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REMARKS AT WEDNESDAY MORNING SESSION UPON RECEIVING FRIENDLY MEDAL

By The Honorable William H. Webster
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the Eighth Circuit, former Director of the
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*The Wednesday morning session
of The American Law Institute
convened in the Ritz-Carlton Ballroom,
Washington, D.C., on May 22, 2013.
President Roberta Cooper Ramo presided.*

President Ramo: While everybody is getting settled down, let me thank Judge Schroeder from the Ninth Circuit, who happens to be standing up right now—don't sit down yet—who has chaired our Awards Committee for a wonderful period of time. It takes a great deal of thought and responsiveness to chair this Committee, and she has done it, as she does everything, in the most intelligent and elegant way, and so let me just say, publicly, thank you to Mary, and I hope you will join me in that. Thank you. (*Applause*)

As everybody in this body knows, we do not give many awards, and we do not give them often. It seems particularly appropriate that at a time when we are having our 90th Meeting, that we do give an award in the name of an icon of the American legal profession to someone who is also an icon. And how lucky for us to have Judge Garland here to make the presentation of the Henry J. Friendly Medal, the chief judge of the D.C. Circuit as of, as I recall, February 12th, I thought Valentine's Day would have been a better day. Judge Garland is a former Friendly clerk, a graduate of both Harvard College and Harvard Law School with extreme honors, a United States Supreme Court clerk, an elegant person in all ways, as we all know, but especially for today, a person who was Judge Friendly's clerk, Judge Garland. (*Applause*)

Chief Judge Merrick Brian Garland (D.C.): Thank you, President Ramo, for the rare and distinct honor of introducing the recipient of The American Law Institute's Henry J. Friendly Medal, William H. Webster. It is a rare honor because, well, it is rare. As the President just told you, it is bestowed, in the discretion of the Institute, only upon those who have made truly outstanding contributions to the legal profession.

In the more than 25 years since Judge Friendly's former law clerks endowed the medal, it has been awarded to only 10 people: Sandra Day O'Connor, Nicholas Katzenbach, Ronald Dworkin, Richard Posner, Anthony Lewis, Linda Greenhouse, William Coleman, Herbert Wechsler, Paul Freund, and Edward Weinfeld. And it is a distinct honor for me because both Judge Friendly and Judge Webster were important influences in my own early career.

As my first job out of law school, I had the great good fortune of clerking for Judge Friendly. As David Dorsen's appropriately titled book aptly puts it, Judge Friendly was the "greatest judge of his era." He was the greatest for a great many reasons, but only one of them is really important today. And that is that by his example, he taught both his clerks and the profession that judging is not just politics by another name. No Friendly clerk ever heard Judge Friendly say anything to suggest that political considerations played a role in any of his decisions. Nor could any reader of those decisions have discerned any such intrusion.

Two years later, I joined the Department of Justice, and there I had the great good fortune of interacting, albeit only intermittently, with then FBI Director Webster. Judge Webster's career has been long, and his accomplishments are many: Navy lieutenant, U.S. Attorney, district and circuit judge, FBI and CIA Director, law-firm partner, and currently chair of the Department of Homeland Security's Advisory Council. But once again, I want to focus on a lesson that Judge Webster taught those of us who then worked at DOJ, a lesson similar to the one taught us by Judge Friendly: that, like judging, law enforcement must be kept separate from politics.

Judge Webster came to the Bureau in the wake of Watergate and of revelations of FBI intrusions into constitutionally protected political activities during the 1960s and 1970s. At the Bureau, he instituted reforms that restored both its credibility and its reputation as the premier nonpolitical law-enforcement agency.

David Dorsen's book notes that during the 1968 election campaign, *Newsweek* reported that Richard Nixon was passing the word that Judge Friendly would be an ideal nominee for the Supreme Court. When that failed to materialize, some, including Judge Friendly himself, blamed Attorney General John Mitchell for rejecting him. It is fitting, then, that today the Friendly Medal goes to a great public servant who was appointed in no small measure because the country had, in turn, rejected Attorney General Mitchell's vision of how the Department of Justice should operate.

In the course of working on this introduction, I thought it would be useful to obtain, through the good offices of Mr. Dorsen, a piece of actual correspondence between Judges Friendly and Webster. Sure enough, David told me that he had found just such a letter, and one relating to the ALI to boot. When I read the letter, however, I was sorely tempted to deep six it. (*Laughter*) But when I asked myself, as I often do, what would Judge Friendly have done, I knew I would have to disclose the letter to you.

