects.

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 or by motions approved at the Annual Meeting. Until the official text is published, the drafts approved by the membership are the official position of ALI, and may be cited as such.

## Updates to ALI Council, Including the Election of Six New Council Members

During Monday's Reports and Business session at the Annual Meeting, the ALI membership approved the election of six ALI Council nominees to a five-year term.

The new Council members are **Stephanos Bibas** of the U.S. Court of Appeals for the Third Circuit; **Bridget M. McCormack** of the American Arbitration Association-International Centre for Dispute Resolution; **Darrell A.H. Miller** of Duke University School of Law; **Randolph D. Moss** of the U.S. District Court for the District of Columbia; **Teresa Wynn Roseborough** of The Home Depot; and **Sarah Hawkins Warren** of the Georgia Supreme Court. Short biographies of the new Council members can be found on the ALI website.

Additionally, ten Council members were reelected by the ALI membership, in each case for a five-year term. They are: Scott Bales of the Arizona Supreme Court (Retired), Evan R. Chesler of Cravath, Swaine & Moore LLP, Allison H. Eid of the U.S. Court of Appeals for the Tenth Circuit, Daniel C. Girard of Girard Sharp LLP, Thomas M. Hardiman of the U.S. Court of Appeals for the Third Circuit, Teresa Wilton Harmon of Sidley Austin, Pamela S. Karlan of Stanford Law School, Lance Liebman of Columbia Law School, Raymond J. Lohier Jr. of the U.S. Court of Appeals for the Second Circuit, and Seth P. Waxman of WilmerHale.

The following six Council members took emeritus status at the end of the 2024 Annual Meeting: John H. Beisner of Skadden, Arps, Slate, Meagher & Flom, Derek P. Langhauser of Maine Maritime Academy and Community Colleges, Gerard E. Lynch of the U.S. Court of Appeals for the Second Circuit, M. Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit, David W. Rivkin of Arbitration Chambers, and Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York.



Bibas



McCormack



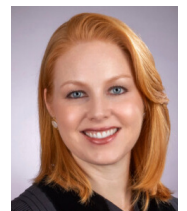
Miller



Moss



Roseborough



Warren

# Lance Liebman, Thelton Henderson Honored at ALI Annual Meeting



The American Law Institute presented the Distinguished Service Award to Lance Liebman and the John Minor Wisdom Award to Thelton E. Henderson at this year's Annual Meeting on Monday, May 20.

From left: Thelton E. Henderson, David F. Levi, Yvonne Gonzalez Rogers, Lance Liebman, Diane P. Wood, and Roberta Cooper Ramo

## Distinguished Service Award: Lance Liebman

The Distinguished Service Award was presented to former ALI Director (1999 to 2014) Lance Liebman of Columbia Law School by former ALI President (2008-2017) Roberta Cooper Ramo of Modrall Sperling. It 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 as the greatest private law-reform organization in the world. Director Emeritus Liebman by all accounts epitomizes the ideal recipient of this award.



During his time as Director of The American Law Institute, Liebman oversaw a significant expansion of the Institute's work, as well as the development of ALI's international partnerships, including with the European Law Institute. His commitment to ALI's contribution to the international community continues today.

Upon presenting the award to Liebman, Roberta Cooper Ramo celebrated Liebman's strength of character when facing challenges, "His wonderful humor used often

to diffuse tension and difficult conversations, and his warm personality, which disarm the prickly and breaks through conventional thinking about almost everything. Lance is both distinguished and has given his life to service to the American legal profession and to our democracy."

Restatement projects begun during his tenure include American Indian Law, Charitable Nonprofit Organizations, Consumer Contracts, Employment Law, Data Privacy, International Commercial and Investor-State Arbitration, three Torts projects (Economic Harm; Intentional Torts; and Physical and Emotional Harm), and Concise Restatement volumes on Law Governing Lawyers, Property (compiled by Liebman himself), and Torts. Principles projects started during Liebman's tenure include: Aggregate Litigation, Election Law, Government Ethics, Software Contracts, and Transnational Intellectual Property. ALI also began its work on two portions of the Model Penal Code: Sentencing and Sexual Assault and Related Offenses. Liebman guided each of these projects through numerous drafts at project, Council, and Annual Meetings.

Liebman earned his B.A. from Yale University, an M.A. from Cambridge University, and his J.D. from Harvard Law School. Before joining Columbia in 1991 as Dean and Lucy G. Moses Professor of Law, Liebman was on the faculty of Harvard Law School for 21 years, becoming a full professor in 1976 and serving as Associate Dean from 1981 to 1984. He spent two years working on transportation and community issues as an Assistant to Mayor John V. Lindsay of New York City, after serving as a law clerk to Justice Byron White of the Supreme Court of the United States during the 1967 term.

Liebman has been a Visiting Fulbright Professor of Law at Maharajah Sayajirao University in Baroda, India, a visiting lecturer at Tokyo University, and an adviser for the Japanese Institute of Labor. He also taught at the Harvard-Fulbright School in Ho Chi Minh City, Vietnam, and at the Hebrew University of Jerusalem, Israel.

## John Minor Wisdom Award: Thelton E. Henderson

The John Minor Wisdom Award was presented to Thelton Henderson by Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California. The Wisdom Award is given from time to time in specific recognition of a member's contributions to the work of the Institute or a person's outstanding achievement in the area of civil rights and related fields following the example of Judge Wisdom.

“It has been said that law is a human exercise,” said Gonzalez Rogers when introducing Henderson. “Despite the peaks and valleys of his life, Judge Henderson’s life experience is filled with the hope and promise of justice. He has and continues to serve as a role model to us all.”



An elected member of The American Law Institute, Henderson received his B.A. in political science from the University of California at Berkeley. After graduation, Henderson was drafted into the United States Army, where he served as a clinical psychology technician. He earned his J.D. from University of California, Berkeley School of Law.

Upon graduation, Henderson was hired as an attorney with the civil rights division of the United States Department of Justice, where he served from 1962 to 1963. During his tenure with the Justice Department, Henderson investigated patterns of discriminatory practices in the South.

He practiced general law in private practice and was the directing attorney of the East Bayshore Neighborhood Legal Center in Palo Alto. From 1968 to 1976, Henderson was the assistant dean of the Stanford University School of Law. There, he helped increase minority enrollment to twenty percent of the student body during his tenure. In 1977, he became a founding partner of Rosen, Remcho and Henderson in San Francisco. He also taught administrative law and civil procedure at Golden State University of Law in San Francisco.

