

**President David F. Levi:** Well, may it please the court. And we have three Justices here—the Chief, Justice Kennedy, and Justice Kavanaugh—for this wonderful event.

The Henry J. Friendly Medal is given by The American Law Institute from time to time—not every year—to recognize significant contributions to the law in the tradition of Henry Friendly, who was a member of the Council of The American Law Institute and a very distinguished judge of the Second Circuit.

This year, the Awards Committee, chaired by Judge Ray Lohier, recommended to the Council that the award be given to Justice Anthony M. Kennedy. And of course, the Council agreed enthusiastically. Over the course of his long and distinguished career, Justice Kennedy has been our rule-of-law ambassador at home and abroad.

The 17th Chief Justice of the United States was a law clerk to Judge Friendly. Chief Justice Roberts was here last year to make the award to Justice Ginsburg, and it is a wonderful pleasure and a real honor to welcome him back to The American Law Institute.

Chief Justice Roberts? (*Applause*)

**Chief Justice John G. Roberts, Jr.:** Thank you. Thank you. Thank you very much. Thank you very much, and good afternoon.

I am very pleased to be back at the Annual Meeting of The American Law Institute to present the Henry J. Friendly Medal to my valued colleague and friend Justice Anthony Kennedy.

Judge Friendly was not a big fan of awards, but he did accept the Presidential Medal of Freedom when it was offered to him by our 38th President, Gerald Ford. The ceremony took place 10 days before President Ford left office in January 1977.

The President accurately described Judge Friendly in these words: “Honored student and servant of the law, man of intellect and wisdom, he brought a brilliant sense of precision to American jurisprudence, sharpening its focus and strengthening its commitment to the high goal of equal and exact justice for every American citizen.”

Now Ford’s Attorney General, you may know, was a lawyer and leader named Edward Levi. Some of Edward Levi’s close relatives have also become noted figures in the law. (*Laughter*)

So I naturally wanted to see if there was any back story about Judge Friendly’s selection, and I found an exchange between Judge Friendly and Attorney General Levi that sheds some light on both.

The day after the medal ceremony, Judge Friendly wrote to his friend General Levi, “It must be a satisfaction to you, as you complete your service as Attorney General, to know that the entire country now shares the high regard for you that your friends have cherished for so long.”

And of the medal, the judge wrote, “Although I am drawing heavily on intuition, I suspect that you had a great deal to do with [this]. This intuition was fortified by the eloquent citation, which I do not think could have been written by anyone on the White House staff.” (*Laughter*)

“If I am right, my hearty thanks. If I am wrong, no harm is done by this erroneous attribution.”

So General Levi wrote back, “The White House did not need my help on this matter. Your qualities are well known and widely appreciated.”

Now the exchange between them accurately reflects their mutual high esteem and humility. When Judge Friendly died in 1986, Edward Levi sent a condolence note to the Friendly family. The judge’s daughter Joan wrote back, “Dad held you entirely responsible for his receipt of the medal. There was no one for whom he had greater respect.”

Now I do not know if Edward Levi was responsible for President Ford’s decision to present the Medal of Freedom to Judge Friendly, but I do know that President Ford had a knack for identifying persons of competence, integrity, and decency. He gave the Medal of Freedom to Judge Friendly. He appointed Edward Levi to his Cabinet.

And in 1975, he selected Anthony M. Kennedy to be U.S. circuit judge for the Ninth Circuit. At 38, Tony Kennedy was the youngest federal-appeals-court judge in the country and one of just 12 court-of-appeals judges Ford appointed. Ford received some good advice recommending Justice Kennedy from then-Governor Ronald Reagan, who deserves some of the credit here today.

Now as I wrote in a *Harvard Law Review* tribute last year, Justice Kennedy “brought to the Court a special combination of legal acumen, collegiality, and kindness. He leaves behind an imposing body of judicial opinions to guide our future deliberations.”

He is also a wise and generous man who possesses the gift of prescience. I will give you a personal example.

