



2015-2016
THE AMERICAN LAW INSTITUTE

ANNUAL REPORT



INTRODUCTION TO THE AMERICAN LAW INSTITUTE.....	3
PRESIDENT’S MESSAGE	4
DIRECTOR’S MESSAGE	5
THE AMERICAN LAW INSTITUTE.....	6
LEADERSHIP CHANGES	8
THE HENRY J. FRIENDLY MEDAL.....	11
IMPROVING COMMUNICATIONS THROUGH TECHNOLOGY	12
CURRENT PROJECTS	12
PUBLICATIONS	20
BENNETT BOSKEY	22
AMERICAN LAW INSTITUTE CLE	23
MEMBERSHIP	24
COMMITTEES.....	26
CONDENSED CONSOLIDATED STATEMENTS OF ACTIVITIES.....	28
CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION.....	29
ANNUAL GIVING REPORT	30
HONORARY AND MEMORIAL GIFTS	31
THE 1991 LIFE MEMBER CLASS GIFT	32
BEQUEST SOCIETY	34
DONATIONS.....	34
SUSTAINING MEMBERS	36
WAYS TO GIVE.....	40

**“BUT WE ARE THINKING ... OF THE LESS
EMPHASIZED DUTY THAT THE LAWYER OWES
TO THE LAW ITSELF, TO CONTRIBUTE TO ITS
IMPROVEMENT, TO ITS ADEQUACY, TO ITS
CERTAINTY, TO ITS APPROPRIATE EXPOSITION.
IN THE GREAT TASK THIS INSTITUTE HAS
ASSUMED WE ARE PLEDGING OUR SERVICE
TO THE HIGHEST OF CAUSES.”**

**SECRETARY OF STATE AND LATER U.S. SUPREME COURT
CHIEF JUSTICE CHARLES EVANS HUGHES**

1924 ALI ANNUAL DINNER ADDRESS

Introduction to The American Law Institute

The American Law Institute was founded in 1923 in response to concerns that the body of American common law was both uncertain and complex. A group of prominent judges, lawyers, and academics formed the “Committee on the Establishment of a Permanent Organization for the Improvement of the Law” and published a report recommending that an organization be formed to improve the law and its administration. This led to the creation of the ALI. The Institute’s mission, as set out in its charter, is “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.”

For more than nine decades, the ALI has gathered the best minds in the American bar—judges, lawyers, and law professors—to accomplish its mission. The courts have come to trust and rely on the ALI’s work due to its careful drafting process, its independence and integrity, and the intellectual caliber of those who participate in the Institute’s projects. Federal and state courts routinely look to the ALI’s work for guidance in resolving questions of law.

Publications and Projects

The ALI drafts, discusses, revises, and publishes Restatements of the Law, model statutes, and Principles of the Law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education.

The ALI has long been influential internationally and, in recent years, more of its work has become international in scope. It collaborates with numerous international law organizations and served as a model for the European Law Institute founded in 2011.

The ALI addresses uncertainty in the law by developing restatements of legal subjects that are primarily addressed to courts. Restatements of the Law contain clear formulations of common law and its statutory elements or variations and reflect the law as it currently stands or might appropriately be stated by a court.

The ALI also examines and analyzes legal areas in need of reform. Principles of the Law are primarily addressed to legislatures, administrative agencies, or private actors. They can, however, be addressed to courts when an area is so new that there is little established law. Principles may suggest best practices for these institutions.

Statutory projects include the Uniform Commercial Code (in conjunction with the Uniform Law Commission), Model Code of Evidence, and Model Penal Code.

There are currently 20 active projects that the ALI is undertaking. For a full list of current projects with short descriptions, please see pages 12-19 of this Annual Report.

COMPLETED RESTATEMENTS OF THE LAW INCLUDE:

Agency	Property
Conflict of Laws	Restitution and Unjust
Contracts	Enrichment
Employment Law	Suretyship and Guaranty
Foreign Relations Law of the	Torts
United States	Trusts
Judgments	Unfair Competition
The Law Governing Lawyers	

Membership

The ALI is limited to 3,000 elected members who are lawyers, judges, and law professors of the highest qualifications. The Institute also has ex officio members and life members, for a total membership of more than 4,500. By participating in the ALI’s work, its distinguished members have the opportunity to influence the development of the law in both existing and emerging areas, to work with other eminent lawyers, judges, and academics, to give back to a profession to which they are deeply dedicated, and to contribute to the public good.

Funding

The ALI’s operating revenue is primarily derived from publishing, educational programs, membership dues and contributions, and rental income from its headquarters building in Philadelphia. The financial support of the ALI’s members and partners is vital to its long-term financial stability. As a public charity under section 501(c)(3) of the Internal Revenue Code, all donations to the ALI are tax deductible to the full extent of the law.

COMPLETED PRINCIPLES OF THE LAW INCLUDE:

- Aggregate Litigation
- Corporate Governance
- Family Dissolution
- Software Contracts
- Transnational Civil Procedure
- Transnational Insolvency
- Transnational Intellectual Property

President's Message



Ninety-three years ago, there was enough unsettled in the American legal world that the titans who were our founders took their precious time and capital to found the ALI. Using their intellectual and personal powers they wanted to bring reason and simplification to pull the patchwork quilt of American common law

decisions together to serve the new nationwide economy. We were then united by highways and rail, and by radio and telegraph, and desperately needed a civil legal system that while based in state law, would work across the country.

They invented the ALI with its ideas of Restatements and other deeply important legal thinking and writing. But they also invented a bicameral body that required that a stable Council *and* the more fluid body that is the Annual Meeting of the membership join to approve anything that is to bear the imprimatur of the ALI. We have survived depressions, recessions, war, and upheaval in our streets and our culture from time to time.

Now it is our turn to make sure that the institution that is so important to American law and our democracy survives and flourishes in a world with the constant, instant connection of the internet. The internet both connects us, and at the moment, exposes deep divisions of all kinds in our political systems and in our communities. Against this background, the ALI works to protect our independence and our devotion to civil discourse about the most difficult legal issues of this moment.

Our independence comes from the very nature of our membership process that searches out the most outstanding scholars, lawyers, and judges from across the United States. We are increasingly diverse in geography and gender and religion and race and cultural backgrounds. We happily welcome and hear from members on at least three sides of every question as we bump our way to consensus in our work. Our independence is also protected because the generosity of our members allows us to self-fund our work.

This Annual Report contains all of our financial information and once again shows the devotion of not only the intellectual but also the financial resources of our members. One hundred percent of our Council donates to our annual fund. An increasing percentage of especially new members and those

who attend our meetings of all kinds also add by donating to our funds. We note that in this year, while we lost the great intellect of our 35-year Treasurer Bennett Boskey, who died at age 99, he left us a major bequest from his estate. We will devote Bennett's bequest to funding our ongoing work. His spirit survives among us in the Boskey motion that allows us to approve each of our drafts in the most efficient way, while taking into account the input of the Council and our members. His bequest helps us insure that we have the financial means to continue our work.

Our work is made better not only when you read and comment on the drafts, but also importantly when you come to the project meetings and to the Annual Meeting. There is not much nuance on the internet, helpful as it is in allowing our Reporters to hear from those interested in the work. It is when we meet in person that the work reaches the high bar that we set for the Restatements, Principles, and our Model Codes. It is in listening to the conversations of our colleagues that we advance our thinking and make our writing good enough that we are ready to vote on it, and are then comfortable in publishing it for use in the courts and by lawyers at all levels and for examination over time by scholars.

Our meetings of all kinds cement us in a fellowship devoted to protecting quality, independence, excellence, and civility in the law. We are plaintiff and defense lawyers; corporate counsel and legal-aid and government lawyers; we are state and federal trial, administrative, and appellate judges, appointed and elected. We are scholars from law schools across the country. We listen to one another, we try to persuade, and we push our Reporters to make sure the propositions in front of us are based on cases and statutes that we understand. We compromise, allowing us to offer the help that judges and lawyers in big firms and small, in cities and small towns, rely on for our work. And we are as generous as each of us can be in making the financial contributions that support our work.

Come to Washington in May 2017 so that I can thank you in person for your support of this magnificent American institution. I thank you now for all you do for the ALI.

A handwritten signature in black ink, which appears to read "Elizabeth H. Row". The signature is fluid and cursive.

Director's Message



I am sitting down to write this letter at the end of two weeks that were enormously productive for the ALI. At the Council meeting in mid-October, we discussed nine ongoing projects, including two of our new projects: the Restatement of Children and the Law, and Principles of Policing, both of which now have approved Sections. And, the following week, we had project meetings with Advisers and Members Consultative Groups all

five weekdays, shuttling between Philadelphia and New York. This level of activity is not wholly aberrational. During 2015-16, we had a total of 40 full-day project meetings (not including the Annual Meeting, Council Meetings, and the Young Scholar Symposium).

As a result, we are making significant progress moving our projects forward. Of our 20 ongoing projects—13 that I inherited when I became Director and seven new ones that were launched over the last two-and-a-half years—six are on track for possible final approval at the Annual Meeting this coming May, and another four are on track for completion the following May. Even if a few of the projects get somewhat delayed, a significant proportion will be completed over the next 18 months. As a result, the Council's Projects Committee, chaired by Justice Goodwin Liu, has begun to discuss possible new undertakings and we are likely to launch several during 2017. Like always, please write to me with any suggestions that you might have.

