

The Tuesday luncheon session of The American Law Institute convened in the State Room of The Mayflower, Washington, D.C., and was called to order at 1:10 p.m. by President Roberta Cooper Ramo.

President Ramo: Good afternoon. Hello, hello, hello. Oh, thank you. Astonishing. So it turns out that what they tell you about your children is true: If you just stand quietly, instead of raising your voice, everybody immediately quiets down.

This is, to me, one of the most wonderful events that The American Law Institute has every year, and that is honoring our life members and those members who have been with us for 50 years. When I look around the room and when you look at the list of people who are life members in this class, one can only think “I could never have gotten into this class,” which is exactly what I think.

So let me start out by acknowledging that we have two members who have been members for 50 years who are here today, and I would like to ask, please, David Champion Acheson of D.C. and Judge Tom O’Neill of Philadelphia to please come up so that they can receive our applause and I can give them a special medal from The American Law Institute. (*Applause*) I appreciate that they were able to take time from their busy schedules to come to be with us.

Congratulations and thank you, Mr. Acheson. We are very glad to have you.

Judge O’Neill, thank you very, very much. Thank you. (*Applause*)

Obviously both of them were 12 when they were inducted. We have changed our rules now; I think you have to be a little bit older.

Let me ask all of the life members from the 1987 class to rise, please. (*Applause*)

We will hear from a representative of the class in a moment, but let me invite one of the members of the class, and that is our friend, our Secretary, Professor Susan Appleton, to come up.

And while she comes, I want to say that one of the wonderful things about The American Law Institute is that people are always, some people especially, thinking about how it is that we can improve the Institute. A little over a year ago, Susan came up to me and she said, “You know, soon I am going to have the opportunity to be a life member,” and she said, “You know, what is interesting to me is that no one has ever done a class gift.”

“Aha,” I said. And we had several long talks about it, including with Judith Miller, who is the head of our Development Committee, and it seemed like such a wonderful idea, not just because we are so appreciative of the great gift that we are about to hear about, but because it gives us an opportunity to touch every member of the class and to let them know how deeply we appreciate their support over this last 25-year period.

Let me say that Susan also helped us find her cochair, Greg Joseph, who, like lots of lawyers in practice, had a piece of litigation come up today in which a judge apparently didn't understand the necessity for him to be here. I find that a little surprising; next time we will have maybe Justice Stevens call and see if something can't be rearranged.

But Susan Appleton, as many of you know, is not only the Secretary of The American Law Institute, she is a well-respected scholar, she is a named professor at Washington University School of Law in St. Louis, and she is one of the most thoughtful human beings in this Institute, and that is saying something.

Susan, I thank you very much, and first let me present to you on behalf of the Institute, with deep appreciation for your wonderful proposal to establish a class gift and your outstanding work as the cochair of the inaugural life-member campaign. Susan, we thank you. (*Applause*)

Professor Susan Frelich Appleton: Thank you, Roberta. I am thrilled to be here to be able to present, on behalf of the ALI Class of 1987, the first ALI new-life-members class gift. Unfortunately, as Roberta explained, last-minute pressing business prevented my cochair, Greg Joseph, who helped enormously in this effort, from joining me in this celebration.

So let me reveal the big line of suspense: I am especially happy to say that we exceeded our original goal, and we have raised for the ALI \$62,975. (*Applause*)

And as the members of the class know from our solicitation, these funds will be used to support the Model Penal Code: Sentencing project, the Members Consultative Group Travel Assistance program, and the Public Lawyer Scholarship program. To date, we have received 74 gifts, ranging from \$10,000 to \$25, and we appreciate each and every one. Fifty-seven percent of our class contributed. I had hoped we would see a larger percent, I thought we could get a hundred percent participation, but there is still time, if you would like to help boost that number. There might well be some of you here who had every intention of participating and just didn't get around to following up, and I am sure that ALI would welcome your gift even after this luncheon.

As Roberta suggested, beyond the dollars, the gifts demonstrate how we feel about ALI: that ALI inspires in all of its members high esteem for the work, commitment to the process, appreciation for the real value in clarifying and improving the law, and affectionate attachment to the organization and its traditions. So, we hope that this particular class gift will be a tough act to follow but not too tough, because we would love if next year's class outdid us; that would be great as well. In any event, we hope we have successfully launched a grand tradition that will continue with life-member classes in the years to come.

Then finally, I want to acknowledge not only the work of Greg Joseph, who couldn't be here today, but also the amazing assistance of Beth Goldstein and Jane Giacinto from ALI, the enthusiastic leadership of Roberta Ramo, and the help in this project from Judith Miller and the rest of the Development Committee. Thanks very much. (*Applause*)

President Ramo: Thank you, Susan.

