



**2016-2017**  
**ANNUAL REPORT**  
THE AMERICAN LAW INSTITUTE

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**“AT A TIME WHEN THERE IS MUCH NEGATIVE REPORTING ABOUT AMERICAN POLITICAL LEADERSHIP, THE ALI IS A BODY WHICH REMINDS US OF AN ENDURING STRENGTH OF AMERICAN CIVIL SOCIETY, IT BEING AN INSTITUTION FOUNDED AND CONTINUED IN A SPIRIT OF VOLUNTARISM AND COMMITMENT TO THE PUBLIC GOOD.”**

**THE HONOURABLE ROBERT SHENTON FRENCH AC**

IMMEDIATE PAST CHIEF JUSTICE OF THE HIGH COURT OF AUSTRALIA  
CHANCELLOR OF THE UNIVERSITY OF WESTERN AUSTRALIA (AS OF DECEMBER 11, 2017)

# 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 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, 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 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 ALI’s work for guidance in resolving questions of law.

## Publications and Projects

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.

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.

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.

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.

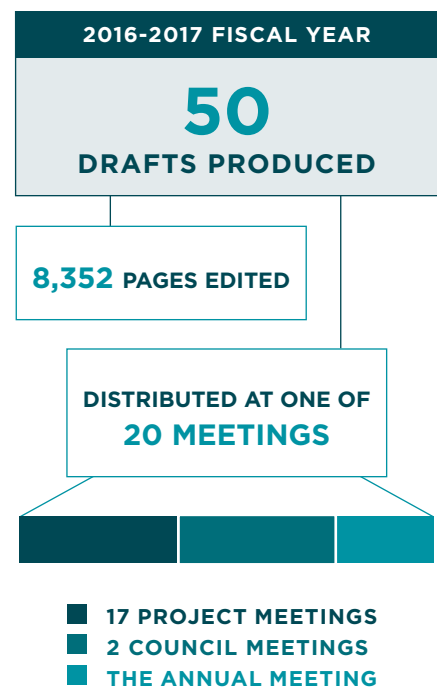
Statutory projects include the Uniform Commercial Code (in conjunction with the Uniform Law Commission), Model Code of Evidence, and Model Penal Code.

## Membership

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 nearly 4,600. By participating in 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

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 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 ALI are tax deductible to the full extent of the law.





## PRESIDENT'S MESSAGE

This is my first annual report message as President of the ALI. Having entered into life membership last year, I am certainly not new to the work of the Institute. Yet

in this new role as President, with the opportunity to reflect on the Institute's past and future, I am once again filled with admiration for the work and culture of the Institute. Perhaps it is not too much to claim that the ALI today is the leading membership organization in any profession in the United States. How this happened is not a mystery. There are several keys to its success and influence.

First, the ALI has had exceptional leadership. Inspirational and distinguished figures in the law have stepped forward to lead the organization from George Wickersham, the first President, to Roberta Cooper Ramo, my wonderful predecessor, and from William Draper Lewis, our first Director, to Richard Revesz, our dynamic current Director and former fellow law dean. The consistent quality of this leadership is quite extraordinary as has been the leadership provided by the Council, which is the governing body of the ALI. The lists of Council members from 1923-24 included such names as Cardozo, Hand, and Hughes. Later lists added others of similar stature—Ginsburg, Griswold, Friendly, and Wald. Our current Council is no less accomplished and includes Chief Judges, Chief Justices, accomplished practitioners, leading scholars, law school deans, university presidents, CEOs and general counsels, and former solicitors general and government officials. They all are volunteers putting in countless hours to improve and simplify the law and maintain the excellence of ALI's work product and the strength of the organization.

Second, the membership shares the same commitment to excellence as the Council and brings a breadth of experience and diversity that is critical to the ultimate work product. Members are the leaders of the bar in their communities, lawyers of national reputation, highly regarded judicial officers, leading academics, and current and former government officials. The ALI asks our members to leave their clients and individual interests at the door and approach all questions as objectively as possible. As a group, the membership body brings formidable wisdom and analytical ability to the task. The meetings of Advisers and Members Consultative Groups, as well as the Annual Meeting itself, display the preparation, commitment, and insight of the membership body. The occasional controversies over project drafts only highlight the continuing influence and importance of the ALI. The high degree of involvement of the members in our work and in the approval process is a key to our past and future success.

Third, there is the actual work and mission of the ALI. Today, the law is driven more by statute than it was at ALI's founding. But to understand many areas of law, one must know the relevant statutes, and also how those statutes fit within a broader body of law that includes common law principles. A quick review of the projects now underway, described in the Director's letter, suggests the continuing relevance and importance of ALI's projects. That the world is more complex today only underscores the challenges facing our esteemed Reporters, as well as the importance of our work and our unique ability to bring so many independent and diverse points of view to each debate.

Fourth, there is our process and our culture. Our process is painstaking precisely because the stakes and our ultimate influence are so high. Our culture respects both lively, even passionate, debate on large law and policy issues as well as precise, focused comment on technical points of law known best to those with deep expertise. That the Reporters are giants in their fields has made our in-person and online discussions of drafts so interesting and productive.

Finally, there is the nuts and bolts of a well-run organization. The ALI has a terrific staff and financial stability that sometimes are taken for granted. We should acknowledge all of the hard work and skill that leads up to the completion of an ALI project or an interesting and successful Annual Meeting.

We are beginning to make plans for the 100th anniversary. The anniversary committees have been formed and are listed on the ALI website. The committee members are already working to help us identify how best to take advantage of this great opportunity to look back and to look ahead and define our role over the next decades and beyond. It will be a great opportunity to celebrate all that the ALI is and does and to secure our future for the next 100 years.

Member involvement in, and support of, the ALI is a key to all that makes us proud to be members. I thank you for what you have done and will do for the ALI.

Sincerely,

A handwritten signature in black ink that reads "David F. (Su)". The signature is written in a cursive, slightly stylized font.





## DIRECTOR'S MESSAGE

This past year was a very productive one for the ALI. Most significantly, at the Annual Meeting in May, we completed three projects: Model Penal Code: Sentencing,

Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes, and Restatement Fourth of the Foreign Relations Law of the United States: Jurisdiction, Sovereign Immunity, and Treaties.

Model Penal Code: Sentencing was our senior project, having been launched in 2001. Over the last 15 years, its subject matter has received significant, sustained attention in the public policy arena, which has focused on the outlier status of the United States in terms of the proportion of the population that is incarcerated and on the significant racial disparities that make this statistic even more troubling. Overincarceration has emerged as one of the few issues in our divided political discourse in which liberals and conservatives have found common ground. The project provides guidance on key issues, including the length of sentences of incarceration and mechanisms for prison release; when life sentences without the possibility of parole should be allowed; the consideration of criminal history in sentencing guidelines; collateral consequences of convictions; and victim compensation.

Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes, launched in 2010, was The American Law Institute's first foray into this area, which is essential to the proper functioning of our democracy. The project focused on two areas of great importance: non-precinct voting and the resolution of ballot-counting disputes. Voting before the election day, either by mail or at locations of early in-person voting, has become an important part of our electoral landscape and the rules under which it is conducted have been the subject of considerable controversy. In turn, disputed elections have become more salient in our national consciousness over the last two decades, mostly as a result of the 2000 presidential election, but also because of high-profile senatorial and gubernatorial elections. Presidential elections received special attention because they present distinct issues for a number of reasons, including the importance of what is at stake, the very compressed five-week period that Congress provided for resolving disputes, and the potential risks of not having procedures in place when the dispute arises.

The Restatement Fourth of the Foreign Relations Law of the United States, launched in 2012, took on the ambitious and daunting task of revising the enormously influential Restatement Third, completed in 1986. The Council authorized initial work on particular sections involving jurisdiction, sovereign immunity, and treaties. The success of this revision augurs well for the prospect of Council authorizing work on additional subjects in the not-too-distant future.

With the completion of these three projects, the ALI now has 17 ongoing projects, which continued to move forward at a good clip, with a flurry of meetings and drafts. Three of them are on track for possible completion at the 2018 Annual Meeting. Should that happen, it is likely that we will soon thereafter launch some new projects. The choice of areas on which to focus our attention is one of the most important institutional decisions that the ALI makes. As always, I welcome suggestions from members.

As we reflect with pride on our considerable accomplishments during the past year, it is important to stress that our members are key to all that we do. They are exclusively in charge of our bicameral approval process, which takes place at the Council and Annual Meetings. The Members Consultative Groups review every draft. And members play a key role in our Advisers' meetings, as subject matter experts who work particularly closely with the Reporters. For all of the tens of thousands of hours a year that our members devote to the substance of our projects (think of what a law firm would bill for that time), I am enormously grateful.