In 1980, Henderson was appointed to the United States District Court for the Northern District of California. He was later appointed chief judge in 1990, becoming the first African American to reach that position. He assumed senior status in 1998 and retired in 2017.

The Thelton E. Henderson Center for Social Justice at Berkeley Law is named in his honor in recognition of his tremendous dedication to transformative justice, noting, “Judge Henderson has a remarkable ability—and willingness—to protect the vulnerable among us. In 1987, he became the nation’s first judge to declare that gay people, like racial minorities, are entitled to equal protection and due process of law under the United States Constitution. While the Ninth Circuit Court of Appeals reversed the decision, we now know that he was ahead of his time: twenty-eight years later, the United States Supreme Court agreed that gay people are entitled to marriage equality.” ■

## Annual Meeting Sunday Programs

This year’s Annual Meeting featured two Sunday programs. The day began with a special program on the book ***Shortlisted: Women in the Shadows of the Supreme Court***, with authors Renee Knake Jefferson and Hannah Brenner Johnson, moderated by ALI Director Diane P. Wood.

Shortlisted tells the overlooked stories of nine extraordinary women who appeared on presidential lists dating back to the 1930s. Florence Allen, the first female judge on the highest court in Ohio, was named repeatedly in those early years. Eight more followed, including Amalya Kearse, a federal appellate judge who was the first African American woman viewed as a potential Supreme Court nominee.



ALI Director Diane P. Wood, Renee Knake Jefferson, and Hannah Brenner Johnson

The second program of the day was the **ALI CLE Ethics Program: Artificial Intelligence and Civil Liability**. Planning chair and moderator Colleen Chien of Berkeley Law was joined by panelists Richard F. Boulware II of the U.S. District Court for the District of Nevada, Mark Geistfeld of NYU Law, Tom Lue of Google DeepMind, and Andy Song of Manifold.

The panel explored the ways that tort law has interfaced with innovation over the years and how this can help us understand the ways in which AI and civil liability may be understood, as well as what adjustments we should be making now to prepare for the future of AI.



Andy Song, Tom Lue, Colleen Chien, Richard F. Boulware II, and Mark Geistfeld

# Speakers at the Annual Meeting

## MONDAY LUNCHEON DISCUSSION:

### New ALI Project on Constitutional Torts

This luncheon featured ALI Council member **Yvonne Gonzalez Rogers** of the U.S. District Court for the Northern District of California discussing one of the Institute's newest projects, Restatement of the Law, Constitutional Torts, with project Reporter **Pamela S. Karlan** of Stanford Law School.

Gonzalez Rogers and Karlan discussed the ways in which this project can provide clarity to courts when handling constitutional law issues, noting how this project's approach will deviate from Restatements' general focus on common law. Instead, this project will focus its attention on providing clarification to statutory interpretations of 42 U.S.C. § 1983. Both emphasized the importance of involvement from ALI members with varying levels of experience in this area of law.



Pamela S. Karlan



Yvonne Gonzalez Rogers



New Members Keira Campbell of American Express and David Thomson of the New Mexico Supreme Court



Tani Cantil-Sakauye



Diane P. Wood, Anna Blackburne-Rigsby, and Tani Cantil-Sakauye

## TUESDAY LUNCHEON DISCUSSION:

### Public Trust in the Courts

Tuesday's luncheon featured two distinguished leaders of state court systems—**Anna Blackburne-Rigsby**, Chief Judge of the District of Columbia Court of Appeals, and former Chief Justice of the California Supreme Court **Tani Cantil-Sakauye**, currently president and CEO of the Public Policy Institute of California.

Joined by ALI Director Diane P. Wood, the discussion addressed two key challenges facing the U.S. justice system: declining public trust in the courts and issues of access to justice. Blackburne-Rigsby and Cantil-Sakauye shared insights from their experiences and the initiatives they have led to address these challenges. The discussion also touched on the potential role of artificial intelligence in addressing some of the challenges facing the justice system.





Brad L. Smith

### WEDNESDAY LUNCHEON DISCUSSION:

## Artificial Intelligence

After the presentation of the 1999 Class Gift, ALI Council member **Ivan K. Fong**, Executive Vice President, General Counsel and Secretary at Medtronic, joined **Brad L. Smith**, Vice Chair and President of Microsoft, in a conversation about artificial intelligence.

Fong and Smith addressed several legal and policy questions about AI, including the current state and future of generative AI, ways AI can improve and potentially harm legal practice and the administration of justice, and the potential methods of utilizing AI in an effort to bridge the gap of access to justice.



Ivan K. Fong

### EARLY CAREER SCHOLARS MEDAL PRESENTATION:

## Leah Litman on Remedial Essentialism

The final day of the Annual Meeting began with the presentation of the Early Career Scholars Medal to Co-Recipient Leah Litman of the University of Michigan Law School followed by Litman's presentation on the topic of remedial essentialism.

After an introduction from ALI Director Diane P. Wood, Litman presented on the topic of post-conviction remedies. Specifically, Litman discussed the topic of remedial essentialism, where courts attribute certain fixed attributes to post-conviction remedies based on an idea about what post-conviction remedies inherently are in their essential nature. Litman argues that courts then use that conception of post-conviction remedies to interpret or mold the statutory post-conviction mechanisms.

Litman is a Professor of Law at the University of Michigan Law School, where she teaches and writes on constitutional law, federal courts, and federal sentencing. Her research examines unidentified and implicit values that structure the legal system, the federal courts, and the legal profession.

Following her clerkships first with Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit and then with Justice Anthony M. Kennedy on the Supreme Court of the United States, she worked at Wilmer Cutler Pickering Hale and Dorr LLP, where she specialized in appellate litigation. Litman previously was a Climenko Fellow and Lecturer on Law at Harvard Law School, where she received one of its inaugural Student Government Teaching and Advising Awards, and an assistant professor at the University of California, Irvine School of Law, where she received the Professor of the Year Award in 2019. She also has been a visiting assistant professor in the Supreme Court Litigation Clinic at Stanford Law School. In 2021, Michigan Law students awarded her the L. Hart Wright Teaching Award.



