

VII

ANNUAL DINNER REMARKS

By The Honorable Stephen G. Breyer
Associate Justice of the United States Supreme Court

By Professor Lance Liebman
Retiring Director of The American Law Institute

By Roberta Cooper Ramo
President of The American Law Institute

*The Annual Dinner
of The American Law Institute
was held in the Ritz-Carlton Ballroom,
Washington, DC,
on Tuesday evening, May 20, 2014.
President Roberta Cooper Ramo presided.*

President Ramo: Pierre, Pierre Leval, will you do it one more time? So someone explained to me very nicely, Pierre, why people paid attention to you and not to me, and they said you have one power that I did not have. I mean, I know a lot of powers you have—and they said it was contempt. (*Laughter*)

And I had to think about that for a while. But I think it is the power of music. Exactly.

Well, this has been a most remarkable Meeting and a most remarkable day for a most remarkable occasion. So let me introduce someone, explain a little bit about what we think is going to happen, but it is a little bit like *Saturday Night Live*, which like this is live and evolving, and if you could not tweet reviews of my handling of this program, I would be so really grateful, although I have read Tina Fey's *Bossypants*, and I am kind of ready to move in that direction.

It is a rare day when a New Mexico country lawyer gets to introduce not one but two Justices of the United States Supreme Court, and I am just glad one of my partners is here to tell the firm, because they are not sure what I do at The American Law Institute that takes so much time, but the phrase “queen of nonbillable work” has floated (*laughter*) in and out of my office from time to time.

When we knew that this dinner was going to be the last dinner at which Lance would be the Director—the next dinner will be the first one that he will be on the Council, but then we won't pay any attention to you, Lance, just like the rest of the Council— (*laughter*) I thought and thought about what would be most meaningful to Lance, and then I did not have to think very long. It was clearly the person with whom he had shared many early teaching memories, and that is Justice Stephen Breyer, if he would come and speak.

So let me just say a few words about Justice Breyer before he gets up, and then I will explain what we are going to do.

Everybody knows Justice Breyer's amazing résumé. I think most people in this room also know that in addition to the elegance of his thinking that you see in his opinions, he is, not surprisingly, a wonderful teacher in every way.

One of the things I so appreciate about him is that he not only teaches in his opinions, but he is willing to take a great deal of his time to speak all over the country, indeed all over the world, to teach about the meaning of the Supreme Court, how it is that our particular

democracy works, and a lot of that has to do with the judicial system and the enormous respect for the Supreme Court that the people of our country have. So it is my honor to bring to the stage both Lance Liebman and Justice Stephen Breyer of the United States Supreme Court.

Justice Breyer and Lance. (*Applause*)

So let me tell you kind of the order of the day. I feel a little badly about this, Justice Breyer, because I, in doing my research to introduce you, I recognized what I had not fully appreciated, and that is that you are now a member of the French Academy, (*laughter*) the only American, I think, and it was like Thomas Jefferson—it is a little bit of an odd group, but he was explaining it to me before—Thomas Jefferson, Ronald Reagan, and Justice Breyer. (*Laughter*) (*Applause*)

So I probably would not have paid attention to doing exactly what he wanted tonight, except that once he told me he was a member of the French Academy, I mean, then obviously I had to listen carefully.

So what we are going to do is that Justice Breyer is going to speak a little bit about Lance.

Justice Stephen G. Breyer: In English, I am going to speak in English.

President Ramo: We will see how it is. But if he speaks in French, I will nod my head. And then we are going to have a conversation with questions that Justice Breyer may have for Lance about the academy, and I discovered at dinner he thought maybe I should answer some questions, Lynn, about the practice, which I do remember, so that will be good, so let us get started.

Justice Breyer. (*Applause*)

Justice Breyer: I mean, Lance and I have just about shared an office; we shared the secretarial pool. I had some trouble my first year—it was not that easy—but he explained how to do it.

But the problem was that I would forget my coat. My jacket would be in my classroom, and it was a little awkward going back. So

I would retrieve his jacket and he would retrieve my jacket, (*laughter*) and therefore we survived the first few years at Harvard Law School, which I will tell you is not that easy.