I am also enormously grateful for the financial support that our members give us by becoming Sustaining Members, contributing to our Annual Fund, supporting the class gift after 25 years of membership, and through estate planning and bequests. Because both the reality and appearance of independence are so critically important to the success of the ALI's work, our universe of sources of financial support is a very constrained one. As a result, we must rely almost exclusively on our membership to provide the financial support necessary for us to carry out our work. I hope that you will keep the ALI in mind as you plan your year-end philanthropic giving. While your financial support was always important, it is particularly critical at this time. First, in recent years, we have undertaken a number of Principles projects, such as Policing; Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations; and Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities, which will provide sorely needed guidance to important institutions, but are unlikely to bring us the revenue that Restatements generally do. Second, in this era in which shrill rhetoric and inattention to facts and logic sometimes dominate the public discourse, the reasoned approach of ALI projects, with close and sustained attention to the merits of the arguments, is more valuable to our legal system and our democracy than it ever was. Please support us generously so that we can continue this critically important work!

# THE AMERICAN LAW INSTITUTE

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**Daniel B. Rodriguez**, Northwestern University School of Law, Chicago, IL

\**Director Emeritus*

\*\**President Emeritus*

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**Catherine T. Struve**, University of Pennsylvania Law School, Philadelphia, PA  
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**N. Lee Cooper**, Maynard, Cooper & Gale, Birmingham, AL  
**George H. T. Dudley**, Dudley, Topper and Feuerzeig, St. Thomas, U.S. VI  
**Christine M. Durham**, Utah Supreme Court, Salt Lake City, UT  
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**Geoffrey C. Hazard, Jr.\***, University of California, Hastings College of the Law, San Francisco, CA;  
 University of Pennsylvania Law School, Philadelphia, PA  
**D. Brock Hornby**, U.S. District Court, District of Maine, Portland, ME  
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**Ellen Ash Peters**, Connecticut Supreme Court (retired), Hartford, CT  
**Mary M. Schroeder**, U.S. Court of Appeals, Ninth Circuit, Phoenix, AZ  
**Robert A. Stein**, University of Minnesota Law School, Minneapolis, MN  
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**Herbert P. Wilkins**, Concord, MA

\**Director Emeritus*

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



# LEADERSHIP CHANGES

## PRESIDENT DAVID F. LEVI

At the adjournment of the 2017 Annual Meeting, Dean David F. Levi of Duke Law School assumed the role of ALI President. As president, he will chair the Executive Committee of the ALI Council, preside at the Annual Meeting, and serve as a member of nearly all standing committees. The President is nominated by ALI's Nominating Committee and elected by its Council.

President Levi has been an active member of ALI for more than 25 years, serving on the Council for more than 10 years. He was an Adviser on the Institute's Federal Judicial Code Revision and Aggregate Litigation projects, and currently is an Adviser on the Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities project.

President Levi will be stepping down as the dean of Duke Law in June 2018. He became dean in 2007 and in his 10 years in that position, he presided over major expansions of faculty, research, academic programs, and fundraising. He has also taught courses on judicial behavior, legal history, and reforming the civil justice system in North Carolina.

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 from 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.

Dean Levi earned his A.B. in history and literature, *magna cum laude*, from Harvard College. He entered Harvard's graduate program in history, specializing in English legal history and serving as a teaching fellow in English history and literature. He graduated Order of the Coif in 1980 from Stanford Law School, where he was also president of the *Stanford Law Review*. Following graduation, he was a law clerk to Judge Ben C. Duniway of the U.S. Court of Appeals for the Ninth Circuit, and then to Justice Lewis F. Powell, Jr., of the U.S. Supreme Court.

In 1994, he was appointed by Chief Justice William H. Rehnquist to the Advisory Committee on the Federal Rules of Civil Procedure and became Chair of this committee in 2000. In 2003, he was appointed Chair of the Standing Committee on Rules of Practice and Procedure, which, along with its five advisory rules committees, carries on a continuous study of the operation and effect of the federal rules as directed by the Rules Enabling Act. He was reappointed by Chief Justice John G. Roberts, Jr., to serve as the academic member of that committee and served in that capacity from 2009 to 2015.

Dean Levi is a fellow of the American Academy of Arts and Sciences. He was the first president and a founder of the Milton L. Schwartz American Inn of Court, now the Schwartz-Levi American Inn of Court, at the King Hall School of Law, University of California at Davis.

## Council Elections

The American Law Institute's membership elected four new members to its Council.

**Nathan L. Hecht** is Chief Justice of the Supreme Court of Texas. He is active in the Court's efforts to assure that Texans living below the poverty level, as well as others with limited means, have access to basic civil legal services. During his tenure on the Court, he has overseen revisions to the rules of administration, practice, and procedure in Texas courts and also served on the Advisory Committee on Civil Rules of the Judicial Conference of the United States.

Chief Justice Hecht was first elected a Justice of the Supreme Court in 1988. He previously served on the Texas Court of Appeals and the District Court in Dallas. Before taking the bench, he was in private practice; a law clerk for Judge Roger Robb of the U.S. Court of Appeals for the District of Columbia Circuit; and a Lieutenant in the U.S. Navy Reserve Judge Advocate General Corps.

Elected to ALI in 1988, Chief Justice Hecht has participated in the MCGs for Sentencing, Torts: Liability for Physical and Emotional Harm, and Torts: Apportionment of Liability.

**Troy A. McKenzie** is a professor at New York University School of Law, where he researches and teaches in the areas of bankruptcy, civil procedure, complex litigation, and the federal courts. From 2015 to 2017, he took a leave of absence from NYU to serve in the U.S. Department of Justice as a Deputy Assistant Attorney General in the Office of Legal Counsel.

Professor McKenzie has served as a faculty co-director of two NYU centers: the Institute of Judicial Administration and the Center on Civil Justice. In addition, he was a reporter to the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States from 2011 to 2015. Before joining NYU, he was an associate at Debevoise & Plimpton and a law clerk for Justice John Paul Stevens of the U.S. Supreme Court, and Judge Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit.

Elected to ALI in 2015, Professor McKenzie participated in two Young Scholars Medal Conferences.



*ALI's new Council members Troy A. McKenzie, Jeffrey S. Sutton, Stephanie E. Parker, and Nathan L. Hecht*

**Stephanie E. Parker**, a partner at Jones Day, co-leads the firm's business and tort-litigation practice of more than 475 lawyers. She also leads the firm's product-liability-litigation group. Most of Ms. Parker's work is focused on mass-tort and product-liability cases for clients in the tobacco, chemical, pharmaceutical, medical-device, and automotive industries. One of her main clients is R.J. Reynolds Tobacco Company, for which she leads about three trials a year. Previously, she was a law clerk for Judge Wilbur D. Owens, Jr., of the U.S. District Court for the Middle District of Georgia.

Elected to ALI in 2004, Ms. Parker is a member of the Regional Advisory Group for Region 14 (Alabama, Florida, Georgia, and Puerto Rico) and has helped to organize member events and programs about the International Commercial Arbitration project in Atlanta and New York.

**Jeffrey S. Sutton** has served on the U.S. Court of Appeals for the Sixth Circuit since 2003. Before that, he was the State Solicitor of Ohio and a partner at Jones Day in Columbus. He has argued 12 cases in the U.S. Supreme Court and numerous cases in the state supreme courts and federal courts of appeal. Judge Sutton served as a law clerk to Justices Lewis F. Powell, Jr., and Antonin Scalia of the U.S. Supreme Court, as well as Judge Thomas J. Meskill of the U.S. Court of Appeals for the Second Circuit.

Judge Sutton served as Chair of the Federal Judicial Conference Committee on Rules of Practice and Procedure from 2012 to 2016. He was appointed to that committee by Chief Justice Roberts. He has also served on the Advisory Committee on Appellate Rules. He was appointed to that committee by Chief Justice Rehnquist in 2005, and Chief Justice Roberts appointed him to be Chair of that committee in 2009.

Elected to ALI in 2006, Judge Sutton served as an Adviser for Election Administration, and a member of the MCG for Sentencing.

## Council Members Taking Emeritus Status

Three Council members took Emeritus status.

**Kenneth S. Abraham** is the David and Mary Harrison Distinguished Professor of Law at the University of Virginia School of Law.

