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2008

### 2008-03-27 H. Thomas Wells, Jr. ABA Presidential Speech

H. Thomas Wells Jr.

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## BREAKFAST OUTLINE

- \* Communicate, cooperate, collaborate.**
- \* I'll talk later this morning on our common core values (that all lawyers share and all bar associations work on): Access to justice, independence, diversity, rule of law.**
- \* Also, elections and Lincoln's bicentennial.**
- \* ABA President can shine a spotlight on your efforts.**
- \* Communicate, cooperate, collaborate. I want to hear what's on your minds, what you're planning, and answer any questions.**

ASSEMBLY REMARKS

**Thank you for fitting me into your  
busy agenda and allowing me to share a  
few words with you. It is an honor to be  
here.**

SENIOR PARTNER  
SEXTON@CEMETARY

**I have my work cut out for me as I  
prepare to lead the ABA starting in  
August. As you know, our practice  
sections, committees, and other groups  
cover just about every area of the law. As**

**a national organization—and the world's  
largest voluntary professional  
association—we bring together bar  
associations and individual lawyers from  
across the country—and around the  
world—to share best practices, to  
network, and to strengthen our national  
voice for the profession.**

**We welcome ideas and participation  
from all members of our profession—**

**especially the members of our state and local bars. The ABA's Standing Committee on Bar Activities and Services, served by our staff director Roseanne Lucianek whom many of you know, is central to our outreach. I'm happy to point out that not just one, but two Western States officers—Dan O'Brien and Eduardo Rodriguez—are lending their considerable experience and talents**

**as members of that committee. And  
Louise Gonzalez, the past president of the  
Maryland State Bar and a member of the  
Standing Committee on Bar Activities  
and Services, is here this weekend to  
share with you how the ABA can give you  
the resources you need. I'm also pleased  
to have with us a member of the ABA  
Board of Governors, Judge Louraine  
Arkfeld, who drove down from Tempe to**

**learn about the collaborative efforts  
between the ABA and the state bars and  
report back to our board.**

**In the coming months, I want to meet  
with as many groups as possible to hear  
your ideas on how we can best focus our  
efforts. I was happy to do so during  
breakfast this morning with my  
president-elect counterparts here at  
Western States.**

**During my "listening tour," one principle guides me: As much as our diverse viewpoints in the bar give us strength and credibility, we need to stay focused on the concerns *all* lawyers, all *bar associations* share—the concerns that unite us as a profession and inspire us to work together. As I see them, our profession's four common core values are:**



**\* First, Access to Justice,**

**\* Second, Independence—and by that**

**I mean independence of the bar *and* the**

**judiciary, which are linked,**

**\* Third, Diversity,**

**\* And, fourth, the Rule of Law, which  
really encompasses the other three values.**

**Virtually *all* bars—whether Arizona  
or Alabama, Montana or Maine—are  
concerned about and working hard to**

**promote access to justice, independence, diversity, and the rule of law. The ABA has resources on these topics to help your bar associations succeed. And just as important, many of *your* organizations have resources that the ABA should know about and promote nationally. Please let us know about the projects you are working on and how we can collaborate and shine a national spotlight on them.**

**Articulating our common core values will be especially relevant during what is likely to be the most important event of the upcoming bar year: the November elections and transition to a new presidential administration.**

**The bar plays a central role in ensuring that our elections are free, fair, accessible, and accurate. That's why the ABA has a Standing Committee on**

**Election Law, which has developed standards for how elections should operate.**

**One element of those standards specifically calls on bar associations to get involved. We've left copies of those standards, along with other materials to help your bar get involved in the upcoming elections, at the registration desk. If your bar is planning any**

**activities to support the upcoming elections, or if you have any ideas, we'd love to hear from you.**

**I've often said that it's easy enough for us lawyers to make a dollar ... but it's a lot harder to make a difference. This concept brings up another watershed event for us during the upcoming bar year: the bicentennial of the birth of one**

**of our greatest presidents—who also  
happened to be an excellent trial lawyer.**

**The ABA, especially with Law Day, will  
be celebrating Abraham Lincoln in 2009  
and emphasizing his contributions as a  
lawyer. I hope your bars can work with  
us on this important commemoration.**

**The profession we share with Lincoln  
is much more than a job or a trade. In**

**the South, we say lawyers are "called" to the bar. Our profession is, indeed, a common calling, dedicated to public service. This call to the bar unites us on our common core values. Our common values allow us to stand up as lawyers and make a difference as a profession.**

**For our common core value of enhancing access to justice, the bar is**

**making a huge difference. A top priority is legal aid funding. As most 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.**

**Our state and local bar foundations play a crucial role in advocating for and raising money for legal aid. We need to**



**celebrate our successes while continuing to devote ourselves in this area.**

**On the federal level, the ABA works closely with our state and local bars to advocate for adequate funding of the Legal Services Corporation.**

**It's crucial that we do so—and we're grateful for the participation we've had from state bars in our ABA Day lobbying efforts on Capitol Hill every spring. This**

**year, we're meeting in Washington April 16-17, so please mark your calendars and visit the ABA's Legislative Advocacy web site at [www.abanet.org](http://www.abanet.org) for details.**

