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2009

### 2009-02-27 H. Thomas Wells, Jr. ABA Presidential Correspondence

H. Thomas Wells Jr.

University of Alabama School of Law

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# CORRESPONDENCE LOG

H. Thomas Wells, Jr.

February 27, 2009

Origin	Correspondence	Date	Revd	Status (All suggested dispositions subject to review by TW)	CCs (Informational copies)
AL	<b>Hon. Rick Teitelman</b> <b>Supreme Court of Missouri</b> Ltr – enclosed article from the <i>St. Louis Post-Dispatch</i> regarding legal aid services	2/17	2/19	<i>Forwarded to Ira Pilchen for response.</i>	
AL	<b>Joseph Burke</b> <b>Wilkes-Barre Law &amp; Library Assn.</b> Ltr – Erie 70 <sup>th</sup> Anniversary	2/12	2/17	<i>OP will draft response.</i>	
AL	<b>Joe – Luzerne County Bar Association</b> Hand written note to Tommy thanking him for letter.	-	2/25	<i>NRN</i>	
AL	<b>James E. Rotch</b> <b>The Birmingham Pledge Foundation</b> Ltr – re TW Birmingham Pledge presentation in Boston	2/19	2/20	<i>TW responded 2/26/09.</i>	
AL	<b>Jack Carey</b> <b>Illinois State Bar Association</b> Ltr – thanks for kind comments about Illinois State Bar Assn and the Illinois Delegation at Midyear Meeting	2/19	2/21	<i>TW responded.</i>	
IL	<b>Dale E. Jones</b> <b>Heidrick &amp; Struggles</b> <b>Washington, DC</b> Ltr – marketing letter re succession planning and leadership transition	2/13	2/24	<i>Forwarded to Hank White.</i>	
IL	<b>Andrew F. Susko</b> <b>Pennsylvania Bar Association</b> Copy of letter sent to Arlen Specter re ABA Day in Washington	2/20	2/25	<i>Forwarded to Julie Strandlie.</i>	
AL	<b>Hon. Margaret H. Marshall</b> <b>Supreme Judicial Court</b> <b>Boston, MA</b> Ltr – pleasure to see TW in Boston	2/19	2/24	<i>TW responded.</i>	

# CORRESPONDENCE LOG

**H. Thomas Wells, Jr.**

February 27, 2009

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IL	<b>Lynn S. Peacock</b> Assistant to Sandy D'Alemberte Ltr – enclosed an article by Sandy from <i>International Bar News</i> , Feb. 2009	2/19	2/24	<i>IP will draft response</i>	
IL	<b>Steven R. Schuh, Delegate</b> <b>The Maryland House of Delegates</b> Ltr urging ABA's support and testimony on behalf of House Bill 514 (Good Samaritan – State of Emergency – Liability Protection	2/9	2/27	<i>Forwarded to Tom Sussman, Ira Pilchen and Bob Horowitz for follow up.</i>	



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FEB 19 2009

**Supreme Court of Missouri**

P. O. Box 150

Jefferson City, Mo. 65102

RICHARD B. TEITELMAN, JUDGE

(573) 751-1004

FAX (573) 751-7161

riteilm@courts.mo.gov

February 17, 2009

H. Thomas Wells, Jr.  
Maynard Cooper & Gale PC  
2400 Regions/Harbert Plaza  
1901 6<sup>th</sup> Ave N  
Birmingham AL 35203-1999

Dear Tommy,

I thought you would be interested in the enclosed article that appeared in the *St. Louis Post-Dispatch* that highlights the medical-legal partnership initiated by Legal Services of Eastern Missouri to provide health and legal care to the poor in St. Louis. This kind of effort is made possible by the excellent support provided by the American Bar Association and its local bar associations for creative approaches by legal aid programs around the country. I thought as you travel the country and you advocate so superbly for equal justice under law, you might like to see an article regarding how that effort is being played out day to day in local communities around the country.

With best personal regards,

Sincerely,

Rick Teitelman

/k  
Enclosure



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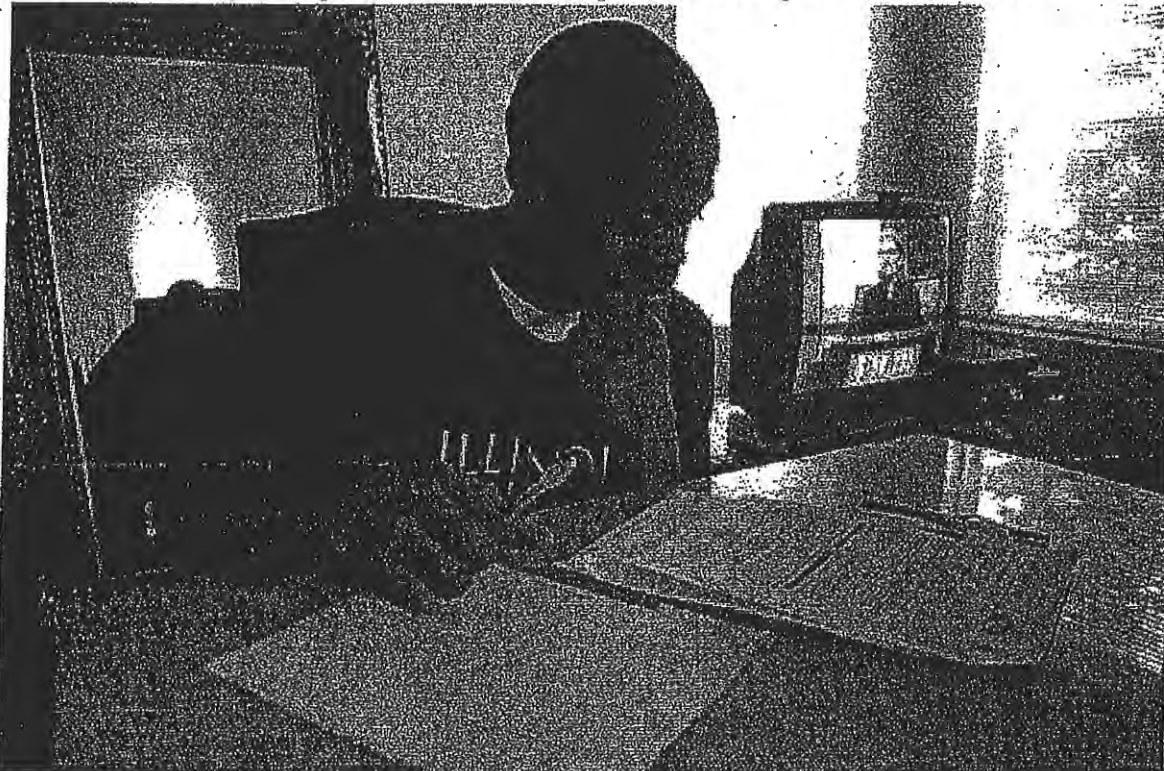
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## Doctors, lawyers partner in hospitals for patient health



Feb. 16, 2009 — Dannell Wise, 16, of University City and a student at University City Senior High School, completes his homework at home Monday afternoon. (Dawn Majors/P-D)

By Adam Jadhav

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## Doctors, lawyers partner in hospitals for patient health

By Adam Jadhav

ST. LOUIS POST-DISPATCH

Tuesday, Feb. 17 2009

Anika Porter was taken aback when her 16-year-old son invited his girlfriend into the house earlier this month to meet the parents before heading out to a dance.

Porter's son, Dannell Wise, was all smiles, sporting slacks, a tie and a vest. Porter just cried.

The teenage ritual — "a little parade" in the living room — would seem commonplace were it not for what Porter considers a family miracle, connected to a partnership that pairs doctors and lawyers together for patient health.

A year ago, Dannell was headed in a completely different direction, busted for stealing from a Shop 'n Save, caught with drugs at school, failing his classes, running away from home and getting into fights. Military and leadership summer camps didn't help.

"It was a dark road," Porter said.

Dannell's situation was complicated by his mental disabilities and his family's meager resources. Porter said the family had neither the money nor the savvy to secure services for him through the school district or the court system.

Navigating the bureaucracy of public assistance programs and fighting for legal entitlements ranging from disability benefits to special education requirements are tough tasks for many people, poor or not. Low-income families are in even more of a bind, social service advocates say, because they often aren't aware of resources and can't afford legal representation.

Dannell's turnaround began when his case was picked up by a pilot program that brings lawyers into hospital settings when a medical diagnosis alone can't solve the problem. The program, the Children's Health Advocacy Project, is expanding now with a \$573,000 grant from the Missouri Foundation for Health.

Dannell began seeing doctors who serve the poor at Grace Hill's Children's Developmental Center. Those physicians ordered medicine and therapy for attention-deficit hyperactivity disorder and paranoid schizophrenia.

But that alone wouldn't solve Dannell's academic and legal troubles. His saving grace: a St. Louis University law professor named Tricia Harrison. As part of the pilot program, Harrison was consulting on cases with doctors at Grace Hill.

Harrison got Dannell allowances from his school district, mandated by law for students with disabilities, and he wasn't kicked out. In addition, Harrison arranged for Dannell to perform community service in place of more serious punishment.

Dannell's story is held out as an example of what is possible by connecting lawyers with doctors, two professions that sometimes have "an inherent distrust" of each other because of medical malpractice law, said Tim Kutz, a doctor at Cardinal Glennon Children's Medical Center who is assisting the program.

The first such effort began in 1993 at Boston Medical Center; more than 80 similar programs have sprung up around the country since, according to the National Center for Medical-Legal Partnership.

Locally, the foundation's grant will fund a new lawyer and paraprofessional to oversee the program at Legal Services of Eastern Missouri, an aid group that provides legal representation to low-income people. In the first year, doctors at Grace Hill and Cardinal Glennon will receive training on situations in which a lawyer can assist. St. Louis Children's Hospital will join the program in the second year.

Legal Services staff, aided by area law students, among others, will also hold clinics on site to provide immediate case review to referred patients.

"There are just some things that we can do that would be enormously helpful to (doctors and patients) if they know that we can help out," said Jesse Goldner, another law professor at St. Louis University who started with the pilot project and aided in the grant application.

Take, for instance, the child with allergies that a doctor can't fix because the cause is mold in an apartment. Or, a teen's poor grades and trouble concentrating might be because of malnutrition after the parent mistakenly was cut from food stamps. A lawyer could reach out to the landlord or state social services to find a legal solution.

"Being poor is extremely challenging," said Dan Glazier, executive director of Legal Services, which handles thousands of cases for poor people every year. "Most of the poor could never afford a lawyer."

Porter, a fitness trainer, and her husband, a business consultant, are self-employed and their insurance wouldn't cover Dannell's mental health problems, Porter said. His father's coverage got him service at Grace Hill, and Porter could handle the co-pays. But paying for an attorney was simply not an option, Porter said.

For Dannell, even a year ago extracurricular activities and dates were out of the question. His mom feared his occasional attempts to run away. She thought juvenile detention was around the corner.

After treatment and an individualized education plan, Dannell's grades, which were practically zeros, have turned into a near-B average. He's getting off medication and playing football — defensive end — at a new school in University City.

As Dannell and his girlfriend left the house for their dance, Porter was struck by how much things had changed.

"He had the chance to go out with his own money — a date. He can do normal things," Porter said. "In the past, we never would have trusted him to go out alone. I have never met the son that I have now."

ajadhav@post-dispatch.com | 314-809-9423

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# Wilkes-Barre Law and Library Association

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*Court House, Wilkes-Barre, Pa. 18711-1001*

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February 12, 2009

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*Wilkes-Barre Law and Library Association*

ERIE 70<sup>TH</sup> ANNIVERSARY LETTER  
FEBRUARY 12, 2009  
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The Pennsylvania Cable Network (PCN) has indicated a deep interest in airing this program statewide in Pennsylvania. After viewing copies of the material that I sent to them, they have noted that this is indeed a great case that needs to be brought to light. I will be asking them to review the Master footage (making their edits) and kindly forwarding the same on for consideration of their sister cable access station in New York. I will also be asking them, because of the importance of *Erie* nationally, to consider referring the matter through their proper network channels to C-Span.

Anyone involved in television production knows just how expensive it can be. Given our limited budget, we had to film this event with only two cameras, doing a live mix of sound and video. And, because of time constraints of breaking down the equipment and moving from the City Bar to the Waldorf=Astoria (and due to the layout of the room), the dinner program had to be shot with a single camera. The final product format determines what TV broadcast outlets are suitable. National network television uses a four-camera format. PBS will use less, but generally requires the use of more than one camera. And, although cable and satellite television have many specialized channels – including Tru TV, which use to be Court TV, our program does not really fit into any existing TV shows on these channels.

Moreover, the cable and satellite channels do not as a general rule create specialized programming – that is they would not specifically create a time slot just to air this show. However, Cable Access TV does do precisely this. There, of course, is a catch, and that is that in order to air, the program has to be edited to fit into conventional units of TV time. This means that the first segment will be edited by PCN to fit under two hours (including the film, which will be included in the TV footage where it belongs – right after Dale's presentation). This should not be a problem as the Master footage that you have is an hour and a half without the 23 minute film included. The Bar Dinner Program at the Waldorf=Astoria, is also roughly an hour and a half. It will most likely be edited by PCN down to under an hour to fit into a one hour time slot. Generally, PCN runs two hour and one hour time-slot programs.