He became a terrific problem solver. He did. It is his personality. When Louis Loss stood on the table in the library in 1971 as the students were rioting, and Louis was trying to explain that actually we had not started the Vietnam War, (*laughter*) Lance, very sound, said to Louis, “You should get off the table.” (*Laughter*) And he was right.

As dean at Columbia, as you know, he solved all kinds of problems, but it was in his work afterwards that he really had some tough ones. I mean, I think there was one occasion when a group of the women students decided it was unfair that the portraits of old judges were all men. Yes. Well, there is something to that. And so what they did was they cut out pictures of women from various magazines—I don’t know which ones—and they posted them up on all of the portraits.

Now, frankly, I would not have known what to do. But he figured it out. I don’t know what he did. Apparently, the great picture crisis has passed us. The women seem to have been satisfied.

Why could he do this? Because he has a good mind, we know that, and he is intelligent, we know that, and he has an ability to listen to other people, and he has a sense of humor, and that helps. (*Applause*)

So let’s think of the problem that was facing him in this institution. When I was first, I think, part of this, it was quite a few years ago. It was not at this hotel; it was at The Mayflower Hotel. Usually, Henry Friendly was there and various others who were listened to, A. James Casner.

At one point, and I learned that about a year ago, when we had a case [*Burrage v. United States*, 134 S. Ct. 881 (2014)] and we had to look up—it was surprising, but the only place to look up the answer to this question was in the minutes of The American Law Institute, I think for 1955. [*Id.* at 890, citing 39 A.L.I. Proc. 135-141 (1962).] There you could read that Livvy Hall suddenly got up and said, “What

would we do if a man were riding a horse and on either side of the horse two motorcycles drew up and they both frightened the horse?” [See 39 A.L.I. Proc. 77 and 137 (1962).] (*Laughter*)

And that is more of a puzzle than you might think. I mean, they were independent, these motorcycles. They came from different directions.

Now Erwin Griswold then got up next, he did, and he said, “I think in order to answer this question we should ask Herbert Wechsler.” (*Laughter*)

And Wechsler got up and he said, “We should not answer this question.” (*Laughter*) “Professor Hall should write a footnote.”

Now in the Supreme Court of the United States last year, or this year, I think, a question that was somewhat analogous came up twice, (*laughter*) and the only place I could find an answer was in that footnote, and I did not understand the footnote. (*Laughter*)

That was during the old days of the ALI, and Lance inherited an institution where people were somewhat less prepared to take as gospel what Herbert Wechsler, Livvy Hall, and Erwin Griswold worked out, even if they had worked it out, because it was a new world. It was a world where people were more suspicious of elites—they were not prepared to take things on authority—and the law schools were changing, too.

Everything was changing. And if I go back to look at the profession, the profession, in my mind, has always had three parts working together. There are the judges, and the judges—contrary, or no, not contrary to popular belief, in accordance with popular belief—are not experts on very much, if anything. (*Laughter*) They learn from the lawyers, so what they do is they make decisions, and the classical idea is that there are academics who will read those decisions. I have always wanted to do a survey of how many—no, no, skip that. But the academics read those decisions and they put them in order, criticize them, try to put the decision over here together with the one over there. They try to make sense out of the law. And then the practitioners read what

the academics write and they use those writings to help them with their cases and, in particular, to help them with their arguments in the courts. And the judges read what the practitioners write in the briefs and are particularly interested when they refer to treatises, because they know that that reflects the work of people who are paid to think about these things and put them in writing.

Director Lance Liebman: Or their clerks read them.

Justice Breyer: No, they will read them.

Director Liebman: Okay.

Justice Breyer: If their clerks recommend them, they will read them. (*Laughter*)

And do you see how it is a continuous cycle? The judges then write more opinions, and they write more opinions, and they are supposed to get better.

So how do you do that in a world where an awful lot of law-school professors are just doing science of some kind? I'm sorry, I think some should, but there might be a few who shouldn't, and the answer to that is the law schools have changed in this respect for the better.