ALI Director Diane P. Wood and Leah Litman



Videos of the discussions and presentation are available on the ALI website at [www.ali.org/annual-meeting-2024/videos](http://www.ali.org/annual-meeting-2024/videos).

# Special Events at the Annual Meeting

## ALI Welcomes Our Newest Members



Sunday Welcome Dinner hosts Tracie L. Brown of the California First District, Court of Appeal; Dan Robbins of the Motion Picture Association, and Jean-Jacques Cabou of Perkins Coie



Avani Mehta Sood of New York University School of Law; Maggie Gardner of Cornell Law School; Alexander A. Reinert of Yeshiva University, Benjamin N. Cardozo School of Law; and Josh Bowers of University of Virginia School of Law



Holly A. Thomas and Gabriel P. Sanchez, both of the U.S. Court of Appeals, Ninth Circuit

← **Left:** ALI welcomed its newest members and first-time Meeting attendees at the Welcome Reception, held Sunday evening before the Annual Meeting kicked off.



Dalié Jiménez of University of California, Irvine School of Law and Christine Chambers Goodman of Pepperdine University, Caruso School of Law



Ajay Krishnan of Keker, Van Nest & Peters LLP



Derek T. Muller of Notre Dame Law School

# Members Reception



Members and guests gathered at the Exploratorium for Monday's Members Reception.



Michael K. Brown of Brown Gee & Wenger LLP



ALI Deputy Director Eleanor Barrett



Swithin J. Munyantwali of ILI-South African Centre for Excellence and Carolyn H. Nichols of the Superior Court of Pennsylvania



Jacquelyn L. Bridgeman of University of Wyoming College of Law, Marsha E. Simms of Weil, Gotshal & Manges LLP (Retired), and William J. Woodward of Temple University Beasley School of Law (Emeritus)



J. Brett Busby of the Texas Supreme Court and Ivan K. Fong of Medtronic PLC

## Annual Dinner



Members and guests at the reception preceding the Annual Dinner



George C. Hanks, Jr. of the U.S. District Court, Southern District of Texas and Jane Bland of the Texas Supreme Court



Joanna C. Schwartz of University of California, Los Angeles School of Law; Alison Siegler of University of Chicago Law School, Federal Criminal Justice Clinic; and Darrell A.H. Miller of University of Chicago Law School



Jennifer S. Martin of Albany Law School, Gregory A. Castanias of Jones Day, and Aaron D. Simowitz of Willamette University College of Law



S. Albert Wang of Halpern May Ybarra Gelberg LLP



Maegen Peek Luka of Newsome Melton PA



Christopher K. Odinet and Robert B. Ahdieh, both of Texas A&M University School of Law



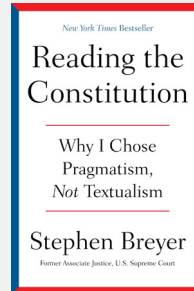
**Stephen Breyer**, retired Associate Justice of the Supreme Court of the United States, appeared in conversation with two of his former clerks, **Caitlin Halligan** of the New York State Court of Appeals and **Jenny Martinez** of Stanford University at this year's Annual Dinner.

Justice Breyer discussed his new book *Reading the Constitution: Why I Chose Pragmatism, Not Textualism*, published by Simon and Schuster. The below is the book's abstract.

*The relatively new judicial philosophy of textualism dominates the Supreme Court. Textualists claim that the right way to interpret the Constitution and statutes is to read the text carefully and examine the language as it was understood at the time the documents were written.*

*This, however, is not Justice Breyer's philosophy nor has it been the traditional way to interpret the Constitution since the time of Chief Justice John Marshall. Justice Breyer recalls Marshall's exhortation that the Constitution must be a workable set of principles to be interpreted by subsequent generations.*

*Most important in interpreting law, says Breyer, is to understand the purposes of statutes as well as the consequences of deciding a case one way or another. He illustrates these principles by examining some of the most important cases in the nation's history, among them the *Dobbs* and *Bruen* decisions from 2022 that he argues were wrongly decided and have led to harmful results.*



Jenny Martinez poses a question to retired Associate Justice Breyer.



Caitlin Halligan



ALI President David F. Levi introduces dinner speakers (from left to right) Jenny Martinez, retired Associate Justice Stephen Breyer, and Caitlin Halligan



A VIDEO OF THE CONVERSATION IS AVAILABLE ON THE ALI WEBSITE.

# ALI Honors the Classes of 1999 and 1974

ALI celebrated its new Life Members and 50-Year Members—the Classes of 1999 and 1974—at a luncheon held on Wednesday, May 22 during the Annual Meeting in San Francisco, CA. There, a Class Gift was presented to the Institute by 1999 Class Committee member Steven K. Balman of Shook & Johnson. Also serving on the Committee were Gary Brian Born of WilmerHale, John G. Buchanan III of Covington & Burling LLP, Ernest Calderón of Calderón Law Offices, PLC, Carol Rose Goforth of University of Arkansas School of Law, Leflar Law Center, and James E. Pfander of Northwestern University Pritzker School of Law.

Before the Class Gift presentation, President Levi introduced ALI Council member Ivan K. Fong (ALI class of 1999), Executive Vice President, General Counsel, and Secretary at Medtronic, and Brad L. Smith, Vice Chair and President of Microsoft, who spoke in a conversation about the development and innovativeness of Artificial Intelligence (AI). Smith stressed the need for strict rules in tech to prevent AI misuse and called for updated laws to regulate it effectively. Fong suggested creating closed systems within companies to keep conversations internal. He proposed training AI to recognize and filter sensitive data and highlighted its ability to analyze sentiment. The conversation concluded with Fong thanking Smith and highlighting the importance of vigilance against AI risks.



Life Members Luncheon speakers Ivan K. Fong of Medtronic and Brad L. Smith of Microsoft Corporation

Following the conversation, ALI President David F. Levi took the stage to express his gratitude for the Class Gift and to acknowledge the new Life and 50-year members in attendance. Representing the latter were 1974 Class members James B. Craven, III of Craven Law Firm, Peter F. Langrock of Langrock Sperry and Wool, LLP, Mary M. Schroeder of the U.S. Court of Appeals, Ninth Circuit, and Guy Miller Struve of Davis Polk and Wardwell LLP (Retired). All 17 members of the Class of 1974 will receive medallions honoring their 50 years as members of the Institute.

