THE ALI
REPORTER

The Quarterly Newsletter of The American Law Institute
Volume 46 Number 2 Spring 2024

ALI Council Meeting opening session with President Diane P. Wood, Treasurer Ivan K. Fong, President David F. Levi, Nominating Committee Chair Jeffrey S. Sutton, and former President Roberta Cooper Ramo

January 2024 Council Meeting Update

At its meeting on January 18 and 19, 2024, the Council discussed and approved drafts of six projects as noted below. *Complete Council Drafts are available on the ALI website; all approvals are subject to the discussion at the meeting and the usual editorial prerogative.*

CONFLICT OF LAWS

The Council discussed Council Draft No. 9, which covers choice of law for issues about testate succession (including issues related to the formal and intrinsic validity of wills), intestate succession, and escheat (the passing of property to the state when no person is entitled to it by testate or intestate succession).

Action Taken: The Council approved Council Draft No. 9, containing the Introductory Note to and §§ 7.25-7.30 of Topic 4, Succession, of Chapter 7 on Property.

COPYRIGHT

Due to inclement weather, consideration of Council Draft No. 8 was postponed until March 1, 2024, when the Council met virtually. At that time, the Council approved §§ 6.10 and 6.13 of Chapter 6 on Copyright Rights and Limitations; § 7.06 on Criminal Infringement of Copyright; §§ 8.01 and 8.02 of Chapter 8 on Secondary Liability; § 10.04 on Integrity of Copyright Management Information; and § 11.01 on Standing to Sue for Copyright Infringement. Council also approved §§ 17 and 18 of Chapter 2 on Subject Matter of Copyright: Scope of Protection, § 6.03 on The Copyright Owner's Exclusive Right to Prepare Derivative Works, and § 7.05 on Defenses of Copyright Infringement, subject to review by a small committee of Council members, appointed by the Director, that

THE DIRECTOR'S LETTER
BY DIANE P. WOOD

The ALI's Rule of Law Mission

At its core, The American Law Institute's mission is to strengthen and protect the rule of law. Most recognizably, we do this by bringing together members of the judiciary, academia, government, and practicing lawyers to produce Restatements, Principles, and Codes that support and reinforce the infrastructure of our common-law system. On some occasions, however, an issue calls for more urgent action. In such instances, the Institute has found a meaningful way outside of its formal project structure to support and offer guidance to legislatures, organizations, and individuals working on these important legal questions.

In our first such effort along these lines, ALI President David F. Levi and former Director Ricky Revesz convened a bipartisan group of 10 individuals with extensive experience in law and government to work together to find a consensus on proposals for reform of the Electoral Count Act. Chaired by Bob Bauer and Jack Goldsmith, the group released its recommendations in April 2022. The group's proposals contributed significantly to the Electoral Count Act reform provisions that were enacted into law in December 2022.

More recently, President Levi and former Director Revesz helped bring together a bipartisan group of government officials, state and local election professionals, lawyers, and scholars in an effort to articulate a uniform set of ethical standards for election administration professionals. Charles Stewart of the Massachusetts Institute of Technology, Bob Bauer of New York University School

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will review the revised drafts of these Sections to confirm that they reflect the spirit of the day's discussion and do not introduce new issues. If the committee is unable to agree that that is the case, the revised draft of these Sections will return to the Council for approval.

CORPORATE GOVERNANCE

The Council discussed Council Draft No. 3. CD 3 contains several sections from Chapter 5, which focuses on the duty of loyalty. It includes an Introductory Note on the concept of "Fairness," three sections concerning directors' and officers' duties, and two sections relating to "controllers," individuals who control the voting securities of or otherwise exercise a controlling influence over the business of a corporation. The sections on directors' and officers' duties articulate rules governing use for personal benefit of corporate position, corporate property, and corporate information and competition with the corporation. The remaining sections deal with tender offers made by controllers that are to be followed by freeze-out mergers of any shares that are not tendered and a controller's duty of care when transferring voting equity securities.

Action Taken: The Council approved Council Draft No. 3, which contained the Introductory Note to and §§ 5.04A, 5.04B, 5.06, 5.11, and 5.16 of Chapter 5, Duty of Loyalty.

PROPERTY

The Council discussed Council Draft No. 9, comprised of material relating to leasing and to contracts for the purchase and sale of present estates in real property. The leasing material includes sections discussing the effect of leases for an illegal purpose, procedures describing what a lessee must do to assert its rights, duties of the lessee that are implied in every lease, and lessor remedies arising out of a lessee's nonperformance of a lease's express promises or implied duties. Specific topics include procedures for lessees to assert a right to terminate performance, recover damages, secure rent abatements, and withhold rent; rules and procedures governing the lessor's right to terminate performance of a lease, including a rule that lessors may not use peaceable self-help to recover possession of a leased property from a defaulting lessee; and lessors' remedies with regard to lessees who remain in possession of property after a lease expires or terminates (i.e., holdover lessees). With respect to holdovers, CD 9 rejects the common-law remedy of unilaterally imposing a new lease term on the lessee.

CD 9's material on contracts for the purchase or sale of real property restates rules of "caveat emptor," the seller's duty to disclose, and a builder-seller's implied warranties of workmanship and habitability in the construction of a new home.

Action Taken: The Council approved Council Draft No. 9, containing Sections from Volume 4, Division III on Leasing and Volume 5, Division II on Contracts for Purchase and Sale of Present Estates in Real Property.

TORTS: MEDICAL MALPRACTICE

The Council discussed revised versions of Comments *b* and *c* to Section 5, Standard of Reasonable Medical Care. Section 5, which Council approved previously, restates the substantive standard of care that governs medical professionals. Comment *b* discusses the relationship between the black-letter rule and the general negligence standard. Comment *c* addresses the relationship of "custom" and "prevailing professional practices" to the "reasonable provider" standard.

Action Taken: The Council approved the revised versions of Comments *b* and *c* to § 5, Standard of Reasonable Medical Care.

John B. Bellinger III of Arnold & Porter (Corporate Governance)

Medical Malpractice Reporters speak with Council members after the adjournment of their project session.

TORTS: MISCELLANEOUS PROVISIONS

The Council considered Council Draft No. 6, which contains sections on: Negligence Liability of Product Suppliers; Liability for the Provision of Alcohol; Agreements to Engage in Conduct that is Negligent or Reckless; Statutes of Limitations and Statutes of Repose; Wrongful Pregnancy, Wrongful Birth, and Wrongful Life; and Tortious Interference with Parental Rights.

The sections on negligence liability of product suppliers address the liability of product suppliers for negligence with regard to the risks posed by the products supplied and that of independent contractors who negligently manufacture, rebuild, repair, maintain, assemble, or install products or who are negligent in failing to identify and disclose an unreasonably dangerous condition in a product they work on and return to the owner. An Introductory Note explains the relationship of these sections to provisions of the Restatement of the Law Third, Torts: Products Liability.

The Liability for the Provision of Alcohol section sets forth rules that, in the absence of a statute, govern liability for injury caused by the provision of alcohol. It provides that commercial establishments are subject to liability for injuries caused by the provision of alcohol when they negligently serve alcohol to one who is underage or visibly intoxicated and the patron's intoxication causes injury, while social hosts are subject to

liability when and only when they recklessly serve an underage guest whose intoxication causes the injury.