During 2015-16, we also had many productive membership meetings around the country: These took me to Boston, Burlington, Dallas, Miami, San Francisco, and Tampa. (In 2014-15, I spoke at receptions in Chicago, Los Angeles, and San Francisco, and, in 2016-17, I'll do so in Albuquerque, Houston, and New York.) The purpose of these receptions is to better connect our far-flung members to the ALI's substantive work. Each had a somewhat different format and program. Most were generously hosted by law firms, but our Burlington reception was at the official residence of our member E. Thomas Sullivan, the President of the University of Vermont. Tom and his wife Leslie, both extraordinarily warm hosts, opened their home to the leadership of the legal community in the state: a majority of Vermont Supreme Court justices and federal district judges, and the U.S. Attorney attended the reception. This august group participated actively in a wide-ranging discussion about the nature of the ALI's work. In San Francisco, we were treated to a fascinating conversation between two California Supreme Court Justices, Goodwin Liu and Leandra Kruger, who focused on their remarkable legal careers and their approaches to judging.

We are very fortunate that Roberta Ramo, our extraordinary President, attended many of these receptions and talked about the crucial role that members play in the work of the ALI. Our work gets its legitimacy from our bicameral approval process by both the Council and the membership. Roberta explains very persuasively that members can play an important role if they are experts on the projects being discussed but that they can play a different, equally important role if they are generalists and are facing that subject for the first time. And she does so with so much warmth and enthusiasm that it's somewhat surprising that our members don't all quit their jobs immediately and dedicate themselves exclusively to the work of the ALI!

At these gatherings, I generally talk about our projects and answer questions about our work. The conversations typically focus on the selection of our projects; the roles of the Advisers, Members Consultative Group, Council, and membership; and the boundaries that define the difference among Restatements, Principles projects, and model or uniform codes. Must Restatements follow the majority rules? (No; but if they depart from them, for example, because of a strong trend in the courts in a different direction, they need to indicate that explicitly.) What is the difference between Restatements and Principles projects? (The former provide guidance to the courts on matters on which judges exercise discretion whereas the latter are directed at institutions other than courts, both public and private.) The ALI has benefited greatly from the Council's clarification of these and related issues in January 2015, as part of the revisions of our Style Manual.

Through these conversations, as well as in my quarterly letters, I try to explain the nature of our work and clear up some commonly held misconceptions. For example, Restatements are generally identified with state common law rules. And, definitely, the state courts are an important audience for our work and we have been very influential with them. But the federal courts are an important audience as well. My Fall 2016 quarterly letter, *Restatements and the Federal Common Law*, shows the extent to which the development of federal common law is guided by our Restatements. For example, the Supreme Court has noted that for the determination of divisibility of harm under the federal Superfund statute, "the courts of appeals have acknowledged that "[t]he universal starting point . . . is . . . the Restatement (Second) of Torts." The courts of appeals have similarly relied on Restatements of Conflict of Laws and of Contracts to fashion federal common law rules. And, my Winter 2016 quarterly letter, *The American Law Institute and the U.S. Supreme Court*, shows that, over the last three Terms, the Supreme Court has cited the ALI's work in approximately one-sixth of its cases, to decide federal constitutional, statutory, and procedural questions. For example, while the Restatements of Torts and of Contracts are thought to be directed at the development of state common law rules in these areas, the Supreme Court has relied on them to interpret particular federal statutory provisions. Similarly, while state legislatures are the main audience for the Model Penal Code, the Supreme Court has relied on it repeatedly to determine the scope of federal criminal law.

To keep all of our important activity going, we rely not only on the critically important intellectual contributions of our members but also on their financial support. As a result of this support, we are able to undertake additional projects, including ones that have great public-policy significance but are unlikely to generate significant royalties from the sale of books. Your contributions also allow us to significantly subsidize the cost of attendance at the Annual Meeting for individuals outside the private sector, making our decisional process a great deal more inclusive. I would be so grateful if you could help the ALI financially before 2016 comes to an end, in the form of sustaining dues, annual gifts, Life Member class gifts, bequests, or other forms of support! During a time when our society is so polarized, the thoughtful, independent, consensus-building approach of the ALI to matters of central importance in our legal system acquires great significance. Member contributions are crucial because they help to preserve both the reality and appearance of our treasured independence and objectivity.

The American Law Institute

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**Director Emeritus*

***President Emeritus and Chair of the Council Emeritus*

Leadership Changes



ELECTION OF ALI'S 10TH PRESIDENT

In January 2016, ALI Council voted to elect Dean David F. Levi of Duke Law School as its 10th President, effective May 24, 2017. Prior to his appointment as dean, he was a judge on the U.S. District Court for the Eastern District of California from 1990 until 2007, serving as Chief Judge beginning in 2003. Prior to that, he was a prosecutor in the U.S. Attorney's Office for the Eastern District of California and in 1986 was appointed by President Ronald Reagan as the U.S. Attorney for the Eastern District of California, serving in that position until his judicial appointment by President George H.W. Bush in 1990.

In addition to serving on ALI's Council, Dean Levi was an Adviser to ALI's Federal Judicial Code Revision and Aggregate Litigation projects. He currently is a member of the Projects Committee and serves as an Adviser on the Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis.

Council Elections

At the 93rd Annual Meeting, The American Law Institute's membership elected six new members to its Council:



John B. Bellinger III is a partner in Arnold & Porter LLP's National Security and Public International Law practices. Before joining the firm, he served as Legal Adviser to the Department of State under Secretary of State Condoleezza Rice, Senior Associate Counsel to the President, and Legal Adviser to the National Security Council.

Mr. Bellinger previously was Counsel for National Security Matters in the Criminal Division at the U.S. Department of Justice; Of Counsel to the Senate Select Committee on Intelligence; General Counsel of the Commission on the Roles and Capabilities of the U.S. Intelligence Community; a lawyer at Wilmer Cutler & Pickering; and Special Assistant to Director of Central Intelligence William H. Webster.

Elected to ALI in 2007, he is a Counselor for the Restatement of the Law Fourth, The Foreign Relations Law of the United States project. He earned his J.D. *cum laude* from Harvard Law School, M.A. from the University of Virginia, and A.B. *cum laude* from Princeton University.



Ketanji Brown Jackson has served on the U.S. District Court for the District of Columbia since March 2013. Until December 2014, she also was also a Vice Chair and Commissioner on the U.S. Sentencing Commission. Prior to serving on the Commission, Judge Jackson worked at Morrison & Foerster LLP, with a practice that

focused on criminal and civil appellate litigation in state and federal courts, and served as an assistant federal public defender in the Appeals Division of the Office of the Federal Public Defender in the District of Columbia. Before that, she was an assistant special counsel at the U.S. Sentencing Commission and an associate with two law firms.

Judge Jackson was a law clerk to three federal judges: Associate Justice Stephen G. Breyer of the Supreme Court of the United States, Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit, and Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts.

Elected to ALI in 2012, she serves on the MCG for the Model Penal Code: Sentencing project. She received her J.D. *cum laude* from Harvard Law School and her B.A. *magna cum laude* from Harvard University.



Gregory P. Joseph is a founder and partner of Joseph Hage Aaronson LLC in New York City, and formerly chaired the Litigation Department at Fried, Frank, Harris, Shriver & Jacobson LLP. He is an active trial lawyer and the author of treatises on evidence, sanctions, and civil RICO.

Mr. Joseph is president of the Supreme Court Historical Society, and previously served as president of the American College of Trial Lawyers and chair of the Section of Litigation of the American Bar Association.

Elected to ALI in 1987, he was a member of the MCG for the projects on Complex Litigation and the Law Governing Lawyers. He earned his J.D., with honors, from the University of Minnesota Law School, and his B.A. from the University of Minnesota.



Janet Napolitano has been President of the University of California since September 2013. She leads a university system with 10 campuses, five medical centers, three affiliated national laboratories, and a statewide agriculture and natural resources program.

She previously served as U.S. Secretary of Homeland Security, Governor of Arizona, Attorney General of Arizona, and U.S. Attorney for the District of Arizona. Before that, she was a partner at the law firm of Lewis & Roca in Phoenix. She began her career as a law clerk for Judge Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit.

Elected to ALI in 1989, she served on the MCG for the Complex Litigation project. She earned her J.D. from University of Virginia School of Law and her undergraduate degree *summa cum laude* from Santa Clara University.



Patricia Ann Millett has served on the U.S. Court of Appeals for the District of Columbia Circuit since December 2013. Previously, she was a partner leading the Supreme Court and appellate practices at Akin Gump Strauss Hauer & Feld LLP. She also worked for four years on the Appellate Staff of the Civil Division in the U.S. Department

of Justice and for 11 years as an Assistant in the Office of the Solicitor General. She has argued 32 cases before the Supreme Court of the United States. After working at the Miller & Chevalier law firm for two years, she clerked for Judge Thomas Tang of the U.S. Court of Appeals for the Ninth Circuit.

Elected to ALI in 2014, she serves as an Adviser for the Restatement of the Law, The Law of American Indians project. She earned her J.D. degree *magna cum laude* from Harvard Law School and her B.A. *summa cum laude* from the University of Illinois at Urbana-Champaign.



Stuart Rabner has served as Chief Justice of the Supreme Court of New Jersey since 2007. After beginning his career as an assistant U.S. attorney for the District of New Jersey, he worked in a number of positions in that office including first assistant U.S. attorney and chief of the terrorism unit. He was chief of the criminal division

when he was named chief counsel to Governor Jon Corzine in January 2006. He was appointed Attorney General of New Jersey in September 2006 and served in that position until his appointment to the Supreme Court of New Jersey. Chief Justice Rabner was a law clerk to Judge Dickinson R. Debevoise of the U.S. District Court for the District of New Jersey.

