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REMARKS AT OPENING SESSION

By Professor Lance Liebman
Retiring Director of The American Law Institute

President Ramo: So now Lance thinks that he is going to get up to speak, but not quite yet, Lance.

It is an extraordinary thing to have had only five Directors in the history of The American Law Institute, and it is extraordinary to have somebody who has served with such incredible intellectual vigor, kindness, and has been a source of so many wonderful ideas and also a person who, in the kindest way, can tell some Presidents, who shall remain nameless, that some of their ideas were not so terrific, and that person is Lance Liebman.

Lance is a person about whom so many of you wanted to speak today that, Lance, we had to do something a little different. I am only going to say a word about Lance from my perspective and I think on behalf of all the Presidents that have served with him who are here today, and that includes Michael Traynor and me.

As President of the ALI, you have an extraordinarily close relationship in an organization like this with the Director. It is always important that you have the ability to have an intellectual discourse at the highest level. It is always important that you have somebody you trust completely to oversee the day-to-day operations of something as important as The American Law Institute.

What is not always obvious is whether it is going to be fun and whether you are going to enjoy that or endure it, and in my case, and I suspect in Michael's as well, it was not just fun, it was a pure pleasure, an honor and a joy to have a chance to talk to Lance, sometimes three or four times in a day. So many of us wanted to say something wonderful about Lance that I am only going to read one of many e-mails that I received, and then, Lance, we have a way of having people speak about you that you may not have expected.

In the middle of the night, while I was in New Mexico, in fact the sun was just coming up, I received the following e-mail that I thought was worthy of reading to you from just one member.

“Dear Lance: This will not be the only praise lavished on you, but I am pretty sure it will be the highest praise. I had the privilege to serve on

the Council under two of the greatest Directors in the history of The American Law Institute, Geoff Hazard and Lance Liebman, but this is Lance's time so a few words to my friend.

“Your leadership at The American Law Institute has been truly outstanding. Your quiet but firm leadership style, coupled with superb judgment on complicated issues and a good sense of humor, have brought many difficult ALI projects to a successful conclusion. The legal community and the public at large will reap the benefits for many years to come.

“Since I took emeritus status a few years ago, I have missed the interaction with you, the incredibly diverse and talented Council, and the wonderful staff. I am proud to call you my friend, Lance, and I wish you all the best in your future personal and professional endeavors. God bless all of you.

Bill Burke, somewhere from Mount Everest.” (*Laughter*)

Those of you that do not know, Bill is in the process of trying to summit on Mount Everest, and it is sort of an astonishing thing to me that he is able to e-mail me in New Mexico from Mount Everest. It does boggle the mind a little bit. It boggles my mind a little more that he is even trying to do this, so I hope all of you will keep your fingers crossed. I think it says something that in an incredibly complicated situation he thinks so much of you, Lance, that he wanted all of us to know that he was thinking of you from Mount Everest, as we are now all thinking of him.

You have been the Mount Everest of Directors, and here are a few comments that some other people have to say about your time.

(The video “ALI Presents a Celebration of Lance Liebman, ALI Director 1999-2014” was played.)

(Applause)

Director Liebman: Boy, am I going to have to write a lot of thank you notes. (*Laughter*)

The single best thing, and I am not kidding about this, is looking at Nancy Perkins, who was my student, and thinking not just of her but of a thousand students, and mostly in property classes, and they are all doing all sorts of things. One of them I am going to introduce Wednesday morning, who is now the Chief Justice of the United States, and if you want to know how you know when you are old, it is when you taught property to the Chief Justice of the United States. (*Laughter*)

But thank you. Okay, that's all I can say, is that I think it was a long but—what can I say? Okay. So it was great.

So let me start this way. In September, I had the tremendous honor, this is not a joke, of being invited to speak on behalf of the ALI at the first annual meeting of the European Law Institute. One of its leaders, Professor Wendehorst, is sitting there, and they said, you know, 15 minutes, and I said, "Fifteen? That's not a lot." And they said, "Well, you can have 20 if five minutes are jokes." (*Laughter*)

And so for this time it was a little different, and Roberta said 30 minutes. I won't use 30 minutes, but Roberta said 30 minutes but as long as only five minutes are substantive, that's what she said. (*Laughter*)

So let me do a couple of the stories and then say a little bit of substance.