I want to make special note of what this gift means to us in two ways. First of all, as many of you know, about four years ago we launched an effort to make sure that lawyers who were in public service, lawyers who were part of the legal services, either corporation or did legal aid in their own communities, lawyers who worked for the Justice Department, military lawyers were included in our membership. We had never really reached out to those people before, and of course when we reached out to them and invited the most distinguished among them, as you all are in your areas of the profession, we had to make sure that they could afford to participate. It is one thing to say to people we want you to be a member of The American Law Institute; it is quite another thing if you are a legal-services lawyer, even a very distinguished legal-services lawyer, or public defender, or prosecutor, to actually come to our meetings. So we pledged that for at least three years, but now we are going on and moving that out, that we would make available scholarships to make sure that those people could not only come to the Meeting with travel help, with hotel help, but could come to lunches like this, to the dinner tonight, because that part of the fellowship and the opportunity to hear the remarkable people that we have address us, that is equally a part of this experience, and we wanted to make sure that that was possible.

A gift like this class gift, Susan, is very meaningful, not just to the projects that it will help but to those actual stupendously fabulous human beings who will now not only be able to join us but be able to interact, and I thank you very much. And I hope you will tell Greg, and I will tell him myself, how much we appreciate him, and I want to say thank you to each and every member of the class that participated in this gift.

I was thinking today, in fact I think I said to Jamie Gorelick and to Dan Meltzer, what has happened in the association that you each saw today is that people come and participate in the meetings in a different way than they did for many years. Something like 64 percent of the new members actually came to this first Meeting that they were eligible to come to. What is so fascinating is to sit up at the front and watch people who, I know, know literally nothing about Indian law, know nothing about how it is in the Constitution that we ended up with the patent system, know much and will never touch international matters of any kind not only sit there, but having read, participated, and wanting to make their feelings known, that is what makes The American Law Institute such a remarkable place. That is what makes our mission so unusual in every way, and that is that we not only talk about law reform, but we talk about it in a well-educated, civilized way that I think is so desperately needed in our country right now. I was very proud to sit there and watch all of you, with me, trying to parse through exactly what it meant to have constitutional history as context in an area about which I knew nothing.

All of this makes it very hard to choose from among a distinguished class like this a person that might represent your class in addressing us. This year it was particularly difficult because when you look down the list of people in this class, you all have been amazing professionals in every way: You have served the public, you have been in private practice, you are stars of the bench, you are elegant intellects in every way. So how do we go about choosing?

Well, as I looked through the list and looked through the résumés, it occurred to me, and there aren't many things, I should tell you, Bill, that the President of the ALI actually gets to choose by herself, I don't even actually choose lunch, Sandrine chooses lunch, but I do get to select the person to address from the life class every year. And as I looked through the list, a name came

to me, and it was somebody I had never actually met before but I had always wanted to meet, and that was Bill Lee.

Bill has been, obviously, like you all, an ALI member since 1987, but what is so remarkable about his experience in life and what he has done using the professional and intellectual skills that he has, is that he has been in every part of what a lawyer's life should be. He has worked on major issues of national and international import, such as the Iran–Contra investigation. He has been a teacher. He is one of the most foremost intellectual property lawyers in the country. He has been the managing partner of a law firm. I don't know that there's any job that's harder than that; I was actually six foot, four inches tall before I managed my own law firm. (*Laughter*) He is experienced in litigation, but he is equally sought out as a counselor. He is a person who understands issues involving minority rights and is not afraid to talk about them. He is a stalwart not only at his own law school but at other law schools, who seek him out to have him instruct their students and sometimes even their faculty.

It is an honor for me to have finally met Bill Lee, and I know that it will be an honor for your class to have him address us. Bill. (*Applause*)

Mr. William F. Lee: Thank you, Roberta.

I actually was quite confident that when Roberta called, that the manner in which she had gone about picking me was putting all the class members in a hat, drawing one out, and I was the lucky member.

Thanks to The American Law Institute for inviting me to address this gathering on behalf of new life members of the ALI. Many things have reminded me of my advancing age in recent years, most recently the birth of two granddaughters, but one has been the realization that I have been a member of this extraordinary institution for now 25 years. I am really honored to speak to you briefly—and as a good trial lawyer I promise you it will be brief—on behalf of all of the members who have been members for 25 years.

For all of us, for each of us, the ALI has been a meaningful and special organization.

