2009

2009-07-03 H. Thomas Wells, Jr. ABA Presidential Correspondence

H. Thomas Wells Jr.

University of Alabama School of Law

CORRESPONDENCE LOG
H. Thomas Wells, Jr.
July 3, 2009

Origin	Correspondence	Date	Rcvd	Status (All suggested dispositions subject to review by TW)	CCs (Informational copies)
DC	**Lawyer Le Thuc Anh** **Vietnam Bar Federation** Ltr responding to TW's congratulation letter	6/11	6/29	*NRN*	
IL	**Don V. Harris, Jr.** **Covington & Burling LLP** **Washington, DC** Ltr – complaint re American Bar Association Insurance Program	6/24	6/30	*OP will coordinate a possible response with Joanne Martin.*	
AL	**Hon. William M. Acker, Jr.** **US District Court** **Northern District of Alabama** Ltr re Caperton decision	6/30	7/1	*TW replied.*	
IL	**Leslie Lesner** **Senator Durbin Scheduler** Ltr – Senator Durbin unable to attend the ABA Pro Bono Publico Awards Luncheon on 8/3	6/29	7/2	*Forwarded to Marty Balogh, Steve Scudder and Tom Susman as an FYI.*	
IL	**Ann B. Lesk, President** **NY County Lawyers' Association** Ltr – enclosed copy of Federal Trade Commission Red Flags Rule Report approved by the NYCLA	6/24	6/29	*Forwarded to GAO for response.*	
IL	**Erick Williams** **East Lansing, MI** Ltr – re legal profession to take steps to eliminate torture and prisoner rape	6/26	6/30	*OP acknowledged letter and forwarded to Criminal Justice as an FYI.*	
AL	**David Rottman** **National Center for State Courts** Ltr – appreciates time TW spent with him in Alabama earlier this month re a study of judicial campaign oversight committees	6/24	6/29	*NRN*	
AL	**Sandra Day O'Connor (ret.)** **Supreme Court of the United States** Ltr – thanks for putting on the meeting in Charlotte concerning the role of fair and impartial state courts	6/26	6/29	*NRN*	

cc: Janet Jackson, Ira Pilchen, Katy Englehart

CORRESPONDENCE LOG

H. Thomas Wells, Jr.

July 3, 2009

Origin	Correspondence	Date	Rcvd	Status (All suggested dispositions subject to review by TW)	CCs (Informational copies)
IL	**Rosalyn Lewis** Complaint Letter against attorney Thomas Mars of Wal-Mart and Chairman of ABA Minority Counsel Program Steering Committee.	7/1	7/2	*Forwarded to Catherine Daubard, General Counsel Office, and Rebecca Smith, ABA Service Center as an FYI.*	

cc: Janet Jackson, Ira Pilchen, Katy Englehart

VIETNAM BAR FEDERATION

Hanoi, June 11, 2009

H. Thomas Wells Jr.
President of American Bar Association
Washington DC, The United States of America

Dear H. Thomas Wells Jr.,

On behalf of Vietnam Bar Federation, I would like to convey my warmest greeting and sincerely thanks to you for having sent your congratulation letter on occasion of establishment of VBF at the First National Lawyer Representatives' Congress held on May 10-12, 2009 in Hanoi, Vietnam. The letter was hand-delivered by Mrs. Susan Goldman, the Country Director of ABA, at the meeting with VBF on May 22, 2009.

We are delighted with the success of the Congress. However, we understood that this is just a starting point for VBF on its long way full of challenging tasks to develop a strong legal profession and contribute in building a rule-of-law state and legal and judicial reform process in Vietnam.

We wish to express our deep gratitude for your willingness to share experiences and resources of ABA, the world oldest and biggest association, in support of the legal profession development in Vietnam. We would like to discuss the potential cooperation between VBF and ABA at an appropriate time in the near future.

Our sincere thanks to you once again.

On behalf of the Vietnam Lawyers Federation

President

Lawyer Le Thuc Anh

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June 24, 2009

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

Dear Mr. Wells:

I was once Chairman of the Section of Taxation. The American Bar Association Insurance Program is grossly misleading. It does not insure anything.

