

## ***REPORT OF THE TREASURER***

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At the close of this year's Annual Meeting—the Institute's 87th—I shall become your Treasurer Emeritus. It is a source of high satisfaction to me—and I am sure it will be to the membership as a whole—that my successor as Treasurer is to be our exceptionally talented and devoted Council member Judge Carolyn King of the United States Court of Appeals for the Fifth Circuit.

For me this occasion provides a welcome opportunity in my final Report as Treasurer to bring to your attention some gentle comparisons between the Institute as it was when I became Treasurer in 1975 and as it is now. But before you indulge me in this, you are entitled to a fair sampling of our bottom line. Are we in trouble or are we in clover or are we somewhere in between?

Specifically, as it appears to your Treasurer:

- Notwithstanding the regrettable recession, our financial situation in all likelihood is adequate to continue to support to a successful conclusion all of our projects currently under way.
- Our ambitious hopes for undertaking new projects that will allow the Institute to remain the most important and the most vital law-reform organization in the United States—these hopes, if they are to be realized, will require a certain amount of new outside financial support.

These conclusory observations could be enlarged and subdivided into many discrete fragments. But as they stand they should be accepted as a reliable snapshot of the Institute's bottom line as of the spring of 2010.

When I was first elected Treasurer in December 1975 and made my first Treasurer's Report to what was the 53rd Annual Meeting in May 1976, the Institute's roster showed a little over 1800 members; today we have somewhat over 4200. Fortunately, we then had the same wholesome mix of highly qualified practicing lawyers and judges and academics that has been a hallmark of the Institute throughout its entire existence. We had already begun to correct—but as yet we had by no means eradicated—the geographical bias favoring membership of individuals east of the Mississippi. We had also begun, but possibly a little slowly, to be alert to the advantages of improving nongeographical diversity (by gender, by race, and by place in the profession) in our membership. Our Council then consisted of 55 individuals, only one of whom was a woman. In sharp contrast, as a result of a variety of changes culminating in our recent bylaw amendments, the situation at the end of this year's Annual Meeting will be that our Council has 57 members, of whom 27 are women, and it will be further fortified by 23 emeritus Council members (myself included), many of whom are expected to remain conspicuously active in the work of the Institute.

The Institute's annual operating expenses (excluding those of ALI-ABA) for the fiscal year 1976 were \$462,000, whereas for our current fiscal year they will probably be in the range of \$5,500,000. At the Annual Meeting in May 1976

we had up for discussion portions of four Restatement Second projects (Torts, Contracts, Judgments, and Property) as well as a fresh installment of our proposed Federal Securities Code. The number of projects on which the Institute was seriously engaged was substantially fewer than what we are doing today (and what we hope and expect to be doing in the tomorrows). The concentration on Restatement work was significantly heavier than it has since become; this is a result of the gradual shifts in emphasis apparent from our annual agendas that have displayed a notable broadening of our fields of activity. Our balance sheet showed that at the close of fiscal 1976 the Institute had net assets (excluding those allotted to ALI-ABA) of a little above \$1,300,000. The comparable figure for today would be a little above \$45,000,000.

At the 1976 Annual Meeting I reported that we were planning to install in the Philadelphia office a minicomputer system. Thus you will see that we were then almost at the starting edge of the electronic revolution. In the succeeding years the electronic revolution has become for us, as for nearly everyone, an intimate part of our activities, of our relationships with both our members and the outside world, and indeed of our well-being. On-line seemingly has no bounds.

A portion of the massive jumps in some of the dollar figures noted above undoubtedly can be attributed to that universal economic phenomenon called inflation. Yet the bulk of the changes I have summarized—changes occurring sequentially over the past three and a half decades—signal how much and how steadily the Institute has been evolving. It has been an evolution involving not

merely a greater volume of activities but perhaps more importantly an expanded range of activities with an enlarged potential for beneficial impact on society. If this history tells us anything, it suggests that the evolution will continue and that, with a happy combination of wise management and good luck, the future of the Institute will be bright.

I could comfortably end this Report right here. However, I do not wish to deprive you of at least the bare bones of what you are accustomed to seeing in the Treasurer's Report.

## **The Financial Data**

In accordance with the Institute's longstanding belief in fiscal transparency, an abundance of information relating to our financial data is readily available to our members—and to the public as well—on the Institute's website ([www.ali.org](http://www.ali.org); click "About ALI," then "News," then "Annual Reports.>"). Nevertheless, I place here a few critical figures that may be of special interest to you.