But first let me start by saying to the two 50-year members, you have our special thanks, our special admiration, for the dedication that you have shown over five decades as members. And thanks to many of you whom I know from different walks of life. It is like coming and seeing your life before you. I have two of my college classmates here, I have two of my colleagues from the Iran–Contra staff here, I have a classmate from law school here. It is great to see all of you.

I am particularly honored to speak to you today from my position as partner, and for 12 years the comanaging partner, of WilmerHale, and I am honored because we are a firm whose partners have had a long history with the ALI. One of my most cherished mentors and friends was Jim St. Clair. He was an active member of the Institute. He is the person who proposed me for membership 25-and-a-half years ago. Lloyd Cutler and John Pickering, named partners of our firm, were equally active members.

Lloyd, John, and Jim encouraged the next generation to be members in the ALI not only to further the important work of the Institute, but also to remind each of us that there was a profession and that we each owed the profession our time and attention. Today, my partners Jamie Gorelick, Seth Waxman, and I, among others, are doing our very best to carry on the work of John and Lloyd and Jim.

Now, as you all know, much has changed at our law firm, and much has changed in law practice, since the days of St. Clair, Cutler, and Pickering, and much has changed at the Institute in those 25 years as well.

As the title of my remarks suggests, I would like to talk to you briefly today about one of those changes, one that I think is the most profound and will have far-reaching effects, and that is the importance for all of us in the profession to work and think effectively as leaders, as team members, as members of a group in the practice of law. It is, to steal the title of the well-known book, *The Wisdom of Crowds* [JAMES SUROWIECKI, *THE WISDOM OF CROWDS: WHY THE MANY ARE SMARTER THAN THE FEW AND HOW COLLECTIVE WISDOM SHAPES BUSINESS, ECONOMIES, SOCIETIES, AND NATIONS* (2004, 2005)] a skill that I have observed in my own practice, in my trial practice. It is a skill that I am doing the best I can to help teach to the next generation of lawyers through a first-year course at Harvard Law School, which I will come back to in a few minutes.

But first, how does this relate to The American Law Institute and what does it mean for The American Law Institute? Well, in fact, the ALI is one of the pioneers of this very concept. When the Institute was formed in 1923, it immediately issued drafts of Restatements of various totems of the legal profession: Agency, Contracts, Property, Torts, Restitution, Conflict of Laws, and more.

By 1987, when we became members, for the first time the Institute had recently finished a Second Restatement of Contracts and a Second Restatement of Torts. And during our 25 years as members the ALI has gone on to address other aspects of torts, property, and trusts and expanded into critical new areas: Products Liability in 1991, a Restatement of Trusts to address the Prudent Investor Rule in 1987, and the Law of Unfair Competition in 1986.

These Restatements, and more broadly the Institute's collaborative process for issuing its Restatements, its Principles, its Model Codes, are truly, in my view, among the best and earliest examples of this concept, that a group as a whole is greater than the sum of its parts, and the wisdom of the crowd is greater than any of us individually.

The Institute's thought and publication process for these publications is a prime example, in my view, of the success that comes from aggregating the wisdom and experience of many very, very smart people on a particular subject in order to come up with the best statement of the law that a collective group can provide.

In his Foreword to the Institute's *Seventy-fifth Anniversary* volume in 1998, Professor Hazard cogently explained the value provided by the Institute's collective work and what a key role collaboration played in all that the Institute did. In that Foreword, he specifically attributed the success to the Institute and the success of the principles that are articulated for the profession to this unique collective procedure. He described how that procedure ensured a diversity of viewpoints, a

diversity of perspectives, and that those different viewpoints and perspectives would be reflected in all of the Institute's work, and why the success of the Restatements and the stature of the Institute was dependent upon that collective wisdom.

He wrote: "The Reporter is almost always an academic; the Advisers always include lawyers and usually judges, as well as academics; the Council is constituted from all three professional 'estates'; and the Annual Meeting represents a professional membership from across the world and across the specialties of practice." This combination—using a Reporter that engages in a broad consultative effort to arrive at an initial draft, which then goes through layers of additional review by Advisers, members of the Council, the Institute at large, and members of the public, lawyers and nonlawyers alike—results in a product that is better, it is universally respected, and, as we all know, universally relied upon.

As we celebrate the 89th year of The American Law Institute at the Annual Meeting, I hope we will all consider just how the Institute and the profession in general can take this model, the wisdom of the crowd, to help address the new face of the American legal landscape.

Now the Institute itself is doing it. It is addressing the developments in the law of torts, restitution, and other legal constructs that have existed since the time of Blackstone. But it is also bringing to bear its collective wisdom on new areas: international arbitration, aggregate litigation, international judgments, and as I look at Jeanne, who presented this morning, one of the fields that occupies so much of my time today, intellectual property, but which is so key to the national economy and its effects so key to what we are doing globally, it is a field that is in desperate need of additional thoughtful voices. It is a field that is in need of just what the Institute does.