Elected to ALI in 2013, he is an Adviser for the Model Penal Code: Sentencing. He earned his J.D. *cum laude* from Harvard Law School and his B.A. *summa cum laude* from Princeton University.

Council Members Taking Emeritus Status

In addition to the election of new Council members at the Meeting, four Council members took emeritus status.

Susan Frelich Appleton is the Lemma Barkeloo and Phoebe Couzins Professor of Law at Washington University School of Law in St. Louis, where she teaches family law, reproductive rights, conflict of laws, and criminal law. Her research, scholarship, and writings address such legal issues as adoption, assisted reproduction, gender and parentage, surrogacy, and abortion rights. She has coauthored a family-law casebook, now in its sixth edition, as well as a casebook on adoption and assisted reproduction, and she has published extensively on family-law matters in law reviews. Professor Appleton was elected to ALI in June 1987 and was elected to the Council in May 1994. She served as the Institute's Secretary from 2004 to 2013. She currently is an Adviser for two projects: Model Penal Code: Sexual Assault and Related Offenses and Restatement of the Law, Children and the Law. She also is a member of the MCG for Restatement Third, Conflict of Laws, and the Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis. In addition, she served as Chair of the Governance Committee and was previously an Adviser on the Principles of the Law of Family Dissolution project.

Allen D. Black is a founding partner of Fine, Kaplan and Black, a small firm specializing in complex commercial litigation with particular emphasis on plaintiffs' side antitrust litigation. He is an Adviser on the Restatement of the Law of Liability Insurance project and was previously an Adviser on the Restatement Third, Agency project. After law school, he served as law clerk to Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit. A member of the Council since 1994, he was the Institute's First Vice President from 2008 to 2015, and previously served as Second Vice President from 2004 to 2008.

Mary M. Schroeder has served on the U.S. Court of Appeals for the Ninth Circuit since 1979, and was its Chief Judge from December 2000 to 2007, the first woman to hold that position. Prior to that, she served as a judge on the Arizona Court of Appeals from 1975 to 1979, and formerly she was a partner in the law firm of Lewis and Roca. She also taught at the Arizona State University Law School. Judge Schroeder was elected to ALI in 1974 and was elected to the Council in 1993. She serves as an Adviser on two projects: Principles of the Law, Government Ethics, and Restatement of the Law, Consumer Contracts. She is also on the MCGs for two projects: Restatement Fourth, The Foreign Relations Law of the United States and Model Penal Code: Sentencing. She previously served as Chair of ALI's Awards Committee and was an Adviser on the Restatement Third, Agency project.

Bill Wagner is a principal in the law firm of Wagner McLaughlin. Mr. Wagner has for more than 50 years represented plaintiffs in personal injury and wrongful death litigation. He was elected to ALI in 1986 and was elected to the Council in 1993. Mr. Wagner serves on the MCGs for the following Principles of the Law projects: Government Ethics; Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes; and Police Investigations. He also is a member of the MCGs for Restatement of the Law, Consumer Contracts; Restatement of the Law, Liability Insurance; Restatement Third, Torts: Liability for Economic Harm; Restatement Third, Torts: Intentional Torts to Persons; and Restatement of the Law, Charitable Nonprofit Organizations. He previously served as an Adviser on two Restatement Third, Torts projects: Apportionment of Liability and Products Liability.



ALI Director Richard L. Revesz of New York University School of Law, Susan Frelich Appleton of Washington University School of Law in St. Louis, Bill Wagner of Wagner McLaughlin, ALI President Roberta Cooper Ramo of Modrall Sperlring, ALI Deputy Director Stephanie A. Middleton, Allen D. Black of Fine, Kaplan and Black, and Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit

The Henry J. Friendly Medal

Established in memory of Judge Friendly and endowed by his former law clerks, the Henry J. Friendly Medal is not awarded on an annual basis but reserved for recipients who are considered especially worthy of receiving it. The Medal recognizes contributions to the law in the tradition of Judge Friendly and the Institute and is not limited to ALI members or those associated with its projects.

This year, the Henry J. Friendly Medal was presented to Patricia M. Wald.

The Medal was presented to Judge Wald by Harry T. Edwards, a Senior Circuit Judge on the U.S. Court of Appeals for the D.C. Circuit. Of Judge Wald, he remarked, "In my view, Judge Wald's accomplishments as a jurist, without more, would make her a worthy recipient of the Henry J. Friendly Medal. But there is so much more. What makes Judge Wald so very special is the extraordinary range and consistent high quality of her work over the past 65 years, made possible by her unparalleled talents, her selfless commitment to the public good, and her innate goodness and integrity. She is someone who has really made a difference in the world."

Judge Wald served for 20 years on the U.S. Court of Appeals for the District of Columbia Circuit, from 1979 to 1999, including five years as Chief Judge. She is currently a member of the Privacy and Civil Liberties Oversight Board.

Judge Wald has had an enormously distinguished career and is known for her modesty, humanitarianism, and great wisdom. She is a respected leader in the legal community, recognized for the manner in which she handled cases involving the rights of women and children in the United States and abroad. She was the first woman appointed to the D.C. Circuit and the first woman to serve as Chief Judge of a Circuit; she also was the first woman to serve on ALI's Executive Committee and the first woman officer, holding the offices of Second Vice President and First Vice President.

After her retirement from the federal bench, she went on to serve as a judge on the International Criminal Tribunal for the Former Yugoslavia at The Hague for two years and also was a member of the President's Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, an independent commission charged with evaluating the intelligence and policy decisions that led to the 2003 invasion of Iraq.



Before her elevation to the court, Judge Wald was the Assistant Attorney General for Legislative Affairs at the Department of Justice. She also previously worked as an attorney at the Mental Health Law Project, the Center for Law and Social Policy, the Neighborhood Legal Services Program, and the Office of Criminal Justice at the Department of Justice, and as the co-director of the Ford Foundation Drug Abuse Research Project.

She has received innumerable honors and awards, including the ABA Medal and perhaps, most notably, the Presidential Medal of Freedom, the nation's highest civilian honor.

Judge Wald has been a dedicated member of the ALI for 43 years. She served on the Council for 31 years, and on the Nominating Committee, which identifies candidates for ALI's Council and other leadership positions, for 26 years. She is currently an Adviser on the Model Penal Code: Sentencing and Election Administration projects.

Improving Communications Through Technology

The American Law Institute launched two new websites during 2015–2016. The ALI website (*ali.org*) launched in July 2015 with the goal of improving member and project participant access to Institute information and project materials. Project pages have been restructured and simplified to accommodate draft downloading, as well as the submission of project comments and Annual Meeting motions. The site's member dashboard conveniently features an aggregate of personalized ALI information, including a member's upcoming meetings, project updates, and dues.

The ALI Adviser (*thealiadviser.org*) launched in September 2016 and aims to extend awareness about our current projects and their areas of law. The primary audience for this site is members of the legal community not involved with ALI or its process. Featuring posts written by project participants, members, and guest authors, the website is regularly updated with posts on project drafts and progress, thoughts on legal trends aligning with draft topics, or stories and links to relevant court opinions.

“AN ORGANIZATION LIKE THE ALI HAS CREDIBILITY BECAUSE IT HAS BROUGHT TO BEAR THE BEST MINDS FROM THE ACADEMY, FROM THE BENCH, AND FROM THE BAR TO FOCUS UPON HOW THE LAW EITHER IS OR SHOULD BE, IN LIGHT OF ALL THE RELEVANT CIRCUMSTANCES.”

**CONRAD K. HARPER,
FORMER ALI FIRST VICE PRESIDENT**

Current Projects

THE ALI DRAFTING PROCESS

ALI publications are accorded great respect because of the Institute's unique process of drafting, discussion, and revision, in which members from all facets of the legal profession—the bench, the bar, and the academic world—participate. Work begins when the Council approves the Director's recommendations of a new project and one or more Reporters. Project Advisers and Liaisons are then appointed and ALI members may join the project's Members Consultative Group. Reporters prepare a Preliminary Draft of a segment of the project for review by the Advisers, the Liaisons, and the MCG. After revising the material in light of comments received from these groups, the Reporter submits a Council Draft for review and approval by the Council. Once a draft is approved by the Council, the Reporter prepares a Tentative Draft, incorporating any revisions directed by the Council, to be submitted to the membership for approval at an Annual Meeting. This drafting cycle continues until the entire work has been approved by the Council and the membership. Then the Reporter, subject to the Director's oversight, readies the final text for publication.

Restatements

RESTATEMENT OF THE LAW, THE LAW OF AMERICAN INDIANS

This Restatement will cement the foundational principles of American Indian law. This project is projected to include five Chapters. Chapter 1 (Federal–Tribal Relations) is partially approved; §§ 1 through 9 were approved at the 2015 Annual Meeting. The remaining Section of Chapter 1 and portions of Chapter 2 (Tribal Authority) and Chapter 4 (Tribal Economic Development) were approved by the Council. The remaining Chapters will be Tribal–State Relations and Indian Country Criminal Jurisdiction.