I had a stroke – what my physician refers to as a major stroke. Sibley Memorial Hospital in Washington, DC, treated my stroke, subsequently transferring me to National Rehabilitation Hospital for further treatment. My primary care physician has had supervision of my treatment since . After ten months, I am not fully recovered and may never be.

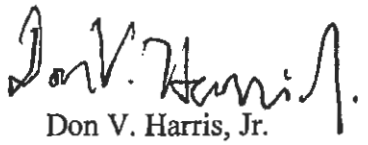
I have carried a catastrophic medical insurance policy, Twenty-five Thousand Dollar ($25,000.00) deductible, for a number of years. The minimum was satisfied by the charges for Sibley Hospital and National Rehabilitation Hospital. Except for proving the qualification for the minimum, no charge was made for the hospitals as they were paid in full by other insurance. There was an excess for prescriptions directly related to my stroke treatment and physicians' services directly related to my recovery. The insurer adamantly and arbitrarily refuses to honor these excess costs.

The insurer was American International Group – AIG. We all know what reputation AIG enjoys. Were they just saving money at all costs?

I doubt you can do anything about my particular case. I do want to alert all the ABA to my experience. I do not think that the ABA will wish to be associated with the Group.

I might also suggest that the arrangement with the American Bar Endowment constitutes a conflict of interest which is not best for its members. Although for years I participated, I do suggest it is not the best practice.

Very truly yours,



Don V. Harris, Jr.

dk

cc: Henry F. White, Jr., Executive Director
Ms. Joanne Martin
Ms. Kelly Abeles
Ms. Renee Z. Leskiw

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
[illegible] COURTHOUSE
[illegible], ALABAMA 35203

CHAMBERS OF
WILLIAM M. ACKER, JR.
JUDGE

June 30, 2009

H. Thomas Wells, Esq.
Maynard, Cooper & Gale, P.C.
2400 Regions/Harbert Plaza
1901 Sixth Avenue, North
Birmingham, Alabama 35203-2618

Dear Tommy:

I have several excuses for putting off writing this letter. I probably should not write it at all, but I have decided it is within my right as an Alabama citizen to exercise what little freedom of speech is left to a federal judge. I am compelled to respond to what you said to Eric Velasco as reflected in his Birmingham News article of June 9, 2009. I assume that he quoted you accurately.

When the President of the American Bar Association speaks people listen, without regard to whether that President knows of what he speaks. The Velasco story was a response to the *Caperton* decision, which admittedly could have some bearing on future Alabama judicial elections. I have mixed feelings about *Caperton*, but whatever I think about *Caperton*, the Supreme Court of the United States did not undertake to solve and cannot solve our Alabama problem.

I agree with your assessment of the 1996 Alabama statute that limits contributions to justices or judges or that requires their recusal. You correctly call it **"a pretty good statute"**. However, I totally disagree with your attempt to explain the non-enforcement of this "pretty good statute" by saying: **"The problem is Alabama has no transparent way to track campaign contributions to judges, so that statute can't be used"**. I don't know how you reached such an erroneous conclusion. You had to be either deliberately spinning or were misinformed by opponents of the Alabama statute. There may be valid reasons to criticize the statute (for instance, it is not perfect), but the real reason for its total lack of enforcement, a reason acknowledged by every knowledgeable person on the subject, is that the Supreme Court of Alabama refuses to implement the statute by saying that the statute must be pre-

cleared by the Department of Justice under the Voting Rights Act, while the Attorney General of Alabama, who is in charge of such things for the State of Alabama, continues to refuse to seek pre-clearance, taking the position that pre-clearance is unnecessary. Thus, a cozy Gaston-Alphonse standoff stands in the way of enforcing a "pretty good statute". The only reason the statute has died on the vine, is that the powers-that-be are happy with the status quo.

This unique statute was supposedly drafted by Justice Champ Lyons when he was an advisor to Governor Fob James. It will be ignored as long as leaders of the bar, like you, are uninformed or are unwilling to speak out, and as long as there is no media outcry. Without enforcement, we will never know how far the statute would go toward solving the problem the statute was designed to address. A fire needs to be built under the Chief Justice and/or the Attorney General. Nobody seems to have a box of matches, and I am not carrying one.

