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2008

### 2008-05-17 H. Thomas Wells, Jr. ABA Presidential Speech

H. Thomas Wells Jr.

University of Alabama School of Law

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- **"Deserves no introduction" story.**
- **Thank you President David Sargent,  
Chairman Nicholas Macaronis (Mack-ah-RONE-iss)  
and the members of the Board of  
Trustees, Dean Fred Aman (AY-min) and law  
school faculty, graduates of the class of  
2008, and families and friends.**

*NOT 1ST TIME @ SUFFOLK - ACCREDITED.  
REVIEW A FEW YEARS AGO. NOT 1ST TIME IN BOSTON*  
**Speaking at graduations, it's natural** (RED  
SOX)

**to congratulate the graduates. But  
equally important congratulations—and  
thanks—go out to the families, to the  
loved ones, to the friends, to the faculty,**

**and to all the others who *supported* our graduates.**

**Law school is a grueling endeavor. Successful law students depend on all the moral and financial and academic and loving support they can get from those around them.**

**To the families and friends and loved ones and faculty here today, the success of today's graduates is your success, and your achievement. Please accept my heartfelt thanks for putting up with my future colleagues in the bar these past three years or so.**

**To our graduates, I want to call your attention to something else: You are not merely undertaking a trade or a business where there are no ethical restraints. You are entering into . . . a profession.**

**As you can likely discern from my accent, I am from the South. In the South, we have a saying about becoming a lawyer: We say you are "called to the bar."**

**Think about that: The only other profession that is a "calling" is the clergy. Engineers are not called to engineering; dentists are not called to dentistry; 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.  
We minister justice, and our mission is  
public service.**

**We cannot allow ourselves to become  
technicians who blindly carry out the will  
of our clients. Instead, we must continue  
to practice . . . as professionals. In many  
respects, this means we must exercise  
moral and ethical judgments—  
independent moral and ethical**

**judgments—when we represent those who seek our help.**

**I firmly believe that we are entering an era for our profession that will be dominated by both peril *and* promise. The peril is losing our professionalism; the promise is that we expand it.**

**If we adhere to the basic tenets of our professionalism, we lawyers will remain, in Alexis de Tocqueville's words, "the most powerful existing security against the excesses of democracy."**

**If we are not vigilant about our professionalism, we will degenerate into a**

**conglomeration of "skunks, snakes, and sharks." These are words, as Sandra Day O'Connor and others have observed, that lawyers and the public are all too familiar with.**

**So what's our challenge? It's to follow our profession's core value of independence, of ethics, and of professionalism.**

**Through our ethics codes and disciplinary enforcement, we are a *self-regulating* profession, ~~independent of any regulatory body~~. Self-regulation is a**

**common core value of lawyers that we must always work hard to maintain.**

**In fact, our profession has been doing so for 100 years. This August, we'll be celebrating the centennial of the ABA's first ethics code.**

**I'm always proud to point out that this code was based on the first *state* ethics code, which was Alabama's. I recently mentioned our state's distinction to a colleague and friend from South Carolina. ~~Frankly, we don't have too many distinctions these days, especially after last year's football season.~~ My**



friend didn't miss *a beat* in <sup>RESPONDING</sup> ~~teasing me~~  
that Alabama had the nation's first ethics  
code for lawyers because we had such a  
need for it.

Of course, an ounce of prevention is  
better than a pound of cure. There's good  
reason for us to celebrate the centennial  
of our ethics code—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 bar or from the supreme court. This would be a disaster for the public and the rule of law. Our system counts on lawyers to exercise sound judgment, independent from government interference, which we all know would become politicized under state regulation.**

**All that said, to preserve our independence, we lawyers owe something**

**to the public. We must demonstrate that we both set and adhere to the strictest standards of ethics and professionalism.**

**The code is crucial—rest assured you didn't take the MPRE for nothing. But aside from our written standards, adhering to the strictest ethics and professionalism often boils down to our own, individual choices of how we conduct ourselves.**

**Let me give you an example: <sup>After</sup>~~Before~~ law school, I served as a captain in the Air Force. Then, fresh out of law school, I was assigned to the Air Force General**

**Counsel's office in the Pentagon. Though this office is based in the Pentagon, it's generally a civilian office.**

**The general counsel, a civilian, <sup>ORDERED</sup>~~encouraged~~ the few of us in our office who were captains not to wear our uniforms. His reason had nothing to do with informality or comfort. He knew that we were frequently called on to give advice to generals and others who far outranked us. Through this symbolic gesture, he wanted us to have the ability to say "no," unfettered by any obvious difference in military rank.**

**In essence, he was promoting something that's priceless: our professional independence as lawyers.**

**Independence is a hallmark of any professional, but especially of lawyers. Therefore, be always faithful to your integrity as a person, on the one hand, and your ethics as a professional, on the other.**

**Do not view the ethical rules as a hindrance or a limitation; view them as a commitment that you have chosen to make.**

**Serve your clients not by being a mere "technician" who does only his or her client's bidding, but by being an independent advocate and advisor who can say "no" to a client when "no" should be said.**