From the Institute's initiatives, we have learned and we have seen demonstrated the principle that the wisdom of the group is greater than the sum of its parts. That also succeeds in law practice. It succeeds elsewhere. I mentioned this fascinating book, by Jim Surowiecki, called *The Wisdom of Crowds*. It has nothing to do with law practice. It has nothing to do with most of what you are doing every day. But it provides a compelling case for the conclusion that the collective wisdom of groups is better suited to solve problems and come to wise decisions than an elite few.

He states in the book [at page 11]: "With most things, the average is mediocrity. With decision making, it's often excellence. You could say it's as if we've been programmed to be collectively smart."

Nowhere have I seen this concept personally become more true than in the practice of law. To some degree, this is simply the product of the size and complexity of the matters and the cases that we are dealing with today. My first major trial in 1977, 10 years before I became a member of the Institute, involved a claim by the Mashpee Indian tribe to an entire town on Cape Cod, Mashpee. We were trial counsel in a four-month jury trial that was tried to verdict, went to the First Circuit Court of Appeals, and went to the Supreme Court, all within 18 months. The trial team was three lawyers and all of the documents fit in four bankers' boxes. My biggest concern was getting the bankers' boxes back and forth to court on a rainy day.

If I fast forward 35 years to today, the world is different. As I have mentioned to Roberta, I am representing Apple in the smartphone wars nationally and internationally. We recently tried a case in which Nokia sought to bar from the United States market the iPhone, the iPad, and the iPod, something that would probably affect many of us here today. The trial team was 40 lawyers. The technology was very complex. The damage claim was \$50 billion. It is a different problem than we had years ago.

By necessity, that team has to work well. It puts a premium on leadership. It puts a premium on teamwork. It puts a premium on collective action. And I will tell you that the lawyers that we worked with, some from my firm, some from other firms, were some of the most brilliant legal minds, the most brilliant strategically, and the most dedicated I had ever worked with. But the decisions of the group and the end result of what the group decided were far superior to what any of us would have come to ourselves.

So what does this mean for lawyers today and, to get to the topic of the talk, what does it mean for the next generation of lawyers of tomorrow? It means, in my view, that our roles have changed. No longer is it enough to be just a superior analytical thinker. You need to be, but it is not enough. No longer is it enough to be just a superior individual contributor. It is important that you be so, but it is not enough. Today, great lawyers fulfill three roles. They are great analytical thinkers, just as lawyers have been for centuries, but they are great leaders, they are effective team members, and they are wise counselors.

As I mentioned, for the last three years I have had the honor of teaching a course at Harvard Law School. Dan is here to make sure I get this straight and I don't venture beyond what is actually true. The course actually was the brainchild of then-dean, now Justice, Elena Kagan, Dean Martha Minow, Todd Rakoff, Joe Singer, and some others.

It is a course that has the benign name, the "Problem Solving Workshop," but as Dan knows, it took over five years to develop and has now become, at Harvard Law School, a required course of all first-year students. The course doesn't say torts, it doesn't say contracts, it doesn't say criminal law. It actually presents the students with a series of problems. They are a sole practitioner in one, a U.S. Attorney in another, general counsel of a multinational corporation in another, the adviser to a public official in another, and they are presented with real-world problems that are complicated legally, ethically, and morally.

On the first day, to get their attention, I do two things. First, I talk about these three roles that I have just tried to identify for you, and I talk first about the role of great analytical thinker, and I put up a picture of Albert Einstein, and that seems to resonate with them.

Then I talk about the need to be a great leader and team member, and I put up a picture of the quarterback Tom Brady. Now you know what my sports loyalties are, but I am trying to make a point, which is that leadership and teamwork are not discipline-dependent, and in fact there is something that is important across fields.

And then I tell them that you also must be a wise and ethical counselor, and I put up a picture of Yoda, and that tends to resonate as well.

The second thing I do is this. Many of these students have had extraordinary performances individually in college. Many of them have done extraordinary things individually before they get to law school. Their résumés are really overwhelming, but very few of them have had to engage in the collective conduct that would demonstrate to them the wisdom of the crowd.

So we organized this course of 80 students into 16 teams of five. They have to do everything with their team. Their written work is written as a team. Their oral presentations are prepared and presented by the team. Their recommendations and advice are the recommendation and advice of the team. I promise you it is not easy for them. They got to law school by being great individual performers. They were never required, for the most part, to do it as a team.