I am enclosing herewith by carbon copy a DVD packet to the A&E Television Network. A&E, which is an interesting limited partnership venture consisting of the Disney Corporation, NBC Universal, and the Hearst publishing multi-media corporation, is the closest TV outlet on cable and satellite to the types of legal programs, events, and topical interests that we have. A&E, of course, owns the Biography Channel, the History Channel, A&E, and History International. They are already airing shows that deal with law within a criminal investigative context. I now that they used to have a strong British BBC flavor at one time, this seems to be undergoing change as the company is developing more of its own original, reality-based, material to broadcast.

*Wilkes-Barre Law and Library Association*

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I am also copying Anne Sweeney and David Westin at Disney-ABC (and want to thank them, along with their assistants who were very kind and helpful to me). Being professionals in the audio-visual business, as well, on the national level, we certainly would value any feedback or comments by David Westin (who is an attorney – and, I am sure remembers *Erie* from his law school days) and Ms. Sweeney (who I recall had a hand in developing the unique programming at Nickelodeon, and, then later, at Disney, the innovative format that now dominates the Disney Channel (which my son and daughter just love). I am extremely familiar with the Disney channels and the Nick channels (and thanks to satellite TV that offers both East and West coast versions), that is all that the plays in our house. So, I do hope that David and Anne might find some time in, what I can imagine to be extremely hectic schedules, to watch our DVDs and give us some feedback (and hopefully, some of it may be positive).

I am also copying Harriet Seidler and Bernard Gugar (who I am extremely grateful to, along with their staff) for Harpo's support in sending Bernard and his wife, Catherine (who is also a lawyer) to our event. *My Mary, many thanks!*

To let all of you know, Bernard did indicate to me that after witnessing our program first-hand, the format does not lend itself to anything that Harpo currently has broadcasting. Notwithstanding, he has very kindly forwarded copies of materials from the program to the producers of the Oprah show.

If the Producers of the Oprah show were to develop an interest in any of you (our speakers and honored participants) as being future guests of the show, the producers will be in touch. However, again, in all honesty, Bernard has indicated we probably do not fit into the show's topical format. And, this should not really be terribly shocking, I suppose. We don't seem to be a current fit anywhere right now.

In any event, I am enclosing DVD copies of the footage and asking that Harpo keep it on file, just in the event that it should become relevant in some way down the line. After all, Harpo is the leading producers of fantastic talk shows, and not just in the U.S. The Oprah show has expanded worldwide. And, with shows like Dr. Phil and Rachel Ray, they have expanded into other topical areas – not just one that we, as of yet, fit into. They also have expanded into satellite radio. Thus, the market is changing every day, and they have such a high degree of success and such a high standard of TV excellence that I think input from them on what we put together would be priceless.

Therefore, any comments by Harpo on our program would be tremendously helpful in the way that the organized Bars approach this sort of mass-media program, especially with regard to such topics as important as *Erie*. And, again given the importance of the topics that the organize Bar tackle by our various projects, we should be actively seeking a practical, national outlet.

*Wilkes-Barre Law and Library Association*

RE: Erie 70<sup>th</sup> Anniversary Celebration.

Dear Honored Program Participants and Program Speakers:

Enclosed herewith, for each of you, please find your long-awaited copy of the prototype design of the Erie Program DVD. I will be enclosing a copy of the DVD to Mr. Justice Souter as he is specifically mentioned and shown in the film that we produced for this celebration.

I do want to be sure that Mr. Justice Souter is happy with the photo that we used of him, and what we said, before we send a copy of these DVDs to Chief Justice Roberts and the other Justices of the Court.

In addition, I also want to be sure that each of you are happy with the final form, before I burn finalized copies for the Middle Temple Library, the ABA Museum, Supreme Court Law Library, Harvard Law Library and Law School, the law schools of everyone involved in the program (NYU, New York, Minnesota, George Washington, Yale, etc.), as well as the eight law schools in New York City and the eight or so located in Pennsylvania), the historical societies (the PA Historical & Museum Commission, the Supreme Court Historical Society, the Historical Society of the Courts of the State of New York, the archives of the Federal Court for the Southern District of New York, and the Appellate Courts for the Second and Third Circuits, and the Luzerne County Historical Society), as well as send finalized archival copies to the bar associations involved (namely, the ABA, NYSBA, NY City Bar, and PBA).

I am enclosing for each speaker and participant, a copy of the official transcript of the event so that you may review your words that you spoke. Because of how we put the video footage together (recording the sound directly to the master and performing a live, simultaneous, mix of the audio and visual), we can not do a direct edit on the footage. Therefore, if there are corrections to be made to the historical record of this event, they have to be noted on the Official Transcript that will be sent out with the final archival packets to all of the groups noted above. It is important that you review your words as soon as possible and let me know of any corrections.

I have the PR contact person at all of the Bar associations and at each of your law schools, and will send to them a CD copy of all the photos that were taken for their use, as well as background material on the event. As a courtesy, I do want to send a personal thank you to the Deans of each of the law schools of the honored participants – providing them with courtesy DVDs and materials. Obviously, I will burn a photo keepsake CD for each of you as well.

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Obviously, because all Bar associations are non-profit, the associations cannot have a partnership with commercial television or professional television production companies such as Harpo. 501(c) corporations like the Bars cannot even make commercial product endorsements. And, we were very careful to place a disclaimer on the DVD that none were being made by any of the nonprofits involved in the project. However, perhaps, we should be encouraging a large, successful, trans-national multi-media corporation like Thomson Reuters (Thomson having some experience in TV production in Canada, and Reuters, being one of the largest information companies in the world) to be doing just that.

Maybe the future of improving the image of the lawyer, and educating the general public on what the organized Bar is really about, is not in Bar association sponsored programs per se, but in more complex and entertaining programs that are produced nationally, or even internationally, by some limited partnership between a giant legal publisher or publishers, together with professional educational companies like PEG, with technical input by a national production company like Harpo, with outlet and popular, specialized program channels like those owned by A&E. To me there seems to be a logical progression in that direction. And, certainly the ill-fated experiment of the limited partnership that was formed by Steven Brill (when he launched American Lawyer Media), NBC, and Time Warner with Court TV hints at the possibility of enormous success in that direction. The problem that I saw, and I think many viewers saw with Court TV is that its legal programming had no diversity. You can't consistently get, nor can a TV network sustain, the sort of high intensity drama of a trial as dramatic as say the O.J. Simpson trial. So, I think what happens is you burn out interest from viewers. This was the same problem faced by MTV in the 1980s when they vowed to show music videos, and only music videos, 24 hours a day. Well, it did not last, and MTV went on to develop other original programming.

Diversity of thought, ideas, and program types really are not the Bars' problem, it is a source of outlet. And, our fellow historical societies share a similar problem as us. Input from the professionals in the multi-media field, I think would also be helpful to the Supreme Court Historical Society, who does great lectures and events. In addition to the series that Professor Freyer was involved in, the Society did an event at the NY City Bar a month after the *Erie* celebration that involved the Historical Society of the Courts of the State of New York (another fine organization). This program was about women in the law – a very important topic that should be seen, discussed, and reflected upon by a wider audience.

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Also, the Supreme Court Historical Society, ended the 2008 year on a high note, with an event that celebrated the 100<sup>th</sup> anniversary of the creation of the Brandeis Brief. Now, that event, alone, is of extreme importance to the history of American jurisprudence, and it would later be a series of important Brandeis' Briefs that would play out in *Brown* at the skillful hands of Professor Charles Black (another fascinating personage of the Law).

The Historical Society of the Courts of the State of New York has also done exceptional work in the field of legal history. They did a program on *Palsgraf*, which is also an extremely important case in American Jurisprudence. Moreover, there are other many excellent programs being produced across the United States. And, I cannot say enough about all of these many important events going on out there that escape greater notice by the American viewing television audience. And, I am copying both Kathy Shurtleff and Marilyn Marcus for their important input and comments on the DVD.

Thompson Reuters, which was very much involved in this celebration, was extremely kind to print a special book to be given out at the City Bar in New York. And, I want to thank Peter Warwick and Jean Maess (along with Gretchen Desutter) for their outstanding work in producing that wonderful keepsake book. My many thanks to CEO, Tom Glocer, as well. It is this sort of dedication and talent that really makes Thomson Reuters the top legal publisher and legal multi-media company in the world.

Judge Colyer called me from England, and told me just how wonderful he thought the special Thomson Reuters book was, and felt that this would be something that the Temple Library would love to have in its collection. I did receive a very lovely letter from Vanessa Hayward, the Keeper of the Library, thanking us for the Middle Temple's keepsake shadowbox. She has put it on display in their historic Library in London, and invites you to visit, if you should ever be in that part of the world. And, I would encourage you to do so -- especially our distinguished professors who might be out and abroad doing research for their next masterpiece. Inter-Bar and transnational lawyer contact is extremely important for a meaningful exchange of dynamic ideas about law.

What I would like to do is to send to Jean (as she was the official representative of Thomson Reuters), a copy of the Thomson Reuters book so that she might make a personal inscription, and to send that to the Temple Library as a further keepsake of this extraordinary event. And, as the Reuters corporate offices are in London, executives of the company might even, perhaps, have the chance to look at this amazing work, and feel quite proud of their involvement with *Erie* and its many lofty concepts.

Likewise, I have a copy remaining of the casebook, of Ed's Foundation Press book, of his Yale book, and Tony's NYU book. I am going to send these directly to the authors for inscription, and forward these to Vanessa. Again, these are extraordinary works that should be brought to light in a greater public manner.

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Even I, who have an expansive knowledge, as a law librarian, of many of the fabulous books and materials that are produced by top quality companies, am sometimes surprised when I stumble across something that is lost in the shadows. For this Christmas my beautiful wife, in honor of the 400<sup>th</sup> anniversary of the Temple (Middle and Inner), which I have a passion for, bought me a copy of the Rider and Horsler book, *The Inner Temple, A Community of Communities*. She also, and this is why I absolutely love this woman, gave me a copy of *Middle Temple Lawyers and the American Revolution*. This is one of those extremely beautiful books published by none other than, Thomson West. This book is by Justice Randy J. Holland of the Delaware Supreme Court. And, my copy is amazingly signed by Chief Justice Myron Steele and all of the Justices of the Bench. And, what I really have come to love about the book, and this is the true importance of West (meaning Thomson Reuters) and its genius in the field of Law, is that there are two forwards to the book. One is by the Chief Justice of England and Wales, and the other is by our own Chief Justice Roberts. Now, that is balance.

As amazing as this book is, what amazes me even more is why I did not know about it. So, I think even the Middle Temple, and even large publishing and mass-media companies like Thomson Reuters face the same sort of challenges that we do. In fact, Judge Colyer told me a fascinating story that drives home this point. The lecturer at the Temple Church has now been in great demand. Does anyone know why? Think about it, after 400 years, there is a boom. It is because of the extraordinary, popular, success of the *Da Vinci Code* book and movie. So, it is clear that things of a legal topic, including important historic locations, themes, ideas, and even cases can strike the public conscious in a very big way.

The organized legal professions' problem is that whether portrayed in popular sitcoms or prime time dramas there is a large distortion factor. There have been several, prominent, *ABA Journal* articles on this. I read the *Journal* religiously, along with the *American Lawyer* (which has its 30<sup>th</sup> Anniversary this month -- also, we all should congratulate John Ettinger for the extensive story that the *Lawyer* did on him just recently and fellow lawyers at Davis Polk -- *many congratulations to him and Davis Polk by way of Attorney Gillespiel*)

I also am a devoted reader of the *National Law Journal*, the *Pennsylvania Lawyer* and PBA Bar News, and the *Bar Leader*. As I am from Pennsylvania, and I am a law journal editor, I also love the *Legal Intelligencier*, which is a model for me. And, Peter Hall from the *Intelligencier* has shown an interest in writing a piece about our *Erie* project.

*Wilkes-Barre Law and Library Association*



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Wendy Smith and Marilyn Cavicchia of the *Bar Leader* have also shown an interest in writing about this project. Kathy Shurtleff at the Historical Society has indicated an interest in writing about this as well. And, I will send to Allen Pusey at the *ABA Journal* and Marcy Mallory and Geoffrey Yuda at the *Pennsylvania Lawyer* materials and photos for their journals. I will be likewise sending to all of those great PR folks at the New York State Bar Association materials, and to all of your law schools' communications departments.

Another person very much interested in *Erie*, and Justice Brandeis, is Professor Ross Davies, the Editor-in-Chief of the *Green Bag*. And, I will be thanking him ever so much for allowing us to use the image of the *Green Bag* bobblehead of Justice Brandeis. Of course, the *Green Bag* is yet another absolutely wonderful national publication. I certainly will follow up with Ross on this matter.

By the way, I did check the DVDs that I have enclosed to make sure that you all have the e-version. It is the version that will appear on TV to be right after Dale's presentation. The version accidentally shown in New York was a law student version. I apologize to everyone again about the mistake. We filmed two ratings. Everyone is receiving DVDs with the e-version on them. This is suitable for absolutely everyone to watch. As the father of two young children, I know how that can be.

The law student version was made to cover the growing gap that exists between the organized profession and the academic law student. And, I can tell you that the younger lawyers just went absolutely bananas for the law school version that accidentally got shown. I had so many young lawyers tell me that I am in the wrong business and should be producing audio-visual educational legal works as they found it so entertaining, funny, witty, and informative. Based on my years of experience and research, I figured as much.

