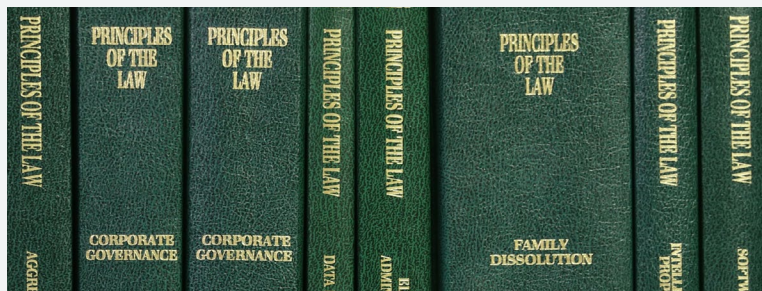


THE ALI REPORTER

The Quarterly Newsletter of The American Law Institute
Volume 47 Number 2 Spring 2025



Compliance and Enforcement Principles Now Available

Principles of the Law, Compliance and Enforcement for Organizations is available to purchase on the LexisNexis website. This is the first time that The American Law Institute has produced Principles on this area of the law. Work began in 2015 under the leadership of Reporter Geoffrey P. Miller of New York University School of Law and Associate Reporters Jennifer H. Arlen of New York University School of Law, James A. Fanto of Brooklyn Law School, and Claire A. Hill of University of Minnesota Law School.

“The basis of this project comes out of the 1990s, 2000s and 2010s, where we had an enormous growth in fines and criminal prosecutions of organizations for various misconduct and misdeeds,” said Reporter Geoffrey Miller at the project’s approval by membership. “This caused a very powerful set of discussions and set many legal minds thinking about, what is a way to both enforce the law against organizations’ misconduct, but also to encourage organizations to enforce the law on themselves, through the processes of compliance.”

This subject matter is one that combines legal and ethical standards. It deals with both externally imposed norms, such as laws and regulations, and internally imposed norms, such as corporate codes of ethics. And it is developed through discretionary actions of regulators and prosecutors and through settlements of enforcement proceedings that do not carry the force of generally binding law. Accordingly, the best course is to set out best-practice standards that may or may not draw on underlying legal norms. The Principles seeks to provide best practices for a variety of public and private entities, but its main audience is large, publicly traded corporations.

PURCHASE NOW AT LEXISNEXIS

THE PRESIDENT’S LETTER BY DAVID F. LEVI

The 2025 ALI Annual Meeting

I hope you will join me at this year’s Annual Meeting of The American Law Institute, which will take place from May 19 to May 21 in Washington, D.C., with pre-Meeting programs on Sunday, May 18. In keeping with our past practice and tradition, this year’s meeting will bring together our distinguished membership and leading experts from the academy, law practice, and the judiciary to debate and discuss our project work and engage with one another concerning some of the significant issues of our time. It is in this way that we seek to advance the rule of law.

Our independent, nonpartisan, and impartial work product is the defining feature of the ALI, and the membership’s participation in that work through Annual Meeting review is critical to these projects’ credibility and success. This year, five of our Restatement projects will offer drafts for discussion and membership approval: Conflict of Laws, Copyright, Property, and two Torts projects: Miscellaneous Provisions and Remedies. Two of these projects, Torts: Miscellaneous Provisions and Copyright, are fully drafted and, if approved, will advance to final publication.

Our agenda also features special programs for two projects at the other end of the project life cycle: Principles of the Law, High-Volume Civil Adjudication and Civil Liability for Artificial Intelligence. On Tuesday, David Freeman Engstrom, Reporter for the High-Volume Civil Adjudication project, will lead a presentation discussing the challenges posed by the types of

Continued on page 2

Register Now for the 2025 Annual Meeting
May 18-21 | Washington, D.C.

SEE PAGE 3 FOR DETAILS →

THE PRESIDENT'S LETTER

Continued from page 1

high-stakes, small-scale cases that dominate state-court dockets (debt collections and evictions, for example), offering examples of some of the ways that courts across the country are responding to these challenges, and previewing some of the Principles that will come before the membership at a later date. And we will devote much of Wednesday morning's session to setting the stage for our project on Civil Liability for Artificial Intelligence. The morning's agenda will include a presentation about the current state of AI technology and regulation, a panel discussion among industry participants and practicing lawyers about the legal challenges arising from AI, and a discussion led by Reporter Mark Geistfeld and Associate Reporter Ketan Ramakrishnan introducing our project and some of the specific topics it will address.

This year, as always, our Annual Meeting offers more than just our project work; it also offers a series of talks and special programs from leaders about current events and the pressing challenges confronting our country and our legal system.

We will hear from Jack Goldsmith of Harvard Law School and Bob Bauer of NYU Law about Executive Power in the First Months of the Trump Administration during Wednesday's lunch. Jack Goldsmith served as the Assistant Attorney General for the Office of Legal Counsel in the Department of Justice and Special Counsel to the Department of Defense during George W. Bush's first term in office. Bob Bauer served as White House Counsel during the first Obama administration. The two of them have written widely together about Presidential power, its use and abuse, and are the co-authors of the influential Substack newsletter *Executive Functions*. Our esteemed Director Diane P. Wood will moderate this session.

We also will have talks from three distinguished judges. During Monday's lunch, we will have the privilege of hearing from Judges David S. Tatel and Thomas B. Griffith, both widely admired, recently retired Judges of the U.S. Court of Appeals for the D.C. Circuit. Their conversation, to be moderated by Kathleen M. Sullivan of Quinn Emanuel

and the former Dean of Stanford Law School, will offer an in-depth look at the role of the judiciary. And William H. Pryor, Jr., Chief Judge of the U.S. Court of Appeals for the Eleventh Circuit, will be our speaker at our Tuesday lunch celebrating the 25th Anniversary of the ALI Member Class of 2000. Before becoming a judge, Judge Pryor had a distinguished career as the Attorney General of Alabama, a member of the United States Sentencing Commission, and co-author of a widely respected treatise on judicial precedent.

Our Annual Dinner program will feature two leading university presidents: Christopher L. Eisgruber (President of Princeton University and member of the ALI) and Ellen M. Granberg (President of George Washington University), in a conversation that I will moderate. These Presidents will discuss the vital role that American universities have played in building the nation and the many challenges that our universities are now facing on and off campus.