Reporter:

Matthew L.M. Fletcher, Michigan State University College of Law,
East Lansing, MI

Associate Reporters:

Wenona T. Singel, Michigan State University College of Law,
East Lansing, MI
Kaighn Smith, Jr., Drummond Woodsum, Portland, ME



Restatement of the Law, The Law of American Indians, project meeting

RESTATEMENT OF THE LAW, CHARITABLE NONPROFIT ORGANIZATIONS

This Restatement clarifies the law governing charities. It addresses legal questions relating to the formation, governance, and termination of charities, as well as the duties of governing boards and individual fiduciaries.

Six Chapters are expected in this project. Portions of Chapter 1 (Definition, Choice of Form, and Autonomy), all of Chapter 2 (Governance), and portions of Chapter 3 (Changes to Purpose and Organization) were approved at the 2016 Annual Meeting. The remaining Chapters are State and Federal Regulation, Enforcement and Remedies, and Gifts.

Reporters:

Marion R. Fremont-Smith, Harvard University,
John F. Kennedy School of Government, Cambridge, MA
Jill R. Horwitz, University of California, Los Angeles School
of Law, Los Angeles, CA

Associate Reporter:

Nancy A. McLaughlin, University of Utah, S.J. Quinney
College of Law, Salt Lake City, UT

RESTATEMENT OF THE LAW, CHILDREN AND THE LAW

This Restatement will deal comprehensively with the legal regulation of children, rather than solely with family law matters. Portions of Part I (Children in Families) and Part III (Children in the Justice System) were approved by the Council. Remaining portions include Part II (Children in Schools) and Part IV (Children in Other Contexts).

Reporter:

Elizabeth S. Scott, Columbia Law School, New York, NY

Associate Reporters:

Richard J. Bonnie, University of Virginia School of Law,
Charlottesville, VA

Emily Buss, University of Chicago Law School, Chicago, IL

Clare Huntington, Fordham University School of Law,
New York, NY

Solangel Maldonado, Seton Hall University School of Law,
Newark, NJ

David D. Meyer, Tulane University School of Law,
New Orleans, LA



Restatement of the Law, Children and the Law, project meeting



Restatement of the Law Third, Conflict of Laws, project meeting

RESTATEMENT OF THE LAW THIRD, CONFLICT OF LAWS

This project will reexamine the increasingly important subject of conflict of laws in light of significant legal developments in the field since the influential Restatement Second was published in 1971. Several Chapters have been drafted. The projected table of contents includes the following Chapters: Personal Geographic Links, Judicial Jurisdiction, Recognition and Enforcement of Judgments, Choice of Law, Torts, and Property, among other topics.

Reporter:

Kermit Roosevelt III, University of Pennsylvania Law School, Philadelphia, PA

Associate Reporters:

Laura Elizabeth Little, Temple University Beasley School of Law, Philadelphia, PA

Christopher A. Whytock, University of California, Irvine School of Law, Irvine, CA



Restatement of the Law, Copyright, project meeting

RESTATEMENT OF THE LAW, CONSUMER CONTRACTS

This Restatement will focus on aspects of the law unique to consumer contracts and on regulatory techniques that are prominently applied in consumer-protection law with examples from specific statutes and regulations. This project may appear on the 2017 Annual Meeting agenda, potentially completing this project.

Reporters:

Oren Bar-Gill, Harvard Law School, Cambridge, MA

Omri Ben-Shahar, University of Chicago Law School, Chicago, IL

Florenca Marotta-Wurgler, New York University School of Law, New York, NY

RESTATEMENT OF THE LAW, COPYRIGHT

This Restatement will encompass general copyright law. The project is projected to include 11 Chapters: General Principles, Subject Matter and Standards (partially drafted), Scope of Protection, Ownership, Duration, Formalities, Rights and Limitations, Infringement, Secondary Liability, Remedies, and Copyright Protection and Management Systems.

Reporter:

Christopher Jon Sprigman, New York University School of Law, New York, NY

Associate Reporters:

Daniel J. Gervais, Vanderbilt University Law School, Nashville, TN

Lydia Pallas Loren, Lewis & Clark Law School, Portland, OR

R. Anthony Reese, University of California, Irvine School of Law, Irvine, CA

Molly S. Van Houweling, University of California, Berkeley School of Law, Berkeley, CA

RESTATEMENT OF THE LAW FOURTH, THE FOREIGN RELATIONS LAW OF THE UNITED STATES

This Restatement updates the influential Restatement Third of The Foreign Relations Law of the United States, published in 1987. Topics include jurisdiction, the domestic effect of treaties, and sovereign immunity. This project may appear on the 2017 Annual Meeting agenda, potentially completing this project.

Coordinating Reporters:

Sarah H. Cleveland, Columbia Law School, New York, NY

Paul B. Stephan, University of Virginia School of Law, Charlottesville, VA

Reporters – Jurisdiction:

William S. Dodge, University of California, Davis School of Law, Davis, CA

Anthea Roberts, Australian National University, Canberra, Australia

Paul B. Stephan, University of Virginia School of Law, Charlottesville, VA

Reporters – Sovereign Immunity:

David P. Stewart, Georgetown University Law Center, Washington, DC

Ingrid Wuerth, Vanderbilt University Law School, Nashville, TN

Reporters – Treaties:

Curtis A. Bradley, Duke University School of Law, Durham, NC

Sarah H. Cleveland, Columbia Law School, New York, NY

Edward T. Swaine, George Washington University Law School, Washington, DC



Restatement of the Law Fourth, The Foreign Relations Law of the United States, project meeting



Restatement of the Law, The U.S. Law of International Commercial Arbitration, project meeting

RESTATEMENT OF THE LAW, THE U.S. LAW OF INTERNATIONAL COMMERCIAL ARBITRATION

This project restates the U.S. law of international commercial arbitration and covers, among other topics, arbitration agreements; conduct of and the judicial role in international arbitral proceedings in the United States; awards; recourse from and enforcement of international arbitral awards rendered in the United States; the judicial role in international arbitral proceedings abroad; enforcement of international arbitral awards rendered abroad; the preclusive effect of international arbitral awards; and ICSID Convention arbitration.

Chapter 2 (Enforcement of the Arbitration Agreement), Chapter 4 (Post-Award Relief), and portions of Chapter 1 (General Provisions) have been approved by the membership.

Reporter:

George A. Bermann, Columbia Law School, New York, NY

Associate Reporters:

Jack J. Coe, Jr., Pepperdine University School of Law, Malibu, CA

Christopher R. Drahozal, University of Kansas School of Law, Lawrence, KS

Catherine A. Rogers, Penn State Law, University Park, PA;

Queen Mary, University of London, London, England

“IT’S JUST FUN, AND IT IS A JOY. IT’S A SATISFACTION. IT’S A GRATIFICATION OF KNOWING THAT YOU ARE WORKING WITH, TALKING TO, AND BEING LISTENED TO BY SOME OF THE SMARTEST PEOPLE YOU’LL EVER MEET, AND THAT IN ITSELF IS TERRIFIC.”

LEE H. ROSENTHAL, ALI SECOND VICE PRESIDENT

RESTATEMENT OF THE LAW, LIABILITY INSURANCE

This Restatement covers the law of contracts in the liability insurance context, liability insurance coverage, and the management of insured liabilities. Chapter 1 (Basic Liability Insurance Contract Rules) and portions of Chapter 2 (Management of Potentially Insured Liability Claims) and Chapter 3 (General Principles Regarding the Risks Insured) are approved by the membership. Chapter 4 (Enforceability and Remedies) and the remaining Sections from previous Chapters will be presented to Council in January 2017. This project may appear on the 2017 Annual Meeting agenda, potentially completing this project.

Reporter:

Tom Baker, University of Pennsylvania Law School,
Philadelphia, PA

Associate Reporter:

Kyle D. Logue, University of Michigan Law School,
Ann Arbor, MI



Restatement of the Law Fourth, Property, project meeting

RESTATEMENT OF THE LAW FOURTH, PROPERTY

This new Restatement seeks to bring comprehensiveness and coherence to American property law. Subjects to be covered include the classification of entitlements, possession, accession, and acquisition; ownership powers; protection of and limits on ownership; divided and shared ownership; title and transfer; easements, servitudes, and land use; and public rights and takings. Portions of Volume 2 (Interferences with, and Limits on, Ownership and Possession); Volume 3 (Powers and Duties Associated with Ownership); and Volume 6 (Servitudes and Land Use) are drafted.

Reporter:

Henry E. Smith, Harvard Law School, Cambridge, MA

Associate Reporters:

Sara C. Bronin, University of Connecticut School of Law,
Hartford, CT

John C.P. Goldberg, Harvard Law School, Cambridge, MA

Daniel B. Kelly, University of Notre Dame Law School,
Notre Dame, IN

Brian A. Lee, Brooklyn Law School, Brooklyn, NY

Tanya D. Marsh, Wake Forest University School of Law,
Winston-Salem, NC

Thomas W. Merrill, Columbia Law School, New York, NY

Christopher M. Newman, Antonin Scalia Law School,
George Mason University, Arlington, VA



Restatement of the Law Third, Torts: Intentional Torts to Persons, project meeting



Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations, project meeting

RESTATEMENT OF THE LAW THIRD, TORTS: INTENTIONAL TORTS TO PERSONS

This project is part of the ongoing revision of the Restatement Second of Torts. This Restatement addresses other major avenues of recovery for physical and emotional harm to persons, with a focus on assault, battery, and false imprisonment, and also including Sections on consent, self-defense, and other privileges. Portions of all three Chapters have been drafted, and Sections of Chapter 1 have been approved by the membership.

