

The Tuesday afternoon session of The American Law Institute convened in the Ritz-Carlton Ballroom, Washington, DC, and was called to order at 1:35 p.m. by President Roberta Cooper Ramo.

**President Ramo:** So lovely fellow members, those of you who have been members for a long time will know, and for those of you who are new to us, I will tell you that to its credit, The American Law Institute gives very few awards. And so the ones that we do give are thoughtfully given, incredibly important to us, and the fact that we don't give many of them makes them, I think, even more precious.

The Chair of our Awards Committee for a number of years has been Judge Brock Hornby, and before he rises to present the Friendly Medal and tell you about it, I can't help but tell you how grateful I am to have Brock not only on the Council, but to have chaired this important Committee for us for many years.

I discovered in actually finally looking at his bio, I'd wondered a little bit about your accent, Brock. You know, Brock is in Maine. He doesn't exactly have a Maine accent. And there was that touch of Canadian. But then there's that time you taught at the University of Virginia School of Law, which apparently softened it all.

And so he has kind of a "pan-North American" accent, which I appreciate very much. Ladies and gentlemen, the Chair of our Awards Committee, Judge Brock Hornby. (*Applause*)

**Judge D. Brock Hornby:** Henry J. Friendly was a great judge. Judge Posner would say he was the greatest federal judge of his time, perhaps of any time. And The American Law Institute has appropriately awarded its Henry J. Friendly Medal to a number of judges.

But Henry J. Friendly was an outstanding New York City lawyer before he became a judge. A founding partner of Cleary Gottlieb. The vice president and general counsel of Pan American World Airways from 1946 to 1959. Friendly was also actively involved in The American Law Institute.

A critical strength of this organization is that it not only includes judges and law professors, but prides itself on also including the best lawyers in America, women and men of insight, intelligence, skill, and integrity. Today, we have the privilege of awarding the Friendly Medal to a lawyer who meets the Friendly award criteria in abundance, namely contributions to the law in the tradition of Judge Friendly and the Institute.

Conrad K. Harper. How does one capture the essence of this cultured, principled lawyer and dedicated public servant?

What are Conrad Harper's contributions to the law? How about working for the NAACP Legal Defense and Educational Fund, Inc., straight out of Harvard Law School, during critical years for desegregation, 1965 to 1970. [*Here Judge Hornby points to a 1969 photograph on the video screen.*] And here he is after just having argued his first Supreme Court case, three-plus years out of law school, which he won, Daniel v. Paul, a public-accommodation case coming out of Little Rock.

How about next serving as an associate at a major New York City law firm—Simpson Thacher & Bartlett—and becoming partner in 1974, where with some public-service interruptions, he remained through 2002 and became of counsel in 2003.

Cochair, the Lawyers' Committee for Civil Rights Under Law, 1987 to '89. [*Here Judge Hornby points again to the 1969 photograph.*] I should say that's also his lovely wife next to him. It's his mother to his left, his father to his far right, his secretary to his far left, and his good friend Michael Winston, whom I had the pleasure of sitting next to today at lunch.

Where was I? The Lawyers Committee for Civil Rights. President of the Association of the Bar of the City of New York from 1990 to 1992. Legal adviser to the State Department from '93 to '96 under President William Clinton and Secretary of State Warren Christopher. United States member of the Permanent Court of Arbitration at The Hague, 1993 to '96 and 1998 to 2004.

Necessarily, this is a severely edited summary of Conrad's contributions to the law. I add that Conrad was the first African American in several of the important positions that he occupied.

The medal criteria also speak of the tradition of The American Law Institute. How about attending this, Conrad's 35th Annual Meeting in 40 years of membership. Second Vice President and First Vice President for six years, Executive Committee for 18 years, Adviser on numerous projects and member of several other committees, Council member for 26 years before taking emeritus status.

Are you impressed yet? (*Laughter*)

For me, four nouns partially characterize Conrad, and I list them in no particular order—language, selflessness, literacy, principle.

*Language.* If you've attended an Annual Meeting, you've heard Conrad at the microphone offering penetrating insights in language that is a delight to hear. Precise, elegant, never ambiguous.

Marsha, his beloved spouse, tells me that when their two sons, Warren and Adam, were young, they would supplement their street language with, "Or as Dad would say," and then rephrase their comments in the language that Conrad must have learned from his schoolteacher mother.

It shouldn't surprise you that Conrad chaired the Committee that published the Institute's first style manual for Reporters in 2005 and was on the same Committee to revise it a decade later.

