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ABF Professor Presents at World on

American Bar Foundation Research Professor Terence Halliday participated in a World Bank panel on the effectiveness of anti-money laundering (AML) measures, as well as measures designed to combat the financing of terrorism (CFT). The program, titled “Clean Solutions for Dirty Money: Closing the Implementation Gap,” was presented on November 16, 2015 at the World Bank Group (WBG) headquarters in Washington, D.C. Halliday was joined by Richard Lalonde, Senior Financial Sector Specialist at the International Monetary Fund (IMF), Joseph (Jody) Myers, VP of Bank Secrecy Act (BSA)/AML Risk Assessment at Western Union, and Jean Pesme, Practice Manager in Finance & Markets Global Practice at the WBG. The panel was moderated by Jonathan Turley, a Professor of Law at George Washington University Law School, and a nationally recognized legal scholar, writer, and analyst for several major media outlets.

Halliday critiqued the status of the existing global AML/CFT regime, including recent changes, weighing the regime’s costs and benefits and offering recommendations for reform. News stories, as well as new research, have challenged the accepted wisdom as to how effective AML/CFT measures really are. Each year, staggering sums of money are

spent on AML/CFT efforts in countries around the globe. Yet, notwithstanding the escalating costs of the AML/CFT regime, there have been numerous high-profile, documented failures of the system. “Under existing AML assessment criteria, some corrupt countries that are awash in dirty money score just as well as ‘clean’ countries,” noted the flyer publicizing the

panel. Moreover, the costs of existing AML/CFT measures include not only government expenditures and the costs borne by the private sector, but also humanitarian and political costs, which traditionally have been largely ignored. Both issues were highlighted by the World Bank panelists.

Humanitarian costs, said Halliday, include adverse effects

Terence Halliday

Bank Panel

Money Laundering

on the world's poor, many of whom rely for survival on overseas remittances and informal economies, which are often disrupted by AML/CFT measures. Political costs include countries' use of AML measures to jeopardize human rights and to threaten the development of civil society. "At this moment—whether intentionally or as a byproduct—the system has been operating adversely to civil society," Halliday emphasized. "Much of the system is directed at potentially shutting down, closing down, constricting, or constraining civil society, or in the hands of the wrong people, being used to domesticate civil society...so it is no longer a center of resistance or the basis for rule of law."

Halliday said AML efforts would be more effective if they were not abused to oppress civil society. He also stressed the

need to "drop the pretense that one set of recommendations or a global formula is going to work everywhere." Halliday favored an entirely new methodology for assessment based on identifying "clusters" of countries that face similar challenges and have comparable means to address them. "We can then tailor interventions based on the attributes of those countries—with variations on the theme—and that would lead us to a much more nuanced basis for regulation by the Bank, the Fund, and other international organizations that have a global mandate," Halliday added.

The panel's topic was particularly timely, coinciding with the terrorist attacks that struck Paris three days before the program, and, one day earlier, the release of a landmark report by the Global Center on

Cooperative Security examining the negative consequences of "de-risking" (the process of financial institutions closing the accounts of clients considered "high risk" under AML/CFT criteria).

The World Bank program, "Clean Solutions for Dirty Money," was inspired by a 2014 report co-authored by Halliday and specialists Peter Reuter and Michael Levi, which analyzed the effectiveness of the global AML/CFT regime. The report, *Global Surveillance of Dirty Money: Assessing Assessments of Regimes to Control Money-Laundering and Combat the Financing of Terrorism*, was published by the ABF's Center on Law and Globalization (of which Halliday is a co-director). It was the first independent study of the AML/CFT regime and specifically appraised the methods and criteria used by

the IMF and the Financial Action Task Force (FATF) to rate countries' compliance with AML/CFT standards. The report found that the battle against money laundering is at a critical turning point. It commended the recognition by the IMF and FATF of the many problems that their assessments have identified over the past decade, and noted reforms initiated in 2012 and 2013. However, the report also underscored the lack of relevant empirical data and the need for greater focus on whether countries' compliance with AML/CFT criteria in fact result in positive outcomes—reductions in the extent of money laundering and reductions in the flow of funds to terrorists.