In January of 1992, President George H.W. Bush nominated me to be a judge on the Court of Appeals for the D.C. Circuit, but the nomination expired when the administration changed. I ran into Justice Kennedy not long after. He said to me, “John, you’ll be a judge if you want to be, but it’s going to be good for you to be in private practice. Now maybe you don’t want to hear it now.” And I said, “Well, that’s right.” (*Laughter*)

Now some years later, I had the fortune to become a judge and then Tony’s colleague on the Supreme Court. I reminded him of our earlier conversation and told him he had been right. And he said, “Well, you’ll find that’s usually the case.” (*Laughter*) (*Applause*)

In important ways, I think all Americans have seen the ways Justice Kennedy has consistently been right. He has spoken consistently and powerfully about the importance of civility in our national dialogue. He has reminded us that freedom is taught, not merely given, and he has devoted his time and considerable energy to asking all Americans to remember that.

He has modeled the independence of courts by giving every party who argued before him the confidence that he retained an open mind and would fairly consider every meritorious argument. And let me just say that he has done all this while living a life of devotion to his wonderful wife, Mary; to his children, Justin, Gregory, and Kristin; and to his many grandchildren.

They have all made sacrifices for Tony to give 44 years and counting of his professional life to our federal courts, and they deserve medals of their own.

Now last fall, Justice Kennedy gave remarks in which he took the opportunity to conclude that each branch of government should ask itself whether it is proud of how it serves the country. Well, Justice Kennedy deserves this medal today because, like Judge Friendly, his career on the bench has been one of complete devotion to this vision of public service.

He deserves this medal today, like Judge Friendly, because he has made the judicial branch one on which all of his colleagues can feel proud to serve with him. Certainly, Justice Kennedy has helped shape a judicial branch and Supreme Court on which I am proud to serve. Certainly, I have been proud and grateful for the chance to serve alongside Justice Kennedy.

And certainly, today I am proud to present the Henry J. Friendly Medal to Justice Kennedy for his contribution to the law in the tradition of Judge Friendly and The American Law Institute.

Tony, congratulations.

*(Justice Kennedy received a standing ovation.)*

**Justice Anthony M. Kennedy (Ret.):** Thank you. Thank you very much. Thank you very much.

Only the litigators need to stay standing. (*Laughter*)

Chief Justice, Justice Kavanaugh, Dean Levi, and my fellow adherents to the idea and the reality of the rule of law, it would be a privilege to speak to a meeting of the Institute at any time and place. But to do so on the occasion of your presenting me with this distinguished award, one of the most distinguished awards in our profession, please know that it is an honor that my family will treasure with me in all the years to come.

The ALI has my highest respects, and for this award, I give you my deepest thanks.

Henry Friendly, one of the great judges by any measure in the history of the American judiciary, an iconic figure, had a brilliant way of using the case-law method to find controlling and powerful principles. In looking back at some of the decisions of the Court where the decisions were written by me, involving quotes from Judge Friendly, it was very interesting to notice this.

We would get cases, as you know, in which the circuits were divided. And often, in my opinions and in other decisions for the Court, Chief Justice, the very opening of the opinion, to describe the issue, has a quote from Judge Friendly, but one of his opinions is to be discussed as to whether or not it should be accepted as the rule of law.

So, and without giving away the suspense, because you have to wait to see the end of the opinion before you find the holding, we begin with a quote from Judge Friendly. And it doesn't mean necessarily that his view will prevail, but it's just so well stated that this is fascinating.

And so he was a powerful figure in preserving and advancing and providing respect for the judicial process that's part of the Anglo-American legal system, the case decisional process, the common-law method.

Now it's not a method that's necessarily designed to survive. If you had lived in even toward the end of the 17th or 18th century, middle of the 18th century, and you were in England, and you were a member of the legal profession or you were a well-informed person, suppose someone asked you to wager, at those times, whether the common law could really survive or whether the code system that was so apparent on the continent would take its place.

It might have been a good prediction, a good wager for you to say that the common law could not survive because it was simply not accessible. It took months to find controlling precedents. The law, merchants in London simply couldn't use it. They had arbitrators, and they referred often to the codes that were being enacted on the European continent.