Professor Abraham was elected to ALI in December 1990 and to the Council in 1996. He is an Adviser on the Restatement of the Law, Liability Insurance project, and he was previously an Adviser on the Restatement Third, Torts: Liability for Economic Harm project; the Restatement Third, Torts: Liability for Physical and Emotional Harm project; and the Restatement Third, Torts: Products Liability project.

**D. Brock Hornby** has been a Judge of the U.S. District Court for the District of Maine since 1990, and served as Chief Judge from 1996 to 2003. He formerly was a Justice of the Maine Supreme Judicial Court and a U.S. Magistrate for the U.S. District Court for the District of Maine. Before joining the bench, he was a partner at the firm of Perkins, Thompson, Hinckley & Keddy in Portland, Maine, and a professor at the University of Virginia School of Law.

Judge Hornby was elected to ALI in December 1979 and was elected to the Council in May 1996. He has served as Chair of the Awards Committee, and was previously an Adviser on the Restatement Third, Agency project and the Restatement Third, Restitution and Unjust Enrichment project.

**Harvey S. Perlman** stepped down as Chancellor of the University of Nebraska-Lincoln in 2016 and returned to his faculty position in the College of Law. He currently is a Commissioner representing Nebraska on the Uniform Law Commission and serves as Senior Consultant to the Roundtable of the Council of the Confucius Institute Headquarters.

He was elected to ALI in 1976 and was elected to the Council in 1995. He served as a Reporter for the Restatement Third, Unfair Competition, and currently serves as an Adviser on Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities, and on the Members Consultative Group for the Restatement Third, Torts: Liability for Economic Harm.

# ROBERTA COOPER RAMO

Roberta Cooper Ramo stepped down as ALI President at the close of the 2017 Annual Meeting. She continues to serve ALI as Chair of the Council for three years.

Ms. Ramo has been an active member of ALI for more than 25 years. Elected to the Council in 1997, she served as First Vice President before being elected the first woman President of the Institute in 2008.

During her nine years as President, she brought a focus on diversity to ALI's membership and Council election process, effectively bringing more women, minorities, and breadth of practice to the organization. As President, she is also credited with inspiring confidence and participation from all members of the Institute and collegiality through some of the most complex and controversial project discussions.

Her Presidency saw 14 projects completed and 20 projects initiated; Ms. Ramo was a driving force behind the first-ever Restatement of American Indian Law. Having oversight on all projects, she often attended project sessions, and never missed a Council or Annual Meeting. As a member of several nonprofit boards, she also lends her expertise as an Adviser on Restatement of the Law, Charitable Nonprofit Organizations.

In her private practice at Modrall Sperling, she works in the areas of arbitration, mediation, business law, real estate, probate, and estate planning. She often is called on to assist corporations with their strategic and long-term legal planning, an area in which she has particular expertise.

In 2015, Ms. Ramo received the American Bar Association's highest award, the ABA Medal. She previously served as president of the American Bar Association from 1995 to 1996, the first woman in history to lead the largest nationwide organization of attorneys. In 2011, she was elected into the American Academy of Arts and Sciences, adding her name to a prestigious list of members including George Washington and Albert Einstein, among other notables.

A Fellow of both the American College of Trust and Estate Counsel and the American Bar Foundation, she also has served as a panel member for the American Arbitration Association. In 2013, she was elected Board Chair of Think New Mexico, a non-partisan think tank, and she serves as a member of the Board of the Santa Fe Opera and Albuquerque Economic Development.

Ms. Ramo was appointed by the United States Senate and served as co-chair of a committee to review governance issues of the U.S. Olympic Committee in 2003. She was named an honorary member of the Bar of England and Wales, and of Gray's Inn in 2000. She served on the Board of Regents for the University of New Mexico from 1989 to 1995, and as President of the Board from 1991 to 1993. She also served on the New Mexico Board of Finance.

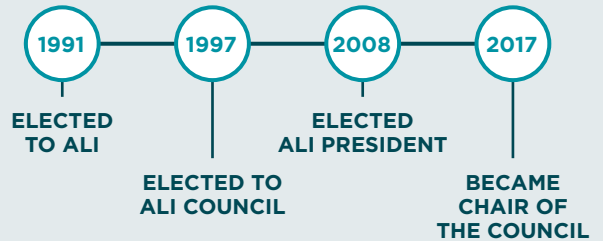
We thank Roberta Cooper Ramo for her years of dedicated service, and look forward to continue working with her as she takes on the role of Chair of the Council.



**“WHAT WOULD I TELL LAWYERS? I WOULD TELL THEM TO FOLLOW ROBERTA RAMO’S LEAD.”**

**U.S. SUPREME COURT ASSOCIATE JUSTICE RUTH BADER GINSBURG**

AT ALI'S ANNUAL DINNER WHEN ASKED ABOUT LAWYERS' SPECIAL RESPONSIBILITIES FOR HANDLING ATTACKS ON THE INSTITUTIONS OF THE AMERICAN JUSTICE SYSTEM



## PROJECTS COMPLETED

**6** RESTATEMENTS      **3** PRINCIPLES  
**1** MODEL PENAL CODE REVISION      **2** OTHER PROJECTS

## PROJECTS INITIATED

**11** RESTATEMENTS      **5** PRINCIPLES  
**1** MODEL PENAL CODE REVISION      **1** OTHER PROJECT

## TWO PROJECTS WERE INITIATED AND SEEN THROUGH TO COMPLETION:

Restatement of the Law Fourth, The Foreign Relations Law of the United States (Jurisdiction, Treaties, and Sovereign Immunity)

Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes



## 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 Conrad K. Harper by D. Brock Hornby of the U.S. District Court for the District of Maine.

“For me, four nouns partially characterize Conrad . . . Language, Selflessness, Literacy, Principle,” said D. Brock Hornby, then-Chair of the Awards Committee, when presenting the Medal to Mr. Harper. Judge Hornby observed that although Judge Friendly is often recognized for his work as a judge, he was first an outstanding New York City lawyer. “Today,” said Judge Hornby, “we have the privilege of awarding the Friendly Medal to a lawyer who meets the Friendly Award criteria in abundance, namely, contributions to the law in the tradition of Judge Friendly and the Institute.” He went on to discuss some of Mr. Harper’s professional highlights as well as his dedication to the Institute.

“Through my 40 years as a member of the Institute, I have had some of the most enriching, intellectually stimulating, and enjoyable times of my professional life,” said Mr. Harper upon accepting the Medal. He reflected on how Judge Friendly’s high standard of quality in judgment during his time in private practice carried through to his legacy on the bench.

Mr. Harper revealed how he has tried to implement this high standard in his practice of the law, including the importance of acquiring the “elements necessary for a true understanding of the law, naming, among others, a command of history, philosophy, economics, psychology, political science, computers and their underlying mathematics, as well as working with artists and architects.”

Mr. Harper is a retired partner at Simpson Thacher & Bartlett. He received his bachelor’s degree from Howard University in 1962 before graduating from Harvard Law School in 1965. Mr. Harper spent the first five years of his career as a staff lawyer for the NAACP Legal Defense and Educational Fund in New York. He joined Simpson Thacher in 1971, and became its first African American partner in 1974. In 1993, Mr. Harper was appointed Legal Adviser for the U.S. Department of State. From 1993 to 1996 and from 1998 to 2004, he also served as U.S. representative to the Permanent Court of Arbitration at The Hague. In 1996, he returned to Simpson Thacher, and became of counsel to the firm in 2003.



In 1990, Mr. Harper was elected the first African American president of the New York City Bar Association, where he worked to increase diversity within the Association’s committees and governance.

Mr. Harper was the first African American appointed to the Harvard Corporation, Harvard University’s highest governing body, serving from 2000 to 2005. He has served as an officer or on the board of numerous organizations, including the Metropolitan Museum of Art, the William Nelson Cromwell Foundation, and the American Philosophical Society. He is a former Chancellor of the Episcopal Diocese of New York and a member of the Modern Language Association, the Jane Austen Society of North America, the Johnsonians, the Johnson Society of London, and the Henry James Society.

A member of ALI since 1977, Mr. Harper attended his 35th Annual Meeting this year. Elected to the Institute’s Council in 1985, he served as Second Vice President from 1998 to 2000 and as First Vice President from 2000 to 2004, taking Council Emeritus status in 2011. Mr. Harper was a member of ALI’s Executive Committee from 1987 to 2005; he has also served on the Nominating Committee, the Committee on Institute Program, the Awards Committee, the Special Committee on the ALI Young Scholars Medal (now known as the ALI Early Career Scholars Medal), the Special Committee on Strategic Communication, and the Ad Hoc Committee on Membership Process. He chaired the Style Manual Committee that oversaw publication of the Institute’s first style manual for project Reporters in 2005, and he also served on the committee tasked with revising the manual in 2015. He was an Adviser for ALI’s Principles of Transnational Civil Procedure and its project on Recognition and Enforcement of Foreign Judgments and a Counselor on the Restatement Fourth, The Foreign Relations Law of the United States.

