

VI

*REMARKS AT TUESDAY
AFTERNOON SESSION —
DISTINGUISHED SERVICE AWARD*

By The Honorable Ruth Bader Ginsburg
Associate Justice of the United States Supreme Court

By Professor Gerhard Casper
*President Emeritus of Stanford University, Senior Fellow at the
Freeman Spogli Institute for International Studies at Stanford, and
ALI Council Emeritus*

*The Tuesday afternoon session
of The American Law Institute
convened in the Ritz-Carlton Ballroom,
Washington, DC, on May 20, 2014.
President Roberta Cooper Ramo presided.*

President Ramo: Ladies and gentlemen, please help me welcome the Honorable Justice of the United States Supreme Court Ruth Bader Ginsburg and Professor Gerhard Casper.

(Justice Ginsburg and Professor Casper received a standing ovation.)

A few years ago, I had an opportunity to introduce Justice Ginsburg at a lay event in New Mexico. And my husband, having heard me speak the first few sentences, said he thought I had lost my voice a little bit, but the fact of the matter is and the truth is that I had been moved to tears because when I announced Justice Ginsburg's name, and she started to walk onto the stage in Santa Fe, New Mexico, people spontaneously stood up and welcomed her with such warmth, joy, and appreciation that I thought to myself, this is truly a living treasure. *(Applause)*

But just to be clear about who this person is, everybody in this room knows Justice Ginsburg, let me note probably more about you than you wish.

Justice Ginsburg served on our Council for many years, brilliantly, as she did everything else. She is, I think, the only person ever to have served on both the *Harvard* and *Columbia Law Review*. What some of us especially appreciate is that at a time when the ability of many of us who look like me was called into question, at every place there was fighting for us somebody who was not taller than I was, was much thinner than I was, was much smarter than I was, and in her quiet voice managed to persuade courts and law-school faculties and the public at large that the rights of women were important to this country not just for women but for all of us. In fact, she did it so well that I thought, as I became aware of what she was doing representing me before I ever knew her, I thought at the back of her very elegant suit it should say "Deceptive Packaging." *(Laughter)*

In a week in which she has hardly anything else to do, *(laughter)* I took my heart in my hand and picked up the phone to call her, standing up, as I always do when I speak to her on the phone, out of great respect, to ask her if she would join us today to give an award to someone who is deeply important to the Institute, to me personally,

and I know a friend of hers, and she said, without one moment of hesitation, “I can hardly wait to come.”

Ladies and gentlemen, Ruth Bader Ginsburg. (*Applause*)

Justice Ruth Bader Ginsburg: I can tell you, the first time I ever met Roberta—Roberta, I don’t know if you remember this—but it was on the stage at Lincoln Center and you had just become the first woman to head the American Bar Association.

Well, it is for me a special pleasure to be with you. ALI’s Distinguished Service Award is not an every year thing. It is presented only occasionally and to people who are contributors supreme to the well-being of the Institute. I count it a privilege to present the award to Gerhard Casper, whose wisdom and caring have guided the ALI since he became a Council member in 1980. The Annual Meeting program describes how much good Gerhard has done for the Institute.

On the long list, he chaired the Nominating Committee from 2004 to 2010, and in that capacity, ensured the continuing excellence of the ALI’s leadership—its Council members, officers, and members of the Executive and Audit Committees. From 2001 to 2007, he served on the Program Committee, assisting the Director in deciding which projects to launch, who should be engaged as Reporters, which projects needed rethinking. Adviser to the project on Principles of the Law of Charitable Nonprofit Organizations since 2002, he has advanced that enterprise by bringing to the discussion table his experience as a prominent and uncommonly successful, leader in the academic world.

Concerned about the ALI’s significance to promising young scholars, Gerhard inspired a gathering of the best among men and women newly engaged in law teaching. That meeting led to the ALI Young Scholars Medal, first awarded in 2011, and now presented every other year to an early-career law professor whose work has the potential to influence improvements in the law.

In 1998, the Institute celebrated its 75th anniversary and sought an Annual Dinner speaker whose intelligence, grace, and humanity would captivate the audience. Gerhard Casper fit that bill perfectly.

He delivered an address of the kind one remembers on a matter about which he cares deeply, academic freedom. Most recently, he joined ALI President Roberta Ramo, and Chief Judge of the Seventh Circuit Diane Wood, to compose the search committee that proposed Ricky Revesz to take up the reins from Lance Liebman as the Institute's Director.