Reporter:

Kenneth W. Simons, University of California, Irvine School of Law, Irvine, CA

Associate Reporter:

W. Jonathan Cardi, Wake Forest University School of Law, Winston-Salem, NC

RESTATEMENT OF THE LAW THIRD, TORTS: LIABILITY FOR ECONOMIC HARM

This project is part of the ongoing revision of the Restatement Second of Torts. This Restatement will cover unintentional infliction of economic loss, including professional negligence, negligent misrepresentation, negligent performance of services, and public nuisance. It also will address fraud, breach of fiduciary duty, interference with contract, unjustifiable litigation, injurious falsehood, interference with the right to possession of chattels, and prima facie tort.

Chapter 1 (Unintentional Infliction of Economic Loss) and Chapter 2 (Liability in Tort for Fraud) have been approved by the membership. Chapter 3 (Interference with Economic Interests) has been approved by the Council.

Reporter:

Ward Farnsworth, University of Texas School of Law, Austin, TX

Principles

PRINCIPLES OF THE LAW, COMPLIANCE, ENFORCEMENT, AND RISK MANAGEMENT FOR CORPORATIONS, NONPROFITS, AND OTHER ORGANIZATIONS

This project will address the need for a set of recommended standards and best practices on the law of compliance and risk management. It is expected to include six Chapters: Definitions and Scope; Subject Matter, Objectives, and Interpretation; Governance; Risk Management; Compliance; and Enforcement. Portions of the first five Chapters have been drafted.

Reporter:

Geoffrey P. Miller, New York University School of Law, New York, NY

Associate Reporters:

Jennifer H. Arlen, New York University School of Law, New York, NY

James A. Fanto, Brooklyn Law School, Brooklyn, NY

Claire A. Hill, University of Minnesota Law School, Minneapolis, MN

PRINCIPLES OF THE LAW, DATA PRIVACY

This project aims to provide a framework for regulating data privacy and for duties and responsibilities—best practices—for entities that process personal data. The project is expected to include three Chapters: Purpose, Scope, and Definitions; Data Privacy Principles; and Accountability and Redress. The Council has approved Sections of Chapters 1 and 2, including Purpose and Scope of the Data Privacy Principles; Definitions; Transparency Statement; and Individual Notice.

Reporters:

Paul M. Schwartz, University of California, Berkeley School of Law, Berkeley, CA

Daniel J. Solove, George Washington University Law School, Washington, DC



Principles of the Law, Data Privacy, project meeting

PRINCIPLES OF THE LAW, ELECTION ADMINISTRATION: NON-PRECINCT VOTING AND RESOLUTION OF BALLOT-COUNTING DISPUTES

This project has three Parts. The first Part concerns the rules for “non-precinct voting”—the casting of ballots by means other than the traditional polling place on Election Day. The second Part concerns general principles for the resolution of disputed elections and is applicable to both presidential and nonpresidential elections. The third Part concerns presidential election disputes specifically and establishes procedures to complete the resolution of a disputed presidential election within the unique and challenging time constraints established by Congress. The first and third Parts are approved by the membership and the second may be presented at the 2017 Annual Meeting, potentially completing this project.

Reporter:

Edward B. Foley, Ohio State University, Michael E. Moritz College of Law, Columbus, OH

Associate Reporter:

Steven F. Huefner, Ohio State University, Michael E. Moritz College of Law, Columbus, OH

PRINCIPLES OF THE LAW, GOVERNMENT ETHICS

This project seeks to enunciate a set of principles or best practices that will both reflect the emerging law of government ethics and provide guidelines to shape its future development.

Six Chapters are planned: Scope, General Principles, and Definitions; Gifts from and Financial Relationships with Prohibited Sources; Conflicts of Interest and the Outside Activities of Public Servants; Limits on the Use of Public Resources in Elections (partially approved by the membership when titled “The Election-Related Activities of Public Servants”); Post-Employment Restrictions on Former Public Servants; and Administration and Enforcement of Government Ethics. A potential seventh Chapter (which would become Chapter 6, while current Chapter 6 on Administration and Enforcement would then become Chapter 7) would address Lobbying.

Reporter:

Richard Briffault, Columbia Law School, New York, NY

Associate Reporters:

Kathleen Clark, Washington University School of Law, St. Louis, MO

Richard W. Painter, University of Minnesota Law School, Minneapolis, MN



Principles of the Law, Government Ethics, project meeting



Principles of the Law, Policing, project meeting

PRINCIPLES OF THE LAW, POLICING

This project is currently divided into four Parts: Overarching Principles of Policing; Principles of Search and Seizure; Principles of Evidence Gathering; and Internal Governance and Compliance. Portions of the first three Parts have been drafted, and the Use of Force Principles from the Part on Search and Seizure have been approved by the Council.

Reporter:

Barry Friedman, New York University School of Law, New York, NY

Associate Reporters:

Brandon L. Garrett, University of Virginia School of Law, Charlottesville, VA

Rachel A. Harman, University of Virginia School of Law, Charlottesville, VA

Tracey L. Meares, Yale Law School, New Haven, CT

Christopher Slobogin, Vanderbilt University Law School, Nashville, TN

Model Codes

MODEL PENAL CODE: SENTENCING

This project revisits the sentencing provisions of the Model Penal Code in light of the many changes in sentencing philosophy and practice that have taken place in the more than 50 years since the Code was first developed. This project may appear on the 2017 Annual Meeting agenda, potentially completing this project.

Reporter:

Kevin R. Reitz, University of Minnesota Law School, Minneapolis, MN

Associate Reporter:

Cecelia M. Klingele, University of Wisconsin Law School, Madison, WI

MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

This project is re-examining Article 213 of the Model Penal Code, which was ahead of its time when approved by ALI in 1962, but is now outdated and no longer a reliable guide for legislatures and courts. Portions of each Section of this project have been drafted, including definitions of “Consent” and “Sexual Penetration” and provisions on Forcible Rape, Sexual Penetration Without Consent, Rape or Sexual Penetration of a Vulnerable Person, and Sexual Penetration by Coercion or Exploitation. Each of these Sections includes the grading of the offense.

Reporter:

Stephen J. Schulhofer, New York University School of Law, New York, NY

Associate Reporter:

Erin E. Murphy, New York University School of Law, New York, NY

Special Project

PROJECT ON SEXUAL AND GENDER-BASED MISCONDUCT ON CAMPUS: PROCEDURAL FRAMEWORKS AND ANALYSIS

Portions of all 11 Chapters planned for this project have been drafted: First Principles for This Project; Before Complaints or Formal Investigations: Notice, Clarity, and Support; Reporting of Sexual Assaults: A Presumption of Complainant Control of Disclosure; Principles for Designing Procedures for Investigations, Hearings, and Formal and Informal Resolutions; Informal Resolution; Formal Resolution Process; Resolution of Formal Sexual Assault Complaints; Sanctions; Appeals; Confidentiality and Disclosure; and Internal Student Discipline and the Criminal Justice System.

Reporter:

Vicki C. Jackson, Harvard Law School, Cambridge, MA

Associate Reporter:

Suzanne B. Goldberg, Columbia Law School, New York, NY

DRAFTING COMMITTEE ON REVISED UCC ARTICLES 1, 3, AND 9

In 2016, ALI and the Uniform Law Commission appointed a joint drafting committee to revise Articles 1, 3, and 9 of the Uniform Commercial Code to provide the substantive commercial-law rules necessary to support an electronic registry for residential mortgage notes on a national basis.

The amendments will accommodate electronic documentation practices in mortgage transactions and revise provisions concerning the grant and perfection of security interests in electronic mortgage notes held as collateral, attachment, priorities, and possession, as well as the transfer of notes and the rights in mortgages securing the notes.

Edwin E. Smith, Morgan, Lewis & Bockius LLP, chairs the joint committee and **Steven L. Harris**, IIT Chicago-Kent College of Law, serves as the Reporter.



Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis, project meeting

Publications

The Institute's electronic and print publications fulfill two very important purposes: they are a major source of funds that support the Institute's vital law-reform work, and they are the means by which that work is disseminated to practicing lawyers, judges, academics, and students throughout the world. Most ALI publications are accessible online through Westlaw, HeinOnline, and LexisNexis.

Beginning with the Restatement of Contracts in 1932, the Institute's Restatements of the Law, Principles of the Law, and model codes have earned an unparalleled reputation for excellence and objectivity. As evidence of the respect the courts have customarily accorded ALI publications, the Restatements and Principles of the Law have been cited in published decisions by U.S. courts over 201,000 times through June 2016.

In the State Supreme Courts

The high courts of a number of jurisdictions specifically adopted Restatement Sections during the past fiscal year. Some highlights follow:

ERKINS V. ALASKA TRUSTEE, LLC

Alaska Supreme Court, adopting **Restatement Second, Contracts** § 15, 355 P.3d 516 (Alaska, 2015)

LAND BARON INV. V. BONNIE SPRINGS FAMILY LTD. P'SHIP

Nevada Supreme Court, adopting **Restatement Second, Contracts** § 154(b), 356 P.3d 511 (Nev. 2015)

NIELSEN EX REL. C.N. V. BELL EX REL. B.B.