In addition to our project discussions and special programs, we will use the occasion of the Annual Meeting to honor two of our members who have made extraordinary contributions to the legal profession and to society. The Distinguished Service Award will be presented to Lee H. Rosenthal, U.S. District Judge for the Southern District of Texas, in recognition of her decades of dedicated service to the law and to the ALI. Lee's commitment to justice and her role in shaping the legal landscape has been nothing short of extraordinary. Her contributions have had a profound and lasting impact, and it is a privilege to be able to recognize her.

We will also present the John Minor Wisdom Award to Kenneth C. Frazier, the former CEO and Chairman of Merck, who has been a force for decency in the legal and business communities. Ken has used his platform to advocate for increased opportunities for success for those who have not had such opportunities and for access to justice by those who cannot afford a lawyer. His dedication to the Institute, and his influence in law, business, and society is an inspiration to us all, and we are so pleased as to be able to honor him.

For those of you who are able to join us on Sunday, we will offer two special programs. The first will explore the ways that AI is reshaping the legal profession, with Jennifer Leonard of Creative Lawyers, Bridget M. McCormack of American Arbitration Association-International Centre for Dispute Resolution, Angela Tripp of Legal Services Corporation, and Darth Vaughn of Ford Motor Company. Then, a panel including James A. Fanto of Brooklyn Law School, Raymond J. Lohier Jr. of the U.S. Court of Appeals for the Second Circuit, Kathryn S. Reimann of Citigroup Inc. (Retired), and Douglas R. Richmond of Lockton Companies will discuss shifting regulatory priorities, enforcement trends, and ethical responsibilities in corporate compliance under the new administration. (Our Principles of the Law, Compliance and Enforcement for Organizations has just been published!)

The 2025 Annual Meeting offers a terrific opportunity to meet and learn from fellow ALI members and thoughtful leaders from across the legal spectrum. Whether you are deeply involved in one of our ongoing projects or interested in one of our special program topics, this Meeting will provide a space for learning, joining together, and contributing to the future of the law.

I look forward to seeing you in Washington, D.C. this May. Please register now and join us for what promises to be an inspiring, thought-provoking, and productive Annual Meeting.

Sincerely,



David F. Levi
President, American Law Institute

2025 ANNUAL MEETING

MAY 18-21 | WASHINGTON, D.C.

The Annual Meeting will take place from Monday, May 19, through Wednesday, May 21, with pre-Meeting programs scheduled for Sunday, May 18. Except for Monday's Members Reception, all events and ballroom sessions will be held at The Ritz-Carlton, located at 1150 22nd Street NW, Washington, D.C.

SUNDAY, MAY 18

2:00-3:30 p.m. How AI Is Transforming the Profession – ALI CLE Ethics Program

As artificial intelligence reshapes the legal industry, attorneys must navigate new challenges in ethics, practice management, and dispute resolution. This session brings together experts from arbitration, legal services, and in-house counsel to explore how AI is already transforming the legal profession.

Featuring: Jennifer Leonard of Creative Lawyers, Bridget M. McCormack of the American Arbitration Association-International Centre for Dispute Resolution, Angela Tripp of Legal Services Corporation, and Darth Vaughn of Ford Motor Company

Tuition for this program is \$95 for ALI members, \$145 for all others.

1.0 CLE credit hours, including 0.5 ethics hour

4:00-5:30 p.m. Corporate Compliance: A Changing Landscape Under the New Administration – ALI CLE Ethics Program

As the new administration takes shape, businesses and legal professionals must navigate shifting regulatory priorities, enforcement trends, and compliance challenges. This session brings together experts to explore today's changing compliance landscape, with a focus on the ethical considerations and responsibilities that arise in this environment.

Featuring: James A. Fanto of Brooklyn Law School, Kathryn S. Reimann of Citigroup Inc. (Retired), and Douglas R. Richmond of Lockton Companies

Moderated by Raymond J. Lohier Jr. of the U.S. Court of Appeals for the Second Circuit

Tuition for this program is \$95 for ALI members, \$145 for all others.

1.0 CLE credit hours, including 0.5 ethics hour

Annual Meeting Projects on the Agenda

Conflict of Laws - Tentative Draft No. 5

Copyright - Tentative Draft No. 6*

Property - Tentative Draft No. 6

Torts: Miscellaneous Provisions - Tentative Draft No. 4*

Torts: Remedies - Tentative Draft No. 4

*With membership approval, this project will be completed.

Make the most of your time in D.C. by kicking off your Annual Meeting experience with our Sunday programming and staying for Wednesday programs on Civil Liability for Artificial Intelligence and a luncheon discussion on the topic of Executive Power in the First Months of the Trump Administration.

Click here to visit the Annual Meeting website and register today.



MONDAY, MAY 19**8:30 a.m. Opening Session****9:00 a.m. Property****10:45 a.m. Presentation of Distinguished Service Award**

The award will be presented to Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas by ALI President David F. Levi. More information about the award and recipient is available on page 5.

11:15 a.m. Torts: Miscellaneous Provisions (Part One)**12:30 p.m. Members Luncheon**

Featuring: Thomas B. Griffith of Hunton and David S. Tatel of Hogan Lovells, moderated by Kathleen M. Sullivan of Quinn Emanuel

1:45 p.m. Torts: Miscellaneous Provisions (Part Two)**6:30-9:00 p.m. Members Reception**

National Museum of the American Indian

Monday Members Luncheon

Location: Salon III

Kathleen M. Sullivan of Quinn Emanuel will moderate a discussion with former judges Thomas B. Griffith of Hunton and David S. Tatel of Hogan Lovells.

Tickets are \$80 per person.

Members Reception at the National Museum of the American Indian

Location: Fourth Street & Independence Avenue, SW, Washington, DC 20560

Please Note: Transportation to the event is on your own. The Museum is a bit more than 2.5 miles from The Ritz-Carlton.

Tickets are \$100 per person.

TUESDAY, MAY 20**8:30 a.m. Conflict of Laws****10:30 a.m. Presentation of Wisdom Award**

The award will be presented to Kenneth C. Frazier, former Chairman and CEO of Merck, by ALI Director Diane P. Wood. More information about the award and recipient is available on page 5.

11:00 a.m. High-Volume Civil Adjudication Program**12:30 p.m. Members Luncheon: Honoring New 25-Year and 50-Year Members**

Featuring: William H. Pryor of the U.S. Court of Appeals for the Eleventh Circuit.

