

REPORT OF THE DIRECTOR

Very few organizations function in such traditional ways as The American Law Institute. Universities, corporations, and even many churches conduct themselves differently than they did in the 1920s. For better and worse, the ALI maintains the business model and even the procedures that were adopted by founder and first Director William Draper Lewis and his colleagues.

From the beginning, the ALI was a membership organization that sought the most distinguished and progressive judges, professors, and practicing lawyers. We began with 308 members. That number is now more than 4200. The original charter assigned governance to a Council made up initially of 21 legal intellectuals. The Council now has 56 members and a growing number of Emeriti. From the start, the ALI engaged professors at nominal compensation to draft language that would restate common-law doctrine. Each project had Advisers who criticized drafts. When drafts were ready for consideration, they were submitted for revision or approval, first to the Council and then to the membership at an Annual Meeting. Only through this process did they become the recommendation of the Institute.

There have been many changes since 1923, but three stand out:

(1) The creation of Members Consultative Groups to add their constructive criticism to that of Advisers and at the same time give all members an enhanced opportunity to apply their talents to ALI's substantive work;

(2) Stylistic change, beginning especially with the Restatement Second series, from language that reads as though it were handed down from the heavens to words that read as though today's thoughtful professionals have taken responsibility for recommending them as a way to pursue the nation's best values, with black-letter statements supported by Comments and Reporters' Notes that discuss alternative doctrinal formulations and supply reasons for the choices that have been made; and

(3) A broadened range of substantive law-reform work that has included statutes (Uniform Commercial Code; Model Penal Code) and now sees about half our work in publications called Principles alongside continued efforts to "restate."

My only candidate for a fourth major evolution, not yet as significant as these three, is the move that our Director Emeritus Geoff Hazard began toward transnational work.

I do not apologize for our adherence to tradition. We are not dinosaurs or Luddites. Rather, I emphasize our procedural and substantive consistency to prove the foresight of the first generation of ALI leaders.

At the moment, I believe that the Institute is in its third period of extraordinary self-creation. The first, led by Professor Lewis and the initial President, George Wickersham, was its foundation in 1923 and the start of work to restate American law. Second was the reconsideration, led by then-President George Wharton Pepper and the Committee on the Future chaired by Judge Learned Hand, immediately after World War II. Today, multiple reforms are underway and others are being considered under the leadership of Roberta Ramo and with the committed involvement of former President Mike Traynor and many loyal Institute members. Times change, technology changes, and intellectual thinking about law changes, so even The American Law Institute is changing in order to remain the most important private law-reform organization in the world and to ensure that we will be able to meet the magnificent goals pursued by our founders.

Consider these innovative steps that are in process or under consideration:

- Creation of an ALI Medal to be awarded to one or more young law professors whose early work has a high likelihood of contributing to important improvements in the law. Law school deans have been asked to nominate possible recipients. The committee that will select the medalists is chaired by Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit.
- A search for ways to involve more government lawyers, legal services lawyers, and public interest lawyers in our work. A committee, chaired by Helaine Barnett, immediate past president of the Legal Services Corporation, will consider active recruiting, possible adaptation of our project agenda, and the need for funding to make participation easier for lawyers whose organizations might not be able to fund travel to our meetings.
- A study of how we should adapt to technological change. This committee, chaired by Derek Langhauser, general counsel of the Maine Community College System, will make recommendations about doing more of our work online. All committee members are aware of the benefits of our traditional procedures and of the dangers of asking lawyers and judges to put ideas about law reform into the blogosphere. On the other hand, the Institute cannot ignore changes in how intellectual engagement now takes place and the assumptions and habits of a generation of lawyers who grew up with the Internet.
- Consideration of a plan regarding foreign members. We are honored to have members from several dozen countries, but until now we have had no strategy for the internationalization of our membership and an inadequate basis for selecting these members. This will be considered by a committee chaired by David Rivkin of the firm of Debevoise and Plimpton.
- Consideration of policies and procedures needed before we engage in serious fundraising. In recent years, intellectual property income (mainly from sale of books through ALI Publishers and royalties from Westlaw and Lexis), plus membership dues and contributions, have paid for most of our work. But what if

we pursue more expensive law-reform efforts or if, as we see in the newspaper or music industry, our work is distributed electronically without adequate compensation? This committee is chaired by Mike McKetta of the firm of Graves, Dougherty, Hearon and Moody in Austin, Texas.

This reform agenda builds on what will probably be seen as the most important modernization: the implementation of term limits for Council members so that new leaders can be brought aboard while the long-serving members, now titled Emeriti, continue to participate. That dramatic change resulted from a reconsideration of Institute governance led by then-President Traynor and by Bob Mundheim of the firm of Shearman and Sterling. This opened up so many Council seats that we added seven new members in 2009, and we will add another seven this year. This new group of 14 is diverse in many ways and is even majority-female, a pleasant surprise to someone like me who studied in college only with men and in law school with a handful of brave women.