Mr. Balman then presented the Class Gift, noting that the Class surpassed its goal for the campaign by making a gift of \$202,756. Balman expressed gratitude to Professor Charles W. Adams who described the ALI as a group of passionate legal scholars, practitioners, and judges who engage in civil discourse and thoughtful deliberation about the law. This inspired Balman to attend the ALI's 75th anniversary meeting, where he saw the truth of Adams' words, leading to his ongoing involvement with the Institution.

The Class Gift will help fund important aspects of the Institute's mission, including our travel assistance programs, the Early Career Scholars Medal and annual conference, and our many influential law-reform projects.

The Class Gift program will continue with the 2000 and 1975 Life Member Classes, which will be honored at ALI's 2025 Annual Meeting next May in Washington, D.C.

## The 1999 Life Member Class Gift

The 1999 Life Member Class Gift will be used to fund important aspects of the Institute's mission, including our travel assistance programs, the Early Career Scholars Medal and annual conference, and initiatives to make our work more accessible by providing free public access.

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

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Members of the Class of 1974



Members of the Class of 1999 gathered to celebrate 25 years with the Institute.

Donors as of June 30, 2024. Giving Circle Donors and Sustaining Life Donors are Sustaining Life Members for the 2024-2025 fiscal year.

The ALI Development Office has made every attempt to publish an accurate list of donors for the 1999 Life Member Class Gift campaign. In the event of an error or omission, please contact Beth Goldstein at 215-243-1666 or bgoldstein@ali.org.

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

# Restatement of the Law, Consumer Contracts Is Available

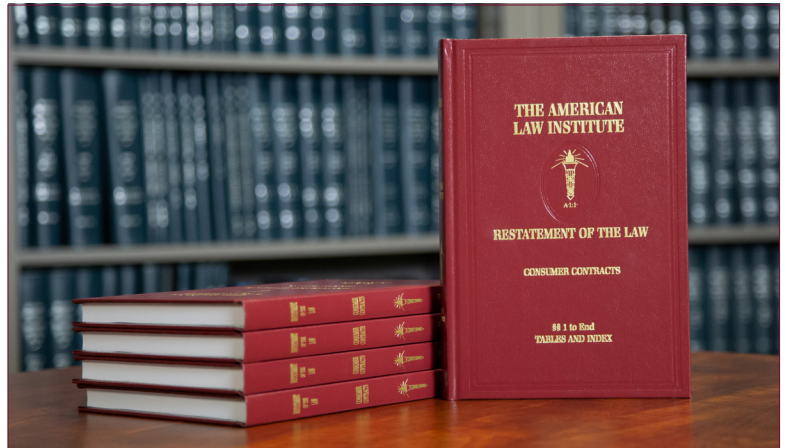
This Restatement seeks to clarify how the courts have applied contract law embodied in the Restatement of the Law Second, Contracts to transactions that either were not contemplated at the time the earlier Restatement was completed (and therefore not addressed), like the purchase of software licenses and all online transactions, or have become a more significant part of the economy since that time.

Consumer contracts present a fundamental challenge to the law of contracts, arising from the asymmetry in information, sophistication, and stakes between the parties to these contracts: the business and the consumers. On one side stands a well-informed and counseled business party, entering numerous identical transactions, with the tools and sophistication to understand and draft detailed legal terms and design practices that serve its commercial goals. On the other side stand consumers who are informed only about some core aspects of the transaction but rarely about the list of standard terms. These consumers enter the transaction solely for personal or household purposes without any professional understanding of its legal contours.

In restating the rules that apply contract law to consumer contracts, this Restatement relies on the common-law principles that have been guiding courts in adjudicating consumer contract disputes. Those principles were originally found in the Restatement of the Law Second, Contracts (and often reflect the statutory provisions of the Uniform Commercial Code (UCC)) but have evolved and been applied by the courts in particular and important directions that are specific to consumer contracts and are restated in this Restatement. When appropriate and consistent with the common law of contracts and the UCC, the rules of this Restatement also reflect the principles of fairness and anti-deception guiding consumer protection statutes and regulations, just as the UCC influenced provisions of the Restatement of the Law Second, Contracts.

The challenges posed by consumer contracts have heightened over the past generation as courts have adapted traditional contract law rules to consumer contracts. To track this development, this Restatement follows the traditional ALI methodology and bolsters it with an additional layer of transparency. Primarily, this Restatement follows leading court decisions, eliciting from them the guiding rationales. It clarifies the policy goals underlying the rules applied by courts and develops their conceptual implications to accord them greater clarity and coherence.

In addition, and in order to confirm that the rules identified through this primary method indeed reflect the “law in action,” the Reporters read the entire body of contract-law decisions relating to consumer contracts and to a number of the rules of this Restatement—higher-court as well as lower-court decisions, both state-court and federal-court (applying state law) cases, published and unpublished, and holdings as well as dicta, made available in online legal-research directories and from secondary sources. By looking at all the information flowing from case law and carefully organizing it according to outcomes, rationales, and influence, this methodology made it possible to examine with greater subtlety the emerging rules, their impact, and their prominence. It decreases the possibility that important or well-reasoned cases may have been missed and allows a closer consideration of the evolution of the doctrine to better understand how courts are addressing key issues.



**PURCHASE NOW ON THE ALI WEBSITE AT  
[WWW.ALI.ORG/CONSUMER-CONTRACTS](http://WWW.ALI.ORG/CONSUMER-CONTRACTS)**



The project was led by Reporters Florencia Marotta-Wurgler of New York University School of Law, Oren Bar-Gill of Harvard Law School, and Omri Ben-Shahar of the University of Chicago Law School.



2022 Annual Meeting



## How is the Restatement organized?

The traditional method of legal reasoning is reflected in the black letter and explicated in the Comments to the Sections of this Restatement. The comprehensive analysis of the entire case law is explained and reported in Reporters' Notes accompanying the relevant Sections. Additionally, as the case law on consumer contracts continues to develop, this Restatement does not seek to cement the rules governing this body of law and stifle their evolution. Rather, this Restatement clarifies and unifies the principles that underlie several decades of jurisprudence in the field, establishing a coherent basis for the field's further development.

This Restatement is organized as follows: Section 1 defines key terms, states the scope of this Restatement, and provides a roadmap of this Restatement's structure and provisions. The first substantive rule is the provision on the adoption of standard contract terms in § 2. The rule in § 2 reflects an approach, widely embraced by a large majority of courts, that enables businesses to design the terms of the transaction, as long as they provide reasonable notice and meaningful opportunity to review the terms and to avoid the transaction. This rule is complemented by a related provision in § 3, extending similar principles to the adoption of modifications of standard contract terms.

