


2017-2018
ANNUAL REPORT
THE AMERICAN LAW INSTITUTE



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“Such is our work. Yet when the work is done, the formulations have no legal force. They are only suggestions we make to the judges and to the legislators and also to legislatures, in the case of model legislation such as the Model Penal Code or the Principles of Corporate Governance or our forthcoming Principles of the Law of Family Dissolution.

“Happily for us, our suggestions are often taken up by the judges and the legislatures. The Restatements are widely relied on. The Model Penal Code has been the most influential suggestion about criminal law in this century, and recently we were deeply gratified to see the Pennsylvania Supreme Court adopt the Principles of Corporate Governance in a single decision.”

GEOFFREY C. HAZARD, JR.
1999 ANNUAL MEETING

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.

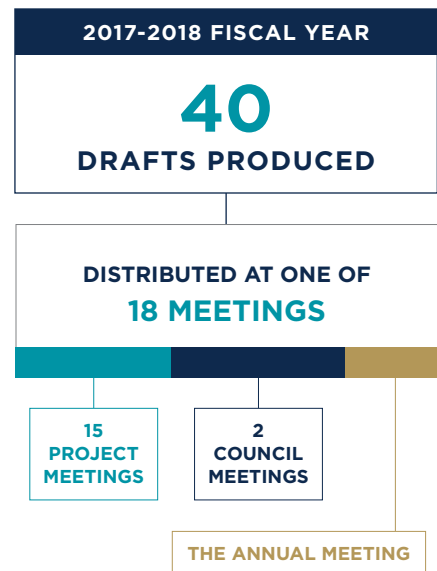
Statutory projects include the Uniform Commercial Code (in conjunction with the Uniform Law Commission), Model Code of Evidence, and Model Penal Code.

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 more than 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 second Annual Report letter as President of The American Law Institute. This year has only deepened my appreciation of the dedication of our members and our Council. The countless volunteer hours

dedicated to ALI by very busy people who are at the top of their profession is extraordinary. To create the ALI today, and to expect this kind of dedication from our members, would be a massive undertaking, were it possible at all. But fortunately for us and for U.S. law, nearly 100 years ago inspirational figures had a vision that remains the foundation for the ALI of today.

At the beginning, the Carnegie Corporation provided \$25,000 for “The Committee on the Establishment of a Permanent Organization for the Improvement of the Law,” which created a report describing the need for and scope of the ALI. Approving the report in 1923, Carnegie gave \$1,075,000 to be distributed over the following 10 years, and continued to increase its grants to the ALI for a total of \$2,494,200 by the end of 1940. The Carnegie Foundation considers the ALI as one of the notable accomplishments from its grant-making commissions in its more than 100 years of history.

The boldness of the ALI undertaking was recognized by the President of the Carnegie Corporation, Henry S. Pritchett, who expressed concerns about the ability of the Institute to create a text that would be respected by the courts. He thought participation and attendance were the keys: “If this end is to be attained, it is essential that a mass of organized opinion be put behind whatever is done by the organization. The first essential to this would seem to be that the Washington Conference shall be largely attended. If the Bench and the Bar are not sufficiently interested in the project to attend in considerable numbers, it would seem to me questionable whether the Corporation would be justified in committing itself to any large expenditure for the setting up of the organization itself.” The 1923 Annual Meeting was attended by Chief Justice Taft and Associate Justices Holmes and Sanford, five judges of circuit courts of appeals, 28 judges of state supreme courts, and special representatives of the American Bar Association and the National Conference of Commissioners on Uniform State Laws.

Today these relationships endure. We continue to have Reporters who are the leading academics in their fields. Highly regarded judicial officers, former and current government officials, and leaders of the practicing bar are active in our projects and on our Council. We are updating traditional Restatements, and, because we are determined to grapple with complex problems in the law, we are creating new Restatements and Principles of Law. With the Uniform Law Commission (also known as NCCUSL) the ALI created and continues to update the Uniform Commercial Code, which has been enacted in every state (with minor variations), the District of Columbia, Puerto Rico, the Virgin Islands, and in part, in the Navajo Nation. The Model Penal Code continues to be the source of statutes, doctrines, and principles of criminal law in every state, as we modernize certain parts of the MPC. And we continue to forge new partnerships, including with the European Law Institute, which is working with us on Principles for a Data Economy.

We do all of this only because of our members’ willingness to serve, to consider, to comment, and to prepare for and attend meetings. The permanency and health of this Institution is based on recognition that together we can do a better job than any one or any small group of us can do alone. The occasional controversy and passionate comments only highlight the continuing importance of our work and our unique ability to bring together people with diverse viewpoints who care deeply about the law. At a time when other professional organizations may falter, we remain remarkably strong in our mission and in the dedication of our members to that mission.

As we approach our 100th Anniversary, please take this opportunity to look back and to look ahead as we define our role over the next 100 years. Please help us today to lay the foundation for future generations of ALI members. Members’ involvement in, and support of, the ALI justifies our pride in being members of the ALI community. I thank you for all that you have done and will do for the ALI.

David F. Levi



DIRECTOR'S MESSAGE

The American Law Institute accomplished a great deal over this past year. Perhaps most visibly, we completed two projects: Restatement of Liability Insurance and Restatement Third of Torts: Liability for

Economic Harm. Liability Insurance was the ALI's first foray into this area. Pioneer projects of this sort pose a particular challenge because they don't have a template to follow. For this reason, I am extremely grateful to Professor Tom Baker of the University of Pennsylvania Law School, the Reporter, and Professor Kyle Logue of the University of Michigan Law School, the Associate Reporter, for their terrific work.

Liability for Economic Harm is the fourth installment of the Restatement Third of Torts to be completed. It follows on the footsteps of Products Liability, Apportionment, and Liability for Physical and Emotional Harm. Two additional installments are currently being drafted: Intentional Torts and Property Torts, which is also being undertaken as part of the Restatement Fourth of Property. We are now planning to launch some additional Torts projects, but the completion of Liability for Economic Harm puts us around the half-way mark towards the completion of the Restatement Third. It is extraordinary that Dean Ward Farnsworth of the University of Texas School of Law was able to be such a distinguished Reporter while carrying out his decanal duties.

During this past year, the ALI also launched an exciting new project: Principles for a Data Economy, which is being undertaken jointly with the European Law Institute (ELI). The project has the ambitious goal to “study, identify, and collate the existing and potential legal rules applicable to transactions in data as an asset and as a tradeable item and assess the ‘fit’ of those rules with these transactions.” For example, when our walking and running steps are recorded by our smart phone or our driving patterns are recorded by our cars, data is being generated and then aggregated across large numbers of individuals. Who owns this valuable information? Who can trade in it? What rights do the various actors have? The project, which will result in a set of transnational principles that could be used by participants in the data economy, has one Reporter from each side of the Atlantic: Christiane Wendehorst, Professor of Private Law at the University of Vienna and President of the ELI, and Neil Cohen, Jeffrey D. Forchelli Professor of Law at Brooklyn Law School. To help coordinate the work of the two institutions, the project also has co-chairs: Lord Thomas of Cwmgiedd, who until recently served as Lord Chief Justice of England and Wales, and Steven Weise, a Proskauer partner and member of the ALI Council.

With the completion of two projects and the launching of one, the ALI now has 16 ongoing projects, which continue to move forward through our process—Adviser/Members Consultative Group meetings, Council meetings, and Annual Meetings—at a good clip, with a flurry of meetings and drafts. Multiple projects are on track for possible completion at the 2019 Annual Meeting. Through skill and hard work, our extraordinary Deputy Director Stephanie Middleton and all of the ALI staff keep these projects, drafts, and meetings moving efficiently through our process. And it is a particular privilege for me to be able to work closely with Stephanie on the substance of each of our projects.