CD 6's material on statutes of limitations and statutes of repose comprises 16 sections. The 11 statutes-of-limitations sections include a definition; rules for identifying when statutes of limitations begin to run and are tolled; provisions addressing the effect of defendant misconduct on statutes of limitations, including equitable estoppel and fraudulent concealment; and circumstances under which a limitations period can be modified by contract. Notably, CD 6 adopts an "all-elements rule," under which the statute of limitations begins to run when all the necessary elements of the cause of action have occurred. Five subsequent sections cover analogous topics for statutes of repose.

The Wrongful Pregnancy section states a claim for tortious conduct that causes an unwanted pregnancy and the subsequent birth of an unplanned child. Liability under this section does not require that the child be born disabled, nor does it require a woman to terminate the unwanted pregnancy or put the child up for adoption. The Wrongful Birth section provides a claim arising out of an actor's tortious conduct in failing to identify and adequately communicate the risk of a birth defect. The Wrongful Life section declines to recognize wrongful-life claims, i.e., claims brought by a child born with a disability who would not have been born but for an actor's tortious conduct.

Action Taken: The Council approved Council Draft No. 6, which contained sections on: Negligence Liability of Product Suppliers; Liability for the Provision of Alcohol; Agreements to Engage in Conduct that is Negligent or Reckless; Statutes of Limitations and Statutes of Repose; Wrongful Pregnancy, Wrongful Birth, and Wrongful Life; and Tortious Interference with Parental Rights.

TORTS: REMEDIES

The Council considered Council Draft No. 3, which addresses topics relating to selected non-compensatory-damages remedies: nominal damages, restitution, punitive damages, injunctions, and non-injunctive remedies that seek to prevent harm or restore plaintiffs' loss in kind, such as ejectment, quiet title, replevin, declaratory judgments, constructive trust, equitable lien, subrogation, rescission, and reformation.

The punitive damages sections articulate the standard for awarding punitive damages, discuss principal liability for punitive damages arising from the tort of an agent, and provide rules governing the amount of punitive damages.

The material on injunctions describes circumstances in which compensatory damages are presumptively a better remedy than a permanent injunction—which include when the injunction would create undue hardship, is impractical to implement, or would unduly burden the court—and addresses the defenses of unclean hands and laches. The defenses of in pari delicto and the wrongful-acts doctrine are discussed in a comment in Section 52.

Action Taken: The Council approved the following sections of Council Draft No. 3: §§ 38–42 of Chapter 2 on Other Monetary Remedies; and §§ 50–53 of Topic 1, Injunctions, and §§ 58 and 60–63 of Topic 2, Other Specific Remedies, of Chapter 3 on Injunctions and Other Forms of Specific Relief. No vote was taken on § 59 (Recovering Chattels (Replevin and Its Analogs; Injunctions)), which will be presented for Council approval after the section on replevin in the Restatement of the Law Fourth, Property, is drafted.

Richard R. W. Brooks of NYU Law (Corporate Governance)

Janet Napolitano of UC Berkeley, Goldman School of Public Policy (Medical Malpractice)

MEETINGS AND EVENTS CALENDAR AT-A-GLANCE

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

2024

April 5
Restatement of the Law Third, Torts: Defamation and Privacy
Virtual

April 12
Restatement of the Law, Copyright
Virtual

April 19
Restatement of the Law Fourth, The Foreign Relations Law of the United States
Chicago, IL

May 20-22
2024 Annual Meeting
San Francisco, CA

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

THE DIRECTOR'S LETTER

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of Law, and Ben Ginsberg of the Hoover Institution led this very impressive working group. *(Working group details can be found on page 11.)*

"Ethical Standards for Election Administration," the group's report, was released in January of this year. See page 11 for the full press release. The report sets forth a set of seven core ethical principles for election administrators. It aspires to "identify[ ] the ethical standards unique to this profession, wherever it is practiced," and "to transparently show the public that [election administrators'] actions are fair, professional, transparent." As the report's Executive Summary explains: "Assembling ethical guidelines for all jurisdictions at the state, county, and local levels offers many advantages. It provides a shared vocabulary to communicate to voters the moral basis for the conduct of elections, aids in training new officials by reinforcing the broader purpose of election administration as a profession, and helps internalize values to guide officials when facing external pressures or unclear election laws."

I echo ALI President David Levi's sincere appreciation to this group and the hard work that they did to bring together a document that has already been distributed to state and local election officials and is being considered by many as they take on the challenge of implementing ethical standards.

Although not officially products of The American Law Institute, these ventures exemplify the outstanding work that is accomplished when dedicated people come together to work toward a common goal.

That brings me to another occasion in which the ALI will be convening a group of talented and dedicated people to work toward a common goal: the 2024 Annual Meeting. The Institute's work depends on the participation and input of its members at the Annual Meeting. And this year is special: we will be meeting on West Coast for the first time in more than a decade.

The Meeting is taking place in San Francisco from Monday, May 20, through Wednesday, May 22, and we have a great lineup of projects to discuss. We will also have special programs scheduled for Sunday, May 19, and special events throughout the Meeting. Registration for the Meeting has begun through the ALI website. You'll note that, in keeping with our mandate of responsible stewardship of the ALI's mission and resources, this year we have added a modest registration fee of $200 to partially defray the costs of hosting the meeting. To ensure that cost is not a barrier to attendance, we will continue to offer financial assistance for our judicial and public-interest/government members.

We have a fantastic lineup of speakers, award recipients, event locations, and projects on the agenda. For example, Stephen Breyer, retired Associate Justice of the Supreme Court of the United States, will appear 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 ALI's Annual Dinner on the evening of Tuesday, May 21. Reporters from Restatement of the Law, Children and the Law and Restatement of the Law Third, Torts: Medical Malpractice will both be presenting drafts, that if approved by membership, would mark the completion of these projects.

Throughout this edition of *The ALI Reporter*, you will find additional details about Meeting projects, speakers, and events. The ALI website is also a great resource; you can find drafts as they become available, Meeting policies, and procedures.

I have been told by many members that they believe there is no substitute to experiencing the energy in the ballroom and the truly extraordinary members that they connect with, or reconnect with, each year, and I feel the same way. The ALI Annual Meeting is a unique experience for those of us who love the law and value the rule of law. If you have not yet made plans to attend the Meeting, I hope you will do so now.

I look forward to seeing you in San Francisco.

2024 Annual Meeting

May 20-22 | San Francisco, CA

The Annual Meeting will be held at
The Westin St. Francis in San Francisco.

SUNDAY, MAY 19

2:00-3:00 p.m. **Special Program on Shortlisted: Women in the Shadows of the Supreme Court**

ALI Director Diane P. Wood will discuss the book *Shortlisted: Women in the Shadows of the Supreme Court* with authors Renee Knake Jefferson and Hannah Brenner Johnson.

3:30-5:30 p.m. **ALI CLE Ethics Program: Artificial Intelligence and Civil Liability**

Moderator Colleen Chien of Berkeley Law will be joined by panelists Richard Franklin 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.

This panel of leading academics and AI industry professionals will explore the ways in which 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.

Tuition for this program is $175 for ALI members, $195 for all others.

