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H. Thomas Wells Jr.

University of Alabama School of Law

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Part of the **Law Commons**

Introduced by: John Leach (vice president/program chair, Mobile Bar Assn.)

President: Kathy Miller, Armbrecht Jackson law firm

President-elect: Ian Gaston, solo practitioner

Vice president: John Leach, Helmsing Leach

Audience: Approx. 100 Mobile attorneys, some Mobile County circuit judges and possibly federal judges.

**Thank you for being here today (also
thank the Mobile Bar Association, John
Leach, Kathy Miller, etc.)**

IAN GASTON
SAM CROSBY /

**First thing I want to talk about is how
great it is for this Birmingham lawyer to
be back in Alabama. Since the first of the
month, I've been to West Virginia,**

**Chicago, Washington, D.C.—twice—and
Nashville, and I came here to Mobile
directly from New York City. Later this
evening I fly back to Chicago for a ~~six-~~
hour meeting tomorrow, ~~morning~~.**

**I may not be in Birmingham, but some
of you know that my wife Jan grew up in
Mobile. Before we met, her folks moved
up to Gadsden, which is my original
hometown, so unfortunately I couldn't**

**even get a home-cooked meal here in
Mobile. But given everywhere I've been
lately, at least I'm close enough to home
to sense that I'm not the only one in the
room who cares about Javier Arenas' 61-
yard punt return two weeks ago in
Tuscaloosa.**

**As president-elect of the ABA, I have
my work cut out for me as I prepare to**

lead our organization next August. As most of you know, the ABA has practice sections, committees, and other groups that cover just about every area of the law. We bring together lawyers from across the country—and even around the world—to share best practices, to network, and to strengthen our national voice for the profession.

One thing I plan to do is promote membership in the ABA at every opportunity. We currently have 413,000 members—somewhere between a third and a half of all practicing lawyers—and we want to increase that percentage of the profession significantly. We need your support to advance our educational programs and our advocacy for the profession on *a national* scale. So, if

**you're already a member of the ABA, I
thank you. If you're not, I hope my
appearance here today will inspire you to
join us.**

**Keeping all our members under one
umbrella while encouraging us to pursue
our unique professional interests is a
rewarding responsibility. We're also an
open organization and welcome ideas and
participation from all members of our**

profession. In the coming months, I want to meet with as many groups as possible so I can hear your ideas on how we can best focus our efforts.

During this "listening tour," one principle guides me: As much as our diverse viewpoints in the bar give us strength and credibility, we cannot lose sight of the concerns *all* lawyers share.

These are the common core values of our profession, and they are:

- * Access to justice,**
- * An independent bar and judiciary,**
- * Diversity in our professional ranks,**
- * And the rule of law.**

As lawyers, we need to remember that it's easy to make a dollar ... but it's difficult to make a difference. Our profession is a common calling, dedicated

to public service. Think for a second about the concept of being "called to the bar." The only other profession I can think of that is referred to as a "calling" is the ministry. Doctors are not "called" to medicine, engineers are not "called" to engineering, and accountants are not "called" to accountancy. We are, however, "called" to the bar. This call to the bar unites us on our common values.

**Our common values allow us to stand up
as lawyers and make a difference as a
profession.**

**When it comes to our value of
enhancing access to justice, the ABA is
making a difference. We set standards for
pro bono assistance, for public defender
resources, for death penalty**

representation. We provide resources for victims of domestic violence, for people languishing in our immigration system, for others without a voice in our system of justice.

And when disaster strikes, as it has most recently with the Southern California wildfires, the ABA and our Young Lawyers Division are always on hand to staff legal assistance hotlines. In

**fact, the YLD has been doing this for
FEMA since 1979.**

A top priority is legal aid funding.

**Working closely with our state and local
bars, we are always the first ones in
Washington to advocate for adequate
funding of the Legal Services
Corporation.**

**It's crucial that we do so—and it's
great if you've ever participated in our**

ABA Day lobbying efforts on Capitol Hill

every spring. If you'd like more

information on how we can work together

and make a difference as a national

profession, I encourage you to visit the

ABA's Legislative Advocacy web site at

www.abanet.org.