## PROJECTS COMPLETED

At the 2017 Annual Meeting, members voted to approve drafts of three projects, Model Penal Code: Sentencing; Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes; and the Jurisdiction, Sovereign Immunity, and Treaties portions of Restatement of the Law Fourth, The Foreign Relations Law of the United States.

The Reporters, subject to oversight by the Director, will now prepare the Institute's official text for publication. At this stage, the Reporters are authorized to correct and update citations and other references, to make editorial and stylistic improvements, and to implement any remaining substantive changes directed or agreed to by the Council, or the membership at the Annual Meetings.

Until the official text is published, all drafts that were previously approved by the membership remain the official position of ALI. Therefore, the Sentencing Proposed Final Draft and the previous Tentative Drafts of Election Administration and U.S. Foreign Relations Law may be cited as such. In fact, drafts of Foreign Relations Law have already been cited.

You can help ALI let the legal community know that these projects are complete. You may tell legislators, judges, practicing lawyers, and professors that these projects and their drafts may be cited as ALI's position.

**CONGRATULATIONS AND THANK YOU TO THE REPORTERS, PROJECT PARTICIPANTS, AND ALI MEMBERS WHO GAVE US THEIR TIME AND INSIGHT ON THESE PROJECTS. WE LOOK FORWARD TO NEXT YEAR'S MEETING, WHEN WE WILL LIKELY HAVE ADDITIONAL PROJECTS ON THE AGENDA FOR FINAL APPROVAL.**



### U.S. Foreign Relations Law

Led by Coordinating Reporters, Sarah H. Cleveland of Columbia Law School (also a Reporter on Treaties) and Paul B. Stephan of University of Virginia School of Law (also a Reporter on Jurisdiction), each portion updates Parts of the Restatement Third, published in 1987. Although the Restatement Third has been cited a great deal by the courts, much had changed in the three decades that followed, so ALI decided to reexamine this area of law, launching this project in 2012 with a focus on three areas of law: the United States law of jurisdiction, of immunities, and of treaties.

Sovereign Immunity addresses the immunity of foreign states from jurisdiction to adjudicate, from jurisdiction to prescribe, and from non-judicial enforcement. The project takes the general approach of the Restatement Third, although the Reporters have endeavored to draw a clearer distinction between domestic and international law in some Sections. The projected table of contents for the Restatement Fourth also includes four new Sections, based on amendments to the Foreign Sovereign Immunities Act (FSIA) or on significant developments in practice since the Restatement Third was adopted.

Treaties addresses the Status of International Law and Agreements in United States Law, including Article II treaties, other international agreements, and customary international law. For purposes of the Restatement Fourth, the Reporters were asked to take up the status of Article II treaties in U.S. law; a full treatment of other forms of international agreements will be taken up in the future.

Jurisdiction follows in the footsteps of the Restatement Third by analyzing jurisdiction functionally in terms of prescribing rules, adjudicating disputes, and enforcing the law. The project will distinguish clearly between rules of international law and rules of U.S. domestic law.

#### 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





## Sentencing

Launched in 2001, under Reporter Kevin R. Reitz of the University of Minnesota Law School, who was joined in 2012 by Associate Reporter Cecelia M. Klingele of the University of Wisconsin Law School, the project reexamines the sentencing provisions of the 1962 Model Penal Code in light of the many changes in sentencing philosophy and practice that have taken place since its original publication.

The Sentencing project provides guidance on some of the most important issues that courts, corrections systems, and policymakers are facing today, including the general purposes of the sentencing system; rules governing sentence severity—including sentences of incarceration, community supervision, and economic penalties; the elimination of mandatory-minimum penalties; mechanisms for combating racial and ethnic disparities in punishment; instruments of prison-population control; collateral consequences, including guidelines, notification, and order of relief; victims' rights in the sentencing process; the sentencing of juvenile offenders in adult courts; the creation of judicial powers to review many collateral consequences of conviction; and many issues having to do with judicial sentencing discretion, sentencing commissions, sentencing guidelines, and appellate sentence review.

Reporter:

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

Associate Reporter:

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



## Election Administration

This project launched in 2010 under the leadership of Reporter Edward B. Foley and Associate Reporter Steven F. Huefner, both of The Ohio State University Moritz College of Law. It marks ALI's first journey into this area of law.

This Principles project is broken down into three Parts. Part I outlines the ways in which states can securely and efficiently incorporate early voting and absentee voting in an effort to provide the most accessibility and convenience to the American voting public.

Parts II and III address how states can manage post-election disputes, with Part II focusing on elections generally and Part III concentrating on the procedures necessary in disputed presidential elections in light of unique scheduling constraints.

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







## CURRENT PROJECTS

### The ALI Drafting Process

ALI's drafting process brings together members of the bench, bar, and academia to review and discuss drafts of Restatements of the Law, Principles of the Law, and Model Codes.



Project ideas are generally initiated by the Director and the Projects Committee. The Director then investigates a potential project and develops a project proposal, which usually includes a prospectus from a proposed Reporter (or Reporters). Once approved by the Council, work on the project begins.

A diverse group of Advisers is assembled by the Reporter, Director, and Deputy Director and approved by the Council. This group of subject-matter experts makes a commitment to review the project drafts and provide input to Reporters. The Director may also appoint Liaisons from other legal organizations or appoint additional advisory panels. ALI members may join the Members Consultative Group (MCG) for a project. MCG members are not necessarily experts in the project's area of law, but provide a vital perspective, as they read the drafts the way the project's intended audience would.



The Reporter prepares Preliminary Drafts of the project for review by the Advisers, Liaisons, and 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 Reporters prepare a Tentative Draft, incorporating any revisions directed by the Council, to be submitted to the ALI membership for approval at an Annual Meeting. This drafting cycle continues until each segment of the project has been approved by the Council and the membership. Then the Reporter, subject to the Director's oversight, readies the official text for publication.



*Project meetings from top to bottom:*

*Restatement of the Law, The Law of American Indians*

*Restatement of the Law, Charitable Nonprofit Organizations*

*Restatement of the Law Third, Conflict of Laws*

*Restatement of the Law, Children and the Law*

*Principles of the Law, Student Sexual Misconduct:*

*Procedural Frameworks for Colleges and Universities*

## Restatements

### RESTATEMENT OF THE LAW, THE LAW OF AMERICAN INDIANS

This Restatement cements the foundational principles of American Indian law. A significant portion of a Chapter on Federal–Tribal Relations has been approved by the membership. A Chapter on Tribal Authority and portions of Chapters on Tribal–State Relations and Tribal Economic Development have also been drafted. The final segment will be a Chapter on 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, CHARITABLE NONPROFIT ORGANIZATIONS

This Restatement clarifies the law governing charities. Three of six Chapters have been approved by the membership: Definition and Choice of Form; Changes to Purpose and Organization; and Standing of Private Parties. Portions of Chapters on Governance and Government Regulation of Charities have also been approved. The project is expected to be completed at the 2019 Annual Meeting, when the Chapter on Restrictions on Charitable Assets and Enforcement of Pledges and remaining portions of other Chapters are presented.

Reporter:

**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

Consultant:

**Marion R. Fremont-Smith**, Harvard University, John F. Kennedy School of Government, Cambridge, MA

### RESTATEMENT OF THE LAW, CHILDREN AND THE LAW

This Restatement deals comprehensively with the legal regulation of children, rather than solely with family law matters. Portions of each of the project's four Parts—Children in Families, Children in Schools, Children in the Justice System, and Children in Society—have been drafted.

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 Law School, New Orleans, LA

### RESTATEMENT OF THE LAW THIRD, CONFLICT OF LAWS

This project reexamines 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. The project will include Chapters on Domicile, Judicial Jurisdiction, Recognition and Enforcement of Judgments, and Choice of Law, among others. Portions of several Chapters have been drafted.

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 focuses 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. A draft of the entire project was presented for discussion at the 2017 Annual Meeting but, as planned, no vote was taken. The draft has been revised based on the discussion at that Meeting and at a subsequent meeting of the Advisers and MCG.

