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2008

### 2008-09-02 H. Thomas Wells, Jr. ABA Presidential Speech

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**Thank you, \_\_\_\_\_, for your introduction. And thank you, everyone, for being here today.**

**It's great to be in Birmingham—and I'll tell you why. Week before last, I went with my wife Jan to the Canadian Bar Association's annual convention in Quebec City. It marked my 145th day on the road as president-elect this *calendar* year. It's getting to the point, quite frankly, where Jan asks to see my ID before she lets me in the house.**

**I really knew things had gone a little too far when just the other day, I blew a**

**heel in one of my dress shoes. I guess I've been walking in airports way too much.**

**At least the wardrobe malfunction happened here in Birmingham, where I could get to the Goodyear Shoe Hospital right around the corner to get it repaired.**

**That probably wouldn't have been the case last January when I was on the road for a rule of law conference . . . in Africa—the city of Accra, Ghana, to be exact. The mental picture I have of trying to get a heel replaced on a pair of shoes in that part of the world . . . let's just say it**

**could very well have been an interesting fashion statement.**

**So much for the glamour of representing the American legal profession. Actually, it's an honor and privilege, and a thrill, to lead the world's largest voluntary professional membership organization, an association that is the voice of the American lawyer and an advocate for justice.**

**And I hope this honor reflects at least a little back to Birmingham. At my recommendation, we're hosting the ABA Board of Governors at Ross Bridge next**

**month, which is the first time—ever, if I'm not mistaken—that we've had such a meeting of the ABA's high-profile national leadership here in Birmingham. I've been talking up the Magic City with our board members, most of whom have never been out here, and I've arranged for them to receive copies of Birmingham magazine every month. David Bronner, the head of Alabama's retirement system, will speak to the group about our local crown jewels, the Robert Trent Jones golf courses, and—of course—we're going to**

get in a few rounds of golf while they're here.

As some of you know, I'm not the first ABA president from Alabama, or even from Birmingham, for that matter. I'm the *third*.

My law partner, Lee Cooper, served as the *second* ABA president from Alabama, in 1996-97.

The *first* ABA president from Alabama was Henry Upson Sims, a real property lawyer of some national renown.

Until recently, my knowledge of Henry Upson Sims was mostly relegated to a

**faded portrait that was found in storage in the Jefferson County Courthouse.**

**Judge Scott Vowell found the portrait and showed it to me with a not-so-subtle suggestion that I foot the bill for a restoration.**

**I think about Henry Upson Sims a lot these days, because—as the old Chinese curse puts it—he led in interesting times. He was president of the Alabama State Bar from 1917 to 1918—America's years in World War I. And he served as president of the ABA from 1929 to 1930.**

**Following in his footsteps, I want to assure you of one thing: Any connection between Henry Upson Sims and the stock market crash of 1929 has been greatly exaggerated.**

**It's interesting to note the subject of one of the controversial issues in the ABA in those days. According to Time Magazine—yes, Time Magazine reported on the ABA meeting in 1930—a heated debate before the ABA that year was one that a substantial portion of the membership viewed as a social issue beyond the pale of the ABA. Can you**



**guess what that issue was? It was Prohibition.**

**Time also reported on Sims' speech to those assembled in Chicago. He said (and I quote) that "visions of social strife are but phantasmagoria of morbid brains."**

**I've assured my colleagues—and for the sake of my well-earned Birmingham reputation—I assure you that I will never use the words "phantasmagoria" and "morbid brains" in any of my future speeches.**

**One thing is definitely not phantasmagoria: My term will focus on**

**common core values of the legal profession, values that resonate for lawyers on Wall Street as well as Main Street; Values that Unite us as a profession; Values that Inspire us to work together; Values that Enable us to make a difference as a profession.**

**Let me share with you briefly about some of these values. One is access to justice. On this, the bar does considerable work to provide pro bono assistance and raise money for legal services for the poor.**

**But we have lots of work to do. For one thing, because of a lack of funding and manpower, 8 out of 10 people across America with limited incomes can't get their legal needs served. We're talking about folks whose homes are being foreclosed, who need family lawyers to help them get out of violent relationships, who face bankruptcy from credit card and other debt.**

**More than ever, the most vulnerable in our communities need trusted advocates to help them navigate their legal problems.**

**The bar does a lot to promote access to justice, and it's my goal to shine a spotlight on and encourage these initiatives.**

**Among our many access-to-justice projects, I'd like to tell you about one: the Military Pro Bono project. This unique collaborative work promotes referral between military lawyers and lawyers in private practice who are willing to represent active duty military members in state and local courts. It's one way we are both supporting our**

**troops and ensuring that they have access to civil justice when they need it.**

**Another core value we're focusing on is the need to promote excellence in our courts—to assure the public that our judges and our courts are fair and impartial, and why that's important in our system of laws.**