The letter is dated March 16, 1984, from Henry J. Friendly to William H. Webster, then FBI Director and, more important, then Chair of the Nominating Committee of the ALI, a position he held for more than 25 years. The letter is Judge Friendly's recommendation of Judge Pierre Leval for a seat on the ALI Council. The document is filled with encomiums to Pierre, no surprise there, but here is the kicker: "Pierre," the judge said, "was among the best law clerks that I have ever had, right alongside Mike Boudin." (*Laughter*)

You see the problem. (*Laughter*)

That endorsement forces every self-respecting Friendly clerk to ask the age-old question often attributed to that sage, Jimmy Durante: "So what am I, chopped liver?" (*Laughter*)

In truth, though, the letter makes a nice closing for this introduction. Every Friendly clerk knows that Pierre and Mike were, indeed, the judge's favorite clerks, and appropriately so. Indeed, every Friendly clerk knows that the idea for this Friendly Medal came from Pierre and Mike. Accordingly, it is more than appropriate that today's honoree was the recipient of a letter that contains not only the name of the judge for whom the medal is named but the names of the two judges who conceived of the award.

Judge Webster, I have one more duty I have to satisfy before I can hand you the Friendly Medal. I have to read you two missives that I received early this week. Now when you were a young man, they would have come in the form of telegrams. This time they come as e-mails.

The first reads: “Dear Judge Garland: As the only judge still around who was a colleague of Judge William Webster, U.S. Court of Appeals Eighth Circuit, and as his friend for 40 years, I send this message of congratulations to Judge Webster, the recipient, and to members of the presenter, ALL, relating to the current Henry Friendly Medal award. The judges on the Eighth Circuit, during William Webster’s years on the court, and for his public service for all years, including the present time, referred to Bill as a ‘straight arrow.’ He was and is a person of the highest integrity, intelligence, and possessing great wisdom and always a careful understanding of his work, judicial and legal, and as a public servant as FBI Director, CIA Director, and in other capacities. Congratulations. Well done, Bill. Sincerely, Myron H. Bright.”

And the second reads: “Judge Garland: Please convey our Eighth Circuit congratulations to Judge Webster for his receipt of the Henry J. Friendly Award. Our admiration of Judge Webster, our legendary colleague, is unsurpassed. Great award choice. We wish you and Judge William Webster all the best. Chief Judge, William J. Riley.”

And now it is my great pleasure to ask the Honorable William H. Webster to step up and receive his medal. (*Applause*)

Judge William H. Webster (D.C.): Thank you so much, Chief Judge Garland. I am taking a second to take it all in.

I can’t tell you how much this recognition means to me. There is so much involved in all of it that it is difficult for me to express.

This organization is the key to how we support and expand and deal with the rule of law in our country in a way that no other country has enjoyed, and my membership in it has meant the world to me. My admiration for Judge Friendly is unbounded, always one of my heroes, and to join the ranks of those that Judge Garland mentioned is really quite an experience for me. They are known to me, and many were friends and colleagues. And I particularly think of, most recently, Tony Lewis, Anthony Lewis, the author of *Gideon’s Trumpet*, my favorite book—I have a first edition; it is well worn and reworn—who just passed away, one of the two nonlawyers that I understand were given this recognition.

Well, I mentioned to Lynda this morning that I was thinking of the Great Yankee from Olympus, Oliver Wendell Holmes, who wrote to his British friend and apologized because he did not have time to write a short letter, to which she replied—and she's sitting over there, my wonderful wife Lynda, who is arranging a major role in the 150th anniversary, this year at Gettysburg, of the Battle of Gettysburg, the birthday of Abraham Lincoln, and the first award of the Congressional Medal of Honor—"Well, if you are thinking about that, just remember that, at Gettysburg, one of America's most remembered speeches took two-and-a-half minutes."

So with that in mind, I will try—I can't do that, but I wanted to share a few thoughts about The American Law Institute and how it relates to all of us as lawyers, coming from the ranks of the judiciary, from academia, and from the active practice of law in a unique, absolutely unique set of arrangements.

In my own case, I did not have much trouble because my mother decided when I was two years old that I was going to be a lawyer, and that ended the discussion. Through the years, my father had to put up with me, as a small child, making speeches at the dinner table to satisfy her ambitions for me. At one point, when I was 15, I thought perhaps I would do better as a hotel manager, where you could make \$200 a month, but my guidance director at the high school said to forget it, I was going to be a lawyer.

So to cover that ground very quickly, my march in that direction was interrupted by military service in the Navy, and in both cases, both in World War II and in the Korean war, I had the privilege of serving in legal court-martials, more effectively I think in special court-martials, after I had become a lawyer. I never regretted any of the decisions that were made, but I kind of stumbled along through my life, responding to occasional calls to duty that I have never regretted.