1:45 p.m. Torts: Remedies**2:30 p.m. Copyright****7:00 p.m. Annual Reception and Dinner**

University Presidents Christopher L. Eisgruber of Princeton and Ellen M. Granberg of George Washington will explore key issues shaping higher education today. The conversation will be moderated by ALI President David F. Levi.

Tuesday Members Luncheon: Honoring New 25-Year and 50-Year Members

Location: Salon III

In addition to the presentation of the 2000 Class Gift by class representatives, William H. Pryor of the U.S. Court of Appeals for the Eleventh Circuit will make remarks.

Tickets are \$80 per person.

Annual Dinner and Reception

Location: The Ritz-Carlton Ballroom

University Presidents Christopher L. Eisgruber of Princeton and Ellen M. Granberg of George Washington will explore key issues shaping higher education today. The conversation will be moderated by ALI President David F. Levi.

The reception will begin at 7:00 p.m. The Annual Dinner is business or evening attire with reserved seating.

Tickets are \$150 per person.

WEDNESDAY, MAY 21**8:30 a.m. ALI Early Career Scholars Program**

Featuring: Crystal S. Yang of Harvard Law School

9:00 a.m. Civil Liability for Artificial Intelligence Program**12:00 p.m. Members Luncheon**

Featuring: Robert Bauer of NYU School of Law and Jack Goldsmith of Harvard Law School, moderated by ALI Director Diane P. Wood

1:30 p.m. Adjournment**Wednesday Members Luncheon**

Location: Salon III

This luncheon will feature a discussion between Robert Bauer of NYU School of Law and Jack Goldsmith of Harvard Law School on the topic of Executive Power in the First Months of the Trump Administration, moderated by ALI Director Diane P. Wood.

Tickets are \$80 per person.

Distinguished Service Award: Lee H. Rosenthal

The Distinguished Service Award will be presented to Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas, Houston Division, on Monday, May 19 at this year's Annual Meeting. This award is given from time to time to a member who over many years has played a major role in the Institute, accepting significant burdens as an officer, Council member, committee chair, or project participant and helping keep the Institute on a steady course as the greatest private law-reform organization in the world.



Judge Lee H. Rosenthal currently serves as the 1st Vice President of ALI, where she also serves as an Adviser on the Conflict of Laws Restatement and the Constitutional Torts Restatement. She was an Adviser for the project to revise the Model Penal Code sections on sexual assault as well as the Employment Law project, the Aggregate Litigation project, and for the Transnational Rules of Civil Procedure project. In 2007, she was elected to the ALI Council and, from 2011 to 2016, served as Chair of the Program Committee.

Read full announcement on www.ali.org.



Wisdom Award: Kenneth C. Frazier

The American Law Institute will present the John Minor Wisdom Award to Kenneth C. Frazier on Tuesday, May 20 at this year's Annual Meeting. The Wisdom Award is given from time to time in specific recognition of an ALI member's contributions to the work of the Institute or a person's outstanding achievement in the area of civil rights and related fields following the example of Judge Wisdom.

Kenneth C. Frazier is the former Chairman and CEO of Merck, following his retirement after more than 30 years with the company, including a decade-long tenure as CEO. He is now serving as Chairman of General Catalyst's Health Assurance Initiatives, where he advises on investments

and partnerships for companies that are well-positioned to help transform the healthcare industry through collaborative and responsible innovation.

Frazier was elected to The American Law Institute in 1996 and to its Council in 2003. He is currently serving as an Adviser to ALI's Restatements on Corporate Governance and Election Litigation, and previously served as an Adviser on the recently completed Principles of the Law Policing.

Read full announcement on www.ali.org.

JOIN US THIS MAY!

Register Here



Early Career Scholar Medal Winners: Madison Condon and Blake Emerson

The American Law Institute has announced that it will award its Early Career Scholars Medal to Professors Madison Condon of Boston University School of Law and Blake Emerson of UCLA School of Law.

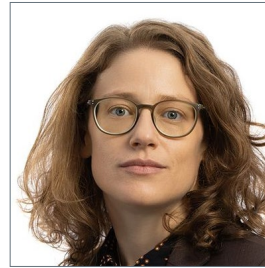
Every other year, The American Law Institute awards the Early Career Scholars Medal to one or two outstanding early-career law professors whose work is relevant to public policy and has the potential to influence improvements in the law. The purpose of the award is to encourage practical scholarly work.

Condon, Associate Professor of Law at Boston University School of Law, is an expert on climate change, financial risk, and regulation. Her scholarship has been included in collections of the best articles of the year for several fields, including environmental law, corporate law, and securities law. Emerson, Professor of Law at UCLA School of Law and Professor of Political Science at UCLA, focuses his work on the normative and historical foundations of American public law, drawing on resources from political theory and American political development to understand the structure and purpose of the regulatory state.

“We are delighted to award the Early Career Scholars Medal to these extraordinary scholars and teachers,” said ALI Early Career Scholars Medal Selection Committee Chair Gerard E. Lynch of the United States Court of Appeals for the Second Circuit. “Professors Condon and Emerson impressed the entire committee, both for their intellectual accomplishment and for the relevance of their work to public policy. Professor Condon’s writings demonstrate how extremely sophisticated interdisciplinary scholarship can have tremendous practical significance for public policy. Her work has already had a profound effect on academic and regulatory discourse on climate risk, and influenced regulatory and policy decisions in corporate and securities law as well as in environmental policy itself, bringing together legal, economic and scientific analysis. Meanwhile, Professor Emerson has become one of the most influential voices in administrative law, with his groundbreaking research on the democratic functions and normative structures of administrative law, and the role of federal agencies in advancing democratically established public policies. His work too draws upon insights from other disciplines, in his case in history and political science, in writings that speak directly to judges and to political decision makers.”

“I am thrilled that the ALI has chosen Blake for this honor,” said Michael Waterstone, UCLA School of Law Dean. “He has already been active in policymaking spaces, and his work is highly relevant to pressing issues that affect the shape and structure of administrative agencies and other government actors. This medal recognizes Blake’s remarkable ability to combine rigorous legal theory with practical, policy-oriented solutions, making him an invaluable voice in the ongoing debates over the future of the administrative state.”

“Madison is a truly remarkable scholar whose work has made a profound impact on both legal academia and policy reform,” added Boston University School of Law Dean Angela Onwuachi-Willig. “Her interdisciplinary approach to climate change law, coupled with her ability to influence real-world legal and regulatory frameworks, sets her



Condon



Emerson

apart as a leader in the field. Her scholarship has already sparked critical discussions and is driving tangible change in addressing one of the most urgent challenges of our time. It is a privilege to see her recognized with Blake as an ALI Early Career Scholar.”