In 2023, the ALI will celebrate its 100th anniversary. For an institution to remain relevant and influential for 100 years is a significant accomplishment. But it is extraordinary to do it in the way in which the ALI has done: producing, decade in and decade out, projects that are enormously influential with courts, legislatures, and other institutions. By providing unbiased clarity, stability, consistency, and fairness in the administration of justice, our work promotes and protects the rule of law, which is essential to democracy and to a healthy economy. To properly mark this milestone, we launched our Anniversary Committee, co-chaired by our wonderful current and previous presidents, David Levi and Roberta Ramo, respectively, which is tasked with planning a volume examining the ALI's history and events that we will do around the country to mark the anniversary, as well as charting a path for our substantive work during our second century. We are particularly interested in getting strategic guidance from our members around the country and exploring how we can connect them more closely to the ALI's substantive work. To that end we have a number of regional events leading up to 2023.

At each project meeting and the Annual Meeting, I marvel at the commitment of our members to strengthen the rule of law. They devote enormous time and intellectual energy to fulfill the ALI's mission to “clarify, modernize, and otherwise improve the law.” Our members also provide vital financial support by becoming Sustaining Members, contributing to our Annual Fund, supporting the class gift after 25 years of membership, and through estate planning and bequests. Without this support we simply would not be able to do our work. I therefore hope that you will keep the ALI in mind as you plan your year-end philanthropic giving. At a time when strengthening that rule of law is a particularly compelling calling, I promise that we will put your contributions to good use!

THE AMERICAN LAW INSTITUTE

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*President Emeritus and Chair of the Council Emeritus

LEADERSHIP CHANGES

COUNCIL ELECTIONS

The American Law Institute's membership has elected two new members to the Institute's Council.



ALI's newest Council members Abbe R. Gluck and Donald B. Ayer

Donald B. Ayer is Of Counsel at Jones Day in Washington, DC. He has specialized in appellate litigation for three decades, arguing 19 cases before the U.S. Supreme Court and many more before other federal and state appellate courts. His experience covers subject areas ranging from criminal appeals to business torts to a wide range of constitutional and technical statutory and regulatory issues. He also has been lead counsel in 20 federal-court jury trials.

After graduating from Stanford University and Harvard Law School, Mr. Ayer clerked for Judge Malcolm R. Wilkey of the D.C. Circuit and for Justice William H. Rehnquist of the U.S. Supreme Court. Before entering private practice in 1990, he served for 10 years in the U.S. Department of Justice as an Assistant U.S. Attorney in San Francisco, as U.S. Attorney in Sacramento, as Principal Deputy Solicitor General under Solicitor General Charles Fried, and as Deputy Attorney General.

Mr. Ayer has served as president of the American Academy of Appellate Lawyers and of the Edward Coke Appellate Inn of Court. He currently teaches a course in Supreme Court advocacy at Georgetown University Law Center and Duke University Law School.

Mr. Ayer is a Fellow of the American Bar Foundation and chairman of the Publications Committee of the Supreme Court Historical Society. He is listed in *Best Lawyers in America* (appellate practice), *Who's Who in America*, *Who's Who in the World*, *Chambers USA* (national appellate), and *D.C. Magazine's* "Top 100 Lawyers in Washington, D.C."

Elected to ALI in 1991, he was a co-chair of the 1991 Life Member Class and serves on the Members Consultative Group for Principles of the Law, Policing.

Abbe R. Gluck is a Professor of Law and the Faculty Director of the Solomon Center for Health Law and Policy at Yale Law School. She joined Yale Law School in 2012, having previously served on the faculty of Columbia Law School. She is an expert on Congress and the political process, federalism, civil procedure, and health law, and is the chair emerita of the Section on Legislation and the Law of the Political Process for the Association of American Law Schools. In 2015, she received Yale Law School's teaching award.

Professor Gluck has extensive experience working as a lawyer in all levels of government. Prior to joining Columbia, she served in the administration of New Jersey Governor Jon Corzine as the special counsel and senior advisor to the New Jersey Attorney General; and in the administration of New York City Mayor Michael Bloomberg, as chief of staff and counsel to the Deputy Mayor for Health and Human Services, senior counsel in the New York City Office of Legal Counsel, and deputy special counsel to the New York City Charter Revision Commission. Prior to law school, she worked in the U.S. Senate for Senator Paul S. Sarbanes of Maryland. Before returning to government work after law school, Professor Gluck was associated with the Paul Weiss firm in New York.

Professor Gluck earned her B.A. from Yale University and her J.D. from Yale Law School. Following law school, she clerked for then-Chief Judge Ralph K. Winter on the U.S. Court of Appeals for the Second Circuit, and for U.S. Supreme Court Justice Ruth Bader Ginsburg.

Among her most recent work is the most extensive empirical study ever conducted about the realities of the congressional law-making process (published in the *Stanford Law Review*): a five-year study on federalism and the Affordable Care Act (*Stanford Law Review*); the *Harvard Law Review's* Supreme Court issue comment on *King v. Burwell*, the 2015 challenge to the ACA; and a study of statutory interpretation in the federal Courts of Appeals, with Judge Richard Posner (*Harvard Law Review*). She also served as co-counsel on a Supreme Court brief in both *King* and the 2012 ACA challenge, *NFIB v. Sebelius*.

Professor Gluck currently serves on numerous boards and commissions, including as an appointed member of both the Uniform Law Commission and the New York State Taskforce on Life and the Law. She was elected to ALI in 2015.

COUNCIL MEMBERS TAKING EMERITUS STATUS

Two Council members took Emeritus status.



John J. (Mike) McKetta III is a member of Graves Dougherty Hearon & Moody P.C. in Austin, TX, where he primarily handles business litigation. He previously practiced in Washington, DC, at Covington & Burling.

Mr. McKetta was elected to the ALI in 1991 and was elected to the Council in 1998. He is Chair of the ALI's Investment Committee and previously served as an Adviser on Restatement Third, Torts: Liability for Economic Harm, and Restatement Third, Agency. He is on the Members Consultative Group for Restatement of the Law, Consumer Contracts, and previously served on the Members Consultative Groups for Restatement of the Law, Liability Insurance; Restatement Third, The Law Governing Lawyers; Restatement Third, Torts: Apportionment of Liability; and Complex Litigation: Statutory Recommendations and Analysis.

In his career, Mr. McKetta has tried more than 70 cases to conclusion. In 2005, he was selected as the Commercial Litigation winner in the *Austin Business Journal's* Best of Business Attorneys and Corporate Counsel Awards, among other awards.



Mary Kay Kane is Distinguished Professor Emeritus at the University of California, Hastings College of the Law, where she served as Dean from 1993 to 2006 and as Chancellor from 2000 to 2006. She is a recognized expert in the field of federal civil procedure.

Prior to joining the Hastings faculty in 1977, she was on the law faculty of the State University of New York at Buffalo and served three years as the co-director of a national science foundation project. She is a past president of the Association of American Law Schools.

Professor Kane was elected to the ALI in December 1978 and was elected to the Council in December 1997. She served as Chair of the Governance Committee and was the Co-Reporter for ALI's Complex Litigation: Statutory Recommendations and Analysis project, developing proposals for handling multiparty, multi-forum disputes in the federal and state courts. She also served as an Adviser on Principles of the Law of Aggregate Litigation; Restatement of the Law Third, Torts: Apportionment of Liability; and the ALI/UNIDROIT Principles of Transnational Civil Procedure.

Professor Kane's major area of interest is civil procedure. She has written several articles and books in that field, including *Civil Procedure in a Nutshell*, the eighth edition of which was published in 2018. She also coauthored a Hornbook on *Civil Procedure*, whose fifth edition was published in 2015, a Hornbook on the *Law of Federal Courts*, whose eighth edition was published in 2017, as well as the second, third, and fourth editions of the multivolume national treatise, *Federal Practice and Procedure*.

THE HENRY J. FRIENDLY MEDAL

Established in memory of Judge Friendly and endowed by his former 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. This year, the Henry J. Friendly Medal was presented to a candidate who is not only deeply deserving but also maintained a special personal and professional relationship with Judge Friendly over the course of her notable career.