**All of us, I hope, were raised both to think and to behave. ~~That said,~~ thinking and behaving are not mutually exclusive.**

**You've earned your law degrees, so you must know how to *think* like a lawyer.**

**But in addition to *thinking* like a lawyer, be a lawyer who knows how to *behave*.**

**You can start by avoiding "Rambo" tactics in litigation. As former Chief Justice Warren Burger wrote, *discipline* and *civility* are the "lubricants that prevent lawsuits from turning into combat."**

**This isn't nearly as entertaining or exciting as, say, an episode of "Boston Legal"—but then, again, despite the hometown appeal here, "Boston Legal" isn't exactly how our profession operates. If you ask me, William Shatner should have remained captain of the Starship Enterprise instead of going into law. He**

**and that other guy—James Spader,  
right?—are definitely going where no  
*lawyers* have gone before.**

**Always remember the oath you will  
take upon your admission to the bar. In  
Alabama, new lawyers affirm that they  
will "demean" themselves as an attorney.  
Demeaning oneself as an attorney  
includes practicing with civility.**

**This does not mean that you need to  
hug your adversary—or say "I love you,  
Man." You still must be a zealous  
advocate for your client. But as you  
represent your client with legal fervor,**



**remember that discourtesy to your  
worthy adversary threatens our  
professional independence and tears at  
everyone's respect for the law.**

**There is a proper balance between  
civility and zealous advocacy. It may take  
you some time to strike that balance, but  
strike it nonetheless.**

**Promote the independence of the  
judiciary before whom you will practice.  
An independent judiciary is a hallmark of  
our justice system, and we lawyers need  
to defend it vigorously. Remember that  
judges must make hard decisions, so do**

**not stand idly by when they are attacked for them.**

**The ethical rules prevent judges from responding to attacks—even unwarranted ones—upon them or upon their decisions. It is therefore up to the professional bar to respond on their behalf, even when reasonable people could disagree about whether the judge's decision is a correct one.**

**Without an independent judiciary, litigation would degenerate into little more than influence peddling, if not outright combat. An independent**

**judiciary helps keep us a nation governed by laws, not individual whim.**

**Do work for the good of the public, *pro bono publico*. That is part of the obligation you chose when you decided to enter a profession and not some commercial enterprise. Some of the greatest satisfaction I have had as a lawyer has been in representing clients for no compensation.**

**Advocate for and otherwise support the rule of law. At the ABA and elsewhere, American lawyers volunteer to help develop sound legal systems in**

**emerging democracies overseas—a sort of Peace Corps for lawyers.**

**These rule of law activities 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.**

**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, you should stand up and be heard on the rule of law's central place in our society.**

**We can look to an ancient principle to help us do this—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. Indeed, I discovered it only upon hearing a speech by former Dean of the Alabama Law School Charles Gamble. 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.**

**When we provide legal services to the poor and support organizations that do so, we're exercising parrhesia.**

**When we advocate for an independent profession and judiciary, and when we do so by promoting ethics and professionalism and civility at every opportunity, we're exercising parrhesia.**

**When we hire and mentor and otherwise support a diverse array of talent to perform in our profession, we're exercising parrhesia.**

**When we take up the causes of unpopular clients, and when judges have the ability to make unpopular decisions, we're exercising parrhesia.**

**In sum, as I often remind myself, remember that our profession is a pretty good one for making a *dollar*, which is easy enough. But it's also the best profession I know for making a *difference*, which is a lot harder but worth every effort.**

**Make a difference by committing yourselves to ethics and integrity.**



**Make a difference by always being independent and willing to tell your clients "no" when "no" is the answer.**

**Make a difference by representing your clients with warm zeal, but retain your civility.**

**Make a difference by promoting the independence of the judiciary and explaining this concept to the pundits, the politicians, and the general public.**

**Remember that judges face hard decisions and cannot always defend themselves.**

**Make a difference by treating your  
call to the bar as a <sup>CALLING</sup>~~ministry~~—a ministry  
for the rule of law, and a ministry that  
includes pro bono work for those less  
fortunate.**

**And, finally, something I haven't yet  
touched on—make a difference by  
remembering to have *fun*.**

**Some of the most fun I've had as a  
lawyer has been getting to know and  
work with my colleagues in the ABA and  
other bar associations. Those of you who  
have been active in the student bar, in the  
ABA Law Student Division, or other**

**student organizations know what I'm talking about.**

**Involvement in the bar broadens your experiences. It broadens your network. It broadens your understanding of your practice area. It broadens your understanding of people—whose names you'll be able to remember, thankfully, because everyone wears a name tag at bar functions.**

**Bar involvement supports the profession's ability to advocate for independence and the rule of law and the other values that define us. And—when**

**the volunteer work or meetings are done—there's nothing more fun than socializing with your peers and their families.**

**Speaking of families, many of us combine bar conventions—at least the ones in places like Orlando—with family vacations. But there's a limit to how much you'll want to do this. You'll know you've taken your kids to too many bar association meetings when, as I experienced when my kids were little, they ask you during a *real* family vacation where the name tags are.**

**Congratulations, graduates. Now go  
forth and practice law!**