2.0 CLE credit hours, including 1.0 ethics hour

MONDAY, MAY 20

8:30 a.m. **Opening Session**

9:00 a.m. **Property**

10:30 a.m. **Torts: Miscellaneous Provisions** (Part One)

12:30 p.m. **Members Luncheon Welcoming New Members**

Featuring: Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California and Pamela S. Karlan of Stanford Law School

1:45 p.m. **Torts: Miscellaneous Provisions** (Part Two)

4:30 p.m. **Presentation of Distinguished Service Award**

The award will be presented to Lance Liebman of Columbia Law School by Roberta Cooper Ramo of Modrall Sperling. More information about the award and recipient is available on page 9.

4:50 p.m. **Presentation of Wisdom Award**

The award will be presented to Thelton E. Henderson, retired judge for the U.S. District Court for the Northern District of California, by Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California. More information about the award and recipient is available on page 9.

6:30-9:00 p.m. **Members Reception and Buffet (Exploratorium)**

MEETING HEADQUARTERS

Westin St. Francis
335 Powell Street, San Francisco, CA 94102
Hotel telephone: (415) 397-7000

ANNUAL MEETING PROJECTS

Children and the Law*
Tentative Draft No. 6

Copyright
Tentative Draft No. 5

Corporate Governance
Tentative Draft No. 2

Property
Tentative Draft No. 5

Torts: Medical Malpractice*
Tentative Draft No. 2

Torts: Miscellaneous Provisions
Tentative Draft No. 3

Torts: Remedies
Tentative Draft No. 3

* *With membership approval, this project will be completed.*

MEMBERS RECEPTION AND BUFFET AT THE EXPLORATORIUM

Location: Pier 15
(Embarcadero at Green Street)

Shuttle buses will start boarding at the Westin beginning 5:30 p.m., departing by 5:45 p.m.

Tickets are $100 per person.

TUESDAY, MAY 21

8:30 a.m. Torts: Medical Malpractice

11:30 a.m. Copyright (Part One)

12:30 p.m. Members Luncheon
Featuring: ALI Director Diane P. Wood, Anna Blackburne-Rigsby of the District of Columbia Court of Appeals, and Tani Cantil-Sakauye of the Public Policy Institute of California

1:45 p.m. Copyright (Part Two)

2:45 p.m. Torts: Remedies

7:00 p.m. Annual Reception and Dinner
Stephen Breyer, retired Associate Justice of the Supreme Court of the United States, will appear in conversation with two of his former clerks, Caitlin Halligan of the New York State Court of Appeals and Jenny S. Martinez of Stanford University.

WEDNESDAY, MAY 22

8:30 a.m. ALI Early Career Scholars Program
Featuring: Leah M. Litman of University of Michigan Law School

9:00 a.m. Children and the Law

11:00 a.m. Corporate Governance (Part One)

12:00 p.m. Members Luncheon Honoring New 25-Year and 50-Year Members
Featuring: Ivan K. Fong of Medtronic PLC, and Brad L. Smith of Microsoft Corporation

2:00 p.m. Corporate Governance (Part Two)

3:00 p.m. Adjournment

Agenda as of March 22

To register now visit www.ali.org/AM2024.

Visit the website to access drafts and learn more about this year's policies, procedures, and motion guidelines.

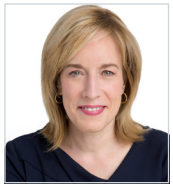
ANNUAL DINNER AND RECEPTION

Location: Westin St. Francis Grand Ballroom

Stephen Breyer, retired Associate Justice of the Supreme Court of the United States, will appear in conversation with two of his former clerks, Caitlin Halligan and Jenny Martinez.

The reception will begin at 7:00 p.m. The Annual Dinner is business or evening attire with reserved seating.

Tickets are $150 per person.


Photograph of Associate Justice Breyer provided courtesy of the Collection of the Supreme Court of the United States

MONDAY MEMBERS LUNCHEON: WELCOMING NEW MEMBERS

ALI Council member Yvonne Gonzalez Rogers will discuss one of the Institute's newest projects, Restatement of the Law, Constitutional Torts with project Reporter Pamela Karlan.

Tickets are $80 per person.

TUESDAY MEMBERS LUNCHEON

This luncheon will feature a discussion between Judges Diane Wood, Anna Blackburne-Rigsby, and Tani Cantil-Sakauye.

Tickets are $80 per person.

WEDNESDAY MEMBERS LUNCHEON: HONORING NEW 25-YEAR AND 50-YEAR MEMBERS

In addition to the presentation of the 1999 Class Gift by class representatives, ALI Council member Ivan Fong will join Brad Smith in a conversation about Artificial Intelligence.

Tickets are $80 per person.

All Annual Meeting luncheons will be held at the Westin.

Project Spotlight: Children and the Law

At this year's Annual Meeting in San Francisco, Restatement of the Law, Children and the Law, Tentative Draft No. 6 will be presented to members for discussion and vote. Membership approval will mark the completion of the drafting process; if the draft is approved, the Reporters will turn to preparing the official text for publication.

This year's draft will include material from all four Parts of the Restatement, including:

- Part I. Children in Families, Sections from Chapter 2. State Intervention for Abuse and Neglect and Chapter 4. Emancipation of Minors
- Part II. Children in Schools, two new Comments to is Students' Right of Personal Expression in Public School from Chapter 7. Student Speech Rights
- Part III. Children in the Justice System, Sections from Chapter 11. Delinquency Proceedings, Chapter 12. Delinquency Dispositions, and Chapter 13. Juveniles in the Criminal Justice System
- Part IV. Children in Society, Sections from Chapter 14. Medical Decisionmaking by Minors and Chapter 16. Juvenile Curfews

Launched in 2015, the project is led by Reporter Elizabeth Scott of Columbia Law School, with Associate Reporters Richard J. Bonnie of University of Virginia School of Law, Emily Buss of 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 Meyer of Brooklyn Law School also previously served as Associate Reporters.

Over the course of nine years, this team assembled 24 drafts, including Preliminary, Council, and Tentative Drafts. Each draft incorporated the comments and guidance received by the project's 53 Advisers, Liaisons, and Social Science Advisory Panel participants, and the 125 members who joined the Members Consultative Group.

These ALI members and project participants submitted more than 125 comments on the ALI website, and provided immeasurable additional guidance during 10 project meetings.

Don't miss your chance to provide your guidance and cast your vote on this important project. Register now to attend the 2024 Annual Meeting.

DON'T MISS THIS SESSION

The Children and the Law project session is on Wednesday, May 22 at 9:00 a.m.

2016 Project Meeting

2017 Project Meeting

2018 Project Meeting

2019 Council Meeting

2023 Annual Meeting

Project Spotlight: Torts, Medical Malpractice

At this year's Annual Meeting in San Francisco, Restatement of the Law Third, Torts: Medical Malpractice will be presented to members for discussion and vote. Membership approval will mark the completion of the drafting process; if the draft is approved, the Reporters will turn to preparing the official text for publication.

The project was launched as part of Restatement of the Law Third, Torts: Miscellaneous Provisions, in January 2019. Beginning with the drafts prepared for the 2023 Annual Meeting, the Medical Malpractice portion of the Miscellaneous Provisions project was produced separately as the Restatement of the Law Third, Torts: Medical Malpractice. Portions of Torts: Miscellaneous Provisions are also on the agenda for discussion and vote at the Meeting.