*ALI Operating Figures.* For the current fiscal year (which will end June 30, 2010) we estimate that for the Institute (excluding ALI-ABA) the operating revenues and operating expenses will probably each be in the range of \$5,500,000. These amounts are slightly, but not significantly, less than the figures for each of several prior years. It remains true that the dominating amount in the operating revenue column (putting aside a thus far very occasional sizeable bequest) consists of what the Institute derives from its publications sales and royalties. Every week

the newspapers tell us more about the extensive changes that are permeating the publishing arena; we watch carefully to understand which significant new developments may affect us and how we can maximize the positive effects while minimizing the negative ones.

*ALI-ABA Operating Figures.* On the ALI-ABA side, for the current fiscal year the operating revenues will probably be somewhere in the range of \$10,500,000, and the operating expenses probably a little higher. With about a quarter of the current fiscal year to go, there is an element of more than usual unpredictability as to ALI-ABA's final outcome. Once again it is expected that operating costs will exceed operating revenues. This is attributable to at least two prominent factors—first, the recession, and second, necessary startup costs of the series of measures undertaken to modify the menu of products ALI-ABA offers in its laudable efforts to accommodate changes in demand and advances in technology. It is still too soon to be sure that ALI-ABA's tremendous changes will enable it to operate year after year normally in the black. But in my judgment the situation warrants considerable optimism.

*The Investment Portfolio.* In a period when the volatility of markets has been acute and at times bizarre, the Institute's Investment Committee has been busily engaged in overseeing the Institute's portfolio. Last year I reported that, as of March 13, 2009, the market value of what we had at State Street Global Advisors (SSgA) was \$22,344,158, and at the GMO Global Balanced Asset Allocation Fund \$8,299,415—making a total of \$30,643,573 (including ALI-

ABA's minor component). This had represented a decline of about 25 percent from the market value as of June 30, 2008. Two important developments have occurred since last year's Report. First, the Institute has benefited significantly from the partial recovery of the market. Second, after careful consideration the Investment Committee decided to shift to JP Morgan the portion of the portfolio that had been with SSgA; this change became effective October 31, 2009. In any event, as of February 28, 2010, the total portfolio value, including several million dollars of ALI additions that exceeded much smaller ALI-ABA withdrawals, was \$40,444,307, of which the ALI-ABA share was \$3,153,691. While it is much too early to judge the performance of JP Morgan, this will be periodically assessed by the Investment Committee as time goes on.

## **Publications**

As I have indicated, year by year the Institute's sales and royalties from our publications constitute an exceptionally heavy portion of our operating revenues—sometimes, as very likely will be the situation this fiscal year, on the order of 70 to 80 percent. Thus, our publications' financial importance to the Institute is strong, and accompanies our persevering interest in assuring their high quality and usefulness. Yet one thing the Institute cannot do is to calendar well in advance when its publications will appear; from year to year, up-and-down sways inevitably occur. Since last year's Report, the month of December 2009 saw the publication of Volume 1 of Restatement Third of Torts: Liability for Physical and

Emotional Harm. In the Principles arena, the Principles of the Law of Software Contracts was issued in March 2010 and it is expected our innovative Principles of the Law of Aggregate Litigation will appear in April 2010. The WTO Case Law of 2008 also hopes to be off the presses in April. A Concise Restatement of Torts is scheduled for appearance in the summer of 2010, but we must wait and see whether any slippage occurs. In addition, the Restatement and Principles Pocket Parts for use in 2010 made their timely appearance in March, and the usual Interim Case Citation Pamphlets become available on their regular semiannual schedule. As many of you know, the process of getting a volume to publication involves arduous labor, and hopefully a large part of it becomes invisible in the end product. The Institute has a notable competence at it, and always hopes to learn more as the electronic revolution keeps pushing the edge of the envelope forward to greater accomplishments.

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It has been an immense privilege to serve continuously as your Treasurer over this extensive period. I have enjoyed it. My enjoyment has been derived in no small part because I have benefited repeatedly from the help obtained from the Institute's excellent staff. I feel especially grateful to Elena Cappella for her close collaboration with me in making her outstanding contributions to the Institute.

And I am delighted that your next Treasurer will be Judge King, whose wise and steady hand will serve the Institute graciously and with superb effectiveness.

Respectfully submitted to the members of The American Law Institute by

**BENNETT BOSKEY**

*Treasurer*

April 2010