Conrad knows how to use language to capture his audience. Here is his opening line in a speech to Yale Law students in 1998. "Moving between private practice and public service is enormous fun and occasionally terrifying." How could you not pay attention after that kind of an opening? Plain English that captures it all.

*Selflessness.* Our colleague Harold Koh, who also was legal adviser, though later than Conrad, shared with me that Conrad gave him sound advice when Harold started at State, namely "Don't let others criticize your staff. It's your job and responsibility."

Harold learned that, early in Conrad's tenure at State, someone blamed one of Conrad's subordinates over something, and Conrad defended the subordinate. And when it happened a second time, Conrad told the critic, "Don't blame my subordinate ever again. It's on me. It's my fault. But anything we did right, it's because he did it."

Still on selflessness. One more excerpt from a speech to Yale Law students. This is Conrad speaking. "No matter how demanding the office work, one should, one must always be actively engaged, for example, in helping pro bono clients, working in a soup kitchen, serving on a child welfare board, pushing a local bar association to address community concerns. From my own experience, I know that such outside work gives a connectedness and a sense of wholeness that merely practicing law does not."

Ponder that. It may not surprise you that Conrad has served as Chancellor of the Episcopal Diocese of New York and that he is a man of faith.

*Literacy.* Conrad has written numerous articles of a legal flavor—I'm not going to list them. But he's also written about "Courtship and Marriage in Letters and Diaries from the Age of Jane Austen." He served as trustee of the New York Public Library and the Metropolitan Museum of Art.

Conrad reads literature to Marsha, while she savors a cocktail when they dine out, and reads poetry to her at bedtime. She told me so, Conrad. (*Laughter*)

In the same speech to Yale Law students I mentioned, Conrad urged them: "Each year, read at least two substantial works, one a novel of importance, the other a significant work of nonfiction. Novels are life-realized. They magically open worlds and personalities. They redeem us from self-adulation. Nonfiction, such as history, philosophy, science, and theology, tests our critical faculties, letting us engage the great minds of all time in intimate conversation. In a true sense, we are what we read."

Conrad and Marsha both take recorder lessons, collect books, and attend Jane Austen events. The breadth of the household and family they nourished

may be reflected in the fact that with Conrad a lawyer and Marsha an executive and consultant to nonprofits, they raised two sons, one of whom is a musician and the other a computer engineer. Now that's progress.

Finally, *Principle*. One example. Conrad Harper was named to the Harvard Corporation in 2000. In 2005, he resigned, protesting the leadership of then-Harvard President Lawrence Summers, criticizing Summers's treatment of "those who are underrepresented at the top levels of major research universities," referring to African Americans, Native Americans, and women.

Two years after the resignation, Harvard University presented Conrad an honorary Doctor of Laws degree.

Conrad, you told Yale Law students this: "I do not know about you. But if I'm to be anywhere close to the person I want to be, I continually need examples before me."

You have been, and you are, Conrad, that example for your friends and colleagues here at The American Law Institute. A great American lawyer, a New York City lawyer, in the tradition of Judge Friendly and the Institute. Please come forward. (*Applause*)

*[Endnotes provided by Mr. Harper have been included here for the benefit of the reader.]*

**Mr. Conrad K. Harper:** Thank you, Brock, for that wonderfully kind introduction.

Roberta, your Presidency has been splendid. That splendor has ennobled us all.

I am grateful beyond adequate words to the officers, Council, and Institute members for this honor, something I never imagined receiving. Through my 40 years as a member of the Institute, I have had some of the most enriching, intellectually stimulating, and enjoyable times of my professional life. I owe deep thanks as well to the Institute's superb staff.

I am very happy my sons, Warren and Adam, and my wonderful, darling wife, Marsha, are here today.

Although it has been half a century, I can see again in my mind's eye the lofty library of the Association of the Bar of the City of New York. I was a young lawyer at the NAACP Legal Defense Fund and at a library reading table I was seeking the key to a problem in a brief I was writing. All became clear as I read Judge Friendly's already famous Cardozo Lecture, "In Praise of *Erie*—and of the New Federal Common Law," published three years earlier. I found what I needed in his incisive, luminous, and sometimes pungent prose. I did not know the man yet I knew his genius.

In a fitting tribute, Bruce Ackerman once wrote that Judge Friendly did his own work. And what work it was, in judicial opinions, law review articles, and in crucial contributions to the work of this Institute, thereby lighting our path to the uttermost generation.

Henry Friendly's status is secure as one of the greatest judges and keenest minds ever to grace an appellate bench. His perceptive opinions across a wide array of subject matter still instruct us on the just resolution of legal disputes. His extrajudicial writings illuminate and advance our consideration of issues ranging from administrative law to constitutional, statutory, and common law.