The project is 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.

THERE ARE THREE TORTS SESSIONS ON THIS YEAR'S AGENDA.

The Torts: Miscellaneous Provisions project session is on Monday, May 20 at 8:30 a.m.

The Torts: Medical Malpractice project session is on Tuesday, May 21 at 10:30 a.m.

The Torts: Remedies project session is on Tuesday, May 21 at 2:45 p.m.

2022 Council Meeting

2020 Project Meeting

Over the course of five years, this team assembled more than one dozen drafts, including Preliminary, Council, and Tentative Drafts. Each draft incorporated the comments and guidance received by the projects' 57 Advisers and Liaisons, and the 121 members who joined the Members Consultative Group.

At the 2022 Annual Meeting, the membership voted to approve §§ 1-3, Patient and Provider Defined, Patient-Care Relationship, and Duties to Patients and Others. The remaining Sections that will be presented in this year's Tentative Draft are:

- § 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

Don't miss your chance to provide your guidance and cast your vote on this important project. Register now to attend the 2024 Annual Meeting.

2024 Council Meeting

2024 Council Meeting

Distinguished Service Award: Lance Liebman

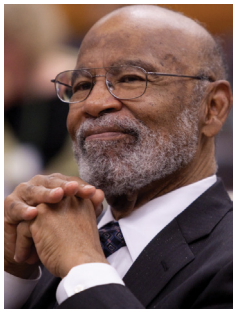
The Distinguished Service Award will be presented to Lance Liebman of Columbia Law at this year's Annual Meeting in San Francisco. This award is given from time to time to a member who over many years has played a major role in the Institute as an institution, by accepting significant burdens as an officer, Council member, committee chair, or project participant and by helping keep the Institute on a steady course as the greatest private law-reform organization in the world.

Lance Liebman served as ALI's Director from 1999 to 2014. During his directorship, he 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.

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.

Wisdom Award: Thelton Henderson



The American Law Institute will present the John Minor Wisdom Award to Thelton E. Henderson at this year's Annual Meeting. The Wisdom Award is given from time to time in specific recognition of a member's contributions to the work of the Institute, the primary purpose of which is to recognize members who do not have an official role in Institute projects.

An elected member of The American Law Institute, Thelton E. 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.

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.

ALI President Emerita **Roberta Cooper Ramo** will present the Distinguished Service Award to Liebman.

Yvonne Gonzalez Rogers will present the Wisdom Award to Henderson.

ALI THE AMERICAN LAW INSTITUTE

Welcome to ALI's Second Century

This year, we introduce a new look to usher in The American Law Institute's second century. Changes include a new logo and color scheme that recognize our history while looking toward our future.

The colors that you'll see in our new logo and throughout our materials are inspired by our publications. New Restatements, in areas of the law not examined before, are red (our new primary color), Principles are green, books in the Restatement Third series are blue, and those in the Restatement Fourth series are black.

As we begin our second century of work, we look forward to continuing the quality and commitment established by our founders and sustained by you. We hope to see you at a meeting soon.

WHEN WAS THE LAST TIME YOU HEARD FROM ALI?

It is important to all of us at ALI that we stay in touch with our members and project participants. Our primary method of doing so is email.

You should be receiving emails about our project meetings, draft notifications, administrative notifications, and other news items of interest.

To ensure that you receive our electronic communications, please add our domain (ali.org) to your spam filter's whitelist, also called the approved or safe-sender list. Doing so will ensure proper delivery of emails to your inbox. Because all spam filters are different, you may need to contact your technology team or service-provider helpdesk for assistance in accessing your spam settings.

Did your email address change recently? If so, please be sure to notify us at membership@ali.org.

Bipartisan Working Group Issues Ethical Standards for Election Administration

Last year, the leadership of The American Law Institute convened a group from across the political spectrum to assemble a proposed set of universal Ethical Standards for Election Administration (Report). In January 2024, this group issues its recommendations regarding the set of ethical standards for the professional community of election officials. At a time of contentious debate about our voting system, the Report offers a clear articulation of the role of ethical standards in guiding the conduct of elections and contributing to public confidence in the process by which Americans select their leaders.

Explaining the goal behind the project and its timing, the Report states: "Even if the times were not so challenging, it would be appropriate to encourage those who conduct elections to consider the principles that undergird their work, inform the public of those principles, and hold each other accountable to them."

Led by Charles Stewart III, Kenan Sahin Distinguished Professor of Political Science at MIT and founder of the MIT Election Data and Science Lab; Bob Bauer, Professor of Practice and Distinguished Scholar in Residence and Co-Director of the Legislative and Regulatory Process Clinic at NYU; and Ben Ginsberg, the Volker Distinguished Visiting Fellow at the Hoover Institute, the report was drafted by a working group consisting of:

- Bill Gates, Supervisor, Maricopa County, Arizona
- Dean Logan, Registrar-Recorder/County Clerk, Los Angeles County, California
- Justin Roebuck, County Clerk/Register of Deeds, Ottawa County, Michigan
- Molly Fitzpatrick, Clerk & Recorder, Boulder County, Colorado
- Ricky Hatch, County Clerk/Auditor, Weber County, Utah
- Sarah Ball Johnson, City Clerk, Colorado Springs, Colorado
- Scott Schwab, Secretary of State, Kansas
- Tahesha Way, Lieutenant Governor and Secretary of State, New Jersey

Throughout the process, this drafting committee received feedback and guidance from an advisory group comprising individuals with deep and varied experience in law and government.

In assembling the Report, Stewart noted "the drafting committee recognized that election officials already adhere to a variety of ethical principles and codes of conduct. These include general ethics laws, oaths of office, and ethical principles associated with other professions to which they may belong. However, there is no unified set of ethical principles to which all jurisdictions can turn and to which the public can refer when assessing the work of election administrators. This report represents an effort to do that."

As explained in the report's Executive Summary, "[a]ssembling ethical guidelines for all jurisdictions at the state, county, and local levels offers many advantages. It provides a shared vocabulary to communicate the moral basis for election conduct to voters, aids in training new officials by reinforcing the broader purpose of election administration as a profession, and also helps internalize values to guide officials when facing external pressures or unclear election laws."

The principles set forward in the Report are intended as a starting point for the development of standards of conduct for election administrators, which provide more concrete guidance on how to behave in specific professional settings. For example, to implement the principle of adherence to the law, a county election director might be directed to seek legal counsel when the law is ambiguous; a polling place officer might be directed to seek guidance from the local election office when the official is uncertain how to handle a situation at the polls."

"State and local election officials are the people that U.S. citizens trust to run fair and lawful elections," said Bauer. "Shared, clearly articulated ethical standards help election officials to do their jobs and train those who assist them, but also set public expectations of performance and transparency."

"In our work, we found that many states had ethical standards in place, but many did not," added Ginsberg. "Yet, everyone we spoke to, told us that they would welcome the input from a document like this one. Having a set of ethical principles, that all use the same language and require the same moral compass will help assure our voters that our elections are conducted fairly. This shared language will also help election officials when they need to speak to explain any portion of the election process to the public."