**One proposal the ABA just adopted at my urging aims to make a positive difference in how federal judges are nominated and approved.**

**Our federal judicial nominees should reflect the community's best legal talent and highest values.**

**But too often, the nomination and confirmation process in Washington involves lengthy, partisan conflict and delay.**

**In some instances, it causes nominees to languish while the parties fight over whether to confirm them, or even whether to hold a vote on the Senate floor.**

**It causes backlogs of cases in our federal courts and overwhelming workloads for the judges.**

**It is not an example of government at its finest.**

**Some have compared the process to making sausage. But that is an insult to sausage makers.**

**One thing the ABA excels at is examining problems affecting our justice system—and to offer possible solutions to those problems.**

**We've offered a solution to the thorny problem of federal judicial nominations. You may have read about it in my op-ed in the Birmingham News a couple of days ago.**

**Based on a review of existing studies and scholarship, we're offering an approach to create a faster, less conflict-ridden method for getting excellent judges onto the federal bench.**

**We hope to bridge the partisan divide that has grown over many years.**

**Here's how the constitutional process for choosing federal judicial nominees**



**works: The president selects the nominees—usually by recommendation from the nominees' home-state senators—for an eventual confirmation vote by the Senate. Sometimes there's input from the home-state senators and citizens, and sometimes there isn't.**

**What we've found is that when there's no buy-in, contention and delay is often the result.**

**The ABA is taking a community approach to the problem. We're encouraging Senators in each state to jointly establish bipartisan advisory**

**commissions, similar to those already used in eight states by senators of both parties. The advisory commissions evaluate the qualifications of prospective nominees to the U.S. district—or trial—courts. We're also suggesting similar commissions for the U.S. courts of appeals.**

**These commissions are voluntary and completely nonbinding. They recommend a number of possible nominees whom the Senators of that state may suggest for the President's consideration. Everyone**

**recognizes that any nomination decision ultimately belongs to the President.**

**The approach is flexible. We don't outline particular steps or procedures to follow. That's best accomplished by the senators themselves.**

**It does encourage the commissions to involve the full range of the state's legal and non-legal communities so they can benefit from the most diverse input possible.**

**We believe this will help avoid battles whose costs outweigh their benefits to the**

**President, the Senate, the nominees, and the courts on which they may serve.**

**The extra screening provided by bipartisan advisory commissions can help speed the process once a nominee is named.**

**Use of advisory commissions offers a way out of partisan contention and delay in the nomination and approval process for federal judges. Judging from the mood of the country and the campaign rhetoric we're hearing this election season, anything that reduces gridlock in**

**Washington is an idea whose time has come.**

**Fortunately, we're getting a lot of coverage of the proposal, even if it isn't always to our liking. A Wall Street Journal editorial got the idea completely wrong on August 14 when they charged us with trying to set up commissions of lawyers that would remove selection from the president. "A lawyers coup," is what they called it.**

**First, we never suggested that the commissions would be composed mainly of lawyers. We do assume that *some***

**lawyers would serve on these commissions because of our familiarity with the courts and the justice system, but we encourage citizens of all stripes to be included.**

**Second, the commissions are advisory only. Senators already offer names to the president for consideration, and the president often follows them anyway.**

**Advisory commissions would merely open the process to all applicants and give senators input on identifying the best possible candidates for the bench.**

**Third, the Journal didn't bother to mention how successful these**

**commissions are in operation—and they've been set up by Democratic and Republican senators alike.**

**In Texas, for instance, Senators Hutchison and Cornyn, both Republicans, use a nominating commission in each of the states' four federal districts. When there's a judicial vacancy, the two senators send out a press release publicizing the vacancy and inviting applications.**

**Applications are then sent to the senators, and the commission reviews and ranks the applicants. The senators choose**

**up to 10 applicants to interview. The committee interviews and ranks these applicants. The rankings are then sent to the senators. A smaller group is interviewed by the senators, and a recommendation is made to the White House.**

**I wrote a letter to the editor of the Wall Street Journal to correct them, and they published it – after a substantial edit - and several other letters supporting our position. But the very next day, they bashed us again—on the same points they had already made.**



**Fortunately, we did get a very supportive editorial in the Los Angeles Times and a few other papers, and we intend to waive the flag on this idea with the new Congress and Administration. Given the spirit of bipartisan cooperation we're seeing, I think we're going to get a lot of traction with it, and I'm encouraging Senators Shelby and Sessions to take a look at the idea.**

**I've enjoyed sharing with you some ways my colleagues and I are working to make a difference in these interesting times of our own, and I thank you for**

**your time this afternoon. I know from talking to this and other Kiwanis Clubs that at 1 o'clock, the Kiwanians leave whether the speaker is still talking or not.**

**I'd be happy to take any questions if there's time.**