The American Law Institute helps Early Career Scholar Medal recipients publicize their work by supporting a future conference on issues related to their work, and invites them to speak at an ALI Annual Meeting. At this year’s Annual Meeting, 2023 recipient Crystal S. Yang of Harvard Law School will be speaking on her area of research—empirical law and economics.

MORE ABOUT THE MEDAL RECIPIENTS:

Madison Condon joined Boston University School of Law as an associate professor in July 2020. She teaches Environmental Law, Corporations, and a seminar on climate risk and financial institutions. Condon is an expert on climate change, financial risk, and regulation. Her scholarship has been included in collections of the best articles of the year for several fields, including environmental law, corporate law, and securities law. Her research has been relied upon by the US Securities and Exchange Commission and the U.S. Department of Labor in rulemakings. The President’s Council of Advisors on Science and Technology pointed to her work criticizing financial models in its recommendations for managing extreme weather risk. In 2023, Condon joined the United Nations Principles of Responsible Investment Academic Network Advisory Committee.

Before joining BU Law, Condon was an attorney at New York University School of Law’s Institute for Policy Integrity, where she participated in litigation against federal regulatory rollbacks. She clerked for Judge Jane Kelly of the 8th U.S. Circuit Court of Appeals and was a postdoctoral fellow with the Earth Institute at Columbia University. Professor Condon holds a J.D. from Harvard Law School, an MALD from Tufts University’s Fletcher School, and a B.S. in Earth and Environmental Engineering from Columbia

University. She was a Fulbright Fellow to the Netherlands where she researched water resources management at the Delft University of Technology.

Blake Emerson is Professor of Law and a Professor of Political Science at UCLA Law. He previously was a Research Fellow at the Administrative Conference of the United States in Washington, D.C. His primary research interests lie in administrative law, structural constitutional law, and political theory. In 2021, he received the Association of American Law Schools, Administrative

Law Section's Emerging Scholar Award. In spring of 2024, he was a Visiting Professor of Law at Yale Law School.

Emerson's research examines the normative and historical foundations of American public law. He draws on resources from political theory and American political development to understand the structure and purpose of the regulatory state. He studies questions such as: What role have federal government agencies played in interpreting and implementing civil rights and other fundamental public

values? How can legal doctrine ensure that agencies address such significant policy issues in a reasoned and inclusive fashion? In what ways have the diverse institutions of the American state realized, or failed to live up to, democratic principles?

Emerson received his B.A. *magna cum laude* with Highest Honors from Williams College, his Ph.D. with Honors from Yale University, and his J.D. with Honors from Yale Law School. ■

Project Meeting Updates

CIVIL LIABILITY FOR ARTIFICIAL INTELLIGENCE, MARCH 7

Reporter Mark Geistfeld of NYU School of Law and Associate Reporter Ketan Ramakrishnan of Yale Law School led a discussion with project participants on defining the scope of this Principles project.

CONSTITUTIONAL TORTS, MARCH 13

At its first project meeting, project participants reviewed materials in Preliminary Draft No. 1, consisting of a projected outline of the Restatement of Constitutional Torts, together with 12 Sections from different parts of the project: The Cause of Action, Jurisdiction, Qualified Immunity, and Ancillary Issues.

TORTS: DEFAMATION AND PRIVACY, MARCH 14

Preliminary Draft No. 5 contains 11 Sections. Three of these—§§ 10, 12, and 14—are entirely new, and §§ 11 and 13 contain notable changes in response to prior comments.



Michael D. Green of Washington University School of Law, Thomas S. Lue of Google DeepMind and Peter Henderson of Princeton University (Civil Liability for Artificial Intelligence)



ALI Director Diane P. Wood, Reporters John Calvin Jeffries of University of Virginia School of Law and Pamela S. Karlan of Stanford Law School, and Associate Reporter James E. Pfander of Northwestern University Pritzker School of Law (Constitutional Torts)

JOIN A MEMBERS CONSULTATIVE GROUP TODAY

Members interested in any of our active projects are encouraged to join the project's MCG by logging in to the ALI website and visiting the Projects section. MCG members are alerted when future project meetings are scheduled and when drafts are available.

Member Spotlight: David Freeman Engstrom

David Freeman Engstrom is the LSVF Professor in Law and Co-Director of the Deborah L. Rhode Center on the Legal Profession at Stanford Law School. A far-ranging scholar of the design and implementation of litigation and regulatory regimes, Engstrom's expertise runs to civil procedure, administrative law, constitutional law, law and technology, and empirical legal studies. He serves as the Reporter on Principles of the Law, High-Volume Civil Adjudication.



Will you summarize the current issues that the Principles of the Law, High-Volume Civil Adjudication project is tackling?

In recent decades, a rising tide of high-stakes but small-scale cases have come to dominate state court dockets: evictions, debt collection actions, home mortgage foreclosures, and certain types of family law. In fact, these cases now make up a *majority* of filed civil cases in state courts at any given time. What's particularly concerning is that these cases tend to feature extreme asymmetries in the resources, expertise, and representation of the parties on the two sides of the "v." In fact, if you look more closely, they overwhelmingly pit an institutional plaintiff—a bank, a credit card company, a debt buyer, a corporate landlord—nearly always with a lawyer, against an individual defendant without one. That's worrying, because these cases can be quite consequential for people's lives, and yet they are largely unconstrained by the various protections of the adversarial process that we normally associate with civil litigation in the American legal system. Principles of the Law, High-Volume Civil Adjudication is a project that aims to provide guidance to courts about how to adjudicate these cases in fair and accurate ways.

I was honored and thrilled to be asked to join the project as the Reporter because I believe that the way this part of the civil justice system is functioning has a significant effect on public perceptions of the legitimacy of American courts. All parties, whichever side of the "v," deserve fair, accurate, and timely determination of their rights. Courts, rule makers, and legislators

are desperate for innovative, evidence-based guidance. The ALI, via High-Volume Civil Adjudication, is uniquely situated to provide it.

With the scope of issues so large in this area, how did your team narrow the scope of the project?