Supreme Court Associate Justice Ruth Bader Ginsburg was presented the Henry J. Friendly Medal at this year's Annual Meeting by John G. Roberts, Jr., Chief Justice of the United States. Chief Justice Roberts shared his admiration for Judge Friendly's legacy of work stating, "Almost 60 years since he started writing them, Judge Friendly's opinions retain a distinctive power to make us better lawyers and better judges." He commented on Justice Ginsburg's close association with Judge Friendly, while highlighting the many similarities between them.

"Like Judge Friendly, Ruth is equal parts careful scholar and evenhanded jurist," said the Chief Justice. "And like Judge Friendly, she derives her authority from the strength of her contribution to a conversation, and never from its volume."

In her acceptance, Justice Ginsburg spoke appreciatively of her relationship with Judge Friendly, his insightful contributions to the law, and his lasting legacy maintained by his work and by the scholarly and biographical works written to honor him. "The opinions he wrote on a wide range of subjects and his extracurricular writings are his legacy," she said. "They will endure to guide the bar and bench for generations."

In closing, Justice Ginsburg reflected on ALI and her work with the Institute:

"My affiliation with the Institute, as Council Member and Adviser to the Restatement Second of Judgments, provided the best learning experiences I have had since law school. The Supreme Court, as other courts, state and federal, often turns to Restatements and other ALI publications for enlightenment and guidance. The Supreme Court has done so since 1933, when an opinion of the Court cited a tentative draft of the Restatement of Trusts. In common with jurists across the U.S.A. and abroad, I look forward to continuing aid from ALI products. A thousand thanks for an award I treasure and every best wish for the discussions and deliberations ahead."



Chief Justice Roberts presents the Friendly Medal to Associate Justice Ginsburg.



Chief Justice Roberts with Henry J. Friendly Medal recipient Associate Justice Ginsburg and ALI President David F. Levi

ANNUAL MEETING MEMBERS RECEPTION

At this year's Annual Meeting Members Reception, ALI President David F. Levi was joined by U.S. Supreme Court Associate Justice Elena Kagan and Paul D. Clement of Kirkland & Ellis LLP for a lively discussion during which they each shared important insights from their careers. Justice Kagan and Mr. Clement remarked on their unique experiences as U.S. Solicitors General, including appearing before Associate Justice Antonin Scalia.

During the discussion, Justice Kagan credited Justice Scalia with changing the nature of a Supreme Court argument. She noted that prior to his joining the bench, there were few questions from the Justices during oral argument. The current practice of the Justices asking questions throughout an argument evolved from his methods.

Mr. Clement (a former clerk of Justice Scalia) shared his own recollections from his time appearing before the Justice as U.S. Solicitor General, calling arguing in front of him "very empowering for the advocate." Mr. Clement regarded the opportunity as a true privilege, stating "Arguing in front of [Justice Scalia]—I think it's one of the great joys that a Supreme Court advocate had during the time that Justice Scalia was on the bench."



David F. Levi, Associate Justice Elena Kagan, and Paul D. Clement



Associate Justice Elena Kagan, Richard L. Revesz, Paul D. Clement, and David F. Levi speaking before the discussion

2019 ANNUAL MEETING

Remember to save the date for the 2019 Annual Meeting, May 20-22, in Washington, DC. It is anticipated that two projects may be presented for final approval at the Meeting:

Restatement of the Law, Charitable Nonprofit Organizations

Restatement of the Law, The U.S. Law of International Commercial and Investor-State Arbitration

PLEASE DON'T MISS YOUR CHANCE TO LEND YOUR VOICE AND YOUR VOTE TO THESE IMPORTANT PROJECTS.



ECONOMIC HARM TORTS AND LIABILITY INSURANCE APPROVED

ALI members voted at this year's Annual Meeting to approve two Restatement projects: Restatement Third, Torts: Liability for Economic Harm, and Restatement of the Law, Liability Insurance. The project Reporters are Ward Farnsworth, Dean of the University of Texas at Austin School of Law (Torts), and Tom Baker of the University of Pennsylvania Law School and Associate Reporter Kyle D. Logue of the University of Michigan Law School (Liability Insurance).

With the approval of the drafts, Dean Farnsworth and Professors Baker and Logue are preparing the Institute's official texts 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 agreed to during discussion with the membership or by motions approved at the Annual Meetings.

ECONOMIC HARM TORTS

Liability for Economic Harm is the fourth installment of the Restatement Third of Torts to be completed. It follows on the footsteps of Products Liability, Apportionment of Liability, and Liability for Physical and Emotional Harm. Two additional projects are currently being drafted: Intentional Torts to Persons and Property Torts, which is also being undertaken as part of the Restatement Fourth of Property.

The Economic Harm Torts Restatement covers the topics of unintentional infliction of economic loss, including professional negligence, negligent misrepresentation, negligent performance of services, and public nuisance. It also addresses fraud, breach of fiduciary duty, interference with contract, unjustifiable litigation, and civil conspiracy.

"Recovery in tort for economic loss has been a growth area in American law over the last few decades," said ALI Project Reporter Ward Farnsworth. "There has been a lot of judicial commentary and a lot of scholarly commentary on when it ought to be possible to recover in tort for a pure economic loss. Our goal in this Restatement has been to capture the best insights of the commentary while staying true to where the case law has been going."



Several torts in this project were covered in the Second Restatement of Torts but required revision because of developments in the law. In addition to updating the economic torts covered in the Second Restatement, this Restatement addresses some topics not covered in prior Restatements. These include the economic-loss rule outside the area of products liability, exceptions to the economic-loss rule, bad-faith breach of contract as a tort, and the application of principles of comparative responsibility to economic torts.

"It is an underrated branch of tort law," continued Dean Farnsworth. "Your typical first-year law-school course on the law of torts is all about accidents, personal injury, and property damage. This branch of the Restatement of Torts comprises torts involving negligence or intentional wrongdoing that produce pure economic loss. Economic torts are no less significant than any other kind, as the victims of Bernie Madoff or any other Ponzi schemer can attest."

LIABILITY INSURANCE

The Liability Insurance project was launched in 2010. The Reporters worked closely with a diverse team of Advisers and a Members Consultative Group that included lawyers who represent insurance companies, lawyers who represent policyholders, law professors, and judges, and nearly 30 drafts were produced through the life cycle of the project.

The Liability Insurance Restatement has four Chapters covering a range of liability insurance law topics, including basic contract-law doctrines that have special application in the insurance-law context; insurance-law doctrines relating to duties of insurers and insureds in the management of potentially insured liability actions; general principles relating to the risks insured that are common to most forms of liability insurance; and enforceability and remedies.

“Liability insurance law was a natural area of law for ALI to tackle in a Restatement,” said Professor Baker. “Liability insurance is an important meeting place between tort and contract law, legal fields in which the ALI has a long tradition of involvement. Liability insurance case law can also vary from one jurisdiction to the next. By closely examining the existing common law, we believe that the membership approved a product that will be quite valuable to the courts.”

“Being a Reporter on the Restatement of the Law of Liability Insurance has been among the most rewarding jobs I have had as a law professor,” said Professor Logue. “I did expect to learn a lot, and to grow professionally through the experience, but I did not expect it to be as transformative as it has been. There’s a learning experience about the field itself, and it was also a learning experience about the process of creating a Restatement. It is a very collaborative exercise. Tom and I both owe a debt of gratitude to all of the project participants who suggested ideas, provided guidance, and helped us identify improvements as we completed this process.”



ALI WOULD LIKE TO THANK THE REPORTERS, PROJECT PARTICIPANTS, AND ALI MEMBERS WHO CONTRIBUTED THEIR TIME, WISDOM, AND GUIDANCE TO THESE PROJECTS.