If anyone doubts that there is a "law gap," and wants it better explained, there is an excellent two-part interview of Arthur on Youtube. No one has the insight on what's going on nationally with the legal field and can sum it up like Arthur Miller. So, I urge everyone to check out Arthur on Youtube. This is a very important issue to all of us whether we are law professors, practicing attorneys, bar execs, or legal publishers.

The other thing is that because of the enormous strain that this project put on my family life (which I value above all else), I included a dedication on both versions. In mastering the raw footage that we shot my editor pointed out that the Director's dedication did not fit in terms of TV and public performance, which, of course, I absolutely agreed with him. The Director's dedication was really meant to be for that specific moment in time as a message to my wife and my children of my commitment to them. And, I think quality of life and family should be first and foremost.

*Wilkes-Barre Law and Library Association*

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As with Walt Disney (the person) and the Disney-ABC Corporation, and Oprah (the person) and Harpo, here in Pennsylvania, family, quality of life, and excellence have been the hallmarks of Milton Hershey and the Hershey Foods Corporation. I am, therefore, sending a DVD copy to Susan Angele, who I don't know except by reputation. And, she has a reputation for excellence like all of you. I think feedback from a public-minded company like Hershey could be essential for doing other important multi-Bar projects of this type. Ironically, the most ideal and best loved Bar in the U.S., and maybe, the entire world, is not a Bar of lawyers, but a candy Bar -- a Hershey Bar to be precise.

Now, when I say there are other important projects to do, I do hope you realize that for a small Bar association like ours just how incredibly special this event was. For this Bar, it was a once-in-a-lifetime feat to reach out to all of you. Sadly, it can never be done again.

To do what we did as a small Bar, with the extremely limited resources and funds available to us, this project took a four-year commitment by our Bar members, spanning three Bar presidencies. I know some of you have asked, how was all this possible, and where did we get the money to pay for this event. And, that is a very good question.

As the Treasurer of our local Bar, I was able to use an old law from 1866 that has never been repealed by the Pennsylvania General Assembly. I applied this law to collect a million dollar bail forfeiture in a spectacular drug trial case. To make it a short story, the alleged drug dealer in the case (ironically a cab driver from New York City) absconded. As a result of this little before effectively used law, I went through a long-and-cumbersome string of eight proceedings and a long brief-writing process, and convinced the judge and the deputy attorney general that the law rightly allowed for this money to be awarded to the Bar for the benefit of the Honorable Max Rosenn Memorial Law Library at the courthouse. Then, with the help, of fellow lawyer, Dick Hughes, I skillfully maneuvered the surety company into a position where they had to agree to settle the matter with the Bar for the benefit of our Hon. Max Rosenn Memorial Law Library at the Luzerne Courthouse (as provided by this old statute).

The Law Library, which has always been expensive to operate by the Bar, suddenly had funds available to cover its expenses. I was then able over a period of years to build up a budget surplus from Bar funds that usually are used to pay for the Law Library. Obviously, this all had to be done very, very, carefully as to not violate all of the many laws and regulations that govern us and our various operations. But, that is how we, rather ingeniously managed to pay for this spectacular program. It was resolve, imagination, and steel will. And, that is what I think is needed to carry on this great work on a national scale. But, by some other entity or newly established vehicle.

*Wilkes-Barre Law and Library Association*

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In the end, I think that all of our hard work at the local Bar level was well worth the effort -- and I think all of you will agree. There is no case bigger in American Common Law or in American Civil Procedure than *Erie*. And, I think that this event that we put together was exceptionally unique. So, again my many thanks to all of you

I am also very thankful to Paul Fogelberg of PEG. And, I am enclosing for each honored participant a complimentary copy of the Irving Younger DVD from Paul. I am also enclosing for each speaker and participant copies of a DVD or CD with the compliments of Bob Noone (and his agent, Burke Allen of Allen Media Strategies).

I think when you see the footage you will see how beautifully, and appearing effortlessly, this program runs. I also think that when you step back and listen to Bob Noone's song, you will see how perfectly it fits in with what you did. I know you saw it live, but sometimes when you step back, from being involved in a project you really get a sense for it. Obviously, as Burke and Bob are professionals, we would love to hear their comments.

*I do hope, Bob, that you are happy with what we did with your song.* And, again, I did the absolute best that I could with the technology available to me. If this project were done by Disney or Thomson, or Harpo, there is no doubt that the product would be of better quality -- but not the content. I think that in terms of content (both people and theme), this project is top of the line. And, it has come along way from my initial discussion with Tom Ross of the NY City Legal History Committee, from its origins.

I remember at some point, I think a year or two into the project, Tom called me. I had submitted an extensive brief on how a moot court might work -- and, that was the initial conception. I remember the great reluctance in Tom's voice as he said I have some bad news. There was a long pause. And, I said what is it. Tom began to tell me that the Committee met and they looked at this thing from every angle, and as much as he hated to inform me, he told me it is not going to work. I remember falling back in my chair, taking a deep breath and saying -- okay. I asked him, does the Committee have something that I can work with -- at that point, we went back to square one and then began to move forward again with a new concept.

Tom and the Legal History Committee, and Ken, as we phased him into it as he took over the leadership of the Committee from Tom (which is not something that is easy to do mid-project), deserve great praise for their integrity and honesty. This program in its final form is great because they were willing to be honest at that point in time.

*Wilkes-Barre Law and Library Association*

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When you watch this program, it moves of its own momentum from speaker to speaker. Each person fills in something (a piece or dimension of *Erie*) – the presentations are non-repetitious. From the moment that Peter gives his stirring and inspiring opening (and I absolutely loved his ad lib remarks about isonomy – it is so very touching to me as a lawyer to hear his remarks. *Peter – I do not know if you are in line to be City Bar President, but you definitely should – and if you are, I predict that you will be an outstanding bar president*).

All the way through the program - just one wonderful speaker after another. Dale was right on the mark with his comments about the PBA, the marker, and the case. It matches perfectly to the short background film. Dale's remarks also hit home the importance of the vital connection between the state and local Bars.

Then there is Arthur Miller. Is there anyone who doubts that after looking at the DVD footage that this is not one of Arthur Miller's greatest performances ever? Arthur's interaction with everyone on the panel is just superb. From the start of his opening, his brilliance is dazzling. *And, while the slides are totally in a different vein than what you did on PBS, I think they capture an important side of you, Arthur, and of what makes you so unique, special, and a powerful teaching force.* To quote, Judge Colyer, I wish I were in your Civil Pro Class. *Your visionary approach to teaching Erie deserves a standing ovation.*

Just think how wonderful would it be if *Erie* Day caught on at law schools all across America – all of that law student enthusiasm, energy, and excitement that was portrayed by those slides and your incredible stories. That would be amazing – just think of the possibilities!

Law students' passion for learning the Law would be rekindled. As related in that wonderful story by Jack, students would beg their law professors to teach them *Erie*. Now that would be an incredible turn of events. Jack was so terrific – and funny. Who knew that law professors could be funny. *Amazing Jack! Simply amazing.*

I loved Bob's stories about Irving, as well. I know a lot of things about legal events and happenings. In fact, Frank Wagner (the Reporter of Decisions of the Supreme Court), on reading one of my *Erie* law journal issues, confided in me that I have a peculiar talent for stringing together bits of legal trivia to tell a much larger, compelling, story. *Bob – your stories about Irving were so moving and just so incredibly compelling. It dwarfs my humble talents.* I had no idea that Irving's admiration for Justice Brandeis was so deep that he wanted to be memorialized in a similar manner. This tidbit, though a small smidgen of knowledge, makes me idealize Professor Younger that much more.

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Then, there is Tony. I knew Tony would be terrific. When he told me his stories about his book, I told him that he should write a book about his writing his book. His story about Aaron Danzig and the fallout from losing *Erie*, as a contingency fee case, is thought provoking. I also loved Tony's story about the importance of the Brandeis Papers, and his meeting Irving. *Thanks Tony!*

Then, what about Helen. Wasn't she awesome? Helen told me she didn't want to speak, but Arthur, being Arthur, and knowing best, convinced her. And, *Helen, Arthur was so right. You added so much to this program – and, again, without duplicating what anyone else did. Your story, Helen, of the guitarist was so moving and brought Erie right up to present day. I also loved your stories about NYU and its mission, and all your many wonderful insights in the Law. Again, I wish I were your student.*

*I also want to thank you, Helen, on a more personal level. Helen – I really, really loved your close with a note on Star Wars. You couldn't know but I am a Star Wars junkie. My wife particularly hates when I draw legal analogies between the saga and the profession. But, is there anyone who doubts that Star Wars is about the place and role of the organized Bar in the Republic of the United States?*

To me, it is very plain that the Jedi Knights are a variation of the old Juris Knights of the Temple (the originally combined Middle and Inner Temple). The attack on the Temple could be reminiscent of the real life attack on the Temple in 1381 by Walt Tyler and his unruly mob, or of the literary cry sounded in Shakespeare, "To kill all the lawyers" – one of the most distorted, misstated, and misunderstood quotes of literature.

In any event, my Star Wars passion irritates my wife (who believes that one day George Lucas is going to get a restraining order against me, so that I can't do what I love to do with it). I had to promise Michele that I would not talk about Star Wars. So, my thanks to Arthur (or should I say Darthur Vader) for the terrific slide. *And, thank you, thank you, thank you to you – Helen. You were marvelous, and that was the perfect close!*

Then, there is Ed. Ed's knowledge of the many aspects and dimensions of this case as expressed in his two books is so expansive that you can talk for hours on end about Ed, his genius, and his work and still not exhaust all of the many issues that he raises. I loved Ed's comparison and contrast of Holmes and Brandeis (the most interesting relationship of two Supremes in the history of the Court). I also loved his vision of *Erie*'s growing application in the field of international law. So, that if Helen, brought *Erie* up to the present – Ed, not missing a beat, carried *Erie* into the future. Again, it is another perfect fit. *Thanks so much Ed.*

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Finally, Judge Colyer adds a new dimension, not usually present in the law school class room. Federalism, which does not historically play any role in English law, does strange and magical things to the Anglo-American legal continuum of the Common law. Yet, another wonderful presentation. *My many thanks your Honour.*

As the City Bar Program is exhilarating, so too is the Judge's lecture on the evolution of the Common Law. Perhaps, heavy for after-dinner conversation, the Judge's presentation in video form and in script is one of the best explanations I have ever heard or read on this subject. Because we plan to send final footage of this event to the law schools in New York and Pennsylvania, the logical thing that I would suggest to everyone with this law school version is that I would like to burn the Judge's talk as a separate contained DVD: I think it will be extremely useful with that approach. **If anyone has any strong feelings to the contrary about this, please let me know.**

I have already been contacted by Justice David Lemons of the Virginia Supreme Court. Now, Virginia is not in either the Second or Third Circuits, so it was not part of our celebration. But, the Justice feels that given the important value of the Judge's book and his talk that they should be made available nationwide to the members of the American Inns of Court. And, I will be forwarding the print layout and the DVD to the Justice shortly. So, I think everyone can see just how far reaching the implications and importance of what we have done really is. *Erie*, and all of its many wonderful and dynamic concepts, belongs to every lawyer – to every citizen. And, certainly to every academically trained law student.

Speaking about law students, our special guest of honor was simply outstanding. And, leading up to this concluding summit – there was a very precise build up. Starting with the Yale Law School.

The presentation from Yale by Professor Eskridge was simply wonderful. Yale is an academic force that has been important in the Law. Also, I was grateful that Professor Eskridge mentioned the impact on the post-*Erie* world by the *Restatements*. Again, this is an important dimension to the *Erie* story. And, as if on cue, the Professor picked right up on this and covered it perfectly. *Thank you Professor.*

When you watch Professor Eskridge, there is a buildup. Then, a further buildup with Michael performing the actual intro of Attorney Gillespie. And, again, Michael is right on the mark. *It is perfect Michael.*

Then, what a close by our guest of honor. His fiery passion for judicial independence is a mega-ton of inspiration. It, again, is a perfect fit with *Erie*, and a perfect ending to a wonderful event.

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*Attorney Gillespie, your story is so amazing, and your career and success in the Law is so lofty – you have truly done your mentor, John W. Davis, proud. I have to thank you for all of us Joelawyers in the field. You serve as a source to inspire us to want to be better lawyers, and to want to do more good in the world, and to show the world the genuinely good nature of our noble profession. So thank you more than I can ever possibly put into words!*

I also want to thank Michael for closing the program. It is just wonderful to work with someone so talented as Michael, because you can step away knowing that the show will go on in spectacular form. I was suppose to close, but was called outside to resolve a transportation issue with the City Police and the Secret Service. We had a series of buses that were suppose to take our local Bar members back to Luzerne County at the end of the program. Apparently, the U.N. delegation from Communist China was coming to the hotel, and the Secret Service would not let our buses come anywhere near the building for security reasons. It took about twenty minutes to negotiate where, how close, and for how long our buses could be park.

So, I want to thank Michael for being a real Bar hero and jumping in like he did at the end. And, I want everyone to know that Michael did a far better job than I ever could. I love the close and the gavel presentation. Again, it is perfect. *Michael – you possess all the hallmarks for being a outstanding Bar president!*

To end the DVD, we have added what I think everyone will agree is again very fitting and appropriate. When you are the President of the ABA, you cannot be everywhere. The U.S. is such a big country. And, the demands of being ABA President, I can only imagine are staggering. Tom Wells could not come to New York on September 20, 2008.