**Access to justice is a common core value of our profession, and I'm eager to learn more about how your bars are promoting it. Another core value that emerges time and again is**

**independence—independence of the bar  
and independence of the judiciary.**

**As just one current example, the legal  
community has worked hard to protect a  
core aspect of an independent legal  
profession: the attorney-client privilege.**

**We're standing up to Justice  
Department guidelines that have operated  
to coerce corporate targets of federal  
criminal investigations into waiving their**

**attorney-client privilege. The government modified its guidelines in response to a broad coalition including the ABA, state and local bar associations, and even the U.S. Chamber of Commerce, but the changes haven't gone far enough.**

**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. A similar bill passed the House of Representatives in November.**

**Independence of the bar doesn't only involve preserving the attorney-client privilege. Through our ethics codes and disciplinary enforcement, we are a *self-regulating* profession, a common core**

**value that we must always work hard to maintain.**

**In fact, our profession has now done so for 100 years, as we're celebrating the centennial this August of the ABA's first ethics code (which, by the way, was based on the first *state* ethics code, which was Alabama's). I invite you to visit the ABA's Center for Professional Responsibility web site to see how we're**

**marking this milestone at our Annual Meeting in New York this August.**

**There's good reason for the bar to celebrate—and to stay vigilant. We don't need to look too far back in history to reflect on the consequences of being lax. Just think of Enron, and the accounting profession. For all intents and purposes, accounting is now federally regulated.**

**And it can happen with the legal profession if we're not attentive. In South Carolina, for instance, the bar is fighting attempts in the legislature to remove disciplinary authority from the state supreme court. As lawyers, nationally and collectively, we must preserve our independence by showing the world that we both 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  
uphold the independence of our judiciary.**

**When politicians relentlessly blame  
judges for opinions that are legally sound  
but politically unpopular, it's not just a  
personal attack on those judges. It**

**weakens our profession's foundation, the rule of law.**

**There's also the growing, stubborn partisanship in state judicial elections and in the nomination and confirmation process for our federal courts. As lawyers, we have got to continue to trumpet the notion that politics has no place in our courts. Our judges should be—and should be perceived to be—**

**beholden not to any particular  
constituency but to one thing only: the  
rule of law.**

**If past is prologue, judges and our  
judiciary will again become a political  
football this election season. The ABA,  
through our Standing Committee on  
Judicial Independence and Division for  
Bar Services, will continue to help our  
partners in the state and local bars**

**respond vigorously and quickly to attacks  
on our judiciary.**

**Diversity is a third core value of our  
profession—a value that our state and  
local bars are taking seriously. I recently  
had the opportunity to visit Nashville,  
where the Tennessee Bar put on a robust  
diversity summit with local bar and  
corporate leaders. It's important to keep**

**us strategizing about these issues for a  
simple reason: 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.**

**And as a profession, we must also be vigilant in ensuring that our laws and courts are accessible and fair to everyone, especially to those from groups that have historically been mistreated or neglected.**

**The ABA's Diversity Center provides nationally regarded resources on pipeline programs, opportunities for minorities in the profession, and broader issues of justice. We also have resources on**

**diversity through our Commission on  
Women and our newly formed  
Commission on Sexual Orientation and  
Gender Identity. I hope the ABA will  
have the opportunity to partner with you  
in your diversity efforts.**

**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 to developing countries  
and newly emerging democracies in the  
former Soviet bloc, Latin America,  
Africa, Asia, and the Middle East. Our  
Rule of Law Initiative is operating such  
programs in 47 countries, primarily**



**funded by USAID. These activities provide wonderful opportunities for volunteer lawyers in America—your members in the state bars—to share their expertise with lawyers overseas who look to our system as a model. These activities strengthen the bar's international ties as our world becomes more global. And they remind us here at home that we must**

**promote and cherish the rule of law at every opportunity.**

**The rule of law is not only something for us to pay attention to overseas. We have our own rule of law issues here at home—questions, for example, about habeas corpus protections for <sup>GUANTANAMO</sup> terrorism detainees, about torture, about surveillance. On these and other difficult matters that can be made more difficult**

**by the heat of politics, we as lawyers must  
continue to stand up and be heard on the  
one thing that serves as our lodestar: the  
primacy of the rule of law in our nation's  
governance.**

**We focus on our common core values  
because the ABA's motto is Defending  
Liberty, Pursuing Justice.**

**We lawyers should look to an ancient principle to help us become even better defenders of liberty and pursuers of justice—to 400 B.C. and the constitutional principles of ancient Athens. The 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.**

**The Athenians called this principle parrhesia. Parrhesia rises above mere rhetoric or politics. Conservatives and liberals, Republicans and Democrats alike can find common ground on the core values 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  
must answer our shared calling—to stand  
up, speak out, and work together on our  
common core values—not to make a  
dollar, but—like President Lincoln—to  
make a difference.**

**I look forward to hearing your ideas,  
to learning from them, and to working  
with you so that we lawyers can answer**

**our calling and make a difference on our  
common core values together.**