“Clean Solutions for Dirty Money” was presented as part of the World Bank Group's 2015 “Law, Justice and Development (LJD) Week,” November 16–20, 2015. The program drew one of the largest crowds of the week, attracting an audience of more than 185 people. Held each

year, LJD Week brings together World Bank Group staff, senior officials from international financial institutions, government leaders, lawyers, judges, scholars, representatives of civil society, and members of the international development community from around the world. The theme of the 2015 event focused on the role of governance and the law in the social and economic development of nations.

Co-sponsored by the WBG and the ABA Section of International Law, in cooperation with the American Bar Foundation, “Clean Solutions for Dirty Money” was organized by the Hon. Delissa A. Ridgway, judge of the United States Court of International Trade, along with Danielle Roosa and Christine M. Makori, both Senior Counsel at the World Bank. Judge Ridgway is a member of the ABF Fellows Research Advisory Committee and a well-known authority on international commercial law, transactions, and commercial arbitration and litigation. The

LJD Week panel is one of many programs Judge Ridgway has organized to encourage meaningful conversation among experts on international law, but her first for the World Bank's LJD Week.

“This program is yet another example of the real-world impact of the ABF's innovative research,” Ridgway stated. “And the World Bank's LJD Week was the perfect venue to showcase the provocative work of Professor Halliday and his colleagues. LJD Week is the premier global forum for influential professionals from all fields who are working in the area of international development.” Ridgway added: “There could be no better audience for Professor Halliday's critically important message. From all over the world, these are the people who need to hear what he has to say about the AML/CTF regime. This is where the rubber meets the road.”

For more information on the World Bank Group's 2015 Law, Justice and Development Week (including additional photos and video of “Clean Solutions for Dirty Money”), visit the website at <https://www.conftool.pro/ljdweek2015/sessions.php>.

ABF Expert on Lawyers in China Terence Halliday Co-organizes Open Letter to President Xi Jinping

A massive crackdown on human rights lawyers in China that began in July of 2015 prompted ABF Research Professor Terence Halliday to join with a global network of jurists, attorneys and legal scholars to co-organize an open letter of protest to Chinese President Xi Jinping. The crackdown, which continued through the summer and fall of 2015, resulted in hundreds of lawyers, law firm staff and family members being subjected to, as the letter stated, “intimidation, interrogation, detention as criminal suspects, and forced disappearance.”

The letter was published in *The Guardian* on January 17, 2016 under the headline “China Must End its Intimidation and Detention of Human Rights Lawyers.” The twenty notable signatories from Europe, North America and Australia called upon President Xi to ensure the rights of those detained, release those detained without legal basis, confirm the whereabouts of those forcibly disappeared, and ensure that those detained will not be subject to future control measures and harassment. As a co-organizer of the letter (but not a signatory to it), Halliday was uniquely situated to understand the full implications of the repression as he and co-researcher Sida Liu have spent hundreds of hours in the field since 2005 researching

the careers of criminal defense lawyers and lawyer activists in China. In fact, the crackdown, which began on July 9 with

the arrest of human rights lawyer, Wang Yu, came just days after Halliday had talked extensively to Wang and other



Chinese human rights lawyer Wang Yu with ABF Research Professor Terence Halliday, June 28, 2015. Wang was arrested on July 9, 2015.



Photo courtesy of World Bank.

lawyers previously detained, interrogated, disappeared, and intimidated.

Halliday said that the lawyer activists pointed to a great irony in the government's increasing repression. Even though more and more pressure has been placed on bold lawyers who defend the most vulnerable populations, the numbers of rights lawyers has "increased explosively." The demand for rights lawyers is high and large numbers of younger lawyers have high ideals for "constitutionalism, justice and freedom."

"The more pressure, the less fear. And the less fear, the more

lawyer-defenders and leaders rally to the cause for legal and political change," said Halliday. He also noted that new networks of lawyers nationwide have been aided tremendously by social media, such as China's WeChat communities, where up to 400-500 lawyers have been sharing problems, teaming up on cases, offering advice and providing support. "WeChat has made us more intimate," Halliday quoted a longtime lawyer-leader, and "helps lawyers expel their inner fears."

Halliday said that China's leaders may have underestimated how much support its rights lawyers had around the world and how

much international public opinion was shocked by disappearances, harassment and detention of family members, and the likely prospect of torture for lawyers simply undertaking the most basic of legal functions. As he told the *New York Times*, "China is deviating further and further from...international standards and agreements...these lawyers are defending rights in ways thoroughly familiar to rule-of-law societies across the world" ("Charges Against Chinese Rights Lawyers Draw Foreign Criticism," January 18, 2016).