UNIFORM COMMERCIAL CODE

A joint project of ALI and the Uniform Law Commission, the UCC was promulgated to harmonize the law of commercial transactions. At the 2018 Annual Meeting, the membership voted to approve amendments to Articles 1, 3, 8, and 9, considering in detail the substance of the rules that would govern rights with respect to electronic mortgage notes and related mortgage notes. A separate set of amendments revises §§ 9-406 and 9-408 on anti-assignment overrides. The amendments were approved by the Uniform Law Commission at its annual meeting in July 2018. The Uniform Law Commission plans to seek enactment of amendments to Articles 1, 3, 8, and 9 in the states only if and when a federal Repository Act is adopted. This will not affect the enactment of the amendments to §§ 9-406 and 9-408.

Reporter:

Steven L. Harris, Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, IL

Drafting Committee Chair:

Edwin E. Smith, Morgan, Lewis & Bockius LLP, Boston, MA



CURRENT PROJECTS

RESTATEMENTS

Restatement of the Law, The Law of American Indians

This Restatement cements the foundational principles of American Indian law. Significant portions of Chapters on Federal–Tribal Relations and Tribal Authority have been approved by the membership. Portions of Chapters on State–Tribal Relations, Tribal Economic Development, Indian Country Criminal Jurisdiction, and Natural Resources have also been drafted.

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 Gifts: Solicitation, 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. Portions of Children in Families and Children in the Justice System were approved at the 2018 Annual Meeting.

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. Chapters 1 (Introduction) and 2 (Domicile) and a portion of Chapter 5 (Choice of Law) have been approved by the Council but have not yet been presented to the membership for approval.

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, The Law of American Indians,
project meeting*



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



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

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.

“When a project starts, you have a group of [members] who do not necessarily know each other. As they work together there develops a sense of trust among them, which enables them to develop a consensus that would otherwise be difficult to achieve.

“Over time one begins to learn what's distinctive about [the group], and to see the diverse set of talents that they bring and the good faith and intelligence that they bring, even when they might say something with which initially you don't agree. I think that sense of trust and connection helps people put aside their differences and strive to achieve consensus.”

DANIEL J. MELTZER
INTERVIEW ON THE OCCASION OF ALI'S 90TH ANNIVERSARY



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 approved by the Council in 2018, but has not yet been presented to the membership for approval.

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. Several Sections have been approved by the Council but have not yet been presented to the membership for approval.

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 and Investor-State Arbitration

This project restates the U.S. law of international commercial and investor-state arbitration. Tentative Drafts of all Chapters, including material on definitions, enforcement of the arbitration agreement, recognition and enforcement of awards, post-award judicial relief, investor-State arbitration, preemption, and the judicial role in connection with the arbitral proceeding, have been approved by the Council and the membership. A Proposed Final Draft of the entire Restatement will be presented for approval at the 2019 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 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

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

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. All six Chapters—Definitions; 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 Council has approved Chapter 1 on Purpose, Scope, and Definitions, and portions of Chapter 2 on Data Privacy Principles, including Transparency Statement. The final portion, Chapter 3 on Accountability and Redress, has 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



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



NEW PROJECT

Principles for a Data Economy

Conducted jointly with the European Law Institute, the project aims to develop a set of transnational Principles to provide guidance to parties in the data economy, as well as to courts and legislators worldwide. Because data does not have a “location,” the goal is to have a common set of Principles that would apply wherever the parties happen to be. The project was approved by the Council in January 2018 and held its first ALI project meeting on October 26, 2018.

Reporters:

Neil B. Cohen, Brooklyn Law School,
Brooklyn, NY

Christiane C. Wendehorst, University
of Vienna, Department of Civil Law,
Vienna, Austria

Chairs:

Lord Thomas of Cwmgiedd, Essex Court
Chambers, London, United Kingdom

Steven O. Weise, Proskauer Rose LLP,
Los Angeles, CA

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. Chapter 2 on Gifts from and Financial Relationships with Prohibited Sources, and four Sections of Chapter 5 on Post-Government Employment Restrictions were approved at the 2018 Annual Meeting. A portion of Chapter 4 on the Election-Related Activities of Public Servants was approved at the 2015 Annual Meeting.

Portions of the Chapter on Conflicts of Interest and the Outside Activities of Public Servants have also been drafted. 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 Chapter on Use of Force was approved at the 2017 Annual Meeting, and portions of several other Chapters, including those on Police Encounters, Policing in the Absence of Individualized Suspicion, and Police Questioning, have been drafted.

Reporter:

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

Associate Reporters:

Brandon L. Garrett, Duke University School of Law,
Durham, NC

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 student misconduct. Several Chapters have been drafted, including those on notice and clarity of policies; support and interim measures; reporting; inquiries and investigations; informal and formal resolution of complaints; and sanctions. Additional portions of the project will cover processes for appeals; confidentiality and disclosure; and interaction between campus processes and the criminal justice system. Three Chapters were presented for discussion at the 2018 Annual Meeting.

Reporter:

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

Associate Reporter:

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



Principles of the Law, Government Ethics, Annual Meeting



Principles of the Law, Policing, project meeting



Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities, Annual Meeting

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 Sexual Assault, Sexual Assault of a Vulnerable Person, Sexual Assault by Exploitation, Offensive 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 2020 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

ALI AND NCSL ROUNDTABLE CONFERENCE



CURRENT AND POSSIBLE LEGISLATIVE APPROACHES TO RESTORATION OF RIGHTS AND OPPORTUNITIES

The American Law Institute and the National Conference of State Legislatures (NCSL) sponsored the joint conference “Current and Possible Legislative Approaches to Restoration of Rights and Opportunities” following a criminal conviction.

Roundtable participants included judges, legislators, practitioners, advocates, and academics who came together to provide a wide range of perspectives and experiences with the aim of helping others develop effective strategies going forward.



Collateral Consequences Sections of the recently approved Model Penal Code: Sentencing project, which provide a comprehensive scheme for managing collateral consequences of criminal convictions through the courts, were discussed. Additionally, several participants presented the approaches that they have implemented in their states. The roundtable spent some time debating two varying approaches to restoration of rights—forgiving or forgetting.



The Model Penal Code proposal and other recent national law-reform proposals recommend giving courts the power to remove mandatory restrictions as early as sentencing and to certify rehabilitation after a period of law-abiding conduct. Most states have gone in another direction by giving their courts authority to limit public access to criminal records or even to direct their destruction.

The disagreement about how people with a criminal record may reenter society—should they be forgiven or instead have their past forgotten—was discussed in depth by the participants.



The day’s conversation was moderated by U.S. District Judge Paul L. Friedman, and was facilitated by a series of issue papers prepared for the conference. These papers are now available in the “Managing Collateral Consequences in the Information Age” issue of the *Federal Sentencing Reporter*. You may request a copy of the publication by emailing communications@ali.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 the Law, 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 207,000 times through June 2018.

RECENT PUBLICATIONS

Restatement of the Law Fourth,
The Foreign Relations Law of the United
States: Selected Topics in Treaties,
Jurisdiction, and Sovereign Immunity

Restatement of the Law Second, Torts
§§ 1-309, Appendix Volume

A Concise Restatement of Donative
Transfers and Trusts

IN THE U.S. SUPREME COURT

During its October 2017 Term, the U.S. Supreme Court cited the work of The American Law Institute in eight cases:

ARTIS V. DISTRICT OF COLUMBIA 138 S. CT. 594 (JAN. 22, 2018)

Majority citing **Study of the Division of Jurisdiction Between State and Federal Courts** (1969)

CARPENTER V. UNITED STATES 138 S. CT. 2206 (JUNE 22, 2018)

Dissent quoting **Restatement Second, Torts** §§ 496B and 496C(1) and Comment *b*

CURRIER V. VIRGINIA 138 S. CT. 2144 (JUNE 22, 2018)

Majority citing **Restatement Second, Judgments** § 19 and quoting § 28(1)

EPIC SYSTEMS CORP. V. LEWIS 138 S. CT. 1612 (MAY 21, 2018)

Concurrence citing **Restatement Second, Contracts** §§ 178 and 179

JESNER V. ARAB BANK, PLC 138 S. CT. 1386 (APR. 24, 2018)

Majority quoting **Model Penal Code** § 2.07(1)(c); dissent citing **Restatement Third, The Foreign Relations Law of the United States** § 702 and the Introductory Note to Part II, and quoting § 111, Comment *h*, and § 404, Reporters' Note 1

