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H. Thomas Wells Jr.

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Sitting at your table:

Charles E. McCallum- Chair, Section of Business Law

Linda J. Rusch- Section Council, Program Speaker

Mitchell L. Bach - Section Council, Planning Committee Member

Conrad Goodkind - Section Council, Planning Committee Member

*** Stanley Keller - Section Council, Program Speaker (and recently provided helpful info to you on Sarbanes-Oxley. He's also a member of the Task Force on Attorney-Client Privilege)**

William H. Clark, Jr. - Section Council, Program Speaker

*** Roland E. Brandel - Program Chair, Chair, Committee on State and Local Bar Relations (will be introducing you)**

Thank you, Roland, for fitting me into your busy agenda, and thank you all for being here.

I salute you for serving as leaders in your bar associations—and I can certainly relate to all the responsibility

that comes with it. I hope the ABA's activities and other resources are helping to make your efforts successful.

We're glad to have you in our fold today with this crown jewel of an ABA conference. I'm sure our Section of Business Law will continue to help you feel welcome at the ABA—not to mention our many other groups that work to help your practice and advance our profession.

As a national organization—and the world's largest voluntary professional association—the ABA brings together bar associations and individual lawyers from

across the country—and around the world—to share best practices, to network, and to strengthen our national voice for the profession.

One principle is guiding me in preparation for my leadership year: As much as our diverse viewpoints in the bar give us strength and credibility, we need to stay focused on the concerns *all lawyers* share—whether we practice business law or criminal law, whether we practice in Alabama or Alaska or New York or California. Our common core values

unite us as a profession and inspire us to work together.

As I see them, these four common core values are:

- * First, Access to Justice,**
- * Second, Independence—and by that I mean independence of the bar *and* independence of the judiciary, which are linked,**
- * Third, Diversity,**
- * And, fourth, the Rule of Law, which really encompasses the other three values.**

Virtually *all* bars, and many sections within those bars, are concerned about

and working hard to promote access to justice, independence, diversity, and the rule of law.

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

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

standards for how elections should operate.

One element of those standards calls on bar associations to encourage lawyers to serve as election judges, poll watchers, and to otherwise lend their legal expertise to the process. Serving and strengthening the election process—wherever we're needed this November—is a valuable way for us to promote this core aspect of the rule of law.

I often say that it's easy enough for us to make a dollar ... but it's a lot harder to make a difference. This brings to mind

another significant event during the upcoming bar year: the bicentennial of the birth of one of our greatest presidents—who also happened to be an excellent trial lawyer.

The ABA, especially with Law Day, will be celebrating Abraham Lincoln in 2009 and emphasizing his contributions as a lawyer. I look forward to joining you in this important commemoration.

The profession we share with Lincoln is much more than a job or a trade. In the South, we say lawyers are "called" to the bar. Our profession is, indeed, a

calling. Think about that for a second: the only other profession that is a calling is the clergy. Engineers are not called to engineering; dentists are not called to denistry; and accountants are not called to accountancy. Yet we are called to the bar, just as ministers are called to the ministry. That, I believe, is appropriate, inasmuch as we minister justice, and our mission is public service. This call to the bar unites us on our common core values. Our common values allow us to stand up as lawyers and make a difference as a profession.

For our common core value of enhancing access to justice, the bar is making a huge difference. A top priority is legal aid funding. As many of you know, 80 percent of the legal needs of the poor are unmet—despite the combined efforts of legal aid-funded programs, other government and private funding, and pro bono.

Our state and local bar foundations play a crucial role in advocating for and raising money for legal aid. I'm sure many of you are involved in these fundraising activities and are otherwise

committed to pro bono work. Your efforts are crucial to ensuring that our profession lives by its access-to-justice creed. And at the federal level, the ABA continually lobbies to ensure continued funding of the Legal Services Corporation.

Another core value of our profession that emerges time and again is independence—independence of the bar and independence of the judiciary.

As just one current example—one you've been discussing at this

conference—the legal community has worked hard to protect the attorney-client privilege.