Ongoing ABF Research on Lawyers and Rights Activists in China

Halliday and Liu are experts on the lives and careers of lawyers in China, thanks to two research projects supported by the ABF. First, Halliday and Liu focused their research on criminal defense lawyers in China with the project “Lawyers in the Pursuit of Political Liberalism: Criminal Defense in China,” which also received funding from the National Science Foundation. The project, the first ever large-scale social science inquiry on the role of lawyers in China’s criminal justice system, investigated “the formation of lawyers’ liberal ideologies, mobilization patterns, and survival techniques in the criminal justice system of an authoritarian state.” Through hundreds of interviews conducted across China, systematic analysis of domestic and foreign media, and extensive archival research, Halliday and Liu sought to discover why, how,

and under what conditions do criminal defense lawyers mobilize in their everyday work for basic legal freedoms in contemporary China.

The research on criminal defense lawyers led serendipitously to a small number of notable human rights activists and defense lawyers who were hailed as heroic by their sympathizers. Through their continuing interviews with Chinese lawyers over several years Halliday and Liu found that (1) the notable activist lawyers choose their cases for explicit purposes of legal and political change in China; (2) a substantial proportion of the notables are Christians with connections both to China’s largest civil society network, unofficial Protestant churches; and (3) these notables, often marginal within the status hierarchy of lawyers in China, are integrated in extensive networks of

international organizations and media. Halliday and Liu’s current project, “The Rise of Lawyer Activism in China,” turns from their earlier study of everyday lawyering to intensive research on leading activist lawyers. It asks: Are elite criminal defense and human rights lawyers part of a wider emerging network of lawyer-activists that has structural capacities for mobilizing domestically and internationally on behalf of legal change in China? And it looks for answers to the wider question: how do lawyers fight for basic legal freedoms in illiberal political societies?

Halliday and Liu have published several articles on their research in China. Their book, *Criminal Defense in China: The Politics of Lawyers at Work*, is due to be released by Cambridge University Press in 2016.

COVER PHOTO:

Terence Halliday was a panelist at a session on money laundering during World Bank Law, Justice and Development Week, November 16-20, 2015 in Washington, D.C. Co-sponsored by the ABA Section of International Law and the World Bank, the panel was organized by the Hon. Delissa A. Ridgway, Judge of the United States Court of International Trade. Left to right: Joseph (Jody) Myers, VP of Bank Secrecy Act (BSA)/AML Risk Assessment, Western Union Company; Jean Pesme, Practice Manager, Global Practice, Finance and Markets, World Bank; Jonathan Turley (moderator), J.B. and Maurice C. Shapiro Professor of Public Interest Law, George Washington University Law School; Richard Lalonde, Senior Financial Sector Specialist, International Monetary Fund; Terence Halliday, American Bar Foundation.

Photo courtesy of World Bank.

American Bar Foundation Professor Discusses Proposals to Strengthen the Rule of Law at United Nations Meeting

Terence Halliday, Research Professor and Co-Director of ABF's Center on Law and Globalization, spoke to foreign diplomats, ambassadors, and U.N. officials about new proposals to strengthen the rule of law during a dialogue at the U.N. headquarters on Friday, March 11, 2016.

The discussion, “Strengthening the Rule of Law through the United Nations Security Council (UNSC),” was hosted by the Rule of Law Unit on behalf of the U.N. Rule of Law Coordination and Resource Group, the Permanent Mission of Australia, and the Permanent Mission of Japan. It marked the official launch of a report of policy proposals by Australian institutions to enhance the capacity of the UNSC to strengthen the rule of law when it deploys peace operations, applies sanctions, and authorizes the use of force. Australia held a two-year elected term as a member of the UNSC from 2013 to 2015. The report was developed by the Australian Civil-Military Centre (ACMC) and Centre for International Governance

and Justice at Australian National University (ANU), where Halliday holds an appointment. The proposals were informed by an empirical study conducted by ACMC and AMU, and supported by the Australian Research Council. Although the dialogue was not an official U.N. endorsement of the report's proposals, it was a critical opportunity for Member States to reflect on the report's recommendations, exchange knowledge and experiences, and further discuss how the UNSC can be more consistent with the fundamentals of the rule of law.