One might think, in view of his steadfast service to the ALI, that Gerhard Casper was a person with time to spare. Having read his most recent book, published this year, titled *The Winds of Freedom* [Yale University Press 2014], I can assure you that is not so. The book has garnered accolades from respected educators nationwide. It describes some of the challenges Gerhard met as Stanford's President from 1992 to 2000, with flashbacks to his earlier adventures in academia at the Universities of Hamburg and Freiburg, Yale Law School, Berkeley, and, for 26 years, at the University of Chicago, first as a law professor, then dean of the law school, after that, provost of the university.

I had one question for Gerhard about *The Winds of Freedom*. Was there time for sleep? (*Laughter*) Precious little, he admitted. During his presidency of Stanford, he explained his aims for the University in 1000 speeches, averaging one every three days, each written with Gerhard's own hand. He faced issues of great moment, striving constantly to demonstrate the value of free inquiry and tolerate debate. Demanding his attention also were issues of a less weighty kind. In that category, I would place the irate reaction of some former students to a plan to move the first hole of Stanford's golf course to make room for urgently needed faculty housing. (*Laughter*) Sacrilegious, an objector charged. Then, during the last two years of his presidency he succeeded, by seniority, to the chairmanship of the then-Pacific-10 athletic conference. (*Laughter*) The first question raised during his tenure: Should the Pac-10 use baseball bats of wood or of aluminum? (*Laughter*)

Somehow, he managed to write two books while steering Stanford's course, one on *Cares of the University* [(1997)], the other on a topic that has long engaged his bright mind, the separation of powers [SEPARATING POWER (1997)].

Gerhard has received honors and prizes galore from educational institutions in the United States and abroad. He served, and still serves, on numerous advisory councils. The list of his scholarly articles, comments, and reviews runs a dozen pages.

One indication of the breadth of his talent, he might have succeeded as a rival to Ralph Lauren. (*Laughter*) When new on campus, Gerhard found the official Stanford tie unappealing. (*Laughter*) The design was a redwood bisecting a block S. It looked to Gerhard like a crude dollar sign. (*Laughter*) So he replaced it with a new design. Cardinal red, it displays Stanford's shield and blue diagonal lines bearing the school's motto, which happens to be in German: *Die Luft der Freiheit weht*. In English translation, the motto is the title of Gerhard's most recent book. The President Casper tie, I'm told, is a best seller, more expensive, but far more popular than the tie it replaced.

Gerhard much admired Gerald Gunther, Stanford's revered professor of constitutional law, who was to both of us an inspiring teacher, sage counselor, and cherished friend. Words written by Gerhard in memory of Professor Gunther seem to me to fit Gerhard himself: His "subtlety, situation sense, learning, and professionalism" have touched legions of colleagues and students.

The pressures of a relentless clock may have eased for Gerhard, now a senior fellow at Stanford's Freeman Spogli Institute for International Studies. But in that post, and as Professor of Law, Political Science, and Undergraduate Education, he remains an ardent contributor to the search to know. Gerhard, for all you have done to make studies blossom and minds move, everyone in this audience joins me in a rousing Bravo. May you have freedom to take pleasure in the life of the mind, and may there be, in the years to come, scores of encores of your engagement with issues of enduring importance. (*Applause*)

Professor Gerhard Casper (CA): Justice Ginsburg has been—I have known her as Ruth for 30 years. She is still Ruth to me and I love you, Ruth. This was—I am moved to tears, the way you were (*to President Ramo*). Thank you. Thank you. Thank you.

While the Distinguished Service Award is clearly a very great honor that I do not deserve, I confess that I am nevertheless disappointed. (*Laughter*)

As Justice Ginsburg mentioned—and by the way, she not only read my book but she understood and appreciated what is important to me in that book. As Justice Ginsburg mentioned, I have very recently published this book with the title *The Winds of Freedom*. You all want to get a copy. (*Laughter*)

The book is about universities and about scholarship. Frankly, given the publication and my relative youth, (*laughter*) I would have found the ALI's Young Scholars Medal more appropriate for it. (*Laughter*) (*Applause*)

President Ramo never tires of characterizing age 74 as early adolescence at the ALI. I certainly do qualify in that respect.

Justice Ginsburg, President Ramo, Director Liebman, ladies and gentlemen: I just said that I do not deserve the honor bestowed upon me and I mean it. Expressions of my modesty are kept in check only by my being mindful of Prime Minister Golda Meir's famous response to an awardee who overdid his displays of humility. Quite exasperated by his excessiveness, she cut him off: "Don't be so humble, you're not that great." (*Laughter*) I know that without having to be told.

