

IV
*REMARKS AT MONDAY
AFTERNOON SESSION UPON
RECEIVING DISTINGUISHED
SERVICE AWARD*

By Michael Traynor, Esquire
*Chair of the Council and President Emeritus
of The American Law Institute*

President Ramo: Our second award will be a little bit of a surprise to the recipient. Michael Traynor will receive the Distinguished Service Award but not from me. The reason, Michael, is that I knew and did receive a stream of e-mails from Michael telling me what not to say. What he meant by that was I should be modest in my comments, I should keep this very short, there were a lot of instructions, and I feel obligated to follow Michael's instructions. So, instead, I have asked Gerhard Casper, who is obligated to follow nobody's instructions, to present this award. (*Laughter*) (*Applause*)

Professor Gerhard Casper (Cal.): Thank you, Roberta.

Congratulations, Guy. I never thought of you as picky, I mean never. (*Laughter*)

The one thing that surprised me about your account of your ALI activities was that even as a student, when you encountered the ALI decades ago, you used the word "cool" to describe it; most implausible, most implausible. (*Laughter*)

Good afternoon, ladies and gentlemen. As I never tire of pointing out, The American Law Institute is a wondrous institution and can accomplish what others would view as hardly possible. Here comes a Stanford law professor, former President of Stanford University no less, giving the laudation for Berkeley's Michael Traynor. (*Laughter*)

What makes one wonder is not simply the fact that Michael Traynor is a Cal-Berkeley alumnus, but he lives in Berkeley voluntarily. As a matter of fact, I learned, to my shock, that Guy Struve will also voluntarily live in Berkeley soon. I don't know what kind of a trend that might be.

Well, I think Mike lives in Berkeley voluntarily kind of, because he and Shirley, also a wonderful ALI presence—Shirley, we thank you for your many contributions—grew up there. They grew up there, they went to high school there, and indeed some of their high-school colleagues are here today.

Mike is not just any old Cal person but a Cal personage by descent. His father, California's great former chief justice, had a B.A., an

M.S., a Ph.D., and a J.D., all from Berkeley. That kind of parochialism should really be prohibited. (*Laughter*)

Roger Traynor was also, of course, a much-admired professor at Berkeley's Boalt Hall, even the acting dean.

Mike Traynor, however, has one saving grace, and you would never have expected that of all people I, who have been associated with the law schools of Yale, Chicago, and Stanford, would say so. For law school, Mike attended Harvard. Now you understand, of course, the only thing praiseworthy about his going to Harvard is that he did not stay at Cal.

When President Ramo called me to ask whether I would do what I am now doing, I accepted with alacrity. It is true that I respond positively to almost any request from Roberta, and so should you, but this is nevertheless a special case.

For instance, in his speech at the Annual Dinner of the Institute in 2008, a speech to which I shall return, Mike displayed a high degree of intellectual catholicity by quoting Stanford's motto: "The wind of freedom blows." [85 A.L.I. PROC. 224 (2008).] That he is willing to run risks is indicated by the fact that he pronounced it, or I should say tried to pronounce it, in both English and German.

The Distinguished Service Award is given, from time to time, to a member who has played a major role in the Institute and has kept the Institute on a steady course. Michael Traynor certainly has played a major role and has kept the Institute on a very steady course.

Mike was elected to the ALI almost 40 years ago, in 1972. He became a member of the Council in 1985. His great talents were quickly recognized by everybody when he followed what the Romans called the *cursus honorum*, the course of honors, the sequence of offices. He became Second Vice President in 1993; First Vice President in 1998; ALI President in 2000; Chair of the Council in 2008.

So is Mike being honored today because he served the Institute in all of these offices? The answer is emphatically no. He is being hon-

ored because, as our esteemed Directors, Geoffrey Hazard and Lance Liebman, said in a joint statement in 2008, on which I cannot possibly improve:

Mike knows so much about law, the responsibilities of lawyers, and the contributions that the ALI can make to justice in the United States and in the world. He is dignified and informal at the same time. He is fair to everyone and insists that all be heard. He has led challenging reforms and improvements in the ALI that have been accomplished without division or opposition. He is loved and respected, a rare combination. . . .

He saw that we needed younger members and younger Council members. He knew that our work must become more international. He realized that we had to help the nation and the legal system address deep challenges. He also knew that the ALI's strengths are its members, even the senior ones, and its extraordinary process, which assures care, accuracy, and an appropriate response to all voices. He is committed and gets things done, but he also truly respects those who disagree or who need more time to see what he knows.

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I earlier invoked Mike's speech at the 2008 Annual Dinner. It was entitled, "Remarks on Liberty, Equality, and the Rule of Law." Over his career, Mike, speaking as a citizen lawyer, not in his official capacity, has publicly addressed the illegality of torture, the obligations of citizenship in a time of repression, judicial independence as a cornerstone of liberty, governmental secrecy, and the assaults by government on constitutional rights and the separation of powers. [See 85 A.L.I. PROC. 218 (2008).]

