



## ***ADVANCE SHEET – ISSUE 96***

### **Thanksgiving**

The holiday season, which we are about to embark on, involves well defined roles for each of the individual holidays, roles that go not just a little into transforming the period into the *Season of Our Discontent*. Christmas is about the lists, i.e., things to do and presents to buy. New Years is of course about resolutions. How can I make this wretched being just a little more tolerable. Self-reflection, frequently aided by a drink or two, morphs into self-condemnation.

To kick it off though, and over all too quickly, more and more so each year as the stores open ever earlier in an uphill battle against on-line shopping, there is Thanksgiving. Counting our blessings, thinking about what it is we have to be thankful for, the day retains the essence, perhaps more than any other holiday, of what it was intended to convey.

We all have much to be thankful for, even those amongst us who appear not to. In the words of Sophocles “Look and you will find it – what is unsought will go undetected.” For me, the beginning, the middle and the end of my reflection centers around my family, one which I am not worthy of, but am certainly grateful for. Somewhere in there though, is a place that over the course of the past thirty-four years has come to feel like home, a place where I have come to know people who feel like family, the Baltimore Bar Library.

The Bar Library represents what is good and noble in a myriad of ways. In the founding of the Library in 1840, by the local Bench and Bar, and hence the name The Library Company of the Baltimore Bar, we see the “can do” attitude that is responsible for so much that we as Americans have achieved. In the acceptance of Everett J. Waring to Bar Library Membership on April 29, 1886 and Etta Haynie Maddox on September 15, 1902, at a time when almost every legal organization in the area was rejecting the applications of the first African-American and the first woman to be admitted to practice in the State of Maryland, we find testament to the Library’ s organizational courage and integrity and commitment to that which is right.

The list does not end in 1902, however, but has continued over the last 117 years. Aware that it is never easy to start out on your own in the legal profession, the Library offers greatly discounted memberships to new admittees as well as makes its conference rooms available to

them for everything from meeting clients to the holding of depositions, all without charge. Pro se litigants can find help at various locations throughout the State but at the Bar Library they find the Harry A. Cole Self-Help Center and material and computer terminals dedicated specifically for their needs. Bar Associations such as the Alliance of Black Women Attorneys of Maryland, the Bar Association of Baltimore City and the Monumental City Bar Association all meet in space provided by the Bar Library without charge.

Every decision that is made here at the Library is made with the intent of serving the needs of its members and the local legal community. Whether it be a lecture; a film; an educational series; the renovation of a conference or meeting room; the purchase of a treatise; the addition of a Library service; the entering into of a subscription to a legal database - all of it is with all of you in mind. By and for the Bench and Bar, all of us together, we are The Library Company of the Baltimore Bar. For this I am indeed Thankful.

Joe Bennett

## **If You Can & Thanks**

As we head toward the end of yet another year, an event that appears to be occurring with ever more frequent regularity, please take just a few minutes to consider the Library and the role that it has played in your professional life and the role that it continues to play not just for you, but for other members of the Bench and Bar. During my time here at the Library I have encountered people who to this very day, overwhelm me with their generosity. From the Library's Board of Directors to those that take part in its continuing legal education and lecture series, to its members, so many have given and continue to give, allowing the Library not just to survive, but to thrive, to remain a vital part of the local legal community.

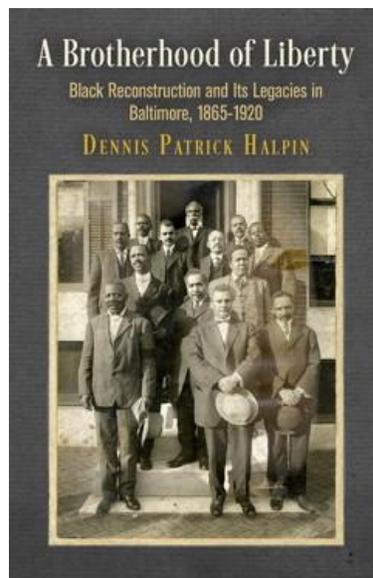
The Library's members, who exhibit their support through their memberships, contributions to the Library's Capital Improvement Fund, and myriad other ways, are the defining element of the Library. For this, I am so very grateful. To them, and to others who may be reading this, I ask that you think of the Library yet again as we come to the end of the year. If you can give more, whether it be a year end contribution, the transfer of some stock (simply call your broker and instruct them to transfer stock to "Charles Schwab and Company, for the Library Company of the Baltimore Bar, account number 1162-6963"), or remembering the Library in your will (bequests should refer to "The Library Company of the Baltimore Bar"), in the fine tradition of, among others, Orville Horwitz, Esquire, Nathan Patz, Esquire, Ms. Kai-Yun Chiu, and Franklin I. Freeman, Esquire, it would greatly help an institution that has striven to do nothing more than serve the Bench and Bar for the whole of its existence. Please remember in deciding how much to give that the Library is a 501(c)(3) organization.

If there is something that might be near and dear to your heart, such as the Library's Honorable Harry A. Cole Self-Help Center, sponsoring a lecture, or Library improvements

throughout the Courthouse, such as the signage replacement project, you may designate that your contribution be used for a particular purpose.

Thank you so much.

