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*ADDRESS*

By Bennett Boskey, Esquire  
*Treasurer of The American Law Institute*

*The Tuesday luncheon session  
honoring new life (25-year) members  
and new 50-year members  
convened in the State Room of  
The Mayflower, Washington, D.C.,  
on May 18, 2010.  
President Roberta Cooper Ramo presided.*



**President Ramo:** Ladies and gentlemen. Dessert eaters. Confereres.

Those of you that know me well, know that I don't agonize about too many things, but I have agonized about how in the world I could possibly introduce Bennett Boskey. In fact, I have thought about it so often that I thought perhaps I would be too busy to come to lunch today, and the reason is this. Bennett is, happily, my friend, my colleague, my Treasurer, but he is also a person of whom I stand in awe.

This is a lunch at which we celebrate people who have been involved in The American Law Institute over a short period of time—25 years, 50 years; a mere nothing—and it is one of the few things that the President gets to do by herself, not approved by the Council, not approved by the membership. I get to actually choose who speaks at this one lunch, and the class of 25 years is extraordinary in every way. There are obviously many members of the class of 50 years equally extraordinary, but as I thought about who had been here, not, as Gerhard said, since 1088, but for a long time, who had the most varied career in and out of the Institute, whose career and life has spanned so many major events in our nation's history, and who is so key to our work, it is of course Bennett. His motion and his work are at the heart of what we do.

Let me read a little bit that was written about him by John Frank, someone that many of us knew, loved, and admired, for the Institute's 75th anniversary.

The Treasurer of the Institute, Bennett Boskey, is a real hands-on director of the financial affairs of the Institute. Boskey's value to the Institute is unparalleled. He became ALI Treasurer in 1975 and has been on the Committee on Institute Program, the Capital Campaign Steering Committee, the Finance and Development Committee, and the Investment Committee. At the same time, he has been an Adviser on four of the major projects of the ALI, including the very successful Restatement Second of Judgments, and has been a member of the committee working with ALI-ABA. He is a big picture, as well as a detail man, and his

comments on the Council and on the floor of the Institute materially affect the results. With his proximity to Philadelphia from his Washington office, he is regularly rung in on administrative problems and his oral [—and I would say written—] Treasurer’s reports are appreciatively received. He is the renaissance man of the Institute.

That would have been enough to invite somebody to speak, but it didn’t really go to the heart of why I wanted everyone to hear Bennett today. Bennett is, to me, the example of how to live one’s life. He is a person who has faced adversity of many kinds and always manages to come back to do first his duty and then to find pleasure in life.

He is a person whose intellect is remarkable about everything. He is a person who, in reading the drafts, as you all know, will say to a Reporter of a 500-page draft, “You know, on page 43, line 13, you say this, and on page 150, line 17, you say that. You can’t say both of those things.”

He is a person of infinite kindness. When it comes to decision-making about matters affecting the Institute, he is, on the one hand, extremely careful of our resources and, on the other hand, the first to say technology is important and we need to take a chance with this. He is a person that is never behind the time but always ahead of times, but never having forgotten anything that happened before.

Bennett Boskey is the person I know I will not grow up to be but the person I shall spend the rest of my life striving to be. Our member, Bennett Boskey. (*Applause*)

**Treasurer Bennett Boskey:** Colleagues and friends: Certainly I am grateful for Roberta’s kind and generous words of introduction. You know, in a way I feel I am here today as a surrogate for all of our life members, not just the ones who became life members this year but for the whole group, which now, it may surprise you, numbers about 1200.

Life members, I think, are a kind of jewel in the Institute’s crown. It is true that they include some life members whom we cherish but

who have decided to retire from the field and leave all further activity to their successors. It is even probably true that there are a few individuals who prematurely have become couch potatoes. (*Laughter*)

But, by and large, our life members, whether they come from the practicing lawyers or the academics or the judges, tend to be eminent members of this profession who are interested and able to continue doing their work and making their contributions to the progress of the law long after they have just become life members of The American Law Institute.

To move to another subject, when my late wife, Shirley, was in her first year at Columbia Law School, one of her professors called on one of her hapless classmates by asking the question, “When did the common law begin?” (*Laughter*)

The student startled both himself and everybody else in the room by responding, “Way, way back.” (*Laughter*)

Now I would like to start by talking about something that certainly qualifies as way, way back but not really on the cosmic scale of the common law. When I was just short of my 12th birthday, in April of 1928, my father did what probably many of you in this room have done with and for your offspring. He took me on a visit to the nation’s capital in order to see the major sights. Actually, we stayed at the historic old Willard Hotel, which a few of you may dimly remember before it became refurbished into its present construct.

The high point of our trip was a visit to the White House, the purpose of which was largely to shake hands with President Calvin Coolidge, that laconic and somewhat mysterious Yankee who was then occupying the White House.

