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20-minutes

It's a relief to be here close to home among friends. If I have counted right, this is my 119th day on the road this calendar year, so it has also been busy. But as good as it is to be home, it is a bit intimidating to address so many friends and colleagues from Alabama. I hope I do better than one of my law school classmates. [Oyez story: save the United States from this honorable court].

I hope to do Alabama proud this year, as my law partner Lee Cooper certainly

did a decade ago when he led the ABA. Lee, as many of you know, introduced Jan and me to the ABA's Litigation Section 20-odd years ago. The rest, as they say, is history.

I have to admit that I think fondly about Lee and the example he set much more than I think about the only other ABA president from Alabama, Henry Upson Sims, who also hailed from Birmingham. Lee's office, of course, is around the corner from mine, and I'll always remember his leadership advice when I was preparing to chair the ABA

House of Delegates: Lee's advice as to what my goal should be was simple and yet profound: Finish your term with more friends than you started with, Lee told me.

On the other hand, my knowledge of Henry Upson Sims, until recently, was largely relegated to a faded painting that Judge Scott Vowell found in the Jefferson County Courthouse. He showed it to me with a proposal to foot the restoration bill.

Since then, I've learned that Henry Upson Sims was a nationally renowned

**real property law scholar who has a
faculty position named for him at the
University of Alabama School of Law.**

**Something I do think about as I brace
myself for the coming year is that Sims
had the fortune – or misfortune - to lead
the state and national bars during some
pretty rocky times in our nation's history.
He served as president of the Alabama
State Bar from 1917 to 1918, which of
course happened to be America's years in
World War I. Apparently, that historical
convergence wasn't satisfying enough for**

Sims. He went on to serve as president of the ABA from 1929 to 1930.

Following in these footsteps, I remind people over and over again that any responsibility Henry Upson Sims may have had for the stock market crash is greatly exaggerated.

Interestingly, according to an account in Time magazine, - yes, in 1930 Time covered the ABA meeting - Sims presided over a particularly heated debate at the ABA—one that reminds us that it's nothing new for political and social issues to appear at the ABA's doorstep. The

issue was Prohibition, and it was up for consideration at the 1930 annual meeting.

That meeting was held in, of all places, Chicago, which is where we're having our annual meeting next year. I sure hope my presidential speech will be more on tune than Sims'. According to Time, which described him as "sad eyed," Sims assured his audience that [quote] "visions of social strife are but phantasmagoria of morbid brains."

Whew! As much as I have tried, I have never been able to work

“phantasmagoria” into any of my speeches thus far.

At any rate, after a debate over whether to consider the question of Prohibition, the convention ultimately deferred resolution until after the November elections—and, I would point out, safely after Sims' term ended.

As Lee Cooper and Henry Upson Sims could both tell you, I do have my work cut out for me. So could my law partners Boots Gale, who managed to keep us out of trouble while leading the Alabama Bar, and Anthony Joseph, who did great

things as head of the Birmingham Bar and I'm sure will do even better things as chair of the ABA's Criminal Justice Section this year.

As you know, the ABA's practice sections, committees, and other groups cover just about every area of the law. As a national organization—and the world's largest voluntary professional association—we bring 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.

I'm encouraged by recent efforts to improve collaboration between the ABA and our state and local bars so we can focus our efforts and work together. And I'm especially looking forward to working with Mark White and the other state and local bar presidents who will serve with me.

One principle will guide me during 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. Our common core values unite us as a profession and inspire us to work together.

There are four common core values I'm emphasizing. They 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.**

In my travels, I'm finding that virtually *all* bars are concerned about and working hard to promote access to justice, independence, diversity, and the rule of law.

Articulating and uniting on 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 administration.

The experts in our respective fields of law can weigh in on the crucial issues our candidates are debating, especially those

that involve our common core values as lawyers.

I, for one, intend to spend a lot of time with the ABA's Governmental Affairs Office in Washington making inroads with the new administration and Congress—so that we can advocate on our common core values.

Aside from the issues, the bar plays a more fundamental role—ensuring that our elections are free, fair, accessible, and accurate. That's why the ABA has a bipartisan Standing Committee on Election Law, which has developed

standards for how elections should operate.

Whatever you say about the elections process, it's ultimately *the rule of law* that keeps elections disputes in the courtrooms and out of the streets.

One element of the ABA's election standards calls on bar associations to encourage lawyers to serve as election judges and to otherwise lend their legal expertise, time, and talent to the process.

You'll soon hear about the ABA's election-related resources that we're rolling out in August. They'll help bar

associations encourage and help lawyers across America serve and strengthen the election process. This is a valuable way for lawyers to do pro bono and public service while promoting free and fair elections, which are a core aspect of the rule of law.