Joe Bennett



## **The Brotherhood Of Liberty**

On March 6, 2018, Professor Dennis Halpin of Virginia Tech University took part in the Bar Library Lecture Series speaking on “The Brotherhood Of Liberty.” Professor Halpin, Co-Winner of the Joseph L. Arnold Award for Outstanding Writing on Baltimore’s History, Baltimore City Historical Society, 2015, has written numerous articles on the quest of African-Americans for equality, such as “The Struggle For Land and Liberty: Segregation, Violence and African-American Resistance 1898-1918.” *The Journal of Urban History*, Volume 44 Issue 4, July 2018; “For My Race Against All Political Parties: Building a Radical African-American Activist Foundation in Baltimore, 1870s-1885.” *Maryland Historical Magazine*, Spring/Summer 2016, Volume 1: 86-107; “Manufacturing Criminals: The Historical Root of Baltimore’s Racialized Criminal Justice System,” *Perspectives on History*, July 2015; “Race Riot,’ ‘Midnight Melee,’ and Other ‘Crimes’ Reconsidered: African-American Soldiers’ Protests in 1898 Tampa.” *Gulf South Historical Review*, Spring 2005, Volume 20, No. 2: 37-62. At the time Professor Halpin spoke at the Library, he had not as yet published a book on the subject on which he was speaking. That has now changed with the recent publication of *A Brotherhood of Liberty: Black Reconstruction and Its Legacies in Baltimore, 1865-1920*. University of Pennsylvania Press, July 2019.

The following is from the University of Pennsylvania Press:

"In *A Brotherhood of Liberty*, Halpin describes how the African American community of Baltimore used activism to define citizenship and freedom after the Civil War. The book makes a significant contribution to our understanding of African American politics from the age of Emancipation through the hardening of Jim Crow to the law-and-order policies of the so-called Progressive Era."—Shawn Alexander, University of Kansas

In *A Brotherhood of Liberty*, Dennis Patrick Halpin shifts the focus of the black freedom struggle from the Deep South to argue that Baltimore is key to understanding the trajectory of civil rights in the late nineteenth and early twentieth centuries. In the 1870s and early 1880s, a dynamic group of black political leaders migrated to Baltimore from rural Virginia and Maryland. These activists, mostly former slaves who subsequently trained in the ministry, pushed Baltimore to fulfill Reconstruction's promise of racial equality. In doing so, they were part of a larger effort among African Americans to create new forms of black politics by founding churches, starting businesses, establishing community centers, and creating newspapers. Black Baltimoreans successfully challenged Jim Crow regulations on public transit, in the courts, in the voting booth, and on the streets of residential neighborhoods. They formed some of the nation's earliest civil rights organizations, including the United Mutual Brotherhood of Liberty, to define their own freedom in the period after the Civil War.

Halpin shows how black Baltimoreans' successes prompted segregationists to reformulate their tactics. He examines how segregationists countered activists' victories by using Progressive Era concerns over urban order and corruption to criminalize and disenfranchise African Americans. Indeed, he argues the Progressive Era was crucial in establishing the racialized carceral state of the twentieth-century United States. Tracing the civil rights victories scored by black Baltimoreans that inspired activists throughout the nation and subsequent generations, *A Brotherhood of Liberty* highlights the strategies that can continue to be useful today, as well as the challenges that may be faced."

Professor Halpin is currently researching "Grassroots Activism, Politics, and the Making of Modern Baltimore, 1877-1920."

## **The Society of the Sons of New York**

### **Honorable Wanda Keyes Heard\***

During Black Reconstruction there were organizations which had a significant influence on the lives of many free African Americans. These organizations were founded primarily by clergy and businessmen looking for a means to address inequality, racism and seeking the full meaning of "the pursuit of happiness". Organizations such as the *Society of the Sons of New York*<sup>1</sup> and the Brotherhood of Liberty in Baltimore were founded during this Black

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<sup>1</sup> Sacks, Marcy S., *Before Harlem: The Black Experience in New York City Before World War I*, on "Society of the Sons of New York", at p.192.

Reconstruction period. Whether they were created or founded for merely political or social reasons, the creation of organized groups of affluent African Americans were used effectively to combat racism, slavery, prejudice and to cultivate, as well as maintain, social and economic gains. These organizations were not only prevalent in Baltimore but also existed in the northern states where free African Americans and supporters of the abolitionist movements existed and produced flourishing communities.

My story and my connection to the *Society of the Sons of New York* is steeped in history, a search for wealth and freedoms based on geographic origins in the North and property/land ownership in New York and New Jersey. It is the geographic identity and land ownership which would be required for admittance into privileged and prestigious organizations like the *Society of the Sons of New York*. When one initially considers the origins of blacks or African Americans in this country, one normally thinks of slave ships and the depositing of Africans in southern locations and on plantations. When asked the proverbial question, “Where are your people from? ”, many more African Americans answer the question by attempting to trace their origins from places in the southern part of the United States. It is only natural to believe that the South is the place to begin one’s search into family origins. However, not all African Americans have roots best developed and traced by examining southern roots or ‘plantation’ stereotypes. It is clearly documented that pre-Emancipation Proclamation Baltimore was the home of the greatest number of freed slaves and free people of color. Many slaves were off-loaded in Annapolis and in Baltimore City, sold into slavery in and around the Chesapeake Bay and on plantations in the South. However, Baltimore developed a strong community of African Americans who were free men. History also tells us that there were large numbers of free men of color in other parts of the country.<sup>2</sup> In fact, my ancestry is best traced to the northern part of the country where several generations of my family owned property and hence, developed an African American story of a slightly different twist.

As far as I have been able to document, my great-great-great-great grandfather, Jacob Brown was a free man who found his way to the Quaker community of Fair Haven, located on the Jersey shore in Monmouth County sometime in the late 1700s - early 1800s. The Abolition Act of 1804 created the legal basis for free African Americans to purchase land in New Jersey – Jacob Brown, being a free man, was sold land by a Quaker, Jacob Corlies Jr. circa 1830.<sup>3</sup> The Corlies Family had owned property in the area since the 1670s and were slave owners. In 1779, however, the Shrewsbury Quakers of this New Jersey peninsula demanded that all slaves be freed. After purchasing the land from the Corlies Family, Jacob Brown created the first community of free African Americans establishing a meetinghouse, school, church and cemetery.<sup>4</sup> The creation of this “enclave” of freemen and fleeing slaves by my ancestor Jacob Brown was significant for my family and forms the understanding of how many other African American families rose to affluence by property ownership, geography and ultimately, some degree of wealth. The property purchased by Jacob Brown and parceled off to other African Americans encompassed largely an area within a peninsula between the Navesink and Shrewsbury Rivers in Monmouth County, New Jersey – later to be named Brown’s Lane.<sup>5</sup> Jacob

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<sup>2</sup> Jones, Martha S., *Birthright Citizens – A History of Race and Rights in Antebellum America*, at 12-15. (2018)

<sup>3</sup> Grabas, John, *Owning New Jersey: Historic Tales of War, Property Disputes & the Pursuit of Happiness*, (2014)

<sup>4</sup> *Ibid.* Chapter “Brown’s Lane: The Enclave Center.”