Reporters:

**Oren Bar-Gill**, Harvard Law School, Cambridge, MA  
**Omri Ben-Shahar**, University of Chicago Law School, Chicago, IL  
**Florencia Marotta-Wurgler**, New York University School of Law, New York, NY

### RESTATEMENT OF THE LAW, COPYRIGHT

This Restatement encompasses general copyright law. Portions of Chapters on Subject Matter and Standards, Scope of Protection, and Ownership have been drafted. The remaining Chapters are expected to include: 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, THE U.S. LAW OF INTERNATIONAL COMMERCIAL ARBITRATION

This project restates the U.S. law of international commercial arbitration and clarifies the role of courts in arbitral proceedings. Chapters on Enforcement of the Arbitration Agreement; Post-Award Relief; and Investor-State Arbitration have been approved by the membership. The remaining portions of the project, Federal Preemption of State Law and The Judicial Role in Connection with the Arbitral Proceeding, are expected to be submitted at the 2018 Annual Meeting, completing this project.

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

### 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. All Sections of the project, which includes Chapters on Basic Liability Insurance Contract Rules, Management of Potentially Insured Liability Claims, General Principles Regarding the Risks Insured, and Enforceability and Remedies, have been approved by the membership. A revised Proposed Final Draft is expected to be presented at the 2018 Annual Meeting.

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

This 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 Volumes on The Basics of Property; Interferences with, and Limits on, Ownership and Possession; Powers and Duties Associated with Ownership; Divided and Shared Ownership; and Servitudes and Land Use have been 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**, The Antonin Scalia Law School at George Mason University, Arlington, VA



*Restatement of the Law Third, Torts: Intentional Torts to Persons, 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. Continuing the work of the Restatement Third, Torts: Liability for Physical and Emotional Harm, this project addresses other major avenues of recovery for physical and emotional harm to persons, with a focus on assault, battery, and false imprisonment. It also includes Sections on consent, self-defense, and other privileges. Portions of all three Chapters have been drafted, and Sections of Chapter 1 on Definitions and Transferred Intent have been approved by the membership.

Reporter:

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

Associate Reporter:

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

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

Part of the ongoing revision of the Restatement Second of Torts, this project covers unintentional infliction of economic loss, including professional negligence and negligent misrepresentation. It also addresses fraud, breach of fiduciary duty, interference with contract, unjustifiable litigation, and civil conspiracy.

All five Chapters have been drafted; Chapters on Unintentional Infliction of Economic Loss and Liability in Tort for Fraud have been approved by the membership. The remaining Chapters of the project are expected to be submitted at the 2018 Annual Meeting, completing this project. Those Chapters are Interference with Economic Interests, Misuse of Legal Procedure, and Secondary Liability.

Reporter:

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



*Restatement of the Law Fourth, Property, project meeting*



## Principles

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

This project provides recommendations of best practice for internal and external control with organizations. Portions of all six Chapters—Definitions and Scope; Subject Matter, Objectives, and Interpretation; Governance; Risk Management; Compliance; and Liability and Enforcement—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 provides a framework of best practices for regulating data privacy and for duties and responsibilities of entities that process personal data. The project is expected to include three Chapters: Purpose, Scope, and Definitions; Data Privacy Principles; and Accountability and Redress. Portions of the first two Chapters have been drafted.

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, GOVERNMENT ETHICS

This project sets forth principles that will both reflect the emerging law of government ethics and provide guidelines to shape its future development. A portion of the Chapter on the Election-Related Activities of Public Servants was approved at the 2015 Annual Meeting. Portions of the following Chapters have also been drafted: Gifts from and Financial Relationships with Prohibited Sources; Conflicts of Interest and Outside Activities of Public Servants; and Post-Government Employment Restrictions. Remaining Chapters include Scope, General Principles, and Definitions; and Administration and Enforcement of Government Ethics.

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, POLICING

This project tackles some of the hardest questions, where courts, legislatures, and police are most in need of guidance. The Principles are currently divided into five Parts: Overarching Principles of Policing; Principles of Search and Seizure; Use of Force; Principles of Evidence Gathering; and Remedies and Accountability. The Chapter on Use of Force was approved at the 2017 Annual Meeting, and several other portions of the project have been drafted.

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. Harmon**, 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

### PRINCIPLES OF THE LAW, STUDENT SEXUAL MISCONDUCT: PROCEDURAL FRAMEWORKS FOR COLLEGES AND UNIVERSITIES

This project recommends procedural frameworks that universities and colleges should have in place to respond to sexual assault and related misconduct. Work is currently focusing on the first four Chapters: First Principles for Procedural Frameworks; Notice and Clarity of Policies; Support and Interim Measures; Reporting of Sexual Assault and Related Misconduct; and Inquiries and Investigations. Additional portions of the project have also been drafted, covering processes for informal and formal resolution of complaints; sanctions; appeals; confidentiality and disclosure; and interaction between campus processes 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

## Model Codes

### MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

This project is re-examining Article 213 of the Model Penal Code, which has become outdated since its approval in 1962. Portions of this project have been drafted, including provisions on Forcible Rape, Rape or Sexual Assault of a Vulnerable Person, Sexual Penetration by Coercion or Exploitation, Criminal Sexual Contact, Sex Trafficking and Related Offenses, and Permission to Use Force, as well as related definitions. The entire draft of this project is expected to be submitted at the 2019 Annual Meeting.

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



*Principles of the Law, Policing, project meeting*

### 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.

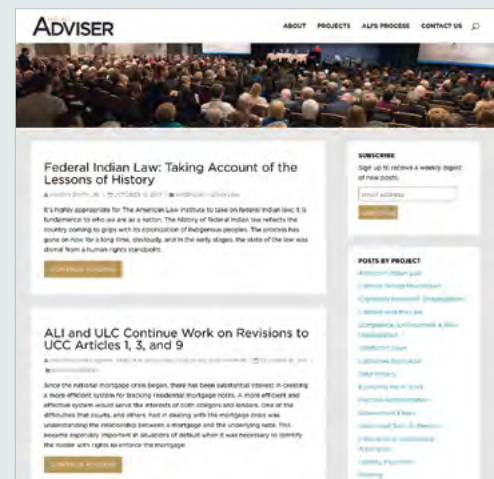
**Edwin E. Smith**, Morgan, Lewis & Bockius LLP, chairs the joint committee and **Steven L. Harris**, IIT Chicago-Kent College of Law, serves as the Reporter.

## SHARING OUR WORK: CURRENT PROJECTS ON *THE ALI ADVISER*

Since its launch in September 2016, *The ALI Adviser* has featured nearly 200 posts on the Institute's current projects and their areas of law. Featured posts have been submitted by project participants, members, practitioner and academic guest authors, and news organizations, including the *Los Angeles Times* and the *Washington Post*.

The primary audience for this site is members of the legal community not involved with ALI or its process. One of the site's exclusive features is public access to approved black letter on current projects. For example, during the 94th Annual Meeting, the *Adviser* regularly shared approved black letter with the public.

In an effort to promote ALI's work through project discussion, the *Adviser* 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. Visit the *Adviser* at [www.thealiadviser.org](http://www.thealiadviser.org).



# 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 more than 204,000 times through June 2017.

## Recent Publications

A Concise Restatement of Donative Transfers and Trusts

Restatement of the Law Second, Judgments, Appendix Volume

Restatement of the Law Third, Restitution and Unjust Enrichment, Appendix Volume

## IN THE U.S. SUPREME COURT

During its October 2016 Term, the U.S. Supreme Court cited the work of The American Law Institute in 9 cases:

### **BNSF R. CO. V. TYRRELL** 137 S.C.T. 1549 (MAY 30, 2017)

Majority citing **Federal Judicial Code Revision Project**, Reporter's Note B (Table, pages 253-290)

### **BOLIVARIAN REPUBLIC OF VENEZUELA V. HELMERICH & PAYNE INT'L DRILLING CO.** 137 S.C.T. 1312 (MAY 1, 2017)

Majority citing **Restatement Fourth, The Foreign Relations Law of the United States: Sovereign Immunity** § 455, Reporters' Note (T.D. No. 2, 2016) and **Restatement Third, The Foreign Relations Law of the United States** §§ 451 and 712

### **BRAVO-FERNANDEZ V. UNITED STATES** 137 S.C.T. 352 (NOVEMBER 29, 2016)

Majority citing **Restatement Second, Judgments** §§ 17, 19, 27, 28, and 29

### **ESQUIVEL-QUINTANA V. SESSIONS** 137 S.C.T. 1562 (MAY 30, 2017)

Majority citing **Model Penal Code** § 213.3(1)(a)