So I went back and took out of my thousand experiences and stories just a couple that I want to tell you about. One is I was in my first year teaching at Harvard—Property—and what I would do is go downstairs from my office and I had a sports jacket on. I would always have a sports jacket on and a tie, and then take off my jacket and put it down on a table, because you want to wave your hands around and write on the blackboard and all that, and then half the time I would get back up to the office and the jacket would still be downstairs, and I would have to go down and get it again. I had this brilliant colleague two years older than I was, three years older, whatever, and he explained to me that there was a solution to this, which was to leave the jacket in the office in the first place since you were going to take

it off, and then after, you could do that for a week or two, then you just leave it at home. (*Laughter*) And this guy was so smart, and he is our dinner speaker tomorrow night, Steve Breyer, okay? (*Laughter*) So I think I knew from then that Steve was going to go far.

The second story I want to tell you is we bought a house, Carol and I with our two little kids, in Newton, Massachusetts. And as always when you buy your first house and your second and your third one, you buy one a little more expensive. You are looking at them, and you thought you had a limit of how much you could afford—my salary was \$18,000—and you go a little high and then you are a little squeezed for money at the beginning, and then it turned out we had termite damage, and I tell you, we did not have any money to fix this termite damage. And somebody said to me, a visiting professor at Harvard from another school said to me the solution is to do a bar-review course, you can make money doing that, and that the best place to do it is California. And so I have only done this once in my life, thank goodness, but I flew to Los Angeles from Boston on the day, because, whatever, time was squeezed, I did not come the day before so, I don't know, the plane landed at 3:00 or something and the class was like 6:00 to 9:00 or something like that, with a break after an hour and a half in the middle. And I am explaining property law to a packed group of people going to take the California Bar, and I was exhausted and on Eastern Time, so it was midnight for me and I was trying to get through this. I made it to the break, and at that break a person came up to me, a male not so young, and he was smiling, and I was really feeling pressure, and he said, "Oh, Professor Liebman, that was just such a brilliant," and I was starting to feel really like it was okay. "Magnificent," he said. "That is the best I have ever heard covenants running with the land explained and this is my 17th time taking the course." (*Laughter*) That is exactly what he said. So, okay, so that is my early experience.

Now we get to, I will tell you how I know about the ALI, when I first knew about the ALI, is that the senior Property professor was Professor Casner, who had taught me and who was not an easy guy, and he did the work in the Second Restatement for this organization

and all of that, and God was he an ego and wanted to be in charge of everything. And so he demanded that Carol and I come to a dinner of a group that I now realize was simply an Adviser meeting for the Second Restatement of Property. At the time, I am not sure I understood exactly what it was, but there were lawyers, judges, and academics there at the Harvard Club of Boston, and we went over there and were sitting there eating, and I was a young Harvard Property teacher. So he thought I should come meet these people working on the Restatement of Property, and then for the program, for the dinner, he said, "Now let's go around the room and everybody tell when they first met me" (*laughter*) "and what I have done for their lives," (*laughter*) and then he starts around the room and he skips the women, and Carol at that moment, this is the early '70s, you understand what I am thinking about, I am whispering, "No, no, keep quiet," (*laughter*) "I want to get tenure," you know, and boy, it was a tough moment.

Then the second thing that happened, a little more interesting in a way, he must have summoned me to his office, but anyway, he tells me I am going to be a member of the ALI. I'm not sure I filled out anything or did anything, but he makes me a member of the ALI because he then orders me to come here to Washington because his version of the Rule Against Perpetuities is having trouble and being attacked actually by Professor Powell of Columbia, whom I never knew. I knew his son, but by the time we got to Columbia he had passed away, and Powell was a leading property-law guy, like Casner was, and they didn't get along. And so whatever Casner was doing, Powell was going to come to the Meeting and attack it, and Rod may remember this. And the Rule Against Perpetuities version, the reformed version that Casner had worked on was getting attacked, and they didn't bring it to a vote. I mean, the management thought we'd better not risk this vote, we'll put it off a year.

And then I came back the next year, and Jim had brought in, he was much better prepared for the next year, and he had brought in some English professor or judge or something with a fancy name, Lord something or Sir something or something like that, who got up and said that Britain had, or England had reformed the Rule Against Perpe-

tivities in 1920-something, and the Queen was still on the throne, and this had not been the death of wills or anything, and the second year, with me in the room voting of course for Casner, we put it through.

The next thing that happens, I am a member and I get a call from a famous professor, Bernard Meltzer, at the University of Chicago. And he wants to nominate for membership in the ALI his son and daughter-in-law, Dan and Ellen, some of our closest, maybe our closest friends, and would I—I don't know if I nominated or seconded or whatever the process was. And the word comes back that yes, Professor Meltzer, a very young teacher at the time, can be a member, but I think Ellen was working in government and maybe that was not quite distinguished enough, you see, to be an ALI member.