It used to be that there were the 20 top law schools, each of which was in the best five. (*Laughter*) Yes, that's right. But now the best five really are the top 20. You see, because you can go pretty far in Mort Zuckerman's rankings before you run out of people. There are good people at vast numbers of law schools, because law teaching is a good profession. I mean, they pay you better than we first got paid, (*laughter*) and it is very interesting, and you find good teachers everywhere.

So he has surmounted that problem, and he has brought in people to open up the Institute, so it is not just Herbert Wechsler and the equivalent; it is a lot of different people. And when he gets answers, it is not an elite who is talking to others; it is a joint effort to solve problems.

All right, what's the result? I wrote it down. The result is—here I did get my law clerk to help a little bit—but look at this list. The list is

what has gone on in these 10 or 15 years. It is a long list. I won't read it all, but it includes: Restatements of Agency, Property, Restitution, Torts, Trusts; Principles of Law: Aggregate Litigation, Family Dissolution, Intellectual Property, Software Contracts, Transnational Civil Procedure, Transnational Insolvency; a federal statute concerning the recognition and enforcement of foreign judgments; the Restatement Fourth of the Foreign Relations Law of the United States; and 11 volumes of world trade law. That is not nothing. That says this institution is alive. (*Applause*)

So in conclusion: We say thank you, Lance, very much. (*Applause*)

Director Liebman: So I have spoken in front of the people in the room enough times in the last few days and told all my jokes and whatever, but of course I appreciate greatly Joanna and Steve being here, and it means a huge amount to Carol and me, and we have been friends for more than 40 years, and that is a great thing.

But the only thing I want to add that makes it a little bit of a substantive discussion for a minute is the fact that we were going to be sitting up here tonight has me thinking about 1970, the day I arrived as a Property teacher at Harvard Law School. Derek Bok was the dean, and I was working for the mayor of New York, [John] Lindsay, and I said to Derek, Dean Bok I called him, "What am I going to teach?"

And he said, "Well, we want you to invent the field of urban law."

And I said, "What is that?"

And he said, "Well, that is what you are going to figure out."

And I said, "Dean Bok, I am a little boy from Frankfort, Kentucky. I don't know anything about cities."

"No, you were working for the mayor of New York," which was true.

And that led to my going into the course called Property, and we did, Charlie Haar and others and whatever, we altered that course from

all the wills and trusts stuff into rent control and zoning and all kinds of things. A lot now of IP, of intellectual property, is in that course.

Okay, but I also started teaching what we loosely call social-welfare law. I mean, in Europe or Japan it is called welfare law but, you know, there are all these different programs and workers' comp and unemployment insurance and stuff like that, and especially once ERISA was passed, four years after I started teaching, that became a very large field with a lot of significance.

But what I want to get at is I have been thinking about that moment in 1970 when Steve had already been teaching for three years, but we were both untenured, we were both scared. There is a question of who told whom about taking your jacket off and where to leave it, but for sure, for sure when that first great copyright article was coming out, I am the one who recommended that you drop your middle initial. I thought Stephen G., (*laughter*) G. Breyer—go look at it, it just says Stephen Breyer.

Justice Breyer: I tried to keep it—

Director Liebman: Yes, yes, I do the same. So I have had an influence. This is my influence on American jurisprudence. But—(*Applause*) (*Laughter*)

But what I want to say that is slightly serious for three, four minutes, is that was the last, before now, significant moment in changing legal education, evolution, significant changes, not just that the boy students stopped wearing ties, that the women started coming.

In other words, the percentage of women in the law schools, this is amazing, between 1970, my first year, and 1980, it went from zero to 30. In other words, it went up three percent every year, three percent, six percent, nine, right up to almost a third of the student body, now it's 48 percent or something.

And so this was a significant time in various ways and something Steve referred to, which is hiring economists. I think we have nine Ph.D.s, economics Ph.D.s, on the Columbia Law School faculty. That is good and bad at the same time. (*Laughter*)

I hope the one who is in this room does not take that message back, (*laughter*) but—

President Ramo: It's your son, who is a little—

Director Liebman: That's another issue.

President Ramo: —at Columbia and he didn't get it.

Director Liebman: Right, right, right.