### **HONEYCUTT V. UNITED STATES** 137 S.C.T. 1626 (JUNE 5, 2017)

Majority citing **Restatement Second, Torts** § 875

### **HOWELL V. HOWELL** 137 S.C.T. 1400 (MAY 15, 2017)

Majority citing **Restatement Third, Property: Wills and Other Donative Transfers** §§ 24.3 and 25.3

### **KOKESH V. SEC** 137 S.C.T. 1635 (JUNE 5, 2017)

Majority citing **Restatement Third, Restitution and Unjust Enrichment** § 51, Comments *a* and *h*

### **MANUEL V. JOLIET** 137 S.C.T. 911 (MARCH 21, 2017)

Dissent citing **Restatement Second, Torts** § 653

### **SHAW V. UNITED STATES** 137 S.C.T. 462 (DECEMBER 12, 2016)

Majority citing **Model Penal Code** § 2.02(2)(a)-(b)

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:

**BOWEN EX REL. DOE V. ARNOLD**

Supreme Court of Tennessee, adopting **Restatement Second, Judgments** §§ 29 and 85, 502 S.W.3d 102 (Tenn. 2016)

**DOBSON BAY CLUB II DD, LLC V. LA SONRISA DE SIENA, LLC**

Supreme Court of Arizona, adopting **Restatement Second, Contracts** § 356(1), 393 P.3d 449 (Ariz. 2017)

**MCCARRELL V. HOFFMANN-LA ROCHE, INC.**

Supreme Court of New Jersey, adopting **Restatement Second, Conflict of Laws** § 142, 153 A.3d 207 (N.J. 2017)

**PACIFIC WESTERN BANK V. BADGER**

Supreme Court of Nevada, adopting **Restatement Second, Conflict of Laws** § 68, 383 P.3d 252 (Nev. 2016)

**PHILIBERT V. KLUSER**

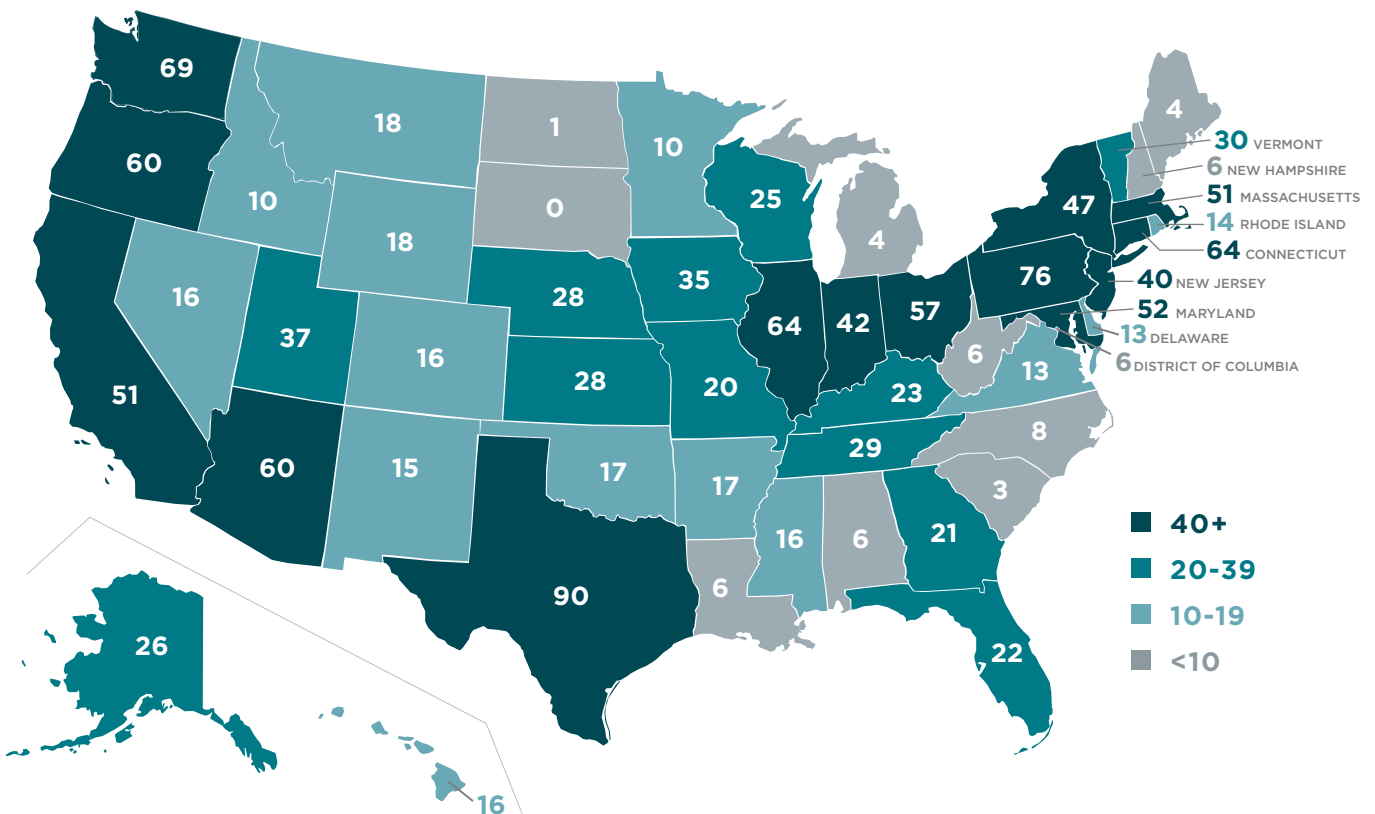
Supreme Court of Oregon, adopting **Restatement Third, Torts: Liability for Physical and Emotional Harm** § 48, 385 P.3d 1038 (Or. 2016)

**ROACH V. BM MOTORING, LLC**

Supreme Court of New Jersey, adopting **Restatement Second, Contracts** § 241, 155 A.3d 985 (N.J. 2017)

STATE CITATIONS OF ALI'S WORK

Below is a breakdown of state citations of ALI publications and drafts for the 2016-2017 fiscal year.



## EARLY CAREER SCHOLARS MEDAL

The Early Career Scholars Medal (previously known as the Young Scholars Medal) is presented every other year at the Institute’s Annual Meeting to one or two outstanding early-career law professors whose work has the potential to influence improvements in the law. This year, the award was presented to two exceptional law professors—Colleen V. Chien of Santa Clara University School of Law and Daniel Schwarcz of University of Minnesota Law School.



Professor Chien’s scholarship focuses on domestic and international patent law and policy issues, and she has already played an important role in helping to formulate public policy on intellectual property and innovation, privacy, open government,

and civil liberties. From 2013 to 2015, she served as a Senior Advisor to the Chief Technology Officer of the United States on Intellectual Property and Innovation in the White House Office of Science and Technology Policy, where her work ranged from advancing open data policies to increasing access to pediatric AIDS medicines. Having testified twice before the House Judiciary Committee and numerous times before other federal agencies, Professor Chien coined the now-ubiquitous term “patent assertion entity” in 2010. Her work on patent assertion business models—which rely on the use of patents to extract money from others rather than commercialize technology—has been the basis of studies and policy initiatives by the White House, the Federal Trade Commission, and Congress (in the America Invents Act), and the term has been referred to thousands of times by academic and news sources. Policy recommendations that she and her coauthors, in law review articles and other fora, have made have been adopted by the U.S. Supreme Court, in Congressional bills, at the U.S. Patent and Trade Office, and by 32 states.

Professor Chien joined the Santa Clara Law faculty in 2007. Prior to that, she was an associate and then special counsel at Fenwick & West LLP in San Francisco. She has been a fellow at the Stanford Center for Law and the Biosciences, and visiting senior scholar at Berkeley Law’s Center for Law and Technology. She also worked as a strategy consultant at Dean and Company, a spacecraft engineer at NASA/Jet Propulsion Lab, and an investigative journalist at the Philippine Center for Investigative Journalism (as a Fulbright Scholar). She received her J.D. from Boalt Hall School of Law, University of California, Berkeley, and an A.B. and B.S. in Engineering from Stanford University, with distinction and honors.



Professor Schwarcz’s research focuses on insurance law and regulation, spanning issues such as solvency regulation, consumer protection, employer-sponsored health insurance, and insurance coverage litigation. His work has directly led to various law reforms to promote more transparent insurance markets. As a result of Professor Schwarcz’s scholarship and advocacy at the National Association of Insurance

Commissioners (NAIC), the NAIC established a new Transparency and Readability Working Group to study these issues and propose needed reforms. Recently, after being contacted and encouraged by attorneys at the Treasury Department, he organized a group of “scholars of insurance and financial regulation” to submit two amicus briefs—at the district court and appellate levels—in connection with litigation involving the designation by the Financial Stability Oversight Council of MetLife as a systemically significant financial institution.