The remaining Sections comprise a set of rules that rely on ex post scrutiny by courts to limit the risk of abuse. Section 4 restates the rules of interpretation and construction from the Restatement of the Law Second, Contracts, that are most relevant to consumer contracts, including interpretation against the drafter and the duty of good faith and fair dealing. Section 5 addresses the problem of open-ended terms, which grant the business unrestricted discretion to specify and adjust its obligations. Section 6 is the unconscionability rule, providing the framework for refusing enforcement of terms that unreasonably favor the business and unfairly surprise the consumer. Section 7 deals with the problem of deception, whereby the standard contract terms conflict with explicit affirmations or promises made to the consumer. Section 8 includes the rules regarding the legal consequences of precontractual affirmations of fact and promises. Section 9 creates presumptions of integration for standard contract terms (under the parol-evidence rule) and explains how such presumptions are rebutted by prior affirmations of fact or promises. And § 10 completes this list of anti-abuse provisions by stipulating the effects of striking terms out of contracts and related remedies.



2015 project meeting



2017 project meeting



2019 Annual Meeting



2019 Annual Meeting



2022 Annual Meeting



**PURCHASE NOW AT**  
**[WWW.ALI.ORG/CONSUMER-CONTRACTS](http://WWW.ALI.ORG/CONSUMER-CONTRACTS)**

# Spring Project Meeting Updates

## **TORTS: DEFAMATION AND PRIVACY - APRIL 5 (VIRTUAL)**

Project participants discussed Preliminary Draft No. 4, which contains 11 Sections from Chapter 1 - Invasions of Interest in Reputation. Topics covered include: Elements of a Cause of Action for Defamation, Publication of Defamatory Matter, Defamatory Communications, and Applicability of Defamatory Communication to Plaintiff.

## **COPYRIGHT - APRIL 12 (VIRTUAL)**

Project participants examined a revised version of § 6.12 on Fair Use in Chapter 6 - Copyright Rights and Limitations. This project was on the 2024 Annual Meeting agenda. See page 3 for details.

## **U.S. FOREIGN RELATIONS LAW APRIL 19 (CHICAGO, IL.)**

At this inaugural project meeting, project participants were presented with Preliminary Draft No. 1, addressing two basic topics: executive agreements (Chapter 2) and diplomatic and consular immunities (Chapter 7).



U.S. Foreign Relations Law project meeting

## Get Involved by Joining a Members Consultative Group (MCG)

A project's MCG is made up of ALI members who volunteer to join project discussions at any stage of a project's life cycle. MCG members are not necessarily experts in the project's area of law, but provide a vital perspective, as they read the drafts from a generalist's point of view. MCG participants may provide input by attending project meetings and by submitting written comments.

### **CURRENT PROJECTS FOR WHICH MEMBERS MAY JOIN THE MCG:**

Restatement of the Law Third, Conflict of Laws  
 Restatement of the Law, Constitutional Torts  
 Restatement of the Law, Copyright  
 Restatement of the Law, Corporate Governance  
 Restatement of the Law, Election Litigation  
 Restatement of the Law Fourth, The Foreign Relations Law of the United States  
 Principles of the Law, High-Volume Civil Adjudication  
 Restatement of the Law Fourth, Property  
 Restatement of the Law Third, Torts: Defamation and Privacy  
 Restatement of the Law Third, Torts: Miscellaneous Provisions  
 Restatement of the Law Third, Torts: Remedies



If you have not already done so, please consider joining an ALI project now by visiting our [Projects page](#) online.

# Australia's Highest Court Cites Restatement Third of Restitution and Unjust Enrichment

In a recent decision by the High Court of Australia, *Redland City Council v. Kozik* [2024] HCA 7, the Court discussed the applicability of Restatement of the Law Third, Restitution and Unjust Enrichment §§ 19 and 62 to Australian common law in the context of defenses against claims for restitution arising from payments made under a mistake of law.

In that case, the city council fulfilled its statutory functions as a local government authority to perform repair and maintenance work on local waterways by levying special charges on the owners of land adjoining the waterways, who paid under the belief that they were obliged to do so under law. The council later realized that it failed to satisfy statutory requirements that it identify an “overall plan” stating the estimated cost and time of carrying out the work prior to levying the special charges, and, as a result, the special charges levied on the adjoining landowners were illegal. After the council refunded to landowners the unspent portion of the total amount invalidly collected, representatives of certain adjoining landowners who paid the special charges sued, asserting, among other things, a common-law claim for restitution to recover the unrefunded portion of amount of the special charges they had paid.

The Supreme Court of Queensland answered the parties’ common questions for determination in the proceeding, the effect of which was that the landowners failed in their claim for restitution at common law. The Court of Appeal of the Supreme Court of Queensland substituted different answers, the effect of which was that landowners succeeded in their claim for common-law restitution.

In the majority opinion, the Court dismissed the landowners’ cross-appeal, holding that they were not entitled to a refund of monies equal to the amount expended by the city council to fund the maintenance work. The Court explained that, while the landowners demonstrated a “prima facie entitlement” to restitution of the monies they mistakenly paid as special charges, that entitlement was “defeated by demonstration that the retention of so much of those moneys as remain unrefunded” did not result in the city council being “unjustly enriched” when viewed in the totality of the circumstances.

The Court looked to the Restatement of the Law Third, Restitution and Unjust Enrichment § 62 in support of its holding and characterized that Section as a form of defense against claims for restitution. It observed that the Restatement’s examination of the totality of the circumstances reflected the principles of equity and restitution under Australian law. Describing the § 62 defense as the defense of “Recipient Not Unjustly Enriched,” the Court explained that the defense applied to “a case in which a payment by the claimant . . . creates unjust enrichment of the recipient and a prima facie right to recovery in restitution,” but “the larger transactional circumstances disclose otherwise.” Under the circumstances of this case, the Court reasoned, the city council’s retention of

the landowners’ monies could not be characterized as unjust, because the council was obliged by statutes to undertake the maintenance work, the work resulted in special benefit to landowners’ property, the council did not exceed its statutory authority despite the procedural error, and the council acted in good faith at all relevant times.

