From President David F. Levi

As I write this in early July, America has shifted its attention from one pandemic to what might also seem like a plague—the use of excessive force by police officers. This is a longstanding problem receiving heightened attention in the aftermath of the deaths, in a span of weeks, of George Floyd, Breonna Taylor, and Ahmaud Arbery. These headlines are not new. For years, we have read news stories and, more recently, watched videos, showing the killing of unarmed Black men by police officers in circumstances that did not justify the use of deadly force. May we hope that we are finally at a point in our history when, in the recognition of the intense pain, distrust, and injustice caused by these tragic killings, we will take this as the opportunity for consequential reforms of the nation’s police departments.

In Director Revesz’s letter, he describes some of the efforts that ALI is taking to put our Policing Principles into the hands of those who can effect positive change. On our special podcast series produced jointly with the Bolch Judicial Institute at Duke Law School, I was joined by four distinguished panelists who are addressing these challenges head on. The Policing episode, available on our website now, features Chicago Mayor Lori E. Lightfoot; Houston Police Chief Art Acevedo; The Leadership Conference on Civil and Human Rights Executive Vice President of Campaigns and Programs Ashley Allison; and Principles of Policing Reporter, NYU Law Professor, and Founding Director of NYU Law’s Policing Project Barry Friedman.

If you have not yet done so, I encourage you to listen as these experts discuss the complex and difficult challenges that must be addressed if reforms are to be effective. There is much to learn from their thoughts on how best to move forward in order to ensure the future of democracy as well as a justice system that protects and serves all Americans.

ALI will continue to engage with the organizations and individuals dedicated to clarifying and modernizing this and other areas of law, as we tackle complex issues in our Principles, Restatement, and Model Code projects. We have received many questions from members and project participants about how we will continue to do this important work while the coronavirus pandemic is still very much a factor in our lives. I will address many of your questions here, sharing what we now know, and I will update you if our plans change as the fall approaches.

Until we are able to gather again in person, I hope that each of you will remain safe and well, and continue to engage in the important work of the ALI.

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THE DIRECTOR’S LETTER BY RICHARD L. REVESZ

ALI’s Contributions in a Time of Crisis

This year has been an extraordinarily difficult one. We are ensnared in a pandemic that has caused a staggeringly large number of deaths and deep suffering and has laid bare appalling inequities, particularly ones based on race. The brutal killing of George Floyd on May 25 in Minneapolis has shaken our country to the core.

We all surely have been asking ourselves what roles we play as individuals and as citizens in meeting these challenges. In addition, I have reflected on how the work of The American Law Institute can be applied to address some of the pressing legal and policy issues facing us in this time of crisis. Several of our Principles projects, in particular, offer guidance that may contribute positively to the ongoing national conversations and to decisions that policymakers are currently making and will need to make in the near and longer terms.

In 2015, the ALI launched Principles of the Law, Policing. Thus far, approximately one third of the project’s Chapters have been approved by both the Council and the membership. One of these approved Chapters covers the use of force by policing agencies. In the wake of the murder of Mr. Floyd, we have made this Chapter, as well as the other approved Chapters, freely available to the public and have promoted it on the ALI website so that it can help guide institutions grappling with this issue. We are also distributing the approved Principles to police departments as well as to policy-setting organizations throughout the country.

The use-of-force Chapter offers best practices for use of force by police in individual encounters like the one that resulted in the death of Mr. Floyd, as well as in responses to the sorts of mass demonstrations that followed his killing. In each situation, too many policing agencies are failing to live up to what society expects of them. The adoption by police departments and their regulators of
The State of the Institute

Each year, ALI’s Annual Meeting includes a session with business reports from ALI leadership. Now more than ever, it is important that our membership remains updated on matters of the Institute, including how our work continues during this time.

That is why, despite the cancellation of this year’s Annual Meeting, ALI has prepared a video on this year’s business reports. This video was released on June 8, 2020.

President David F. Levi opens the video with an important statement, as well as an overview of the state of the Institute. He then introduces the executive members and committee chairs as they provide their reports on Institute matters.

The following are listed in the order in which they presented:
Richard L. Revesz, Director
Roberta Cooper Ramo, Immediate Past President and 100th Anniversary Committee Co-Chair
Stephanie A. Middleton, Deputy Director
Teresa Wilton Harmon, Membership Committee Chair
Wallace B. Jefferson, Treasurer
Steven O. Weise, Investment Committee Chair
Judith A. Miller, Development Committee Chair
Anthony J. Scirica, Nominating Committee Chair

Watch the video now on the ALI website at www.ali.org/news.

The ALI Principles on use of force—which emphasize overarching precepts of necessity, proportionality, and de-escalation—could provide the framework on which just and rational use-of-force laws, policies, and practices may be built.

There is real-life evidence that these principles work well. In 2019, Camden County, New Jersey, adopted a revised use-of-force policy, modeled largely on the ALI Principles, and drawn with the assistance of Reporter Barry Friedman and the Policing Project at NYU School of Law, which he directs. Press coverage has shown that Camden’s response to demonstrations sparked by the killing of Mr. Floyd differed markedly from escalatory responses of policing agencies in much of the rest of the country. In this connection, members of the Minneapolis City Council recently requested a copy of Camden’s policy, and Professor Friedman has briefed the National Governors Association. In addition, the Principles of Policing Chapter on use of force was the model in part for the California Act to Save Lives (2019), which raised the standard for when officers may use deadly force, allowing such force only when necessary in defense of human life.