The issued Report include seven core principles for adoption by the profession:

1. **Adhere to the law.** Election officials have a duty to administer the law as written and interpreted by the relevant authorities.
2. **Protect and defend the integrity of the election process.** Election officials have a duty to safeguard against unfounded attacks on the integrity of the election process.
3. **Promote transparency in the conduct of elections.** Election officials have a duty to make election administration transparent to the public.
4. **Treat all participants in the election process impartially.** Election officials have an obligation to treat all participants in the electoral process impartially, including voters, candidates, citizens, and political committees.
5. **Demonstrate personal integrity.** Election officials have a duty to conduct themselves honestly and forthrightly in all interactions with superiors, peers, candidates, campaign officials, and the general public.
6. **Practice the highest level of ethics and stewardship.** Election officials have a duty to expend public funds carefully and foster respect among employees and volunteers.
7. **Advance professional excellence.** Election officials have a duty to stay informed about election laws and new developments in election management.

"This is the second time that The American Law Institute has sought to bring together a bipartisan group of extraordinarily distinguished thinkers and practitioners to find common ground on a critical and urgent issue," said ALI President David F. Levi. "Like the work that was done on the Electoral Count Act reform recommendations, this project also required quick action. Although this work did not go through the typical ALI bicameral process, which requires approval by both our Council and membership, and therefore cannot be considered the official work of the Institute, we are proud to have been a convener and supporter of this project. It is my hope that the thoughtful and detailed document that this team produced will contribute to the rule of law, will increase citizens' trust in elections, and will ultimately help protect democracy, all of which are well within the law reform mission of the ALI. We would like to extend our deepest gratitude to Charles, Bob, Ben, and the entire working group for producing this product. We also thank ALI Legal Fellow Will Tadros for providing valuable support to the team."

Download the complete Ethical Standards for Election Administration at www.ali.org/eseo.

ALI and ELI Relationship Continues to Flourish with 2024 Programs

The American Law Institute entered the new year continuing its collaboration with the European Law Institute in creating programs to showcase the ongoing and completed works of both Institutes and highlight how these works connect to legal trends around the world. These programs follow the successful inaugural webinar held last year on the ALI-ELI Principles for a Data Economy.

THE USE OF AUTOMATED DECISION-MAKING AND CONSUMER LAW

During this transatlantic dialogue, speakers shared insights on existing legal frameworks and their 'readiness' for the use of automated decision-making (ADM), reflecting on the completed Restatement of the Law, Consumer Contracts (publication pending) and recently published ELI Report on EU Consumer Law and Automated Decision-Making, which is an interim output of the ELI project on Guiding Principles and Model Rules on Algorithmic Contracts. The program will be available on demand at ali-cle.org.

Participants

- ELI President Pascal Pichonnaz of the University of Fribourg (Chair)
- Florencia Marotta-Wurgler of NYU School of Law (Reporter on Restatement of the Law, Consumer Contracts)
- John Linarelli of the University of Pittsburgh School of Law (MCG Participant on Restatement of the Law, Consumer Contracts)
- Hans W. Micklitz of the European University Institute
- Jeannie Patterson of the University of Melbourne

UPCOMING PROGRAM: THIRD PARTY FUNDING OF LITIGATION (APRIL 15, 2024)

Date: April 15, 2024
Time: 9:00 a.m. PT | Noon ET | 18:00 CET

Registration is open for this joint program, which aims at engaging in a transatlantic dialogue on Third Party Funding of Litigation (TPLF). Speakers will share insights on existing legal frameworks as well as the interim findings under the ELI Project on the topic. The diverging factual contexts in which litigation funding takes place, the different interests at play in different contexts and stages of the funding process, the different developments of litigation funding in countries in which the practice is well developed and developing areas will all form part of the discussion.

Participants

- ELI President Pascal Pichonnaz of the University of Fribourg (Chair)
- Tom Baker of the University of Pennsylvania Carey Law School (Reporter for Restatement of the Law, Liability Insurance)
- Susanne Augenhofer of the University of Innsbruck (Co-Reporter of ELI Project on TPLF)
- Sara Cockerill of the Commercial Court of England and Wales (Co-Reporter of ELI Project on TPLF)
- Alice Fremuth-Wolf of Market Head for Austria & CEE region, Nivalion
- Pia Lindholm, Deputy Head of Unit for Civil Justice, Directorate-General for Justice and Consumers, European Commission

Member Spotlight: Mark A. Geistfeld

Mark Geistfeld is the Sheila Lubetsky Birnbaum Professor of Civil Litigation at New York University School of Law, where his research has extensively addressed the common-law rules governing the prevention of and compensation for physical harms.

He has authored or co-authored five books along with over 50 articles and book chapters, often showing how difficult doctrinal issues can be resolved by systematic reliance on the underlying legal principles. He will be participating on the Artificial Intelligence (AI) and Civil Liability panel on Sunday, May 19, at the 2024 Annual Meeting in San Francisco.

You were a part of the "Comparative law study on civil liability for artificial intelligence" commissioned by the European Commission, with the goal of providing an overview of existing tort law within the EU that would apply to liability for AI. Can you provide a summary of what that study found?

The project was one of a series of studies intended to help guide the EU in formulating its regulatory approach to AI. At the time, autonomous vehicles (AVs) and medical devices were the primary objects of concern (the large language models or LLMs were not yet on the public radar screen). My two European co-authors analyzed how tort law across Europe would apply to various liability issues. In addition to flagging some likely tort problems from a US perspective, my primary responsibility was to report on how the states and federal government in the US were beginning to regulate these areas. Outside of the FDA's involvement with medical devices, not much was going on in the regulatory arena. Many states had adopted rules permitting the testing of AVs on public roadways and the like, but none had addressed liability issues in a systematic manner. The National Highway Traffic Safety Administration was issuing soft policy guidance on AVs with no hint of any prospective rule-making. A federal bill came close to enactment but the highly publicized fatal crash involving an Uber AV in Arizona halted that legislation. As a consequence of the legislative and regulatory quiescence, state tort law by default almost entirely governs the liability issues in this space—a conclusion that continues to be valid.

Interestingly, the report ultimately underscored one of the perils about working on these issues. Like our report, the EU at that time was focused on AVs and medical devices. The resultant framing of the EU AI Act subsequently ran into problems once LLMs entered into the marketplace. To account for these new issues, the legislators had to significantly modify the AI Act. The entire process, ultimately resulting in the first enacted set of comprehensive rules governing AI, shows why it is so important to account for the dynamic properties of the technology when thinking about liability and related regulatory issues.

There are several opinions about how to treat AI and civil liability in U.S. law. Can you tell me about the various legal theories?

The short answer is that most tort scholars, myself excluded, think that negligence liability and the important defect-related rules of strict products liability are not up to the task. On this view, the so-called "black box" nature of AI decision-making would seem to make it virtually impossible to prove issues like ordinary negligence, defective product design, and informed medical consent, requiring resort to rules of strict liability. My view is that as a general proposition (subject to exceptions), the legal system can adequately evaluate the safety performance of AI without understanding why the technology behaves in one way rather than another. For example, the safety performance of AVs is properly evaluated on a system-wide basis because there is in effect one driver (the operating system) for the entire fleet of vehicles. One can analyze the safety performance of the fleet across the intended operating domain in terms of total crash statistics, an inquiry that doesn't require an understanding of why a particular vehicle crashed on a particular occasion. The machine-learning program for the operating system can correct for those errors, and so safety can be regulated and continually improved upon in the absence of any understanding about what goes on inside of the black box of the AV's operating system.