Most of us have thought that, until recently, nobody was ever turned down for membership. But I got this call and I went on the warpath and I said, hey, you guys are putting out this stuff and saying you want women members, and here you are going to say that Ellen with this incredibly distinguished record in law school and clerking at the United States Supreme Court and all these other things cannot be a member of the ALI and her husband can be? This is pure discrimination, etc. And it worked, and I don't know if anybody now in the room was involved in that process in the '80s, but that was one of my successes.

Then we get to the point—and Ron Gilson was briefly on the screen there—we get to the point where I am either going to be or not going to be Director of the ALI. I had finished being dean, and Carol and I were on a sabbatical doing some teaching at Hebrew University in Jerusalem, and the Gilsons were there also, Ron and Nina. Ron had been a Reporter on the Corporate Governance project, and he was really working on me, saying you can't just go back to teaching having been a dean, you will be bored, and you need something to run and all this, and this is a good job, and the ALI is a great thing, and that is what made this happen from my side of the story. I don't know what made it happen from the management side.

And Bill was on there, Judge Webster, the great Judge Webster was chairing this thing, and I had turned it down a couple of times and wasn't sure and whatever, and then we worked it out on the phone with me in Jerusalem, but Bill says, "I need you to be in Washington on," probably a Tuesday or a Wednesday. It was just like this Meeting, you see. I think the Meetings then went to Thursday, so this might have been on Wednesday.

Anyway, so I had to make the equivalent of a 24-hour, 48-hour round trip from Jerusalem to Washington and back. We had been away on this sabbatical for, I don't know, six weeks already, we had been in Italy, whatever. So I flew to New York, and there were piles of mail and stuff like that, we hadn't been there, and Carol stayed in Israel, and it was a quick round trip and I was of course jet-lagged up the gazoo. So I flew to New York, looked at what was going on there, I think took the train or the plane to Washington, and got interviewed by Bill Webster's Committee. All of you know that Bill was an incredibly successful Director of both the FBI and the CIA, okay, but he had made clear that it was worth my while to fly, and, you know, there were not still five candidates or something, so this was going to be okay, and I was willing to take the job. And so I have the meeting with the Nominating Committee, and I come back to New York, and as I left Washington, Bill said, "Lance, I will let you know how this goes at the Committee," he said, "but it may be a while before I contact you, because I am going out tonight on the Secretary of the Navy's yacht for dinner." And I thought, you know, you still could have called me, (*laughter*) and I bet they have a phone on that yacht, you know.

But anyway, I go back to New York then, and I am sitting in front—I fall asleep, of course, jet-lagged on a couch with the Yankees game on TV. And eventually, like 10:00 o'clock, the phone rings, and Bill says, "Yes, you are going to be the Director," whatever it is, and I said, "Thank you, sir," and he then says, he's got to say one more thing, it's too early to, you know, discuss the salary, that's Bennett's business, whatever. He says, he has to say one more thing, he says, "Lance, everybody at the agency thinks you are going to do a great job." And I said, I said, "Bill, Bill, what is this? What is this job?" He said, "I mean the

Institute, I mean the Institute.” (*Laughter*) So that was the start of my whole thing, okay, and those are enough stories that Nancy has heard before.

But so let me just say this. One thing is that—and I really mean this in a very serious way—taking this job from Geoff Hazard was a great experience, and Geoff was an extraordinary person. And when I looked into the numbers about five years ago, Geoff had been the shortest-serving Director at 15 years, and so I thought, 15 years, okay, that is a goal, and I put that in my head as May of 2014. Those years have come and whatever, and Geoff was hugely helpful to me during my time as Director Designate. He taught me everything and remained very active but without, you know, trying to make trouble for his successor, which sometimes happens in institutions. And so that has been simply my goal with Ricky in these terrific months as we have spent time together, and he has asked terrific questions, and I have usually not known the answer but trying to be helpful to him the way Geoff was to me.

I have had four Presidents in truth. One is Rod Perkins, who was President Emeritus when I started but has been extremely helpful. Professor Wright, who died at the end of my first year as Director, so that was not a substantial working together. Wonderful, wonderful years with Mike Traynor, just wonderful, and including the problem of the three-hour time difference to California. I would try to stay up to answer his e-mails before going to bed, but of course he had a three-hour advantage on me, and so some of them I didn't see till the morning.

