

President Levi: So we're going to start our after-lunch program. I know that some of you are still eating, and that's great. You should please continue to do so.

So if any of us were to think, particularly those of us who've spent some time in California, about who are among the handful of truly excellent lawyers who are incredible citizens and thoughtful people and know how to try cases and know how not to try cases, you would have to think of Liz Cabraser. She's just absolutely remarkable, you know?

And she's built this fantastic law firm, in a field of practice involving mass torts and class actions, product liability, a field dominated by gigantic figures, huge egos, lots of Y chromosomes, and one asks, how could a rock-and-roll drummer do this and do it so well?

I will reveal that Liz appeared before me, I think only once, in a case that involved some ice cream that had gone bad, unfortunately. And I was so sad, which was pretty extraordinary, when she dismissed the case, because I had re-ally been looking forward to having her in the courtroom. And any judge that

has had Liz Cabraser before them just feels like this is what it's all about. You realize you're in the presence of a superior force and a superior intellect, all wrapped in such great good will.

So we heard from the ABA President about her plans for the law schools, and I'd say, with respect, that the law schools also have a plan for the legal profession. And our plan is to turn out lawyers like Liz Cabraser.

So welcome, Liz, the podium is yours. (*Applause*)

Ms. Elizabeth J. Cabraser (CA): Well, thank you so much. It's an honor to be here, and I'm going to aspire to be short, because I know that we've got an afternoon session that everyone wants to get to.

First, let me just add my welcome and admiration and congratulations to the ALI's new life members, the class of 1993, and to the new 50-year class of 1968 members. You are the members that best and most literally exemplify the profound essence of the ALI itself, a permanent organization dedicated to the unending mission of clarifying, improving, and simplifying the law. Ours is a project that, by its very nature, should never be completed and a mission that, we should be proud to say, can never be fully accomplished.

We know from our study of ALI's origins that our organization arose from a study, in the early 1920s, by a committee whose very title was propitious, "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law." Out of this Committee's recommendations, our hopefully permanent organization, The American Law Institute, was founded with a mission, boldly set forth in its charter, "to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work."

And I know many of us have that saying by heart. It's a little too long for a tattoo, so I don't advise it. (*Laughter*) But it should be virtually imprinted, I think, in every one of our hearts.

Over more than nine decades, the members of the ALI have advanced this mission through projects, including Restatements and Principles that, in their turn, have become the guideposts of American common law. And because the law is an ongoing project that strives to meet and also to anticipate societal needs, the ALI has not been satisfied with one generation of Restatements.

Recent and current projects of the ALI include the Restatement Third of Torts, the Restatement Third of Agency, the Restatement Third of Conflict of Laws, and many other more specialized Restatement and Principles projects that reflect the contemporary concerns and needs of modern law and society, including projects on the law of American Indians, children and the law, election administration, principles for better policing, and of course, the inevitably controversial and ambitious projects regarding consumer contracts, liability insurance—congratulations—copyright, and data privacy.

And by the way, this is a little-known ALI fact. A Restatement Third is technically a three-statement. (*Laughter*) So use that correctly.

The fact that the ALI takes its mission seriously is reflected both in the vigor and enthusiasm of its often lively, sometimes sharp, but always respectful debates, usually accomplished with almost no screaming or tweeting. These attributes are essential as we strive, collectively, to articulate a clear and sufficiently certain black-letter law that nonetheless retains the flexibility needed to effectively serve our diverse society's need for law that is at once clear, simple, complete, and inclusive.

This would seem a daunting, if not impossible task, but for the demonstrable fact that the ALI has been pursuing it, on mission and on message, for the past 95 years. The ALI has endured precisely because it has evolved, and it has, indeed, grown slowly, yet perceptively, ever more relevant and ever more inclusive.

As a result, for nearly a century now, the life and the spirit of our common law has largely been entrusted to the ALI and its membership, a trust reflected in the wide citation by federal and state courts of ALI Restatements and Principles, as Justice Ginsburg noted yesterday.