But, so all these other fields came in. The political stuff came in with, you know, critical legal studies and all of that, that divided the faculty and made things difficult but raised issues that it was important to be talking about: What is law, where does it come from, where do we find it, is it just politics, etc., etc., and lots of things changed.

And then I think it was pretty stable for a while. Now it is at a major moment of change, and during the last decade I had five years on a committee as Japan became the first new country to go to postgraduate law schools, you see, undergraduate and then law school instead of just law as an undergraduate major. And I was honored to be on this committee, went twice a year to Tokyo University, whatever, and I would talk to them about reform of Japanese legal education.

I was in Japan a few weeks ago, and I decided to talk about reform of American legal education, and what that means is something that our speaker Phoebe Haddon talked about at lunch. We are not supplying legal services to, she said, to a hundred million Americans. That is probably a rounded-off number, but who knows what the exact number is, but that is a huge crisis. The number of kids, as everyone in this room knows, applying to law school has dropped steadily such that it is now 40 percent down from what it was seven years ago. Forty percent is not just, you know, two percent up or down. We don't know exactly why.

The tuition is crazy. Our—Jerry Lynch's and my—school has just reached, I think we are the first ones to reach the \$60,000-a-year level instead of the old \$50,000-plus level. That means the kids are borrow-

ing huge amounts of money. The jobs out there at high salaries are not so many.

And finally, there is this experiential question that has become the “in” word, and California has said every student who wants to qualify in California has to have had 50 credits of experiential. Now some of that will be clinics, but they are very expensive for the schools, so a lot of it will be shipping kids out to different kinds of internships, some of which will be supervised and meaningful, and some will not, and how is that going to be regulated?

The President of the United States, without thinking about it, said let’s just have two years of law school, (*laughter*) and the chief judge of New York says why don’t we just take the bar exam in February of the third year, so that the kids can right away go and write habeas petitions upstate for, you know, people in prison, and fine, but if they take the bar exam in February, they don’t have the results till July, so they are not lawyers, and are you going to supervise them, and who is going to pay that? He is very clear in his proposal that they would still have to pay the schools’ tuition for that semester, because he doesn’t want the schools to, you know, veto or fight against this plan.

None of this makes sense, none of it, and the goals, which are cheaper but better, and training for what you really need to do as a lawyer, as opposed to all the intellectual stuff that is great and comes in and makes the law school more of a social-science or philosophic or economics institution, which we are not against, Steve and I together were part of the relationship with the Kennedy School in its first days, Jeff’s school, and etc., etc.

So this is a serious moment, and how our profession, the law schools, the courts, it is relevant to the courts, it is relevant to the law schools, it is relevant to the bar, I don’t know how it is going to all be brought together in some way that makes sense.

Want to comment on that? (*Laughter*)

Maybe Roberta should comment.

President Ramo: No. After you.

Justice Breyer: I just listened to that. It's—yes. (*Laughter*)

Money will drive it. I think, what is it, you know, let's look at this in the broadest possible terms: What does it mean to me? (*Laughter*)

But if you look at the judicial part of this, what I think is the biggest problem for our Court and probably, certainly, for state courts, is: If I go into a room of students, as I often do, I will talk about the Court, yes, and I will say halfway through, "I know what you're thinking." That catches their attention. I say, "You're thinking that we're really junior varsity politicians. That's what you really think, isn't it?" Yes, that is what they think. A lot of people think it.

So then I say, "Well, you know, Hamilton, why did he give the job to us?" Hamilton, in [Federalist No.] 56, explains that he thought of giving this judicial review to the President, but he thought that would make him too powerful. Then he thought of Congress. Why not Congress? After all, they are elected. And he thought, well, Congress, they will be fine, but this document is really for the least popular person in the United States as well as for the most popular, and the rights are the same and they are fine as long as it is popular. They know popularity. Believe me, they wouldn't be where they were if they didn't. But how will they do when it is not popular?