Utah Supreme Court, adopting **Restatement Third, Torts: Liability for Physical and Emotional Harm** § 10, 370 P.3d 925 (Utah, 2016)

SAFEWAY, INC. V. ROOTER 2000 PLUMBING AND DRAIN SSS

New Mexico Supreme Court, adopting **Restatement Third, Torts: Apportionment of Liability** § 22, 368 P.3d 389 (N.M. 2016)

WATTS V. MEDICIS PHARMACEUTICAL CORP.

Arizona Supreme Court, adopting **Restatement Third, Torts: Products Liability** § 6(d), 239 Ariz. 19, 365 P.3d 944 (Ariz. 2016)

WYNKOOP V. STRATTHAUS

Vermont Supreme Court, adopting **Restatement Third, Restitution and Unjust Enrichment** § 28(1), 136 A.3d 1180 (Vt. 2016)

RECENT PUBLICATIONS

Restatement of the Law Third,
Torts: Liability for Physical and
Emotional Harm, Appendix Volume

Restatement of the Law Second,
Conflict of Laws, Appendix Volume

“WHY DO JUDGES CITE OUR CASES? WHY ARE WE A MODEL? WHY ARE OUR MODEL CODE PROJECTS ADOPTED BY LEGISLATURES? BECAUSE THEY TRUST US AND THEY HAVE GOOD, SOUND REASON TO TRUST US. THAT IS BECAUSE OF THE INTEGRITY, THE COMPETENCE, AND THE INTELLIGENCE OF THE PEOPLE IN THIS ORGANIZATION THAT ENSURE THE QUALITY OF OUR WORK.”

WILLIAM C. HUBBARD

ALI Work Cited by U.S. Supreme Court

The U.S. Supreme Court continues to rely on the work of ALI. In the October 2015 Term, ALI work was cited in 11 cases in majority, dissenting, or concurring opinions authored by seven of the eight sitting Justices. Below is a complete list of citations to the ALI's work this Term, noting the title, the Justice who authored the opinion, and the type of opinion.

DIRECTV, INC. V. IMBURGIA 136 S.CT. 463 (DECEMBER 14, 2015)

Dissent Ginsburg Cites **Contracts** 2d § 206, Comment *a*

MONTANILE V. BOARD OF TRUSTEES OF NAT. ELEVATOR INDUSTRY HEALTH BENEFIT PLAN

136 S.CT. 651 (JANUARY 20, 2016)

Majority Thomas Cites and quotes **Restitution** [1st] § 215; cites § 209; cites case citing § 160

AMERICOLD REALTY TRUST V. CONAGRA FOODS, INC. 136 S.CT. 1012 (MARCH 7, 2016)

Majority Sotomayor for unanimous court Cites **Trusts** 2d § 2

SPOKEO, INC. V. ROBINS 136 S.CT. 1540 (MAY 16, 2016)

Majority Alito Cites **Torts** [1st] §§ 569, 570.

TORRES V. LYNCH 136 S.CT. 1619 (MAY 19, 2016)

Majority Kagan Cites and quotes **Model Penal Code** § 1.13(10); cites **Model Penal Code** § 2.02

SIMMONS V. HIMMELREICH 136 S.CT. 1843 (JUNE 6, 2016)

Majority Sotomayor for unanimous court Cites **Judgments** [1st] §§ 96 and 99; cites **Judgments** 2d § 51

HALO ELECTRONICS, INC. V. PULSE ELECTRONICS, INC. 136 S.CT. 1923 (JUNE 13, 2016)

Majority Roberts for unanimous court Quotes **Torts** 2d § 8A

UNIVERSAL HEALTH SERVICES, INC. V. UNITED STATES EX REL. ESCOBAR 136 S.CT. 1989 (JUNE 16, 2016)

Majority Thomas for unanimous court Quotes **Torts** 2d §§ 529 and 551; cites and quotes **Torts** 2d § 538; cites **Contracts** 2d § 161 and quotes **Contracts** 2d § 162

RJR NABISCO, INC. V. EUROPEAN COMMUNITY 136 S.CT. 2090 (JUNE 20, 2016)

Concurrence/Dissent Ginsburg Cites **Conflict of Laws** 2d § 84

VOISINE V. UNITED STATES 136 S.CT. 2272 (JUNE 27, 2016)

Majority Kagan Cites and quotes **Model Penal Code** § 2.02; quotes **MPC** § 211.1

Dissent Thomas Cites **Model Penal Code** §§ 211.1, 2.02, and 2.01; cites and quotes **Torts** 2d § 8A; quotes **Torts** 2d § 500

WHOLE WOMAN'S HEALTH V. HELLERSTEDT 136 S.CT. 2292 (JUNE 27, 2016)

Majority Breyer Cites and quotes **Judgments** 2d §§ 24, 20

Dissent Alito Cites and quotes **Judgments** [1st] §§ 61, 1; cites and quotes **Judgments** 2d §§ 19, 24, 20, 25; cites **Judgments** 2d § 73

Bennett Boskey August 14, 1916 – May 11, 2016



Bennett Boskey's passing this year was felt throughout the legal community. Since earning his degree from Harvard Law School in 1939, he has influenced U.S. law and The American Law Institute in immeasurable ways. Upon his passing, through a generous seven-figure estate gift, he has ensured that we may continue our important work to clarify and improve the law.

Bennett was a member of the ALI's Council and served as Treasurer from 1975 to 2010. Elected to ALI in 1951, he served as an Adviser on five projects and, through 2011, had attended more than 50 consecutive Annual Meetings.

He is credited with coining the “Boskey motion,” which simplifies the process of moving ALI's projects forward after a successful Meeting by allowing members to approve the contents of a draft “subject to the discussion at the Meeting, and subject to the usual editorial prerogative,” which means that flexibility is allowed for changes in language, arrangement, and style, but not changes in substance.

In 2007, Bennett received the ALI's Distinguished Service Award for his long and outstanding service to the Institute, and it named “The Bennett Boskey Library and Studio” at its headquarters in his honor.

Born in 1916, he grew up in Manhattan and Queens, and received his B.A. from Williams College in 1935. He studied economics at the University of Chicago for one year before attending Harvard Law School. In 1940, Bennett married Shirley Ecker. They were happily married until her death in 1998.

After graduation from Harvard Law, Bennett spent four years as a law clerk, serving successively under Judge Learned Hand of the United States Court of Appeals for the Second Circuit (1939-1940), Justice Stanley Reed of the Supreme Court of the United States (1940-1941), and Chief Justice Harlan Fiske Stone (1941-1943). He declined Chief Justice Stone's invitation to serve as his clerk for a third year—although disappointed, Stone wrote him a sterling recommendation for appointment to the Army's Judge Advocate General's School, and Bennett enlisted in the U.S. Army.

Bennett wrote extensively on legal subjects, particularly on matters relating to practice before the Supreme Court of the United States. His great knowledge of the Supreme Court and his intense interest in its rules and procedures led to his taking on the near lifelong project as the author of West's Federal Forms, focusing on the Supreme Court, and several collaborative commentaries on the Supreme Court's rules that Bennett and Professor Eugene Gressman wrote for the Supreme Court Reporter and Federal Rules Decisions. Bennett became one of a small number of the country's leading experts in Supreme Court procedure.

Between his service at the U.S. Supreme Court and the Army, Bennett worked briefly as a special assistant to the Attorney General in the War Division of the U.S. Department of Justice, reporting to Edward H. Levi. Mr. Levi would later serve as U.S. Attorney General in the Ford Administration when Bennett's name was included on President Ford's short list of possible successors to Justice William Douglas (the seat that went to Justice Stevens).

Bennett was assigned to the Special Branch of Military Intelligence, and served there as one of the lawyers assigned to represent the War Department in the hearings conducted by the congressional committee investigating the attack on Pearl Harbor. Discharged from the Army in 1946 as a first lieutenant, Bennett moved to the Department of State. His duties there included advising on peace treaties with Italy and the satellite countries, and on the treatment of enemy property. After one year, he took a staff-attorney position in the newly created U.S. Atomic Energy Commission (AEC), and became the agency's deputy general counsel in 1949.

In 1951, Bennett left the AEC to form what proved to be a highly successful partnership with former AEC general counsel Joseph Volpe, Jr. Over the next 45 years, the two intentionally kept their firm both small and broadly engaged in the practice of law.

In addition to his service to ALI, Bennett was also a long-time member of the International Legal Studies Program Advisory Council of the American University Washington College of Law, as well as a member of the Board of Review and Development of the American Society of International Law. He served nearly 60 years on the board of the Primary Day School, a private elementary school in Maryland. The school credits Bennett for helping it in virtually every capacity from providing much-needed advice to arranging for the funding for its building.

American Law Institute CLE

American Law Institute Continuing Legal Education (ALI CLE) is one of the most venerable and widely recognized CLE providers in the industry. Its legacy began in 1947, with its first program designed to educate lawyers who were returning from World War II service. Today ALI CLE aims to serve a larger community of lawyers from across the country in several practice areas. On the eve of its 70th anniversary, ALI CLE maintains its reputation for excellence by consistently featuring thought-leaders in its faculty: respected judges, noted scholars, well-regarded practitioners, and in-house counsel, including many ALI members.

ALI CLE serves a diverse bar by offering courses in a variety of settings and across multiple media. Its comprehensive and timely courses cover such areas of law as real estate, estate planning, employee benefits, employment law, securities, nonprofit law, litigation, corporate law, and taxation. ALI CLE also devotes a pillar of its curriculum to the “soft” skills all attorneys need: time management, legal writing, negotiation, and business development. In-person courses are held in convenient destinations around the country, and most are available via live streaming so that legal professionals can benefit from ALI CLE programming even when time or budget does not permit travel. Lawyers can also avail themselves of an array of real-time distance-learning courses, in audio and video formats, as well as a robust on-demand curriculum. In these ways, ALI CLE meets lawyers where they are, both in practice and in setting.