Professor Schwarcz joined the University of Minnesota Law School in 2007. From 2007 to 2014, he served as a consumer representative at the National Association of Insurance Commissioners. He earned his A.B., *magna cum laude*, from Amherst College and his J.D., *magna cum laude*, from Harvard Law School. While in law school, he was an articles editor for the *Harvard Law Review* and a John M. Olin Fellow in Law and Economics. After law school, he clerked for Judge Sandra L. Lynch of the U.S. Court of Appeals for the First Circuit and practiced at the law firm Ropes & Gray, where he worked mainly on insurance law matters. He subsequently spent two years as a Climenko Fellow and Lecturer on Law at Harvard Law School.

### MODERNIZING CONSUMER PROTECTION REGULATION IN INSURANCE

After the presentation of the Early Career Scholars Medal at the 94th Annual Meeting, Professor Schwarcz talked to the audience about modernizing consumer protection regulation in insurance. He began by discussing the history of insurance regulation, and then went on to explain why he believes that much state insurance regulation is premised on outdated or incorrect assumptions.

Professor Schwarcz’s scholarship develops this theme in three broad areas: the lack of transparency in property/casualty insurance markets, the failure of rate regulation in property/casualty insurance markets, and the limitations of state solvency regulation, particularly in life insurance markets. After his presentation, Professor Schwarcz engaged in a Q&A with the audience.





## ALI CLE

ALI CLE continues its 70-year tradition of offering premier multi-day conferences that serve as “go to” national annual events for lawyers across a number of practice areas. Whether from private practice, nonprofits, businesses, or government agencies, attendees come for such opportunities as gaining federal judges’ perspectives at *Current Developments in Employment Law*; networking with museum professionals at a Dallas Museum of Art reception at *Legal Issues in Museum Administration*; witnessing a discussion between the SEC Chair and the SEC Chief Accountant at *Accountants’ Liability*; or hearing a review of current Supreme Court cases from Harvard Law School Professor Richard J. Lazarus at *Environmental Law*.

Complementing the in-person curriculum, ALI CLE distance programs provide convenient, in-depth coverage in a wide range of timely subjects, accessible both live and on-demand. Most recently, lawyers are showing a heightened interest in technology-related programming. As technology transforms law practice, ALI CLE distance programs on such topics as paperless practice, cloud computing, e-signatures, and blockchain for lawyers have increasing appeal, and we will continue to explore technology trends in the future in such areas as e-contracts, cyber-risk, and the use of artificial intelligence in law practice.

ALI CLE published two books this year, *Trial Manual 6 for the Defense of Criminal Cases* and *Taking and Defending Depositions, Second Edition*.

*The Trial Manual*, authored by Anthony G. Amsterdam and Randy Hertz, is an update of their widely used how-to guide for handling criminal-court cases. The *Manual*, last published in 1988, was a joint project of the American College of Trial Lawyers, National Defender Project of the National Legal Aid and Defender Association, and ALI-ABA Committee on Continuing Professional Education. The primary goal of the manual has always been—and continues to be—to serve as a resource for criminal-defense lawyers at the trial level.

*Taking and Defending Depositions*, authored by Stuart M. Israel, expands on his 2004 edition, providing rule references, checklists, and practical examples to lawyers taking or defending a deposition, including how to use discovery, detail, confirming, recasting, expansion, and exhaustion questions; how to use pleadings, exhibits, and other discovery at depositions; how to effectively prepare deponents—with information, advice, ethical “coaching,” practical orientation, and practice; and the six reasons to question your client at a deposition.

The books both received a warm reception from the bar, and in an effort to make the *Trial Manual* accessible to all lawyers, public defenders may request a free electronic copy.

## ALI DOCUMENTARY

Visionaries Inc. has selected The American Law Institute to be profiled in their 23rd season. Visionaries is a nonprofit educational organization dedicated to producing and distributing media that inspires individuals and communities to take action for positive social change. Since 1995, Visionaries has been producing a documentary series for public television. Hosted by Sam Waterston of the TV show *Law & Order*, the documentary series highlights the rarely told stories of nonprofit organizations all around the world that are working to make a positive difference in their community and beyond. Visionaries’ production crews have traveled across six continents and to more than 50 American cities to profile the extraordinary work of these organizations.

The Visionaries crew will be on-site at several ALI meetings talking to project participants, members, and ALI leadership. Once complete, the documentary will premiere in 2018, and be featured on 100 PBS stations throughout the United States.

Learn more about Visionaries at [www.visionaries.org](http://www.visionaries.org).



*A behind the scenes look at Visionaries interviews*

# MEMBERSHIP

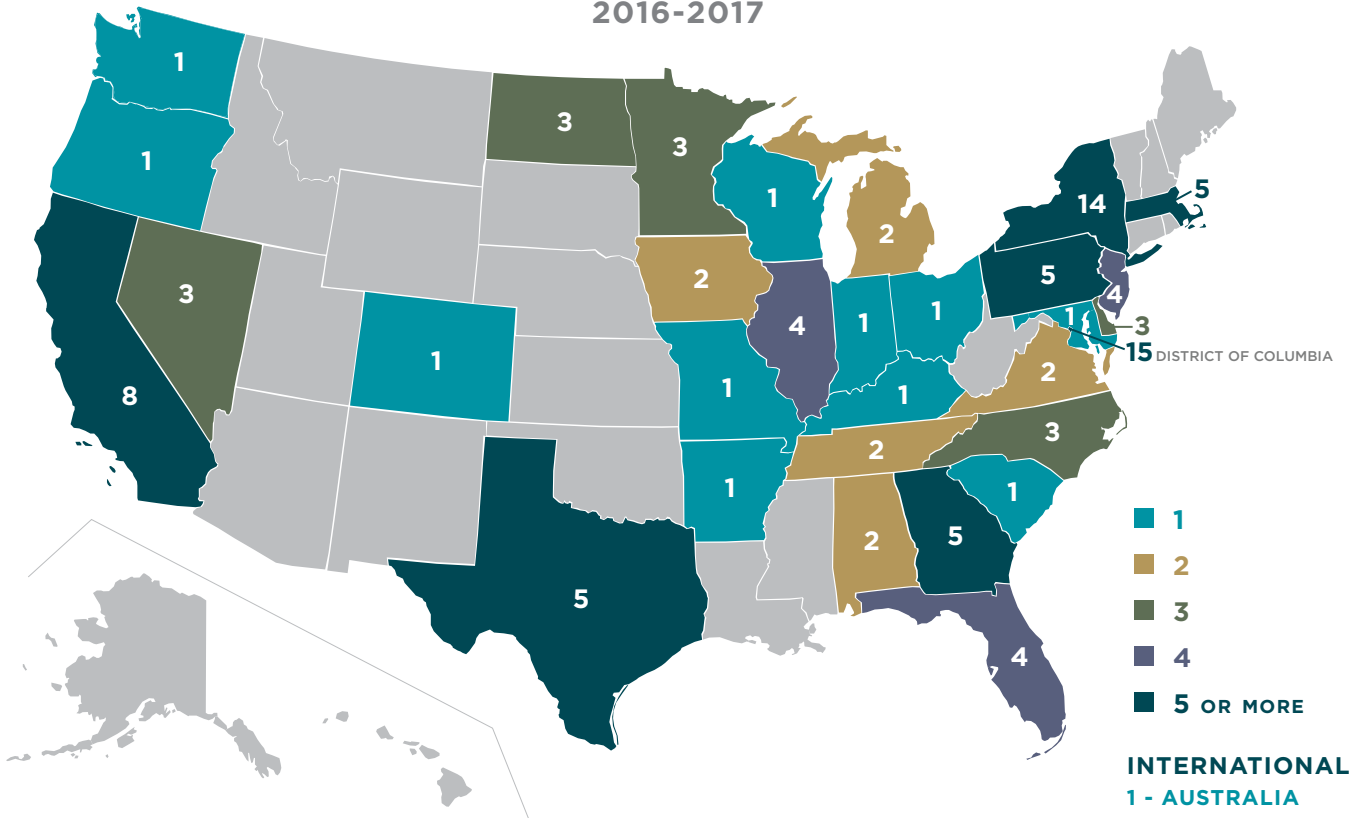
ALI's elected membership is limited to 3,000 individuals, and as such, the Membership Committee seeks to recommend to the Council only those candidates who have demonstrated exceptional professional achievement, outstanding personal character, and an avid interest in law reform. The Committee is committed to maintaining a membership that reflects the broad diversity of highly capable and accomplished lawyers, judges, and academics in the United States and abroad, including by type of practice or other professional work.