The policy proposals enlist a responsive model of decision making to increase the UNSC's capacity to promote the rule of law, based on four fundamental principles—transparency, consistency,

accountability, and engagement. The recommendations are intended to inform the actions of the UNSC but are also a tool of analysis and evaluation for “Member States, civil society actors, and researchers,” according to the report's summary. “...The more these principles are respected and promoted in both the UNSC's decision-making and in the implementation of UNSC decisions, the more the rule of law will be strengthened,” the summary states. The authors of the report, Alan Ryan, Ph.D., Executive Director of the ACMC; and ANU researchers Jeremy Farrall, Ph.D., and Professor Hilary Charlesworth, presented their proposals during the dialogue. Halliday then followed with his observations, focusing on the implications

of the proposals on the U.N.'s efforts to encourage rule of law internationally.

In his remarks, Halliday began by explaining why global standards fail, referencing his ABF research on global governance. Global standards fail because they are “built on weak foundations,” the authority asserting them typically “lacks legitimacy,” final veto power is held locally and, ultimately, because there are issues with the “expression of the ideals themselves,” he said. Halliday then focused on the strengths of the report, asserting that the proposals are “pragmatic,” built upon “empirical foundations,” directed at “outcomes,”

and reflect “high ideals.” He highlighted several key proposals, including one that states that the UNSC should hear the views of those who may be adversely affected by a decision before it is introduced, and another for practical recommendations for peace-keeping mandates and the expansion of “ombudsman process in sanctioning regimes.”

Halliday also mentioned many other recommendations, applauding the empirical basis of “Recommendation 52,” which states the UNSC must clearly identify the “objectives for which force may be employed” and the “objectively verifiable circumstances” that may lead to the termination

of their authorization to use force. In his concluding remarks, Halliday stressed that the policy proposals offer a “renewed vision” that is highly adaptable. “They offer us the determination that rule of law can restrain the exercise of arbitrary power in the global heights of the UNSC and the distant localities in the farthest corners of the world. It is in these remote places where the weak and poor and suffering look to the U.N., to the UNSC, and to U.N. Member States as an institution of last resort,” Halliday said. “[The proposals] will help silence the skeptics and bring justice and protection to those whose silent voices need most to be heard.



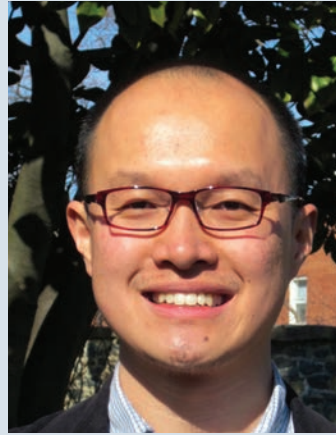
ABF Research Professor Terence Halliday spoke at a panel on the Rule of Law at the United Nations on March 11, 2016.



Terence Halliday

is Research Professor at the American Bar Foundation where he also co-directs the Center on Law and Globalization. He is Adjunct

Professor of Sociology, Northwestern University, and Honorary Professor, School of Regulation and Global Governance, Faculty of Asia and the Pacific, Australian National University. He holds a Ph.D. in Sociology from the University of Chicago.



Sida Liu is a Faculty Fellow at the American Bar Foundation, and Assistant Professor of Sociology and Law at the University of Wisconsin – Madison. He holds

a Ph.D. in Sociology from the University of Chicago as well as an LL.B. from Peking University School of Law. In July of 2016 he will join the faculty of the Department of Sociology at the University of Toronto.



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ABF Welcomes New Director Ajay K. Mehrotra

When, after 11 years of service, ABF Director Robert L. Nelson announced in September of 2014 that he would be stepping down as director in twelve months time and returning to full-time research and teaching, a committee of ABF faculty and board members immediately began a search for Nelson's successor. Eight months later, after an exhaustive nation-wide search, Ajay K. Mehrotra, a professor and scholar of U.S. tax policy and legal history at the Maurer School of Law at Indiana University, accepted ABF's offer to become the Foundation's ninth Director. He was also appointed Research Professor, and will hold the joint position of tenured professor at Northwestern Pritzker School of Law. Mehrotra began his tenure as ABF Director on September 1, 2015.