I, of course, agree with you that there is a problem with the laundering of money between PAC's, but that is a different problem. It relates to the election of all elected state officials. This particular statute was tailor-made for judicial races. It has been languishing on the books since 1996, while never being held unconstitutional or in violation of the Voting Rights Act. If I appear to be frustrated, I am.

Your respectful, if
disappointed, friend,

William M. Acker, Jr.

WMA/skb

RICHARD J. DURBIN
ILLINOIS

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON THE JUDICIARY

COMMITTEE ON RULES
AND ADMINISTRATION

ASSISTANT MAJORITY
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(217) 492–4062

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durbin.senate.gov

June 29, 2009

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

Dear Mr. Wells:

Thank you very much for your kind invitation to Senator Durbin. Unfortunately, due to the legislative session the Senator will be in Washington D.C. and will not be able to attend the ABA Pro Bono Publico Awards Luncheon and Awards Presentation on August 3rd.

The Senator truly appreciates being kept in mind and hopes that in the future you will continue to keep him abreast of any special occasions that your organization hosts.

If you have any further questions or if I can be of any assistance in the future, please contact me at (312) 353-4952.

Sincerely,

Leslie Lesner
Illinois Director of Scheduling
U.S. Senator Richard J. Durbin

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June 24, 2009

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

Dear Mr. Wells:

The Executive Committee of the New York County Lawyers' Association, at its meeting on June 23, 2009, approved the attached Federal Trade Commission Red Flags Rule Report. The Report was prepared by our Ethics Institute, chaired by Lewis F. Tesser. I hope you will find the recommendations helpful and I look forward to hearing from you.

Sincerely,

Ann B Lesk

Ann B. Lesk
President

ABL/rz

NEW YORK COUNTY
NYCLA
LAWYERS' ASSOCIATION

Lewis F. Tesser
Director, Ethics Institute
Tesser, Ryan & Rochman, LLP

NYCLA Ethics Institute Federal Trade Commission Red Flags Rule Report

This Report was approved by the Executive Committee of the New York County Lawyers' Association at its regular meeting on June 23, 2009.

It is clear that the crime of identity theft has become increasingly common and now affects people in all segments of society, including lawyers. *See* Weiss, "Bradley Arant Reportedly Scammed Out of More Than $400K" ABA Journal (June 2009) available at http://www.abajournal.com/weekly/bradley_arant_reportedly_scammed_out_of_more_than_400k. In general, attempts to fight identity theft should be applauded and, where appropriate, should merit the Association's support. However, that is not the case with respect to the Federal Trade Commission's ("FTC") new "Red Flag Rules," (scheduled to go into effect on August 1, 2009), due to the FTC's intention to apply these rules to the legal profession. It should be noted that the FTC belatedly informed the American Bar Association ("ABA") in April 2009 of the agency's intention to apply its new rules to lawyers and law firms. In doing so, the FTC did not provide any specific guidance as to how its Red Flag Rules would, if implemented, operate in the context of a law firm or a sole practitioner.

For these reasons, and as is more fully explained below, we urge the FTC to reconsider its decision to apply the Red Flag rules to the legal profession.

The Red Flag Rules are clearly directed at "financial institutions" and "creditors." Viewed reasonably in this context, lawyers are, of course, neither of these. However, without sufficient justification, the FTC has determined that the Red Flag Rules are applicable to lawyers and law firms, as well as physicians and other health care providers, because, in the FTC's view, all of these professionals fall within the legal definition of "creditor"[1] and therefore come under the statute. This strained interpretation ignores the reality that in many instances lawyers are not creditors with respect to their clients. Specific examples of situations where lawyers are not acting as "creditors" include, but are not limited to, the case of a retainer agreement, the prompt payment of its bills by the client, or a contingent fee arrangement—all of which are extremely common circumstances. However, to the extent

[1] The definition of "creditor" in the Fair Credit Reporting Act refers directly to the definition of "creditor" in the Equal Credit Opportunity Act ("ECOA"): "any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit." "Credit," is defined by the ECOA as "the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." The FTC has stated that professionals who regularly bill their clients for their services after those services are rendered are "creditors" under the ECOA.

that any lawyer or law firm does become a "creditor" with respect to a client, that occurrence is so tangential as to make the FTC's use of it as a basis for including the legal profession within the ambit of the Red Flag Rules untenable.

