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REMARKS AT MONDAY
AFTERNOON SESSION

By William C. Hubbard, Esquire
President of the American Bar Association and ALI Council member

*The Monday afternoon session
of The American Law Institute convened in the
Ritz-Carlton Ballroom,
Washington, DC, on Monday afternoon, May 18, 2015.
President Roberta Cooper Ramo presided.*

President Ramo: It's a wonderful tradition of The American Law Institute to invite the President of the American Bar Association to come and address our Annual Meeting. As almost everybody in this room knows, I spend a lot of time reading about people that I introduce, and I am often in awe, and it's usually pretty easy. This time it's a little bit hard for me because, although I am in awe, William Hubbard is a close and dear friend and someone I admire without measure.

You have his biography in your materials, and you can see that he is a superb litigator, that he has been active in both the American Bar Association but, at the same time, has been on the Executive Committee of the Council of The American Law Institute and one of our most treasured voices on any subject.

What you probably can't tell, though, from the written material, is what I want to say in a few words in introducing him.

The American Bar Association is the largest voluntary professional organization in the world. It's a very big tent with lots of people with all kinds of views. It's also a place where you are the leader for a single year. And you ask yourself before you begin, what is it that you can do that will be of importance. And sometimes we have leaders who think in narrow terms. William has thought in the broadest, most courageous way about what is important to American lawyers and the American Bar Association.

First of all, he has thought about the institution of the ABA itself. And I want to say I was speaking to a group in New York last week. Paulette Brown, my friend, was there as well. People forget that it takes large, brave institutions to change institutional norms. Were it not for the American Bar Association, I think we would have had a very different view of women and minorities in the practice, because it was the ABA as an institution that took it upon itself to decide that, first, for a small but important example, it was not going to meet at clubs that excluded women or minorities. That was important. What was more important was when they started asking people running for office if they belonged to any of those clubs. Amazingly almost over-

night—and I assure you this was not a popular thing to do in many quarters of the ABA—nationally there were cataclysmic changes for the good.

Secondly, there is the Legal Services Corporation, the board now chaired by our own David Levi's brother, John, which I think genuinely would not be around if it were not for the constant strong support of the American Bar Association.

At a time when the justice system is under attack, it looks to many people to be partisan and ineffective, when lawyers worry about how they are going to make their ways, when law schools face challenges that 10 years ago they never thought would exist, we needed a courageous leader. And luckily for us, the American Bar Association chose William Hubbard.

William, I am very proud to be your friend. I think that what you have done on all fronts, reaching out to the world that so needs to hear from the leader of the American legal profession, that in every corner of this world we strive for justice. We strive for an independent bar. We strive for an independent judiciary. Hearing that from you has made an enormous difference.

I look at the profession, especially the practicing profession, and your saying that we've let technology get ahead of us but not help us, and the conference that you had at Stanford, which I think, over the next few years, may be one of the most profound things that the ABA has ever done.

And I applaud your continuing support of access to justice for those who so need it, because the American ideal is a joke if everybody doesn't really not only believe in, but have access to, the justice system.

For those reasons, I am honored to be your friend. I'm grateful to be a member of the ABA, but I'm especially happy to introduce you to The American Law Institute. William Hubbard, our Council member. (*Applause*)

President William C. Hubbard: I've had the great good fortune to be a mentee of Roberta Cooper Ramo for over 30 years, and if I were smart, I would just sit down and leave it at that. (*Laughter*)

But I'm not as smart as Roberta would want me to be. But I am grateful for all that she has done to coach me, and sponsor and mentor me, over the years, and she truly has a special place in my heart, as she does in the hearts of all of you.

I'm grateful for this opportunity. I think it's a wonderful tradition that The American Law Institute invites the President of the American Bar Association to come and speak because, as they say, we are all in it together. There's so much work to be done. There's so much progress to be made. And it's very important that we work together and collaborate.

The ABA and the ALI have shared many leaders over the years, and Roberta is probably exhibit A for the person who's been the best leader, in so many respects, for both of our organizations. She's contributed so much and we are indebted to her for her leadership both to the ABA and to the ALI.

I also am pleased that Judy Miller is here, your representative to the ABA House of Delegates. She does a terrific job.

The ABA has accomplished much this year. Building on Roberta's prescient leadership 20 years ago when she established the ABA Commission on Domestic and Sexual Violence, we've attempted to reenergize and rededicate lawyers and train lawyers to represent victims of domestic violence. It's still a scourge in our country, as it was 20 years ago when Roberta and Barry [Ramo] had a conversation that led to the creation of the Commission on Domestic and Sexual Violence. One out of three women will be victims of domestic violence over the course of their lifetime, and 15.5 million children a year witness acts of domestic violence.