<sup>5</sup> *Ibid.* See also, Gabrielan, Randall, *Images of America: Fair Haven*, at 32, 120-121.

Brown's son, Jacob S. Brown, was my great-great-great grandfather. He fathered three children, William S. Brown (my great-great grandfather), Frederick C. Brown (my great-great uncle) and Clara Brown Treadway (my great-great aunt). Each of Jacob Brown's children were given parcels of land and remained on the property known as Brown's Lane until their deaths.

In 1891, my great-great uncle, Frederick Brown, son of Jacob S. Brown, joined the *Society of the Sons of New York*. Like its counterpart the Brotherhood of Liberty in Maryland formed in 1885, the *Society's* membership consisted of affluent African Americans in New York who fought for racial equality and tried to orchestrate changes in society for the betterment of a specific group of New Yorkers in the African American community. Even in the early to mid 1800's, Fair Haven, New Jersey was but a stone's throw from the urban center of New York City. It was common place for affluent African Americans to travel there for business and pleasure. Frederick Brown often travelled to New York and owned property and held business interests in Westchester County, New York.<sup>6</sup> Both the Brotherhood of Liberty in Baltimore and the *Society of the Sons of New York* had members who were activists, businessmen and preachers, many of whom had achieved affluence and wealth through property ownership.<sup>7</sup> It is from the vantage point of the enclave of his birthplace on Brown's Lane that my great-great uncle, Frederick Brown decided to join the *Society of the Sons of New York* on April 8, 1891. *The Society* had as primary requirements for admission to the organization that one be a person of color, a property owner, born in New York or New Jersey and not from the "South". These affluent African Americans sought to separate themselves and remain somewhat elitist by distinguishing themselves from the migrant influx of freed blacks and people of color from the South. *Society* member, Adam Clayton Powell Sr. would go on to found the National Urban League and his son, Adam Clayton Powell Jr. would become the first African American member of the United States House of Representatives from New York.<sup>8</sup> However, the difference between the Brotherhood and the *Society* was the use of geographic origins to create privilege and status. Though the *Society* occasionally admitted other individuals with "honorary" membership who met other criteria,<sup>9</sup> my great-great uncle, Frederick Brown joined the *Society* to further his status, privilege and power already evidenced through land ownership. Having never known bondage, servitude or slavery, Frederick Brown had status, affluence, property ownership and a birthplace with the "right" geography. The *Society* sought to make social inroads for better educational, economic and social circumstances for its members much in the same way as the Brotherhood of Liberty did in Baltimore. In this way, this elitist organization protected all socio-economic gains, thrived and gained political respect and recognition. Though the trappings and restrictions of racial prejudice impacted my family in a great many ways, it was birth right in the North and property ownership which afforded my family freedoms not realized by many African Americans in the South in the pre-Emancipation Proclamation days

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<sup>6</sup> Documented deeds of property acquisition by Frederick Brown held in this writer's family records.

<sup>7</sup> Northup, Solomon, "*Twelve Years A Slave*", (1853). It helps one to understand the stories of well-educated men like Solomon Northup, who wrote about being captured in Washington City in 1841 and rescued from the bondage of slavery in 1853. During this time, my ancestor Jacob Brown was living and owning land in Fair Haven, New Jersey but fearful of being captured and sold while travelling to Freehold, NJ to record the deed to the land.

<sup>8</sup> Documented Certificate certifying membership of Frederick C. Brown into the *Society of the Sons of New York* (1891) on loan to the Library Company of the Baltimore Bar by this writer (2019).

<sup>9</sup> Among the non-New Yorkers permitted into Society of the Sons of New York were; Adam Clayton Powell of Virginia, Alexander Walters of Kentucky and T. Thomas Fortune of Florida. Sacks, Marcy S. at 192.

and during the Black Reconstruction post Civil War era. Knowing and understanding these ancestral origins is crucial in understanding my truths as an African American.

Today, I understand so much better my grandmother's great shock and ominous warnings when I advised her I would attend the University of Maryland – south of the Mason Dixon Line. The year was 1975, but the family stories handed down to her by her grandfather, Jacob Brown warning “never go south” were repeated to me as if it were 1840 and I was about to break a golden rule. History, knowledge and truth provides clarity and appreciation where sheer ignorance once stood. I understand the reasons behind her cautions now. I appreciate the knowledge and documentation made available to me, for it is not often that an African American can trace their roots as I have done. Certainly, much more research and discovery into my family is warranted but I am blessed to have discovered others who have taken an interest in accurately documenting so much information about my family to date.

