



ABILA Newsletter

Issue No. 84

ILA—Founded 1873

September 2009

INTERNATIONAL LAW WEEKEND New York, October 22-24, 2009

The American Branch will hold its annual International Law Weekend and its 88th Annual Meeting in New York from October 22-24, 2009. The overarching theme for the conference is “Challenges to Transnational Governance,” and many of the panels during the conference will focus on this critical international issue. The plenary session for the conference, and the opening reception, will take place on Thursday, October 22, at the Association of the Bar of the City of New York, 42 West 44th Street in New York City. The opening session will focus on efforts to reform the United Nations Security Council, including the initiation of inter-governmental negotiations in March of this year. Confirmed participants include the Deputy Permanent Representative of the Mission of the United States to the United Nations, Ambassador Alejandro D. Wolff, the Permanent Representative of the Mission of Sierra Leone to the United Nations, Ambassador Shekou M. Touray, and Professor Joseph E. Schwartzberg of the University of Minnesota. The panel’s moderator will be Professor Jose Alvarez of Columbia University Law School.

On Friday and Saturday, the conference’s venue shifts to Fordham University’s School of Law, 140 West 62nd Street in New York City. The conference schedule includes thirty-four panels, traversing a wide spectrum of contemporary international law, including international criminal law, human rights law, international environmental law, international economic law, commercial law, and trade law. Several of the panels during these two days focus on the conference’s theme of transnational governance, including “The Contribution of the International Law Commission to Transnational Governance,” “Transnational Governance/Regulation in Global Competition Law Enforcement,” “Democratic

Process in International Law: State Practice and Non-State Actor Access,” “Transnational Legal Orders: International Trade Regimes and Domestic Regulatory Policy,” and “The Role of International Environmental Law in Transnational Governance.” The keynote speaker at the annual luncheon on Friday, October 23, at 12:30 p.m., will be Lucy Reed, who will speak on the topic “Not-So-Fine Lines in Transnational Governance: Blurring of Public and Private in the International Legal Order.” Ms. Reed is a partner with Freshfields Bruckhaus Deringer LLP, co-head of its global arbitration group, and President of the American Society of International Law. On Friday evening, the Annual Gala Reception will be hosted at the residence of the Deputy Permanent Representative of the United Kingdom to the United Nations, 510 Park Avenue, 11A in New York City.



Lucy Reed

Rooms for ILW 2009 are available at the Holiday Inn Midtown-57th Street (440 West 57th Street), which is located between the Association of the Bar of the City of New York and Fordham University School of Law. Each guest must call the hotel directly (212-581-8100 or 800-231-0405) to secure a reservation. Individuals identifying themselves as part of ILW 2009, group code XLW, may receive the reduced rate of \$217.00 per room, per

(Continued on page 2)

American Branch Inaugurates Patrons Program

The American Branch of the International Law Association has inaugurated a Patrons program. The Branch is immensely grateful for the support of the following Patrons:

*Charles N. Brower
Cynthia Lichtenstein
John F. Murphy
James A.R. Nafziger
John E. Noyes
Charles D. Siegal*

Patrons, who contribute at least \$5000.00 to the American Branch, become life members of the Branch. They will be recognized on the ABILA website and in Branch publications.

For information about becoming a Patron of the American Branch, see <http://www.ila-americanbranch.org/Membership.aspx> or contact John Noyes at President@ila-americanbranch.org.

PRESIDENT’S MESSAGE

I urge you to attend International Law Weekend, October 22-24, 2009, in New York. The feature story in this issue is about ILW 2009. The Weekend’s theme is “Challenges to Transnational Governance,” and the Weekend will address a wide range of private and public international law topics. There will be panels of interest to practitioners, students, academics, government officials, and people working with international and nongovernmental organizations. The keynote panel on Thursday evening, October 22, at the Association of the Bar of the City of New York, focusing on reform of the UN Security Council, will feature several ambassadors and leading academics. We look forward to the annual luncheon address by Lucy Reed of Freshfields, President of the American Society of International Law, on Friday, October 23, and to the Fri-

(Continued on page 3)

PROFESSOR THOMAS M. FRANCK REMEMBERED

BY RACHEL SMITH



Prof. Thomas M. Franck

The ABILA lost one of its most distinguished members, Professor Thomas M. Franck, when he succumbed to cancer on May 27, 2009. Elected Honorary Vice President of the ABILA in 1994, Professor Franck previously served as an Honorary Secretary-Treasurer and as a Vice President of the American Branch for many years.