The Camden example also illustrates the value of two principles from another approved Chapter that is also freely available on the ALI website. Section 1.05 of Principles of Policing states that “[a]gencies should operate subject to clear and accessible written rules, policies, and procedures.” Camden’s use-of-force policy, which is clearly drafted and publicly available online, satisfies these fundamental criteria. Section 1.05 also urges that such policies should “be formulated through a process that allows for officer and public input.” This guidance (including more detailed discussion in the Comments) could be useful as communities and jurisdictions reassess not only policing policies but also questions about community involvement in public safety. In addition, Camden demonstrates the transformative power of a thoroughgoing commitment to community policing, which is endorsed and described in § 1.07.

DOWNLOAD THE USE OF FORCE PRINCIPLES AT WWW.ALI.ORG.

Individuals involved in Principles of Policing—an extraordinarily impressive group drawn from a diversity of disciplines—include leading contributors to the national conversation on race and policing that is currently taking place throughout the country. To cite just a few recent examples, Associate Reporter Tracey Meares and Adviser Art Acevedo, the Houston Police Chief, appeared in a segment on the PBS NewsHour, and Adviser Sherrilyn Ifill of the NAACP Legal Defense and Educational Fund was featured on 60 Minutes. In addition, Reporter Barry Friedman and former U.S. Attorney General Loretta Lynch were tapped by New York Attorney General Letitia James to help guide and
support her investigation into NYPD interactions with protestors, serving in this role together. Professor Friedman and Chief Acevedo also appeared with Chicago Mayor Lori Lightfoot and Ashley Allison, Executive Vice President of the Leadership Conference on Civil and Human Rights, in a podcast moderated by our President David F. Levi and produced jointly by the ALI and the Bolch Judicial Institute at Duke Law School. I am gratified that the ALI has convened such a leading group of experts and stakeholders around this timely and critically important project, and I am confident that their perspectives on the current crisis are informed, at least in part, by the many days we spent together discussing Principles of Policing.

On a different front, in 2019, the ALI published Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes. Little did we know how central the issues of ballot counting and non-precinct voting would become in a landscape altered by the coronavirus pandemic. Ensuring that our upcoming elections, including the November 2020 presidential election, run smoothly and with public confidence without exposing citizens to unnecessary health risks is critical to our democracy.

The dramatic increase in voting-by-mail and other early voting that will undoubtedly occur this November poses significant challenges. Several state primaries already have been marred by problems, including widespread failures to provide mail-in ballots to voters who had requested them. In a recent podcast produced by ALI, which is available on our website, the Reporters of Principles of Election Administration emphasize the need for state legislatures and election administrators to step up before it is too late, to ensure that clear rules and planning are in place to successfully administer the November elections amidst the ongoing pandemic.

Legislators and election administrators answering this call will benefit from the remarkably detailed guidance supplied by these Principles, which cover the most important factors for successful nontraditional voting, including timing windows for mail-in and early voting, best practices for producing clear and effective ballot applications, ballots, and ballot-transmission envelopes, and systems for processing and counting mailed ballots. Getting these details right can mean the difference for many voters between voting and disenfranchisement, and between an election viewed as legitimate and one raising significant questions. In an effort to assist election administration officials in implementing proper procedures for absentee voting, ALI distributed to officials across the United States the Early In-Person Voting and Open Absentee Voting part of the Principles of Election Administration.

Even without serious complications raised by the pandemic, an election with significant numbers of mailed-in ballots is more likely to produce post-election disputes and litigation. On this issue, Principles of Election Administration offers two Parts providing guidance on navigating these fraught waters for legislatures, election authorities, and courts, with useful direction on how to handle the challenges posed by such disputes.

The pandemic also has brought to the fore important questions on which our recently approved Principles of the Law, Data Privacy, can provide guidance both to lawmakers and to entities that handle data. Development of smartphone apps to facilitate contact tracing has raised issues of notice, consent, data identifiability, data storage and retention, its use for unauthorized purposes, data security, data transfer, and accountability via reporting requirements and enforcement, among others. In view of these concerns, there currently are three different bills in the U.S. Congress that would regulate coronavirus-related data activities. Given the rapid pace at which lawmakers have had to develop these bills, it is important that legislators and their staffs have access to the best available expertise on the issues. To this end, the ALI earlier this spring transmitted to relevant congressional staff members in both houses of Congress, and on both sides of the aisle, the unofficial final text of Principles of Data Privacy, which is almost ready for publication.

These Principles are highly relevant to the questions that Congress is currently facing. They contain Sections pertaining to many of the major issues being tackled, including notice (§§ 3 and 4); consent (§ 5); limitations on using data beyond the scope of notice and consent (§ 7); confidentiality (§ 6); data retention and destruction (§ 10); data security, including notification of data breaches (§ 11); data transfer (§ 12); and accountability and enforcement (§§ 13 and 14).

For nearly a century, the ALI has been helping to shape conversations on the development of American law. But our work most often is invisible to nonlawyers. At a time when myriad challenges confront our society, our Principles of the Law contribute significantly both to public discourse and to policymaking. The ALI as an institution will continue to raise awareness of the relevance and value of our work, and I encourage you, our members, to do the same.