*\* The Honorable Wanda Keyes Heard is the Chief Judge of the Circuit Court for Baltimore City. Chief Judge Heard was born in Monmouth County, New Jersey. She has been a member of the Library Board of Directors since 2010.*

## **Restatement Third of Torts: Concluding Provisions**

In the last edition of the Bar Library's Advance Sheet (Volume 95), I wrote about the American Law Institute's Restatements of the Law. Near the end of my article, I mentioned that in January 2019 the ALI Council approved three new torts projects to complete the Restatement Third of Torts. Reprinted below with the permission of the authors and the ALI is an article that was published in the Fall 2019 ALI Reporter ([https://www.ali.org/media/filer\\_public/a6/06/a6068891-6c5c-4517-a539-0a8451178e6a/ali\\_fall\\_reporter-3151-web.pdf](https://www.ali.org/media/filer_public/a6/06/a6068891-6c5c-4517-a539-0a8451178e6a/ali_fall_reporter-3151-web.pdf)) regarding the Restatement Third of Torts: Concluding Provisions. The excellent article answers many questions about the Restatement Third of Torts, including a question that I have had for years: Why was the Restatement Third published in separate parts, rather than as a complete whole as the first two Restatements of Torts had been?

*- H. Mark Stichel, principal in the firm Astrachan Gunst Thomas, P.C., and member of the American Law Institute.*

## **Project Spotlight: Restatement of the Law Third, Torts: Concluding Provisions**

*by Michael D. Green & Nora Freeman Engstrom*

We think that one can only understand how the project titled “Restatement Third of Torts: Concluding Provisions” came about and what it will address with some background about the Third Restatement of Torts. So, this profile might more appropriately be titled, “A Brief History of the Third Restatement of Torts.”

This story begins with the Responsibility for Personal Injury (Enterprise Liability) project, itself inspired by the widespread adoption of strict products liability, which occurred, in no small part, because of the 1965 publication of § 402A of the Second Restatement of Torts. Authored by leading torts and administrative law scholars of the day and ultimately published in 1991, the Enterprise Liability project was a magnificent piece of academic work, providing a range of recommendations for an optimal system to address accidental injuries. Once completed, though, the Institute realized that this project, which was somewhat unmoored from case law, could not be published in any form that the ALI had previously utilized, all of which the ALI endorsed as appropriate for common law judges. The Institute thus named it a “Reporters’ Study,” which meant that it was the voice of the Reporters, not the Institute, and also meant that, other than publishing it, the ALI did not endorse its recommendations.

In the aftermath of that somewhat ill-fated project, then-ALI Director Geoffrey Hazard determined it was time to start work on the Third Restatement of Torts, which he hoped might benefit from the Enterprise Liability’s Reporters’ Study. To kick off that effort, in 1992, the ALI convened two meetings of tort law experts, where Hazard canvassed attendees’ views about the wisdom of restating product liability law and, once convinced that the project was worthwhile, sought advice about how to proceed.

After these meetings and much deliberation, the Institute launched the Products Liability project, with two leading products liability scholars, Jim Henderson of Cornell University and Aaron Twerski of Brooklyn Law School, as the Reporters.

Notably, in so doing, the die was cast for the future of the Third Restatement. Peeling off products liability and addressing it solo meant that the Institute would be breaking with tradition in the manner it had previously prepared Restatements. In the past, one or perhaps a couple of Reporters took on the entire subject (whether torts, property, or the law governing lawyers) and proceeded seriatim through the subject, culminating with the publication of a multivolume final product. Instead, Products Liability (PL) would be a discrete project and volume, which meant, for better or worse, that further efforts on the Third Restatement would follow this mold.

Though that much was clear, for a long while the shape and scope of the remainder of the Third Restatement of Torts was distinctly uncertain. Some supported a “General Principles” project that would address the core issues of duty, negligence, intent, and causation. Others pointed out that a Third Restatement couldn’t just address those basic elements but would also have to address the major reforms of the latter part of the 20th century, including comparative fault, which, starting in the mid- to late 1970s, supplanted the complete bar of contributory negligence; states’ many modifications to the traditional rule of joint and several liability; and states’ new rules for contribution and credit, in the event of a partial settlement.

That latter idea gained traction, and the Institute ultimately commissioned Bill Powers of the University of Texas to lead that project, eventually dubbed “Apportionment of Liability” (AoL). One of us (Mike, then of the University of Iowa) also joined to collaborate with Bill on this project. Meanwhile, as to General Principles, the Institute scored a great coup and convinced Professor Gary Schwartz of UCLA, who we consider one of the torts titans of the latter part of the 20th century, to take the pen.

Gary began his work in 1997, covering topics such as negligence, intent, and causation, and was eventually joined by Mike (by then at Wake Forest) to assist in the project’s completion. Tragically, however, Gary died six months into that partnership. To continue the project after Gary’s untimely death, Mike enlisted (by that time, his frequent coauthor and dear friend) Bill Powers.

In time, just as that project’s leadership changed, its scope did as well. The project, which started with a narrow focus on limited topics, ultimately morphed into something much larger, in recognition of the fact that “General Principles” needed to be supplemented with a deep dive into the many bricks that make up a contemporary tort law edifice, including, for example, negligence per se, lost chance, market share liability, and stand-alone claims for emotional distress. Remarkably Bill continued on this project—which came to be called “Liability for Physical and Emotional Harm (LPEH)”—even after he became President of the University of Texas in 2006. When liability of those who hire independent contractors was appended to this project, Ellen Pryor, now of the UNT Dallas College of Law, generously agreed to join Bill and Mike as an Associate Reporter. LPEH was ultimately published in two volumes in 2010 and 2012.

Gentle and impatient readers: Yes, this background really is critical to understanding Concluding Provisions.

In 2007, as LPEH was winding down, Director Lance Liebman convened an important meeting about the future of the Third Restatement of Torts in Austin, Texas. From Mike’s perspective, the meeting’s critical takeaway was a decision that the Third Restatement would not leave any provisions of the Second Restatement expressing the position of the Institute. The Third Restatement would not be a “lite” restatement of the tort law of the 21st century. Instead, it

would be, attendees agreed, comprehensive and complete on its own terms. Attendees immediately recognized some implications of this decision (for example, that Intentional Torts, a largely stable area, would have to be included). The full implications of this decision, however, would not be revealed for a decade.