The elections are just one way our profession makes a difference. 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 a

**model lawyer who became one of our
greatest presidents.**

**The ABA, especially with Law Day,
will be celebrating Abraham Lincoln in
2009 and emphasizing his contributions
as a lawyer. It is more than a little ironic
that, during this year of celebrating
Lincoln's bicentennial, the ABA President
will be from Alabama, the Chair of the
House of Delegates will be from South
Carolina, and the chairman of Law Day
will be from Georgia.**

**I think about Lincoln's honesty and
ethical behavior when I stop to consider**

something I've long cherished about being a lawyer. The profession we share with Lincoln is much more than a job or a trade. Here in the South, we say lawyers are "called" to the bar.

Think about that for a moment: "Called to the bar." The only other profession that is "called" is the clergy. Accountants are not called to accountancy; dentists are not called to dentistry; and engineers are not called to engineering.

If clergymen and women minister in the realm of the spirit, lawyers minister in

the realm of justice. As you know, my sister-in-law Lynn McKenzie from Cullman ministers in both—she's both a nun *and* a lawyer. And she received the bar's Pro Bono Award at the luncheon yesterday.

Our profession is, indeed, a calling. We minister justice, and our mission is public service. This call to the bar unites us on our common core values of access to justice, independence, diversity, and the rule of law—and they enable us to make a difference as a profession.

For our common core value of access to justice, the bar is making a huge difference even as we have a lot of work to do. We know this here in Alabama, which joined many other states when Chief Justice Cobb established the Supreme Court's Access to Justice Commission. The ABA, especially through our Division for Legal Services, encourages the efforts of access to justice commissions throughout the country, and we're happy to work with Alabama's.

In carrying out our national leadership role, the ABA develops

universally respected access-to-justice standards that are implemented at the state and local level. These standards cover pro bono programs, public defender resources, and death penalty representation. Our resources for lawyers ultimately help victims of domestic violence, provide due process and fair treatment to people in our immigration system, and give a voice to those who don't have a strong voice in our system of justice.

Most recently, the ABA as the national voice of the legal profession has been

urging Congress to increase funding for the Social Security Administration, to ease the unprecedented backlog of disability claims.

And when disaster strikes, the ABA's Young Lawyers Division is always on hand to staff legal assistance hotlines, in conjunction with state bars and FEMA. We mobilized our members during the Gulf Coast hurricanes, and we've done so most recently in the flooding of Iowa and surrounding states.

At the federal level, the ABA and our state and local bars continually lobby to

ensure continued funding of the Legal Services Corporation. We were happy to have Sam Crosby, Wade Baxley, Bill Broome, and—of course—Tracy Daniel from the Alabama Law Foundation representing Alabama in Washington last April for ABA Day, our annual lobbying activity on behalf of legal services and other core issues of the profession. This was the first year the ABA pulled together something remarkable: A letter of support for funding for LSC was signed by all 50 state bar presidents. We appreciate Alabama's steady

participation in ABA Day in Washington, and we look forward to working together on legal services funding and other access to justice issues.

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, the legal community is working 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. Just this past week Attorney General Mukasey testified to the Senate Judiciary Committee signaling changes in this policy, and Deputy Attorney General Mark Filip wrote to the Committee detailing changes that are soon to come. While it's encouraging that the government is again modifying its guidelines in response to a broad coalition including the ABA, state and local bar associations, and the U.S. Chamber of Commerce and the American Civil

Liberties Union, but even these most recent changes do not go far enough.

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. 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. I like to point out that the ABA's original code was modeled on the first *state* code—and that, of course, 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, 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 political influence 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 may again become a political football this election season. The ABA,

through our Standing Committee on Judicial Independence and Division for Bar Services, will continue to help our partners in the state and local bars respond vigorously and quickly to attacks on our judiciary.

Judicial independence doesn't stop with defending against attacks. As important, we must ensure that our judiciary is competent and accountable to standards of professionalism and ethics. The ABA's Model Code of Judicial Conduct is the national standard. And our Standing Committee on the Federal

Judiciary, which is universally respected by both parties, helps ensure that federal judicial nominees meet the highest standards of competence and professionalism.

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 our profession as we're called on to serve an increasingly diverse society.

And as a profession, we must be vigilant in ensuring that our laws and courts are accessible and fair to everyone, especially to those from groups that have historically been mistreated or neglected.

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—primarily funded not by membership dues but by grants from USAID and other sources. 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.

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 ensuring national security in these extraordinary times while preserving the liberties that form our society's bedrock.

Our rule of law is also threatened by inadequate resources for public defenders and counsel in capital cases. By lack of access to civil justice. By 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.

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

Dean Charles Gamble taught me about an ancient principle to help us become even better defenders of liberty and pursuers of justice in this very room at the Bar meeting two year ago. Dean Gamble took us back 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 Dean Gamble pointed out 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. 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 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, and that's "lawyer."

As lawyers, particularly in the heated environment of an election year, 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.**