I was a United States Attorney for the Eastern District of Missouri back in 1960, as I recall the approximate date, and I also served as a member of the Missouri Board of Law Examiners. In those capacities, I got to know the Chief Justice of Missouri, Laurance M. Hyde, and at

one point, in those long days ago, he said, "You know, Bill, you ought to be a member of The American Law Institute."

Well, I knew about the Restatements, because I had studied them in law school, but I did not know much about the ALI. He said, "I have been in it almost from the beginning; let me propose you for membership."

He did and I was taken in and attended my first Meetings in the old Mayflower Hotel. And for the next several years, I hated those stiff-backed chairs in the Ballroom in those days; I could hardly stand it. They did get improved about 25 years ago.

But it was a remarkable experience to be exposed to such unique minds, all, as Judge Garland said, without political motivations, with people who have had vast experience and who wanted to make sure that our laws were clarified under the common-law system in which we exist, so that those who practiced it and those who lived under it could better understand where it was and where we ought to go, and I will never forget what a great experience that was for me.

Years later, I had the privilege of serving on the district court and then on the court of appeals, and I want to mention, I am so pleased to have heard, I was not present when I think Judge Schroeder revealed that letter from Judge Bright to the Council, and I was so pleased to hear from him. He is the oldest federal sitting judge in the United States, and he is still sitting on the Eighth Circuit at the age of 94, and that is an incentive for some of us. (*Laughter*)

It's getting closer and closer as time goes along. But that was a great thing to hear from him.

I had a wonderful experience on the court of appeals, I had no intention to leave it, but another fine gentleman, Attorney General Griffin Bell, persuaded me that, at that particular time, I ought to think about coming to the FBI. I had my doubts, my moments of uncertainty. Chief Justice Burger was not sure that was the right place for me, and I found myself on the way to meet with President Carter by dropping by the—my meeting the Attorney General at the Depart-

ment of Justice. I passed the office of another member, Wade McCree, who had been on the Sixth Circuit and was serving as Solicitor General of the United States, and I stopped, put my head in the door, and told him of my concerns.

He put them away in this way. He said, "Bill, it is not a duty. What you are doing is important, but if you want to make a great gift to your country, I can't think of a better thing or a better time for you to do it." And that sort of washed away my reservations, but I said, "There's just one thing, though." I said, "I have been told that I am being nominated to serve on the Council of The American Law Institute, and I guess I will have to give that up," and Judge McCree said, "Well, just a minute; we'll call Ammi Cutter," who was then leading the ALI, justice of the Supreme Court of Massachusetts, and he was very brief. Wade put the problem before him, and he said, "Well, I'll vote for him." (*Laughter*) And that ended it. And that's how I found my way to the Council.

The years that I got to serve as head of the Nominating Committee, I had a wonderful group of people sharing that responsibility with me. I look back on it and think of all the people who helped make sure that we did our jobs in a right way, and I look around at the leadership today, and it is tremendous, and I recognize that that helped, made all the difference.

I remembered little things, and this is why it's going over the two-and-a-half minutes. One of our members, Elizabeth Warren, who now sits as a United States Senator, said, "You ought to look into this fellow Doug Laycock." (*Laughter*)

So it was the knowledge and the help of the people, collectively we knew how to do it, and I was proud to have served in that capacity because it was a wonderful experience.

Judge Friendly wrote many things that attracted my interest, as I know it did yours, but the one thing that always stuck with me was not an opinion but an article that he wrote, which appeared in the *University of Chicago Law Review* [Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attacks on Criminal Judgments*, 38 U. CHI. L. REV. 142

(1970)], while I was then sitting on the district court burdened by all these postconviction remedies.

People were tried, they were convicted, they went to jail, and then they started filing motions, and how to address that was a major problem for the judiciary. I won't go through all of that except to say that when he submitted it and it was published, his law-review article had a simple title. It said, "Is Innocence Irrelevant?" And that set the tone for how we would approach these postconviction motions, technicalities, and so forth. Unless a person made an arguable claim of innocence, they didn't get the same entitlement to keep running and combating with technicalities the issues.

That was the kind of person he was, and I always admired the kind of people that he selected for his law clerks and the ones who have gone on to so many other things, like Chief Judge Garland and Judge Boudin and Pierre Leval and others. That meant a lot to me.

And I shared that experience, both on the bench, and it was so good for me that I carried it on at the FBI and the CIA to have a kind of bench clerk, or special assistants, as they were called, and to follow them as they have moved on into their own lives and with such pride in what they were able to do, not to mention here our retiring Secretary, Susan Appleton, seated with John Cameron, who became a member many years ago and is now the acknowledged expert on real-property law in the state of Michigan, who never misses a Meeting, and they are here today, and I am so proud of them.