Meanwhile, as the larger project's architecture was being worked out, other projects were proceeding. A project on economic harm had been moving forward in stutter-steps, as it was initiated in 2004, suspended, and restarted in 2010 with Ward Farnsworth, who would shortly thereafter become the Dean at the University of Texas, as the Reporter. Covering topics including the unintentional infliction of economic loss, fraud, breach of fiduciary duty, and public nuisance, the final portions of that project were approved at the 2018 Annual Meeting, and publication of this fourth piece of the Third Restatement is imminent.

So too, in 2012, the ALI began the Restatement of Intentional Torts to Persons, with Ken Simons of the University of California at Irvine and Ellen Pryor at the helm. When Ellen stepped down to help launch the law school at UNT Dallas, Jonathan Cardi of Wake Forest stepped in. That project, which will ultimately address matters including assault, battery, and false imprisonment, is well underway.

But, that still left some unfinished business—and after taking over as the new Director of the ALI—Richard Revesz sought to determine what would be required to actually *finish* a comprehensive Third Restatement, which, even at that point, had been in production for almost a quarter-century. Eager to close the book on the odyssey of this project, Director Revesz contacted Bill and Mike and requested that the two longtime collaborators prepare a blueprint for the Third Restatement's completion.

In preparing this to-do list, the collaborators agreed that some unfinished business was easy to spot: defamation (with all of its constitutional overlay) and privacy were ripe for revision. Similarly, the critical matter of remedies required comprehensive attention. All were addressed by the Second Restatement but had escaped attention in the patchwork of projects that comprised the Third Restatement up to that point.

But the two also found something unexpected: all of the completed and planned subject-specific projects had also left behind numerous matters covered in the Second Restatement. Though the Austin meeting had concluded with the commitment that the Third Restatement would be comprehensive and not leave orphans—the reality was, even after decades of sustained effort, orphans remained.

At the same time, Bill and Mike found topics that logically should have been in the Second Restatement but weren't: How can a Restatement of Torts not address medical malpractice? Or vicarious liability? Neither of those subjects was contained in either of the first two Restatements, although *legal* malpractice was included in the Restatement Third of the Law Governing Lawyers, and vicarious liability was included in the Restatement Third of Agency.

Finally, Bill and Mike also realized something that all of the work on specific-subjects missed. Important new areas had emerged in the years since the Second Restatement—and these, too, had so far been unaddressed. Recent developments include a wide variety of issues, including: spoliation-of-evidence claims, wrongful birth, pregnancy, and life, and bad-faith insurance claims, among many others.

Canvassing these orphans and newly-emergent areas, Bill and Mike prepared a memorandum, which they submitted to ALI leadership in 2018 recommending that yet another torts project be commissioned to cover these “leftover” subjects, an eclectic but broad swath of tort law. Director Revesz agreed and by the fall of 2018 the Council also provided its approval. Bill and Mike got their just deserts, however, when Director Revesz asked if they would serve as Reporters for this final Torts Restatement project. As Mike remembers it: “Bill and I talked over the phone about the invitation, fully cognizant that we were far too old to do it. Although, I couldn’t see him, I am confident that Bill had a twinkle in his eye when he said, ‘This is crazy Mike, but let’s do it.’” No doubt the attraction of getting back in the saddle together for a third time provided the motivation for the “crazy” acceptance. Bill and Mike did agree to find a third Reporter, a bit younger, to join onto what is now known as Restatement Third of Torts: Concluding Provisions, and Professor Nora Freeman Engstrom of Stanford Law School (Bill and Mike’s first choice), after approval by ALI leadership, was approached and signed on.

Given the breadth (some may say, “grab bag nature”) of the project, some subjects will be covered by Associate Reporters recruited to restate those subjects. Mark Hall of Wake Forest, one of the leading health-care law experts in the country and a non-physician member of the Institute of Medicine, has been recruited and will oversee medical malpractice. The country’s leading expert on the law of the dead, Wake Forest’s Tanya Marsh—who also serves as an Associate Reporter on the Restatement of the Law Fourth, Property project—will address the Right of Sepulcher and other tort aspects regarding corpses. Don’t know what the right of sepulcher is? Join the Members Consultative Group for Concluding Provisions and save yourself a trip to the dictionary.

As the project progresses, we are working through the list Bill and Mike initially devised and finding still additional areas that demand adequate coverage. For example, loss of consortium in the Second Restatement was limited to married couples. Since that time, a substantial minority of courts have expanded consortium claims to cover the parent–child relationship— and the Third Restatement will need to address that development. Similarly, medical monitoring claims did not exist when the Second Restatement was published. These claims are now quite prominent, and the existence, contours, and limitations of medical-monitoring claims demand careful attention.

Regrettably, the story of the project includes a terrible tragedy about which many readers may already know: Bill Powers died on March 10, 2019 from complications suffered in a fall at the University of Texas. We will not dwell here on his remarkable career and extraordinary

contributions to the work of the ALI, as that is well documented in other places. But among those who knew Bill, he will be greatly missed.

And, for our part, we are committed to completing a project that Bill would have been proud of and that will put another twinkle in his eye.

## **Books – Books – Books**

Sure we have books, but did you know we also have a bookstore? When the Library began its Lecture Series back in 2007, it was not long before the first author was invited, the first book signing was held, and the first unsold books found their way into our possession. The first I believe, as I look through the list of lectures which can be seen by going to the Library Web Page at [www.barlib.org](http://www.barlib.org) and clicking on the Information button on the left and then on Lecture series, was *In the ring: the trials of a Washington lawyer* by Robert S. Bennett who spoke at the Library on September 16, 2008. Over the years we have had judges, lawyers, professors and historians speak on a myriad of subjects. They have almost without fail been that most marvelous of combinations, educational and entertaining. As their lectures have been, so too have been their tomes. I invite you to come over and look at those volumes presently available in our bookstore. If you already know what you want by looking over the list that follows, just let us know and we will get it (them) to you. Remember “Reading Is *Fundamental*.” For yourself, for someone who enjoys reading (how many shopping days left to Hanukkah/Christmas/Kwanzaa?), stop by. And while you are here – how about a little legal research on the side? You would be amazed at what you can find here.