It was the same way with admiralty law, the same way with international law. So you might have thought, if you were making a prediction, that the common-law method, the common-law tradition would not really survive. Enter William Blackstone.

Blackstone began his life thinking he wanted to be a poet. He didn't quite make it that way, so he took his second choice, and he wrote the *Commentaries*, and they were published between 1765 and 1770. Suddenly, the principles, the traditions, the teachings of the common law became accessible.

And in America, this was of tremendous importance. For a number of years, the biggest-selling book after the Bible, i.e., the second-biggest-selling book, was Blackstone's *Commentaries*. We didn't have many lawyers. So many people in business or owning property had a copy of the *Commentaries* on their shelves.

He made the common law and the Anglo-American legal tradition, then mostly the Anglo tradition, accessible. The Blackstone *Commentaries* were instrumental in teaching the Framers at Philadelphia, in 1787, the meaning and the dynamics of separation of powers.

Fast forward from 1770 just over 150 years to the 1920s. In this nation, we had 48 state judicial systems, 48 legislatures, and obviously the federal government. We had this great outpouring of case decisions and statutes. The law was becoming inaccessible. Enter the ALI.

The ALI did for the Anglo-American judicial process and for the law in the 1920s what Blackstone had done 150 years earlier. Sometimes during my tenure on the Court when the clerks

came in and we first began to discuss a case, my suggestion was get the Restatement on Contracts, Agency, whatever the underlying problem was, or Conflicts, or the Restatement on Torts. And they would look at me as if this was rather too simple, kind of beneath them. I said please get the Restatement. (*Laughter*)

And this would often be the beginning of a very, very important part of a discussion and sometimes even the end.

You now have Principles of the Law. You have Model Codes. You have the Restatements. It's important, it seems to me, for our fellow members in the profession—members of the academy, of the bar, and of the bench—to know the process by which you come to your conclusions on issues that are very controversial.

You do so in a way that is civil. You have a civility in your tradition, in your methods, in your debates as part of your history. We must know this civility.

It was not at all anticipated by me, but some years ago, Charles Alan Wright wanted to talk with me. We'd been talking by telephone. And we found out that we were both going to be in San Francisco, and we wanted to talk about literature. He particularly liked mystery stories and was quite an expert in that.

And when we came, he said, "I've arranged for you to come tomorrow to the ALI meeting on Corporate Governance." And he said, "We are going to preside." (*Laughter*)

Well, you know, if you're a Supreme Court Justice, you know everything. So we were on the rostrum together, and at times, it seemed to me appropriate to intervene to call on someone. This was a very, very controversial subject, and today, apparently, it still is, Principles of Corporate Governance.

This was a debate with lawyers, about this many lawyers in the room, and it went on for three hours. It was one of the most principled, decent, thoughtful, instructive debates that it had ever been my pleasure to encounter. And it was done with the utmost of civility.

In a way, The American Law Institute, by its history and by its traditions and by its ethics, make you itself a restatement of civility. It's never been needed more than it is today.

The ALI should teach and ensure that the rest of our profession knows how thoughtful and decent and rational and polite your debates are. And the rest of society should know the same thing about the bar.

In just about four years, Dean, you're going to have the 100th anniversary of the ALI. And it should be our aspiration and our hope that at that point, we will have made some recovery in restoring decency and thoughtfulness and honor to our civic discourse. (*Applause*)

Democracy presumes that there will be a consensus based on thoughtful debate. Two summers ago, it seemed to me appropriate to reread Plato and Aristotle. It always irritated me that they gave a low grade to democracy. They classified different forms of government. Monarchy, aristocracy, oligarchy, democracy—they gave democracy a low grade.

My conclusion after rereading them—and I found agreement with several classic scholars that I consulted—was they thought democracy did not have the capacity to mature, and it's our destiny to prove them wrong. At the moment, we are not doing that.

But it is within our province, within our capacity, within our maturity, within our respect for the meaning of democracy and freedom, that we can do that. This award will inspire me in future years to bring again the message of civility and decency and progress to all those who, like you, revere the law.

Thank you very much.

*(Justice Kennedy received a standing ovation.)*

*(Pause)*