A Homecoming to ABF

Accepting the directorship was a homecoming of sorts for Mehrotra, who spent two formative years at ABF as a Doctoral Fellow from 2001 to 2003. Participating in the ABF research community at the very beginning of his career was a particularly enriching experience, according to Mehrotra. At ABF, Mehrotra found a vibrant intellectual community, where top-notch social scientists and legal scholars engaged in interdisciplinary empirical legal

research, bringing a law-and-society perspective to some of the most pressing issues of our time. "I am deeply honored by the tremendous privilege to be the next Director of the American Bar Foundation," said Mehrotra upon his appointment. "The ABF is not only the preeminent research institute for the empirical and interdisciplinary study of law, it is also the organization that launched my academic career. I'm thrilled and delighted by this opportunity to return to the ABF and work closely with

its faculty, staff, and board in building upon the momentum of Bob Nelson's outstanding leadership."

Scholarship on Taxation

Mehrotra holds a B.A. in Economics from the University of Michigan, a J.D. from Georgetown University Law Center, and a Ph.D. in History from the University of Chicago. His research centers on the history of American law and political economy, and the relationship between taxation and state formation in historical

and comparative contexts. His 2003 dissertation became the basis for his book *Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877-1929* (Cambridge University Press, 2013), which won the Best Book Award from the Society for U.S. Intellectual History in 2014.

The book traces the intellectual origins of the transformation of the U.S. system of public finance, showing how the late nineteenth century system of indirect, partisan and regressive taxation was replaced with a system that was more direct,

transparent and progressive. It also illustrates “law’s double role”—that is, law’s ability both to facilitate and contain social, economic, and political transformations. As Mehrotra argues, “the leading historical actors in the making of the American fiscal state turned to law, juridical institutions, and legal processes not only to achieve the immediate economic goal of reforming a regressive and antiquated tax system, but to advance a new sense of civic obligation, to improve existing modes of governance, and perhaps most importantly to lay the institutional foundations

of the activist state.” Through the same process, however, these actors “domesticated more radical calls for wealth redistribution and limited the possibilities of using the full tax-and-transfer powers of the fiscal state to address the many social dislocations of industrial capitalism.”

Mehrotra brings with him a strong track record of publication as well as a history of grant and fellowship acquisition. In addition to *Making the Modern American Fiscal State*, he has authored numerous articles in law reviews and scholarly journals. He is the co-editor (with Isaac William Martin and Monica Prasad) of *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective* (Cambridge University Press, 2009). His research has been funded by the American Academy of Arts and Sciences, the National Endowment for the Humanities, the William Nelson Cromwell Foundation, and the Social Science Research Council. At Indiana, where he was Professor of Law and Louis F. Niezer Faculty Fellow, he was a university-wide leader on interdisciplinary approaches to the study of law. In addition, in



Outgoing ABF Director Robert L. Nelson (right) with incoming Director Ajay K. Mehrotra at a dinner in Nelson’s honor in Chicago in April, 2015. Nelson continues at ABF as MacCrate Research Chair in the Legal Profession and Director Emeritus, and is working with Neukom Fellows Chair Rachel Moran to develop the Future of Latinos in the United States project.

his years at Indiana he gained significant administrative experience, serving as Associate Dean for Research at the Maurer School of Law and Co-Director of the Center for Law, Society and Culture.

Enhancing ABF's Research Portfolio

In his role as director Mehrotra wants to build on ABF's historical strengths, but also explore new areas of research.

He cites the After the JD study of lawyers' careers, as well as studies on legal education and criminal justice as just a few of the areas where ABF has built an exceptionally solid tradition of research that he would like to see continue. He is actively encouraging faculty to build on ABF's already strong record of securing funding from third party sources, in order to better leverage ABF's own resources toward support of research in

these and other areas. At the same time, in consultation with the ABF faculty and Board of Directors, he would like to expand the research portfolio.