Some of this past year’s in-person programs are noteworthy for their superior content, popularity, and longevity. *Planning Techniques for Large Estates* surpassed attendance from previous years and remains a must-attend program for estate planners. Renowned for its networking

opportunities, specialized concurrent sessions, and active blog posts, *Eminent Domain and Land Valuation Litigation* also set an attendance record in 2016. *Regulation D Offerings and Private Placements*, an essential conference for sophisticated securities lawyers and industry professionals, likewise reached a post-recession high-attendance mark in 2016. These courses are merely a sampling of the premier ALI CLE conferences sought out by lawyers from across the country.

ALI CLE launched its LawPass Solo subscription plan in July 2015, giving individual lawyers the ability to access ALI CLE content efficiently and cost-effectively. Since that time, LawPass Solo has increasingly grown in popularity, with sales exceeding budget projections by 68 percent. For a low-cost way to access ALI CLE nonprogrammatic content, lawyers can also subscribe to one of four journals in print or electronic format, *The Estate Planning Course Materials Journal*, *The Practical Lawyer*, *The Practical Real Estate Lawyer*, and *The Practical Tax Lawyer*, or to one of ALI CLE’s online forms libraries.

ALI CLE maintains relationships with respected national organizations such as the American College of Trust and Estate Counsel (ACTEC), the American College of Real Estate Lawyers (ACREL), the Smithsonian Institution, the Environmental Law Institute (ELI), and the National Association for Law Placement (NALP), enhancing the breadth of its programming and its outreach to the bar.

As ALI CLE looks to next year, it is positioning itself to capitalize on several opportunities. It is evaluating and will be upgrading its distance-learning delivery system to further improve the attendee experience. ALI CLE is also preparing to meet the needs of almost 20,000 Connecticut attorneys now required for the first time to fulfill a CLE requirement in 2017. Finally, ALI CLE is working with a premier learning management system (LMS) serving large law firms in order to integrate its programming into this popular tool. Placement within the LMS will make it easier for legal professionals to learn about and to attend ALI CLE events. Through these endeavors, ALI CLE continues to advance its reputation and role as the first-class CLE organization providing a national educational curriculum to the legal profession.



Life Insurance Company Products 2016, presented in Washington, DC, November 3-4, 2016

Membership

The American Law Institute's distinguished membership reflects the full spectrum of legal professions and perspectives. Practitioners, judges, in-house counsel, academics, and government and public-sector lawyers from all areas of the United States and many foreign countries make invaluable contributions to ALI's law-reform efforts by donating their time and expertise in numerous areas of the law.

Current ALI members initiate the process for electing new members by submitting confidential proposals for review by the Membership Committee. Proposals for prospective members include a nomination letter by a current member with detailed supporting letters from two additional members. ALI's elected membership is limited to 3,000 individuals, and as such, the committee seeks to recommend to the Council only those candidates who have demonstrated exceptional professional achievement, outstanding personal character, and an avid interest in law reform.

During the 2015–2016 fiscal year, 179 top-tier legal professionals proudly accepted the nomination and joined ALI's membership ranks, increasing the elected membership to 2,816. The Institute celebrated these new members at the 2016 Annual Meeting with two special events designed to welcome them to the ALI community and educate them about opportunities to participate in the Institute's many projects. As of June 30, 2016, ALI membership also included almost 1,550 Life members (a status achieved after 25 years of service to the Institute), more than 230 ex officio members, and two honorary members. While ex officio members are generally considered members only during the time they hold a specific office or position, the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States are ex officio members for life.

RECAPITULATION OF CURRENT MEMBERSHIP (As of 6/16 with Council Approval)

Elected Members (83 of whom are also ex officio)	2816
Life Members (20 of whom are also ex officio)	1548
Honorary Members	2
Ex Officio Members	235
Total ALI Membership	4601

MEMBERS BY CATEGORY

Includes Elected, Elected & Ex Officio,
Life, Honorary, and Ex Officio



■ 39% PRACTICING ATTORNEYS

■ 37% ACADEMICS

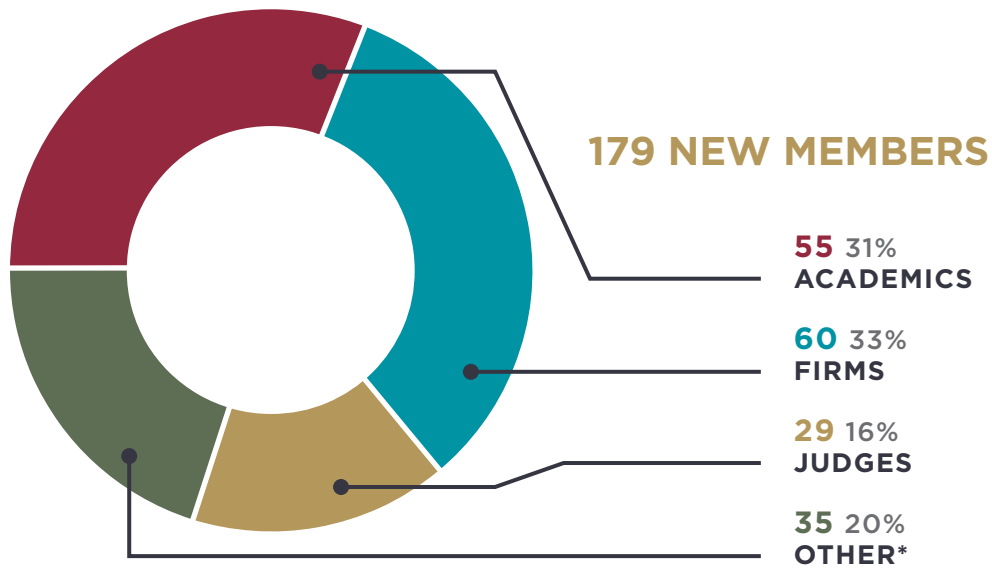
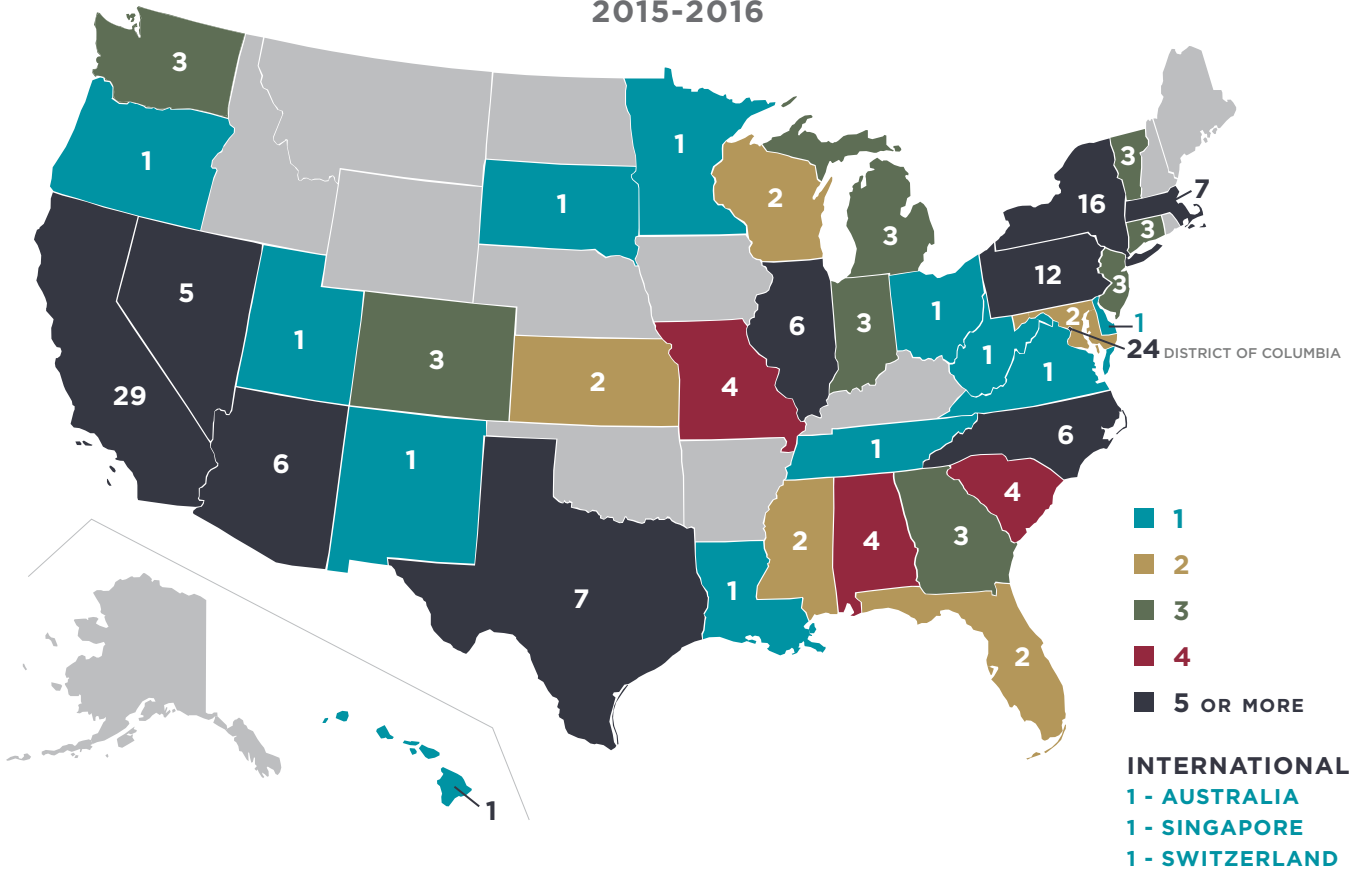
■ 14% JUDGES

