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2009-03-20 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.

March 20, 2009

Origin	Correspondence	Date	Revd	Status (All suggested dispositions subject to review by TW)	CCs (Informational copies)
email	Laverne Lewis Gaskins University Attorney Valdosta State University Pleasure meeting TW in Atlanta; also her interest in short term international rule of law projects.	3/17	3/17	<i>Forwarded to ROLI, International Law and WJP</i>	
IL	Andrew F. Susko Pennsylvania Bar Association Ltr – unable to attend 8 th Annual National Meeting of State Access to Justice Chairs meeting	3/13	3/17	<i>Kay faxed letter to Terry Brooks</i>	
AL	Edmond W. Caldwell, Jr. Executive Vice President and General Counsel North Carolina Sheriffs' Association Ltr – to express extreme displeasure with the March 2009 ABAJ article on the <i>Lions of the Trial Bar</i>	3/10	3/16	<i>Forwarded to Ed Adams for a response.</i>	
IL	Paul H. Tobias Cincinnati, OH Ltr – requests information regarding proposal for 1,000 lawyer legal corp.	3/11	3/16	<i>Forwarded to Tom Susman and Terry Brooks for a response.</i>	
IL	David Enriquez, Partner Goodrich Riquelme Asociados Col. Cuauhtemoc, Mexico Ltr – the firm is celebrating 75 year anniversary; enclosed book, <i>Death of the Altar</i> , and a bookmark on Semillas, a Mexican non profit organization.	1/29	3/19	<i>Forwarded letter, book and bookmark to TW</i>	
IL	Dave Dunlap, Director National Youth Leadership Forum Vienna, VA Ltr – request TW write a welcome letter to appear in the National Youth Leadership Forum on Law academic Journal.	3/19	3/20	<i>Beverly Curd will draft letter for HTW.</i>	

ABA President

From: Pilchen, Ira
Sent: Tuesday, March 17, 2009 12:15 PM
To: ABA President
Subject: RE: Rule of Law

Log as already forwarded to ROLI, International Law, and WJP. No need for you to do the actual forwarding, as this has already been done.

From: ABA President
Sent: Tuesday, March 17, 2009 12:13 PM
To: Pilchen, Ira
Subject: FW: Rule of Law

Ira – another message for Tommy.
Kay

From: Laverne Gaskins [mailto:llgaskin@valdosta.edu]
Sent: Wednesday, March 11, 2009 12:38 PM
To: twells@maynardcooper.com; ABA President
Subject: Rule of Law

Hello Mr. Wells,

** was a pleasure meeting you yesterday in Atlanta. Thank you so very much for speaking to me. In regards to our conversation concerning short term international Rule of Law projects, please find attached me résumé. I look forward to hearing from you.
Laverne Lewis Gaskins

Laverne Lewis Gaskins, M.Ed, J.D.
University Attorney
Office of Legal Affairs
Valdosta State University
333-5351

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March 13, 2009

H. Thomas Wells, Jr., President
American Bar Association
321 North Clark Street
Chicago, IL 60610

Tom
Dear Mr. Wells:

Thank you for your letter of February 9, 2009 inviting me to join Access to Justice leaders at the 8th Annual National Meeting of State Access to Justice Chairs. Unfortunately, I will be unable to attend as my son will be graduating from Boston University that weekend. I appreciated and was honored to the invitation and remain very interested in this most important issue.

Thank you for your invitation and hope the meeting is a success.

Very truly yours,

Andrew F. Susko
BY: Andrew F. Susko

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AFS:lab

cc: Deborah G. Hankinson, Chair, Standing
Committee on Legal Aid and Indigent Defendants
Barry M. Simpson, PBA Executive Director

5110824v

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March 10, 2009

RECEIVED

MAR 16 2009

H. Thomas Wells, Jr., President
American Bar Association
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203

Re: March 2009 ABA Journal

Dear President Wells:

As a twenty-seven year veteran attorney, and an American Bar Association member (#01054010) I am writing to express my extreme displeasure with the most distasteful content of the March, 2009 ABA Journal, specifically the article on the "Lions of the Trial Bar." Enclosed are several pages from that publication with various provisions highlighted for your ease of reference.

This article attempted to hold up these seven trial lawyers as examples of the best that lawyers have to offer America. Instead, at least a portion of the article pointed out exactly what is wrong with some members of our profession today. The article begins at the bottom of page 20 by encouraging the reader to "pour yourself a drink" as you begin to read the article. As you know, one of the greatest challenges facing our profession today is that of alcoholism by some of our members.