And then Roberta is only a two-hour time difference, so that is a little bit better. Of the four, Roberta is the best because she is the only one I can kiss, you see, (*laughter*) but all of them a good experience. And I will just repeat, things were said about Bennett before, but Bennett Boskey, a joy to work with and so knowledgeable and so committed to the ALI, and I don't think Roberta said the number. His age at this moment is, I think, 97 and three-quarters, and that is amazing and his brain is working and he cares about this Institute.

And I want to mention, although they are not here, Elena Cappella and Mike Greenwald, whom I inherited as Deputy Directors and with whom we worked closely for a decade, and then this became the job of Stephanie, and that has been a great, great, great experience.

And I will just mention, I mean, all 70 of our employees are important and easy to work with and helpful to somebody who is not in Philadelphia, where they are, but needs things from time to time. I will just say the first names—Marianne, Beth, Judy, and Deanne—but I am saying those names as symbols of dozens of people with whom I have had a great work experience.

Now for my five minutes of substance. When I was coming in, Geoff Hazard said to me and said, I think, here when he gave his talk at his last Meeting [see Geoffrey C. Hazard, Jr., Annual Dinner Address, Wednesday Evening Session, May 19, 1999, 76 A.L.I. PROC. 359, 361 (1999)], said something at the beginning I really doubted. He said this is the best job for a law professor that there is.

He said that and I thought, I don't know, you know, I was a dean, that is a good job, and there are other jobs, etc. And now from this perspective I know that Geoff was right, and first of all, this organization has an ability to influence the law. Very few people have that. Very few professors struggling to write a law-review article have any realistic hope that that article is going to change the law of the Rule Against Perpetuities or anything else, but if the ALI will recommend it, it may, and it is not easy in a legislature or even in Congress to get the law changed in certain ways. The ALI has 91 years of actually influencing law, so if we can do good work and convincing work and balanced work and persuasive work, we can influence the law.

So what does the Director do? The Director has to basically make the decisions of which projects to take up, and some of the ones I have started or that started in my time were mistakes and did not work out, and others have. And especially now, you know, our founders thought there was a fixed thing called the common law, and so the subjects—agency, restitution, whatever, property, contracts, torts—were somehow there in the heavens to be identified and then you complete the work.

We do not think that now. We think we've got, I don't know, 100 or 200 possible areas of law, and we have to pick and choose where we can do something, and that is a truly challenging intellectual, political decision where the Director is the main, closest thing to a leading decisionmaker, even though you get huge amounts of advice from others in the process and all that.

Then you've got to find a Reporter or multiple Reporters who can do the thing and that requires persuasion, but, again, you know, it is a very significant job and worth working very hard on.

Then you've got our process, which brings the different people into a room and tries to get from here to there with something that works, and, you know, we've got 14 projects. I would say three are in areas of law that I know something about, so you are up in front and trying to protect the Reporters from evil Advisers in the room (*laughter*) and trying to keep that going. And then the main thing, when you are up there in front of one of these things that you do not know much about, is trying to stay awake. (*Laughter*) And, you see, I heard it said about both Herb Wechsler and separately people told me this about Geoff as I was coming into the job, they said, "The thing about Professor Wechsler," and others said, "The thing about Professor Hazard," "is they can be fast"—each one they said it about—"he can be fast asleep up there and then wake up and ask a brilliant question," and I said, "Well, I've got the first half of that figured out." (*Laughter*)

Or the other way to put it, with so many different subjects of law, and I have said this to Ricky a few times, is the job is for somebody who is either eclectic or superficial, and I think I am both of those things, and I think Ricky is only eclectic, he is not superficial.

Okay, but that is the point, and it is an extraordinary institution, and depending on the membership, depending on the Council, depending on finding the Reporters, depending on persuading people to be Advisers, people to come to Members Consultative Groups and make their comments, and if we can keep engaging all these people, we can absolutely make a contribution to law in this country, and to some degrees, with certain work, we will do so in other countries as well, and it has been a wonderful experience for me. Thank you.

(Director Liebman received a standing ovation.)

President Ramo: You are not done yet. We've got a lot of substance at this Meeting, Lance, so we are going to move right on to the Restatement of the Foreign Relations Law of the United States. Judge Rosenthal will be coming to chair this. We are a little bit behind, so I am not going to take a break. We are just going to mush right on until lunch, so if you need to take a break, do so, but please come right back because this is a very important discussion.