

THE ALI Reporter

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In Memoriam: Geoffrey C. Hazard, Jr.

ALI Director 1984-1999

Geoffrey C. Hazard, Jr., Director Emeritus of The American Law Institute and one of the most brilliant legal scholars and teachers of his generation, died on January 11. He was 88.

One of the nation's foremost authorities on professional ethics, trial practice, and civil procedure, Professor Hazard was the

Thomas E. Miller Distinguished Professor of Law Emeritus at the University of California, Hastings College of the Law. He was also Emeritus Professor of Law at the University of Pennsylvania Law School and the Sterling Professor of Law Emeritus at Yale Law School.

When Professor Hazard received the Institute's Distinguished Service Award at the May 2013 Annual Meeting, his former student and research assistant at Yale, U.S. Supreme Court Associate Justice Samuel A. Alito, Jr., took time from a busy schedule to speak in Professor Hazard's honor, sharing memories of his student days. On presenting the award, given from time to time to a member who over many years has accepted significant responsibilities and played a major role in the Institute, Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit succinctly captured the astounding breadth of Professor Hazard's career:

Law professor at several great law schools, prolific scholar, author of textbooks, legendary teacher, mentor, rulemaker of procedural rules and rules of attorney conduct, and, of course, the former Director of The American Law Institute, Geoff continues to leave an indelible imprint on the American and international legal systems. He is truly one of the law's wise men.

An ALI member for 52 years, Professor Hazard served for nine years as the Reporter for the Restatement Second of Judgments, published in 1982. The experience may have prompted his wry remark at the 1999 Annual Dinner that "qualifications for Reporter in an ALI project include good health and proven stamina." He succeeded Herbert Wechsler as ALI's fourth Director in 1984, skillfully guiding the ALI's already-begun Principles of Corporate Governance and Restatement Third of Foreign Relations Law to completion.

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THE DIRECTOR'S LETTER BY
RICHARD L. REVESZ

A Transatlantic Collaboration

At its January meeting, the ALI Council approved a new project, tentatively entitled "Principles for a Data Economy." It differs from our 17 ongoing projects because it is being undertaken jointly with the European Law Institute (ELI), which, like the ALI, is a membership-based, independent nonprofit organization with the mission of providing guidance on legal developments. We are very excited about this transatlantic collaboration!

As the proposal for the project indicates, "the law governing trades in commerce has historically focused on assets, and on trade in items, that are either real property, or goods, or rights (including shares, contract rights, intellectual property rights, licenses, etc.). With the emergence of the data economy, however, tradeable items often cannot readily be classified as goods or rights, and they are arguably not services. They are often simply 'data', which may be considered as any piece of information recorded in any form or medium." There is uncertainty, both in the United States and in Europe, concerning the legal rules that should apply to the data economy. When our walking and running steps are recorded by our smart phone or our driving patterns are recorded by our cars, data is being generated and then aggregated across large numbers of individuals. Who owns this valuable information? Who can trade in it? What rights do the various actors have?

The project has the ambitious goal to "study, identify, and collate the existing and potential legal rules applicable to transactions in data as an asset and as a tradeable item and assess the 'fit' of those rules with these transactions." It will not address, however, the regulation of data privacy or intellectual property rights relating to data. The end-product will be a set of transnational principles that could be used

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by participants in the data economy. And, these principles might also provide guidance to courts and legislatures worldwide.

The project will have two distinguished Reporters, one from each organization. The ELI Reporter, Christiane Wendehorst, is Professor of Private Law at the University of Vienna. She was also a founding member of the ELI and became the ELI's President in September 2017. The ALI Reporter, Neil Cohen, is the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School and the longstanding Research Director of the Permanent Editorial Board for the Uniform Commercial Code, the ALI's joint venture with the Uniform Law Commission.

To help coordinate the work of the two institutions, the project will also have co-chairs and a working group of up to 10 additional individuals, with roughly half appointed by each institution. The ELI co-chair will be Lord Thomas of Cwmgiedd, who most recently served as Lord Chief Justice of England and Wales. On the ALI side, the co-chair will be Steven Weise, a Proskauer partner and member of the ALI Council. Steve is so central to all the ALI's myriad activities concerning the UCC that I sometimes think of him as Lord Weise of Sherman Oaks (and collectively think of him, Neil, and ALI Council members Amy Boss and Teresa Harmon, who contribute so much wisdom to the ALI's work on commercial law and all of whom are already involved in this project, as the UCC's gods and goddesses). In addition to this leadership group, the project will have a group of jointly appointed Advisers and a Members Consultative Group (or equivalent) from each organization.

While the work will be conducted jointly, each organization will follow its respective approval processes. For the ALI, the Council and membership will need to approve the draft, as is the case for all our projects. We hope that a single draft will be approved on both sides of the Atlantic. But for any Principles for which agreement of this sort cannot be reached, there will be different ALI and ELI versions. The project already got off to a very good start with a productive exploratory meeting that took place in New York this winter. I am very grateful to my illustrious predecessor as ALI Director, Professor Lance Liebman, who provided guidance to the ELI at the time of its founding and now serves as our ALI "ambassador" to the ELI, for participating in the meeting.

There is only one precedent for a full project that was jointly approved by the ALI and a sister institution. In 2004, the ALI and the International Institute for the Unification of Private Law (UNIDROIT) jointly approved the ALI/UNIDROIT Principles of Transnational Civil Procedure, which set forth a code of civil procedure that would be intelligible and operable in both common law and civil law regimes and is now serving as the basis for an ELI/UNIDROIT project on European model rules. In addition, the portion of the ALI's Principles of Cooperation Among the NAFTA Countries dealing with Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases was also approved by the International Insolvency Institute.

The 21st century has so far produced not only the increasing globalization of commerce but also the emergence of respected organizations around the world with goals similar to the ALI's. As a result, my hope is that further collaborations of this sort will emerge. For example, in recent years, members of the ALI Council and I have had conversations with Chief Justice Sundaresh Menon of the Supreme Court of Singapore concerning possible joint work with the recently launched Asian Business Law Institute, for which Chief Justice Menon chairs the Board of Governors. Perhaps one day we will be able to launch a joint ALI/ELI/ABLI project. But in any event, ALI members should feel pride that the type of work that we do is deemed valuable around the world!

**ALI MEMBERS MAY JOIN THE MCG FOR PRINCIPLES FOR A
DATA ECONOMY AT WWW.ALI.ORG/PROJECTS.**