The Court further acknowledged that an Illustration in § 19 was analogous to this case, in which municipal taxes that were improperly assessed but already spent on ordinary municipal services benefitting taxpayers did not result in the municipality’s unjust enrichment. Lastly, the Court noted that § 33 contemplated the defense set forth by § 62 in the context of municipal corporations.

The dissent argued that the majority erred in recognizing a defense of “Recipient Not Unjustly Enriched” because § 62 conflicted with Australian law. According to the dissent, the concept of unjust enrichment in Australian law was limited to performing a “taxonomical function referring to categories of cases in which the law allows recovery by one person of a benefit retained by another” and could not itself be a premise that was capable of direct application. The Restatement also denied recovery of restitution in circumstances in which such recovery would be permitted under Australian law, such as in the context of restitution following full performance under a void agreement. Further, argued the dissent, § 62 appealed to principles of natural justice and equity, whereas Australian law accepted that natural justice and equity “do not themselves form the basis for direct application.” The dissent characterized § 62 as “judicial discretion to do whatever idiosyncratic notions of what is fair and just might dictate,” which was not consistent with Australian law.

Lastly, the dissent cautioned against the majority’s recognition of another possible defense set forth in § 19, which provided that restitution could be inappropriate if it would “disrupt orderly fiscal administration.” The dissent observed that the § 19 defense was a broader form of the defense of “change of position” under Australian law and, even if recognized under Australian law, the city council failed to plead that defense. The dissent further observed that “it would be a very large step” for this Court to recognize the § 19 defense, as that defense in the United States “was said to take ‘on a significant federal constitutional dimension,’” and applying it to Australian law would impinge upon “notions of constitutional equality between private parties and government.” ■

# What's New on *Reasonably Speaking*?

## COMING SOON

### Attacks on the Judiciary: A Threat to the Rule of Law

This episode addresses the alarming surge of attacks on judges and courts. These attacks range from threats of physical violence to a corrosive rhetoric that undermines public confidence in the judiciary. While criticism of court decisions is a vital aspect of a healthy democracy, dismissing the courts as corrupt or illegitimate threatens the rule of law. ALI President David F. Levi moderates this discussion where panelists share their perspective on the current state of judicial attacks and proposes solutions to uphold the integrity of our judicial system.

#### FEATURED SPEAKERS

**Nathan L. Hecht**, Chief Justice of the Texas Supreme Court

**Bridget McCormack**, President and CEO of the American Arbitration Association-International Center for Dispute Resolution, former Chief Justice of the Michigan Supreme Court

**Thomas Griffith**, former Judge of the U.S. Court of Appeals for the D.C. Circuit, Fellow at the Wheatley Institute at Brigham Young University, Special Counsel at Hunton Andrews Kurth

**Paul Grimm**, David F. Levi Professor of the Practice of Law and Director of the Bolch Judicial Institute at Duke Law School, former U.S. District Judge in Maryland

**Suzanne Spaulding**, Senior Advisor for Homeland Security and Director of the Defending Democratic Institutions Project at the Center for Strategic and International Studies, and Undersecretary for the Department of Homeland Security

### Empowering Everyday Choices: A Conversation on Philip Howard's "Everyday Freedom"

Is America's governing framework hindering our ability to make simple choices in daily life? In this episode of *Reasonably Speaking*, ALI President **David F. Levi** sits down with author and lawyer **Philip Howard** to discuss his new book, *Everyday Freedom: Designing the Framework for a Flourishing Society*.

They're joined by Judge **Edith Jones** of the U.S. Court of Appeals for the Fifth Circuit and Professor **Nicholas Bagley**, Thomas G. Long Professor of Law at the University of Michigan Law School, for a lively conversation that explores Howard's critique of complex legal structures and their impact on our sense of agency. They delve into the book's central theme of "everyday freedom" and how simplifying legal frameworks can empower individuals and revitalize society.

All episodes of ALI's podcast, *Reasonably Speaking*, are available at [www.ali.org/podcast](http://www.ali.org/podcast) and through any podcast application.

## Notes About Members and Colleagues

**Daniel Abebe** will serve as the 16th dean of Columbia Law School, effective August 1, 2024.

**Donald B. Ayer** and **Peter Keisler** have joined the Advisory Council of the Society for the Rule of Law whose mission is to protect the Constitution and the rule of law against rising threats posed by illiberal forces in our society, without regard to political party or partisan affiliation.

**Susan Bandes** of DePaul College of Law coedited a symposium in the *DePaul Law Review* (Spring 2024) on the legal issues in HBO's *Succession*. The issue is based on a zoom class taught by several law professors and a couple of business law professors, and it covers issues of

law and legal pedagogy. Bandes' article "The Sense of an Ending, examines how narrative closure can inform our understanding of legal proceedings, highlighting the differences between legal finality and other forms of closure, particularly in the context of death penalty jurisprudence.

**Richard J. Bonnie** of UVA Law (retired) and **Paul L. Friedman** of the U.S. District Court for the District of Columbia participated in the reenactment and panel discussion on the trial of John Hinckley for the attempted assassination of President Ronald Reagan as moderator and panelist, respectively.

Harvard Law School's magazine *Harvard Law Bulletin* published "Restatement

to the Rescue, Harvard Law Professors Work to Bring Clarity and Cohesion to Property Law," an article discussing the Restatement of the Law Fourth, Property project, with interviews from project Reporters **Molly E. Brady**, **John C.P. Goldberg**, and **Henry E. Smith** of Harvard Law School.

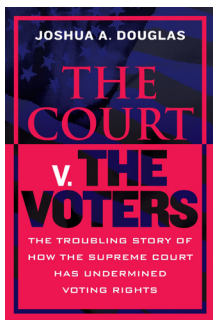
**Stephen Breyer**, retired Associate Justice of the Supreme Court of the United States, has authored *Reading the Constitution, Why I Chose Pragmatism Not Textualism* (Simon & Schuster 2024), a book examining the varying judicial philosophies in the Supreme Court of the United States. Breyer participated in a book talk with **Jeffrey Rosen** of the National Constitution Center as part of the Center's *America's Town Hall* series.

**Irene Calboli** of Texas A&M University School of Law has been elected to the European Law Institute.

**Alan K. Chen** and **Justin Marceau** of University of Denver Sturm College of Law have authored *Truth and Transparency, Undercover Investigations in the Twenty-First Century* (Cambridge University Press 2023), a book discussing political roles of undercover investigators.