I have written in this letter in prior years about the development of our substantive agenda, which must adapt and reform while staying true to our best procedures and to our publications that are most influential. Please try to attend the Wednesday morning session at the Annual Meeting where Program Committee Chair Paul Friedman, a judge of the U.S. District Court for the District of Columbia, and I will talk about new projects and seek member ideas and comments. The short summary is that our important work on Donative Transfers, Trusts, and Restitution will soon be finished. Ongoing mature projects are Sentencing, Nonprofits, Employment, and World Trade. Of course we are always working with our partners at the Uniform Law Commission on improvements to the Uniform Commercial Code. In addition, these new subjects for law-reform work are at the beginning of their ALI life or are under serious consideration: U.S. Law of International Commercial Arbitration (debuting at this Annual Meeting), Economic Torts and Related Wrongs (restarting after a hiatus due to the resignation of the Reporter), Government Ethics, Election Law, Liability Insurance Law, and Financial Regulation.

Publications

This year the ALI published Volume 1 of Torts: Liability for Physical and Emotional Harm. My friend since law school, Gary Schwartz of UCLA, had begun this work but died too young. The work was completed by Mike Green of Wake Forest and Bill Powers of the University of Texas. We also published Principles of the Law of Software Contracts, the work of Reporters Bob Hillman of Cornell and Maureen O'Rourke of Boston University. And we published the latest volume of analyses of judicial decisions from the World Trade Organization. That project is headed by Henrik Horn of Sweden and Petros Mavroidis of Switzerland and Columbia Law School. Finally, Principles of the Law of Aggregate Litigation, the product of Samuel Issacharoff of NYU, Robert Klonoff of Lewis and Clark Law School, Richard Nagareda of Vanderbilt, and Charles Silver of the University of Texas, should be in print in time for the Annual Meeting.

People

Change is also occurring among the Institute's most loyal officers. Bennett Boskey, Treasurer since 1975, a strong intellectual leader as well as a money man, will step down this May. I have enjoyed immensely my close working relationship with Bennett and have no doubt that the Institute has benefited from virtually every one of our hundreds of phone conversations. Deputy Director Elena Cappella, the head of our Philadelphia office since 1993, will complete her Institute service on June 30. The Institute's odd structure, with a part-time Director in New York and a full-time Deputy Director in Philadelphia, demands trust, flexibility, and cooperation from the two people who fill those roles. Elena took on every task, remembered every uncompleted responsibility, magnificently combined a short-term and long-term focus, and taught and guided the talented staff who reported to her. Now I look forward to new and, I hope, equally rich relationships with our next Treasurer, Judge Carolyn Dineen King of the U.S. Court of Appeals for the Fifth Circuit, and our new Deputy Director, Stephanie Middleton, formerly minority Staff Director of the U.S. Senate Committee on the Judiciary.

Loyal staff who have completed five years at ALI-ABA or ALI are: John Ceci, Judith Cole, Julene Franki, Aron Goldschneider, Nancy Shearer, Jonathan Shinault, Frank Tomasello, and Amy Weinberg. Ten-year veterans are: Charlotta Blanden, Tom Hennessey, and Amy Shapiro. Joseph DiPietro, Todd Feldman, and Marykay Hamilton have completed 20 years. Joe Mendicino, Linda Smith, and Pattye Stringer are at 25 years. And Susan Tomita has finished 30 years. I should pay special note in this distinguished group to Julene Franki, whose leadership of ALI-ABA in a time of change and challenge has been exceptional.

This year, the following Council members have taken Emeritus status or will take it at the conclusion of our Annual Meeting, thus opening seats to new and younger members: Philip Anderson, Bennett Boskey, Michael Boudin, Gerhard Casper, George Freeman, Pierre Leval, William Reece Smith, and Herbert Wilkins. All have served about 30 years, except for Bennett, who has been on the Council for 38 years and has been an ALI member for 59 years. We are deeply indebted to them for their decades of dedication to the Institute, and we look forward to many more years of collaboration with them.

I note and regret the passing, since my last Report, of Council Emeriti James H. Wilson, Jr., a prominent Atlanta attorney, and William H. Erickson, former Chief Justice of the Supreme Court of Colorado. Jim chaired the Institute's first Capital Campaign Steering Committee, helping us attain greater financial stability, while Bill served for many years on the Nominating Committee.

I have no doubt that as we march toward our centennial in only 13 years, our leadership will be refreshed, our substantive tasks will evolve, and our procedures for approving law reform recommendations will be modernized, but the basic mission and the importance of the Institute will stay the same.

Respectfully submitted to the members of The American Law Institute by

LANCE LIEBMAN

Director

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