The genius of our American legal system is that it is inescapably democratic. This speech is a love letter to our American law. It is a common-law system, and more to the point, our common law is not one made solely by exalted law lords or ladies, but by every dedicated practitioner and scholar of the law who devotes her time and energy to its clarification and improvement. Like the home-improvement channel, American law is DIY. (*Laughter*)

The ALI provides the preeminent channel for that professional urge to improve and clarify the law, welcoming the law's daily practitioners whether they are judges, academic scholars, or public and private advocates. We are the builders of our American common law, and the endless projects to which we lend our energies changes, expands, and, we hope, fashions a common law that becomes ever more fair and inclusive with the passage of time.

The life and 50-year members of the ALI should not blush to take credit for what the ALI has become over the past few decades. Indeed, it is to your credit that the ALI has more than met the challenges to the law of our rapidly changing society and has expanded both the number and nature of its projects, just as it has striven to expand the reach of its membership to every area of the country, to every age group, and to every group that still struggles toward inclusion in our law.

This is not a matter of facile self-congratulation, although I do want to make sure that you at least take a second to congratulate yourselves and each other. You have undertaken to perform the duty of those who were called to the law in our society, to make sure every day that the law continues on a path of progress so that, buffeted by unceasing change, it does not become brittle, static,

or hollowed out. But rather, that it grows and flourishes to meet the ever-more-compelling demands of our society.

You see, on the last page of your program, the tribute to the class of 1993, which is truly wonderful. I want to talk a minute about 50 years ago, when the ALI was even younger than it is today, and the year 1968 was one of tumult, tragedy, and protest. We suffered the assassinations of inspiring and beloved leaders, and we were torn by a polarizing war.

Many of us, especially the young, feared for the life of our nation. Loyalties and ideals were under siege. We survived because the rule of law endured. We owe a debt to the 50-year members who joined the ALI that year in service to the law.

So thanks to you, the ALI has maintained and enhanced its relevance. The increasing energy of the debates at the past few Meetings, and of this Meeting itself, are living proof of the centrality of the ALI to the legal life of this country and of ALI's role in sharing with, and learning from, the legal systems and ideals of others. Relevance isn't always comfortable, and it is rarely sedate, but it is essential, and here, the ALI can count itself a success.

We are not among those organizations that have struggled or failed to deal with, denied, or resisted the demands of the 21st century. We have boldly gone into this century both as conservators of what is best in our law and builders of what is better. After all, the ALI's founding committee envisioned a permanent organization, not merely to enshrine then-existing law. Most shrines are also tombs.

Rather, these founders were distinctly dissatisfied with the status quo and with the incoherence, disorganization, and inconsistencies of the common law. They wanted a permanent organization in recognition that the law must unceasingly evolve, and that the project of building a better law is never completed.

The metaphors of craft and construction find ready application to the nature of American law. We are, by definition, a work in progress. We do not have a detailed blueprint beyond our very brief Constitution and our common-law legacy.

Building the law is a human endeavor, and humans make mistakes. The law is not immune from error, but there is a wisdom in crowds, and our ALI crowd possesses an unsurpassed collective wisdom of experience and training, combined with a collective desire for improvement that brings focus and direction to our task.

The ALI uniquely combines the mature judgment of its senior members with an ever-young spirit of inquiry to animate our quest to restate, to refine, and to reconstruct the law, and to articulate the principles that ought to guide it. The ALI's Restatements have served as the quintessential blueprints for the common law, and we exist to continuously revise and refine those blueprints in

every generation, three and counting, to guide the endless renovation and, indeed, the sometimes disruptive remodeling of the common law.

To borrow the famous saying of California Supreme Court Justice Roger J. Traynor, “The law will never be built in a day, and with luck it will never be finished.”

With luck, all of you will continue with vigor and longevity to promote and pursue the ongoing project of building the law in America. As you do, I want to remind you of the challenge and of the very serious piece of unfinished business that our law has yet to accomplish, although the ALI has, I believe, largely been moving in this direction since its inception.

Let me go back to our American Constitution. We have a document that has served as a model for many nations. It is a thin and tiny pocket pamphlet. Many of us carry it daily, close to our hearts, but not simply or mainly as a protective talisman. We carry it in our hearts not for what it is, but for what it may become.