MASTERPIECE CAKESHOP, LTD. V. COLORADO CIVIL RIGHTS COMM'N 138 S. CT. 1719 (JUNE 4, 2018)

Concurrence citing **Model Penal Code** §§ 1.13 and 2.02(2)(a)(i), and citing **Restatement Second, Torts** § 8A

SESSIONS V. DIMAYA 138 S. CT. 1204 (APR. 17, 2018)

Dissent citing **Model Penal Code** § 221.1, Comment 3(c)

UPPER SKAGIT INDIAN TRIBE V. LUNDGREN 138 S. CT. 1649 (MAY 21, 2018)

Dissent citing and quoting **Restatement Second, Foreign Relations Law of the United States** § 68 (citing § 68(b) of the Official Text and quoting § 71(b) and Comment *c* of Proposed Official Draft, 1962, which is now § 68 of the Official Text); quoting **Restatement Third, The Foreign Relations Law of the United States** § 455(1)(c), and quoting **Restatement Fourth, The Foreign Relations Law of the United States – Sovereign Immunity** § 456(2) (T.D. No. 2, 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:

2DP BLANDING, LLC V. PALMER 423 P.3D 1247 (UTAH 2017)

Supreme Court of Utah, adopting **Restatement, Restitution** § 74, Comment *i*

FRANCHISE TAX BOARD OF CALIFORNIA V. HYATT 407 P.3D 717 (NEV. 2017), CERT. GRANTED, 138 S. CT. 2710 (2018)

Supreme Court of Nevada, adopting **Restatement Second, Torts** § 46, Comments *j* and *k*

GREAT NORTHERN INSURANCE COMPANY V. HONEYWELL INTERNATIONAL, INC. 911 N.W.2D 510 (MINN. 2018)

Supreme Court of Minnesota, adopting **Restatement Third, Torts: Products Liability** § 10

HOWARD V. ASPEN WAY ENTERPRISES, INC. 406 P.3D 1271 (WYO. 2017)

Supreme Court of Wyoming, adopting **Restatement Second, Torts** §§ 652B and 652H

KIRSCH V. TRABER 414 P.3D 818 (NEV. 2018)

Supreme Court of Nevada, adopting **Restatement Second, Judgments** § 13

MCELHANEY V. THOMAS 405 P.3D 1214 (KAN. 2017)

Supreme Court of Kansas, adopting **Restatement Second, Torts** §§ 13 and 18

RESTATEMENT FOURTH, FOREIGN RELATIONS LAW OFFICIAL TEXT

Restatement of the Law Fourth, The Foreign Relations Law of the United States, updates the influential Restatement of the Law Third, The Foreign Relations Law of the United States, published in 1987. A lot has changed since 1987, and nowhere is that more evident than in the world of foreign relations. In 2012, recognizing that the Restatement Third was no longer a true reflection of the present state of the law, ALI decided to reexamine U.S. foreign relations law.

Restatement of the Law Fourth, The Foreign Relations Law of the United States: Selected Topics in Treaties, Jurisdiction, and Sovereign Immunity, available now for purchase, addresses the U.S. approach to three areas of foreign relations law, with limitations:

Treaties but not other forms of international agreements;

U.S. views on **Jurisdiction**, but not generally on separation of powers or federalism; and

Sovereign Immunity, but not other immunities required or regulated by international law.

Additional areas of the Restatement Third are likely to be addressed in future discrete projects within the Restatement Fourth.

The project was 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), Jurisdiction Reporters William S. Dodge of University of California, Davis School of Law, and Anthea Roberts of Australian National University; Sovereign Immunity Reporters David P. Stewart of Georgetown University Law Center and Ingrid Wuerth of Vanderbilt University Law School; and Treaties Reporters Curtis A. Bradley of Duke University School of Law and Edward T. Swaine of George Washington University Law School.

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EARLY CAREER SCHOLARS MEDAL CONFERENCE

THE FUTURE OF INSURANCE LAW AND REGULATION

On April 6, 2018, ALI Early Career Scholars Medal recipient Daniel Schwarcz of University of Minnesota Law School organized a conference in Washington, DC, on The Future of Insurance Law and Regulation. The event evaluated developments in insurance law and regulation over the last decade and explored competing visions for mediating the relationships among courts, regulators, and insurance-market participants in the future.

The conference began with a keynote address by Roy Woodall, a former member of the Financial Stability Oversight Council, and was followed by four panel discussions:

Panel 1: Balancing State and Federal Regulation of Insurance Markets

Moderator: Howell E. Jackson, Harvard Law School

Panelists: Martin Grace, Temple University Fox School of Business; Mike McRaith, former Director of the U.S. Department of the Treasury's Federal Insurance Office; Patricia A. McCoy, Boston College Law School; Ted Nickel, Wisconsin Commissioner of Insurance (Immediate Past NAIC President); Thomas Sullivan, Federal Reserve System

Panel 2: Modernizing Insurance Rate and Market Regulation

Moderator: William H. McCartney, former director of insurance for Nebraska and President of NAIC

Panelists: Birny Birnbaum, Center for Economic Justice; Da Lin, Harvard Law School; Dave F. Snyder, Property Casualty Insurers Association of America; Rick Swedloff, Rutgers Law School – Camden

Panel 3: The Role of Courts and Regulators in Policing Insurance Policy Terms

Moderator: Daniel Schwarcz, University of Minnesota Law School

Panelists: Michelle Boardman, George Mason University Antonin Scalia Law School; Omri Ben-Shahar, University of Chicago Law School; Erik S. Knutsen, Queen's University Faculty of Law; Jeffrey W. Stempel, University of Nevada, Las Vegas, William S. Boyd School of Law

Panel 4: Key Unresolved Issues in the Restatement of Liability Insurance Law and Designing a Restatement of First-Party Insurance Law

Moderator: Jay M. Feinman, Rutgers Law School – Camden

Panelists: Kenneth S. Abraham, University of Virginia School of Law; Robert F. Cusumano, formerly General Counsel of ACE Ltd.; Kyle D. Logue, University of Michigan Law School; Lorelie S. Masters, Hunton Andrews Kurth



Daniel Schwarcz, Colleen V. Chien, and Mariano-Florentino Cuéllar at the 95th Annual Meeting

PATENT ASSERTION ENTITIES

At the 95th Annual Meeting, 2017 Early Career Scholars Medal Co-Recipient Colleen V. Chien of Santa Clara University School of Law spoke to the membership about her scholarship on domestic and international patent law and policy issues. She explored how her research development on “patent assertion entities,” a term used for firms that use their patents primarily to sue others rather than to support the development of technology, has contributed to a much-needed correction in the patent system and a refocus on innovation.

Professor Chien also talked about her work in criminal justice reform. She discussed her efforts in documenting the “second chance gap,” the difference between those eligible for and those receiving second chances. Characterizing the Annual Meeting audience as “a roomful of people who can make a difference,” she urged that the application burden for second chances be reduced, that economies of scale be increased, and that two kinds of code, computer code and legal code, must work together to deliver justice for those seeking to restore their second chances.

Professor Chien's Early Career Scholars Medal Conference will take place in April 2019.

VIDEOS OF THE PANEL DISCUSSIONS ARE AVAILABLE AT WWW.VIMEO.COM/AMERICANLAWINSTITUTE

ALI CLE

American Law Institute Continuing Legal Education (ALI CLE) is one of the most venerable and respected names in continuing legal education. Since its founding in 1947, ALI CLE has provided top-tier educational programming for lawyers across the country in a broad spectrum of practice areas and settings. Integral to ALI CLE's national reputation for excellence are the thought leaders in its faculty: noted judges, scholars, and practitioners, including many ALI members.

Offering national multiday conferences, timely audio and video webcasts, an expansive curriculum of online archived programs, and two convenient subscription plans, ALI CLE meets lawyers' educational needs on their own terms.