This remarkable man spent more of his life, however, as a practicing lawyer than a federal judge. After brilliant records at Harvard College and Harvard Law School, and following his clerkship with Justice Brandeis, Friendly, in 1928, joined the Root, Clark firm in New York, becoming a partner nine years later in 1937. He and several other partners withdrew from the firm at the end of 1945, thereafter founding, with Friendly as a named partner, the firm now known as Cleary Gottlieb Steen & Hamilton. He was 31 years at the Bar before elevation to the Second Circuit in 1959. At his death in 1986, he had been a judge for almost 27 years.

I want to spend a few minutes talking about Henry Friendly, the lawyer. His central role is well-known as counsel to, and later as a corporate officer and director of, the fledgling and then dominant Pan American World Airways. In his early years at the Bar, he was heavily involved in the celebrated *Wendel* estate litigation. Through the years, his practice was concentrated on matters for Pan Am but other important clients included Paramount Pictures, New York Telephone, and New York Central Railroad.

As Michael Boudin noted, “. . . Friendly brought to the tasks of law finding, law improvement, and sound outcomes two qualities in which perhaps no American judge has surpassed him: a skill in wielding the legal tools and a quality of judgment honed by years of private law practice and service as general counsel to a great corporation.”

What were the standards by which Friendly, the lawyer, was guided? In the fall of 1964, he spoke to the entering class at the University of Chicago Law School. After discussing the purpose of law school education as directed toward acquiring a legal mind, he turned to the elements necessary for a true understanding of the law, naming, among others, a command of history, philosophy, economics, psychology, political science, computers and their underlying mathematics, as well as working with artists and architects.

He then brought the message home, saying: “The office lawyer who lacks knowledge of his client's business is a poor adviser; the litigator who tries a case without adequate information about the relevant technologies is perpetrating a fraud on his client and is failing to do his duty to the court.”

I should inject here that sometimes pursuing the Friendly approach to litigation requires some daring. I once represented a car manufacturer in a products liability case. The plaintiff's expert said the crash occurred the instant the car's power steering failed at 55 miles per hour when the ignition went off. Our engineers said that was impossible.

One evening on a dark highway after interviewing a witness, I was driving with a soon-to-be-terrified younger colleague a car like the one at issue. I sped up to 55 miles per hour, cut the ignition, and found—are you ready?—there was no effect on the power steering.

Returning to the advice given to law students, Friendly quoted John W. Davis who said, “the lawyers ‘supply the lubrication’ that makes it possible for society to run. . . .” Friendly added that Davis “was speaking the truth but not the whole truth; you are not here simply to become better wielders of oil cans.”

Having in mind, then, Friendly’s own standards, let me turn to an example from his practice. This one illustrates his point that a lawyer must know the client’s business and the relevant technologies.

Friendly’s client, Pam Am, sought permission to buy the North Atlantic air routes of American Overseas Airways over the objection of TWA. On cross-examination at a hearing, Friendly destroyed the credibility of the President of Braniff Airlines as well as that of a key TWA executive and director. Friendly’s questions, showing that he knew their business better than they did, also showed they were lying.

According to Friendly’s major biographer, David Dorsen, in the course of Friendly’s career as an advocate, he lost his two biggest cases, one before the Supreme Court and the other before the Civil Aeronautics Board. Dorsen’s summary is that Friendly’s “overall record before appellate courts was twelve wins and sixteen losses (including two losses before the Supreme Court).”

But a bare account of wins and losses leaves out the quality of Friendly’s work. He was by any measure a stellar lawyer. Erwin Griswold called Friendly “the ablest lawyer of my generation.” Paul Freund said of Friendly, “No one who sat with him on the Council of the American Law Institute could doubt that in practice he had tendered to his clients his services, not his soul, in the best tradition of eminent lawyers-turned-judges like Joseph P. Bradley, Harlan F. Stone, and Charles Evans Hughes.”

By the 1950s, however, Friendly was more than willing to move to the bench. The story of how that came about, though, is for another occasion.

My time as a member of the Institute overlapped with the great Henry Friendly. Now, thanks to you, I have another unanticipated and gratefully accepted connection to his memory and achievement.

Thank you.

*(Mr. Harper received a standing ovation.)*

#### Notes

1. Information and quotations relating to Friendly’s legal career are from David M. Dorsen, *Henry Friendly: Greatest Judge of His Era* (Cambridge: Harvard University Press 2012), pp. 34-72.