We're standing up to Justice Department and other federal agency guidelines that have operated to coerce corporate targets of federal criminal investigations into waiving the privilege. It's encouraging that the government modified its guidelines in response to a broad coalition including the ABA, state and local bar associations, and even the U.S. Chamber of Commerce, but the changes haven't gone far enough.

We've determined that legislation is the only viable way to resolve the issue at this point.

The ABA and our allies are urging lawmakers to support Senate Bill 186, the Attorney-Client Privilege Protection Act, which is getting widespread support on both sides of the political aisle. A similar bill passed the House of Representatives in November.

After this meeting, I'm flying to Washington, D.C., to meet with the Lawyers Council of one of our coalition partners, the Financial Services

Roundtable. Attorney-client privilege will be a main topic of discussion—not only because it's a huge issue of concern, but also because the new deputy attorney general, former U.S. district judge Mark Filip, will be there, too. As you know, it's that office that issued the Thompson and McNulty memorandums—and while we're hoping that any Filip Memorandum will be a vast improvement, it's our position that legislation is warranted. The ABA has already met with Judge Filip to express our view that the attorney-client privilege is a core aspect of

an independent bar, which ensures that our clients' rights under the rule of law are preserved.

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

In fact, our profession has now done so for 100 years, as we're celebrating the centennial this August of the ABA's first ethics code (which, by the way, was based

on the first *state* ethics code, which was Alabama's).

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

And it can happen with the legal profession if we're not attentive. Every now and then, like weeds cropping up in a garden, some state legislation proposes

that attorney discipline be removed from the supreme court. As lawyers, nationally and collectively, we must preserve our independence by demonstrating that we both set and adhere to the strictest standards of ethics and professionalism.

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

When politicians castigate judges for opinions that are legally sound but politically unpopular, it's not just a

personal attack on those judges. It weakens our profession's foundation, the rule of law.

There's also the growing, stubborn partisanship in many state judicial elections and in the nomination and confirmation process for our federal courts. As lawyers, we must continue to trumpet the notion that politics has no place in our courts. Our judges should be—and should be perceived to be—beholden not to any particular constituency but to one thing only: the rule of law.

If past is prologue, judges and our judiciary will again become a political football this election season. The ABA will continue to help our partners in the state and local bars respond vigorously and quickly to attacks on our judiciary.

Diversity is a third core value of our profession—a value that the ABA and our state and local bars are taking seriously. It's important to keep us strategizing about these issues for a simple reason: When gifted women and men of diverse backgrounds face systemic barriers to

entering law school and climbing the ranks of our profession, it's not just a *lack of opportunity* for them. It's a *lost opportunity* for all lawyers as we're called on to serve an increasingly diverse society.

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

Since soon after the fall of the Berlin Wall, the ABA has provided technical legal assistance to newly emerging

democracies in the former Soviet bloc, Latin America, Africa, Asia, and the Middle East. Our Rule of Law Initiative is operating such programs in 47 countries. These activities provide wonderful opportunities for volunteer lawyers in America to share their expertise with lawyers overseas who look to our system as a model.

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 the ABA's executive director. 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 Guantanamo 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 rule of law's central place in
our society.**

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

We should look to an ancient principle to help us become even better defenders

of liberty and pursuers of justice—to 400 B.C. and the constitutional principles of ancient Athens. As you know, many of our most cherished values come to us from the ancient Athenians, principles like freedom of speech, freedom of association, and participation in government by the governed. But there is one ancient principle that is sometimes overlooked. The Athenians believed that every citizen had not only the right, but the duty, to stand up and speak out in the face of injustice or when there were attacks on liberty.

The Athenians called this principle parrhesia. I submit that we could do well to inject a little more parrhesia into our profession today. Parrhesia rises above mere rhetoric or politics. Conservatives and liberals, Republicans and Democrats, business lawyers and criminal lawyers and human-rights lawyers alike can find common ground on the core values that shape the rule of law and the legal profession's role in it. Whenever I'm asked if the ABA is conservative or liberal, I respond that only one "L" word defines us: ... "lawyer."

As lawyers, we must answer our shared calling—to stand up, speak out, and work together on issues involving access to justice, independence, diversity, and the rule of law—our common core values. Not to make a dollar, but—like President Lincoln—to make a difference.