2009

2009-04-03 H. Thomas Wells, Jr. ABA Presidential Correspondence

H. Thomas Wells Jr.

University of Alabama School of Law

CORRESPONDENCE LOG

H. Thomas Wells, Jr.

April 3, 2009

Origin	Correspondence	Date	Rcvd	Status (All suggested dispositions subject to review by TW)	CCs (Informational copies)
email	**Philip A. Talmadge** **Talmadge/Fitzpatrick** **Tukwila, WA** Ltr – Request for ABA to Withdraw Letter in Support of HR 6381 and S3398	3/23	3/27	*TW sent standard response 3/30*	
AL	**Fred W. Suggs, Jr.** **South Carolina Bar President-Elect** Ltr – re banner ad on the ABA's LRIS web page	3/27	3/31	*Ira is working with Ed Adams and Hank White on a response.*	
AL	**Britt Wegner** **LRIS Service Director** **Milwaukee Bar Association** Ltr – disappointed that ABA would allow paid advertising above the mission of lawyer referral services	3/27	3/30	*Ira is working with Ed Adams and Hank White on a response.*	
AL	**Norman Jetmundsen, Jr.** **Birmingham, AL** Ltr – thanks for superb talk to the Sunrise Rotary Club	4/2	4/2	*NRN*	
IL	**Stephen Moriarty** **The Commercial Bar Association** Ltr – thanks for letter of Jan. 12, advising that Jack Young has been appointed as the ABA liaison with COMBAR for their Chicago meeting	3/20	4/2	*NRN*	
IL	**Thomas B. Worsley** **Madison Memorial Project** Ltr – seeking sponsors for the Madison Memorial honoring James Madison	3/09	4/2	*NRN*	
email	**Mark K. Shriver, Chairperson** **Nat'l Coms'n on Children and Disasters** Ltr – inviting ABA to help inform and shape their work in a study that assesses children's needs re major disasters	4/1	4/1	*Forwarded to Howard Davidson and Bob Horowitz for a response.*	

cc: Janet Jackson, Ira Pilchen, Katy Englehart

TALMADGE/FITZPATRICK
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TUKWILA, WASHINGTON 98188
(206) 574-6661 (206) 575-1397 FAX
EMAIL: PHIL@TAL-FITZLAW.COM

March 23, 2009

Via Electronic Mail: abapresident@abanet.org

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

Re: Request for ABA to Withdraw Letter in Support of H.R. 6381 and S. 3398

Dear Mr. Wells:

I am writing to express my concern about your December 29, 2008 letter to Representative Frank Pallone, Jr., the Chair of the Subcommittee on Health of the House Committee on Energy and Commerce, and to Senator Edward M. Kennedy, the Chair of the Committee on Health, Education, Labor, and Pensions, urging them to reintroduce legislation to overturn the U.S. Supreme Court's decision in *Riegel v. Medtronic*. The letter, written on behalf of the ABA and its members, appears to be contrary to the ABA's existing policy on federal preemption and certainly does not reflect the position of numerous attorneys on that subject. I urge you to withdraw the letter.

As you are aware, federal preemption is a controversial issue in the legal community. While your letter states that it represents the views of the ABA, this issue was noticeably absent from the ABA's 2008 annual meeting agenda, although there was ample time between the Supreme Court's February 20, 2008 ruling in *Riegel* and the August annual meeting for interested affiliated organizations to prepare policy recommendations for consideration by the ABA House of Delegates. Proposed federal legislation to overturn *Riegel* was publicly circulated and the subject of media reports as early as March 2008. The ABA could have considered taking an official position on legislative action to overturn *Riegel*, but it did not.

Aside from greater transparency and permitting broader participation of ABA members on this issue, there are sound reasons for

going through the ordinary procedure of developing reports and recommendations and submitting them for approval by the House of Delegates. This process would have ensured greater discussion of a controversial issue, examination of other ABA policies affected by its adoption, and a summary of minority or opposition views on the issue.

Your December 29 letter appears to be at odds with the ABA's existing policy on preemption. Current ABA policy urges Congress to "address foreseeable preemption issues clearly and explicitly when it enacts a statute affecting regulation or deregulation in an area of conduct." (Aug. 1988 Resolution). Moreover, the report accompanying that ABA resolution expressed the decision to "not address substantive questions concerning the desirability of Federal preemption in general or in particular regulatory contexts." (Rep. No. 3 of the Section of Administrative Law, May 1988). The report included a well-considered discussion of the institutional advantages of a federal agency over a federal court in determining whether preemption applies, such as its "superior ability to engage in detailed analysis of the effect of a state regulation that arguably conflicts with a federal goal," its expertise in the subject area, its ready access to scientists, and its ability to engage in extensive factfinding. The 1988 ABA policy has not been archived and therefore, in accordance with Recommendation 400 (1996), it remains official policy and is listed as such in the ABA's Legislative Issues handbook.