And it is at that point he thinks of the judges, and he says the judges are gray, nobody's ever heard of them; good. And they don't have the power of the purse; they don't have the power of the sword. Fabulous. Fabulous. We will give the power to them and hope they don't—and until they got that big building over there across the street, they probably were okay. (*Laughter*)

But now, see, and you go and scratch the surface of any high school, college, or group that is meeting, yes, they don't tell the judges that directly necessarily. They don't tell the judges a lot of things. Normally, what they say in the courtroom is, "Yes, Your Honor, that's certainly intelligent," until they get out of the room. (*Laughter*)

The only time I saw a really honest reaction was when Joanna had a friend of hers, who was a psychologist who dealt with stress

among judges, and she began to talk to a group of judges and lawyers, and lawyers began to walk out, and she said, "Where are you going?" She said, "They don't have stress. They cause stress." (*Laughter*)

All right, but you see, it is very simple to see where, if that is where that is going, all the others will go the direction I talked about. And there are lots of people who would like jobs as junior-league politicians. There are lots of people who would like to, and all over the state systems, you have huge campaign contributions, and the federal system is more immune, more immune. But you start thinking, and I need two hours before I convince you that is the wrong word, junior-league politician, I would need two hours. I think I could do it in two hours, maybe, but I don't have two hours with the students.

And so what? What is the answer to that? And we better have one, because what we are actually standing for in this room is, although there are lots of changes, it is a certain vision of law. And that vision, Henry Friendly was part of that, and so was Brandeis, and so was Holmes, and so was Learned Hand, and so were our teachers over at the Harvard Law School. And that vision is not immune from politics, but it is basically what Potter Stewart said, that you have a good opinion, and if it is really a good opinion, you don't really know if it was written by a judge who was a man or a woman or a Democrat or a Republican or what, and that kind of ideal is at least an ideal that everyone here stands for.

And so you say the schools go that way, then how do we preserve our institution from what I think of is terrible cynicism, which affects every major institution in the United States at the moment, and us too. I wish I had an answer to that, but what we are doing is raising problems, and that from my point of view is a big one. (*Applause*)

Director Liebman: Steve, let me ask, let me ask, I promise, only one other question and it is this. Earlier today, Gerhard Casper spoke on this very platform and said maybe the ALI, whose history has been state law and private law, essentially, and has had great influence and all that, and it has been a little careful, and when it has proposed federal statutes, Congress has not paid much attention, etc., he said maybe

things are so tough in this country that there is some area of public law, like campaign stuff, finance, or other things where maybe the ALI should run the risk of trying to get involved. And this is really a question I am asking, in a way, on behalf of Professor Revesz, who's got to find the next 15 projects for this organization, but does anything occur to you in the public-law area where maybe we could do some good?

Justice Breyer: That is so controversial. I mean, campaign finance is awfully controversial, so I don't know.

Director Liebman: Yes.

Justice Breyer: I don't know. A big area which sounds technical but has turned into, at least in the last few years in the Court, amazingly controversial is intellectual property, and you know some of the things involved in that.

Another one, which you probably have already done or thought of—it seems to me it has come up a lot because I have gotten into discussions with people about it—is related to what is a false issue. The false issue, which you can read about in political argument, is: Should the Supreme Court of the United States refer to practices and laws of other countries? You know, now that is a false argument, but it is related to a true argument.

I say that is false because, you know, I once got into a discussion with a congressman about it. It was sort of fun, and he was saying how bad it was. And I was saying, "I guess that's aimed at me," and he said, "Yes." And then I said, "But look, we do that. Other people in other countries have jobs like ours, and they have constitutions like ours more and more, and they have courts something like ours. And if they have problems like ours and jobs like ours and constitutions something like ours, why don't I read their opinions? I don't have to follow them." I thought that was brilliant. So he said, "Yeah, read it. Just don't refer to it." (*Laughter*)

And then I got into it and said, "They know what they're doing. Well, you know, a lot of newer countries, European, Eastern European countries, are not well established in their judiciaries, and we refer to

them. They can go to their legislators and say, “See, the Supreme Court of the United States, a well-established court, refers to us.” We refer to them; that might give them some added prestige. He says, “Fine.” He says, “Write them a letter.” (*Laughter*)

But, you see, now that is where we are, because people are concerned about retaining American values. That is what is going on there. So I said, “But that is a false issue.” Because look at what our Court is actually involved in. It is involved in things where you have to use foreign law, you have to use practices of other countries, and it’s non-controversial.