Unlike today, the President of the United States didn’t really seem to be very busy, (*laughter*) and the custom then was that you would get a card from your congressman, and that would entitle you to get on a line at the White House, one of two specified days a week, and take your turn shaking hands with the President.

And so it came to pass that that is what we did, and I guess as far as anybody knew this process was handled in a wholly bipartisan manner and without any fuss. You just were able to do it.

Now a little later, when in 1929, which was the following year, Mr. Coolidge decided to publish something called *The Autobiography of Calvin Coolidge*, which I am almost positive he wrote all himself, I was not surprised to find that my particular visit was not singled out. (*Laughter*) There was no mention of it. But in what I think our Property professors, if any of them are still in this room, would recognize as a reference to a class, Silent Cal did have this to say about his own routine, and I am now quoting from page 201 of this autobiography. "At twelve-thirty the doors were opened, and a long line passed by who wished merely to shake hands with the President. On one occasion I shook hands with nineteen hundred in thirty-four minutes, which is probably my record." (*Laughter*)

Well, for the rest of the trip my father saw to it that we covered the major sights: the Washington Monument; the house, probably most of you have been there, across from Ford's Theater where the mortally wounded Lincoln was taken to die; the Capitol; and the old Supreme Court. This is before the new building was built.

And I would have to say that that visit to the Supreme Court was my first viewing of the interior of any courtroom. I don't remember whether the Court was or was not in session. I've got a fuzzy recollection, an early image of an elderly judge with an elegant mustache, but I can't really say whether I saw Justice Holmes in the flesh or whether I was just seduced at an early age by a bunch of distinctive photographs of him. At any rate, as I said, that was my first introduction to an interior of a courtroom.

Now you will note it had been my good luck to have that happen really at the top of the line, the Supreme Court of the United States. The next episode when I was able to see the inside of a courtroom was about 11 years later, and again it was at a relatively elevated level. It occurred shortly after I reported for duty in September of 1939 as Learned Hand's law clerk.

In the courthouse at Foley Square, there was a very convenient courtroom for the court of appeals. I won't say it was cozy, but it was quite nice and it was comfortable and the law clerks—then in the court of appeals there were only five or six of us, one law clerk per circuit judge. It is much different today. The law clerks would tend to gather in the courtroom either when some unusual or spectacular argument was expected—that would be a pretty rare occasion—or, in the alternative, really sometimes by chance, we didn't have too much to do that day and we would go and listen to the arguments.

Now when I first met Judge Hand, of course I already knew that he possessed remarkable intuition in the law, but I didn't have any notion at all of how deeply this Institute was in his soul and in his debt. He had been one of the Institute's enthusiastic participating organizers.

Then, after the first Restatement series was nearly completed, he had chaired a rather distinguished committee that was requested to recommend whether, and if so what, future work by the Institute would be both useful and should be encouraged. The committee made its report in March of 1947, and that report did much to put this Institute on a stable long-term basis as the major law-reform organization in the nation.

Learned Hand graced the Council of this Institute from the very beginning in 1923 until his death in 1961. He attended the Annual Meetings like this one when he could, and his contributions to this Institute were notably those of a lifetime.

While I am on the subject, I think it would be careless of me not to say a few words about life with Learned Hand. He was interested in everything but especially in the law. He had a quick analytic mind, but usually he had the patience not to jump too early to an irrevocable conclusion. He really enjoyed discourse with law clerks, and he treated them, including me, with more respect than was their due.

As most of you probably have found out for yourself, his exceptional literary style was just beyond belief. It plain flowed. One could imagine him as analogous to what Mozart must have been like when Mozart was composing a musical opus. Hand knew where he was at the

beginning and where he thought he should come out at the end, and meanwhile a kind of sprightly rhythmic progression poured itself out onto the paper.

Though somewhat formidable appearing, as some of you may have judged from pictures you have seen of him, the judge occasionally exhibited an almost impish temperament.

In those days—I don't know whether it is still true today—in the Second Circuit, three judges who sat on a panel in cases would exchange very short memos among themselves, indicating a tentative view on the case, before they convened to discuss it and to vote. One of the federal judges then in Brooklyn was a judge named Judge Inch. As sometimes happens, he was a judge for whom the members of the court of appeals did not have a high regard. As a result, in these preconference memos Judge Inch was always referred to not by his real name but as Millimeter, J. (*Laughter*)

I can recall a patent case on appeal from the rather genial District Judge Mandelbaum, who had acknowledged at the beginning of the case on the record that he had never before handled the trial of any patent litigation. Judge Hand thought that the trial judge had totally messed things up by conspicuous, really fatal, misinterpretations of all the important evidence. And sort of expressing his frustrations to me, the judge said about the trial judge, "Bennett," he said, "I'd rather have a rabbit on the bench." (*Laughter*)

Then there was the day when the law clerks happened to be listening to a rather routine appeal that did have some complexity, and a lawyer was about halfway through his oral argument when suddenly the three judges on the panel became engaged in a very loud and animated discussion that you could tell had absolutely nothing to do with the case at bar. (*Laughter*)

Sensibly, the lawyer just paused in his argument, which is what I would do, what you would do, and Learned, who was sitting in the center seat as presiding judge, said to him, "Go on, go on." The lawyer said, "Your Honor, I have nothing more to say." And he sat down. This turned out to be really the most effective piece of spontaneous advocacy I have ever seen. (*Laughter*)

By the time Judge Hand returned to chambers, he was busy reflecting on how truly rude he had been. I don't remember how the case came out, but the brief of that lawyer did receive, from the judge, the most careful and sympathetic attention that possibly it could have had.