ALI CLE's in-person courses are designed for lawyers seeking a more immersive experience, including personal access to the country's top lawyers and opportunities to network with nationally based peers. This past year featured postrecession highs in attendance at two ALI CLE signature conferences, *Legal Issues in Museum Administration 2018* (cosponsored by the Smithsonian Institution) and *Eminent Domain and Land Valuation Litigation 2018*. Highlights of other in-person courses include a keynote discussion at *Accountants' Liability 2017* featuring SEC Chair Jay Clayton and SEC Chief Accountant Wesley Bricker; a plenary session on the future of legal practice led by Law21 founder Jordan Furlong at the *Professional Development Institute 2017* (cosponsored by NALP); judicial perspectives provided by six federal judges on eight panels at *Current Developments in Employment Law 2018*; a keynote by Dalia Blass, SEC Director of the Division of Investment Management, plus 11 other SEC, DOL, and IRS speakers at *Life Insurance Company Products 2017*; a keynote by Andrew Calamari, SEC Director of the New York Regional Office, at *Securities and Shareholder Litigation 2017*; and a forward-looking examination of bitcoin and initial coin offerings by industry experts at *Regulation D Offerings and Private Placements 2018*.

ALI CLE also had a busy distance-programming year. The swift enactment of the Tax Cuts and Jobs Act of 2017 on December 22, 2017, and its near immediate effectiveness on January 1, 2018, left practitioners urgently seeking guidance on the law's implications for their clients, both domestic and international. As a national CLE organization with a broad reach, ALI CLE was able to move quickly and deliver a series of highly successful live audio and video webcasts examining the effects of tax reform across a range of practice areas. Our first tax-reform webcast, *Confronting the Challenges of Tax Reform: What Happened to the Certainty of Death and Taxes?*, cosponsored by the American College of Trust and Estate Counsel (ACTEC), was broadcast live on January 11, 2018. Because of its immense popularity, the program was rebroadcast three times that month, each time garnering high interest and attendance. With IRS guidance still emerging, ALI CLE continues to track and provide essential updates to lawyers on the latest tax-reform developments.

Collaboration with ALI continues to play an important role in our programming. Among the many ALI members who volunteer their time as planning chairs and faculty for ALI CLE programs, Judge M. Margaret McKeown chaired our ethics session at this year's ALI Annual Meeting, *The Ethics of Ex Parte Contact: From Watergate to the Internet Era – When Can We Talk?*, also featuring Pamela A. Bresnahan, Paul Fishman, Wallace B. Jefferson, and author Geoff Shepard. Other ALI members chairing ALI CLE in-person programs over the past year were Alan J. Berkeley, Greta E. Cowart, Joseph Z. Fleming, Richard R. Goldberg, Malcolm A. Moore, Edwin E. Smith, Joseph T. Waldo, and Steven O. Weise. This year features an in-depth video webcast with ALI Reporter Tom Baker on the recently approved Restatement of the Law, Liability Insurance, with additional ALI project webcasts being planned for the coming months.

In addition to its substantive and skills webcast curriculum, ALI CLE continues to expand its offerings on technology topics, such as blockchain, bitcoin, smart contracts, paperless practice, software and technology tools, cloud computing, electronic record retention, initial coin offerings, digital wills, and ethics and artificial intelligence in legal practice. As the educational needs of lawyers evolve, ALI CLE positions itself to meet them.



2018 Annual Meeting ALI CLE Program: The Ethics of Ex Parte Contact: From Watergate to the Internet Era – When Can We Talk?

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 2017–2018 fiscal year, 143 distinguished legal professionals were elected upon accepting the nomination and committing to participate in our work. The Institute celebrated these new members at the 2018 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, 2018, ALI membership included 2,812 elected members, 1,576 life members (a status achieved after 25 years of service to the Institute), 257 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	2,812
Life Members	1,576
Ex Officio Members	257
Honorary Members	2
Total ALI Membership	4,647

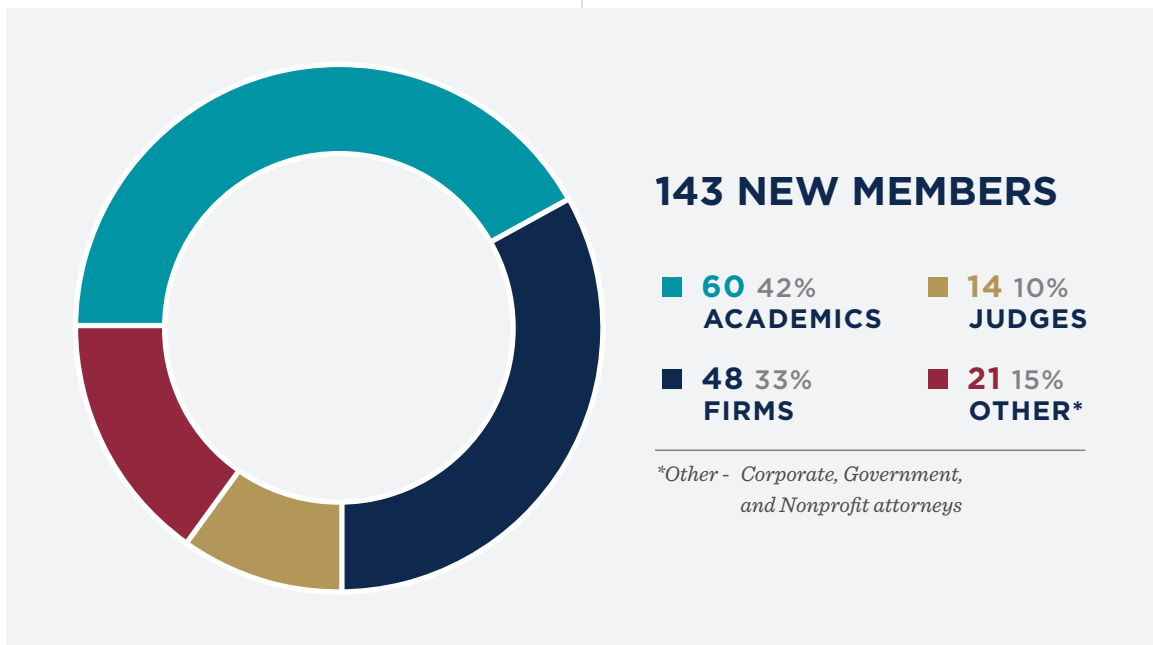
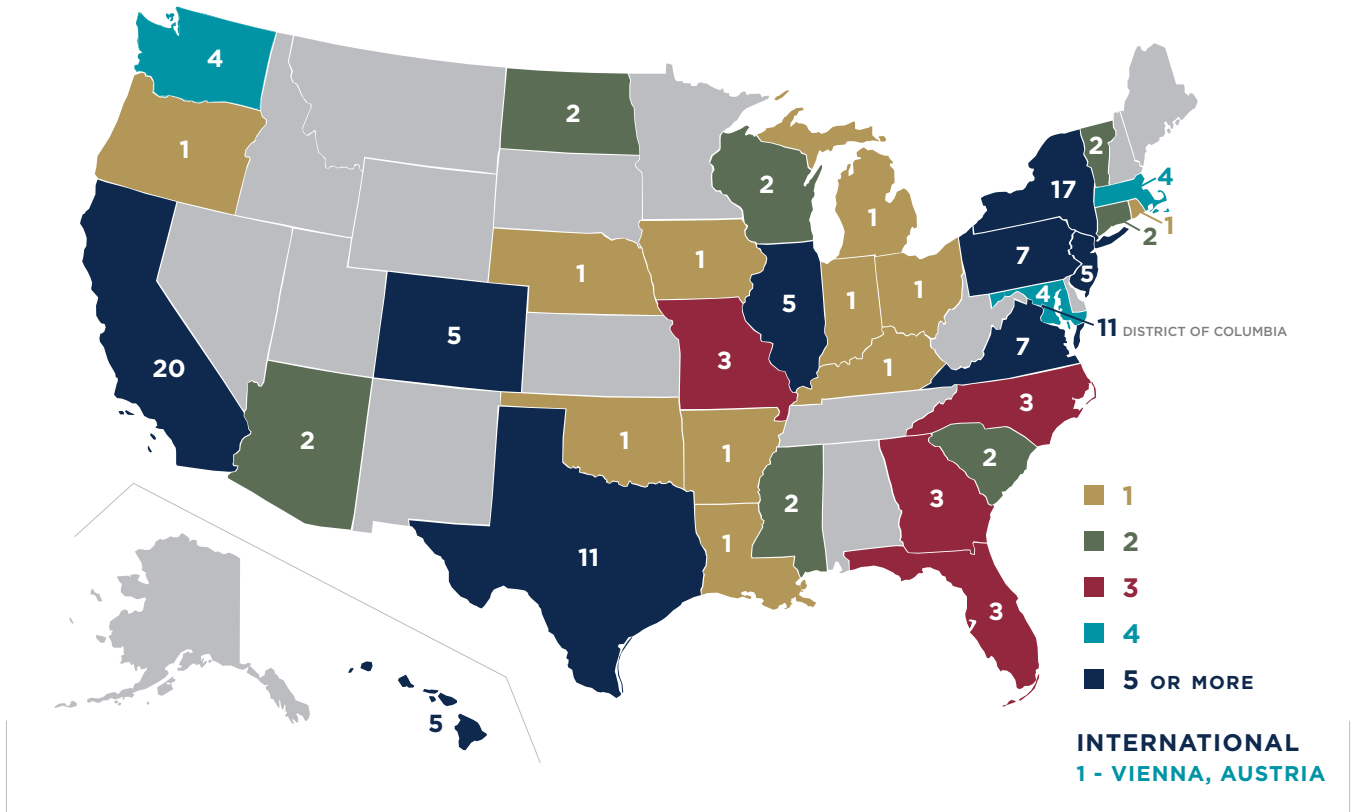