In particular, the article on Joe Jamail contains an extensive amount of filthy language that is an embarrassment to our profession. Granted, I have heard these words before, but they certainly have no place in an allegedly professional publication of a profession that is as important to our country's fabric as that of an attorney. On page 32, the author of this article describes Mr. Jamail as "one of the most successful lawyers in history." That statement may be true if your measure of a successful lawyer is filthy language, excessive alcohol consumption, criminal forgery and denigration of other lawyers. That is certainly not my definition of a successful lawyer.

The article glamorizes filthy language, excessive alcohol consumption and forgery, which in our state is a felony. It also publicly allows a "trial lawyer" member of our profession to denigrate the "mediators" in our profession. It is certainly telling when the Delaware Supreme Court reprimands this lawyer and calls his conduct "an astonishing lack of professionalism and civility."

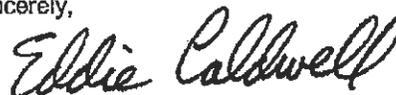
In my opinion, the decision of the ABA to publish this filthy article that is denigrating to all of us in the profession of law is also "an astonishing lack of professionalism and civility."



H. Thomas Wells, Jr.
March 10, 2009
Page 2

The ABA has done our profession an extreme disservice by the publication of portions of this article. I hope that you will exert the considerable influence of your office as President, and as an ex officio member of the Board of Editors for the ABA Journal, to ensure that articles of this nature are not published in the future.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Caldwell".

Edmond W. Caldwell, Jr.
Executive Vice President and General Counsel
North Carolina Sheriffs' Association

EWC:gh

Enclosure

cc: Allan B. Head, Executive Director
North Carolina Bar Association

Lions of the Trial Bar

By Mark Curriden

THEIR NAMES CAN BE FOUND IN THE PAGES OF casebooks and on the sides of law school buildings. They've tried some of the most important cases of the last 50 years, dazzling juries and swaying judges. They've won—or saved—billions of dollars for their clients, and become wealthy men in the process.

They've also represented the guilty and unpopular because they thought it was the right thing to do. They are the lawyers most of us secretly wish we could be, if only for a day.

And now they're in the autumn of their careers.

Fred Bartlit. James Brosnahan. Bobby Lee Cook. Richard "Racehorse" Haynes. Joe Jamail. James Neal. Bernie Nussbaum.

These seven lawyers are among the best litigators in America. Strike that. Most of them consider the word *litigator* an insult. They're trial lawyers.

They're all past—in some cases, well past—70 years of age, but when the nation's largest corporations and most important people face serious trouble, they still turn to these seven old-timers.

That's because, as the number of trials in the United States seems to be approaching zero, there are fewer and fewer trial lawyers with the experience to take their place. (See "The Endangered Trial Lawyer," page 63.)

Says U.S. District Judge Royal Furgeson, who's seen several at work in his San Antonio courtroom: "They represent a breed of lawyer that I fear is on the verge of extinction."

But before they go, they've got some tales to tell—stories that are timeless, provocative, profane and laugh-out-loud funny. And most of them are even true.

Sit back, pour yourself a drink, and learn how it was done back in the day. Class is in session.

Mark Curriden, an occasional contributor to the ABA Journal, is a freelance writer based in Dallas.

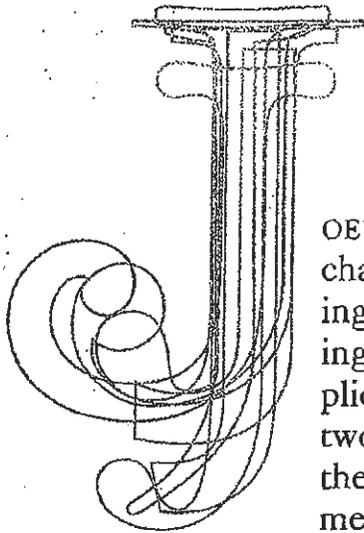
7 OVER 70



“If you are not emotionally involved, your client is not getting your best effort.”

—*Joe Jamail*

Keeping it simple



JOE JAMAIL SETTLED INTO HIS chair at home to map out his closing argument for the next morning. The case was a highly complicated business dispute between two of the largest corporations in the world—a multibillion-dollar merger gone awry. Just as Jamail picked up his pen, he heard a car horn blowing outside. ¶ Jamail's buddies—singer Willie Nelson and former University of Texas football coach Darrell Royal—were in a white limo, begging him to go out for a drink or two.

"I tried telling them that this was the biggest damn case of my life—hell, of anybody's life—and that I needed to prepare," says Jamail. "But they weren't having any part of it. They kept me up all fucking night drinking. I could barely see straight the next morning."