A Principles project that takes on the large and urgent problems of high-volume civil adjudication cannot make meaningful progress if it is insufficiently focused. Out of all the case types we could have chosen, we landed on a scoping for the project that focuses on a discrete set of cases: eviction, debt collection, mortgage foreclosure, and child support actions. The reasons we chose them is that they are some of the highest-volume cases and, also, they tend to share an important feature in common by pitting institutional plaintiffs with a lawyer against individual defendants without them.

Who is in the Adviser group?

We have a remarkable Adviser group in classic ALI fashion. It's a group of people who truly cover the landscape of the different stakeholders within these litigation areas. Our group includes federal and state judges, lawyers who operate on all sides of these cases in each of the different litigation areas, and a number of technologists who helped pioneer important technologies, such as online dispute resolution, or ODR, that some say might provide scalable solutions to overwhelmed courts. We also have a terrific set of legal academics—law professors like me—with a mix of doctrinal and empirical skills.

How has your Reporter team and the project participants approached the sheer volume of data on cases like these?

Trying to understand the challenges of these dockets and also how to fashion solutions to those challenges requires a multi-method approach. We have spent a lot of time thinking about constitutional law, particularly procedural due process, and using that to inform our understanding of what's happening in these dockets. And our first half-dozen chapters focus on civil procedure, from notice, to pleading, to discovery, to entry of judgment, and propose

We're also looking at a growing empirical literature that uses data and data science to try to understand what the effects of



ALI Deputy Director Eleanor Barrett, David Freeman Engstrom, and Associate Reporters David Marcus of University of California, Los Angeles School of Law, and Lauren D. Sudeall of Vanderbilt University Law School

different proposed interventions might be. We are deeply immersed in that literature and working to understand what works and what doesn't.

Finally, we're talking to court leaders around the country, including presiding judges and court administrators, whenever we can. Wearing my other hat as a professor at Stanford Law, I'm involved in research collaborations with several courts around the country. I am constantly talking to them, and those conversations give me an on-the-ground sense of how these courts are functioning.

At Stanford, you co-direct the Deborah L. Rhode Center on the Legal Profession with Nora Freeman Engstrom, who currently serves as Co-Reporter for the Restatement Third of Torts. The Center recently announced a partnership with the Superior Court of Los Angeles County to find and identify innovative ways to expand and improve access to justice. Can you tell us a bit about this initiative?

Last year my research team at Stanford entered into a first-of-its-kind collaboration with LASC, the largest trial court in the country, to pilot, implement, and evaluate new approaches to managing and adjudicating cases in the Court's high-volume dockets. We're thrilled because LASC has long been a leader among courts at the frontier of justice innovation, including when Judge Carolyn Kuhl, now an ALI Council Member, served as presiding judge. The Court's current senior leadership is every bit as inspiring and forward-looking as Judge Kuhl was.

We're working with the Court on a number of exciting initiatives, including new approaches to providing notice in eviction cases. We're also prototyping new AI-based tools. Some are litigant-facing "self-help" tools that do a better job of providing self-represented litigants with actionable information, including available legal help. Other are internal, court-facing tools that help courts serve court users better by making it easier for judges and court clerks to ensure that default judgments are warranted both substantively and procedurally.

Like it or not, "courthouse AI," as I call it, is the wave of future. AI has immense access-widening potential, and presents plenty of peril, too. Courts need guidance on how to use it in fair and trustworthy ways.

Nora Freeman Engstrom is the Ernest W. McFarland Professor of Law and Co-Director of the Deborah L. Rhode Center at Stanford Law. She is a nationally recognized expert in both tort law and legal ethics. In her far-ranging scholarship, she explores the day-to-day operation of the tort system, including the system's interaction with alternative compensation mechanisms. She serves as a Reporter on the recently completed Torts: Medical Malpractice project as well as on the ongoing Torts: Miscellaneous Provisions project.

What would you tell ALI members who want to get involved in their own communities/jurisdictions? How can they help?

Joining the Members Consultative Group would be a great start!

There are lots of other ways. Standard outlets include pro bono work or assistance to a wide array of advocacy groups doing work on evictions, debt matters, and family law. Eviction has been a particular focus of advocacy efforts and has really roared onto political and legal radars, especially during COVID.

That said, one of the most important things that ALI members can do is spread basic awareness of the profound challenges of these dockets. Over the past two years, I've spent a lot of time speaking to bench and bar groups. Even in rooms full of sophisticated lawyers, surprisingly few are aware that the state courts—which account for some 97% of cases in the American legal system—look the way they do. Not to be a broken record, but the statistics here are bracing, including the stunning fact that the modal case (that is, the most frequent type of case) in the entire civil justice system right now is a debt collection action. Evictions are not far behind.

JOIN THE MCG

If you are interested in joining the High-Volume Civil Adjudication project as a Members Consultative Group participant, log in to the ALI website and visit the High-Volume page under Projects. Project participants will be alerted when future meetings are scheduled and when drafts are available.

The other way ALI members can get involved is to engage with other members of the profession to help think about what the next chapter of the civil justice system looks like. Conversations are starting to gain momentum around all sorts of pivotal questions about whether and how to change the way procedures are structured, or whether the courts, perhaps working with the other branches, could design better ways to prevent disputes from ripening into lawsuits in the first place. Finally, there are a bunch of really important questions that have begun to surface around how courts should incorporate technology, particularly AI, into their operations. I think those conversations are especially urgent in these high-volume dockets. If you think about it, the potential for automation within our courts seems to map most directly to that part of the system where there are millions of cases.

The American civil justice system is, in so many ways, at a hinge moment. ALI members, who are some of the best of the profession, should be trying to involve themselves in these conversations whenever they can.

LEARN MORE AT THIS YEAR'S ANNUAL MEETING

Engstrom will be moderating the High-Volume Civil Adjudication Program on Tuesday, May 20, at the 2025 Annual Meeting in Washington, D.C.

Register here or see pages 3-4 for more details.

Connecticut Supreme Court Adopts Punitive-Damages Rule Espoused by Restatements

In *McCarter & English, LLP v. Jarrow Formulas, Inc.*, 329 A.3d 898 (Conn. 2025), the Connecticut Supreme Court adopted the rule followed by the Restatements of the Law and the majority of jurisdictions in holding that a law firm may not recover common-law punitive damages for a client's breach of contract unless it pleads and proves the existence of an independent tort for which punitive damages are available.