Abraham Lincoln & Treason In The Civil War (Hardcover) (Signed By Author)	\$35.00
Abraham Lincoln & Treason In The Civil War (Softcover) (Signed By Author)	\$20.00
American Constitutional History: A Brief Introduction	\$30.00
Ancient Law	\$75.00
Art Of Cross-Examination	\$95.00
Baltimore & The Nineteenth Of April 1861	\$15.00
Blackstone’s Commentaries On The Laws Of England	\$500.00
Birthright Citizens: A History Of Race And Rights In Antebellum America	\$20.00
Brady v. Maryland: A Fiftieth Anniversary Commemoration	\$20.00
Daggers Drawn: 35 Years Of KAL Cartoons In The Economist	\$35.00

The Death Penalty As Torture	\$20.00
Emancipation – The Union Army . . . (Signed By Author)	\$35.00
Ex Parte Merryman: Two Commemorations	\$15.00
Failure To Flourish	\$30.00
The Fall Of The House Of Speyer	\$35.00
51 Imperfect Solutions	\$20.00
The Ghosts Of Johns Hopkins (Signed By Author)	\$20.00
Great American Law Reviews (3 Volume Set)	\$300.00
Holding Fast To Dreams	\$25.00
I’m Not Really Guilty	\$25.00
Lincoln On Law, Leadership, And Life (Signed By Author)	\$12.50
The Lost Indictment Of Robert E. Lee	\$20.00
Louis D. Brandeis	\$35.00
Louis D. Brandeis: American Prophet	\$20.00
The Making Of Africa America	\$25.00
Mencken: The Days Trilogy	\$30.00
Mencken’s Prejudices Debunked	\$20.00
Military Law And Precedents	\$75.00
Odessa: Architecture – Monuments	\$35.00
The Order Of The Coif	\$95.00
“Our Little Monitor”: The Greatest Invention Of The Civil War (Signed By Author)	\$25.00
Prohibition In Maryland: A Collection Of Documents	\$15.00
The Promise And The Dream	\$30.00
Reason And Imagination: The Selected Correspondence of Learned Hand	\$35.00
The Secret Life Of Lady Liberty	\$20.00

The Spirit Of The Common Law And Other Writings	\$150.00
Telemachus	\$20.00

## **Curmudgeon Corner**

Recently, my son married a lovely, young lady from Vietnam, Ly Lam Ngoc Nguyen. Over the course of the past several months it has been a great deal of fun going with her, my son, wife, and sometimes some of our other children, to places that we have been many times before, but which she is experiencing for the first time. Several weekends ago it was “America’s Attic,” the Smithsonian Institute. We spent the morning at the Museum of Natural History and after a very nice brunch at the National Gallery of Art’s Garden Café, the afternoon was spent with Renoir and Van Gogh. Now, as promised, the curmudgeon.

I have always loved art, be it on the walls of a museum or the front of our refrigerator. Pretty much anything not suitable for the East Building, will do. At the Gallery, however, I found out how hard it is to enjoy art when Aunt Myrtle from Topeka has to have her picture taken in front of “that one over there,” while a whole host of others cannot rest until they have a “shot” of everything hanging on the wall. After all, everyone knows how easy it is to capture creative genius by pointing your phone and pressing a button. If they had only had the I-phone four hundred years ago think of how much time Rembrandt could have saved. Just as many of the Old West saloons used to tell the cowboys to check their “shootin irons” at the door, the Smithsonian should tell those visiting the Gallery to turn theirs off at the door. Carpe diem has now been reduced to “Take a picture of it so we can look at it later.”

Joe Bennett

## **Special Collections**

One of the many things that make the Bar Library special is its special collections. These collections: Horwitz; Joseph; Kach and Mitchell, established and funded by generous gifts to the Library, have permitted the acquisition of thousands of books on civil rights and history, both general and legal. Best of all, they circulate. Now, having worked at the Library for three and a half decades, and having become acquainted and friends with a good many of you, I know that time is not always the most common of commodities. I also know, however, that many lawyers love history. For this reason, the loan period for the books in our special collections is a most generous thirty days. So, even if it is *Rising star: the making of Barack Obama* by David Garrow, weighing in at 1460 pages, you should have plenty of time.

The Bar Library, like the piano player of old, does in fact take requests. Let us know if you think there is a good read out there that is not in one of our collections. To see if we have a work on a particular subject that you are interested in, go to the Bar Library Web Page at [www.barlib.org](http://www.barlib.org), click on the Library Resources button on the left and select Catalog when it comes up. Hit the OK button, and you are ready to go. You can use the search box to select “words or phrase” “author” or “title.”

During the course of the past several months alone, the Library has added the following titles to its special collections: Allan, Janice M., *The Cambridge Companion to Sherlock Holmes (Cambridge Companions to Literature)*; Atkinson, Rick, *The British Are Coming: The War for America, Lexington to Princeton, 1775-1777*; Blight, David W., *Frederick Douglass: Prophet of Freedom*; Brinkley, Douglas, *Rightful Heritage: Franklin D. Roosevelt and the Land of America*; Brinkley, Douglas, *The Wilderness Warrior: Theodore Roosevelt and the Crusade for America*; Budiansky, Stephen, *Oliver Wendell Holmes: A Life In War, Law, And Ideas*; Foner, Eric, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*; Geoghegan, Thomas, *Only One Thing Can Save Us: Why America Needs a New Kind of Labor Movement*; Goodwin, Doris Kearns, *Leadership: In Turbulent Times*; Greenhouse, Linda, *Becoming Justice Blackmun: Harry Blackmun ’ s Supreme Court Journey*; Halpin, Dennis Patrick, *A Brotherhood of Liberty: Black Reconstruction and Its Legacies in Baltimore, 1865-1920*; Nann, John B., *The Yale Law School Guide to Research in American Legal History (Yale Law Library Series in Legal History and Reference)*; O’ Brien, David M., *Justice Robert H. Jackson ’ s Unpublished Opinion in Brown v. Board: Conflict, Compromise, and Constitutional Interpretation*; Thomas, Evan, *First: Sandra Day O'Connor*; Twining, William, *Jurist in Context: A Memoir (Law in Context)*; White, G. Edward, *Law in American History, Volume III: 1930-2000*.