Jamail did just fine. He kept his closing argument simple. The case was about people keeping their word and being honest—or, in the case of the defendants, about not keeping their word.

The result: On Nov. 20, 1985, a Texas jury returned a \$10.53 billion verdict for Jamail's client, Pennzoil Co., against Texaco Inc. It remains the largest verdict upheld on appeal in legal history. The case later settled for \$3.3 billion. Jamail's personal take topped \$400 million, according to reports.

"We celebrated that night at my house by eating hamburgers and drinking beer," he says. "I've still got the \$3 billion deposit slip on my wall."

83 AND COUNTING

THE SON OF A GROCER, JOSEPH D. Jamail Jr. is one of the most successful lawyers in history. He has tried more than 500 jury and bench trials, which resulted in more than \$13 billion in judgments for his clients—

not too shabby for a guy who failed torts in law school. *Forbes* magazine estimates Jamail is worth \$1.5 billion, making him the 321st-richest person in the U.S.

Despite having more money than he ever dreamed of and being 83 years old, Jamail says he plans to continue trying cases for another decade or so, and then slow down a bit. He's been hired by three Fortune 200 companies in the past six months that are involved in bet-the-farm lawsuits.

"The corporate boardroom mentality and structure encourages companies and their executives to fuck each other," he says. "So, there's always going to be a need for good lawyers."

Jamail pauses to clarify. "By good lawyers, I mean good trial lawyers," he says. "They've invented this new term, *litigator*. What the fuck is a litigator? I'm a trial lawyer. I try cases. There are some lawyers who do nothing but this mediation bullshit. Do you know what the root of mediation is? Mediocrity!"

The move to replace jury trials with mediation and arbitration, he says, is actually an effort by elitists in our society to control how disputes are decided.

"I don't think the trial practice is dead," says Jamail. "But it is very ill.

There are some days you could throw a hand grenade down the hall of the Harris County Courthouse and not hit anybody."

Jamail says young lawyers at big firms today don't have the opportunity to cut their teeth on small cases, which would help develop their trial techniques.

"By not trying the small cases, the lawyers don't get the courtroom experience," he says. "So when the huge, bet-the-company cases come along, there are only a handful of trial lawyers who can handle it. That's why these big corporations still call us old-timers every day."

A \$100 WAGER

IN A TELEVISION DEBATE OVER TORT reform with a physician, the medical doctor was slamming lawyers as a drain on society. "I would like to remind the doctor that while his professional ancestors were putting leeches on George Washington to bleed him, my ancestors were writing the Declaration of Independence and the United States Constitution," Jamail responded.

"I never heard any more shit from him."

Jamail didn't always want to be a lawyer. In fact, he initially enrolled at the University of Texas as a pre-med student. But the first semester in 1942 didn't go so well. He failed to show up for his final exams and received five F's. So he forged his father's name on enlistment documents and joined the Marines.

Jamail returned home after the war and received his liberal arts degree from UT. Then he decided to go to law school, sort of.

"I was so damn naive that I didn't know that there was a test you had to take before you got into law school, so I just started showing up for classes without even enrolling," he says.

No one at the UT School of Law noticed Jamail wasn't officially enrolled either, until the time came three years later for the law dean to sign his diploma.

"Today's law schools teach students how not to get emotionally involved in their cases. That's bullshit."

On a \$100 bet from a classmate, he took the bar exam in 1952, a year before he graduated. The passing mark was 75. Jamail scored 76.

"Shit, I'm overeducated," he told his friends. "We used the \$100 to buy a lot of beer and got drunk by the lake."

Jamail remembers his first five trials. "Mainly because I lost all of them," he says. "They were what we call dogs."

His first win actually came while he was still in law school. A waitress at one of his favorite bars had cut her hand trying to open a bottle of beer. So Jamail and his classmates sued the beer's bottling company.

"None of us knew what the hell we were doing," says Jamail. "The thing was, the other side and the judge also knew we didn't know what we were doing. Fortunately, the beer company offered us \$750 to settle the case. We took it and ended up spending it all at the bar that night drinking."

BUCKING POPULAR OPINION

THE CASE THAT BROUGHT JAMAIL into prominence was a case no other lawyer in Texas would touch. The facts were bad. The plaintiff was unsympathetic. And public opinion was not in his favor.

Jamail's client had had a few shots of bourbon before jumping in his car to get some fried chicken for dinner. His car jumped the curb of the cement island in the middle of the street, knocked down a street sign and then struck a tree. The driver's blood-alcohol level at the hospital tested at .22, and he died from the injuries a few days later. When the man's widow asked the city to pay the funeral cost, city officials laughed at her.