In my law practice, I represent the Washington Trucking Associations ("WTA"). WTA is a strong proponent to federal preemption of state and local laws that attempt to address rates, routes, and services of this interstate industry. Congress has preempted local laws in the FAAAA, 49 U.S.C. §§ 14501(c). Plainly, pronouncements by the ABA on preemption undertaken without appropriate consideration by the ABA's membership could have implications for preemption in other settings like trucking. Present ABA policy on preemption is sound and should not be abandoned on a case-by-case basis, as your letter has done.

For the reasons stated above, I respectfully ask that you withdraw your December 29 letter submitted on behalf of the ABA and its members.

Very truly yours,

Philip A. Talmadge

cc: Larry Pursley

South Carolina Bar

950 Taylor Street
PO Box 608
Columbia, SC 29202-0608
803-799-6653 Phone
803-799-4118 Fax
www.scbar.org

ADVANCING JUSTICE, PROFESSIONALISM AND UNDERSTANDING OF THE LAW.

March 27, 2009

H. Thomas Wells, Esq.
President, American Bar Association
Maynard Cooper & Gale PC
2400 Regions/Harbert Plaza
1901 6th Ave. N.
Birmingham, AL 35203-2603

Henry F. White, Jr., Esq.
Executive Director
American Bar Association
321 N. Clark
Chicago IL 60654

Edward A. Adams, Esq.
Editor and Publisher
American Bar Association
ABA Journal
321 N. Clark
Chicago IL 60654-7598

Dear Gentlemen:

As President-Elect of the South Carolina Bar, it has come to my attention that the ABA inappropriately placed a private lawyer's banner ad on the ABA's Lawyer Referral and Information Service Web page and on each state's referral service listing.

Although the advertisement has expired, the placement of this ad greatly concerns our Bar's Lawyer Referral Service. A lawyer should not be permitted to subvert the Lawyer Referral space to promote himself, aided by the very organization that promulgated the LRIS model rules which by implication prohibit these ads. We respectfully request that no ads be so placed on the ABA's LRIS Web page or on each state's referral listing page.

Sincerely yours,

Fred W. Suggs, Jr.

Fred W. Suggs, Jr.
South Carolina Bar President-Elect

5157057.1 (PERSONAL)

1858 MBA 2008

Milwaukee Bar Association

Improving Access to Justice for 150 Years

RECEIVED
MAR 30 2009

March 27, 2009

H. Thomas Wells, Junior
Maynard Cooper & Gale PC
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203-2603

Dear Attorney Wells:

I am disappointed that the American Bar Association (ABA) would allow paid advertising to distract those in need from reputable referral services. The decision to place advertising revenue above the mission of lawyer referral services, public services that connect callers with the justice system, is disgraceful.

I call upon the ABA to end this practice; return to endorsing those whose mission statements align with your organization. Stop accepting funds from opportunistic agencies that are unable to serve the needs of an at risk population. We will be informing our Board of Directors about this poor decision made by the ABA.

Sincerely,

Britt Wegner
Lawyer Referral and Information Service Director
Milwaukee Bar Association

424 E. Wells Street · Milwaukee, Wisconsin · 53202 · P: 414.274.6760 · F: 414.274.6765
www.milwbar.org

Vulcan
Materials Company

P.O. BOX 385014
BIRMINGHAM, AL 35238-5014
TELEPHONE: 205 298-3206
FAX: 205 298-2960
E-MAIL: jetmundsenn@vmcmail.com

April 1, 2009

Mr. H. Thomas Wells, Jr.
Maynard Cooper & Gale, P.C.
2400 AmSouth/Harbert Plaza
1901 6th Avenue North
Birmingham, AL 35203

Re: **Sunrise Rotary Club**

Dear Tommy:

Thanks for your superb talk to the Sunrise Rotary Club. I heard a number of good comments after the meeting about your talk. I hope you can help initiate change with choosing our judiciary.

We greatly appreciate you taking time to come talk to our club. I hope to see you again soon. Best wishes with the ABA.

Sincerely yours,

Norman

Norman Jetmundsen, Jr.

Thanks!