The Red Flag Rules provide that, "financial institutions" and "creditors" will be required to develop a written program that identifies and detects the relevant warning signs – or 'red flags' – of identity theft. The FTC has suggested that written programs mandated by the rules should potentially include ways of identifying or detecting unusual account activity or attempted use of "suspicious account application documents." Additionally, the FTC has stated that such programs should also describe responses that would mitigate or prevent the crime. Such a program must be managed by senior employees of a creditor or financial institution and must include staff training, as appropriate, and provide for oversight of any service providers.

The FTC's overreaching Red Flag Rules are analogous to the FTC's similarly ill-founded and ultimately unsuccessful attempt to apply the financial reporting provisions of the Gramm-Leach-Bliley Act ("GLBA") of 1999 to lawyers. *See Am. Bar Ass'n v. Federal Trade Commission,* 430 F.3d 457 (D.C. Cir. 2005). Title V of the GLBA requires "financial institutions" to disclose in writing to customers, the financial institution's privacy policy. The FTC considered lawyers and law firms who were "significantly engaged in financial activities" to be "financial institutions," and therefore were subject to requirements of Title V. The ABA and the New York State Bar Association filed lawsuits seeking declaratory judgments that the FTC did not have the authority to regulate lawyers under the GBLA.

The bar associations prevailed when the D.C. Circuit Court of Appeals found that the FTC's attempt to regulate lawyers under the GBLA "was an 'arbitrary and capricious' violation of the Administrative Procedure Act." The court added that, "[i]t is undisputed that the regulation of the practice of law is traditionally the province of the states." Federal law "may not be interpreted to reach into areas of State sovereignty unless the language of the federal law compels the intrusion," and "if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" The D.C. Circuit further held that, "[Congress] does not ... hide elephants in mouseholes"; to regulate lawyers based only on the very general grant of authority in GLBA over "financial institutions" would require the court "to conclude that Congress not only had hidden a rather large elephant in a rather obscure mousehole, but had buried the ambiguity in which the pachyderm lurks beneath an incredibly deep mound of specificity, none of which bears the footprints of the beast or any indication that Congress even suspected its presence."

With its Red Flag Rules, the FTC is once again trying to regulate the practice of law through an over-broad application of a set of rules that were clearly written with the intention of being applied to financial institutions. There is no legitimate basis for the FTC to regulate the legal profession in this way, nor has the FTC even made a showing that new rules would accomplish any positive practical effect in this context.

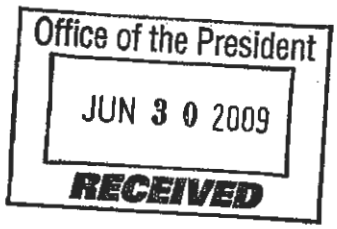
The regulation of lawyers is best left to the states. As the U.S. Supreme Court has stated, "[s]ince the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions." While it is not necessary for the present purpose to even consider the larger question of whether or not it is appropriate for the FTC to regulate lawyers in any fashion, it is important to observe that the application of these Red Flag Rules, directed at "financial institutions" and "creditors," to lawyers could have potentially broad and disturbing implications for the bar and the public.

If applied to lawyers, the Red Flag Rules would have the potential to intrude on the profoundly confidential nature of the client-lawyer relationship that is now regulated by the states through the Rules of Professional Conduct. Given the wide range of circumstances under which a client-lawyer relationship can develop, these Red Flag Rules would have a negative impact on the client-lawyer relationship and, in some cases, would limit a client's access to legal advice. For example, it would have a chilling impact on client-lawyer relationships if lawyers were now required to demand certain specific personally identifiable information from a client before providing advice. ["I am sorry, but before I am able to provide you with legal advice, I must first ask you some questions that are required by the Federal Government."] Clearly, some clients will be reluctant to provide this information and will be put in the position of having to decide whether to provide this personal information or go without the advice of counsel. As things stand, there is nothing that would prevent lawyers from undertaking their own sound due diligence before agreeing to a representation. It is obvious that under the current circumstances, the unarticulated benefit of applying the Red Flag Rules to the legal profession, as the FTC proposes to do, is outweighed by the very real damage that the rules would impose on the client-lawyer relationship that public policy that has guarded so carefully for centuries.