Others took different paths, as we all do as lawyers, and as in the interest of public service, what I call sometimes the private man in public life, who takes a job not for a permanent career but to do a job that is needed, and then knows that he can go back to practicing law and to carry on the service as he had in the past.

Among those that I have, and I won't mention them all, but one rose to become Deputy Secretary of the Treasury, Neal Wolin. Ralph Gants sits on the Supreme Court of Massachusetts. I had Howard Gutman, who is our current ambassador to Belgium. We have some

handwriting I'm not reading, the former dean at Mercer University, Phil Shelton. We had John Bellinger, currently a Counselor in the proposed Foreign Relations Law Restatement project, who rose to the top ranks in the State Department's legal department.

Those are just some, and then the others who were exceptional as private lawyers, one Doug Winter, who wrote the definitive work on Stephen King, of all things, but was a serious expert in appellate advocacy and electronic discovery and came to help me, along with three other now senior partners in their firm, to do the study of the Fort Hood massacre, a study that took a year and a half, pro bono of course, and they did a beautiful job in putting together a series of recommendations. The Director of the FBI accepted all 18, as I remember, recommendations, and I am grateful to them for what they do and their attitude about their responsibilities as lawyers to preserve and protect the rule of law.

I am glad—two other memories, and I think my two minutes are about up, and I am about to close. (*Laughter*) But I remember, with gratitude, that—I think Chief Judge Garland has mentioned some of the problems we were having at the FBI when I came there, and I tried to set a theme when I was sworn in. And I promised—in the presence of the President and the Chief Justice, who swore me in, and all of the others, from Congress and others there—that we would do the work that the American people expected of us, and we would do it in the way that the Constitution demanded of us. When they redid the conference center, they put up a plaque, a big round shield, and around it were the same words, “Together all of us can and must do the work the American people expect of us . . . in a way the Constitution demands of us,” and they have, and they have, and I am so proud of them for that.

The other experience at CIA was helpful to me because, in relations with Congress, the kind of problems that we will probably be experiencing, we are reading about them in the papers today, but we had the four Cs that we decided we would follow: That all testimony must be correct, candid, complete, and consistent. We would not dance around the issues, but we would, if we could not answer the question for reasons—in public for classification, we would say so, but we would

take the problem back, work it with them and with our legal department, and we always were successful in doing that. And those four Cs are still in place, and I am so pleased about that.

But through it all, I thought of how much has been accomplished in these years, not by me but by The American Law Institute in these projects: the clarifications, the debate, the coming together of all issues, the bringing of our academic, our judicial, and our practicing experiences. It has just been remarkable.

And I think of the icons, such as Henry Friendly, and they have been great examples to us.

And finally, I would like to close with something that I use at almost every occasion when I am talking to young lawyers, and it came from Learned Hand, who also sat on the Second Circuit with Henry Friendly, and he just said this, and it sums it up, I think, how we all feel about this institution more than any other institution. He said, "Descended to us, in some sort moulded by our hands, passed on to the future with reverence and with pride, we at once its servants and its masters, renew our fealty to the Law." [Learned Hand, Commencement Address at 1931 Yale Law School Graduation, *in* THE SPIRIT OF LIBERTY 84, 89 (Irving Dilliard ed., 3d ed. 1960).]

Thank you so much for this opportunity. (*Applause*)

President Ramo: How wonderful to have in front of us one who embodies all the ideals of who we are supposed to be. I have to tell you, as Judge Webster leaves the podium and we invite our Indian Law Reporters to come up, and Judge Wood as well to lead our discussion, years ago Judge Webster and I were on a committee. Lynda will especially appreciate and know what I am about to say is true. And in New York, we were reviewing someone's governance, I don't remember who. Somebody sent a car for Judge Webster, and he offered to give me a ride to a restaurant that I was meeting my son at for dinner, my son being an expert in small restaurants in dicey neighborhoods. As we began going through New York and finding the address, we came to the address, and I started to get out, and Bill's hand stopped me, and I said, "This is it, I'm fine" and he said, "I'm walking you in until we see your

son.” I said, “Why?” He said, “Roberta, how is it going to look in *The New York Times*: Former Head of FBI and CIA Leaves Albuquerque Lawyer in Dicey Neighborhood, Never to be Seen Again?” (*Laughter*) And he just stood right with me, Lynda, until he had handed me off to someone he thought looked more responsible than I was.

So it is a pleasure, and thank you again, Judge Garland, Judge Webster. It has been an honor for us. (*Applause*)