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The ALI's Response to the Center for Tobacco Control Research & Education

Roberta Cooper Ramo & Lance Liebman***

We write in response to the recent *Iowa Law Review* article about tobacco industry input on several of the American Law Institute's Restatement of Torts.[†] The article errs in its assumption that finding correct legal rules is the same as assessing the results of medical research. It does not recognize that ALI's process for considering improvements in law must be open to input from all sides of the relevant issues. The process which produces Restatements would not be credible or of practical use without participation by lawyers who represent clients on all sides. The article also incorrectly states that ALI's process takes place in backrooms, when in fact our drafts are publicly available at all stages, encouraging constructive improvements, disagreements, amendments, and arguments. ALI's search for better law needs participation by all sides on contentious issues, and must be done—and is done—in sunshine. Our work is also improved by comments from our members who do not specialize in the area being considered.

In addition to failing to understand the ALI process and the difference between medical and legal recommendations, the authors make an unjustified and unsupported broad attack. ALI's strength lies in our process and our membership—about 4,000 of the most accomplished academics, lawyers, and judges—and we stand by the integrity of both. ALI provides judges, legislators, and practicing lawyers with concise and clear jurisprudential principles, based on reported court decisions, statutes, academic analysis, and contrasting and conflicting policy arguments. The framework we present in the Restatements accommodates both the specific factual aspects of cases and the evolving policy choices of legislatures. For this reason, ALI's products liability framework—found wanting by the Iowa article's authors—has been cited widely, as courts and elected leaders of each state considered variations reflecting their balancing of interests in

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† Elizabeth Laposata, Richard Barnes & Stanton Glantz, *Tobacco Industry Influence on the American Law Institute's Restatement of Torts and Implications for Its Conflict of Interest Policies*, 98 IOWA L. REV. 1 (2012).

their differing political, jurisdictional, and social contexts.

The legal scholars who serve as Reporters on ALI projects receive comments and criticisms from many sources, in large and small meetings, by letter, and in emails. The ALI Archives at the University of Pennsylvania Law Library, open to all, contain drafts, notes, and comments that reveal how our projects and our resulting recommendations for improving the law evolve. Our Advisers, Members Consultative Groups, Council, and full Membership, through debate, motions, and votes, decide what ALI's recommendations to judges and legislatures will be. No one is disenfranchised or muzzled, nor should they be.

An ALI rule tells members to "leave our clients at the door," and it is a point of honor among members that we state what we personally believe to be right, not what our clients want us to say. But it is equally important that we make certain that all significant points of view are represented and explained. New Restatement work is always underway, identifying imperfections in earlier versions, responding to new information and evidence, and seeking legal doctrine that fits contemporary values. It is no surprise then that there is a First, a Second, and now a Third Restatement of Torts. In addition, we regularly review and revise our conflicts of interest policy and consider legitimate criticism expressed in careful and responsible scholarship.