Immigration continues to be a conundrum for our country, and we are trying to do something about that in the American Bar

Association. Two delegations of us have gone down to the border to meet with border officials, to look at facilities, to have conversations with detained children, and to try to learn how our system can best reflect that which is great about our country and our justice system. From that, we've set in place a working group, a coalition of sections and divisions and state bar associations, to train lawyers to represent specifically the unaccompanied minors, mostly girls, who are coming across the border, many of them fleeing to escape being taken into slavery for sex purposes out of Guatemala, Honduras, and El Salvador. This is one of the finest moments, I think, in the American Bar Association, because we've put together a coalition, and the sections have stepped up, and they've contributed talent and dollars, and individuals have as well.

Do lawyers matter? Do lawyers matter in this process? When these unaccompanied minors are represented by lawyers, their success rate, their ability to be allowed to stay in our country is 73 percent. When they are not represented by a lawyer, their ability to stay in our country drops to 15 percent. Lawyers matter and we can make a difference.

We've also worked very diligently on the criminal-justice reform effort. The ABA has been at this for a long time. Steve Saltzburg is here and others who have played such a vital role over the years in trying to make sure the ABA was at the forefront of criminal-justice reform. Neal Sonnett is here. This goes back with great interest and effort to 2003, when Justice Kennedy admonished the American Bar Association that it needed to do something about the criminal-justice problem in our country. We have been working on that. And fortunately, we found our time this year when those efforts are starting to pay off.

The United States has five percent of the world's population and 25 percent of the persons incarcerated in the world. We must reform our mandatory-minimum laws. We need to give judges the discretion that they need to make smart sentencing decisions.

This was a topic that I spoke on last week at a conference, a convocation convened by Chief Justice Bernette J. Johnson, the chief justice of the state of Louisiana. Chief Justice Johnson is very concerned about Louisiana having the highest rate of incarceration of any state in the union, and thank goodness there are leaders like she is who are trying to do something about it.

Sentencing reform is happening in the states. I come from South Carolina, probably not known to all of you as a progressive state in these kinds of matters, but in 2010, we adopted a criminal justice and sentencing reform act. Let me just highlight just a couple of the results.

There's been a 24 percent decrease in annual admissions to the prison system. There's been a dramatic decrease in the number of nonviolent offenders now in the prison system, and the percentages of violent to nonviolent have almost flipped. Recidivism has declined, and there's been a direct cost savings of \$5 million a year. That does not even account for the savings in capital costs that we've avoided by not having to build new prisons.

So sentencing reform works. The states are about it. We hope the federal government can come along. There seems to be a broader coalition that's developing on sentencing reform, and this is the opportunity. Now is the time to get these reforms passed.

The ABA has developed a new tool to encourage needed criminal-justice reform, the first of its kind online inventory of the 46,000 state and federal collateral-sanctions laws that often deny employment opportunities, educational benefits, and even the right to vote for those who are released from prison. This database enables judges, counsel, researchers, and policymakers to identify and understand the vast scope of such collateral-consequences laws and their effects. This easily accessible information helps lawyers and judges better grasp the implications of plea agreements and sentences. It's a click away at abacollateralconsequences.org. Let me repeat that. Abacollateralconsequences.org. You can go in and you can search state

by state, and it has a full inventory of each state's collateral-consequences sanctions. My own state has about 696. Louisiana has about 1200, and most states are somewhere in that range. The federal government itself—in our federal statutes there are a number of these, these laws that prohibit people from having an opportunity for a successful reentry into society. And 62 percent of these laws keep people from getting gainful employment after they return to society, having paid their debt, the sentence to which they were sentenced.

The Wall Street Journal has focused on this project in today's online version. I don't know if it's in the paper version. [See Joe Palazzolo, *After Prison, Landing a Job Is Tricky: Officials Aim to Tackle the Mounting Sanctions That Limit Employment for Former Inmates*, THE WALL STREET JOURNAL, May 18, 2015, at A3.]

We've also reinforced this year the ABA's longstanding efforts to promote access to civil justice in our country. Working with our state and local bar partners, the ABA has been a sustained champion for legal-aid funding, and we provide national leadership for pro bono efforts.

John Levi and I have been in touch, as recently as 25 minutes ago, about the funding problems for the Legal Services Corporation. The most current version of the House bill continues to lower funding to LSC, and the current version has reduced the appropriation 20 percent down to \$300 million. It's just wrong. We have to do something about it. We have to be more vocal and more forceful in our efforts.