During the 2016–2017 fiscal year, 106 distinguished legal professionals were elected upon accepting the nomination and committing to participate in our work. The Institute celebrated these new members at the 2017 Annual Meeting with two special events designed to welcome them to the ALI community and to explain the Institute's many projects and ways to participate in its work. Members make invaluable contributions to our law-reform efforts by donating their time and expertise in numerous areas of the law.

As of June 30, 2017, ALI membership included 2,813 elected members, more than 1,530 life members (a status achieved after 25 years of service to the Institute), 250 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 and Associate Justices of the Supreme Court of the United States are ex officio members for life.

CURRENT MEMBERSHIP	
Elected Members	2813
Life Members	1534
Ex Officio Members	250
Honorary Members	2
<b>Total ALI Membership</b>	<b>4599</b>

## NEW MEMBERS 2016-2017





## MEMBERS BY CATEGORY

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

- 39% PRACTICING ATTORNEYS
- 36% ACADEMICS
- 14% JUDGES
- 4% CORPORATE
- 3% GOVERNMENT
- 4% NONPROFIT



## 106 NEW MEMBERS

- 34 32% ACADEMICS
- 33 31% FIRMS
- 16 15% JUDGES
- 23 22% OTHER\*

\*Other - Corporate, Government, and Nonprofit attorneys

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# CONDENSED CONSOLIDATED STATEMENTS OF ACTIVITIES

Years ended June 30, 2017 and 2016

	2017	2016
<b>UNRESTRICTED</b>		
Publications and royalties	\$5,652,797	5,662,828
Membership dues and other income	1,096,619	1,058,232
ALI CLE revenue	5,514,044	6,150,704
Contributions and grants	545,475	514,909
Investment spending policy income	1,445,829	1,955,035
Net assets released from restrictions used for operations	2,567,908	2,396,196
<b>Total unrestricted operating revenue and other support</b>	<b>16,822,672</b>	<b>17,737,904</b>
Program expenses	8,560,982	9,674,130
General and administrative expenses	4,440,833	4,785,922
<b>Total operating expenses</b>	<b>13,001,815</b>	<b>14,460,052</b>
<b>Increase in unrestricted net assets from operations</b>	<b>3,820,857</b>	<b>3,277,852</b>
Investment return, net of spending policy	3,103,575	(2,098,773)
Bequests	6,001,071	(16,474)
Non-operating expense, net	(1,320,502)	(993,994)
<b>Increase in unrestricted net assets</b>	<b>11,605,001</b>	<b>168,611</b>
<b>TEMPORARILY RESTRICTED</b>		
Investment return	1,171,105	34,031
Net assets released from restrictions used for operations	(2,567,908)	(2,396,196)
Contributions	17,195	11,250
<b>(Decrease) Increase in temporarily restricted net assets</b>	<b>(1,379,608)</b>	<b>(2,350,915)</b>
<b>(DECREASE) INCREASE IN NET ASSETS</b>	<b>10,225,393</b>	<b>(2,182,304)</b>
Net assets, at beginning of year	55,788,103	57,970,407
Net assets, at end of year	66,013,496	55,788,103

# CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

June 30, 2017 and 2016

	2017	2016
<b>ASSETS</b>		
Cash	1,243,631	809,447
Receivables and other assets	4,319,614	2,364,639
Investments, at fair value	61,772,604	53,566,621
Land, buildings, and equipment, net	2,767,673	2,942,364
<b>Total Assets</b>	<b>70,103,522</b>	<b>59,683,071</b>
<b>LIABILITIES AND NET ASSETS</b>		
<b>LIABILITIES</b>		
Accounts payable and accrued expenses	1,318,102	1,332,224
Deferred revenue	888,586	913,014
Postretirement health benefit obligation	1,883,338	1,649,730
<b>Total Liabilities</b>	<b>4,090,026</b>	<b>3,894,968</b>
<b>NET ASSETS</b>		
Unrestricted		
ALI	56,177,083	44,563,195
Noncontrolling Interest in ALIP	418,100	426,987
<b>Total unrestricted</b>	<b>56,595,183</b>	<b>44,990,182</b>
Temporarily restricted	8,978,942	10,358,550
Permanently restricted	439,371	439,371
<b>Total Net Assets</b>	<b>66,013,496</b>	<b>55,788,103</b>
<b>Total Liabilities and Net Assets</b>	<b>70,103,522</b>	<b>59,683,071</b>

*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.

## PRODUCE IMPORTANT PUBLIC-INTEREST WORKS



The Institute's mission is 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 publications may not generate revenue to cover the costs of the projects in the way ALI's Restatements do. Projects on these topics—including Policing; Student Sexual Misconduct; and Government Ethics—are nonetheless of great importance. Gifts to the Institute provide funding necessary to engage in such works that benefit the public interest.

## 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.

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



ALI's Early Career Scholars Medal and annual conference support practical legal scholarship and raise awareness of the Institute's mission while engaging the next generation of eminent legal minds. Contributions to the Institute provide funding to ensure that this important program continues.

## SECURE THE INSTITUTE'S FUTURE



Contributions to the Institute allow us to properly maintain our equipment, technology, and infrastructure, and ensure that any reduction in revenue from print publications will not inhibit ALI's work.

To inquire about making a donation, please contact Kyle Jakob, ALI Development Manager, at 215-243-1660 or [kjakob@ali.org](mailto:kjakob@ali.org).

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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 1992 LIFE MEMBER CLASS GIFT

ALI's new Life Members were honored at a luncheon at the 94th Annual Meeting, where Steven O. Weise of Proskauer Rose LLP presented the 1992 Life Member Class Gift to the Institute. The campaign, co-chaired by Mr. Weise along with Gail B. Agrawal of University of Iowa College of Law; Mitchell A. Lowenthal of Cleary Gottlieb Steen & Hamilton LLP; and Gregory K. Palm of Goldman, Sachs & Co., far exceeded its goal of \$150,000 by raising a record-setting Class Gift of \$188,157. The gift will help fund important aspects of ALI's mission, including the Judges and Public-Sector Lawyers Expense Reimbursement program, the Early Career 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 1993 Life Member Class, which will be honored at the 2018 Annual Meeting.

The American Law Institute is grateful to everyone who contributed to the success of the 1992 Life Member Class Gift campaign. We appreciate your generosity.



*1992 Class Gift Co-Chairs Steven O. Weise, Gail B. Agrawal, and Mitchell A. Lowenthal are joined by then-President Roberta Cooper Ramo to present the 1992 Class Gift.*



*1992 and 1967 Class members gathered to celebrate 25 and 50 years with the Institute.*



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The Institute expresses its deep appreciation of long-time ALI Treasurer Bennett Boskey, who was 99 at the time of his passing in May 2016. Mr. Boskey generously chose to make the Institute part of his legacy by including ALI in his estate plans, bequeathing more than \$4,000,000 to ensure that our work continues without compromise.

For more than 60 years, Mr. Boskey dedicated himself to the Institute, serving on ALI's Council and, from 1975 to 2010, as its Treasurer. He attended more than 50 consecutive Annual Meetings, was an Adviser for five projects, and served on multiple committees. Since at least 1971, his signature "Boskey motion," precisely capturing a draft's procedural status, has concluded the discussion of the draft and set the scene for its approval by the membership at the Annual Meeting.

Mr. Boskey graduated from Williams College in 1935 and Harvard Law School in 1939, where he was a member of the Board of Editors of the *Harvard Law Review*. He then clerked successively for Judge Learned Hand, Justice Stanley Reed, and Chief Justice Harlan F. Stone. During World War II, Mr. Boskey served in the U.S. Army and was discharged as a first lieutenant. He then served as special assistant to the Attorney General in the U.S. Department of Justice, as an adviser on enemy property in the U.S. Department of State, and as an attorney and then deputy general counsel for the Atomic Energy Commission. In 1951, he entered private practice as a partner in the firm that became Volpe, Boskey and Lyons, where he remained until 1996. Throughout his career, Mr. Boskey wrote extensively on legal subjects, particularly on matters relating to practice before the Supreme Court of the United States.

ALI is immensely grateful to Mr. Boskey, 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](mailto:kjakob@ali.org).

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