The American Law Institute’s Early Career Scholars Medal

Last month, at a meeting at the Supreme Court of California, the ALI’s Young Scholars Committee, which Justice Mariano-Florentino Cuéllar chairs, selected its 2017 winners of the Young Scholar Medal: Professors Colleen V. Chien of Santa Clara University and Daniel Schwarcz of the University of Minnesota. It was the culmination of a process that began last April with a letter to all the deans of schools approved by the American Bar Association asking each to nominate one faculty member on the basis of the excellence of that individual’s scholarship and its potential to influence improvements in the law, and to suggest three pieces of the nominee’s scholarship for the committee to read. Eighty-eight deans submitted nominations.

The committee’s 16 members—all leading judges, practicing lawyers, and academics—then undertook the arduous task of winnowing the field. First, pairs of committee members read the works of roughly eight nominees each, and selected the one or two strongest in every group. Then, all the committee members read the works of the 11 semifinalists and narrowed the field to six. The works of these faculty members were discussed at some length at the in-person meeting in San Francisco, which I attended together with Stephanie Middleton, our spectacularly talented Deputy Director. I was enormously impressed by the dedication and commitment that the committee members brought to this endeavor, which stretched over almost one year and involved the careful evaluation of a staggering amount of work.

This award, which is bestowed every two years, was established in 2009 in order to bring individuals who are still at relatively early stages of their academic careers into contact with the ALI as an institution and with its work. The prior winners have been Professors Oren Bar-Gill, then at New York University (now at Harvard) and Jeanne C. Fromer, then at Fordham (now at New York University) in 2011; Adam J. Levitin of Georgetown and Amy B. Monahan of the University of Minnesota in 2013; and Michael Simkovic of Seton Hall (moving to the University of Southern California) and Elizabeth Chamblee Burch of the University of Georgia in 2015.

The ALI works hard to amplify the impact of each winner’s scholarship. As a result, each winner makes a presentation at a plenary session of the Annual Meeting, therefore garnering an audience of several hundred people. And we organize a large all-day conference, with a high-profile keynote speaker, a dozen or so panelists, and 50 or so members of an invited audience of experts in the field, to grapple with the winner’s work, particularly its policy recommendations. Past keynote speakers have included Justice Stephen G. Breyer of the Supreme Court of the United States; Commissioner Julie Brill of the Federal Trade Commission; Judge Anthony J. Scirica of the United States Court of Appeals for the Third Circuit; and U.S. Senator Elizabeth Warren, a former ALI Vice President, who co-authored an article with one of the winners and was a mentor to another.

Professor Schwarcz, one of this year’s winners, has used theory, empirical methods, and analysis of doctrine to make extensive contributions to our understanding of insurance law and regulation. For example, he challenges the conventional wisdom that homeowners’ insurance policies are standardized across competing companies. Instead, they differ significantly with respect to multiple important coverage provisions. And consumers cannot compare these differences before purchasing a policy, because the information is currently not provided to them. His work presents a range of regulatory and legislative options for responding to this lack of transparency and offers strategies for coverage attorneys to challenge the enforceability of non-standard exclusions.

Largely in response to Schwarz’s research, the National Association of Insurance Commissioners established a working group to study the transparency of consumer-oriented insurance markets and propose reforms. A number of states, including Nevada, Missouri, and California, developed practices for making publicly available the policies of competing carriers, frequently working with Schwarz on these efforts. And a recent Federal Insurance Office report extensively described his work and embraced many of his proposed reforms. Schwarz testified about his findings in several U.S. congressional hearings and his work was discussed in leading publications, including the New York Times and Wall Street Journal.

Professor Chien, the other winner, is a creative and prolific scholar of intellectual property. Among other contributions, she coined the now-ubiquitous term “patent assertion entity” to describe entities that use patents primarily to obtain license fees rather than to support the development and transfer of technology. Her work presents a sophisticated analysis of the impact of these entities on patent markets, including their effects on startups, venture capitalists, and consumers, and incorporates legal analysis, narrative, and empirical approaches, including surveys and descriptive statistics.

