ALI Council Approves Six Project Drafts at October Meeting

During its meeting in New York City on October 18 and 19, the ALI Council reviewed drafts for seven Institute projects. Drafts or portions of drafts for six projects received Council approval, subject to the meeting discussion and to the usual prerogative to make nonsubstantive editorial improvements.

On October 18, Reporter Barry Friedman of New York University School of Law, with Associate Reporters Tracey L. Meares of Yale Law School, Christopher Slobogin of Vanderbilt University Law School, and Brandon L. Garrett of Duke University School of Law (participating by telephone), presented Council Draft No. 2 of Principles of the Law, Policing, consisting of Chapter 1 on definitions and general principles, Chapter 3 on police encounters, Chapter 4 on policing in the absence of individualized suspicion, and Chapter 11 on police questioning. The Council approved Chapter 1 and §§ 3.01-3.06 of Chapter 3, but there was insufficient time to consider § 3.07 on searches incident to arrest and Chapters 4 and 11. In response to comments from project participants, the Reporters will make a number of changes that will be incorporated into their next draft. The project will be on the agenda for the Council's January 2019 meeting.

Reporter Geoffrey P. Miller of New York University School of Law and Associate Reporters Jennifer H. Arlen, also of NYU School of Law, and James A. Fanto of Brooklyn Law School submitted their first Council Draft for Principles of the Law, Compliance, Risk Management, and Enforcement. Council Draft No. 1 contains Chapter 1, Definitions; Chapter 2, Subject Matter, Objectives, and Interpretation; Chapter 3, Governance; and Chapter 5, Compliance. The Council discussed

Preparing for Our 100th Anniversary

In 2023, The American Law Institute will celebrate its 100th anniversary. As befits an organization better known for the meticulousness of its work than for its ability to turn on a dime, the planning efforts are already well underway under the direction of a spectacular committee co-chaired by our current President, David Levi, and our past President, Roberta Ramo. In turn, the committee is divided into three subcommittees: on commissioning a history of the ALI, chaired by Edward Cooper and Diane Wood; on planning the celebratory events, chaired by Paul Friedman and Larry Kramer; and on charting a course for our second century (or at least for the early portion of that century), chaired by Yvonne Gonzalez Rogers, Margaret Marshall, and Troy McKenzie. While many of our plans for the anniversary are still being developed, I thought that it would be useful for me to share our current thinking at this early stage. As an administrative law scholar, I am a fan of notice-and-comment proceedings and would very much welcome ideas from our members before any of the arrangements become set in stone.

Our history subcommittee is likely to ask a dozen or so historians and legal scholars to each write a chapter about some aspect of the ALI’s work. Some of these chapters will probably focus on particularly influential projects, such as the Restatements of Torts and Contracts, the Model Penal Code, and the Uniform Commercial Code. Others will probably look at the role of the ALI as an institution. I am particularly interested in understanding better the role, if any, that the ALI played in some of the key legally based transformations during the 20th century, such as the civil rights movement and the New Deal. Learning more about how we
approached these matters in the past might help us reflect on how to deal with similar transformative events in the future.

As to the anniversary events, the core of our celebration will take place in Washington, DC, during the Annual Meeting in May 2023. We will devote one of the Meeting’s days for programming focusing on our past and our future and will have a large celebration reception at a spectacular venue yet to be determined. In addition, during 2022 and 2023, we plan to host four to six regional events around the country, with substantive programs examining features of our work. For these regional events, we will try to have a traveling exhibit of ALI historical materials, prepared with the assistance of the University of Pennsylvania Law School Library, which manages our archives.

Over the last year, we have been busily involved with the efforts to chart our future. In this connection, the ALI’s leadership has had many conversations with members about our current work and the types of projects that the ALI should do in the future. Should we depart significantly from our current mix of Restatements, Principles, as well as our ongoing attention to the Model Penal Code and the Uniform Commercial Code? How should we deal with new technologies that have significant legal underpinning, like artificial intelligence, autonomous vehicles, and drones, but not yet much case law addressing them? Can our work benefit from the analysis of “big data”? What are the implications for the work of the ALI on increasing pressure on rule-of-law values? And we have discussed whether our deliberative process continues to be well suited for areas of law that are changing rapidly. The conversations have also explored how members, particularly those who live far from the East Coast, can become more productively engaged with the ALI’s work.

The ALI primarily relies on its members for their experience, analytical abilities, and judgment. Fundraising campaigns are a rare occurrence: the last one took place in the 1980s. But it is important at this time to secure the ALI’s programmatic and financial future, particularly in light of possible declines in our royalties in the future resulting from market transformations. Thus, as part of the anniversary effort we will launch an ambitious development campaign supervised by a committee chaired by Judith Miller. While the precise contours of our fundraising priorities are still being worked out, I wanted to share with you an early peek at our thinking.

In connection with our substantive work, we will want to address certain pressing social problems that have strong legal underpinnings or dimensions, even though these projects are unlikely to yield us the revenues we derive from traditional Restatements. Our Principles projects on Data Privacy, Policing, and on Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities fall in this vein. But we also need to continue focusing on our core competencies, such as completing the Restatement Third of Torts and revising the Model Penal Code. These Restatements and Codes are still of the utmost importance and complexity. We have found that the best way to assure quality and timeliness is by assembling teams comprising multiple Associate Reporters working with a Reporter—a departure from the traditional model of a single Reporter. This significant commitment of resources has proven its value. Moreover, we believe that in our global economy, undertaking transnational projects, like our ongoing Principles for a Data Economy, which we are doing jointly with the European Law Institute, will become even more compelling.

We also need to enhance the opportunities for our members to participate in our substantive work. In this connection, a very high priority is to significantly increase the resources we provide for members of the judiciary, the public sector, and private nonprofits to attend our meetings; indeed, we derive our legitimacy from the broad participation of members across the whole breadth of the legal profession and we absolutely cannot let financial barriers remain in the way of representing diverse sectors of the profession in our deliberations. We also are committed to exploring uses of technology that might help our members engage more productively with our substantive work.

Another important priority is to increase our work’s influence. We need to make sure that our Restatements are available to courts, particularly trial courts in certain states that no longer can afford electronic subscriptions that include our materials. We also need to effectively raise the awareness of our work in the legal profession—for example, through conferences and other events focusing on recently completed projects—and engage with the next generation of legal scholars, which we currently do through our Early Career Scholars Medal.

As in all fundraising campaigns, we will eventually have an official launch, when we will announce the campaign’s goal. But, also as in all campaigns, this public phase is preceded by a silent phase. For us, the silent phase started on July 1, 2016. So, any financial contributions that we currently receive, including annual fund gifts, sustaining member dues, and bequests will count towards the campaign’s goals.

Being able to plan for a second century is, by itself, a significant sign of success. Most institutions do not find ways of remaining relevant and influential for such a long period of time. And it is a success for which we should all take great pride. It is also a wonderful opportunity to think about how to ensure that our successors, a hundred years from now, will be in at least as good a position as we are to plan for their next century.