I mean, consider a few of the areas. You think the area of security versus civil liberties is going to be something that is uniquely American? There are 190 countries in the world that have similar problems, and we can learn something from what they do and we do.

Or take a case, *Kiobel* [*Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013)]. That is a pretty good case. Someone passed a statute in about 1790 saying anyone who was injured, any alien who was injured as a result of a violation of international law, can bring an action in the United States for damages. All right, yes. What were they after? Pirates. The rule was then if you find a pirate, you can hang him. And by the way, before you hang him, shake out his pockets, any money goes to the victim, and that was true wherever you found him. (*Laughter*)

All right, so who are today’s pirates? Are they the torturers? Are they the genocide people? Who exactly? And be careful because whatever you decide here will be followed by other countries, and there is a word for that called comity.

And now let’s go to another case [*Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351 (2013)], where we had to decide what is the meaning of the first-sale doctrine in the copyright law, a whole paragraph of unintelligible language. And in order to decide that, you have to know how these things work in Europe and other countries, and we had briefs from all over the world. Again, the key word is going to be comity.

Just as when we had to decide an antitrust case where the plaintiff is from Ecuador; he was a vitamin distributor, and was suing a member of a cartel, Dutch, for price fixing, the manufacturers, and he wanted to sue in New York. [See generally *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004).] Why? Well, I thought perhaps he was too weak. See, the vitamins were too expensive, he could not eat enough of them, and so he stopped on the way to Europe. That is one possible explanation. The other possible explanation is treble damages. (*Laughter*)

Okay, but in order to understand that statute, you have to know how the Europeans enforce their antitrust laws, and once again you are going to find that word, comity, and when I tried to look it up, it was not as clear to me as perhaps I might have hoped.

Well, there are lots of cases like that every year, lots of them, and if I had said this 20 years ago, you would have said, “Name two.” I say it today—I will not bore you—but I think I could name 20 in a year. Go and look at those kinds of problems—*Medellín* [*Medellín v. Texas*, 552 U.S. 491 (2008)], I mean, look at those kinds of problems from our point of view. How should our courts actually decide, abstracting from any political feelings? Put yourself in my shoes. Of course I would like that help, and there we are. So yes, there, whatever the question was, that was the answer.

Roberta, what do you want to say? (*Laughter*) (*Applause*)

President Ramo: So, Justice Breyer, let me talk to you a little bit about the view of the Court and some things that happened at the ALI today. When I started out after law school, some of you know this, after I graduated the only job I could find, and I was deeply grateful to have it, was at a historically black college in North Carolina, where they were trying to get a Ford Foundation grant, and they were looking for somebody who had reasonable academic qualifications. And so I taught two classes, constitutional law—this was in 1967, '68, and '69—and I also taught in a course, in a survey course that I helped put together called “20th Century Man: The Black Perspective.” (*Laughter*) I am not making that up. (*Laughter*)

But what was so important to me, in those years there, is that at this very small college in North Carolina, every weekend these kids and my fellow professors went out across the South, and many of them got their heads beaten in, and many of them came back with big bruises, and every once in a while someone would not come back because they were in jail. And when we talked about constitutional law on Monday, because we had a lot to talk about, what their view of the United States was, which was also Dr. King's view, is that the United States Supreme Court and the United States Constitution would prevail, and ultimately all people would be the same, and so far from being a view of cynicism, it was that little book, which I also, Gerhard, carry with me in—I don't have a pocket tonight or I would get it out.

Professor Gerhard Casper (CA): You can borrow mine.

President Ramo: I might have to. It was their view, and it turned out to be true, that indeed brave lawyers of all colors and even braver judges and the United States Supreme Court not only saved them but in my view saved our democracy. So the question I think that we have, at The American Law Institute on a day like this, is what each of our responsibility is in making sure that the courts, to the extent that we can help them, are indeed the guardians of true American values, which, as you pointed out originally, is not just making sure that we save the country and the rights of the many, but when we get to the rights of the really most unpopular, and that is a kind of a moving target in our society, that we are there at the courts to solve our conflict. But we lawyers must also be explainers of the courts.