I have been a member of The American Law Institute for almost 40 years and was elected to the Council in 1980, shortly after I had become dean of the University of Chicago Law School. As a then definitely youthful 43-year-old immigrant boy who speaks funny English and teaches American constitutional law and history, I certainly did not fit right in.

And by the way, let me say something about the funny English. It really is funny. Judge Leval, a couple of nights ago, demonstrated an app he has on his iPhone, a dictation app. You dictate and then the text is being produced. And I said to him, "Pierre, that does not work, for people speaking funny English, terribly well," and so he did an immediate test. He dictated something and it was reproduced

perfectly. Then he gave it to me and about half of my sentence came through accurately and the rest was garbled. (*Laughter*) So there is no question about the funniness of my English.

But not only did I not fit in because my field was American constitutional law and history, and for one the ALI was not about to embark on a Restatement of Constitutional Law, also I did not even know anything about estate planning. Probably the greatest compliment I was ever paid in my work for the Institute came from Harvard's Jim Casner, to whom Lance referred yesterday, when he served as a Reporter on estate planning and I disagreed with him on a fairly subtle point. "Dean Casper," he said, "for somebody who has never studied trusts and estates, that was a pretty perceptive comment." (*Laughter*)

I have had the great privilege of being a Council member during the presidencies of Ammi Cutter, Rod Perkins, Charlie Wright, Michael Traynor, and last but in no way least, Roberta Ramo. The ALI Directors during this period were only three: Herbert Wechsler, Geoff Hazard, my one time Chicago colleague, and Lance Liebman. All Directors and members of the Council and the Institute provided me with challenging opportunities to engage in the unceasing process of inquiry about the law, and for this I am deeply grateful to all of you.

Lance, I see you leave office with great sadness. Throughout my life, I have worked with many people in positions like yours, though I cannot remember many who served the way you did, with outstanding judgment and understanding but always low-keyed and with a sense of irony and humor that has been most endearing. Thank you, Lance. (*Applause*)

While the ALI was not and is not about to do a Restatement of Constitutional Law, public law has received increasing attention, especially during the years of Lance's directorship, above all in the form of what we call Principles projects. As I am fading into the background, I hope the Institute will increase its attention to public law, even, God forbid, constitutional law.

What makes The American Law Institute so unique is that it provides a place for the intelligent, rational discussion of important issues

without the polarization that characterizes so much of our legislative discourse.

As our electoral system, with its gerrymandered districts, with its uninterrupted electioneering, with its dependence on money-raising machines, and with the more or less unlimited opportunities to buy influence, can hardly be viewed with much confidence or optimism, we desperately need organizations such as The American Law Institute that put the premium on careful analysis of legal policies and on searching intellectual honesty.

The Institute's contribution to the education of the public is perhaps more indirect than direct. However, we are performing an essential task. In the language of economics, what we do and what we need to do is patiently and over the long run to build up the right intellectual habit capital.

I, of course, understand that the ALI cannot and should not do everything. However, I am wondering whether, in addition to Restatement and Principles projects, we should perhaps regularly convene focus or issue groups that will enable the Institute to address some of the pressing problems of our life as a nation. One of them we heard about during lunch, the delivery of legal services.

I shall give one other topical example that will frighten many of you but that is at the core of so many evils, campaign finance. Intelligent and rational discussion here, too, may help to build up habit capital that increases the public's demand for fair and effective norms.

A primary task of government is the task of setting substantive priorities and implementing these priorities in a competent and fair manner. Capacity to govern, to set priorities, to deliver services, seems to be in low supply worldwide. Perhaps it is time for the Institute to address not just corporate governance but governance of the public realm as well. As somebody who still carries his copy of the Constitution with him, I wish our governance system would again become a major object of analysis and recommendations.

I have a friend—I had a friend, he died last year, the novelist Richard Stern, who was a member of the University of Chicago English Department, about which he frequently said that he loved it the way he loved Brown Betty. I quote: “Seventy-odd years ago, my father cautioned me about saying I loved Brown Betty. ‘You can’t love what can’t love you. You *like* Brown Betty.’” “But,” Stern continued, “I *did* love that grand fusion of apple, crumb and hard sauce, and I say that I love and have loved the English Department for over half a century.” [RICHARD STERN, STILL ON CALL, 234 (2010).]

The way Richard Stern loved his English Department I have loved The American Law Institute for 40 years. Thank you all.

(Professor Casper and Justice Ginsburg received a standing ovation.)

President Ramo: I will say, as the Justice and Gerhard walk out, she did not mention one of his reasons for success at Stanford. I have teased him for many years that he had what every university President needed: a psychiatrist wife. *(Laughter)*