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Thank you, everyone, for being here today. Thank you to Norman Jetmundson for introducing me.

We're only at March 31—the 90th day of the year—yet it will mark my 48th day on the road in 2009, since I fly to Chicago this afternoon. And I spent 215 days on the road last calendar year.

So much for the glamour of representing the American legal profession. Actually, it's an honor to lead the world's largest voluntary professional membership organization. We're the

voice of the American lawyer and an advocate for justice.

I'm the third president of the American Bar Association from Alabama. The second was my law partner, Lee Cooper, who served in 1996-97. The first was Henry Upson Sims, who was also from Birmingham.

I think about Henry Upson Sims a lot these days. You see, as the old Chinese curse puts it, he led in interesting times. He was president of the Alabama State Bar from 1917 to 1918—America's years

in World War I. And he served as president of the ABA from 1929 to 1930.

Given the state of the economy and the challenges we face today, I'm beginning to wonder if I'm channeling the spirit of Henry Upson Sims.

I don't need to tell you that we're living in some interesting times of our own. Americans are hurting from the economy—and the legal profession's considerable efforts to promote access to justice are more needed than ever.

State and local bar activities, and certainly our legal services offices here in

Alabama, help provide free legal assistance for people whose homes are being foreclosed, for folks who are facing bankruptcy from credit card debt, for people who need legal help securing unemployment benefits.

The most vulnerable in our communities need trusted advocates to help them navigate their legal problems.

And there are ripple effects if we don't act. People who can't afford to hire a lawyer to help them resolve their basic legal problems often end up requiring

more resources from other state and federal agencies down the road.

The need to provide legal services to the poor is getting more and more traction from both parties.

[SPENCER BACHUS STORY].

Because of the actions - primarily of the ABA - LSC will receive \$40 million more this year than last – and a good bit of that money comes to Alabama.

Along with access to justice, another core value is the need to promote excellence in our courts—to assure the public that our judges and our courts are

fair and impartial, and why that's important in our system of laws.

We need courts that are fair and impartial in order to have equal treatment under the law, and to protect our personal freedoms that our laws guarantee. Judges should be accountable only to the law and the Constitution, not to the whims of the day or to popular public opinion.

This is a problem relevant to our state courts here in Alabama. Let me offer a few observations about how current highly politicized judicial elections for our

state courts undermine public confidence in a fair and impartial judiciary.

In an address in January to the Conference of Chief Justices of the NCSC, former Justice Sandra Day O'Connor said:

“While our judiciary has always faced significant attacks, some appropriate and others not, the single greatest threat to judicial independence is *fairly modern and uniquely American*. And that is the flood of money coming into our courtrooms by way of increasingly expensive and volatile judicial elections.”

This threat was emphasized again by Chief Justice Margaret Marshall of the Mass. Supreme Judicial Court, who addressed the ABA House of Delegates in February in her capacity as President of the Conference of Chief Justices, when she said:

“When judges have to look over their shoulders before deciding a case – or worse, when they made an implied promise to look over their shoulder before deciding a case – when litigants enter the courtroom hoping their attorney has

contributed enough to a judge's election coffers, we are in trouble, *deep* trouble."

In the November election, candidates for the open Alabama Supreme Court seat and outside interest groups spent a reported \$5 million on the race. It was the most expensive supreme court election in the country last year. I have said that the amount of money spent on this race was obscene, and I meant it.

Earlier I mentioned access to justice and legal services for the poor. Well, guess what? That \$5 million far exceeded the amount of money Alabama spends on

legal services for the poor. In fact, Alabama is one of the lowest contributors to legal services for the poor in the nation.

That distinction obviously isn't something for us to be proud of. And here's another distinction: From 1993 through 2006, Alabama led the nation in campaign spending for state Supreme Court elections.

This situation is shameful—a threat to fair and impartial courts—and we need to do something about it.

Why? Because judicial campaign contributions often come from special

interests that want their influence to shape how judges rule on cases—and that's a threat to America's rule of law that's respected throughout the world. Maintaining fair and impartial courts is important for public confidence in the courts—yet the current situation doesn't help. National polls show that three in four Americans believe campaign contributions affect judges' decisions.

The issue hit home for me last fall, when my colleagues in the ABA leadership from across the country attended a meeting here in Birmingham

the weekend before the elections. They told me they were shocked by the sensational TV ads for state supreme court candidates to which most of us in Alabama have become accustomed. They were justifiably appalled at the negative content and endless repetition.

It is inappropriate to put judges and judicial candidates in positions where they must campaign on issues that will appear before them on the bench. It is wrong to set them up so they must rely on financial contributions from interests that argue before the courts. No matter how

responsible and fair-minded judges in these circumstances are, it's difficult to shake the resulting perception that some litigants cannot get a fair shot at justice.

Let me tell you a story—not from Alabama, but from West Virginia. A while back, a lawyer running against the incumbent for a position on the state supreme court received a \$3 million contribution from the CEO of a coal mining company. The candidate won the election. Soon thereafter, the justice provided the deciding vote in overturning a \$50 million verdict against the same

mining company. There's a case now before the U.S. Supreme Court—it's called *Caperton v. Massey Coal*—where the court will rule whether the West Virginia justice should have removed himself from considering the state court case.

Still, though, regardless of whether the justice should have ruled on that case, think about the underlying issue—a \$3 million campaign contribution from a party who appears before the courts . . . for a judge who is sworn to be fair and impartial.

So, what's the solution? Alabamians elect their judges, but it's not something every state does. In a majority of states, in fact, at least some judges—if not all judges in the state—have been recommended by a nonpartisan commission for appointment by the governor. The nonpartisan commission solicits applications for judgeships, interviews applicants, and recommends appointments only on the basis of experience and judicial temperament. Political ideology is not a factor. It's a

plan called merit selection. Does it work?

You bet it does. And it works right here.

**Here in Alabama, voters in
Lauderdale County and Shelby County
just adopted merit selection for interim
judicial positions. Similar commissions
already operate in Baldwin, Jefferson,
Madison, Mobile, Talladega, and
Tuscaloosa Counties. And a bill is
pending to set up a merit selection
commission in Montgomery County.
That would mean that 85% of the
population of Alabama would have trial
judges initially selected on merit.**

Most of us admit that moving entirely from judicial elections to merit selection can be a tall order politically, so there are other proposals for turning down the heat of politics in how we select judges and ensure public confidence in an impartial judiciary.

We could have public financing of appellate judicial races.

We could switch to nonpartisan elections—so that judges who are supposed to be fair and impartial aren't identified with one political party or another.

Whatever system we come up with is bound to be better than maintaining Alabama's distinction as the state with the most expensive supreme court races.

Let me close by reading you something written by my friend Wallace Jefferson, who happens to be the recently re-elected Chief Justice of the Supreme Court of Texas and also happens to be the first African-American Chief Justice of Texas:

You don't know who I am. I don't blame you.

I have been on the statewide ballot three times, in 2002, 2006 and 2008. I was elected

each time by impressive margins. Yet a July 2008 statewide poll found that 86 percent of the electorate had "never heard of" me.

My success depended primarily on a straight-ticket partisan vote

I campaigned hard on merit...

Ultimately, though, my qualifications were not relevant.

Even if I had never appeared in court, lost every endorsement and fared poorly in polls that assess qualifications, I would still have won in Texas. The state voted for McCain, and I was the down-ballot beneficiary.

We close our eyes and vote for judges based on party affiliation, even though a party label does not ensure a judiciary committed to the rule of law. We reject worthy judicial

candidates whose names are hard to pronounce.

The men and women we elect in this arbitrary process make decisions that affect all of our lives. We don't know who they are.

In a close race, the judge who solicits the most money from lawyers and their clients has the upper hand. But then the day of reckoning comes. When you appear before a court, you ask how much your lawyer gave to the judge's campaign. If the opposing counsel gave more, you are cynical. Aren't you entitled to a fair hearing?

For the foreseeable future, I will win elections not because I am best suited for the job, but in spite of my qualifications. When a judge's victory is based on party over

principle, money over merit, cynicism over the rule of law, voters lose.

Let's change the system so that the law governs neutrally. What more can we ask of democracy?

I cannot say it any more eloquently than that.

Thank you for your time and attention this morning. It has been an honor to speak to you.