**As many of you know, 80 percent of
the legal needs of the poor are unmet—
despite the combined efforts of legal aid-**

funded programs, other government and private funding, and even pro bono efforts.

Many of us forget, but the preamble to our Model Rules of Professional Conduct actually instructs us lawyers to make access to justice a core value of our profession. It states that we (and I quote) "should be mindful of deficiencies in the administration of justice and of the fact

that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore," the preamble concludes, "all lawyers should devote professional time and resources *and use civic influence* to ensure equal access to our system of justice for all those... who cannot afford or secure adequate legal counsel."

If access to justice is a core value of our profession, another is independence— independence of the bar and independence of the judiciary. Let me share with you a little about the difference the ABA has been making in protecting a core aspect of an independent legal profession: the attorney-client privilege.

In recent years, Justice Department guidelines have operated to coerce corporate targets of federal criminal investigations into waiving their attorney-client privilege. Responding to concerns from the ABA, state and local bar associations, and others, the government modified its guidelines, most recently in the Justice Department's McNulty

Memorandum. But the changes haven't gone far enough.

These government policies are not just an attack on business lawyers and their corporate clients. It undermines what all lawyers do, and it's a threat to everyone who counts on the right to full and frank legal counsel.

The ABA and our allies are making a difference in this area. We're urging

lawmakers to support Senate Bill 186, the

Attorney-Client Privilege Protection Act,

which is getting widespread support on

both sides of the political aisle.

JUST TUES.
House passed

its version of Atty Client Priv. Prot Act on voice vote

Independence of the bar doesn't only

HR-3013

involve preserving the attorney-client

privilege. Through our ethics codes and

disciplinary enforcement, we are a self-

regulating profession, something we

emphasized during the drafting of

Sarbanes-Oxley. The accounting profession used to regulate itself—until Enron. For all intents and purposes, accounting is now federally regulated.

As lawyers, nationally and collectively, we must preserve our independence by showing the world that we set and adhere to the strictest standards of ethics and professionalism.

That's a hallmark of the independence of the bar, and we're making a difference. But it's equally important for lawyers to work actively to uphold the independence of our judiciary.

When politicians relentlessly blame judges for opinions that are legally sound but politically unpopular, it's not just an attack on those judges. It weakens our profession's foundation, the rule of law.

And then, of course, is the growing, stubborn partisanship in state judicial elections and in the nomination and confirmation process for our federal courts. This should concern everyone who counts on impartial, independent, and highly qualified judges to rule solely on the merits of cases, free from actual—or even perceived—political pressure or influence.

If past is prologue, as we approach the 2008 elections, judges and our judiciary will again become a political football. As lawyers, we will continue to prepare ourselves to respond vigorously and quickly to attacks on our judiciary. If lawyers won't make the case, nobody else will.

Judicial independence doesn't stop with defending against attacks. As

**important, we must ensure that our
judiciary is competent and accountable to
standards of professionalism and ethics.**

**The ABA's Model Code of Judicial
Conduct is the national standard. And
our Standing Committee on Federal
Judiciary, which is universally respected
by both parties, helps ensure that federal
judicial nominees meet the highest**

**standards of competence and
professionalism.**

**Diversity is a third core value of our
profession. When gifted women and men
of diverse backgrounds face systemic
barriers to entering law school and
climbing the ranks of our profession, it's
not just a *lack of opportunity* for them. It's
a *lost opportunity* for all lawyers as we're**

called on to serve an increasingly diverse society.

A diverse profession cannot and will not exist without sufficient diversity at all points along the educational pipeline.

Next year, we will celebrate the 40th anniversary of the ABA's founding of a premier national pipeline institution: the Council on Legal Education

Opportunity—known by its acronym

CLEO.

CLEO extends the pipeline to the legal profession by providing training and workshops for minority college students who want to attend law school and pursue a legal career. They also provide law students with placement assistance, academic support, financial assistance, and bar prep classes.

While we can claim some measure of success on increasing diversity in the pipeline, we also acknowledge that progress has too often seemed to move at glacial speed—or even regressed in some areas.