Lack of access to justice in our country is simply a national disgrace, and it is a flaw in the fabric of our democracy. Access to justice should be a national priority, and it should be the priority of everyone in this room. Eighty percent of the people in our country who are poor, and more and more of those of moderate means, do not get the civil legal assistance that they need. Half of those who qualify for civil legal aid and go to legal-service offices around our country are turned away because of lack of resources. In some states, one party or

the other in the family courts—in 95 percent of cases, one party or the other is not represented by a lawyer in those family-court cases.

The World Justice Project Rule of Law Index has rated 99 countries on a host of factors that pertain to the rule of law. The United States of America ranks 65th out of 99 countries around the world in accessibility and affordability of civil justice.

Justice Scalia made the point most clearly when he said, “Access to justice . . . is the most fundamental American ideal.”

“We the People of the United States, in Order to form a more perfect Union, establish Justice. . . .” You know those words. You know them by heart. We cannot establish justice when people do not have access to justice. Lack of access creates distrust in our system, and when trust in the justice system is broken, the rule of law is threatened. And when the rule of law is undermined and threatened, our very system of ordered liberty is at risk.

As Judge Learned Hand said, “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.” We cannot claim to have an adversary system of justice when, in so many cases, one side is not even represented by counsel. The practical implications of this are enormous, as self-represented litigants put substantial burdens on court operations and processes.

I see our fellow ALI Council member Judge Carolyn Kuhl. She’s one of many judges and leaders who recognize this. As she recently observed as presiding judge of the Los Angeles County Superior Court, a self-represented litigant who seeks help from a court clerk interrupts the clerk’s other business, scheduling matters and recording orders. Often the court has to continue a motion in order to accommodate a self-represented litigant, further clogging court calendars for other cases. Eighty percent of litigants in California’s family courts are not represented by counsel.

And then there are those who have legal problems but never solicit a lawyer’s help. Recent research at the American Bar Foundation

has indicated that those on the lowest end of the socioeconomic and education scale often do not even recognize their legal problems as legal problems. They simply look at their plight in life as one of a lack of success, that's just who I am, I have unfortunate circumstances, and they do not recognize an eviction notice as a legal process perhaps providing certain opportunities for relief.

In 1971, there was one lawyer for every 572 Americans. By the year 2000, that had grown to one lawyer for every 264 Americans. In the time since then, ironically, the percentage of self-represented litigants has continued to grow in our country and is really at a point where it's become untenable.

The current system is broken, and we must fix it. The traditional one-on-one model, where one lawyer works in person with one client at a time, simply has not met the demand. In law, we honor precedent, but sometimes we must break from precedent and tradition to seek more effective ways to establish justice. We have a choice. We can continue to operate as we have and risk losing the very people we are sworn to serve, or we can engage in fresh thinking and fashion innovative ways to provide legal services to the public.

Fresh thinking is what the ABA set out to encourage this year with our Commission on the Future of Legal Services, to which Roberta alluded. The commission is identifying and promoting innovations, through technology and other means, to create new avenues for access to justice, develop new career opportunities for current and future lawyers, and at the same time stay true to our core values of professional independence and client protection.

The commission itself is an influential group of leading innovators, regulators, judges, law professors and deans, and practicing lawyers from all settings. It includes ALI Council members Dan Rodriguez, Wallace Jefferson, and Kim Askew. And I must also recognize Laura Stein and Roberta Ramo for their guidance in helping formulate the structure and mission of this commission.

Our partners include the National Center for State Courts, the Federal Judicial Center, the Conference of Chief Justices, the Association of American Law Schools, and the Legal Services Corporation. Through this collaboration, and through these different perspectives, we are breaking down silos and trying to find new solutions to these vexing problems.

Justice Brandeis in *New State Ice Co. v. Liebmann* [285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)] described how states are the laboratories of economic and social and legal reform. And that is why we are helping to organize community-based, grassroots meetings throughout the country that include bar leadership, judiciary and court personnel, local practitioners, local businesses, clients, and innovators. Some of you have been part of these exciting efforts, and virtually all of our grassroots meetings have had significant participation from the organized bar and the state judiciaries and usually the state chief justices. We have had or are planning grassroots events on the future of legal services in 17 states, including one we had last month led by ALI Council member Arizona Chief Justice Scott Bales. These local efforts are key to identifying opportunities for improved access.

Two weeks ago, we concluded the event that Roberta described, the National Summit on Innovation in Legal Services, hosted by Stanford Law School and the ABA's commission. Twelve state chief justices were in attendance. During two intense days at Stanford, with an opening session led by Judge Jeremy Fogel, director of the Federal Judicial Center, and our own ALI Council member, Justice Tino Cuéllar of the California Supreme Court, we heard from a rich diversity of people who encouraged us to innovate and be creative in providing legal services.