Tom referred me to Barbara Sharpley, who I want to thank. Barbara was wonderful to deal with. The problem I had in the last few days before the program is that I was all over the place. Barbara had a hard time connecting with me as to see who would be available from the ABA officer corps to come to New York.

In the end, what I suggested to Barbara, and she liked the idea, was that a letter from Tom would be more lasting and meaningful than anything. And, with the help of Ira Pilchen (whom I also thank), we received some very stirring and appropriate remarks from the President of the ABA.

As the highest ranking Bar Officer in the United States, I think it is absolutely appropriate that the DVD is closed by Tom Wells. And, hopefully, Tom and the ABA will be happy with what they see. *My many, many thanks to you Tom!*

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The support of the ABA for all of us out in the field at the local level means a great deal. And, really only the ABA is large enough, has the concentrated expertise, and is well-organized to tackle the really big issues that confront the legal profession today. So, it is a great honor for a local Bar to be able to partner with the ABA in the way that the W-BLLA has done on this special project.

With Tom Wells' permission, I would like to send a final packet of materials to the ABA Division for Public Education. They, of course, are a vital force within the ABA. This Division published this beautiful and insightful book of essays for the 50<sup>th</sup> Anniversary of *Brown*. They do nice work – maybe they would be interested in following up on some of the many themes that were raised as part of this project, and do a similar book for the 75<sup>th</sup> Anniversary of *Erie*, or diary a project for the 100<sup>th</sup> Anniversary of *Erie*, to be done in the future.

Finally, I am going to thank personally Chief Justice Hodge and Chief Judge Kaye for attending our celebration. It was quite a distance for Chief Justice Hodge and Mrs. Hodge to travel to be with us from the Virgin Islands. And, I am so glad that they did.

Additionally, I did not realize that we would be celebrating the sad event of Chief Judge Kaye's mandatory retirement. But, as New York law required her to step down, I hope in some measure she might treasure this celebration and her evening with all of us, celebrating this important case, as one of those last official moments in her exceptionally distinguished career.

Therefore, as all of you can see, there is still some work to be done to bring this simply incredible project to a proper close. I look forward to hearing back from all of you, and receiving your comments, and from all of you copied on this letter. You can mail me or you can email me at either Joeatwblla@aol.com or Joseph.Burke@luzernecounty.org.

Finally, as a last administrative matter, as we move towards the publication and press release closing of this event, I need each of your permissions to release your contact telephone numbers to the various PR and publications people who would like to write stories on this event, so that they might contact you directly for a quote or other background information. In this request, I am also including, Tom Ross and Ken Aldous, who are copied on this letter as the Chairs of the NY City Bar Legal History Committee, which was responsible for overseeing the on-site planning of this extraordinary program.

*Wilkes-Barre Law and Library Association*

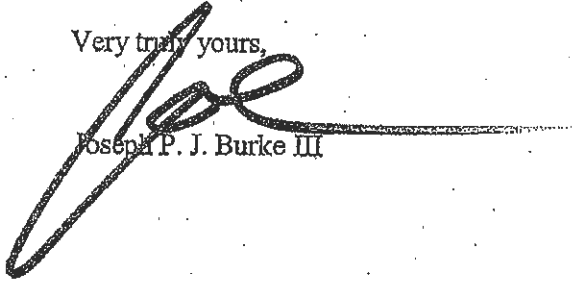


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Again,

*So Many Thanks!*

Very truly yours,

  
Joseph P. J. Burke III

Enclosures

JPJBIII/me

*With Carbon Copy as Follows:*

*Wilkes-Barre Law and Library Association*

cc : *(By the Order addressed in the Main Body of this Letter):*

Abbe Raven, President and CEO, A&E Television Network (encs.).

Anne Sweeney, Co-Chair, Disney Media Networks and  
President, Disney-ABC Television Group, Walt Disney Corporation (encs.).

David Westin, President of ABC News (encs.)..

Harriet Seitler, Director of Special Project Development,  
Harpo Productions, Inc. (encs.).

Bernard Gugar, Esquire, Associate General Counsel,  
Harpo Productions, Inc. (encs.).

David Pride, Executive Director, Supreme Court Historical Society (encs.).

Kathleen Shurtleff, Assistant Director, Supreme Court Historical Society (encs.).

Marilyn Marcus, Executive Director, Historical Society of the Courts of the  
State of New York (encs.).

Thomas H. Glocer, CEO, Thomson Reuters (encs.).

Peter Warwick, President and Chief Executive Officer, North American Legal,  
The Thomson Corporation - Thomson Reuters (encs.).

Jean Maess, Vice President, West Content Operations,  
Thomson Reuters (encs.).

Susan Angele, Esquire, Vice President, Deputy General Counsel,  
and Chief Governance Officer, Hershey Foods (encs.).

Paul A. Fogelberg, President, P.E.G. (encs.)

*Wilkes-Barre Law and Library Association*

**CARBON COPIES**  
**PAGE 2**

Bob Noone, Lawsongs.com (encs.)

Burke Allen, CEO - Allen Media Strategies (encs.).

Thomas M. Ross, Esquire - Past Chairperson, NY City Bar Legal History  
Committee (encs.).

Kenneth E. Aldous, Esquire - Chairperson, NY City Bar Legal History  
Committee (encs.)

Barbara Sharpley, Assistant to ABA President H. Thomas Wells, Esquire (encs.).

Ira Pilchen, Special Assistant to ABA President H. Thomas Wells, Esquire (encs.).

*Wilkes-Barre Law and Library Association*

RECEIVED

FEB 25 2009

Tom,

Again Many Thanks to you.  
I hope that you approve with how  
we utilized the letter & the photo that  
you sent us for Eric. As soon  
as I hear back from everyone, I  
will send a courtesy copy of the  
DVDs to the other ABA officers (as  
well as the archival packet to the  
ABA Museum). I will also  
send one to Hank, as well.

I guess by now you may have  
heard about the problems created  
by two of our local judges.  
And, a third who was removed from  
the Bench by our Judicial  
Conduct Review Court for being  
a real-life Judge Judy. Because  
of all of this sickening behavior  
locally by a few rotten apples -  
Eric, and the many sacred principles  
that it highlights, has a new  
and personalized meaning to  
me. It is amazingly affecting  
me and more attention as  
we move along towards a ↓



Final conclusion of the project  
And this is particularly significant  
as the public's faith in the  
law, in justice, and everything  
that the organized Bar stands  
for has been shaken regionally  
by this ever-growing larger  
~~scandal~~ scandal here at home.  
You only need to Google  
Luzerne County Judges to see  
all of the variations of  
what these two jokers allegedly  
were involved in. *Joe*



# The Birmingham Pledge Foundation

RECEIVED

FEB 20 2009

## Board of Directors

James Rotch  
Chairman

Lynne Berry

Judge Houston Brown

Gary Burley

Cathy Crenshaw

Cathy Friedman

Lori Nelson

Carolyn McKinstry

Judge David Rains

Lou Willie III

Odessa Woolfolk

Wade Black  
Executive Director

February 19, 2009

H. Thomas Wells, Jr., ABA President  
Maynard Cooper & Gale, PC  
2400 Regions/Harbert Plaza  
1901 Sixth Avenue North  
Birmingham, AL 35203

Dear Tommy,

Wade Black (Birmingham Pledge Executive Director) gave me a call earlier this week after hearing a glowing report from Roy Hammer about your Birmingham Pledge presentation in Boston. Roy is at Hemenway & Barnes and was present when you spoke. He now wants to help conduct a Birmingham Pledge drive at a Boston area school and also has discussed the Pledge with members of his firm.

Clearly you've become a proselytizer for us, and I really appreciate it. Let us know if there are ways we can assist you. We've got signature forms, wallet cards, teachers guides, maybe even more of the Pledge bracelets. Wade can be reached at [wadeblack@mindspring.com](mailto:wadeblack@mindspring.com), but I'd love to talk with you if you want to contact me directly at Bradley Arant. My phone is 205-521-8211 and my email address is [jrotch@ba-boult.com](mailto:jrotch@ba-boult.com).

Thanks sincerely for what you do.

  
James E. Rotch  
Board Chair

H. Thomas Wells, Jr.  
President

AMERICAN BAR ASSOCIATION

321 North Clark Street  
Chicago, IL 60654-7598  
(312) 988-5109  
Fax: (312) 988-5100  
E-mail: abapresident@abanet.org

**Via Express Mail**

February 26, 2009

James E. Rotch  
Board Chair  
The Birmingham Pledge Foundation  
2829 Second Avenue South, Suite 307  
Birmingham, AL 35233

Dear Jim:

It is an honor to send you the enclosed 176 signed Birmingham Pledge forms from the American Bar Association's House of Delegates, representing leaders from the legal profession across the country. In asking delegates to sign the Pledge, I recalled the lawyers and nonlawyers who led the movement for civil rights, and the courageous federal judges who upheld those rights. Our participation demonstrates the deep-seated commitment of America's lawyers to equality and justice.

Very truly yours,



H. Thomas Wells, Jr.

Encls.

**RECEIVED**

FEB 21 2009



**ILLINOIS STATE  
BAR ASSOCIATION**

Jack C. Carey • President  
jclaw@compu-type.net

February 19, 2009

Mr. Tommy Wells, President  
American Bar Association  
Maynard, Cooper & Gale PC  
1901 Sixth Avenue North  
2400 Regions/Harbert Plaza  
Birmingham, AL 35203

Dear Tommy:

Please accept my sincere thanks for your kind comments about both the Illinois State Bar Association and the Illinois Delegation which you made from the well of the house on Monday, February 16, 2009.

I know our members were appreciative of your remarks and made comments to both me and Bob Clifford how much it meant to have the President of the ABA recognize our delegation and what we are doing to celebrate Abraham Lincoln, the lawyer.

We look forward to the ABA in Chicago, in August, and be assured both the Illinois State Bar Association and the Illinois Delegation will do whatever we can to assist in making the Annual Meeting in the *Land of Lincoln* a memorable one.

Yours very truly,

  
Jack Carey

JCC: jmf

cc: Mr. Robert Craghead  
Mr. Bob Clifford

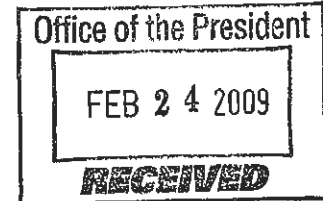


# HEIDRICK & STRUGGLES

Dale E. Jones, Vice Chairman

February 13, 2009

Mr. H. Thomas Wells Jr.  
President  
American Bar Assn.  
321 North Clark Street  
Chicago, IL 60654-7598



Dear Mr. Wells:

It's hardly a secret that the executive ranks of non-profit associations are filled with individuals who have served long tenures. This reality plays out across the for-profit sector as well.

As change continues to take hold in Washington, D.C., as well as throughout the country, we would like you to consider a few points about succession, which represents a potential path for tackling uncertainty.

- 1.) Only a third of all Fortune 1000 companies and similar sized non-profit organizations have succession plans in place. The reasons why succession planning isn't more pervasive are numerous. Chief among them, in our view, is the fact that very few service providers are qualified enough both on the organizational and talent side to deliver effective solutions.
- 2.) It's become more difficult to attract and recruit qualified board members who share a passion for an association's cause. Potential qualified professionals report reluctance to serve based on time constraints and negative public sentiment. This means finding members requires more work and ingenuity than ever before.
- 3.) Companies and organizations that implement effective succession plans report better performance and continuity in their operations. None of us likes to read about leadership failure or a board's inability to make leaders accountable for their actions or inaction. At a core level, succession planning helps alleviate the stress and resistance that often come with making change.

Heidrick & Struggles is uniquely qualified in the areas of succession planning and leadership transition. Attached is a bio with some introductory information. I look forward to speaking with you about how we can serve you and your organization.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale E. Jones".

Dale E. Jones

## Dale E. Jones



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Avenue, NW  
Suite 925  
Washington, DC 20006  
United States

tel: +1 (202) 331 4908  
cell: +1 (404) 723 4396  
fax: +1 (202) 331 4937

[djones@heidrick.com](mailto:djones@heidrick.com)

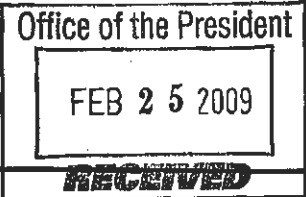
Dale E. Jones is vice chairman and partner of the CEO and Board Practice in the Americas. He re-joined the firm this year after serving as CEO of PlayPlumps International, a non-profit organization that provides clean drinking water to villages in sub-Saharan Africa. To ensure continuity in operations and fund raising, Dale will continue to serve as chair of PlayPumps' global advisory council in 2009.

Dale remains highly active at the corporate and non-profit board levels. He was named to the board of directors at Kohl's Corp. in 2008. This follows a similar appointment to the board of trustees at Northwestern Mutual in May 2007. Prior to joining Northwestern's board, he was a corporate director for Hughes Supply, a \$5.1 billion NYSE-traded company, which was acquired by The Home Depot in 2006. Dale continues to serve on the National Advisory Board of The Salvation Army and also is a member of the Young Presidents Organization (YPO.)

From 1999 to 2007, he served as managing partner of Heidrick's Atlanta office. Early in 2007, he was named managing partner of the firm's CEO and board practice in the Americas. Dale originally joined Heidrick & Struggles in 1999 following tenure with another leading search firm. Prior to entering executive search, he held a series of progressive roles as Executive Director of Quest Atlanta, Assistant Vice President of Charitable Giving at Bank of America (formerly C&S bank) and Director of Development at Morehouse College.

Dale earned a bachelor's degree at Morehouse College in Atlanta and completed course work at the Atlanta University Graduate School of Business.

He and his wife, Yolanda, and their two children, Taylor and Kennedy, continue to reside in Washington, D.C.



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FREDERICK N. EGLER, JR.  
Pittsburgh

February 20, 2008

The Honorable Arlen Specter  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510-3802

Dear Senator Specter:

Over the past two years, I have had the privilege, along with other lawyers from Pennsylvania and the American Bar Association (ABA), to meet with you at your office in connection with the ABA Day in Washington. I write at this time to ask you to participate in a news conference that will highlight the reoccurring theme of ABA Day in Washington: adequate funding for access to legal services.

More than 300 ABA, state, local, territorial and specialty bar leaders from around the country, including many Pennsylvanians, are expected to attend ABA Day, April 21 through April 23, 2009, and will meet with their own Senators and Representatives on this topic.

We believe that you in particular can be instrumental in helping focus public and Congressional attention on the need for access to legal assistance, especially during this time of economic crisis when families are losing their homes, jobs, health care, and more. Last year, the ABA honored you in conjunction with ABA Day and, in particular, recognized your longstanding service on the Judiciary Committee and support of the importance of the rule of law and equal access to our justice system for everyone. You have been an instrumental advocate for adequate funding of The Legal Services Corporation throughout your entire career. Of particular importance to the legal profession was your recent support of the FDIC's inclusion of IOLTA funds, along with payroll accounts, in the unlimited insurance provided under the Temporary Liquidity Guarantee Program. Also noteworthy, was your co-sponsorship of the bipartisan Specter/Casey amendment, which would have added to the stimulus bill \$30 million dollars for foreclosure-related representation. Although ultimately this was not included in the package, your bipartisan leadership alongside Senator Robert Casey was deeply appreciated by the organized Bar.

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E-mail: info@pabar.org • Website: www.pabar.org

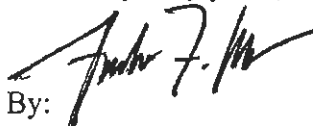
It is our hope, through a news conference, to focus Congressional and public attention on the significant need for adequate funding for legal services. Although I know this goes without saying given your staunch advocacy and support for access to justice, our justice system requires, as an aspect of its fundamental fairness, that the system be accessible to all. We truly believe the inspirational words of Dr. Martin Luther King, Jr., written from a jail cell in Alabama, that injustice anywhere threatens justice everywhere.

I should add that the news conference is being modeled, in concept, on a news conference held in Harrisburg during the year I was President of the Pennsylvania Bar Association (PBA) and which we believe was very successful in focusing public attention on the need and the value of increased funding for legal services. During that news conference, one critical component was having members of the legislature speak at the news conference. In addition, at the Pennsylvania news conference, there were representatives of the organized Bar, as well as clients served by legal services. H. Thomas Wells, Jr., President of the ABA, and a representative client served through legal services, would be the expected to attend and speak at the news conference. The plan would be, assuming you are willing to participate, to give you a front line role in presenting the case at the news conference of the importance of legal services to our justice system.

The news conference is very much in the formative stages and, if you want to be a part of this effort, then, of course, we would seek your good input and counsel regarding both content and site of location, participants, etc.

I greatly appreciate your consideration of this request and hope that you are willing to assist the legal profession in making the case publicly for access to justice.

Very truly yours,

By:   
Andrew F. Susko

AFS:lab

cc: H. Thomas Wells, Jr., ABA President ✓  
Barry M. Simpson, PBA Executive Director  
The Honorable Jan E. DuBois  
(With Enclosures)



## Legal Services Corporation

### ABA Urges FY 2009 Funding Increase

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The Preamble to the U.S. Constitution states that the first enumerated function of government is to “establish justice.” A bipartisan Congress and the Nixon Administration in 1974 created the Legal Services Corporation (LSC) to provide low-income persons access to the justice system through civil legal services. Today, 50 million Americans qualify for federally funded legal assistance. Many of these individuals have significant legal needs and may suddenly be poor because of natural disaster, loss of a job, the break-up of their family, housing loss or uninsured medical care. While the need for civil legal services has increased, LSC funding and our ability to ensure access to the justice system falls far short.

For FY 2009, the House and Senate Appropriations Committees approved \$390 million, a much-needed \$40 million increase. No further action was taken; instead, Congress deferred finalization of most FY 2009 appropriations bills to the 111th Congress and the Obama Administration. As a result, LSC will be funded at its current level of \$350.49 million until the FY 2009 appropriations process is completed.

**The ABA urges the Obama Administration and Congress to approve, at a minimum, the \$40 million increase.** However, dramatic losses incurred by private foundations and cuts in funding from Interest on Lawyer Trust Accounts (IOLTA) programs in some states have resulted in legal aid lawyer lay-offs, thus increasing the number of qualified clients who are turned away. **Therefore, the ABA urges the Administration to address this crisis by providing significantly more funding for LSC, closer to the LSC Board recommended amount of \$471.7 million because:**

- **A crisis exists for the millions of low-income persons who are unable to access the justice system.** The 2005 study, “*Documenting the Justice Gap in America*,” reports that one in every two eligible clients who seeks assistance from a federally funded legal aid program is turned away because of lack of resources. A 1993 ABA study and recent state studies consistently report that despite the combined efforts of LSC-funded programs, state, local and private funding and pro bono efforts, between 70 and 80 percent of the legal needs of the poor are unmet.
- **LSC-funded programs provide assistance to those who suddenly qualify for and need legal assistance, such as when natural or national disaster strikes.** September 11th families, flood victims, and hurricane evacuees have received legal assistance ranging from identity verification to family law issues. There are continually new issues that require legal assistance that disproportionately affect low-income families, including consumer fraud and now the mortgage foreclosure crisis; foreclosures are forcing both low-income home owners and renters from their homes.
- **LSC-funded legal aid lawyers preserve and protect American families; many low-income military families qualify for legal aid.** Local legal aid programs make a real difference in the lives of millions of low-income American families by helping them resolve everyday legal matters, including family law, housing, and consumer issues, and by helping them obtain wrongly denied benefits such as social security and veterans’ pensions. Soldiers and their families most often seek help with estate planning, consumer and landlord/tenant problems and family law.
- **LSC-funded programs prevent a long-term reliance on other government programs, many of which have also suffered funding cuts.** People who are unable to resolve basic legal problems are more likely to experience greater hardships and require assistance from public social services programs.
- **LSC-funded programs are the nation’s primary source of legal assistance for women who are victims of domestic violence.** Legal aid programs identify domestic violence as one of the top priorities in their caseloads. While domestic violence occurs at all income levels, low-income women are significantly more likely to experience violence than other women, according to the U.S. Bureau of Justice Statistics. Recent studies also show that the only public service that reduces domestic abuse in the long term is a woman’s access to legal aid.

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ABA Contact: Julie M. Strandlie, (202) 662-1764; [jstrandlie@staff.abanet.org](mailto:jstrandlie@staff.abanet.org)

January 2009



## Legal Services Corporation

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### ABA Urges FY 2008 Funding Increase

The Preamble to the U.S. Constitution states that the first enumerated function of government is to “establish justice.” A bipartisan Congress and the Nixon Administration in 1974 created the Legal Services Corporation (LSC) to provide low-income persons access to the justice system through civil legal services. Today, 50 million Americans qualify for federally funded legal assistance. Many of these individuals have significant legal needs and may suddenly be poor because of natural disaster, loss of a job, the break-up of their family, housing loss or uninsured medical care. While the need for civil legal services has increased, LSC funding and our ability to ensure access to the justice system falls far short.

For FY 2007, LSC is funded at \$348 million, the highest level since LSC’s funding was severely slashed in 1996 from \$415 million to \$278 million. For FY 2008, the Administration proposed a \$37 million funding cut, reducing LSC’s funding to \$310.2 million – *an amount less than LSC received in 1981*. The bipartisan LSC Board of Directors recommends that Congress fund LSC at \$430 million, an \$82 million increase over FY 2007, as an essential step toward improving access to justice for low-income persons. **The ABA urges Congress to fund LSC at no less than \$430 million because:**

- **A crisis exists for the millions of low-income persons who are unable to access the justice system.** The 2005 study, “*Documenting the Justice Gap in America*”, reports that one in every two eligible clients who seeks assistance from a federally funded legal aid program is turned away because of lack of resources. A 1993 ABA study and recent state studies consistently report that despite the combined efforts of LSC-funded programs, state, local and private funding and pro bono efforts, between 70 and 80 percent of the legal needs of the poor are unmet.
- **LSC-funded programs provide basic legal services for low-income persons in every Congressional district in the country.** LSC disburses 95 percent of its annual federal appropriation to 138 local legal aid programs nationwide. Boards consisting of leaders in the local business and legal communities set the priorities for and oversee these programs, which provide basic civil legal services to the poor.
- **LSC-funded programs provide assistance to those who suddenly qualify for and need legal assistance, such as when natural or national disaster strikes.** September 11th families, flood victims, and hurricane evacuees have received legal assistance ranging from identity verification to family law issues.
- **LSC-funded legal aid lawyers preserve and protect American families; many low-income military families qualify for legal aid.** Local legal aid programs make a real difference in the lives of millions of low-income American families by helping them resolve everyday legal matters, including family law, housing, and consumer issues, and by helping them obtain wrongly denied benefits such as social security and veterans’ pensions. Soldiers and their families most often seek help with estate planning, consumer and landlord/tenant problems and family law.
- **LSC-funded programs prevent a long-term reliance on other government programs, many of which have also suffered funding cuts.** People who are unable to resolve basic legal problems are more likely to experience greater hardships and require assistance from public social services programs. LSC-funded programs, for example, assist parents by enforcing child support payments, reducing reliance on public assistance programs while waiting to receive support payments.
- **LSC-funded programs are the nation’s primary source of legal assistance for women who are victims of domestic violence.** Legal aid programs identify domestic violence as one of the top priorities in their caseloads. While domestic violence occurs at all income levels, low-income women are significantly more likely to experience violence than other women, according to the U.S. Bureau of Justice Statistics. Recent studies also show that the only public service that reduces domestic abuse in the long term is a woman’s access to legal aid.

# CAPITOL HILL HIGH POINT

After a Decade, ABA Day Continues to Grow as a Key Lobbying Effort by the Bar

RHONDA McMILLION

**N**EARLY 300 BAR LEADERS VISITED Capitol Hill on May 3-4 to meet with members of Congress on issues of concern to the legal profession, making this year's ABA Day in Washington, D.C., the largest ever.

The chance to meet face-to-face with congressional delegations is crucial to getting across the organized bar's views on key issues, says H. Thomas Wells Jr. of Birmingham, Ala., who has participated in every ABA Day in Washington since the event began in 1997.

"Participating in ABA Day and in the ABA's legislative advocacy program really makes a difference," says Wells, who co-chaired the planning committee this year with Carolyn B. Lamm of Washington, D.C.

"As a result of ABA Day contacts, members [of Congress] have changed their position on the Legal Services Corp.—one of the ABA's most important issues—and are now strong supporters of LSC funding," Wells says.

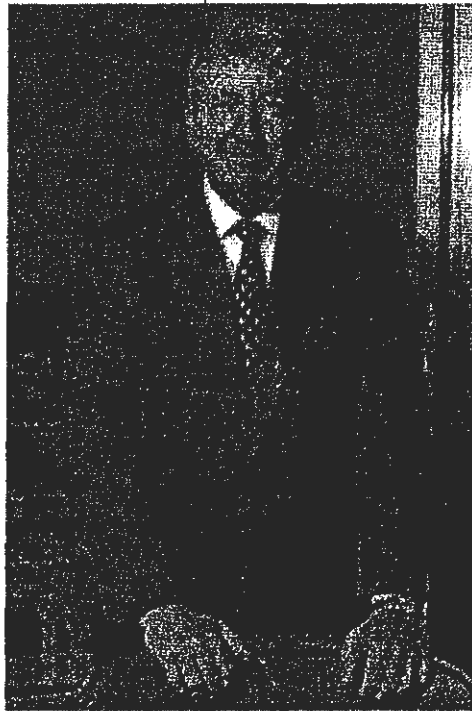
Increased funding for the LSC was one of four issues on which this year's ABA Day participants focused their efforts. In October, the LSC issued a report concluding that at least 80 percent of the civil legal needs of low-income Americans are not being met—a gap that may have widened even more since Hurricane Katrina. Meanwhile, President Bush has asked Congress to cut the LSC's funding in fiscal year 2007 by 5 percent, from \$326.5 million to \$310.2 million. The bipartisan LSC board of directors has requested \$411 million.

*Rhonda McMillion is editor of Washington Letter, an ABA Governmental Affairs Office publication.*

*This column is written by the ABA Governmental Affairs Office and discusses advocacy efforts by the ABA relating to issues being addressed by Congress and the executive branch of the federal government.*

These issues also were on the ABA Day agenda:

- **Attorney-client privilege.** The ABA is seeking congressional support for its efforts to reverse government policies that encourage federal prosecutors to pressure companies and other entities to waive attorney-client privilege and work product protections as a condition for receiving cooperation credits during investigations.
- **Medical liability.** The ABA opposes three medical liability bills in the Senate on grounds that they would pre-empt state laws and restrict damages for patients.
- **Immigration.** The ABA supports comprehensive immigration policy reform that enhances border protections and national security while providing a path to permanent residence for undocumented laborers currently in the United States. The ABA opposes elimination of administrative and judicial review for immigrants, criminalization of civil immigration violations, and mandatory and/or indefinite detention.



Thomas Wells has participated in ABA Day from its inception.

## NAME RECOGNITION

IN CONJUNCTION WITH ITS lobbying efforts, the association recognized Sen. Mike DeWine, R-Ohio, for his long record of improving the justice system's approach to child abuse, neglect cases and foster care, and for his strong advocacy for the Violence Against Women Act.

The ABA also recognized Sen. Barbara Ann Mikulski, D-Md., for her long-standing support for the LSC, including her determined effort in 2005 to restore funding for the corporation.

The ABA presented the first Grassroots Advocacy Awards to lawyer John D. Robb of Albuquerque, N.M., the Lawyers' Campaign for Equal Justice in Oregon, and the Texas Access to Justice Commission. The awards recognize their work with the

ABA on federal legislative issues.

At the annual ABA Day breakfast session, Senate Judiciary Committee Chairman Arlen Specter, R-Pa., and Sen. Edward M. Kennedy, D-Mass., praised the ABA's new policy on domestic electronic surveillance and reiterated their support for the LSC. Rachel L. Brand, assistant attorney general in the Justice Department's Office of Legal Policy, described department priorities. ■

PHOTOGRAPH BY BRILEY BEOWN

# A HEARING ON CAPITOL HILL

## ABA Day Offers the Profession a Chance to Make its Case Before Congress

ROBERT A. STEIN

**A**S THE NATIONAL REPRESENTATIVE of the legal profession, the American Bar Association is actively involved in public policy discussion and advocacy before Congress, the executive branch and other governmental bodies on issues and legislation that directly affect lawyers and the administration of justice. Spearheading this activity is the ABA Governmental Affairs Office based in Washington, D.C.

The ABA lobbies on more than 100 issues in each session of Congress, and these efforts have been highly successful. We have consistently achieved an 85 percent or higher success rate each year in our legislative advocacy, despite the fact that the ABA is a nonpartisan organization, does not endorse candidates and does not make political campaign contributions. An essential part of the association's legislative program is our annual ABA Day in Washington.

ABA Day—co-sponsored this year by the Section Officers Conference and the Young Lawyers Division along with the National Conference of Bar Presidents and the National Association of Bar Executives—provides an opportunity for organized-bar representatives to meet with members of Congress and address issues vital to the justice system. This year's hugely successful ninth annual program, chaired by ABA President-elect nominee Karen J. Mathis, saw a record number of more than 250 bar leaders converge on Capitol Hill in late April.

Attendees participated in more than 250 meetings with members of Congress and their staffs. Awards were presented to Reps. Frank R. Wolf, R-Va., and José E. Serrano, D-N.Y., for their efforts to improve the American justice system as chairman and ranking minority member, respectively, of the House Appropriations subcommittee that provides funding for programs such as

the Legal Services Corp., as well as the federal judiciary and the U.S. Patent and Trademark Office.

This year's ABA Day targeted three primary issues: funding for the LSC, federal pre-emption of state medical malpractice laws, and student loan forgiveness for public interest attorneys. In addition, the GAO offered consultation on several other issues, including bankruptcy reform, immigration, the Lawsuit Abuse Reduction Act and funding for the Thurgood Marshall Legal Educational Opportunity Program.

ABA Day provides important support for the association's lobbying efforts by encouraging bar leaders to be direct advocates for the profession and the justice system before members of Congress. Hearing from lawyers—who implement and work with enacted laws and regulations every day—enables elected officials to more clearly appreciate the impact of their decisions.

### AN IMPRESSIVE LINEUP

TO PROMOTE THE MOST EFFECTIVE INTERACTION BETWEEN participants and members of Congress, ABA Day offers a superb lineup of activities. These include an interactive lobbying session for legislative newcomers on current issues and how to most successfully present them; an in-depth analysis of three key focus issues for the session; assistance for participants in arranging visits with as many members of their congressional delegations as time permits; advice on developing and maintaining relationships with elected officials; and an opportunity for participants, on a first-come, first-served basis, to be admitted to the U.S. Supreme Court. Attendees also receive briefings from congressional leaders on their legislative agendas for the upcoming Congress and on the issues they see as key for the organized bar.

To ensure broad nationwide participation, the GAO conducts targeted outreach to state and local bar associations in advance of the meeting. On-site, the GAO assists participants in setting specific issue-oriented meetings in such areas as criminal justice, patent law and family law. This year, for example, meetings were arranged for 11 members of the Intellectual Property Law Section with the chairman and ranking

member of the House subcommittee on intellectual property and with key House and Senate staff members.

Participating in ABA Day is one of the best ways to keep the channels of communication open with members of Congress, executive branch officials and their staffs, and to learn how to effect change in the legislative arena. Save the dates—May 3-4, 2006—and plan to participate in the next ABA Day in Washington.

For more information, contact Julie M. Strandlie, the outstanding staff director of ABA Day, at 202-662-1764 or via e-mail at [strandlj@staff.abanet.org](mailto:strandlj@staff.abanet.org). ■

*The  
ABA is  
actively  
engaged in the  
national debate  
on public policy.*





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## PBA on the Hill Event Focuses on 'Pennsylvania Lawyers Taking Their Case to Capitol Hill' May 5-6 in Harrisburg

*Editor's Note: The following is excerpted from a speech PBA President Andy Susko gave at the recent PBA on the Hill event, which was held May 5-6 in Harrisburg.*

Today, lawyers from across the commonwealth have joined together here in Harrisburg to bring to the General Assembly issues and concerns of the legal profession. Principal among the issues we will be addressing at PBA Day on the Hill is the accessibility of our justice system to hard-working, low-income Pennsylvanians.

Every year, one million low-income Pennsylvanians benefit from the services of legal aid; thousands more receive free legal services from volunteer Pennsylvania attorneys. Yet estimates from a national study of unmet legal needs commissioned by Legal Services Corp., titled "Documenting the Justice Gap," reveal the depth of the challenge that still remains and that has been identified as the "justice gap" in America. Eighty percent of low-income Americans see their legal needs go unmet. One in every two people who actually go to a legal aid office with a legal problem do not receive representation because the resources are not sufficient to make a lawyer's services available to

them. In Pennsylvania, these national statistics have been confirmed; for nearly every person who is helped by a legal aid entity, one is turned away.

Our justice system is only as fair as it is accessible to all. A justice system that is only available to those who have the means undermines the integrity, the legitimacy and the fundamental fairness of the system. There are landmark legal decisions that set forth critically important legal rights, like *Brown v Board of Education*, holding that separate educational facilities were inherently unequal. But although this landmark decision — along with other significant decisions — creates important rights for our citizens, these important legal rights do not have full meaning and their promise cannot be fully realized when ordinary citizens do not have effective access to our justice system because they cannot meaningfully access a lawyer's services.

So today lawyers have joined with me and the Pennsylvania Bar Association to take our case to the Hill; we seek legislative support of increased state funding for legal services. Because the need is great and state funding has been flat in modern times, cur-



*PBA members showed their support for an additional \$1 million in state funding for civil legal aid during a state Capitol Rotunda rally on May 5. The increase, which would bring state funding for legal aid to \$3.6 million, is currently included in Gov. Ed Rendell's 2008-09 budget proposal. Part of the PBA on the Hill activities, the rally included remarks by PBA President Andrew F. Susko (center), Pennsylvania Legal Aid Network Executive Director Sam Milkes, Sen. Andrew E. Dinniman, Sen. Stewart J. Greenleaf, Sen. Michael O'Park, Rep. Kathy M. Manderino and Dorchina Davala Urrutia, a client of MidPenn Legal Services. The rally also brought attention to two bills that would create a law school student loan repayment program for public service lawyers.*

## PBA on the Hill *Continued from Page 1*

rent shortfalls in legal services funding undermine the fundamental fairness of our justice system. Martin Luther King Jr. wrote, from a jail cell in Birmingham, Ala., that "injustice anywhere threatens justice everywhere." Every time justice is denied, the fabric of the justice system is damaged; every time justice is reached in a case for a legal aid client — even in one case — the justice system is greatly enhanced.

Our nation is dedicated to the principle that our justice system is for everyone, and what we as lawyers know is that access to a lawyer's services often makes the difference between justice and injustice, between heartache and happiness. In the context of protecting a women from abuse, protecting against the loss of one's housing or providing representation on behalf of children whose safety and welfare are at risk, the legal system must be fair and accessible to all. Indeed, this is the principle upon which our very government was founded, and the principle that is embodied in the words concluding our Pledge of Allegiance to our flag: "with liberty and justice for all."

That is why lawyers and legal aid clients are here today; that is why we rally on the Hill in support of increased funding for legal services. Lawyers across this state are deeply committed to the justice system and to its fairness and to the principle that equal justice under the law must be for everyone. This is the promise of our nation's founders — a promise we must as a legal community stand up and fight for every day.

In a few moments you will hear from Sam Milkes, executive director of the Pennsylvania Legal Aid Network. You will also hear from legal aid client Dorchina Urrutia, Rep. Kathy Manderino, Sen. Andrew Dinniman and Sen. Stewart Greenleaf.

Before I call on Sam, I want to share a story with you that provides a powerful illustration that legal services can be a positive sum gain, not only for those Pennsylvanians who directly benefit from the program but for all Pennsylvanians.

Legal aid client Susan F., a single mother of three children ages seven, three and one, applied for a job driving a bus. The job offered the prospect and hope of working perfectly with her children's schedules, and the resulting income would have allowed her family to live on her income instead of public assistance. But she had been charged — not convicted — of an offense as a juvenile. She needed her record expunged to be able to drive the bus. Although Neighborhood Legal Services filed a petition to expunge her record, the district attorney's office initially objected. Legal Services had the client provide the letter of hire from her new employer stating that she would not be able to work unless her record was cleared. As a result of the work of Neighborhood Legal Services, the DA's office withdrew the objection, the court, on petition, agreed to expunge Susan's record and she is now happily able to support her three children. This is one of hundreds of success stories that vividly demonstrates that legal aid benefits not only the client but in many cases every Pennsylvanian. Our justice system is only as fair as it is accessible to everyone, and these stories and many others dramatically demonstrate that increased funding for legal services is both necessary and justified.

And now it is my pleasure to call on Sam Milkes, executive director of the Pennsylvania Legal Aid Network, who will document the legal services funding needs here in Pennsylvania. Sam Milkes is responsible for coordinating and making effective the legal aid program in Pennsylvania. He, along with eight regional legal aid program directors and six special program directors, provides individualized legal services to nearly 100,000 clients annually. Sam has been a tremendously effective executive director and is a proven and spirited advocate for legal services and legal services funding here in Pennsylvania.

# CENTRAL PENN BUSINESS JOURNAL

STATE

## Lawyers: Aid gap hinders justice

BY DAVID DAGAN  
davidd@journalpub.com

Lawyers say they cannot keep up with the growing demand for free assistance in civil cases dealing with issues such as child custody, home foreclosures and medical bills.

"It's an issue about fairness of our justice system," said Andrew R. Susko, president of the Pennsylvania Bar Association. "It's not a pocketbook or bread-and-butter issue for lawyers, but it is an issue that the legal community is deeply concerned about."



Susko

Society pays for the failures of legal assistance through its safety-net programs, Susko said.

Anybody who watches cop shows knows that criminal defendants have the right to a government-funded lawyer, said state Rep. Kathy Manderino, D-Montgomery, Philadelphia counties. That's not true in civil cases, even though the stakes there can be just as high, she said. Manderino spoke at a May 5 event in which various legal groups called on the state to do more for legal aid.

The growing gap between the capacity of the legal-aid system and the

please see **GAP**, page 26

# GAP: Legal groups want Pa. to increase support for aid programs

continued from page 23

demand is also a business concern, said Samuel W. Milkes, executive director of the Pennsylvania Legal Aid Network.

Lawyers can help antagonists solve disputes without litigating, he said.

"Disputes get resolved much more readily if each side ... is getting advice, you know — 'You're being reasonable here, you're not being reasonable here,'" Milkes said.

Legal-aid organizations make contact with almost 1 million Pennsylvania residents annu-

ally, and law firms provide free services to thousands more, according to the Pennsylvania Bar Association. Some 100,000 people are represented annually by legal-aid lawyers, and the same number is turned away for lack of resources, Susko said.

More people do not even ask for help, advocates say. By some accounts, only 20 percent of the need for free legal assistance is being met, Milkes said.



Milkes

"It's a life-balance question for them," Durkin said.

Gaetano D'Andrea, who graduated from Widener this year, is not working in legal aid, but he has taken a public-service job with a limited salary. D'Andrea, 27, will work for the Philadelphia district attorney at an annual salary of about \$49,000. By comparison, D'Andrea estimates he could earn between \$65,000 and \$100,000 at a private law firm, depending on the location. With the lower salary, D'Andrea said he will struggle to pay off his \$120,000 in student debt.

"It's going to literally be paycheck to paycheck," he said.

D'Andrea stretched his loan term from 10 to 30 years, dropping his monthly payments to about \$800. He plans to get rid of his 2005 Chevy Cobalt and to limit how much he spends on food and going out.

D'Andrea plans to stick around the prosecutor's office as long as he can.

"You actually see the people you help," he said. "My goal is to make a career out of it." ■

To help close the gap, legal groups are calling for the state to bump up its support for legal-aid programs by \$1 million, to \$3.6 million annually. The groups also want the state to offer student-loan repayment programs that would help more lawyers get into public service, where salaries are lower than in the private sector.

But direct state funding is only a fraction of the roughly \$70 million spent annually on legal aid in Pennsylvania, according to the groups. Other sources include the federal government and a program that collects interest

on funds that attorneys hold temporarily for their clients. The bar association sought a \$4 million increase in state funding, but Gov. Ed Rendell's administration agreed to bump the figure by only \$1 million in its budget proposal for the next fiscal year, Susko said.

The bar association is doing other things to ease the crunch. The association cooperates with other groups to run [www.palawhelp.org](http://www.palawhelp.org), a self-help Web site. The association also wants to make it easier for lawyers to provide informal assistance for as a little as a day. The idea is to create official programs through which lawyers can offer limited representation, which is otherwise difficult to do. If clients consult with a lawyer who can say how a court might act, they will navigate the system more easily, Susko said.

"That information is power," he said.

The legal groups also want the state to help lawyers in public service pay off their law school loans. Chances are that more young graduates are weighing this problem.

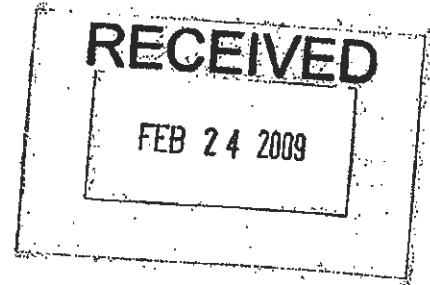
"I see more and more students who would be candidates for large firms opt to go into government service," said Karen Durkin, director of career development at the Dauphin County campus of Widener University School of Law. That partly reflects a commitment to public service by this generation, but it is also a lifestyle choice, she said. Public-sector lawyers have steadier hours and generally work less than those who join the private sector.

**"It's going to literally be paycheck to paycheck."**

**Gaetano D'Andrea, graduate of Widener University School of Law**



SUPREME JUDICIAL COURT  
JOHN ADAMS COURTHOUSE



MARGARET H. MARSHALL  
CHIEF JUSTICE

February 19, 2009

H. Thomas Wells, Jr., Esq.  
Maynard Cooper & Gale, PC  
24 Regions/Harbert Plaza  
1901 6th Avenue North  
Birmingham, AL 35203-2603

Dear President Wells,

It was a particular pleasure to see you in Boston and to participate in many of the American Bar Association events throughout the week. It was also an honor to have the opportunity to address the ABA House of Delegates as President of the Conference of Chief Justices.

The Chief Justices were most pleased that you were able to join us at the CCJ Midyear Meeting in Arizona. I hope that you and I have launched a tradition, and that both of our organizations will continue to maintain even closer collaboration and mutual support.

I look forward to seeing you at the ABA Summit on Fair and Impartial State Courts in Charlotte in May.

My best wishes to you.

Yours sincerely,

Margaret H. Marshall

cc: Mary Campbell McQueen



THE FLORIDA STATE UNIVERSITY  
COLLEGE OF LAW

*Talbot D'Alemberte*  
*President Emeritus and Professor*

February 19, 2009

H. Thomas Wells  
President  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60654-7598

Dear Mr. Wells:

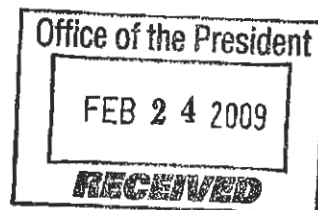
Attached is an article Sandy D'Alemberte wrote which has been published in the International Bar News, February 2009.

Sandy wanted you to have a copy of the article.

Sincerely,

Lynn S. Peacock  
Assistant to Sandy D'Alemberte

Enclosure



# US: out of step on international human rights obligation


The Vienna Convention on Consular Relations stipulates that when a foreign national is arrested he has the right to assistance from the consul of his nation. **Talbot D'Alemberte** looks at why this has not been consistently applied in the US and whether there might be any practical way forward.

**W**hen Colin Powell endorsed Barack Obama before the American presidential election, he noted that it was up to the next president 'to fix the reputation that we've left with the rest of the world.' Certainly this includes repairing America's reputation as a defender of international human rights, a challenge the United States should address by closing Guantánamo and drastically changing the procedure for trying detainees.

A key issue to examine here is US compliance with international treaty obligations, and a good place to start is the decision last year in

*Mexico v United States of America (Avena)*. *Avena* raises the issue of US compliance with the Vienna Convention on Consular Relations which requires that, when a foreign national is arrested, the arresting party shall inform the detainee of his right 'to request assistance from the consul of his nation,' and when the detainee requests, 'the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State.'

Before the 2008 *Avena* decision, the United States executive branch had taken exceptional steps to demonstrate its respect for the International Court of Justice as well as the



Talbot D'Alemberte  
President, Friends and  
Professor of Law at  
Florida State University  
and Past President  
of the American  
Bar Association. He  
can be contacted at  
dalember@fsu.edu

2004 *Avena* decision which, like earlier cases brought by Paraguay and Germany, had results adverse to the United States and led to American apologies and promises of improvement.

The Bush Administration made *amici* appearances in both Texas and federal courts, informed state Attorney General of the implications that flow from the failure to inform foreign governments when one of their citizens is arrested, made appeals to the Texas authorities and, most remarkably, issued a Presidential Memorandum that stated:

'I have determined, pursuant to the authority vested in me as President by the Constitution and laws of the United States, that the United States will discharge its international obligations under the decision of the International Court of Justice in [*Avena*] by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision...'

In *Medellín v Texas*, the United States Supreme Court rejected the Bush Administration's attempt to direct the state court and upheld the Texas decision. José Ernesto Medellín, a Mexican citizen, was executed even though the United States admitted a breach of its duty to inform Medellín of his right to have the Mexican consul notified of his arrest.

To examine this problem, we must walk into a house of mirrors: detainees usually do not know of their right to request that their consulate be informed, and arresting authorities typically do not inform them of that right despite the fact that they are required by the treaty to do so. Though failure to inform foreign nationals promptly of their rights constitutes a treaty violation, this breach of duty may never be raised if it is not brought before the trial court as quickly as possible. This is because US courts have applied principles of 'procedural default'—a doctrine which holds that issues not brought promptly for decision before the trial court are waived. As the World Court points out, application of the procedural default rule means that, in practice, the right to be informed is an empty right where a person who does not know of their right to have their consul notified is not able to exercise that right. In effect, the requirement that the

accused promptly raise the treaty issue trumps the state's duty to inform the detainee and, on request, his consul.

If we do not care about this issue, we can simply note that the 2005 withdrawal by the US from the Optional Protocol and the jurisdiction of the ICJ may mean that the United States is less likely to have embarrassing World Court decisions rendered against it in the future. But the United States does care about the issue and is quite insistent that other nations inform the US government when one of its own citizens is arrested. A failure to provide an adequate system of communication in the United States undermines efforts to protect United States citizens in foreign lands.

#### Extra-legal approaches to the *Avena* problem

A useful framework for the proposals that follow is an analysis of state interest. Since states have authority to adjudicate cases which touch on core issues of international human rights law, particularly regarding capital punishment, there is a very real possibility that international trade pressure may be brought to bear to force states to conform to international norms. If South Africa could be moved by boycotts to abandon apartheid, then concerted economic pressure might convince states to rethink their human rights regimes.

The idea of using economic boycotts against subnational units has not yet been put into action, but at least one commentator has raised the possibility. Hofstra University law professor Peter Spiro observed: 'Local authorities now perceive the international marketplace to be an important factor in overall economic prosperity.' Professor Spiro notes that, among the many indicators of state and local interest in foreign trade, official trade missions and foreign trade offices are now a significant feature of economic development activities. He argues that this sets up a new dynamic.

'There are no practical impediments to establishing direct transnational, inter-level contacts where interests might demand them, at the same time that the niceties of diplomacy no longer appear to impede such communications.'

*'If South Africa could be moved by boycotts to abandon apartheid, then concerted economic pressure might convince states to rethink their human rights regimes.'*



*'Detainees usually do not know of their right ... and arresting authorities typically do not inform them of that right despite the fact that they are required by the treaty to do so'*

This could have profound consequences for notions of state responsibility. The critical last step in the analysis: insofar as subnational actors see rewards in the global marketplace, they may also be subject to its discipline... A governor would no doubt listen more carefully to a foreign official were his message to implicate exports and investment. Such possibilities exist today in a way that they did not fifty or even fifteen years ago...

There certainly are examples of foreign appeals directly to states on human rights issues—particularly capital punishment. There have also been instances when state and local governments have sought to use economic pressure against foreign countries.

Even if not implemented, a credible threat of boycott would help to focus attention on the failure of individual states to implement rights promised by the US federal government.

#### **Legislation: state or federal?**

Short of reappraising procedural default rules or changing the principle that treaties not be self-executing—both of which are unlikely—there are several possible remedies to the situation raised by the *Avena* case and the Medellín execution.

Most obvious is the adoption of state statutes recognizing the decisions of the World Court. To advance this idea, the Commissioners for Uniform State Laws and the American Law Institute could play a useful role in providing

guidance to states. Alternatively, a federal statute could require recognition of World Court decisions regarding human rights. After all, the United States has figured this out with trade agreements.

A simple idea that may be easy to implement is modification of 'Miranda' warnings (where police in the US advise suspects of their rights). Simply informing anyone who is arrested: 'If you are a citizen of another nation, you have the right to have the consul of that country in front of you at arrest' should fulfil US treaty obligations assuming that any request to notify the consulate is honoured. This would also be an effective way to educate law enforcement officials of treaty rights and obligations. If the federal government were to take the lead in adopting such a rule, states would be likely to follow. An equally simple solution would be a court rule requiring that those arrested are informed at their arraignment of their right to consular notification. Incorporating this language into the police standard arraignment script will ensure that defendants, counsel and others are regularly informed about this duty that the United States owes to other nations.

The World Court decision in the 2008 *Avena* case highlights a serious shortcoming in the international human rights regime in the United States. If the US can resolve this problem and repair the damage done to its reputation, perhaps it can move on to fully bring into being the rights it has promised to protect. ☒

STEVEN R. SCHUH  
Legislative District 31  
Anne Arundel County

Appropriations Committee



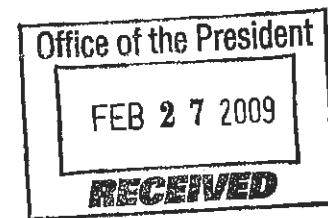
*The Maryland House of Delegates*  
ANNAPOLIS, MARYLAND 21401

*Annapolis Office*  
The Maryland House of Delegates  
6 Bladen Street, Room 156  
Annapolis, Maryland 21401  
410-841-3206 • 301-858-3206  
800-492-7122 Ext. 3206  
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Steve.Schuh@house.state.md.us

*District Office*  
P. O. Box 47  
1710 Skippers Row  
Gibson Island, Maryland 21056  
410-255-6323  
Fax 410-255-0586

February 9, 2009

Mr. H. Thomas Wells  
American Bar Association  
740 15th Street, N.W.  
Washington, DC 20005



RE: Good Samaritan Corporate Liability Protection

Dear Mr. Wells:

While we hope that a major disaster never arises in Maryland, it is important that we be prepared. Under current law, organizations such as the American Red Cross and the Salvation Army are impeded in their abilities to mobilize volunteers in the context of a large-scale disaster. Currently, these entities do not enjoy liability protection, even if directed into action by FEMA or MEMA in the context of a declared Statewide emergency. As reported by the Robert Wood Johnson Foundation (Trust for America's Health) Maryland scored a 5 (the lowest rating achieved by any state) in part because of our State's lack of liability protections for providers of relief services during major disasters.

Please find attached a bill entitled House Bill 514 (Good Samaritan – State of Emergency – Liability Protection).

The purposes of this bill are to:

- Facilitate the activation of large numbers of volunteers to assist in relief and mitigation of a major disaster (e.g. pandemic or chemical/biological/nuclear attack).
- Provide liability protection to corporate entities providing disaster-relief services under the following very limited circumstances:
  - Only upon declaration of a State of Emergency by the Governor
  - Only upon the organization being directed into action by the State's emergency management personnel
  - Only if disaster relief services are rendered without compensation
  - Only in the absence of gross negligence or willful misconduct

I hope that you will actively support this bill and testify in support of it. Please contact my Legislative Aide, Danielle Iman, at (410) 841-3206 or via email at [diman@house.state.md.us](mailto:diman@house.state.md.us) to inform us of your intentions to participate. If you would like to view an electronic version of the bill or find a bill hearing date, please follow the enclosed instructions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Steve / dme". The signature is written in a cursive, flowing style.

Steven R. Schuh  
Delegate

Enclosure

# HOUSE BILL 514

D3

9lr2266  
CF 9lr2946

---

By: **Delegates Schuh and Reznik**

Introduced and read first time: February 5, 2009

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Good Samaritan Laws - Corporations**

3 FOR the purpose of providing that a corporation that provides services or goods in  
4 response to a state of emergency proclaimed by the Governor is not liable in  
5 damages, under certain circumstances, for personal injury, wrongful death,  
6 property damage, or other loss caused by an act, error, or omission, in providing  
7 the services or goods; providing for certain exceptions; providing for the  
8 construction and application of this Act; and generally relating to certain  
9 liability protection for a corporation that provides services or goods in response  
10 to a state of emergency proclaimed by the Governor under certain  
11 circumstances.

12 BY adding to

13 Article - Courts and Judicial Proceedings

14 Section 5-642

15 Annotated Code of Maryland

16 (2006 Replacement Volume and 2008 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 **5-642.**

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
22 MEANINGS INDICATED.

23

24

25  
26  
27  
28

---

**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.



1           (D) (1) THIS SECTION DOES NOT CREATE, AND MAY NOT BE  
2 CONSTRUED AS CREATING, A NEW CAUSE OF ACTION OR SUBSTANTIVE LEGAL  
3 RIGHT AGAINST A CORPORATION THAT PROVIDES SERVICES OR GOODS.

4           (2) THIS SECTION DOES NOT AFFECT, AND MAY NOT BE  
5 CONSTRUED AS AFFECTING, ANY IMMUNITIES FROM CIVIL LIABILITY OR  
6 DEFENSES ESTABLISHED BY ANY OTHER PROVISIONS OF THE CODE OR  
7 AVAILABLE AT COMMON LAW, TO WHICH A CORPORATION MAY BE ENTITLED.

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
9 construed to apply only prospectively and may not be applied or interpreted to have  
10 any effect on or application to any cause of action arising before the effective date of  
11 this Act.

12           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2009.

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## Bill & Testimony Information Sheet

Office of Delegate Steven R. Schuh

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### To View an Electronic Copy of the Bill

- Go to the Maryland General Assembly's website: <http://mlis.state.md.us>
- Scroll to mid-page and search by sponsor, bill number or subject
  - By sponsor: Click "Sponsor" under the Bill Index heading and select "Schuh, Steven, R., Delegate District 31" from the drop down menu.
  - By subject: Click "One or two subject" under the Bill Index heading and select the subject of the bill(s) that you are searching.
  - By bill number: Type in the bill number under the Bill Information and Status heading. Further clarification about this search feature is available on the homepage of the website.
- Once you have selected the bill of interest, click "First Reading" under the Documents heading for a copy of the bill.

### To Find a Bill Hearing Date/Time

- Follow the first two steps in the instructions above.
- Once you have selected the appropriate bill, you can find the bill's hearing date under the heading entitled, "History by Legislative and Calendar Date."

### To Testify or Submit Testimony for a Bill

- Notify Danielle Iman at 410-841-3206 or via email at [diman@house.state.md.us](mailto:diman@house.state.md.us) of your intentions to testify for a bill.
- Submit written testimony (either alone or part of a personal appearance) to our office by email (preferred) or fax 48 hours prior to a bill hearing.
- Show up at least 10 minutes prior to the bill hearing to ensure that you are signed in on the witness register located outside of the respective committee room.

ISSUE REPORT

# Ready or Not?

PROTECTING THE PUBLIC'S HEALTH FROM  
DISEASES, DISASTERS,  
AND BIOTERRORISM **2008**



 Trust for  
America's Health  
[WWW.HEALTHYAMERICANS.ORG](http://WWW.HEALTHYAMERICANS.ORG)

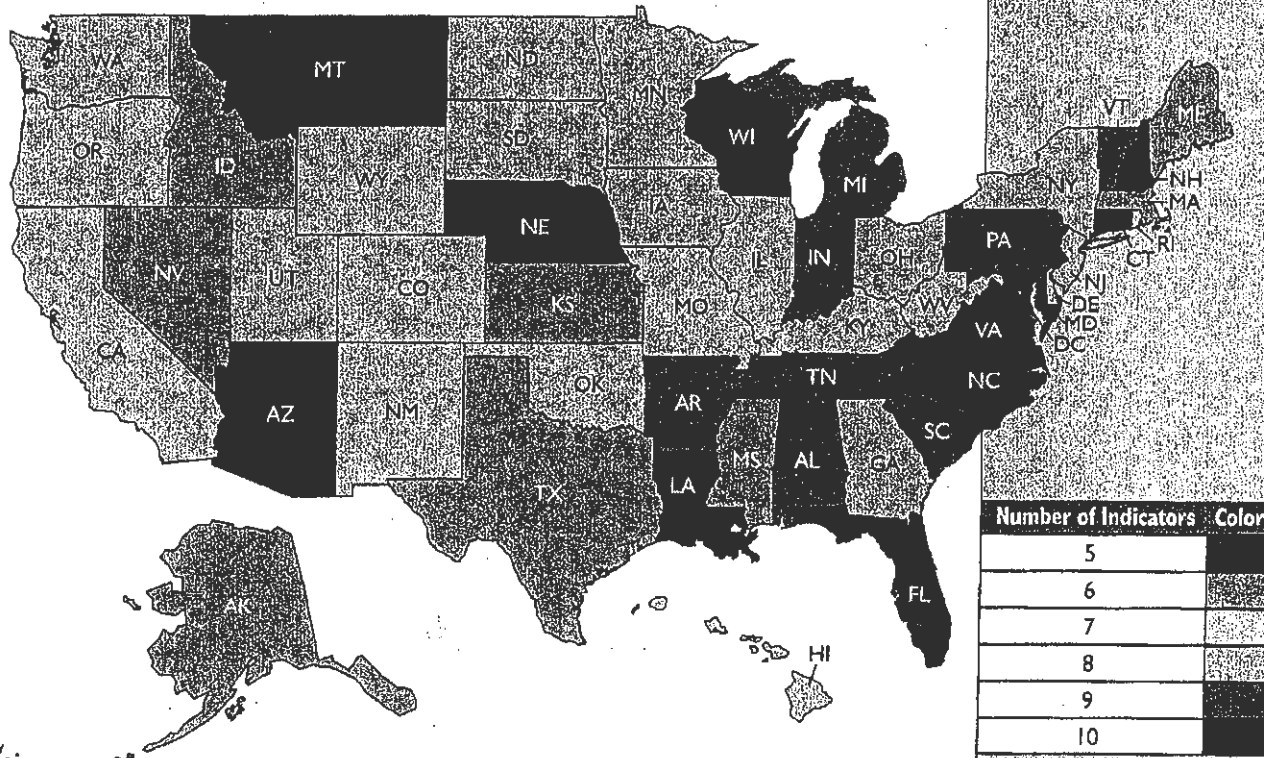


Robert Wood Johnson Foundation

PREVENTING EPIDEMICS.  
PROTECTING PEOPLE.

states and D.C. Many states have taken action in other areas of preparedness or may be in the process of increasing certain capabilities not reflected in this report. In some

cases, TFAH is reporting data that shows an improvement upon the state scores CDC published in February 2008, representing progress over the past year.



Number of Indicators	Color
5	Very Light Gray
6	White
7	Light Gray
8	Medium Gray
9	Dark Gray
10	Black

SCORES BY STATE					
10 (5 states)	9 (8 states)	8 (9 states)	7 (14 states & D.C.)	6 (8 states)	5 (6 states)
Louisiana	Arkansas*	Delaware	California	Alaska	Arizona
New Hampshire	Alabama	Georgia	Colorado	Idaho	Connecticut
North Carolina	Indiana	Hawaii	D.C.	Kansas	Florida
Virginia	Michigan	Iowa	Illinois	Maine	Maryland
Wisconsin	Pennsylvania	Minnesota	Kentucky	Massachusetts	Montana
	South Carolina	North Dakota	Missouri	Mississippi	Nebraska
	Tennessee	Ohio	New Jersey	Nevada	
	Vermont	South Dakota	New Mexico	Texas	
		Washington	New York		
			Oklahoma		
			Oregon		
			Rhode Island		
			Utah		
			West Virginia		
			Wyoming		

\* Note: Arkansas's score has been revised. The state provided information confirming they have a Medical Reserve Corps Coordinator after the original release of the report.



## STATE PREPAREDNESS SCORES

States	1 Has adequate plans to distribute emergency vaccines, antidotes and medical supplies from the SNS	2 Purchased 50 percent or more of its share of federally subsidized antivirals	3 State public health lab has an intra-state courier system (non-mail) that operates 24 hours per day for specimen pickup and delivery	4 State public health lab can meet the expectations of the state's pandemic influenza plan	5 Has a disease tracking system to collect and monitor data electronically via the Internet	6 Has laws that reduce or limit the liability exposure for health care volunteers who serve in a public health emergency	7 Has laws that reduce or limit the liability for businesses and non-profit organizations that serve in a public health emergency	8 State has a Medical Reserve Corps (MRC) Coordinator	9 State identified the pathogen responsible for reported foodborne disease outbreaks at a rate that met or exceeded the national average of 44 percent (combined data 2004-2006)	10 Increased or maintained level of funding for public health services from FY 2006-07 to FY 2007-08	2008 Total Score
Alabama	✓	✓	✓	✓	✓	✓	✓	✓	✓	9	
Alaska	✓	✓		✓	✓			✓	✓	6	
Arizona	✓			✓	✓	✓			✓	5	
Arkansas*	✓	✓	✓		✓	✓	✓	✓		9	
California	✓	✓		✓	✓	✓	✓		✓	7	
Colorado	✓			✓	✓	✓	✓	✓		7	
Connecticut	✓			✓	✓	✓	✓	✓		5	
Delaware	✓	✓	✓	✓	✓	✓			✓	8	
District of Columbia	✓	✓			✓	✓	✓			7	
Florida	✓			✓	✓	✓	✓		✓	5	
Georgia	✓	✓		✓	✓	✓	✓		✓	8	
Hawaii	✓			✓	✓	✓	✓	✓		8	
Idaho	✓			✓	✓	✓	✓	✓		6	
Illinois	✓	✓		✓	✓	✓	✓		✓	7	
Indiana	✓	✓		✓	✓	✓	✓	✓	✓	9	
Iowa	✓	✓	✓	✓	✓	✓	✓		✓	8	
Kansas	✓	✓	✓			✓	✓		✓	6	
Kentucky	✓	✓		✓	✓	✓	✓		✓	7	
Louisiana	✓	✓	✓	✓	✓	✓	✓	✓	✓	10	
Maine	✓			✓	✓	✓	✓		✓	6	
Maryland	✓		✓	✓	✓	✓	✓			5	
Massachusetts	✓			✓	✓		✓	✓	✓	6	
Michigan	✓	✓	✓		✓	✓	✓		✓	9	
Minnesota	✓	✓	✓	✓	✓	✓	✓	✓	✓	8	
Mississippi	✓	✓	✓	✓	✓	✓			✓	6	
Missouri	✓		✓	✓	✓	✓			✓	7	
Montana	✓		✓	✓	✓	✓			✓	5	
Nebraska	✓			✓	✓	✓		✓		5	
Nevada	✓	✓		✓	✓	✓	✓	✓		6	
New Hampshire	✓	✓	✓	✓	✓	✓	✓	✓	✓	10	
New Jersey	✓	✓		✓	✓	✓	✓			7	
New Mexico	✓			✓	✓	✓	✓		✓	7	
New York	✓	✓		✓	✓	✓	✓		✓	7	
North Carolina	✓	✓	✓	✓	✓	✓	✓	✓	✓	10	
North Dakota	✓	✓		✓	✓	✓	✓	✓	✓	8	
Ohio	✓	✓	✓		✓	✓	✓	✓	✓	8	
Oklahoma	✓		✓	✓	✓	✓	✓		✓	7	
Oregon	✓		✓	✓	✓	✓		✓	✓	7	
Pennsylvania	✓	✓	✓		✓	✓	✓	✓		9	
Rhode Island	✓			✓	✓	✓	✓	✓	✓	7	
South Carolina	✓	✓	✓	✓	✓	✓	✓		✓	9	
South Dakota	✓	✓	✓	✓	✓	✓	✓	✓	✓	8	
Tennessee	✓	✓	✓	✓	✓	✓	✓	✓	✓	9	
Texas	✓		✓	✓	✓	✓	✓		✓	6	
Utah	✓			✓	✓	✓	✓	✓	✓	7	
Vermont	✓	✓	✓	✓	✓	✓	✓	✓	✓	9	
Virginia	✓	✓	✓	✓	✓	✓	✓	✓	✓	10	
Washington	✓	✓		✓	✓	✓	✓		✓	8	
West Virginia	✓	✓		✓	✓	✓	✓	✓		7	
Wisconsin	✓	✓	✓	✓	✓	✓	✓	✓	✓	10	
Wyoming	✓	✓	✓	✓	✓	✓	✓	✓	✓	7	
Total	50+D.C.	34+D.C.	26	47+D.C.	44+D.C.	42+D.C.	24+D.C.	34+D.C.	30	39	

\* Note: Arkansas's score has been revised. The state provided information confirming they have a Medical Reserve Corps Coordinator after the original release of the report.