Now on the question of legal education, and then I want to tell you about the horse case that you mentioned, because we talked about it just today, I have always felt, since I came to know the English system, that the best system of legal education in the world would be in the middle of the Atlantic. That is a graduate education, but we would have the kind of pupillage and clerkship program that the English bar had, and what is being forced upon us now, I think by circumstances, is figuring out how in this economy and with the resources that are available we do exactly that.

My own belief is that, thanks to a lot of people who are in this room, we are going to come out the other end, I really do believe, with the best legal-education system and one that is completely appropriate for this next century and the needs of the American people, so I think that is all a good thing.

Now, when you gave the example about the case in which there was a motorcycle and a horse on either side, (*laughter*) being from New Mexico I was a little confused, thinking to myself, “What is a motorcycle doing on the road?” (*Laughter*)

But as it turns out, we had that discussion today, so we are working very hard on a variety of torts projects and I took torts, I was saying to somebody, from Harry Kalven, somebody known to many of the academics and the Chicago people here. We so loved Harry Kalven, who many of you know was one of the great torts scholars, but he was one of the great teachers, and he loved two things, he loved torts and the Chicago Cubs. And our class decided once, in his honor, that when the Chicago Cubs finally won the World Series, we would name a professorship after him. We have never even had a close call, so— (*Laughter*)

But what we did today was the quintessential ALI way of going about things in torts in which we had judges who have to hear these cases all of the time; scholars who write, including from an economic perspective, about things; and lawyers who represent plaintiffs and defendants, and in the most elegant, informative, interesting discussion, we figured out how to come to a place that was both based in the law and that also helped reform and move us forward. So we are trying very hard to do the homework that you have assigned us, and I am proud to say that we are working in the kind of spirit that is not political and that I wish we could export a little bit outside of the room sometimes when we do it.

Justice Breyer: Great. (*Applause*)

Director Liebman: With that we are done, right? We are done, right?

President Ramo: So here is what I promised Justice Breyer, because you know that this is kind of a busy week at the place he works, and that is that he would be out soon. So let me just finish up by asking Lance to say a last word, if you want to, Justice Breyer to say a last word, and then I will bid adieu.

Director Liebman: Nothing from me. I've said it all. Thank you. Thank you for being here.

Justice Breyer: No, I haven't said it all.

Director Liebman: Okay. (*Applause*)

Justice Breyer: I want to say one other thing, because Roberta said this, and this is really because we are all in this room, you are all lawyers or you are interested in law, and you have influence with other parts of the community. So it isn't as the ALI is an institution, and people have heard me say this—I said it last week in New York. But when I talk about the questions you have raised, and you are absolutely right, and I get questions from, for example, which I have used often as an example but it is true, the President, the Chief Justice, a woman who is the Chief Justice of the Supreme Court of Ghana, and she is in my office. I get the same question from people all over the place, in Africa and other places: Why do people do what you say?

That's the question: Why do they do it? And I tell them a little bit of our history, including some of the history that you talked about. But I point out that these words are not very meaningful unless people do it. And it has taken us a long time—a long time—and what I want them to see, and what I want her to see, which I get to at the end, is: Don't go talk to the lawyers and the judges. The people you have to convince that you should follow a decision which is important, and maybe unpopular—take your pick, we have had our few unpopular decisions, and by the way, could be wrong—I mean, four or five, somebody's wrong. (*Laughter*)

All right, the people— (*Applause*)

Okay, but they will follow it. So the people you have to get to understand that that is in their interests are in your villages, not in your

law schools, and the people who have to talk to them on the editorial boards and in the high schools and in places where they are not yet lawyers and may never be. As long as we are doing that, and not just on Law Day, then we can make some progress in the direction that you have sketched out. (*Applause*)

Director Liebman: That was great. Thank you. That was a perfect ending. Oh, my God. (*Applause*)

President Ramo: Thank you for everything, Lance. Thank you, Justice Breyer, for what you do every day.

And now I expect each of you to go read, if you have not finished the Employment Law draft. (*Laughter*)

We've got the Restatement Third of Indian Law, and we begin at 9:00 o'clock in the morning, and when you leave here, Justice Breyer has told you what to do.

Good night. God bless.