The summit more than fulfilled our purpose of cross-pollinating ideas and learning from one another. The message was simple and at the same time it was bracing. As we have seen in the medical profession, journalism, finance, real estate, and in many other sectors, we must embrace innovation and technology or face the threat of becoming obsolete. We shop differently. We bank differently. We get our

news differently. We cannot expect the public to look at the American legal system and not expect it to change if we are going to serve that public.

Lawyers can learn from innovators like Rich Barton, founder of several successful online companies like Expedia and Zillow. At the Stanford summit, he reminded us that technology can be a force multiplier. He urged lawyers to suit up and go to battle with the forces of change and innovation and to resist the temptation to fight them.

Speakers at the summit pointed out ways to open our minds to innovative approaches, using smart phones and tablets and new software, even artificial intelligence, in order to identify new models for the delivery of legal services to those who do not have access to legal services.

We heard from a founder of a company called Modria, which uses the online dispute-resolution systems developed by eBay and PayPal and resolves more than 60 million disputes a year—outside the traditional court system.

Avvo is another technology company that provides a variety of services. It receives eight million hits on its website per month, and it has addressed 6.5 million legal inquiries.

IBM has invested billions of dollars in its Watson project, and recently it has invested another billion to commercialize IBM Watson in several sectors, including the legal sector. And IBM's general counsel has said that Watson is going to take on work now done by external lawyers.

We've learned from courts that use online kiosks to serve the public, from law schools that are teaching students to develop user-friendly online and smart-phone-friendly legal forms, and from law firms with successful technology-based, nontraditional business models that serve more moderate-income clients and keep costs down and still make a profit.

The lawyers who seize these and other opportunities see what venture capitalists see. In 2012, investors pumped \$66 million into legal-technology companies that provide legal services. These are not investments in law firms. They are investments in technology companies. In 2013, that number jumped to \$456 million, and in 2014, it topped \$1 billion.

Disruptive innovations are accelerating in the legal sector. We know the world changes. As we survey the changing legal landscape, we are reminded of the lyrics of the song sung by Carole King many years ago, “I feel the earth move under my feet.” (*Laughter*)

The earth is moving under our feet, but we should not leave it to others to define what that new world will look like. We are at an inflection point. With the emergence of new technology-based, legal-service-delivery companies, the window is closing on our ability as lawyers to shape the future. Lawyers have what machines do not have—judgment, wisdom, moral values, empathy. And we are leaders. We are leaders. And it is our time right now to lead. Change can be difficult, but change is inevitable. Failing to seize this opportunity to be better stewards of the public interest is simply not an option. By partnering with innovators in design, engineering, and business, we can deliver our services to clients who are not now getting them and who may not even know that we can help them.

The American Bar Association remains firm in our desire to partner with stakeholders to improve the delivery of legal services for all. These stakeholders, of course, include every one of you. Can we collaborate on new, innovative ways to expand legal services? Are there rules that can be changed for a new century, laws that can be rewritten, processes reformed? ALI’s depth of expertise is critical in this combined effort to develop new approaches.

At this national summit, paraphrasing Albert Einstein, Stanford University President John Hennessy said it clearly: “We cannot solve problems with the same kind of thinking we used in creating them.”

Several years ago, and in conclusion, I had a meeting that was canceled, and I had a chance to take a run around the National Mall, and it was one of those picture-perfect days in Washington with a crystal blue sky. I got a little bit lost on my run, and I came in the back way to the Martin Luther King Memorial. I needed a rest. And so I took some time there, and I looked at that 450-foot granite wall that marks that monument. Of course, I observed the first quote was on the far left, and you are all familiar with it. “[T]he arc of the moral universe is long, but it bends toward justice.” The last quote—there are 15 quotes, and the last one on the far right of the 450-foot wall quotes Dr. King’s words, “True peace is not merely the absence of tension; it is the presence of justice.”

So let us join together with new energy and new thinking and renewed dedication to deliver justice—not just for some, but for all.

(President Hubbard received a standing ovation.)

President Ramo: Well, everybody in this room—almost everybody in this room has someone that represents them in the United States Congress, and somebody that represents them in their state legislatures. And I hope that the week won’t end without your contacting them to tell them how important all kinds of support for the American justice system is, not just access but for our courts as well. That would, I think, make a profound thank you to the leader of the American Bar Association.

William, we thank you for everything you have done. I have felt your absence acutely from the ALI the last two years, and we will embrace you back as soon as you put down your heavy but useful burdens for us all. Thank you, William. *(Applause)*