What it is, is a seriously flawed blueprint, circumscribed by the limitations of the late 18th century for an edifice that collapsed in bloody civil war less than 80 years after signoff. It is a document that, frankly, incorporates racism and the concept of people as property. It is a document that literally excluded over one half of the population—women—from full participation in the social contract.

And so the history of law and of legal process in America has been a history of progress toward an ideal, embodied in our Declaration of Independence, that all are created equal. It has been an endless and tenacious campaign for inclusion. So many Americans have battled for their entire lives to invade the Constitution, to gain entry to its rights and privileges, and to force an acknowledgment by the law itself that the law includes them fully.

Women gained an acknowledgment of their right to vote only a few years before the ALI was founded. At the time of the ALI’s founding, our nation was segregated. African Americans were categorically excluded from the vote and from full citizenship.

We had, in the not-too-recent past, nearly completed a heedless obliteration of the nations of American Indians that inhabited what became this country long before we arrived. Our law has a lot to make up for in terms of the way we have treated each other in this country, and it is heartening and inspiring that those who have battled for rights, for recognition, and for inclusion throughout our history most often chose the path of the law.

They chose litigation. They chose legislation. They loved the law when the law did not love them back. Like the rest of our legal project, in a mission far from accomplished, slowly over the years, rights were acknowledged and recognized, and inclusion was gained.

For women, for people of color, for American Indians, for lesbian, gay, and transgender people, the history of the law is a history of institutions and of

power that excluded us. It is also a story of those who, while ensconced and empowered within the edifice of the law, gradually and ultimately began to listen to us. When we speak of the law, it is thus with both reverence and frustration, because it is our hope as well as our barrier.

The ALI has, and I hope will continue to play, a pivotal role in building the edifice of the law outward and upward toward and welcoming inclusion, toward embracing all of us in this country, whether our people were born here, whether they were brought here against their will, whether they were exiles, or whether they simply came here with hopes and dreams to work for. The law is our touchstone, because no other force in this country has been invested with so much power and so much promise to accomplish the ultimate incorporation of all people in the social contract that is the very basis for our country's existence.

Our nation is not and has never been a harmonious one, but we here in the ALI achieve harmony, or try to, through respectful debate. We are privileged to have the luxury of reasoned discourse and of civil debate.

Many Americans do not have that privilege. No one speaks to them or of them civilly. The law is not a respite and a refuge for them. But they need the law. They need the law that all of you are engaged in improving and clarifying.

As Justice Ginsburg said yesterday, law exists to serve all the people. And I believe what is a luxury for us, and what we enjoy in our meetings, is a necessity for the law and is also a duty that we owe to all the people in this country.

So I'm proud to be a member and now a life member of The American Law Institute. I am proud that, during my lifetime, the recognition of the civil rights of my fellow Americans and my own have increased, although equal rights are currently, as always, embattled. I am proud that, through the law and directly or indirectly, marriage equality has been recognized to enable more of us to participate more fully, through our own choices, in the institutions of citizenship and society.

I am proud because the ALI stands ready to take on the new challenges faced by all of us to our privacy, to the security of our personal and financial data, to our rights of contract, to access to our courts, and to the common law.

Whatever your personal philosophy, whatever your politics, whatever your stance on the particular issues that come before The American Law Institute, please take this opportunity to congratulate its life members and its 50-year members again and to renew the challenge within yourself to reaffirm, as your lifetime project, the mission of our 95-year-old permanent organization to build the law for all.

It will never be built in a day. With luck, and with your support for the ALI, it will continue to be clarified, simplified, and become better adapted to social needs, and it will never be finished.

Thank you. *(Applause)*

President Levi: Thank you, Liz. That was inspirational, aspirational, and just terrific. Thank you.

And thank you, class of 1993, and thank you for the wonderful gift. You might ask, what will the ALI do with this? And you have a lot of evidence right around you.

What it permits us to do is to bring people to our meetings who can't otherwise afford to come—judges, public lawyers, people who do legal services. It permits us to undertake new projects like the Policing project. And it permits us to get our work out to state courts that can no longer afford to buy the Restatements.

So it's essential. It's our lifeblood. Our work is never done, and it's about to happen across the hall. So let's get to it.

Thank you. (*Applause*)