But we can't allow ourselves to get stuck. We will take action that will make a difference—one student at a time, if needed. We will spotlight and support

**existing projects, and we will replicate
and build upon successful pipeline
diversity initiatives at our law firms, our
law schools, and our state and local bar
associations.**

**Diversity ... access to justice ... and
independence of the bar and the judiciary
factor centrally in a final core value of
our profession: the rule of law.**

**Since soon after the fall of the Berlin
Wall, the ABA has provided technical
legal assistance on rule of law issues to
developing countries and newly emerging
democracies in the former Soviet bloc,
Latin America, Africa, Asia, and the
Middle East. We are now operating legal
technical assistance programs in 47
countries around the world, primarily
funded by USAID. These activities**

**provide wonderful opportunities for
volunteer lawyers in America to share
their expertise with lawyers overseas who
look to our system as a model, and they
strengthen our international ties as our
world becomes more global.**

**That said, I believe our own country
has room to improve when it comes to
some of the principles we espouse. There
are some, for example, who view the Bill**

**of Rights as an obstacle to be overcome as
opposed to the embodiment of our most
precious liberties. Folks like former
Assistant Secretary of Defense for
Detainee Affairs Cully Stimson, who
questioned the patriotism of the pro bono
lawyers who represent detainees at
Guantanamo.**

**Fortunately, many in the bar rose up
in response. They pointed out that these**

**lawyers, much like the young John
Adams who defended British soldiers
after the Boston Massacre, are upholding
one of the oldest and greatest traditions of
our profession and our country—that
even the most despised or underprivileged
in our society are entitled to adequate
representation.**

**We can reaffirm our appreciation for
the rule of law as our brothers and sisters**

**on the bench and bar in Pakistan have
been beaten and jailed or placed under
house arrest for taking to the streets and
insisting that the government follow not
the rule of one man ... or of one party ...
but the rule of law. You have all heard
the quote by Dick the Butcher in
Shakespeare's Henry the Sixth, "The first
thing we do is kill all the lawyers". That
quote is universally misunderstood, as**

Dick was trying to overturn the rule of

law and promote anarchy. Today

President Musharraf is well aware that

killing all the lawyers—literally or

figuratively—is the first step toward

dictatorship.

**The rule of law is a common core
value of our profession, and the bar is
making a difference:**

When lawyers provide legal services to the poor and support organizations that do so, we're advancing the rule of law.

When lawyers advocate for policies and legislation that promote an independent profession and judiciary, we're advancing the rule of law.

When lawyers hire, mentor, and recommend a diverse array of talent to

**perform in our profession, we are
advancing the rule of law.**

**When lawyers take up the causes of
unpopular clients, and when judges have
the ability to make unpopular decisions,
we are advancing the rule of law.**

**When lawyers advocate in front of
judges to resolve contested elections, and
the generals have no say in the matter, we
are advancing the rule of law.**

**The motto of the ABA is Defending
Liberty, Pursuing Justice.**

We can look back for a principle that we could use today to become better defenders of liberty and pursuers of justice. We can look all the way back to 400 B.C. and the constitutional principles of ancient Athens. Most of you know we can trace some of our greatest liberties back to those ancient Athenian

constitutional principles, liberties such as freedom of speech, freedom of association, and participation in government.

However, there's another Athenian principle that has been overlooked. In addition to freedom of speech, the ancient Athenians believed that every citizen had not only the right, but the duty, to stand up and speak out in the face of injustice

or when there were attacks on liberty.

We need to adopt that principle. The ancient Athenians called it parrhesia, p-a-r-r-h-e-s-i-a. Our brothers and sisters in Pakistan adopted that principle and stood up and spoke out when confronted with injustice and an attack on liberty. They exercised parrhesia.

Parrhesia rises above mere politics.

Conservatives and liberals, Republicans

and Democrats alike can find common ground on the core ideals that shape the rule of law and the legal profession's role in it. Whenever I'm asked if the ABA is conservative or liberal, I respond that only one "L" word defines us: ... "lawyer."

As lawyers—whatever area of the law or area of the country we practice in—we need to stand up, speak out, and work

**together—not to make a dollar, but to
make a difference. I look forward to
listening to your ideas, to learning from
them, and to working with you so that we
can make a difference together.**