NJjr/als

combar

The Commercial Bar Association

H.Thomas Wells, Jr
President
American Bar Association
321 N.Clark Street
Chicago, Illinois 60654
USA

20 March 2009

Dear Mr Wells,

I am writing, very belatedly I am afraid, to thank you for your kind letter of January 12, letting me know that Jack Young has been appointed as your liaison with COMBAR for our forthcoming meeting in Chicago. As a result of a "glitch" on this side of the Atlantic, your letter remained dormant until Jack got in touch with me (as your letter promised), and I then realised my error in not having responded to thank you. I do apologise.

Anyhow, as I say, Jack and I are now indeed in contact; and COMBAR is extremely grateful indeed to you, and to the ABA, for providing us with the kind assistance of a liaison to help us with our meeting. I very much look forward to working with Jack, and to meeting him in due course.

With very many thanks once again.

Kindest regards,

cc: John Hardin (Jack) Young

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e: admin@combar.com www.combar.com DX 331 London Chancery Lane

American Revolution Round Table (ARRT) of DC
MADISON MEMORIAL PROJECT
ATTN: Dr. Thomas B. Worsley
6317 Golf Course Square
Alexandria, Virginia 22307

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

March 2009

Dear Mr. Wells,

The enclosure presents the case for a long overdue major Madison Memorial honoring Virginian, James Madison, Father of our revered Constitution and Bill of Rights, in the national capital.

We are developing a coalition of strong sponsors of that cause and would appreciate permission to list you as a valued member. The purpose of the coalition is to help activate Congress to promote and fund the Memorial.

It is said that, despite his great stature among academics as a political scientist, Madison does not occupy much space in the American heart or consciousness. It may require considerable educational effort and time to create adequate commitment and action in this important endeavor. During our economic crisis it may be harder to accomplish but remember that the Jefferson Memorial was dedicated in 1943, the middle of World War II.

As indicated in the enclosure, volunteers who will help contact the powers that be, or have suggestions, are welcome.

Thank you for your attention.

Sincerely,

Thomas B. Worsley

Thomas B. Worsley
703-765-9362

1 Encl.

TO: To Those Who Appreciate the Founding Father, James Madison
FROM: Dr. Thomas Worsley, American Revolution Round Table of D. C
DATE: February 2009
SUBJECT: PROPOSAL FOR AN ADEQUATE MADISON MEMORIAL (*CAPITAL 'M'*) IN THE NATIONAL CAPITAL.

A "Style" article in the *Washington Post* of September 17, 2008, regarding recent restoration of James Madison's Montpellier home, asks whether the father of our almost sacred U.S. Constitution and Bill of Rights is the Rodney Dangerfield of the Founding Fathers. It then states, "First of all, there's no Madison Memorial in Washington."

Three days later in the *Post's* "Free For All" section, a representative of the Library of Congress rebuts the earlier article, stating that according to its archives, the Madison building "serves both as the Library's third major structure, and as this nation's official memorial (sic, note the small `m') to James Madison." But the vast American general public is unaware of this fact.

The original Library of Congress building is named for Thomas Jefferson, the Library's great benefactor, but the American general public is far more aware of the great Jefferson Memorial (with a capital 'M') honoring the "Author of the Declaration of Independence," with its prominent Mall location, appropriately beautiful architecture, impressive statue and many apt Jefferson quotations. We need a comparable memorial on the Mall honoring 'the great little Madison'.

It was the studious and persuasive Madison who was the primary force in accomplishing the "Miracle at Philadelphia," the framing of our founding document, signed in September 1787, and so ably explained by him in the Federalist Papers. It was also he who shepherded his creation through the hard-fought Virginia ratification convention of June 1788. In that Battle of the Titans at Richmond, Federalists Washington (in absentia) and Madison as leader were opposed by Antifederalists Patrick Henry and George Mason, the latter having declined to sign the Philadelphia product without a Bill Of Rights limiting government powers. In a close vote the Virginia convention finally approved the measure on condition that a Bill of Rights would be added later. Next it was Madison who, as a member of the first U.S. Congress meeting in New York, introduced twelve Constitutional amendments, of which ten were approved in 1791, and became known as the 'Bill of Rights'; Madison drew heavily on principles enunciated in 1776 by Mason in Virginia's Declaration of Rights. There is a statue of Mason on the Mall.

Madison's magnum opus brought to bear ideas and principles of self-government that go back over two millennia to the Greek *demokratia* (people's power) and the *res publica* (public affairs) of the Roman Republic. Many later political philosophers also influenced Jefferson and Madison, most notably those of the 17th and 18th century Enlightenment, who emphasized natural and equal rights and the consent of the governed. Despite imperfections later ameliorated by amendments, Madison's Constitution and Bill of Rights gave America a balance of individual rights and community values unmatched but later emulated elsewhere.