■ 4% CORPORATE

■ 3% GOVERNMENT

■ 3% NONPROFIT

NEW MEMBERS 2015-2016



*Other - Corporate, Government, and Nonprofit attorneys

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Standing Committees

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Kate Stith - Yale Law School

Condensed Consolidated Statements of Activities

Years ended June 30, 2016 and 2015

	2016	2015
UNRESTRICTED		
Publications and royalties	5,662,828	5,475,141
Membership dues and other income	1,058,232	1,046,762
ALI CLE revenue	6,150,704	6,585,630
Contributions and grants	514,909	471,859
Investment spending policy income	1,955,035	2,012,004
Net assets released from restrictions used for operations	2,396,196	2,498,237
Total unrestricted operating revenue and other support	17,737,904	18,089,633
Program expenses	9,674,130	10,361,624
General and administrative expenses	4,785,922	4,832,927
Total operating expenses	14,460,052	15,194,551
Increase in unrestricted net assets from operations	3,277,852	2,895,082
Investment return, net of spending policy	(2,098,773)	(1,355,252)
Bequests	(16,474)	365,413
Non-operating expense, net	(993,994)	(1,016,924)
Increase in unrestricted net assets	168,611	888,319
TEMPORARILY RESTRICTED		
Investment return	34,031	339,907
Net assets released from restrictions used for operations	(2,396,196)	(2,498,237)
Contributions	11,250	30,000
(Decrease) Increase in temporarily restricted net assets	(2,350,915)	(2,128,330)
(DECREASE) INCREASE IN NET ASSETS	(2,182,304)	(1,240,011)
Net assets, at beginning of year	57,970,407	59,210,418
Net assets, at end of year	55,788,103	57,970,407

Condensed Consolidated Statements of Financial Position

June 30, 2016 and 2015

	2016	2015
ASSETS		
Cash	809,447	1,007,533
Receivables and other assets	2,364,639	2,522,795
Investments, at fair value	53,566,621	56,122,883
Land, buildings, and equipment, net	2,942,364	2,997,412
Total Assets	59,683,071	62,650,623
LIABILITIES AND NET ASSETS		
LIABILITIES		
Accounts payable and accrued expenses	1,332,224	1,387,426
Deferred revenue	913,014	1,023,704
Postretirement health benefit obligation	1,649,730	2,269,086
Total Liabilities	3,894,968	4,680,216
NET ASSETS		
Unrestricted		
ALI	44,563,195	44,360,964
Noncontrolling Interest in ALIP	426,987	460,607
Total unrestricted	44,990,182	44,821,571
Temporarily restricted	10,358,550	12,709,465
Permanently restricted	439,371	439,371
Total Net Assets	55,788,103	57,970,407
Total Liabilities and Net Assets	59,683,071	62,650,623

The condensed consolidated financial statements for The American Law Institute include all accounts and activities of Funds of the Treasurer and ALI CLE. In addition, they reflect the accounts and activities of The American Law Institute Publishers.

Annual Giving Report

Contributions to The American Law Institute provide a key source of support that allows ALI to remain independent as we continue our mission of clarifying and improving the law. By becoming a Sustaining Member, joining a Giving Circle, or making a general contribution, ALI members help guarantee that the Institute is prepared for a second century of law reform.

Contributions to The American Law Institute help us:



MAXIMIZE PROJECT EFFICIENCY AND ATTRACT TOP TALENT QUICKLY

ALI pays stipends to top-tier law professors best suited to produce its project drafts, and also pays for the research assistants who assist them. Contributions provide important funding that will allow the Director to increase the number of Reporters, which will expedite project completion times while maintaining the high level of quality the Institute is known for.



RAISE AWARENESS OF ALI'S WORK AND ENGAGE THE NEXT GENERATION

ALI's Young Scholars Medal and annual conference support practical legal scholarship and raise awareness of the Institute's mission while engaging the next generation of law faculty, practicing attorneys, and judges in law-reform work. Contributions to the Institute provide funding to ensure that this important program continues.



REDUCE BARRIERS TO PARTICIPATION

ALI's members are lawyers of the highest qualifications. Some have chosen service-oriented careers in which compensation lags far behind the private sector. The participation of these members is critical to maintaining the diversity of ideas that is the hallmark of ALI's approach and the key to our success. ALI's travel assistance programs, which are supported by generous contributions, provide opportunities for the full spectrum of our membership to participate in the Institute's work regardless of financial means.



SECURE THE INSTITUTE'S FUTURE

Following best practices in nonprofit management, ALI is establishing a Capital Projects Fund that will ensure that equipment, technology, and infrastructure are properly maintained and kept up-to-date. In addition, contributions to the Institute ensure that any reduction in revenue from print publications will not inhibit ALI's work.



PRODUCE IMPORTANT PUBLIC-INTEREST WORKS

The Institute believes its mission should be driven by focusing on areas of law that are most in need of clarification, regardless of financial return. The current legal landscape includes a number of topics that are ripe for review, but the resulting publication may not generate revenue to cover the costs of the project in the way ALI's Restatements do. Projects on these topics—including Police Investigations; Sexual and Gender-Based Misconduct on Campus; and Sentencing—are nonetheless of great importance. The Class Gift provides funding necessary to engage in such works that benefit the public interest.

To inquire about making a donation, please contact Kyle Jakob, ALI Development Manager, at 215-243-1660 or kjakob@ali.org. To make a gift online, please visit www.ali.org/support.

Honorary and Memorial Gifts

The Institute is proud to receive gifts that honor or memorialize dear friends and loved ones. We are pleased to recognize the following gifts:

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The 1991 Life Member Class Gift

ALI's new Life members were honored at a luncheon at the 93rd Annual Meeting, where John J. "Mike" McKetta, III, of Graves, Dougherty, Hearon & Moody, P.C., presented the 1991 Life Member Class Gift to the Institute. The campaign, co-chaired by Mr. McKetta along with Donald B. Ayer of Jones Day; Linda Sheryl Greene of University of Wisconsin Law School; Michael Alexander Kahn of Crowell & Moring LLP; and Henrietta Wright of Goldberg, Godles, Wiener & Wright LLP, concluded with nearly two-thirds of the Class participating to exceed its goal of \$150,000 by raising \$162,130. The gift will help fund important aspects of ALI's mission, including the Judges and Public-Sector Lawyers Expense Reimbursement program, the Young Scholars Medal and annual conference, the Members Consultative Group Travel Assistance program, and the Institute's ongoing law-reform projects.

The Class Gift program will continue with the 1992 Life Member Class, which will be honored at the 2017 Annual Meeting.

The American Law Institute is grateful to everyone who contributed to the success of the 1991 Life Member Class Gift campaign. We appreciate your generosity.



ALI President and 1991 Class Member Roberta Cooper Ramo with 1991 Class Co-Chairs Linda Sheryl Greene, Henrietta Wright, Michael Alexander Kahn, and John J. "Mike" McKetta, III, during the 1991 Class Gift presentation



1991 and 1966 Class members gathered to celebrate 25 and 50 years with the Institute.

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The Institute expresses its deep appreciation of Judge Charles R. “Jim” Simpson—a 45-year ALI member at the time of his passing in 2015—and his late wife Ruth V. Simpson. Judge and Mrs. Simpson chose to make the Institute a part of their legacy by including ALI in their estate plans. As a result of their incredible generosity, a bequest in the amount of \$350,010 was left to the Institute to help ensure that its work may continue.

Judge Simpson, who was blind, earned his B.A. and J.D. from the University of Illinois and his LL.M. from Harvard Law School. At age 25, he became the youngest person to be elected to the Illinois Legislature. It was during this time that Judge Simpson married his beloved wife, Ruth. Three years later, they moved to Washington, D.C., where he took a position with the Office of General Counsel of the Internal Revenue Service, and Ruth began working as his legal secretary. He advanced within the IRS to become the Director of the Legislation and Regulations Division of the Chief Counsel’s Office, and in 1964 he received the Justice Tom C. Clark Award for Outstanding Government Lawyer. The next year, President Lyndon B. Johnson appointed Judge Simpson to the United States Tax Court. During his more than two decades on the bench, Judge Simpson presided over more than 1,000 cases, while Ruth continued in her role as his legal secretary. In 1987, Judge and Mrs. Simpson retired and moved to Sarasota, Florida. For his outstanding service to the Court, Judge Simpson was awarded the J. Edgar Murdock Award.

ALI is immensely grateful to Judge and Mrs. Simpson, and to all members who have generously named the Institute as a beneficiary in their estate plans. Planned gifts such as this allow members to make a significant impact in furthering the ALI’s law-reform work, without affecting their current assets. If you are interested in learning more about including The American Law Institute in your estate plans, please contact Development Manager Kyle Jakob at 215-243-1660, or kjakob@ali.org.

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