MEMBERS BY CATEGORY

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

- **39% PRACTICING ATTORNEYS**
- **37% ACADEMICS**
- **13% JUDGES**
- **11% CORPORATE, GOVERNMENT, NONPROFIT**

NEW MEMBERS 2017-2018



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 Anthony J. Scirica, U.S. Court of Appeals, Third Circuit
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(2018-2019)**

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Vance K. Opperman, Key Investment, Inc.

Peter A. Winograd, University of New Mexico School of Law

CONDENSED CONSOLIDATED STATEMENTS OF ACTIVITIES

FOR THE YEARS ENDED JUNE 30, 2018 AND 2017

UNRESTRICTED	2018	2017
Publication and royalty revenue	\$5,509,241	\$5,652,797
Membership dues and other income	1,112,689	1,096,619
ALI CLE revenue	5,380,113	5,514,044
Contributions and grants	636,079	545,475
Investment spending policy income	1,556,743	1,445,829
Net assets released from purpose restrictions	2,689,328	2,567,908
Total unrestricted operating revenue and other support	16,884,193	16,822,672
Program expenses	9,033,600	8,560,982
General and administrative expenses	4,048,696	4,440,833
Total operating expenses	13,082,296	13,001,815
Increase in unrestricted net assets from operations	3,801,897	3,820,857
Investment return, net of spending policy	2,561,003	3,103,575
Bequests	448,001	6,001,071
Non-operating changes, net	(963,131)	(1,320,502)
Increase in unrestricted net assets	5,847,770	11,605,001
TEMPORARILY RESTRICTED		
Investment return	725,534	1,171,105
Net assets released from purpose restrictions	(2,689,328)	(2,567,908)
Contributions and grants	5,000	17,195
Decrease in temporarily restricted net assets	(1,958,794)	(1,379,608)
PERMANENTLY RESTRICTED		
Investment return	(334)	—
Contributions and grants	223,474	—
Increase in permanently restricted net assets	223,140	—
INCREASE IN NET ASSETS	4,112,116	10,225,393
Net assets, at beginning of year	66,013,496	55,788,103
Net assets, at end of year	\$70,125,612	66,013,496

CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

AS OF JUNE 30, 2018 AND 2017

ASSETS	2018	2017
Cash	\$1,653,514	\$1,243,631
Receivables and other assets	2,243,314	4,319,614
Investments, at fair value	67,485,015	61,772,604
Land, buildings, and equipment, net	2,586,449	2,767,673
Total Assets	73,968,292	70,103,522
LIABILITIES AND NET ASSETS		
LIABILITIES		
Accounts payable and accrued expenses	1,185,145	1,318,102
Deferred revenue	810,296	888,586
Postretirement health benefit obligation	1,847,239	1,883,338
Total Liabilities	3,842,680	4,090,026
NET ASSETS		
Unrestricted		
ALI	62,078,720	56,177,083
Noncontrolling Interest in ALIP	364,233	418,100
Total unrestricted	62,442,953	56,595,183
Temporarily restricted	6,982,648	8,978,942
Permanently restricted	700,011	439,371
Total Net Assets	70,125,612	66,013,496
Total Liabilities and Net Assets	\$73,968,292	\$70,103,522

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 us 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, you help guarantee that the Institute is prepared for a second century of law reform.

CONTRIBUTIONS TO THE AMERICAN LAW INSTITUTE HELP US:

PRODUCE WORKS IMPORTANT TO THE PUBLIC INTEREST

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.

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.

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 support them. By providing funding necessary to maintain an increased number of Reporters, contributions help to expedite project completion times while retaining the high level of quality the Institute is known for.

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.

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.

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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NEW ENDOWMENT FUNDS

The Geoffrey C. Hazard Jr. Fund and Daniel J. Meltzer Fund were established this year by Professor Mary Kay Kane and ALI President David F. Levi, respectively, to honor the memory of two prominent and respected intellectual leaders in the field of law who made significant contributions to The American Law Institute during their lifetimes. The Geoffrey C. Hazard, Jr., and Daniel J. Meltzer funds will provide the current Director with the resources necessary to take advantage of any and all opportunities to further ALI's important work.

GEOFFREY C. HAZARD JR. FUND



Geoffrey C. Hazard, Jr., was an ALI member for 52 years and served as ALI's Director for 15 of those years, during which he oversaw numerous traditional Restatement projects, guided less traditional projects such as the Complex Litigation Project, and moved the Institute into embracing

international projects with global participants. Professor Hazard was one of the nation's foremost authorities on professional ethics, trial practice, and civil procedure, as well as an accomplished and respected scholar of the law, serving on the faculties of the University of California, Hastings College of the Law, the University of Pennsylvania Law School, and Yale Law School. Professor Kane, who worked with Professor Hazard in many capacities, established this special fund to recognize Professor Hazard's exemplary ALI directorship and ensure that his memory remains connected to the ongoing work of the Institute.

We are pleased to recognize the following individuals who have made gifts to the Geoffrey C. Hazard Jr. Fund:

Anonymous
 Carolyn F. Corwin
 Deborah A. DeMott
 Michael D. Green
 Conrad K. Harper
 Edwin E. Huddleson
 Mary Kay Kane
 Evan Tsen Lee
 William Charles Powers, Jr.
 Michael Traynor

THE DANIEL J. MELTZER FUND



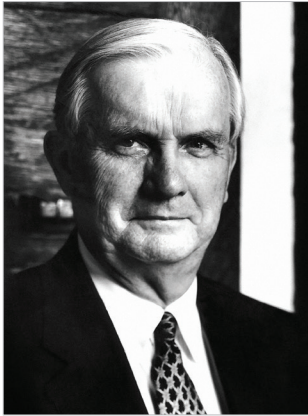
Professor Daniel J. Meltzer was named Director Designate of ALI in 2013, but was forced to withdraw from the position for health reasons; he passed away in 2015. An expert in the fields of federal courts and criminal procedure, Professor Meltzer worked in the federal government for many years, including

in the White House during the presidency of Barack Obama, and was the Story Professor of Law at Harvard Law School. He is remembered for his intellect, for the rigor and integrity of his legal analysis, and for his generosity, kindness, and commitment to public service. President Levi, who was Professor Meltzer's first cousin and close friend, established this special fund to honor and continue Professor Meltzer's dedication to law reform and legacy of support of ALI.