Following a survey and related work on frivolous demand letters that Chien carried out in 2012, 32 states have adopted legislation to deal with this practice. She has testified twice before the House Judiciary Committee and numerous times before federal agencies. Her work has been the basis of studies and policy initiatives by the Federal Trade Commission, Congress (in the America Invents Act), and the White House, which recruited Chien to work on patent reform from 2013 to 2015 as a Senior Advisor on Intellectual Property and Innovation. Chien has published influential articles in the New York Times, Wall Street Journal, and Washington Post.
Meetings and Events Calendar At-A-Glance
(for more information, visit www.ali.org)

Below is a list of upcoming meetings and events. This schedule may change, so please do not make travel arrangements until you receive an email notice that registration is open.

2017

**May 22–24**
94th Annual Meeting
Washington, DC

**June 14 (JOINT)**
Restatement of the Law, Children and the Law
Philadelphia, PA

**June 26 (MCG)**
June 27 (Advisers)
Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis
Philadelphia, PA

**September 8 (JOINT)**
Restatement of the Law Third, Torts: Liability for Economic Harm
Philadelphia, PA

**September 14–15 (JOINT)**
Model Penal Code: Sexual Assault and Related Offenses
New York, NY

**October 5 (JOINT)**
Restatement of the Law, Charitable Nonprofit Organizations
Los Angeles, CA

**October 12–13 (JOINT)**
Restatement of the Law Fourth, Property
Philadelphia, PA

**October 19–20**
Council Meeting - October 2017
New York, NY

**October 26 (JOINT)**
Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations
Philadelphia, PA

**October 27 (JOINT)**
Restatement of the Law Third, Conflict of Laws
Philadelphia, PA

**November 9 (JOINT)**
Principles of the Law, Policing
Philadelphia, PA

**November 10 (JOINT)**
Restatement of the Law, The U.S. Law of International Commercial Arbitration
Philadelphia, PA

**December 1 (JOINT)**
Restatement of the Law, Children and the Law
Philadelphia, PA

**December 7 (JOINT)**
Restatement of the Law, Copyright
Philadelphia, PA

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and she has been a catalyst for significant efforts to reform the patent system, organizing important conferences and bringing together leading scholars to focus on reform efforts.

These days, some commentators decry the state of legal scholarship by saying that what professors write is not useful to judges. The assertion that leading professors are not primarily providing doctrinal guidance to the courts is perhaps true. But their work, as evidenced by the scholarship of all eight winners and of the vast majority of the finalists is certainly useful to other important institutions, including the U.S. Congress, state legislatures, and federal and state administrative agencies—all of which are institutions to which the ALI aspires to provide guidance. And I find it difficult to believe that having a more sophisticated understanding of the nature of homeowner policies or of the impact of patent assertion entities will not eventually prove useful to the courts. Participating in this selection process and reading a great deal of work of both very high quality and significant public policy importance made me feel very good about being a law professor!

At last month’s meeting, Justice Cuéllar’s committee also decided to make three recommendations, subsequently approved by the Executive Committee, for prospective changes to the program. First, the letter to the deans soliciting nominations will stress the ALI’s interest in having a diverse group of nominees. Second, whereas until now, nominees needed to have graduated from law school within the last 15 years and have been full-time faculty members for no more than 10 years, the first requirement will be eliminated for future competitions so that all individuals at an early stage of their academic careers regardless of their prior career path can compete for the award. And, third, in light of this latter change, the Young Scholars Medal will now be renamed the Early Career Scholars Medal.

I very much hope that you’ll be able to attend the Annual Meeting this year and hear Professor Schwarcz’s presentation, and that you’ll come as well in 2018 and hear Professor Chien’s presentation. I’m confident that you won’t be disappointed!