For these same reasons, tort law will have to address some difficult causal issues. The system-wide safety performance is measured in terms of probabilities, analogous to those often involved in the toxic tort cases and some of the medical malpractice cases. For example, suppose the reasonably safe driving performance of an AV creates a risk of crash equal to 2/10,000 over the relevant set of operating conditions, and that a defective design increases that risk to 3/10,000. The black-box nature of the operating system makes it impossible to figure out which crashes are attributable to the defect and which ones are not, requiring resort to the general probabilities. For every three crashes, two would have occurred in the absence of defect. The defect is never the most likely cause of a crash, barring recovery in all cases even though one-third are attributable to the defect. In order for tort law to effectively enforce the associated tort obligation, courts will need to figure out how to solve this kind of causal problem.

In what ways might the doctrine of strict liability affect the continued innovation and advancement of AI technology?

Targeted rules of strict liability will be necessary for effective regulation, just as they have been for other kinds of technologies. More general rules of strict liability are likely to offer additional safety benefits over negligence liability, but are even more likely to generate greater costs with adverse effects on innovation and the like. This is obviously a complex issue that depends on what kind of AI we are talking about.

AVs helpfully illustrate my concerns. Most tort scholars propose that the manufacturer should be strictly liable for all AV-related crashes, regardless of defect. I don't think these proposals have adequately considered some important cost-related concerns. One involves the cost of auto insurance, which will effectively be impounded into the price of a new AV vehicle. The manufacturer will charge for its expected liabilities for all crashes over the course of the vehicle's lifetime operation (not an easy calculation), so in effect the consumer will buy a new AV bundled with a lifetime auto policy. The up-front cost for the bundled product is considerably higher than the one for a conventional motor vehicle with its separate or unbundled annual auto policies. The resultant impact on relative prices is likely to impede the diffusion of AVs into the marketplace. There are also the considerable costs of eliminating the existing auto insurance industry in favor of manufacturer-provided auto insurance. These costs involve the important differences between first-party and third-party insurance and also include competitive concerns (each AV manufacturer would effectively hold a monopoly on providing insurance for its vehicles, in sharp contrast to the existing market structure of the auto insurance industry).

What tools or resources do you think would be helpful to legislative bodies and courts in navigating through legal issues in AI in the future?

I firmly believe that tort law can provide extremely valuable guidance even if tort liability is not the most effective way to regulate this technology. The primary value of tort law lies in the prevention of injuries—the usual outcome when risky actors comply with their obligation to behave in a reasonably safe manner. The associated hard questions involving trade-offs between cost and risk are ones that courts have wrestled with for centuries, producing an identifiable set of tort principles of relevance to any regulatory approach for AI. For example, tort law can provide helpful guidance on the system-wide safety performance we should expect from AVs, whereas federal regulators are better positioned than courts to figure out how to measure that performance (the required number of miles to establish statistically reliable measures and so on). Federal regulations guided by the principles of state tort law have the further advantage of solving, or at least ameliorating, the knotty problem of federalism that potentially arises anytime federal regulations preempt state tort law. Rather than pitting the two against one another, a federal regulatory approach guided by the principles of tort law can largely harmonize federal and state interests.

And because tort law does not require enabling legislation, it fills a critical void in the absence of regulation—the point I made at the outset. Perhaps the most surprising finding for me in this area involves the extent to which the AI industry is apparently unaware that tort law governs the liability issues for physical harms in the absence of preemptive federal law. In thinking about their potential liability exposure, these decision-makers need to understand the basic tort principles that courts are likely to apply and that federal regulators are likely to rely on when establishing safety performance standards. Tort law can help motivate the safe development of AI technologies today even if it is years before anyone incurs significant tort liability for AI-caused physical harms. ▬

Corporate Governance Project Meeting

On leap day, February 29, 2024, the Advisers and Members Consultative Group of Restatement of the Law, Corporate Governance met to discuss Preliminary Draft No. 5. This draft includes portions from the following Chapters: Chapter 1. Definitions; Chapter 3. Corporate Structure: Functions and Powers of Directors, Officers, and Shareholders; Chapter 4 Duty of Care and the Business Judgment Rule; Chapter 5. Duty of Loyalty; and Chapter 7. Remedies.

Associate Reporters Marcel Kahan and Elisabeth de Fontenay

Michael St. Patrick Baxter of Covington & Burling LLP

Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York

High-Volume Civil Adjudication Project Meeting

On March 22, the Advisers and Members Consultative Group of Principles of the Law, High-Volume Civil Adjudication met in Philadelphia for their first project meeting. This project (launched in October 2022) will address a serious challenge facing state courts: the adjudication of high-volume, high-stakes, low-dollar-value civil claims. These types of claims, which arise in such areas as debt collection, evictions, home foreclosure, and child support, comprise a significant proportion of state court cases and are shaping the lives of millions of Americans, particularly women and people of color.

The first Preliminary Draft included Sections from five Chapters: Chapter 2. General Principles of Procedure in High-Volume Civil Adjudication; Chapter 3. Notice and Service of Process; Chapter 4. Pleading and Information Exchange; Chapter 5. Hearings; and Chapter 7. Entry and Enforcement of Judgments. **For members who wish to do so, now is a great time to join the Members Consultative Group for this project by logging in to the ALI website and visiting the Project page.**

ALI Director Diane P. Wood, David Freeman Engstrom, David Marcus, Lauren D. Sudeall, ALI Deputy Director Eleanor Barrett, Jessica K. Steinberg, and ALI President David F. Levi

Frederick Wherry of Princeton University

Idaho Supreme Court Adopts Property 3d Provision

The Idaho Supreme Court recently adopted Restatement of the Law Third, Property (Wills and Other Donative Transfers) § 8.3, Comment *f*. The following is a summary of that case.

In *Gestner v. Divine*, 519 P.3d 439 (Idaho 2022), the Idaho Supreme Court adopted Restatement of the Law Third, Property (Wills and Other Donative Transfers) § 8.3, Comment *f*, in holding that a presumption of undue influence arose if an alleged wrongdoer was in a confidential relationship with a donor and there were suspicious circumstances surrounding the preparation, formulation, or execution of a donative transfer.

In that case, disinherited beneficiaries challenged an amendment to a revocable family trust created by their stepmother and father, who predeceased their stepmother; under the trust terms, a surviving settlor had the authority to change the beneficiaries of the trust. The beneficiaries argued that because the surviving settlor lived with and was cared for by the successor trustee, who was their stepmother's biological daughter, the trustee unduly influenced the settlor to amend the trust to eliminate their father's special bequests to them and designate the trustee as sole beneficiary. Following a bench trial, the trial court determined that the settlor had full testamentary capacity when she amended the trust to disinherit the beneficiaries, and that they failed to establish that the trustee unduly influenced the surviving settlor to amend the trust.