## **Travels Without Charley**

I am really not sure how to begin, so I suppose I should just say it and get it over with. Of all the places my wife and I have been in our travels over the past several years, our last destination might have been our favorite. Pittsburgh. Yes, you heard me right, Pittsburgh. Let us get started.

Our first destination was the Duquesne Incline. We parked our car and headed to the little box to pay for parking when a woman walked toward me saying “Here, take mine,” and handed me her parking pass which was good until the next day. It was the first of many kind people we would encounter over the next several days. If you are someone who does not like heights, you will most likely find, as I did, the Duquesne Incline to be terrifying. Very steep, very creaky, but oddly, a lot of fun. At the top an amazing view of the city and an amazing lunch

at The Grandview Saloon, which featured, you guessed it, a grand view as well as a rather grand poached pear salad. Although restaurant reviews peg the place as average, what we experienced was something substantially more and I am afraid I have eaten at a lot of restaurants, so who knows.

Our next stop was the Gateway Clipper and a riverboat cruise on The River Queen. At the ticket office we encountered nice person number two, Joe. He asked if either of us was a senior (their definition is 55 and over). I said yes, but I did not accept discounts. I hate the condescension that comes with age. I am an adult and will pay an adult rate. Well, Joe was just about as nice as you could be in trying to convince me I was a fool. Now knowing my name because of my wife having used it, Joe was “Come on Joe, from one Joe to another, how about doing me a favor. Fifty percent off.” Well eventually, how could I say no to a guy named Joe.

The cruise was a great deal of fun. The sky was sunny, the breeze was steady but not overpowering, and the young guide was infectious in her affection for the city she was describing. As we disembarked my wife pointed out the numerous fish swimming around the boat. Not a bad sign as to the progress a city which was as polluted as any in the country was making in their clean-up efforts. Over the weekend we saw more than fish in the water. The rivers of Pittsburgh seemed to have more watercraft in them than we saw during our visit to Hawaii. There were speedboats, jet skis, sculls, power boats, yachts, and yes, of course, riverboats.

The Pittsburgh zoo is large, well shaded and features a substantial menagerie in spacious, well thought out, naturalistic habitats. Within the zoo is the PPG Aquarium. Pittsburgh is only one of six major zoo/aquarium combinations in the United States. Located roughly at the half-way point of the exhibits, it provides a nice change of pace as well as a place to cool down in the summer and warm up in the winter.

A trip to Pittsburgh is not complete without a visit to the famous Strip District which is home to a large assortment of international grocery stores and retailers, boutique shops, independent merchants and numerous bars and restaurants of the first order. It is such a rush just walking down the street amidst the hustle and bustle, the sounds and oh the smells, from kettle corn to the Allegheny Coffee and Tea Exchange where inside you will find dozens of different barrels full of in-house roasted coffee beans.

During the course of our several days we walked and walked and walked, but, owing to our discovery of Peace, Love and Little Donuts, and a scheduled visit to explore the wonders of a Primanti Brothers sandwich (both located in the Strip District), I am afraid no progress was made in reducing that which is in need of reduction.

After Mass on Sunday we paid a visit to the Heinz History Center. The Center is designed to share the history of the region ranging from the days of the first settlers including

early fortifications; the revolutionary war; the slave trade and underground railroad; the industrial revolution and the present. There is a large exhibit on Pittsburgh native Mr. Rogers, which will make you feel like a kid again, and a special exhibition on the Vietnam War which was quite poignant.

Almost every place that my wife and I have gone to we have liked better than Baltimore. The problem, however, is that although there are many places that I like, there is only one that I love and that is Baltimore. It is my home, the only one that I have ever had and the only one I ever imagine having. Except while away on our travels, I have lived, gone to school and/or worked in the City each day of my life. Although anyone who knows me will tell you I am quite emotional, when we were travelling home from our trip to Pittsburgh, because of all the recent national attention on Baltimore resulting from negative comments that have been made, I felt a lump in my throat when I saw the first road sign with Baltimore on it. For better or worse, it is my home, and we were headed for it.

Joe Bennett

## **WE FACE THE DAWN – BAR LIBRARY LECTURE**

On Tuesday, November 12, 2019, Ms. Margaret Edds will be at the Baltimore Bar Library to speak on her book *We Face The Dawn: Oliver Hill, Spottswood Robinson, And The Legal Team That Dismantled Jim Crow*.

“A thoughtful historical account of a legal campaign that formed one of the main pillars for Brown v. Board of Education.... Hill and Robinson provide exemplary—and timely—models of citizenship. A welcome contribution to the literature of the civil rights movement.” - Kirkus Reviews

Place: Mitchell Courthouse – 100 North Calvert Street – Main Reading Room of the Bar Library (Room 618, Mitchell Courthouse).

Time: 5:00 p.m., Tuesday, November 12, 2019.

Reception: Catering by DiPasquale’s featuring their prosciutto, cod fish, fruits and cheeses.

Invitees: All are welcome to this free event.

**R.S.V.P.:** If you would like to attend telephone the Library at 410-727-0280 or reply by e-mail to [jwbennett@barlib.org](mailto:jwbennett@barlib.org).