We are pleased to recognize the following individuals who have made gifts to the Daniel J. Meltzer Fund:

Lincoln Caplan and Susan L. Carney
 Michael D. Green
 Conrad K. Harper
 Carol F. Lee
 David F. Levi
 Lance Liebman
 Myles V. Lynk

IN MEMORIAM: GEOFFREY C. HAZARD, JR.



On January 11, 2018, Geoffrey C. Hazard, Jr., Director Emeritus of The American Law Institute and one of the most brilliant legal scholars and teachers of his generation, died. He was 88.

In addition to serving as ALI Director, Professor Hazard served for nine years as the ALI Reporter for the Restatement Second of Judgments, published in 1982. The experience may

have prompted his wry remark at the 1999 Annual Dinner that “qualifications for Reporter in an ALI project include good health and proven stamina.”

Many new ALI projects were begun under his leadership, including Restatement Third works on Agency, The Law Governing Lawyers, Property, Restitution, Suretyship, Torts, Trusts, and Unfair Competition; and Principles of the Law projects on Family Dissolution, Transnational Civil Procedure, and Transnational Insolvency. It was also during his tenure as Director that the Institute first turned its attention to projects with an international scope, a trend that continues today with its ongoing work on international commercial arbitration, foreign relations law, and conflict of laws. On stepping down as Director after 15 years, Professor Hazard was elected to ALI’s Council in 1999, serving until he took emeritus status in August 2015. He also was Co-Reporter for the ALI/UNIDROIT Principles of Transnational Civil Procedure (2006), which has become a path-breaking model of civil procedure for international commercial disputes.

Born in Cleveland, Professor Hazard was a graduate of Swarthmore College and Columbia Law School, where he was Reviews Editor of the *Columbia Law Review*. He began his career in private practice in Oregon, serving also as deputy legislative counsel for the State of Oregon and executive secretary of the Oregon Legislative Interim Committee on Judicial Administration. Professor Hazard’s teaching career spanned almost six decades, beginning at the University of California, Berkeley School of Law, in 1958, then at the University of Chicago Law School, Yale Law School, the University of Pennsylvania Law School, and the University of California, Hastings College of the Law.

While at Chicago, Professor Hazard was also executive director of the American Bar Foundation. During his tenure at Yale, he served variously as associate, acting, and deputy dean of the Yale School of Organization and Management. He also was Reporter for the American Bar Association Model Rules of Professional Conduct (promulgated in 1983) and draftsman-consultant for the ABA Model Code of Judicial Conduct (promulgated in 1972). He served since 1994 as a member and a consultant on the Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States. In recent years, he advised the European Law Institute on its proposal to develop European rules of civil procedure from the ALI/UNIDROIT Principles of Transnational Civil Procedure. Notwithstanding his many professional interests and responsibilities, Professor Hazard found time to serve as a consultant and expert witness on legal ethics, including legal malpractice, and to write. He was coauthor of a fundamental treatise and a casebook on civil procedure and also on professional ethics, as well as the author or coauthor of many other books and articles.

Professor Hazard was the recipient of several honorary degrees and many awards, including the American Bar Foundation Research Award and William Keck Foundation Award, the Columbia University School of Law Association Medal for Excellence, the American Judicature Society Justice Award, the International Insolvency Institute Gold Medal, the ABA Section of Legal Education Robert J. Kutak Award, and the ABA Center for Professional Responsibility Michael Franck Award. On January 5, Columbia Law School bestowed on him its Distinguished Columbian in Teaching Award, given to a law-school graduate for excellence in teaching, scholarship, and writing—an honor, said Dean Gillian Lester, that he earned “many times over” in his long, illustrious career. He was a fellow of the American Bar Foundation, the American Academy of Arts and Sciences, and the American Philosophical Society.

THE 1993 LIFE MEMBER CLASS GIFT

ALI's new Life Members were honored at a luncheon at the 95th Annual Meeting, where members of the 1993 Life Member Class Gift Committee presented the Class Gift to the Institute. The campaign, chaired by Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain, P.A., along with committee members Charles J. Cooper of Cooper & Kirk, PLLC, Joan Sidney Howland of University of Minnesota Law School, David W. Ichel of X-Dispute LLC, Mark S. Mandell of Mandell Schwartz & Boisclair, Ltd, and Bettina B. Plevan of Proskauer Rose LLP, far exceeded its goal of \$200,000 by raising a record-setting Class Gift of \$251,275. 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 1994 and 1969 Life Member Classes, which will be honored and present a joint gift at the 2019 Annual Meeting.

The American Law Institute is grateful to everyone who contributed to the success of the 1993 Life Member Class Gift campaign. We appreciate your generosity.



1993 Class Gift committee members David W. Ichel of X-Dispute, Committee Chair Larry S. Stewart of Stewart Tilghman Fox Bianchi & Cain, Joan Sidney Howland of University of Minnesota Law School, and Charles J. Cooper of Cooper & Kirk



1993 and 1968 Class members gathered to celebrate 25 and 50 years with the Institute.

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Charitable contributions to the Institute help to ensure that ALI's work continues uncompromised. We thank the following individuals and foundations for their generosity:

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The Institute expresses its deep appreciation of long-time ALI Treasurer Bennett Boskey, Director Emeritus Geoffrey C. Hazard, Jr., and Member Harry C. Sigman, for generously choosing to include ALI in their estate plans to ensure our work continues without compromise.

Mr. Boskey, who was 99 at the time of his passing in May 2016, bequeathed more than \$6 million to ALI. This year, the Institute, which had previously received \$4 million from Mr. Boskey's bequest, received an additional distribution of more than \$2.4 million. 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. 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 served in the U.S. Army during World War II. He clerked successively for Judge Learned Hand, Justice Stanley Reed, and Chief Justice Harlan F. Stone. The late John P. Frank, Mr. Boskey's colleague on the ALI Council, once called Mr. Boskey the Institute's "Renaissance man."

Professor Hazard, who passed away in January 2018 at age 88, bequeathed \$20,000 to the Institute. An ALI member for 52 years, Professor Hazard served as ALI's Director from 1984 to 1999, and as a Reporter on two ALI projects. After stepping down as Director, he served on ALI's Council. Outside of his work with The American Law Institute, Professor Hazard was regarded as one of the most brilliant legal scholars and teachers of his generation. His teaching career spanned almost six decades and earned him distinguished professorships and honors, including the Distinguished Columbian in Teaching Award from Columbia Law School. Judge Anthony J. Scirica, when presenting The American Law Institute's Distinguished Service Award to Professor Hazard in May 2013, characterized him as "truly one of the law's wise men."

Mr. Sigman's bequest of \$25,000 was made in memory of Donald J. Rapson, Homer Kripke, and Peter F. Coogan, and in honor of Neil B. Cohen, Steven L. Harris, Charles W. Mooney, Jr., Edwin E. Smith, and Steven O. Weise—Mr. Sigman's colleagues in the development of the Uniform Commercial Code. Mr. Weise remembers Mr. Sigman as being "passionately dedicated to creating the best law possible," and asserted that anyone practicing commercial law is indebted to Mr. Sigman for his influential work. Mr. Sigman taught commercial law at universities in California and abroad, represented the United States in commercial-law treaty negotiations at the U.N., The Hague, and UNIDROIT, and published various articles and books on the subject. Mr. Sigman was accomplished outside the field of law as a world traveler, polyglot, philanthropist, and art collector.

ALI is immensely grateful to Mr. Boskey, Professor Hazard, Mr. Sigman, and all members who have generously named the Institute as a beneficiary in their estate plans. Planned gifts such as these allow members to make a significant impact in furthering 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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The ALI enjoys the support of many longtime Sustaining Members. They are the backbone of our organization. It is with tremendous pride that we recognize the individuals who were Sustaining Members for the 2017–2018 fiscal year.

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