In that case, a law firm sued its client in the U.S. District Court for the District of Connecticut for, among other things, breach of contract, claiming more than two million dollars in outstanding legal fees and expenses incurred in representing the client in a contentious Kentucky action; the law firm later amended its complaint to add a claim for punitive damages for willful and wanton breach of contract, alleging that the client terminated its engagement with the law firm following a jury verdict in favor of its adversary, but did not inform the law firm of that decision until weeks later while continuing to ask the law firm to perform legal work, and refused to pay the law firm's last five monthly invoices. The client counterclaimed for breach of fiduciary duty, negligent and intentional misrepresentation, unfair trade practices, and legal malpractice.

Before trial, the parties stipulated that the jury would determine whether either party was entitled to punitive damages, and that the court would determine the amount of those damages. Following trial, the jury returned a verdict in favor of the law firm on all claims and counterclaims. After receiving a jury instruction that punitive damages could be awarded if a party's conduct intended to violate the rights of the other party, the jury determined that the client's conduct in breaching the contract for legal services was willful and malicious.

The client moved for judgment as a matter of law, arguing that no punitive damages could be awarded to the law firm on its breach-of-contract claim because Connecticut law did not recognize bad faith breach of contract

except when there was a strong public policy involved. Because Connecticut law was unsettled on that issue and resolving the issue required weighing competing public-policy concerns, the district court certified a question to the Connecticut Supreme Court and denied without prejudice the law firm's motion for punitive damages, noting that the motion could be renewed if the Connecticut Supreme Court determined that punitive damages were available for the client's willful and malicious breach of contract.

The Connecticut Supreme Court answered the certified question, holding that, as a matter of first impression, a law firm could not recover common-law punitive damages for its client's breach of contract unless it pleaded and proved the existence of an independent tort for which punitive damages might be recoverable. The court noted that it frequently "relied on the Restatement (Second) of Contracts when evaluating novel issues of contract law" and found that multiple Restatements supported the majority rule. First, the court observed that § 355 of the Restatement of the Law Second, Contracts, followed the majority approach, providing that punitive damages were not recoverable for breach of contract unless the conduct constituting the breach was tortious and permitted the recovery of punitive damages. Restatement of the Law Second, Torts § 908, Comment *b*, similarly explained that an award of punitive damages was not permitted merely for a breach of contract; the fact that a party's act or omission amounted to a breach of contract did not preclude the award of punitive damages if a tort action was concurrently filed and the tort was one for which an award of punitive damages was proper. The court also pointed out that Restatement of the Law Third, Torts: Remedies § 39, Comment *n* (Tentative Draft No. 3, 2024) aligned with the majority rule in that it did not permit the recovery of punitive damages for even egregious breaches of contract, but noted that the contractual context of an action did not preclude an award of punitive damages for an "independent"

tort that a defendant committed in the course of the negotiation, performance, enforcement, or breach of the contract.

The court explained that the approach adopted by the majority of jurisdictions and the Restatements was strongly supported by the different purposes for which breach-of-contract damages and punitive damages were awarded in Connecticut. Breach-of-contract damages provided compensation to a party for the loss of the bargain, while punitive damages were awarded to punish and deter certain behavior and generally were "not a remedy to private wrongs, but to vindicate public rights." Recognizing that Connecticut was unique in that it was one of only two jurisdictions that limited the award of common-law punitive damages to litigation expenses less taxable costs, the court was persuaded that this nuance in Connecticut law did not warrant a departure from the majority rule.

After looking at case precedent, the law of other jurisdictions, and the Restatements, the Connecticut Supreme Court concluded that "the rule adopted by a majority of jurisdictions and the Restatements, which require[d] the existence of an independent tort for which punitive damages [could be] recoverable, provide[d] adequate protection for plaintiffs while also providing clear guidance as to the circumstances in which punitive damages [could be] recovered."

THERE ARE TWO TORTS SESSIONS ON THIS YEAR'S ANNUAL MEETING AGENDA.

The Torts: Miscellaneous Provisions project session is on Monday, May 19 at 11:15 a.m.

The Torts: Remedies project session is on Tuesday, May 20 at 1:45 p.m.

Register here or see pages 3-4 for more details.

Notes About Members and Colleagues

George A. Bermann of Columbia Law School, **Ingrid (Wuerth) Brunk** of Vanderbilt Law School, **Julian G. Ku** of Hofstra Law School, and **Paul B. Stephan** of UVA School of Law, led the Federalist Society webinar *Do Foreign States Deserve Due Process? 'Minimum Contacts' and the Future of International Arbitration*. The discussion examined the implications of *Devas v. Antrix*, a case in which the Ninth Circuit ruled that Antrix, an Indian government-owned corporation, lacked sufficient “minimum contacts” with the U.S., leading to the dismissal of an arbitration award enforcement attempt.



Clockwise from left to right: Julian G. Ku, Ingrid (Wuerth) Brunk, George A. Bermann, and Paul B. Stephan

The American Academy of Arts and Sciences hosted the webinar “Constitutional Crisis: What Is It and Are We in One?” featuring former D.C. Circuit Judge **Thomas B. Griffith** of Hunton; **Vanita Gupta** of NYU School of Law; **Goodwin Liu** of the Supreme Court of California, **Janet A. Napolitano** of UC Berkeley, and **Eric A. Posner** of the University of Chicago Law School.

Jeffery P. Hopkins of the U.S. District Court for the Southern District of Ohio has received the Ritter Award, the highest honor awarded by the Ohio State Bar Foundation; this award is given for a lifetime of service recognizing the accomplishments of the honoree in attaining and promoting the highest level of professionalism, integrity and ethics in the practice of law.

Suzette Malveaux of Washington and Lee University School of Law has been selected as the recipient of the 2025 Clyde Ferguson, Jr. Award by the Association of American Law Schools Section on Minority Groups, which recognizes outstanding legal educators who have made significant contributions to public service, teaching, and scholarship.

Robert S. Peck of the Center for Constitutional Litigation has coauthored *Supreme Anecdotes: Tales from the Supreme Court*, a collection of short anecdotes covering every justice to have served on the Supreme Court of the United States.

Richard L. Revesz of NYU School of Law presented the inaugural Alex Geisinger Lecture at Drexel University Thomas R. Kline School of Law. Revesz on the topic of “New Challenges for Federal Environmental Regulations – Executive Branch Responses.” The Alex Geisinger Lecture Series honors the memory of Professor Geisinger, a leading scholar of environmental law, administrative law, and public policy. Each year the law school will invite a leading scholar in one of these fields to give a talk to the Drexel community. Revesz is an apt inaugural speaker as he was a mentor of Geisinger’s.