The Idaho Supreme Court affirmed, holding that the trial court properly concluded that the beneficiaries "failed to establish that a presumption of undue influence should be applied in this case." The court explained that a rebuttable presumption of undue influence arose when an "alleged wrongdoer was in a confidential relationship with [a settlor] and there were suspicious circumstances surrounding the . . . execution of the trust," and adopted § 8.3, Comment *f* of the Restatement, in "expanding the type of confidential relationships which can give rise to the presumption."

Looking to the definition of "confidential relationship" set forth in § 8.3, Comment *g*, the court noted that the term embraced three sometimes distinct relationships—fiduciary, reliant, and dominant-subservient—and concluded that the beneficiaries failed to establish that a confidential relationship existed between the trustee and settlor. The court noted that "there [was] no evidence that [the settlor] was a beneficiary of the trust," as the settlor was not a beneficiary to the trust at the time she amended it. Likewise, there was no evidence that a dominant-subservient relationship existed, because the testimony from numerous witnesses reflected that the settlor acknowledged her attorney's concerns of the trustee's exercise of undue influence and "assur[ed] him otherwise," and was "convincingly insistent that [the trustee] did not tell her what to do."

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

The Latest from *Reasonably Speaking*

FREE SPEECH ON CAMPUS

The tension between protecting and promoting freedom of speech is no better exhibited than in the university setting. Historically, colleges have been a place where young minds have been encouraged to exercise true freedom of thought. But to what extent is that freedom protected? Additionally, how does that freedom extend to university faculty?

ALI President David F. Levi is joined by constitutional law expert Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law at The University of Chicago Law School, to discuss speech on campus.

ALI ORAL HISTORY SERIES: ROBERTA COOPER RAMO AND MIKE TRAYNOR

Featuring an abridged portion of one of the series of interviews that ALI is conducting as part of ALI's Oral History Series, in this episode, we are joined by two former American Law Institute presidents, Michael Traynor and Roberta Cooper Ramo. Listen as they discuss their tenure as president, the challenges they faced, and some of their favorite accomplishments.

Traynor served as ALI's eighth president from 2000 to 2008, and Ramo as ALI's ninth, and first woman, president from 2008 to 2017. Both are recipients of ALI's Distinguished Service Award. This interview was conducted on October 19, 2023.

EXPLORING ALI'S HISTORY AND INFLUENCE

On the occasion of ALI's anniversary, we brought together three of our project Reporters to talk about ALI's history and a few of our most influential projects. In this discussion, ALI Centennial History Book Editor Andrew Gold of Brooklyn Law School is joined by Deborah A. DeMott of Duke Law School (Reporter for Restatement of the Law Third, Agency), John C.P. Goldberg of Harvard Law School (Associate Reporter for Restatement the Law Fourth, Property), and Erin E. Murphy of NYU Law School (Associate Reporter for Model Penal Code: Sexual Assault and Related Offenses).

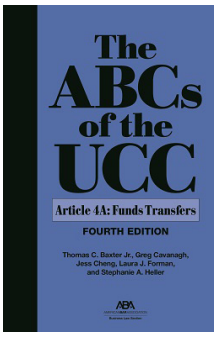
All episodes of ALI's podcast, *Reasonably Speaking*, are available at www.ali.org/podcast and through any podcast application.

Notes About Members and Colleagues

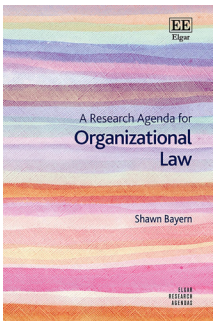
James Allsop has been appointed an international judge on the Singapore International Commercial Court. He previously served on the Federal Court of Australia, retiring in April 2023.

The Oregon State Bar honored **Thomas A. Balmer** of the Supreme Court of Oregon with the Wallace P. Carson Jr. Award for Judicial Excellence.

Thomas C. Baxter of Law Offices of Thomas C. Baxter, Jr., **Jess Cheng** of Wilson Sonsini, **and Stephanie A. Heller** of The Clearing House Payments Company are coauthors on *ABCs of the UCC, Article 4A: Funds Transfers, Fourth Edition* (ABA Publishing 2024), an updated book edition on UCC Article 4A.



Shawn Bayern of Florida State University College of Law has authored *A Research Agenda for Organizational Law* (Edward Elgar Publishing 2024), a book detailing the current state of organization law and the flexible structures and capabilities of modern organizations.

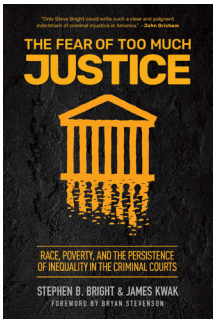


The University of Chicago Law School has named **Omri Ben-Shahar** the Leo and Eileen Herzel Distinguished Service Professor of Law.

Gary Brian Born of WilmerHale has authored *The File* (Addison & Highsmith Publishers 2023), a thriller about the discovery and aftermath of finding Nazi files after World War II.

Richard Briffault of Columbia Law School addressed the Alabama House Ethics and Campaign Finance Committee ahead of the lawmaker's planned overhaul of a 2010 ethics law.

Stephen B. Bright of Yale Law School, with a foreword by **Bryan Stevenson** of Equal Justice Initiative, has co-authored *The Fear of Too Much Justice Race, Poverty, and the Persistence of Inequality in the Criminal Courts* (The New Press 2023), a book discussing justice in criminal courts.



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

Roger A. Fairfax Jr. is the next dean of Howard University School of Law, effective July 1.

The New York City Bar Association has nominated **Muhammad U. Faridi** of Patterson Belknap Webb and Tyler as its next president. If elected, Faridi will become the first Muslim-American to hold the position.

J. Clifton Fleming of Brigham Young University, J. Reuben Clark Law School has authored "Acknowledging (Celebrating? Regretting?) Sixty Years of Subpart F," 51 Intertax 519 (2023) and co-authored "Directions for International Tax Policy," 48 Journal of Corporation Law Digital 8 (2023).

Matthew L.M. Fletcher of University of Michigan Law School, **Linda Sheryl Greene** of MSU College of Law, **Doreen Nanibaa McPaul**, **Wenona T. Singel** of MSU College of Law, and **Rebecca Tsosie** of University of Arizona, James E. Rogers College of Law participated in the 20th Annual Indigenous Law Conference at MSU College of Law.

Jeremy D. Fogel of the Berkeley Judicial Institute, UC Berkeley Law School, **Mary S. Hoopes** of Pepperdine Caruso School of Law, and **Goodwin Liu** of the California Supreme Court have authored the study *Law Clerk Selection and Diversity: Insights From Fifty Sitting Judges of the Federal Courts of Appeals*. Additionally, Fogel has received the 2023 Samuel E. Gates Litigation Award from the American College of Trial Lawyers.

Kenneth C. Frazier has joined the Harvard Corporation.