"I went to the scene of the accident and I couldn't believe my eyes," Jamail says. "There was a

tree growing in the middle of the damn street. A couple of them, in fact. I thought, what the hell is a tree doing growing in the middle of the street. A street sign, I could understand, but not a damn tree."

Jamail sued the city of Houston claiming that the trees were a public nuisance. And he won at trial. The city paid for the man's funeral, plus \$6,000 for pain and suffering. Plus the city had to cut down the trees. "I got calls for the next two years from these tree-huggers cursing me for having the trees cut down," he says.

Jamail garnered headlines again in 1976 when he was representing

JOSEPH D. JAMAIL JR.

Born 1925 in Houston.
Firm Jamail & Kolius in Houston.
Law school University of Texas.

Significant cases

1962—Won a \$580,000 judgment for Olin Robertson, who had both hands and a foot burned off due to a faulty electrical box. This was the first tort-law verdict in the United States to surpass \$500,000.

1985—Won a \$10.5 billion jury verdict for Pennzoil in a suit against Texaco for interfering with a merger with Getty Oil.

1988—Won a \$16.6 million verdict for Sonya Webster, who was 16 when she was rendered quadriplegic after the crash of a Honda all-terrain vehicle. It was the first-ever verdict against the ATV industry.

1993—Represented Northwest Airlines in its losing antitrust claims against American Airlines.

Other career highlights—A swimming center, a law school pavilion and the football field at the University of Texas in Austin are named for Jamail, who is a hefty contributor.

Major League Baseball player Bob Aspromonte. The former Houston Astros infielder was jump-starting his car battery when the jumper cable he bought at Sears, Roebuck & Co. flew off the car battery and struck his eye, causing him intense pain and blindness in that eye. At trial, the jury awarded Aspromonte \$875,000. When defense counsel for Sears missed the deadline for filing an appeal, Jamail obtained a court order allowing him to collect the judgment.

"I went to the largest Sears store in Houston, walked into the manager's office and told him that I wanted the keys to the store, and I wanted him to get on the loudspeaker to order all customers out because we now owned that store," Jamail says. "The manager asked me what was going to happen, and I said that their competitor, Montgomery Ward, was about to have the biggest damn Memorial Day sale in history."

Within an hour, according to Jamail, the law firm representing Sears showed up with a check for the entire amount. The newspapers and radio stations announced that Jamail had shut down Sears, which led to him getting a lot of angry phone calls. He remembers one in particular.

"Joe, you son of a bitch, don't you know it is un-American to close down Sears?" The caller was Willie Nelson.

ROLLING WITH IT

IN THE EARLY 1980S, JAMAIL REPRESENTED his courtroom idol, Houston criminal defense attorney Percy Foreman, whose neck was injured when his car was rear-ended by a commercial truck. On direct examination, Foreman testified that he had not experienced any neck problems before the accident, and that he was entitled to \$75,000 for lost



income due to the injury.

But on cross-examination, the defense revealed that Foreman had been hospitalized nine times for neck problems prior to this accident.

"The jury looked at me, expecting me to give them an answer," says Jamail. "So I told them that Percy had been a great lawyer throughout his life, but that he was now just an old man and was growing senile."

At that moment, Foreman jumped up and yelled out across the courtroom, "You goddamned son of a bitch!"

"See what I mean," Jamail immediately told jurors. "He doesn't even know where he is right now."

The jury awarded Foreman the sum of \$75,004. Jamail says he never figured out why the extra \$4.

"Today's law schools teach students how not to get emotionally involved in their cases," he says. "That's bullshit. If you are not emotionally in-

involved, your client is not getting your best effort."

While Jamail's tongue has swayed many juries and judges, it has also gotten him into trouble. In November 1993, Jamail was defending his friend and client, Pennzoil Corp. Chairman J. Hugh Liedtke, in a lawsuit regarding the takeover of Paramount Communications Inc., of which Liedtke was an outside director. During the deposition, Jamail called a lawyer representing QVC Network Inc. an "asshole" and said his deposition skills could "gag a maggot off a meat wagon."

The Delaware Supreme Court reprimanded Jamail, calling his conduct "an astonishing lack of professionalism and civility." Jamail told *Texas Lawyer* reporter Brenda Sapino Jeffreys on the day the court issued its opinion, "I'd rather have a nose on my ass than go back to Delaware for any reason." ☐

Date Jan. 1, 2008.

Location Willie Nelson's ranch house, outside of Austin, Texas.

Who Joe Jamail (right), Willie Nelson and his sister Bobbie Nelson.

What Jamail enjoys a private performance at the home of longtime friend Nelson, accompanied on the piano by his sister, whose birthday was the occasion for the gathering.