**Louis R. Cohen** of WilmerHale, **Henry L. Hecht** of UC Berkeley School of Law, **Michael S. Helfer** of Citigroup Inc. (Retired), **Carol F. Lee** of Taconic Capital Advisors, **Martha L. Minow** of Harvard Law School, **Robert H. Mundheim** of Shearman & Sterling, **Trevor Potter** of Campaign Legal Center, and **James L. Quarles III** of WilmerHale (Retired) contributed chapters in *Legal Briefs, The Ups and Downs of Life in the Law* (Prospecta Press 2024), a compilation of stories and profiles about legal cases and negotiations, lawyers, and judges.

President Biden has nominated **Michelle Williams Court** to the U.S. District Court for the Central District of California.



**Joshua A. Douglas** of University of Kentucky, J. David Rosenberg College of Law has authored *The Court v. The Voters: The Troubling Story of How the Supreme Court Has Undermined Voting Rights* (Beacon Press 2024), a book exploring the effect of several Supreme Court cases on voting rights. He has recently started *Democracy Optimist*, a public radio series and podcast that looks democratic processes, elections, and voting rights.

**Muhammad U. Faridi** of Patterson Belknap Webb and Tyler LLP has been elected the 71st president of the New York City Bar Association. He is the youngest person and the first ever Muslim-American to serve in this role.

**Donald Wayne Glazer** of Goodwin Procter has authored *Uninvited Guests* (Green Writers Press 2023), a book of poetry.

**Roger L. Gregory** of the U.S. Court of Appeals for the Fourth Circuit has been selected as this year's recipient of the Thomas Jefferson Foundation Medal in Law from the University of Virginia and the Thomas Jefferson Foundation.

**Richard L. Hasen** of UCLA School of Law has been appointed the Gary T. Schwartz Endowed Chair in Law at UCLA School of Law. He is also Professor of Political Science, and Director of the Safeguarding Democracy Project at UCLA School of Law.

**Noel L. Hillman** has joined Gibbons P.C. as head of its Alternative Dispute Resolution practice. He will also provide counsel to the firm's White Collar & Investigations Group.

**Melissa B. Jacoby** of University of North Carolina School of Law has authored *Unjust Debts, How Our Bankruptcy System Makes America More Unequal* (The New Press 2024), a book examining the hidden impacts of bankruptcy in America.

The American Academy of Arts & Sciences has elected ALI members **Pauline T. Kim** of Washington University School of Law and **Jeffrey S. Sutton** of the U.S. Court of Appeals for the Sixth Circuit to its 2024 member class.

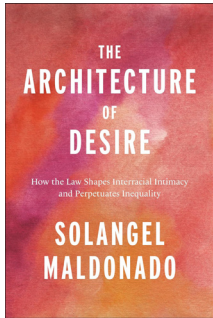
## NEW MEMBERS ELECTED

On July 1, the Council elected the following 47 persons.

**Claudia H. Allen**, Chicago, IL  
**Laura I. Appleman**, Salem, OR  
**Dwyer Arce**, Omaha, NE  
**Karen Arnold-Burger**, Topeka, KS  
**Lamar W. Baker**, Los Angeles, CA  
**D. Benjamin Barros**, Gulfport, FL  
**James D. Blacklock**, Austin, TX  
**Enrique Braquehais**, Balearic Islands, Spain  
**Tiffany Williams Brewer**, Washington, DC  
**Pamela Chestek**, Raleigh, NC  
**Daniel C.K. Chow**, Columbus, OH  
**Brooke D. Coleman**, Seattle, WA  
**Michael K. Davis**, Cheyenne, WY  
**Erin F. Delaney**, Chicago, IL  
**Mihailis E. Diamantis**, Iowa City, IA  
**Matthew Diller**, New York, NY  
**Gabriel Eckstein**, Fort Worth, TX  
**Laura Viviana Farber**, Pasadena, CA  
**Nicole Stelle Garnett**, Notre Dame, IN  
**Margaret Hagan**, Stanford, CA  
**Vinay Harpalani**, Albuquerque, NM  
**Faith S. Hochberg**, Lakeville, CT  
**Andrew N. Keller**, Washington, DC  
**Jonathan A. Kobes**, Sioux Falls, SD  
**Jocelyn D. Larkin**, Berkeley, CA  
**Damon R. Leichty**, South Bend, IN  
**William R. Levi**, Washington, DC  
**Mark S. Levinstein**, Washington, DC  
**Justin Levitt**, Los Angeles, CA  
**Veronica Root Martinez**, Durham, NC  
**Brett A. Mason**, Atlanta, GA  
**Joshua Matz**, Washington, DC  
**David E. Nahmias**, Atlanta, GA  
**Jane Elinor Notz**, Chicago, IL  
**Mary Kay O'Brien**, Essex, IL  
**Christopher L. Peterson**, Salt Lake City, UT  
**Karen Michelle Porter**, Washington, DC  
**Mary Price**, Washington, DC  
**Chad Andrew Readler**, Columbus, OH  
**Richard E. Redding**, Orange, CA  
**Anne Marie Seibel**, Birmingham, AL  
**Carolyn Shapiro**, Chicago, IL  
**Kate A. Shaw**, Philadelphia, PA  
**Andrew Z. Soshnick**, Indianapolis, IN  
**Brian Soucek**, Davis, CA  
**Juan R. Thomas**, Chicago, IL  
**Tiffany R. Wright**, Baltimore, MD

**Harold Hongju Koh** of Yale Law School has authored *The National Security Constitution in the Twenty-First Century* (Yale University Press 2024), a book on U.S. foreign affairs and national security policy. This book is an updated edition to Koh's National Security Constitution, published in 1990.

**Derek P. Langhauser** of the Maine Maritime Academy and Community Colleges has recently authored "An Extraordinary Pardon," an article featured in Volume 33, Issue 1 of *Maine Policy Review*, and "Taking on the Military Funeral Protest: A Multifarious Statute Leans In," an article published in Harvard Law School's *Journal on Legislation*.



**Solangel Maldonado** authored *The Architecture of Desire: How the Law Shapes Interracial Intimacy and Perpetuates Inequality*. The book examines how the law influences who we choose as intimate partners and explores the psychological, economic, and social effects of these choices.