Britain's Gladstone said the American Constitution "is the most wonderful work ever struck off at a given time by the brain and purpose of man" That work defines fundamental principles of representative democracy, including the rule of law, limited power, division of powers among legislative, executive and judicial branches; majority rule both in the electorate and in Congress; protection of important rights of the minority from the majority; and division of power between the national and state governments under the principle of Federalism.

Such provisions guarantee rights that are the foundation of our national identity and cultural unity, symbolized by the Statue of Liberty and motto *E pluribus unum*. Especially important is the First Amendment, which protects what Madison called "the great rights," which guarantee free religious and civil expression, the foundation of a free society These rights are freedom of religion, speech, press, assembly and petition.

ABA President

From: Johnson, Victoria (ACF) (CTR) [Victoria.Johnson@acf.hhs.gov]
Sent: Wednesday, April 01, 2009 9:35 AM
To: ABA President
Subject: Letter on Behalf of Mark K. Shriver, National Commission on Children and Disasters
Attachments: American Bar Association Juvenile Justice Committee.doc

Dear Mr. Wells,

The attached letter is sent to you on behalf of the Mark K. Shriver, Chairperson of the National Commission on Children and Disasters. Your organization is a valued stakeholder in the national effort to examine and assess the needs of children as they relate to preparation for, response to, and recovery from disasters. We look forward to your response to our request for information.

Sincerely,

Vicki Johnson, MS
Director of Policy
National Commission on Children and Disasters
Administration for Children and Families
U.S. Department of Health and Human Services
1250 Maryland Avenue SW, 8th Floor East
Washington, DC 20024
Office: (202) 205-9558
Cell: (202) 536-6828
Fax: (202) 205-9565
:toria.johnson@acf.hhs.gov

NATIONAL COMMISSION ON CHILDREN AND DISASTERS

1250 Maryland Ave, S.W., 8th Floor East · Washington, D.C. 20024 · (202) 205-9560

NATIONAL COMMISSION ON CHILDREN AND DISASTERS

April 1, 2009

Mr. H. Thomas Wells, Jr. President
American Bar Association
Juvenile Justice Committee
321 North Clark Street
Chicago, IL 60654

Dear Mr. Wells,

As Chairperson of the National Commission on Children and Disasters (NCCD), and on behalf of my fellow Commissioners, I invite your organization to help inform and shape our important work by responding to this request for information.

The NCCD is an independent and bipartisan body of ten members, appointed by the President and Congress, and authorized under the Consolidated Appropriations Act of 2008 (P.L. 110-161). The NCCD is tasked with conducting a comprehensive study that examines and assesses children's needs as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies. The authorizing statute requires the NCCD to study a broad range of domestic policy areas related to the needs of children affected by all hazards: physical and mental health, elementary and secondary education, child welfare, child care, housing (including sheltering, intermediate and long-term), evacuation and transportation, juvenile justice, and emergency management. The NCCD will review and prepare policy, legislative, regulatory, and administrative recommendations, which will be provided to President Obama and Congress through an Interim Report in October 2009 and a Final Report in October 2010.

The NCCD respectfully requests that your organization help us identify persistent "gaps" in public programs and policies, where the unique needs of children must be elevated in the minds of policymakers at the federal, state, and local levels. **The NCCD encourages you to**

1250 Maryland Ave, S.W., 8th Floor East · Washington, D.C. 20024 · (202) 205-9560

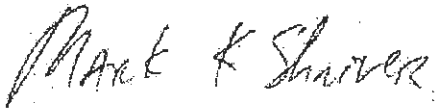
share with us your organization's policy, legislative, regulatory, and administrative recommendations as they relate to improving emergency preparedness, response, and recovery for children under the age of 18. Also, please provide any evidence supporting your organization's recommendations, such as reports, research briefs, articles, policy resolutions, public testimony, presentations, and other relevant documents.

Please forward your recommendations and supporting evidence via e-mail to Victoria Johnson, Director of Policy, at victoria.johnson@acf.hhs.gov by **May 1, 2009.** Any questions may be directed to Ms. Johnson via e-mail or at (202) 205-9558.

In addition to this request, we welcome your presence and participation in our quarterly public meetings. The next NCCD meeting is June 26, 2009 in Washington, DC. More information concerning the time and location of the meeting will be forthcoming.

Thank you, in advance, for your timely response to our request. We look forward to collaborating with you and your organization.

Sincerely,



Mark K. Shriver
Chairperson
National Commission on Children and Disasters

cc: