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2008-05-05 H. Thomas Wells, Jr. ABA Presidential Speech

H. Thomas Wells Jr.

University of Alabama School of Law

Introduced by: Betsy McGeever

Audience: Approx. 200 bar leaders

Duration: 20-30 minutes

Thank you, Betsy. It's a pleasure to be with all of you at this marvelous Hotel DuPont. As impressive as our surroundings are, they can't begin to compare to the achievements of today's honorees. Mr. Dell'Olio, Mr. McGriffin, and Ms. Green, your contributions remind us, especially on Law Day, of the law's central role in building communities of opportunity and equity.

And as you remind us, this is true whether such efforts are made by lawyers, or by our fellow citizens in other fields. Or, perhaps best of all, by working together.

I often say that it's easy to make a dollar, but it's harder to make a difference. Joe Dell'Olio, Jim McGriffin, and Marge Green have, indeed, made a difference. I'm grateful to be here today to acknowledge and learn more about their contributions and achievements.

It's also a real honor to be incoming ABA president on this, the 50th anniversary of Law Day. No bar presidential initiative has had the universal brilliance, or the staying power, of Law Day—an idea my predecessor, ABA President Charles Rhyne, developed in 1957. A year later, in 1958, President Eisenhower declared Law Day a federal commemoration—hence the golden anniversary we're now celebrating.

We're focusing this year on the theme, "The Rule of Law: Foundation for

Communities of Opportunity and Equity."

The theme—with its emphasis on community—encourages us to contemplate how the rule of law is essential to sustaining a free society.

The rule of law is about community. It's not just a matter of concern to lawyers and judges. It's the rule of *law*, not the rule of *lawyers*. It affects *all* people from *all* walks of life and in *all* fields.

So it's not just lawyers and judges whom our U.S. presidents have addressed when proclaiming Law Day on May 1 of every year for the past 50 years. Our presidents have made it clear that every citizen has a stake in advancing the rule of law.

The first presidential proclamation of Law Day—by President Eisenhower in 1958—stated that Law Day would be, quote, "a day of national dedication to the principles of government under law."

Subsequent presidential proclamations during Law Day's first decade provide a snapshot history of our national community. These proclamations expressed the importance of the rule of law through the lens of the significant challenges of the day.

The earliest years of Law Day—the late 1950s and early 1960s—were the apex of the Cold War. Many of you know that it's no coincidence Law Day is celebrated each year on or around *May 1.* Throughout most of the world, May 1 is

known not as Law Day, but as May Day, with a strong connection to the labor and union movement. In the 20th century, the Soviet bloc appropriated May Day as a celebration of communism and the totalitarianism that sustained it.

Thus, one of the primary aims of *Law* Day, as expressed in President Kennedy's 1963 proclamation, was to, quote, "become the significant answer to Communism's May Day demonstrations." At the time, Americans were often shown news footage of Soviet May Day parades

with tanks, missiles, and soldiers marching in lockstep.

These May Day images were likely to be fresh in President Eisenhower's mind when he issued the first Law Day proclamation—in 1958. He asserted that, quote, "the principle of guaranteed fundamental rights of individuals under the law is the heart and sinew of our Nation, and distinguishes *our* governmental system from the type of government that rules by *might alone.*"

Though the Cold War provided the explicit and oft-discussed inspiration for Law Day, another crucial phenomenon was evolving—one that's often overlooked in tracing Law Day's origins.

The year ABA President Rhyne developed the Law Day concept—1957—was a landmark year in America's civil rights movement. 1957 was the year the city of Little Rock, Arkansas, made worldwide headlines during the fight to desegregate its public schools, particularly at Central High School.

Ultimately, after a weeks'-long standoff, President Eisenhower took the extreme but necessary step of federalizing the Arkansas National Guard, which Governor Orval Faubus had earlier deployed to prevent nine African-American students from entering the all-white school. The president then ordered a thousand members of the U.S. Army's 101st Airborne Division to protect the Little Rock Nine as they approached the school building and attended classes.

President Eisenhower's actions not only restored order in Little Rock. They also resolved a constitutional crisis by upholding the law of the land—the law expressed in the Supreme Court's landmark ruling three years earlier in *Brown v. Board of Education.*

In addition to the Cold War context, it was in *this* context that President Eisenhower established Law Day to reaffirm our national commitment to the rule of law. He was persuaded by Charlie Rhyne, an ardent civil rights advocate.

When President Eisenhower issued the second-annual Law Day proclamation, in 1959, he was likely to be thinking internationally as well as domestically—not only of America's battles against communism, but also of its internal civil rights struggles.

The 1959 proclamation begins with a plea that, quote, "free people can assure the blessings of liberty for themselves only if they recognize the necessity that the rule of law shall be supreme and that all men shall be equal before the law."

Four years later, in 1963, President Kennedy continued the Law Day tradition of advocating for the rule of law. This time, his audience was an American public that had just lived through the Cuban missile crisis and the very real fear of nuclear annihilation.

In that context, here's how President Kennedy's proclamation of 1963 read:

"In a time when all men are properly concerned lest nations, forgetting law, reason, and moral existence, turn to mutual destruction, we have all the more

need to work for a day when law may govern nations as it does men within nations . . . when the moral development of the human race may assure us of a peaceful and law-abiding world."

Fast forward a few years to the middle of President Johnson's term—where we find a different America. It was a time when the nation, and the president, wrestled with civil disobedience, struggles for—*and against*—equal justice, and violent confrontations in the streets.

It was a time when civil rights at home and the war in Vietnam abroad were on the minds of everyone in our communities throughout America.

The well-heeled, black-and-white days of the 1950s and early '60s—when "Father Knew Best"—had given way to "questioning authority" and our nation's expanding social consciousness.

Consider LBJ's Law Day proclamation of 1967, the year of the Summer of Love, in which he spoke directly to Americans in the first person:

"I ask every American to take the law into his *heart*—not into his hands." He added, "I ask not *blind* obedience, but *enlightened* obedience. I ask patience, too, for the law, like our times, will and must change. But [and here's the main point] America's fidelity to the law must be eternal."

The next year's proclamation from President Johnson, in 1968, picks up this theme again, but deepens the emphasis on law as a democratic instrument for constructive social change:

"The law we recognize and respect is not the mere exercise of power," Johnson's proclamation read. "It is not just a device to enforce the status quo. Law is a process of continuous growth that allows the creation of new rights for all men through a deliberative, democratic process . . . without recourse to self-defeating violence."

With the benefit of historical perspective on this 50th anniversary of Law Day, we can see how these proclamations from Law Day's first

decade reflect the key issues of the day—not just of the bar, but of the community as a whole.

They showcase the attitudes and values our presidents expressed toward the rule of law and its role in our broader society.

As we look back at the 20th century to honor this 50th anniversary or Law Day, we can also look ahead to the 21st century and the meaning of this year's Law Day theme—"The Rule of Law: Foundation

for Communities of Opportunity and Equity."

Today, the Berlin Wall is gone, and so is the Soviet system that created it. Since the wall came down (for almost 20 years now), the American Bar Association—through our Rule of Law Initiative—has given technical legal assistance to emerging democracies in the former Soviet bloc, Latin America, Africa, Asia, and the Middle East. We are now operating such programs in 47 countries.

These activities send volunteer lawyers from America to share their expertise with lawyers overseas who understand an important truth—that developing the rule of law is the first, crucial step in building the communities of opportunity and equity they seek.

Our rule of law activities have other benefits: They strengthen our profession's international ties as our world becomes more global. And they remind us here at home that we must

promote and cherish the rule of law at every opportunity.

This point was made clear by my friend Hank White, a retired rear admiral, and a lawyer, who eventually took on what I think is a much more challenging position—as executive director of the American Bar Association. Hank tells the story of a visit in 2006 to the ABA Board of Governors from Admiral Tim Keating, who's now Commander of the Pacific Command.

When Admiral Keating was asked what he needs most from the organized bar, he didn't hesitate in his response: "Rule of law," he said.

Admiral Keating's reasoning was simple: The bar's rule of law training overseas is far preferable to armed conflict.

I would add that the rule of law is not only an overseas issue. We have our own rule of law dilemmas here at home—questions, for example, about habeas

corpus for terrorism detainees, about torture, about surveillance.

About inadequate resources for public defenders and counsel in capital cases. About lack of access to civil justice. About the vestiges of racial discrimination and injustice that continue to plague us.

On these and other difficult matters, we must continue to stand up and be heard on the primacy of the rule of law in our society—about its necessity if we truly

seek a community of opportunity and equity.

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

When we advocate for an independent profession and judiciary, we're advancing the rule of law.

When we hire and mentor a diverse array of talent to perform in our profession, we're advancing the rule of law.

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

We saw this in South Dakota—where a coalition of professions including and beyond law defeated the "Jail 4 Judges" ballot measure that would have undermined the court system.

They're advancing the rule of law in St. Louis, where doctors in low-income clinics are working with lawyers to identify legal issues that traditionally are

seen exclusively as health issues. A kid with asthma, for example, could very well benefit from legal advocacy that forces a landlord to remove mold from his property.

And our communities are advancing the rule of law here in Delaware, through the collaborative efforts of Child, Inc., the Community Legal Aid Society, and others.

Together, our communities rely on the rule of law to make our world a better

place—not only to make a dollar, but also to make a difference.

Thanks again for having me here this afternoon and allowing me to share in your celebration.