So the second thing I do to get their attention is this. On the very first day, I give them 10 questions. The questions are as interesting as what is the per capita consumption of eggs in the United States on a daily basis? When was the Gutenberg press invented? What is the 101st prime number?

They all laugh. They are very accomplished people. They have no idea why we are asking these questions, but here's what we do. We have them answer them all individually, and they give a confidence interval. Then I organize them into the teams that they are going to work on for the rest of the semester, and they have to answer them again. And I promise you that when they do it, they laugh; there is a lot of laughter and tittering in the classroom. They think it could be a little bit of a joke.

That night, a partner of mine and I run them through a computer program that we have. It's not one that we have developed, it's one that has been around in the area of psychology and organizations before, and we give the students the results. I have done this for three years, so 240 students. The results are the same every year. The best-performing teams outperform the best-performing individuals by a statistically significant margin. The best-performing teams do not have the best-performing individuals on them. Individually, the men are much, much more confident in their answers than the women. Individually, the women are much closer to right than the men. *(Laughter)*

We can use the computer program, the results, to actually show them how their teams have learned and come closer to what is a correct answer. I promise you even for this accomplished group of first-year law students, it gets their attention, and every year the room gets very quiet, and you can just see them thinking to themselves, well, maybe there's something here after all.

To make the point, I intentionally organize the teams so that students who are very different, with very different backgrounds and perspectives, have to work together. Last year, I had one team who had a man who had interned for Newt Gingrich, a man who had interned for Jeb Bush, two avowed feminists from Berkeley, a person who wanted to be an environmental lawyer who, I was quite sure, wanted to know what I had done to them. They struggled at first. They struggled at first because they were so different in their perspectives; they were so different in their outlooks. They came to see me because they said it couldn't work. At the end, they produced the most creative work in the class. They brought together their different perspectives and had some of the best ideas, the best thinking, the best recommendations of any team that we had taught, and on

the very last night of the class, the five of them went out to dinner in Boston's North End, and I considered that a triumph of some kind.

This course, like the Restatement and the Institute's other initiatives, teaches, I hope, our newest generation of lawyers that if they work together, if they engage in collective conduct, they will come up with better, more meaningful answers than even the best students could come to individually. The course itself and the type of teaching the course provides has garnered enough interest that, this April, some faculty from the Harvard Law School who are involved in teaching the course actually did a one-day workshop for people from other law schools throughout the country just to teach how to use—how to teach the course. And the skill, the skill that we are trying to impart, which is recognizing the benefit of collective judgment, recognizing that to get there you need to have the ability to participate in that group not just as a great analytical thinker but as a great leader, a good team member, a wise counselor, those are skills that we hope the law students will recognize are important as they walk out of that room.

So let me end where I began by thanking the Institute, on behalf of my class of now life members, for the honor of being members of this great Institute for 25 years, by, more importantly, thanking the Institute for its extraordinary work and extraordinary efforts in the development of the law, and finally by thanking the Institute for being a true pioneer in recognizing and employing the wisdom of the crowd. Thank you. (*Applause*)

President Ramo: I have learned a lot today that is important in the law. What I have just learned, the emphasis on collaborative work rather than competitive work, I think is maybe the most profound thing that gives me hope for our country, and I am deeply appreciative, Bill, that you spoke to us.

Let me present to you—each of you in the 25-year class will have this mailed to you—your certificate of being a life member, with my deepest gratitude for your membership and today. Thank you. (*Applause*)

So I have to tell you, Bill, as you sit down, I was lucky enough, strange for a lawyer from New Mexico, to know both Lloyd Cutler and John Pickering. I feel compelled to tell you my favorite story about John Pickering. Over 20 years ago, when I first ran to be the President of the American Bar Association, the way you did that was that there was a Nominating Committee, and you went around, if you could afford to, which I could not, and took people out to dinner—Phil Anderson is nodding his head—in many places. But we were meeting the ABA in Hawaii, and I heard that John Pickering was coming in a day early. So it was the same plane fare and one extra hotel night, so I called his office to see if he would have dinner with me this night before the meeting started. My husband was coming the next day.

We went out to dinner. I fully intended to take him out to dinner. He was having none of it. He insisted on buying my dinner. I don't think I got his vote, but he insisted on buying my dinner. (*Laughter*)

So the next morning my husband, red eyed, comes off the overnight flight to Hawaii, I meet him in the lobby, and we run into John Pickering, and I said, "Sweetheart, I want to introduce you

to the man who bought my dinner last night,” and Pickering, who was then 80, looked right at my husband and said, “But nothing came of it.” (*Laughter*)

So with that, Employment Law. Thank you.