**David W. Rivkin** of Arbitration Chambers has been appointed an international judge to the Singapore International Commercial Court for a term from April 2024 to January 2027.

**Jeffrey Rosen** of the National Constitution Center has authored *The Pursuit of Happiness, How Classical Writers on Virtue Inspired the Lives of the Founders and Defined America* (Simon & Schuster 2024), a book on our country's founders and how their perception of "the pursuit of happiness" influenced the Declaration of Independence.

The National Association of Attorneys General (NAAG) has elected **Ellen F. Rosenblum** of the Oregon Department of Justice as association president.

**Victoria Shannon Sahani** of Boston University School of Law testified as an expert witness before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet on her academic research on third-party litigation funding.

**Mary L. Smith** is a recipient of the 2024 Diversity Leadership Awards from the University of Chicago. She has also been named to the Ambassador Circle for America250, a nonpartisan group planning the 250th anniversary of the signing of the Declaration of Independence. Each Ambassador represents a



Ellen F. Rosenblum  
Photo courtesy of the  
National Association of  
Attorneys General

## IN MEMORIAM

### Betsy Levin

Longtime ALI Council member Betsy Levin passed away on July 4, 2024, at the age of 88. She is survived by her cherished siblings, Larry (Rita) Levin and Sarah "Sally" Cooper Levin; and adored nieces, Leah Levin, Kendra Levin and Karen Levy. Betsy was predeceased by her dear sister, Alexandra "Lexie" Cohen; and loving parents, Alexandra and M. Jastrow Levin.



Betsy was elected to the ALI in 1978 and to the ALI Council in 1983, taking emeritus status in 2007. She attended Bryn Mawr College, where she earned a B.A. with Honors in Geology, after which she went to work at the Geological Survey in Washington. While in Washington, she decided to enroll in law school to focus on civil rights issues. She first went to George Washington University in the evening, before transferring to Yale where she obtained her LLB in 1966. Betsy then clerked for Judge Simon Sobeloff on the U.S. Court of Appeals for the Fourth Circuit before becoming a White House Fellow, where she was an assistant to Justice Arthur J. Goldberg, Ambassador to the United Nations.

Her impressive legal career spanned more than three decades, including serving as the Director of Education Studies at the Urban Institute in Washington and holding a tenured professorship at Duke Law School where she taught constitution law. During President Jimmy Carter's administration, Betsy served as General Counsel at the U.S. Department of Education. In 1981, she became Dean at the University of Colorado School of Law until 1987 when she left to become Executive Director of the Association of American Law Schools.

Betsy's legacy extends far beyond her professional achievements. She will be remembered for her intellect, her empathy and her unyielding belief in the power of education to transform lives. Her greatest joy in her career was the opportunity to teach and mentor her students, helping shape the next generation of legal minds. In addition to her extensive professional career, Betsy was passionate about civil rights, travel, hiking, and theater.

### ELECTED MEMBERS

**John L. Carroll**, Birmingham AL; **Leonard Court**, Oklahoma City, OK; **Thomasenia P. Duncan**, Washington, DC; **Christopher F. Edley, Jr.**, Berkeley, CA; **Anne Gardner**, Fort Worth, TX; **Alex C. Geisinger**, Philadelphia, PA; **Gene E.K. Pratter**, Philadelphia, PA

### LIFE MEMBERS

**Lorence L. Bravenec**, College Station, TX; **Carl Estes, II**, Houston, TX; **Dagmar Strandberg Hamilton**, Austin, TX; **Robert M. Kaufman**, New York, NY; **Betsy Levin**, Washington, DC; **Jerome B. Libin**, Washington, DC; **Ricardo A. Mestres, Jr.**, New York, NY; **Ellen Ash Peters**, Hartford, CT; **James L. Robertson**, Jackson, MS; **Paul Martin Wolff**, Washington, DC; **Burton Young**, Miami, FL

different region across the nation, reinforcing America250's commitment to creating the largest and most inclusive commemoration in history that engages as many Americans as possible.

**Elizabeth S. Stong** of the U.S. Bankruptcy Court for the Eastern District of New York received the 2024 Mayre Rasmussen Award for the Advancement of Women in International Law from American Bar Association.

**Robert L. Tsai** of Boston University School of Law has been a 2024-2025 Laurance Rockefeller Fellow at the Princeton University Center for Human Values.

**Franita Tolson** has been named dean and Carl Mason Franklin Chair in Law at USC Gould School of Law.

**George Triantis** is the new dean of Stanford Law School.

**Nancy E. Weiss** is the fifth Abraham L. Kaminstein Scholar in residence at the U.S. Copyright Office.

**Melanie D. Wilson** of Washington and Lee University School of Law has inducted as AALS President. She takes over as president from **Mark C. Alexander** of Villanova University Charles Widger School of Law, who transitioned to the AALS Executive Committee as Immediate Past President.

**Submissions as of June 28. 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).**

### STANFORD LAW SCHOOL PARTNERSHIP WITH SUPERIOR COURT OF LOS ANGELES COUNTY

The Deborah L. Rhode Center on the Legal Profession and Legal Design Lab at Stanford Law School and the Superior Court of Los Angeles County have launched a collaboration to "research, design and implement innovative, evidence-based approaches to reduce barriers to participation in the judicial process and to improve access to justice for all court users."

**David Freeman Engstrom** codirects the Deborah L. Rhode Center with **Nora Freeman Engstrom**. David Engstrom stated during the announcement, "All around the country, courts are recognizing that existing processes prevent litigants – whether represented or not – from accessing the justice system effectively. The Superior Court of Los Angeles County is leading the way by systematically taking the steps necessary to break down those barriers."

Learn more about the partnership [here](#).

## ALI Members Enjoy Free CLE Courses Through ALI-CLE



*Children and the Law: Protecting the Vulnerable in a Time of Crisis* webcast (2020)

Complimentary online CLE courses (live webcast or on-demand) are available to all ALI members through [ali-cle.org](http://ali-cle.org). To use this membership benefit:

1. Go to [www.ali-cle.org](http://www.ali-cle.org) and add an online course to your cart.
2. In your cart, apply the coupon code **ALIWEB**.
3. When checking out, you will be prompted to login to ALI-CLE.org or to create a new account. **Your ALI CLE account is separate from your ALI login.**
4. To access your purchased course, choose My ALI-CLE / Login (top right of page) and follow the instructions to access your courses.