Well, so much for the extraordinary individual who has been called the greatest judge of the 20th century who never sat on the Supreme Court of the United States. Let me come now to tell you a bit more about how it is I come to still be in Washington.

My wife, Shirley, and I drove down from New York to Washington as the summer of 1940 was fading. Our thought, though it wasn't fully articulated, was I would serve a year as Justice Stanley Reed's law clerk, and very likely we would then gravitate back to New York. Well, I am sure that many of you have heard that old Washington refrain and maybe some of you have sung it. It says: "They never go back to Pocatello." And we didn't. Jointly and severally, our paths kept us here.

Upon finishing law school, Shirley launched into a career in the territories portion of the Interior Department, and from there she went on for many years at the World Bank. I tell you what you might have guessed, that there was then, at the World Bank, a visible culture not especially receptive to the talents of women. Most of you women in the audience will certainly know what I am talking about, and some of you in your professional careers probably have encountered a similar phenomenon. Fortunately, I will let you know that, at the World Bank, I think this by now has largely met with correction, as it has in at least some of the other venues some of you are more familiar with.

In due course, Shirley became the Bank's first female department director, and by a kind of process of osmosis, I was a major beneficiary of many of her accomplishments.

Now here it is decades later, and after a series of metamorphoses that are sort of summarized in the printed Program of this Annual Meeting, I am still in Washington with an office tucked in a friendly corner of the District of Columbia.

Let me emphasize that here at our 87th Annual Meeting, I can claim the perspective at least of a rather lengthy stretch of time. As has been indicated during the past couple of days, my membership in the Institute goes back nearly 60 years, dating from October 30, 1951. This almost total immersion in the affairs of the Institute has often prompted me to assess what seems to be, in my view, the very core of the Institute's effectiveness and success. In a nutshell, it is what, if you would like to use a high-class fancy word, could be called the Institute's infrastructure.

What is it? It is the solid alliance of a wisely selected group of practicing lawyers, judges, and academics working together to produce major reforms that will facilitate adjusting the law to the changing needs of society as one generation gives way to the next. This recognized need for adjusting the law to the changing needs of society is what really motivated the founders of this Institute. And it is this always continuing need of adjusting the law that has been, in my view, the dominating motive as the Institute moves in the direction of its 100th birthday, to take place in the year 2023.

The founders had the vision and they had the foresight to feel that, with the proper guidance, the tripartite membership structure would work. As a result, the founders gradually put together a close, really slowly increasing, tripartite membership package composed of highly qualified individuals who—and this is the important thing—would be temperamentally disposed to collaborate.

The objective was not to look for members who would come to meetings reflecting one single point of view. It has always been quite the contrary. The objective, at the beginning, was to bring together leaders of the profession who would represent varying, really quite varied experience and many different viewpoints, but who would have a talent to discuss their differences civilly, with a strong desire to emerge with the best result.

It is a tribute, I think, to the founders of the Institute and to their immediate successors that they were able to proceed cautiously, both in enlarging the membership and in expanding the scope of the

Institute's activities, in a manner that made this tripartite membership formula prosper. Once about two decades had passed and success had been achieved, it certainly became easier for us, who are the inheritors of this, to follow the practice successfully and to refine the pattern into the kind of institute we look at and see today.

Now I say to you candidly, the Institute is not a perfect organization and it never will be. But its substantive contributions to the changing needs of society are on the rise and very much on the rise. Its devotion to the rule of law does not falter, and there is no reason to think it ever will falter. The exceptionally high quality of the Institute's work remains evident. In this way, the Institute is continuing to make its quite distinctive mark on the betterment of the law.

Well, in closing, I would like to do so on a personal note. As you all know, I am about to graduate, at the close of business tomorrow, to an emeritus status as an officer of the Institute and a Council member. From this vantage point, I really feel enormously proud of the Institute's accomplishments, and more important, I am extremely optimistic about the Institute's future.

I thank you for listening. (*Applause*)

**President Ramo:** Well, it is one thing for Justice Breyer to take questions, but Bennett said he might take one or two.

**Treasurer Bennett Boskey:** Relevant or irrelevant.

**President Ramo:** Any questions? Bennett, we thank you in every way we know how. The happiest news for us is that you will continue among us in every possible way.

**Treasurer Boskey:** Thank you.

**President Ramo:** And now onward to Employment Law.