That evening in Washington, Mike spoke with deep engagement about compromising and debasing the rule of law. Mike tackled the hardest of questions: the gradual, imperceptible erosion of liberty and the rule of law, a subject that the President of the ABA also addressed this morning. Mike observed how, “during the critical years after 9/11 . . . both Congress and the American public were uninformed, fearful, and unengaged; and they let themselves be deceived.” [Id. at 219-220.] Then he went on to invoke words of his father from the McCarthy Era: “The judges whose job it is to apply [the Constitution] must carry liberty in their hearts even when other men have ceased to. . . . Liberty is not lost suddenly, catastrophically; it is lost imperceptibly, by erosion. Who is to say it is irretrievably lost until it has died in the hearts of those whose job it was to care that it lived in the hearts of others?” [Id. at 221, quoting Roger J. Traynor, *Law and Social Change in a Democratic Society*, 1956 U. ILL. L. REV. 230, 241 (1956).]

Mike, we owe you much for the high degree of professionalism with which you have led the Institute. We owe you even more for reminding members of the Institute, and judges and lawyers in general, of what the most important job is. Thank you. (*Applause*)

Mike, if you look at the display, you are going to get a trophy, but it is so fragile that they have not entrusted it to me. (*Laughter*)

I should be handing it over to you, but they know I am clumsy and they wouldn't want me to drop it. It stands right there, and it will eventually come your way if you are patient, and I know you can be very patient, so there is the trophy, and again, warmest congratulations.

Chair of the Council and President Emeritus Michael Traynor: Thank you. Using Guy's words, I feel pretty cool to be a Berkeley kid. (*Laughter*)

Dear Roberta, Gerhard, and dear friends: Thank you. I am deeply honored by your friendship, and I treasure this award. It is heartening to be with you and to have such an able, extraordinary, and personable leader as Roberta Ramo as our President. It is a special pleasure to have this ceremony in my home state of California. I am proud to follow

John Subak, Bennett Boskey, and Rod Perkins as a recipient of the Institute's Distinguished Service Award. Each of them is an inspiration.

The ALI is a prized institution in the life of our country. It is a trusted institution. In large measure, our reputation is due to our careful process, our objectivity, and our willingness to consider, debate, and resolve competing viewpoints intelligently and pragmatically. It is also due to our being nonpolitical and to the respect we show to each other personally and for our different perspectives and experience. We are a unique forum in which leading judges, law teachers, and practicing lawyers freely and openly exchange their views.

Enormous credit goes also to our devoted staff and to our Director, Lance Liebman, and to his predecessors, Geoff Hazard and Herb Wechsler.

Our reputation is also due to members like Guy Struve, who today has received the John Minor Wisdom Award in memory of one of our country's most distinguished judges. Whenever Guy comes to the microphone, we can be confident that we are going to be the beneficiaries of a thoughtful, reasoned, and articulate comment or motion.

In 1972, I became a new member. Today, 39 years later, although about to become emeritus as an officer, I look forward to continuing to be an active member. Throughout this time, I have been lucky to have my wife Shirley's encouragement and support, and I am glad to see her here with me today.

Shirley. (*Applause*)

Another Berkeley note is that Shirley and I met at Berkeley High School.

I hope, indeed I look on this award both as a stimulus and as a kind of guarantee that I will be at our Annual Meeting in 2023 when we celebrate our hundredth anniversary. In 1923, our founders, chaired by Elihu Root, recommended not merely the establishment of a law institute but the creation of a new force of judges, scholars, and lawyers in fulfillment of an obligation to the American people to promote the

certainty and simplicity of the law and its adaptation to the needs of life. We and our predecessors have lived up to that promise, and there is every reason to believe that we and our successors will continue to give us reason to celebrate our first century of good work and the beginning of our second. With good will in all quarters and attendant commitment, we can begin to prepare for our second century, for example by strengthening our financial independence and our consequent ability to undertake important public-law and other new projects and by enhancing our capacities for communication.

It has been wonderful to have a chance to serve The American Law Institute, and I am deeply grateful to all of you and to Roberta and to Gerhard for those magnificent words. Thank you very much. (*Applause*)

President Ramo: Let us go now immediately to Torts. I want also—I saw her a moment ago—is the Chair of our Committee, the Awards Committee, Mary Schroeder, here?

Judge Mary M. Schroeder (Ariz.): I'm here.

President Ramo: There you are. Mary, of course, is the major-domo of all of this, and I just want her to stand up so that everybody, as we invite people to nominate people for awards from time to time, you know to whom it is you are sending that communication. So Mary, thank you very much.

Judge Schroeder: Thank you. (*Applause*)