Franck and his parents fled Nazi Germany in 1938, emigrating to Vancouver, Canada. After receiving his first law degree from the University of British Columbia in 1953, he earned an LL.M. (1954) and a J.S.D. (1959) from Harvard Law School. He joined the faculty of New York University School of Law in 1957 and was the Director of NYU's Center of International Studies from 1965 until his retirement in 2002.

Professor Franck had a distinguished career practicing as well as teaching international law. He advised several foreign governments including Tanganyika, Kenya, Zanzibar, Mauritius, the Solomon Islands, El Salvador, Bosnia and Herzegovina, and Chad. He served as an advocate before the International Court of Justice as well as one of its ad hoc judges. He also served on the U.S. Department of State Advisory Committee on International Law for many years.

Professor Franck's life work was dedicated to advancing the international rule of law. He helped draft new constitutions, supporting democratic rule during decolonization in Africa, advised Bosnia in its genocide case against Serbia, and challenged the Bush administration's interpretation of international law well before the Abu Ghraib scandal. His colleague David Kennedy described him as "the leading American scholar of international law, an enthusiast for new ideas to

make the world a more ordered and humane place."

Chris Borgen, an Associate Professor of Law at St. John's University School of Law and one of Professor Franck's former students, described Franck as the "epitome of the engaged scholar" in his tribute on the blog *Opinio Juris*:

As a student, I immediately learned from Tom that international law professors should act, not just talk. They should do what they could in their own area to make the world a better place. I had the opportunity to be one of many students who assisted him in his work on Bosnia's legal team for the Genocide Case. No abstract theoretician, he was an object lesson in how to think through a case, build a file, and construct an argument.

Professor Franck authored over 30 books and received numerous awards and honors, including the Christopher Medal (for *Resignation in Protest*), the Hudson Medal of the American Society of International Law (ASIL), the Read Medal of the Canadian Council of International Law, and two Guggenheim Fellowships. Professor Franck was President of the ASIL from 1998-2000,

served as editor-in-chief of the *American Journal of International Law* from 1984-1993, and

was named Honorary President of the ASIL in March.

Members of the American Branch remember Professor Franck's service to the Branch through the Branch offices he ably filled, the International Law Weekend panels he organized and on which he eloquently spoke, and his advice about ways to promote the Branch and its unique role among international law organizations. They remember especially his wit, his charm, and his passion for international law and international justice.

For obituaries and more remembrances of Professor Franck, please visit <http://ila-americanbranch.org/LeadershipNews.aspx>.

INTERNATIONAL LAW WEEKEND 2009

(Continued from page 1)

night, plus 14.25% tax and \$3.50 occupancy tax. Each individual will pay the hotel directly for all room, tax, and incidental charges. Reservations must be made prior to October 1, 2009, to receive the discounted rate. Check-in time is 4:00 p.m. and check-out time is 12:00 noon.

The co-chairs of ILW 2009 are Pierre Bodeau-Livinec, Legal Officer, Codification Division of the United Nations Office of Legal Affairs (bodeau-livinec@un.org); Dr. Wil Burns, Center for Environmental Studies, Williams College (William.C.Burns@williams.edu), and Anibal Sabater, a partner with the law firm of Fulbright & Jaworski LLP (asabater@fulbright.com). The International Law Students Association (contact registration@ilsa.org) will handle registration for ILW 2009; registration materials can be found at www.ila-americanbranch.org/IntlLawWknd.aspx. Registration for ILW 2009 is free to members of the American Branch, students, members of the Association of the Bar of the City of New York, and members of co-sponsoring organizations; for others, the cost is \$75.00. Advance registration is advised, to insure a spot at the Friday luncheon, the Friday evening reception, and the Saturday boxed lunch programs.

(Continued on page 3)

CALENDAR OF EVENTS

ILA AND ABILA EVENTS

October 22-24, 2009 —
International Law Weekend, New York

February 12-13, 2010 —
International Law Weekend — Midwest, Denver

August 15-20, 2010 —
De iure Humanitatis: Peace, Justice and International Law, The Hague

COSPONSORED EVENTS

September 25, 2009 —
Workshop on Teaching International Law

December 20-31, 2009 —
Continuing Legal Education in Israel

FOR INFORMATION ABOUT ILA, ABILA AND CO-SPONSORED EVENTS, PLEASE

SEE:

www.ila-americanbranch.org/ABILA_ILA_Events.aspx

REGIONAL INTERNATIONAL LAW WEEKEND AT UNIVERSITY OF DENVER FEBRUARY 12-13, 2010

INTERNATIONAL LAW WEEKEND 2009

(Continued from page 2)

The University of Denver's Sturm College of Law will host a regional International Law Weekend on Friday, February 12, and Saturday, February 13, 2010. The theme of the Weekend is "Sustainable Development, Corporate Governance, and International Law." The conference organizers will provide information about skiing opportunities for those able to spend time in Colorado either before or after the conference.



Univ. of Denver, Sturm College of Law

Cosponsors include the International Legal Studies Program, the Ved Nanda Center for International Law, the International Law Society, and the *Denver Journal of International Law and Policy* at the University of Denver Sturm College of Law. The International Law Section of the Colorado Bar Association is also cosponsoring this event.

For more information about this regional International Law Weekend, contact Keri Grundstein (kgrundstein@law.du.edu).

PRESIDENT'S MESSAGE

(Continued from page 1)

day evening reception at the residence of the Deputy Permanent Representative of the United Kingdom to the United Nations. Register early to ensure your place at these events, at <http://www.ila-americanbranch.org/IntlLawWknd.aspx>

The American Branch is again delighted to offer free admission to ILW to members of the Branch, law students, and members of our cosponsoring organizations. We are immensely grateful to our cosponsors: the American Bar Association Section of International Law; the American Society of International Law; American University, Washington College of Law; California Western School of Law; the Canadian Bar Association; the Customs and International Trade Bar Association; Debevoise & Plimpton LLP; the Federalist Society; Fordham University School of Law (which is hosting ILW 2009 on October 23 and 24); Freshfields Bruckhaus Deringer LLP; The George Washington University Law School; Hofstra University School of Law; the *ILSA Journal of International and Comparative Law*; the Leitner Center for International Law and Justice; Oxford University Press; and Seton Hall University School of Law.

ILW 2009 would not take place without the extraordinary efforts of its co-chairs, Pierre Bodeau-Livinec of the United Nations Office of Legal Affairs, Professor Wil Burns of Williams College, and Anibal M. Sabater of Fulbright & Jaworski International LLP. I also particularly note the dedication and talent of Jill Hereau and other staff members and volunteers of the International Law Students Association, which is co-organizing ILW 2009.

John E. Noyes

The American Branch is grateful for the support of the following co-sponsors of ILW 2009:

- American Bar Association Section of International Law
- American Society of International Law
- American University, Washington College of Law
- California Western School of Law
- Canadian Bar Association
- Customs and International Trade Bar Association
- Debevoise & Plimpton LLP
- Federalist Society
- Fordham University School of Law
- Freshfields Bruckhaus Deringer LLP
- The George Washington Law School
- Hofstra University School of Law
- *ILSA Journal of International and Comparative Law*
- Leitner Center for International Law and Justice
- Oxford University Press
- Seton Hall University School of Law

The International Law Students Association is joining the American Branch in organizing ILW 2009, and the Branch appreciates the essential support of ILSA staff members and volunteers.

CALL FOR ABILA EXECUTIVE COMMITTEE NOMINATIONS

The current membership of the Executive Committee of the American Branch of the International Law Association is one short of the number allowed by our by-laws. It is the intention of the Nominating Committee (Catherine Amirfar, Ron Brand (chair), and Karen Hudes) to nominate a member to fill this vacancy and allow the Executive Committee to vote on that nomination at the meeting to be held during International Law Weekend in New York City on October 24. If you wish to suggest a member for possible nomination to the Executive Committee, please provide complete contact information and any further details you think might be useful to the Nominating Committee by e-mail to rbrand@pitt.edu.

AMERICAN BRANCH COMMITTEE UPDATE

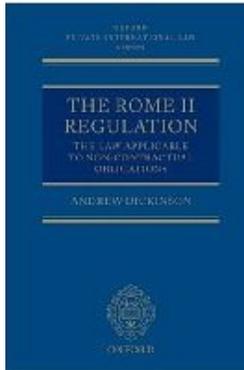
Thanks to the work of the American Branch's Co-Directors of Studies, Professors Valerie Epps and Philip Moremen, and the Branch's webmaster, Mark Cuevas, the Committee section of the ABILA website has been significantly updated. It now includes a link for each committee, showing past committee reports and summarizing current committee projects. See <http://www.ila-americanbranch.org/BranchComm.aspx>.

The Branch's Teaching of International Law Committee, chaired by Professor Mark Wojcik, has developed an excellent newsletter highlighting Committee projects, upcoming meetings, and plans for a membership directory. For a link to the newsletter, see <http://www.ila-americanbranch.org/CommitteeDetail.aspx?CommitteeID=23>.

BOOK REVIEWS

The Rome II Regulation: The Law Applicable to Non- Contractual Obligations

Andrew Dickinson
Oxford University Press, 2008
Pp. lxx and 797, £145
ISBN: 978-0-19-928968-4



Reviewed by David Stewart

In this exceptionally thorough and well-written volume, Andrew Dickinson (who practices with Clifford Chance) provides a comprehensive analysis of the background, scope, and substantive rules of the European Community's recent Regulation on the law applicable to non-contractual obligations in civil and commercial matters. The book is an essential referent for anyone who practices EC law or works in the field of private international law. It is kept current by updates available on the OUP website.

Rome II came into force January 2009 and applies throughout EC Member States except for Denmark. Like its two "sister" regulations (Rome I on the law applicable to contractual obligations, and Brussels I on civil jurisdiction and enforcement of judgments), it is intended to promote greater harmony within the Community and between its divergent legal systems. Not only is the Regulation the first EC instrument addressing the rules of applicable law in a general way, it is the most comprehensive instrument of its kind anywhere and is therefore bound to have an important impact on the future development of applicable law rules globally.

Substantively, the Regulation applies to non-contractual obligations arising out of "tort/delict" (including obligations arising out of strict liability) as well as three separate categories of non-contractual obligation (unjust enrichment, *negotiorum gestio*, and *culpa in*

contrahendo). Special rules are provided for claims involving product liability, acts of unfair competition, environmental damage, infringement of intellectual property rights and "industrial actions" (essentially certain kinds of collective actions involving labor disputes). The Regulation contains a number of specific exclusions, e.g., of obligations arising from family relationships, the law of companies, violations of privacy rights or "rights relating to personality" including defamation, or acts or omissions in the exercise of State authority.

The Regulation recognizes the parties' freedom to choose the law applicable to their dispute before or after the event giving rise to the damage (art. 14), defines the scope of the applicable law (art. 15), acknowledges that mandatory rules of the forum (or the EC or international law) may take precedence (art. 16), makes room for the forum's rules of safety and conduct (art. 17), but delimits the ability of the forum to apply a "public policy" exception (art. 26). Article 24 specifically excludes the doctrine of *renvoi*.

In each of these areas, the issues are complicated but thoroughly examined. To take but one example, Article 4 (which Dickinson describes as "the cornerstone" of the Regulation) sets as a general rule that the law applicable to a non-contractual obligation arising out of a tort/delict shall be "the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur." This principle of *lex loci damni* seems straightforward enough, but exceptions are provided by what Dickinson terms "rules of displacement" (where, for instance, the claimant and the person claimed to be liable are habitually resident in the same country, or where it is clear that the tort/delict is manifestly more closely connected with a country other than the one indicated by the general rule or the "habitually resident" rule). Moreover, he notes that the wording of Article 4 does not permit *depeçage*.

Dickinson carefully explores the practical dimensions of the rule, discussing such issues as what constitutes "damage" and how to "locate" it, the meaning of "causation," how to deal with *quasi-delict* (including claims brought in what is known in French law as an *action paulienne* against a debtor for undervaluing assets to prejudice the interests of credi-

AMERICAN BRANCH TO HOST 2016 ILA BIENNIAL CONFERENCE

The American Branch invites input about where in the United States to hold the International Law Association's 2016 biennial conference. The ILA has accepted the American Branch's proposal to host the ILA's 2016 biennial conference at some point during the months of April through August. In August 2008, the Brazilian Branch hosted the seventy-third biennial conference in Rio de Janeiro, and future locations include The Hague in the Netherlands (2010), Bulgaria (2012), and Japan (2014). The United States has hosted five of the ILA's biennial conferences, in Buffalo, New York (1899), Portland, Maine (1907), and New York City (1930, 1958, and 1972).

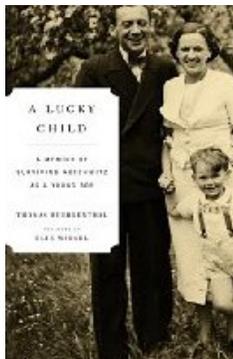
The biennial conference is a four-day meeting bringing together leading international lawyers, international law academics, government officials, and leaders of international organizations from around the world. ILA 2016 will feature programs and working sessions of the international committees of the ILA, as well as numerous other panels and plenary sessions.

The threshold decision that needs to be made this fall is the location of the conference. Boston, Chicago, Los Angeles, New York, San Francisco, and Washington, DC have been suggested as potential host cities. The American Branch values members' input concerning that issue, in light of such factors as: cost (including the availability of low-cost housing, perhaps at universities); venue (including the availability of a hall that could accommodate a plenary session of up to 1500 people); attractiveness of locale for foreign and U.S. visitors; and likely support from law firms and other institutions. Please pass along your ideas about the location of the 2016 biennial conference, as well as any other ideas about planning for this event, to John Noyes (President@ila-americanbranch.org) or Charles Siegal (Charles.Siegal@mto.com).

BOOK REVIEWS

A Lucky Child: A Memoir of Surviving Auschwitz as a Young Boy

Thomas Buergenthal
Little, Brown & Co., 2009
Pp. 256, \$24.99
ISBN-13: 9780316043403



Reviewed by Christina M. Cerna

Justice Sonia Sotomayor's comment about the "wise Latina" reaching a "better" verdict than "a white male who hasn't lived that life" reflects a basic truism that we are the product of our context, and how we were raised affects how those of us who become judges see the world.

Judge Tom Buergenthal is a white American male who is currently a judge on the highest world court of international law: the International Court of Justice at The Hague. Earlier in his career, he was a judge and then President of the newly created Inter-American Court of Human Rights and a member of the UN Human Rights Committee. His memoir on "surviving Auschwitz" as a ten year old reveals the blueprint for a life to be lived in the defense of human rights.

This is a book about the experience of a child in the devastation of the Holocaust, and because it is the story of a child's experience it offers a unique parallelism to Anne Frank's famous *Diary*. But it is a book written with the wisdom of age and experience, a reflection on his childhood experience, not a first-person narrative of events occurring in the here and now. Most importantly, it has a happy ending: we know when we begin the book that he survives. That, compared to the fate suffered by Anne Frank, makes him "a lucky child."

Through his reflections we discern the character of the man who survived the camps. Interestingly, his reflections are not brought on by survivor's guilt, but the quest for understanding one's fate: what had he learned along the way that helped him to devise strategies for survival; his recognition of the "luck" that he had a gradual and not immediate immersion into this hell; his ability to speak fluent German and Polish; and lastly, the fact that he didn't look Jewish, but rather, in the few idyllic photographs with his attractive parents before the nightmare begins, like an archetypical beautiful Aryan boy in his shorts, a copy of German lederhosen, down to the alpine Edelweiss flowers on the straps holding them up.

The tale is told in about two hundred pages, and once the gradual immersion into hell begins you cannot put it down. Although we know that he survives, we know that many of those around him do not. I had read the interviews Tom Buergenthal gave when the book first came out in German and Spanish two years ago so I knew about the post-War reunion with his mother, a wonderfully poignant re-entry into childhood, because when he was back in her arms, he could become a child again.

There are many indelible scenes, simple scenes that define how far away ordinary life had become. Young Tommy with two friends collected garbage at the camps, the main job to which most of the children were assigned. While collecting garbage outside the SS kitchen they see a pan filled with milk sitting near a stove and steal some gulps. To this day, he writes, he can still taste that heavenly mouthful of milk, and the reader savors it with him.

In January 1945, the Nazis began the evacuation of Auschwitz when the half-starved prisoners were transported by freight train and on foot to Germany in what became known as the Auschwitz Death March. Buergenthal queries what insanity motivated the Nazi regime at a time when Germany was fighting for its

survival, to use its rapidly dwindling resources to move half-starved and dying prisoners from Poland to Germany? He arrives at Sachsenhausen, the German concentration camp to which he has been transferred, with severe frostbite from the cold and the long march. His friends convince him that he needs to go to the infirmary but after being operated upon he awakens terrified that his feet have been amputated. He makes the doctor take off the bandages because he fears that he will be killed now that he has no feet and he refuses to believe the doctor who tries to reassure him that only two toes were amputated. The doctor convinces him that since he is under twenty-one years of age his toes will grow back, just like teeth when your baby teeth fall out.

As the Avenue of the Righteous Among the Nations in Yad Vashem attests, there are elements of goodness in the bleakest climate of evil and fear. The attention of a Norwegian inmate, who came to the infirmary on a daily basis to visit a compatriot and almost certainly helped to keep young Tommy alive as well, is one of the most beautiful portraits in this amazing story. Odd Nansen is evacuated and gives Tommy his address in Norway and promises that they will meet again. Soon thereafter Sachsenhausen is liberated by the Russian troops and Tommy is placed in an orphanage until he is reunited with his mother. In 1948, while living in Germany with his mother, he learns that the Norwegian,

“His memoir on ‘surviving Auschwitz’ as a ten year old reveals the blueprint for a life to be lived in the defense of human rights.”

Mr. Nansen, had recently published a diary that he had kept in various camps and that it had become a best-seller in Norway. Buergenthal writes to Odd Nansen, having lost his address, but since he had become a local celebrity the letter reaches him. Mr. Nansen sends him a crate of "marvelous" food, a luxury in post-War Germany, and shortly thereafter comes to Germany to visit Tommy and arrange for Tommy to visit in Norway. When the German translation of Nansen's book appeared in 1949, Buergenthal notes that the Norwegian was donating the proceeds to a fund set up to help German refugees. Again, he queries why should someone

(Continued on page 6)

BOOK REVIEWS

AMERICAN BRANCH APPOINTMENTS TO THE ILA COMMITTEE ON INTERNATIONAL PROTECTION OF CONSUMERS

Rome II Regulation

(Continued from page 4)

tors), the treatment of “equitable” damages and damages occurring in more than one country, and to what extent the Regulation applies to actions for non-compensatory remedies.

Throughout, attention is given to questions concerning the often murky relationship of the Regulation to the growing list of specialized EC directives (such as those on e-commerce, product liability, insolvency, and intellectual property) as well as to relevant international conventions (e.g., the 1985 Hague Trusts and Traffic Accidents Conventions).

Dickinson deals candidly (if sympathetically) with the criticisms often heard from the perspective of U.K. practitioners, judges and academics about the effect of such regulations on English and Scottish law (in his preface, the General Editor of Oxford’s Private International Law Series, Prof. James Fawcett, describes the Regulation as “another step in the relentless process of the Europeanization of private international law”) as well as a certain skepticism about the Community’s legislative competence to have adopted the Regulation in the first place. Whether they share these concerns or not, international practitioners in the United States would do well to pay close attention to this Regulation

A Lucky Child

(Continued from page 5)

who spent more than three years in a Nazi concentration camp care about the fate of German refugees? He learns from Mr. Nansen how to empathize with human beings in need, regardless of who they are.

What makes this book more important than just another memoir are these important lessons learned. Buergenthal lived through the economic hardship of post-War Germany, and he notes that this experience helped him to overcome his hatred of Germans and his desire for revenge, an empathy he says many of his Jewish friends and acquaintances who had escaped the Holocaust never learned because they were much less forgiving. Even if one hasn’t “lived that life,” there’s much to be learned about the building of character from reading this memoir.

Should you wish to submit a book review, please contact Lucy Martinez at lucy.martinez@freshfields.com.

The May 2009 *ABILA Newsletter* highlighted several appointments of American Branch members to International Law Association Headquarters (London) committees. Two additional appointments to the ILA’s new Committee on International Protection of Consumers have now been confirmed. They are ABILA Vice President David Stewart, who is a Visiting Professor at Georgetown University Law Center, and ABILA Executive Committee member Louise Ellen Teitz, who is a Professor of Law at Roger Williams University. They join Professor James P. Nehf of Indiana University School of Law as the American Branch’s representatives on the Consumer Protection Committee.

For a complete listing of the American Branch’s representatives on ILA committees, see

<http://www.ila-americanbranch.org/LondonComm.aspx>, and for more information on those committees, see <http://www.ila-hq.org/en/committees/>.

American Branch of the
International Law Association
c/o Charles D. Siegal, Esq.
Munger, Tolles & Olson LLP
355 S. Grand Ave., 35th Fl.
Los Angeles, CA 90071-1560