For example, Mehrotra said in an interview with the American Bar Endowment, "we're still in the midst of a recovery from a great recession, and I think we could be doing more on law and inequality, and law and financial governance—how markets



Current and former Directors of the American Bar Foundation, April 2015. Left to right: Bryant G. Garth (1990–2003), Robert L. Nelson (2004–2015), Ajay K. Mehrotra (2015–), John P. Heinz (1982–1986)

work and the importance of legal regulation for effective markets.” Health care is another growing concern, not only among lawyers but society at large, especially with the Affordable Care Act in full implementation. ABF could also do more in the area of environmental law and policy, according to Mehrotra. Overall, “there are a number of broad, social issues that touch upon the law and the legal profession,

and hopefully we can start to think about doing more research in those areas.”

Building Community Ties within ABF and to the Legal Profession and Society

So that ABF may continue to be a magnet for the best socio-legal scholars, as well as a valuable resource for the American Bar Association, the American Bar Endowment, and

the Fund for Justice Education, Mehrotra wants to bolster the ABF community, both internally and through enhanced ties with the legal profession and the broader community. Internally, he sees expanding opportunities for graduate and undergraduate fellows in law and social science, as well as post-docs and visiting faculty, as crucial for maintaining ABF’s longstanding tradition of being a vital incubator

ABF to Host First in a Series of Regional Roundtables on the Future of Latinos in the United States, June 6–7, 2016

The Latino population is currently projected to account for nearly 30 percent of the U.S. population by 2050. The well-being of Latinos will significantly impact the future prospects of the country as a whole. A new ABF research project co-directed by ABF’s inaugural William H. Neukom Fellows Research Chair in Diversity and Law, Rachel F. Moran, and ABF Director Emeritus Robert L. Nelson is dedicated to advancing the understanding of issues facing

Latinos as well as to proposing laws and policies that will overcome these obstacles. Launched in the summer of 2015, “The Future of Latinos in the United States: Law, Opportunity, and Mobility,” has been laying the foundation for transformative work at the regional and national level. To that end, the project has compiled an extensive annotated bibliography that includes over 400 academic and media sources on issues of concern to Latinos and has

constructed GIS maps showing the location of Latino-serving organizations throughout the nation.

Using this information, the project is now planning a series of roundtables that will invite selected law and non-law scholars, legal advocates and community activists, media representatives, foundation representatives, politicians, and students to imagine the different futures for Latinos that are possible by 2050.

of aspiring interdisciplinary legal scholars. ABF's weekly research seminar will continue, regularly bringing together faculty, graduate students, and visitors. Similarly, ABF faculty and staff will continue to collaborate on communicating the ABF's innovative and influential research to a broader community. And the faculty and graduate student editors of ABF's peer reviewed journal *Law & Social Inquiry* will

continue to work together to publish the best socio-legal research being produced today.

In order to build stronger ties with the legal profession and the society that it serves, Mehrotra plans to encourage ABF researchers to present their studies regularly to The ABF Fellows, to ABA entities and leadership, and to concerned social groups interested in law and legal institutions. Mehrotra

believes that a key objective will be to disseminate the ABF's research to a wider audience. While the legal community will always be a significant stakeholder in ABF research, as the institution grows and reconfigures its research portfolio, the goal will be to reach the broader public that the legal profession is meant to serve.

Participants will identify what interdisciplinary research, legal activities, and community initiatives are already underway on topics such as education, immigration, civic engagement and political participation, and economic opportunity. The goal of the overall initiative, say co-directors Moran and Nelson, will be to "identify mistakes we cannot afford to make, as well as opportunities we cannot afford to miss." Using small-group exchanges and scenario planning, participants will enter into meaningful dialogue about how law and policy can either entrench or interrupt inequality.

The ABF and the Northwestern Pritzker School of Law will host

the first of the roundtables in Chicago on June 6 and 7, 2016. The Chicago roundtable will open with keynote addresses and accompanying white papers on the history of Latinos in the Midwest, prepared by Professor Lilia Fernandez (Ohio State University); the demographic profile of Latinos in Chicago, prepared by Sylvia Puente (Executive Director of the Latino Policy Forum); and the current landscape of law and policy issues facing Latinos in the Midwest, prepared by Ricardo Meza (Greensfelder, Hemker, & Gale, P.C.). Future roundtables will be held in Miami, Florida, New Haven, Connecticut (Yale), Palo Alto,

California (Stanford), and Austin, Texas. The roundtable series will culminate in a national summit in Washington, D.C., tentatively scheduled for the spring of 2018.



Rachel F. Moran

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