Joseph and Ngoc Bennett

## **Love Is In The Air**

Most of you probably know that if you want a law book there is a better than average chance that if you come to the Bar Library you are going to find it. Same thing for access to a Westlaw database, either by way of one of the Library's terminals or by using your own laptop. Did you know though that you could also get married? My son did just that on Friday, September 27. A place where twenty years ago he had played hide and seek provided a glorious background for a wonderful ceremony performed by the Chief Judge of the Circuit Court for Baltimore City the Honorable Wanda Keyes Heard. Knowing how important family is to Chief Judge Heard, and how very kind she has been to my wife and I over the years, Anita and I were honored when she consented to preside.

Now, speaking of did you know, can anyone tell me what Administrative Judge the Honorable W. Michel Pierson and soon to be Administrative Judge the Honorable Audrey J. S. Carrion have in common, and no the answer has nothing to do with the administration of the

Circuit Court for Baltimore City? Alright, you have thought about it long enough. The answer is that they were joint officiants of a wedding held in the Bar Library of Kyle and Alyssa Hildreth. Kyle had clerked for Judge Carrion and Alyssa for Judge Pierson. It was not Judge Pierson's first wedding in the Library who years before had performed another ceremony. Although I did not want to bother him for the article, as my rather sorry memory recalls, I believe it was a friend of his daughter and her fiancé. Judge if you read this and I'm wrong, please let me know.

Speaking of administrative judges, anyone who has had any business with the Administrative Judge in Baltimore going back many years, undoubtedly knows Ms. Dana Amato, who has been the Administrative Assistant to the Administrative Judge going back to the Honorable Joseph H. H. Kaplan. Well, after a scouting trip to the Library by Dana's niece Paula, the decision was made that the Library was where she wanted to marry her fiancé James Scharf, which is exactly what she did in front of friends and family in a ceremony performed by the Honorable Macella A. Holland, who, as many of you undoubtedly remember, was also the Administrative Judge of the Circuit Court for Baltimore City. So, although it is probably nonsensical to contemplate who might one day succeed Judge Carrion, we can be fairly safe in assuming that whoever they are, they will probably be performing a marriage ceremony in the Library.

Finally, if any of you out there thinks what a great idea, I want to get married there, just let me know. After all, who am I to stand in the way of true love.

Joe Bennett



James and Amanda Scharf

## NEW ACQUISITIONS

### **Horwitz Collection**

Atkinson, Rick.

The British are coming: The war for America, Lexington to Princeton, 1775-1777. (2019)  
HORWITZ 973.3 A84B

Budiansky, Stephen.

Oliver Wendell Holmes: a life in war, law, and ideas. (2019)  
HORWITZ 347.73 H68B

Frankfurter, Felix, 1882-1965.

Mr. Justice Holmes and the Supreme Court. (1938)  
HORWITZ 347.99 H6F

Goodwin, Doris Kearns.

Leadership in turbulent times. (2018)  
HORWITZ 973.099 G66L

Hirshman, Linda R.

Sisters in law: how Sandra Day O'Connor and Ruth Bader Ginsburg went to the Supreme Court and changed the world. (2015)  
HORWITZ 347.73 H57S

Reeves, John.

The lost indictment of Robert E. Lee: the forgotten case against an American icon. (2018)  
HORWITZ 923.5 R44L

Sloan, Cliff and David McKean.

The great decision: Jefferson, Adams, Marshall, and the battle for the Supreme Court. (2009)  
HORWITZ 347.73 S56G

### **J.A.B. Collection (Moose Room)**

Edsel, Robert M., with Bret Witter

The monuments men: Allied heroes, Nazi thieves, and the greatest treasure hunt in history. (2009)  
J.A.B. 940.53 E23M

### **Joseph Collection**

Thomas, Evan.

First: Sandra Day O'Connor. (2019)

JOSEPH 347.73 O26T

The Supreme Court justices: illustrated biographies, 1789-1993, edited by Clare Cushman (the Supreme Court Historical Society); foreword by William H. Rehnquist. (1993)

JOSEPH 347.73 S86

### **Maryland Books**

Practice manual for the Maryland lawyer, 5th ed. (M.S.B.A.)

KFMD 1281 .P7 2019

### **Mitchell Collection**

Blight, David W.

Frederick Douglass: prophet of freedom. (2018)

MITCHELL 973.8 D74B

Halpin, Dennis Patrick.

A Brotherhood of Liberty: black Reconstruction and its legacies in Baltimore, 1865-1920. (2019)

MITCHELL 323.1196 H35B

O'Brien, David M.

Justice Robert H. Jackson's unpublished opinion in *Brown v. Board*: conflict, compromise, and constitutional interpretation. (2017)

MITCHELL 344.73 O27J

Pietila, Antero.

The ghosts of Johns Hopkins: the life and legacy that shaped an American city. (2018)

MITCHELL 378.752 H6P

### **Treatises**

Knepper, William E. and Dan A. Bailey.

Liability of corporate officers and directors, 8th ed.

KF1423 .K58 2016

Restatement of the law, children and the law: tentative draft, no. 2 (March 20, 2019) / the American Law Institute. (Unbound, kept in Office)

KF395.C55T

## **HOLIDAY CLOSINGS**

The following is a list of upcoming holiday closings. Remember that on those days when the Bar Library closes at 6:00 P.M. the rest of the Courthouse is closed and those wishing to use the Library must enter the Courthouse through the Lexington Street door.

Monday, November 11 (Veterans Day) - Close at 6:00 P.M.  
Thursday, November 28 (Thanksgiving Day) - Closed  
Tuesday, December 24 (Christmas Eve) - Close at 12:00 P.M.  
Wednesday, December 25 (Christmas Day) - Closed  
Tuesday, December 31 (New Years Eve) - Close at 2:00 P.M.  
Wednesday January 1 (New Years Day) - Closed