Robert H. Sitkoff of Harvard Law School has been inducted into by the National Association of Estate Planners & Councils’ Estate Planning Hall of Fame and is a recipient of the Accredited Estate Planner (Distinguished) designation for 2024.

Judicial Perspectives: Highlights from ALI Members in the Latest Issue of *Judicature*

The most recent issue of *Judicature*, published by the Bolch Judicial Institute, features timely and thought-provoking commentary on key issues facing the judiciary. Several members of The American Law Institute contributed to this edition. Below are excerpts from their articles. The full issue of *Judicature* is available online.

“[Judges Under Siege: Threats, Disinformation, and the Decline of Public Trust in the Judiciary](#)” by ALI President **David F. Levi** of Duke University School of Law, **Thomas B. Griffith** of Hunton Andrews Kurth LLP, **Paul W. Grimm** of Duke University School of Law, **Nathan L. Hecht** of Supreme Court of Texas (Retired), **Bridget M. McCormack** of the American Arbitration Association-International Centre for Dispute Resolution, and **Suzanne Spaulding** of Center for Strategic and International Studies

In June, Levi convened this group of judicial and legal leaders to discuss the sources of this growing crisis and to share ideas

for how judges and lawyers can respond. In a wide-ranging discussion of the challenges ahead, one sentiment was shared by all: The time to act is now, and the cause is urgent.

From the article:

From threats to physical violence, attacks on judges and courts are surging, and corrosive partisan rhetoric and misinformation are spreading through social media like wildfire. While criticism of judicial decisions is a core aspect of democracy, dismissing judges and the courts as corrupt or illegitimate can degrade the rule of law. At a time of declining public trust in the courts, the growth of violence and unfair attacks against judges is raising alarm bells across the profession.

“[Principles for Just and Rational Policing](#)” by **Barry Friedman** of NYU School of Law, **Brandon L. Garrett** of Duke University School of Law, **Rachel A. Harmon** of UVA School of Law, **David F. Levi** of Duke University School of Law, **Tracey L. Meares** of Yale

Law School, **Maria Ponomarenko** of University of Texas School of Law, and **Christopher Slobogin** of Vanderbilt University Law School

With the recent approval of Principles of the Law, Policing, a Q&A with the project's Reporters explored many of the topics from the Principles:

Police reform has long been a topic of heated debate in the United States. But it assumed new urgency and political significance during the past decade, as national news has carried story after story about the killing of unarmed Black men and women at the hands of law enforcement officials. In 2015, not long after the death of Michael Brown in Ferguson, Mo., The American Law Institute (ALI) launched its Principles of the Law, Policing project to address pressing questions about law enforcement failures and to provide a written framework for building just and rational policing laws, policies, and practices — a framework that police agencies and police reform advocates alike might agree on.

ALI Principles of the Law projects aim to offer best practices for issues that have significant legal underpinnings. Drawing on a variety of sources, including existing policies and practices in various jurisdictions, social science research, and constitutional norms, the publications are primarily addressed to legislatures, administrative agencies, and private groups. The audience for the Policing Principles project is broad, including lawmakers, police agencies, bodies that regulate or conduct oversight on policing, the public, and also, in some instances, the courts. For judges who regularly interact with law enforcement on cases in which police are involved, the principles offer new insights into policing practices.

“The 2023 Amendment to Federal Rule of Evidence 702: The Inside Story” by **Daniel J. Capra** of Fordham University School of Law

In the Federal Rules of Evidence, the predominant rule on expert testimony is Rule 702. On December 1, 2023, the rule was amended after six years of work by the Judicial Conference Advisory Committee on Evidence Rules, for which I have served as reporter since 1996.1 Here I provide an account of how the amendment came to be, in the hope that this “insider’s view” will help the reader better understand the amendment’s goals — and how the rulemaking process actually works.

The amendment to Rule 702, in my view, accomplishes three goals: 1) It emphasizes that the reliability requirements of the rule must be established by a preponderance of the evidence, rejecting lower court case law that held that defects in reliability were matters of weight and not admissibility; 2) It requires the court to closely assess whether the expert’s opinion reflects a reliable application of a reliable methodology, and to exclude the opinion if it overstates what the methodology supports; and 3) The Committee Note to the amendment focuses on forensic evidence and suggests that overstatements (such as testimony about a “zero rate of error”) are impermissible.

“E-Service Across Borders: Rules for Serving Foreign Defendants by Email” by **William S. Dodge** of George Washington University Law School and **Maggie Gardner** of Cornell Law School

Reasons are critical to justice and the rule of law. They connect discrete holdings and show that a judge or arbitrator’s decision is not merely a gut reaction to one set of facts on a given day. Reasons embody and transmit the law. They state the principles that separate a society built on whimsy or arbitrary power from one grounded on a core set of written values. Reasons explain decisions, and they should legitimate them.

Traditionally, American arbitrators were not required to give reasons unless the parties requested them. As arbitration has nosed its way into a wider range of disputes, however, reasons have become more important. Today most arbitration rules require a reasoned award, one with true explanations. And that is what most parties expect, too.

Unfortunately, arbitrators sometimes fail to provide sufficient reasons for their decisions. But they alone should not take all the blame. Reviewing courts too often do not recognize and vacate unreasoned awards. These failures are rooted in three crucial opinions: an 11th Circuit opinion in *Cat Charter, LLC v. Schurtenberger*, a Fifth Circuit follow-on opinion in *Rain CII Carbon, LLC v. ConocoPhillips*, and a Second Circuit opinion in *Tully Construction Company v. Canam Steel Corporation*. None of the three awards contained anything recognizable as reasoned. Yet all three courts confirmed the unreasoned awards as if they are reasoned — with the *Cat Charter* opinion blazing the trail for the other two circuits.

“Inside the JPML” by **Karen K. Caldwell** of the U.S. District Court for the Eastern District of Kentucky

The world knows multidistrict litigations (MDLs) by the names of the cases’ defendants and the high-stakes, high-dollar claims at issue. In fact, these claims are often touchpoints for major moments in recent American history: Litigation stemming from asbestos exposure, the Volkswagen “clean diesel” cars, the opioid epidemic, the weed killer Roundup, and Google’s advertising practices have all proceeded as MDLs.