The American Bar Association has created the ABA Task Force for American Democracy and an accompanying Advisory Commission. ALI members **Kenneth C. Frazier** of Merck & Co. (as Special Advisor) **Heather Gerken** of Yale Law School, **Thomas B. Griffith** of Hunton Andrews Kurth**, Sherrilyn Ifill** of Howard Law School, **Jenny S. Martinez** of Stanford Law School, **Richard Pildes** of New York University School of Law, **Lewis F. Powell III** of Hunton Andrews Kurth, **Jeffrey Rosen** of the National Constitution Center, and **Larry D. Thompson** of Finch McCranie are members of its task force. ALI members **Michael E. Flowers** of Steptoe & Johnson, **Barbara J. Howard** of Barbara J. Howard Co., **William C. Hubbard** of University of South Carolina School of Law (as Special Advisor), **Trevor Potter** of Campaign Legal Center, **Ellen F. Rosenblum** of the Oregon Department of Justice, **James R. Silkenat** of World Justice Project (as Special Advisor), and **John Hardin Young** of SandlerReiff are members of its advisory commission.

Stanford Law School's Deborah L. Rhode Center on the Legal Profession and Legal Design Lab, with codirectors **David Freeman Engstrom** and **Nora Freeman Engstrom** of Stanford Law School, has launched a partnership with the Superior Court of Los Angeles County.

The Houston Bar Foundation honored **Nathan L. Hecht** of the Texas Supreme Court with the 2024 James B. Sales Pro Bono Leadership Award, the organization's highest honor.

Monte A. Jackel of Jackel Tax Law has been named the Graduate Tax Program Scholar in Residence at the University of Baltimore School of Law.

Roscoe Jones Jr. of Gibson, Dunn & Crutcher has been elected chairman of the American Constitution Society's board of directors. Additionally, he has been named the next dean of Drake University Law School, effective July 1.

Leslie Carolyn Kendrick is next dean of University of Virginia School of Law, effective July 1, 2024. Kendrick will succeed **Risa L. Goluboff** in the position, who will return to the law school's faculty at the completion of her term.

NEW MEMBERS ELECTED

On December 14, the Council elected the following 54 persons.

Alok Ahuja,
Kansas City, MO
Steven L. Barth,
Burlington, VT
Derek W. Black,
Columbia, SC
Amy Brigham Boulris,
Miami, FL
Josh Bowers,
Charlottesville, VA
Stuart N. Brotman,
Knoxville, TN
Keira M. Campbell,
New York, NY
Sergio J. Campos,
Newton Center, MA
Jess Cheng,
New York, NY
Eugenia A.P. Cowles,
Burlington, VT
Richard B. Farrer,
San Antonio, TX
Pamela Foohey,
New York, NY
Mark Geistfeld,
New York, NY
Markus Green,
New York, NY
Jasmine E. Harris,
Philadelphia, PA
Thomas Healy,
Newark, NJ
Michael J. Higdon,
Knoxville, TN
B. Jessie Hill,
Cleveland, OH
Josh M. Hsu,
Washington, DC
Rebecca Ingber,
New York, NY
Ramzi Kassem,
Long Island City, NY
Brittany K.T. Kauffman,
Denver, CO
Emily F. Keimig,
Denver, CO
Ajay Krishnan,
San Francisco, CA
Kent A. Lambert,
New Orleans, LA
John Z. Lee,
Chicago, IL
Sophia Lee,
Philadelphia, PA
Addar Levi,
Washington, DC
Natasha C. Merle,
Brooklyn, NY
Jon D. Michaels,
Los Angeles, CA
Benjamin C. Mizer,
Washington, DC
Eric S. Nguyen,
Washington, DC
Oren Nimni,
Washington, DC
Ryan Y. Park,
Raleigh, NC
Charlotte K. Perrell,
St. Thomas, VI
Ashwin P. Phatak,
Washington, DC
Cedric Merlin Powell,
Louisville, KY
Carla L. Reyes,
Dallas, TX
Shannon M. Roesler,
Iowa City, IA
Robin L. Rosenberg,
West Palm Beach, FL
Gabriel P. Sanchez,
San Francisco, CA
Harry Sandick,
New York, NY
Joanna C. Schwartz,
Los Angeles, CA
Joshua S. Sellers,
Austin, TX
Steve Smith,
Waco, TX
Carlos R. Soltero,
Austin, TX
Roxanne K. Song Ong,
Phoenix, AZ
Jason P. Steed,
Lexington, KY
Jeffrey E. Stone,
Chicago, IL
Madhavi Sunder,
Washington, DC
Shelice Tolbert,
Gary, IN
Raymond P. Tolentino,
Washington, DC
Sozi Pedro Tulante,
Philadelphia, PA
Jonathan L. Williams,
Washington, DC

The fall 2023 edition of the *Marquette Lawyer* features the E. Harold Hallows Lecture originally given by **Gerard E. Lynch** of U.S. Court of Appeals for the Second Circuit at Marquette University Law School on March 7, 2023.

Suzette Malveaux of University of Colorado Law School has been awarded the 2023-2024 Gilbert Goldstein Faculty Fellowship. Additionally, Malveaux, together with **Joanne Martin** of the American Bar Endowment were presented the Outstanding Service Award and Distinguished Life Fellow Award, respectively, at the Fellows of the American Bar Foundation 68th Annual Fellows Award Reception and Banquet.

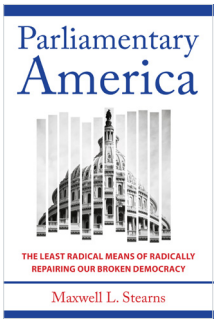
Suzette Malveaux and Joanne Martin receiving ABF awards

Photos courtesy of the American Bar Foundation

Fionnuala Ní Aoláin of University of Minnesota Law School has been named Honorary King's Counsel by King Charles III.

Mary L. Smith was presented as one of the 2023 Business Leaders of Color by Chicago United. She is a recipient of the 2024 Diversity Leadership Awards from the University of Chicago.

Maxwell L. Stearns of University of Maryland, Francis King Carey School of Law has authored *Parliamentary America: The Least Radical Means of Radically Repairing Our Broken Democracy* (Johns Hopkins University Press 2024), a book proposing parliamentary democracy to address political turmoil in the United States.



Stephen T. Whelan of Blank Rome has been appointed a founding member of the Academic Freedom Alliance's Legal Advisory Council, an organization "dedicated to protecting the rights of faculty members at colleges and universities to speak, instruct, and publish without fear of sanction or punishment."

The following ALI members were honored with 2024 Section Awards from the Association of American Law Schools:

Section on Election Law John Hart Ely Prize in the Law of Democracy

Richard Pildes of NYU School of Law

Section on Federal Courts Daniel J. Meltzer Award

Vicki C. Jackson of Harvard Law School

Judith Resnik of Yale Law School

Section on Jurisprudence Hart-Dworkin Award

John C.P. Goldberg of Harvard Law School

Benjamin C. Zipursky of Fordham University School of Law

Section on Taxation Lifetime Achievement Award

J. Clifton Fleming Jr. of Brigham Young University, J. Reuben Clark Law School

Patricia A. Cain of Santa Clara University School of Law

Section on Torts and Compensation Systems William L. Prosser Award

Kenneth S. Abraham of UVA School of Law

Section on Women in Legal Education Ruth Bader Ginsburg Lifetime Achievement Award

Martha L. Minow of Harvard Law School

Submissions as of February 27. If you would like to share any recent events or publications in the next ALI newsletter, please email us at communications@ali.org.

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At its Council meeting in January 2024, former ALI President Roberta Cooper Ramo read a Minute in Remembrance honoring ALI Council Emeritus Philip A. Anderson. A copy of her remarks is available on the ALI website.

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