Note Many years earlier, Nelson had persuaded Jamail to loosen up the night before closing arguments in the landmark *Pennzoil v. Texaco* lawsuit with a night of drinking. Jamail accepted the challenge and went on to win what would become the largest verdict ever upheld on appeal in U.S. legal history.

TOBIAS, KRAUS & TORCHIA

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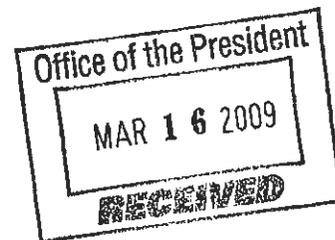
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March 11, 2009



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

Dear Mr. Wells,

Please send me any available information regarding your proposal for 1,000 lawyer legal corp. which hopefully would include lawyers to help those to obtain unemployment compensation benefits.

Thank you in advance.

Very truly yours,

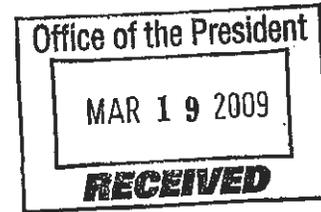
A handwritten signature in black ink, appearing to be "P. Tobias", with a long horizontal line extending to the right.

Paul H. Tobias

PHT:de

January 29, 2009

Thomas Wells Jr.
President
American Bar Association
321 North Clark Street
Chicago Illinois
60654-7598
United States of America



Dear Mr. Wells,

Today, we would like to share with you the joyfulness that celebrating seventy five years of life as an institution brings to us. Since our birth, our growth has always been accompanied by a strong vocation of service to our clients and a solid commitment to the development of our country. In this context, we wish to express our utmost gratitude for trusting us your projects.

The task of depicting a gift that accurately represents our Arts and *Mexicanity* can turn quite complex. Notwithstanding, in lure of the anniversary of our foundation, we have decided to accept this challenge through a captivating popular-cultural expression. Thus, kindly accept our book *Death of the Altar* by Tomás Casademunt and Mercurio López, as a visual commemoration of Mexico. With gratitude and affection, we sincerely hope you enjoy as much as us the pages you are about to explore.

Last but not least, kindly accept our bookmark on *SEMILLAS*, a Mexican non profitable organization devoted to fostering human rights and development with a gender approach. We welcome your generosity towards their interesting projects throughout Mexico.

GRA
Goodrich, Riquelme y Asociados

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Sincerely yours,

A handwritten signature in black ink, appearing to read "David Enríquez".

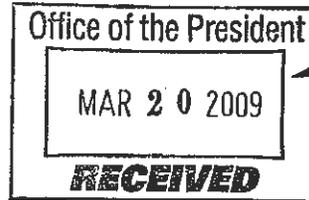
David Enríquez
Partner



NATIONAL YOUTH LEADERSHIP FORUM

March 19, 2009

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



Dear Mr. Wells,

I am pleased to extend this invitation for you to write a welcome letter to appear in the National Youth Leadership Forum (NYLF) on Law academic Journal. NYLF is an educational organization that conducts career exploration programs for outstanding high school students. This year, NYLF will once again present its Forum on Law to approximately 2500 students across the country.

NYLF on Law, held in Washington, D.C., offers students an intense and stimulating six-day exploration of the legal profession. During the Forum on Law, America's brightest high school students have the opportunity to interact with distinguished legal scholars and practitioners, participate in seminars on current legal issues and visit some of the nation's top law schools, prestigious Washington law firms, local and federal courtrooms and the United States Supreme Court. The forum's hands-on interactive curriculum is designed so that site explorations, speaker topics and simulation exercises complement each other for a truly integrated and meaningful educational experience.

Our students represent a distinct group of high achievers who have demonstrated exceptional academic merit and leadership potential as well as a strong interest in pursuing legal careers. I am confident that a welcome letter from you, the president of the premier legal organization representing attorneys, will make a life-long impression on these young people as they begin to explore careers and their futures in law.

Among the materials I have enclosed with this letter is a copy of the 2008 Journal for your review, which includes a welcome letter from your predecessor, William H. Neukom. Should your schedule permit you to draft this welcome letter, I ask that it be sent to me by Friday, April 17, in order for us to meet our publication deadline. If you are willing, we would also like to include a photograph of you. We would consider it a true honor and privilege to have your words of welcome for our students this year, and we hope you will consider the invitation. I encourage you to contact me at (703) 584-9554 or ddunlap@nylf.org with any questions and thank you for your consideration.

Warmest regards,

Dave Dunlap
Director
National Youth Leadership Forum