In the last 50 years, MDLs have come to play an increasingly prominent and important role in our country’s legal system. It all started in the 1960s, when the judiciary was forced to manage more than 1,800 related electrical equipment civil antitrust cases filed in multiple district courts across the country. An ad hoc coordinating committee was formed to manage that litigation, including coordinating discovery across all the cases. It was apparent that such complex litigation proceeding in multiple district courts would only become more common. Congress responded by passing the federal statute creating the MDL mechanism, 28 U.S.C. § 1407. Section 1407 gives courts a way to solve complex problems in cases filed in multiple courts, and it helps alleviate the problems of inefficiency, duplicative discovery, and inconsistent pretrial rulings posed by having related cases pending in multiple district courts.

According to the Administrative Office of the U.S. Courts and the U.S. Judicial Panel on Multidistrict Litigation, MDLs constituted 38 percent of the federal civil docket in 2019. That figure has since grown to approximately 59 percent. MDLs dominate civil litigation, and they are here to stay.

Less talked about is the Judicial Panel on Multidistrict Litigation (JPML or the Panel), for which I serve as Chair. Section 1407 allows the JPML to transfer civil actions involving common factual questions pending in different districts to one court for pretrial proceedings. We call this process of bringing cases together “centralization.” The goal is to create a federal legal process that enables the judiciary to administer and resolve factually related complex civil cases more efficiently. Here I offer some reflections on how the JPML works to bring that goal to life.

Book Review by ALI Director **Diane P. Wood** on *Written and Unwritten: The Rules, Internal Procedures, and Customs of the United States Courts of Appeals* by **Jon O. Newman** of the U.S. Court of Appeals for the Second Circuit and **Marin K. Levy** of Duke University School of Law

If asked, most people — even most lawyers — would probably say that the Supreme Court is the primary arbiter of legal questions in the United States. And in a certain sense, that is true: The Court has the last word on the existential questions of constitutional law on which our democracy rests. Such questions, however, do not arise every day, or even every month or term of court. The Court’s docket comprises both statutory matters on which a clear and uniform rule is needed, and constitutional questions that demand resolution. It is up to the Court to decide which cases meet these criteria. In doing so, it draws from a pool of some 6,000 requests for review (known by the medieval term “petitions for a writ of certiorari,” or informally as “certs”), from which it selects the 60 or 70 that seem most deserving of the Court’s scarce resources. For all the rest — the more than 5,900 for which review was sought unsuccessfully, plus the balance of the 40,000 to 50,000 cases on which cert is not sought — it is the federal courts of appeal that have the last word.

That fact alone is reason enough for this book, written by two of the country’s leading experts on federal procedure, Judge Jon O. Newman of the U.S. Court of Appeals for the Second Circuit and Professor Marin K. Levy of Duke University School of Law [Levy is also faculty director of the Bolch Judicial Institute, which publishes *Judicature*].

In Memoriam: Michael Boudin

Michael Boudin, revered judge of the U.S. Court of Appeals for the First Circuit and a dedicated member of The American Law Institute, passed away at the age of 85. Appointed to the First Circuit in 1992, Judge Boudin served with distinction for more than two decades, including as Chief Judge from 2001 to 2008. His legacy is marked not only by his influential rulings but also by his long-standing dedication to the ALI.

Elected to ALI in 1974, and to the ALI Council in 1980, his thoughtful contributions to ALI’s projects and deliberations were well known. In 2014, The American Law Institute presented to Michael Boudin and Pierre Leval the Henry J. Friendly Medal. This 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.

Upon presenting the award, Chief Justice of the United States John G. Roberts, Jr. said, “The Institute has chosen well. The recipients, Judges Mike Boudin and Pierre Leval, are extremely worthy honorees. I have known each of them for 35 years, and I can attest to that personally. They embody the judge’s uncompromising rigor and integrity in following the law wherever it may lead.”

Judge Boudin’s legal career began after his graduation from Harvard Law School. Following clerkships with Judge Henry J. Friendly and Justice John Harlan, he entered private practice, where he worked at Covington & Burling before joining the U.S. Department of Justice’s Antitrust Division. His judicial career, which culminated in his appointment to the First Circuit, was defined by his rigorous application of the law, an adherence to judicial restraint, and an unwavering commitment to the principles of justice.

As a judge, Michael Boudin became known for his intellectual rigor, deep integrity, and respect for the rule of law. He was both admired and respected across the legal community, earning recognition for his thoughtful and principled decision-making. He will be remembered not only for his judicial career but also for his exceptional contributions to ALI, shaping the direction of American law through his dedicated work and service.

Judge Boudin leaves behind a profound legacy; his impact will be felt for years to come.

In Memoriam

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“Anne E. Thompson: A Mentor and Guide. On and Off the Bench” by **Thomas M. Hardiman** of the U.S. Court of Appeals for the Third Circuit

On July 8, 2024, Judge Anne E. Thompson of the United States District Court for the District of New Jersey celebrated her 90th birthday. As a senior federal judge who was eligible for retirement with full pay and benefits in 1999, Judge Thompson essentially has been working pro bono publico for 25 years. This profound commitment to public service exemplifies her character. As one of many federal judges privileged to know Judge Thompson, I'm grateful for the opportunity to offer some reflections about this extraordinary woman.

Soon after federal judges are appointed, they attend the Federal Judicial Center's Orientation Seminar for Newly Appointed District Judges — what is facetiously known as “baby judges’ school.” The curriculum has two phases. In the first, around 15 judges convene in a hotel conference room with two mentor judges, along with staff from the Federal Judicial Center. The second phase involves a week of classes and lectures in Washington, D.C., at the Thurgood Marshall Federal Judicial Building and a wonderful reception and dinner at the Supreme Court. Though the week is to some extent celebratory, judges return home with a clear sense of purpose, a respect for their judicial forebears, and a keen appreciation for the enormity of the task that lies before them. As meaningful as that second phase is, a good argument can be made that the first phase in the nondescript hotel conference room is even more influential. That was true for me, in large part because of our mentor judges, Anne Thompson and D. Brock Hornby.

Submissions as of March 21. If you would like to share any recent events or publications in the next ALI newsletter, please email us at communications@ali.org.



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(ISSN 0164-5757)
4025 Chestnut Street,
Philadelphia, PA 19104
www.ali.org

EDITOR
Jennifer L. Morinigo
(215) 243-1655
jmorinigo@ali.org

MANAGING EDITOR
Pauline Toboulidis
(215) 243-1694
ptoboulidis@ali.org

ART & PRODUCTION
Kathleen A. Morton
(215) 243-1612
kmorton@ali.org