For these reasons, the Association is opposed to the FTC's proposed application of its proposed Red Flag Rules to lawyers and law firms, and urges the FTC to reconsider its position.

Erick Williams
1209 Old Hickory
East Lansing, MI 48823

26 June 2009



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

Dear Mr. Wells:

This is a propitious time for the legal profession to take steps to eliminate torture and prisoner rape.

The movement against prison rape, led by ex-offenders, prison reformers and religious groups, culminated in the Prison Rape Elimination Act of 2003 which created the Prison Rape Elimination Commission that recently published a report on the causes and measures to eliminate prison rape, http://nprec.us/files/pdfs/NPREC_FinalReport.PDF.

A parallel movement in reaction to the torture of prisoners captured in the war on terror led to major Republican losses in 2008 and helped sweep President Obama into office. One of the president's first acts was a series of executive orders banning torture and disavowing the legal memoranda purporting to justify the practice.

These two movements, springing from rather different constituencies, deal with the same phenomenon. Torture, including sexualized assault, is a feature of prison life, endemic in all parts in the world, in all epochs, inflicted on victims who have been stripped of the means to protect themselves, committed by assailants who operate under layers of legal protection.

The National Prison Rape Elimination Commission report, although it concentrates on rape to the exclusion of other forms of torture, notes that the threat of rape can lead prisoners to make hard, damaging choices, exposing themselves to other forms of torture merely to avoid the risk of rape:

> "[C]orrectional facilities may rely on protective custody and other forms of segregation (isolation or solitary confinement) as a default form of protection. [D]esperate prisoners sometimes seek out segregation to escape attackers. Serving time under these conditions is exceptionally difficult and takes a toll on mental health, particularly if the victim has a prior history of mental illness. Segregation must be a last resort and interim measure only." (Executive Summary, finding 3)

A form of isolation or solitary confinement so difficult that "takes a toll on mental health" is torture under the international definitions. Sexualized torture by Americans in Iraq, Afghanistan and Guantanamo Bay entailed some of the same methods seen in US domestic prisons, perhaps carried there by domestic police officers and prison guards activated and deployed to work in military prisons overseas. The interrelationship of rape and other forms of torture helps demonstrate that they are part of the same phenomenon, and suggests that the same measures are necessary to eliminate them.

The two movements to end torture and to end prison rape benefit from robust political support. The law against prison rape was passed at the height of the war on terror and reflected bipartisan support, and the revulsion against torture that helped sweep President Obama into office was historic. The atmosphere is favorable for opponents of torture and prisoner rape.

The means to eliminate prison rape and other forms of torture are the same – we need (1) union support, (2) effective complaint procedures, (3) medical treatment for victims, and (4) reporting requirements for lawyers.

The obligation of police and prison officials to protect their employees is often spelled out in disciplinary and privacy clauses in collective bargaining agreements. When those workers are charged with brutal behavior, collective bargaining agreements govern the internal grievance process and give procedural protections to employees that prisoners do not enjoy.

The National Prison Rape Elimination Commission found that union protection was a major source of cover for prison rapists. The Commission warned:

> "[C]ollective bargaining agreements should feature an explicit commitment from unions and their members to support a zero-tolerance approach to sexual abuse. Without it, there is little common ground upon which to build when negotiating the many specific policies and procedures to prevent and respond to sexual abuse." (Executive Summary, finding 1)

Unions are a major target of efforts to end prison rape, and they should be a target of efforts to abolish torture in all its forms. We need union support to make the grievance system more favorable to prisoners.

The National Prison Rape Elimination Commission report notes that internal grievance systems do not work; they are stacked against the prisoner. The Commission found:

> "Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail. Reporting procedures must be improved to instill confidence and protect individuals from retaliation without relying on isolation. Investigations must be thorough and competent. Perpetrators must be held accountable through administrative sanctions and criminal prosecution.

"Even when prisoners are willing to report abuse, their accounts are not necessarily taken seriously and communicated to appropriate officials within the facility. "When I told one of the guards I trusted how tired I was of putting up with abuse [by other youth in a Hawaii facility], he told me to just ignore it," Cyryna Pasion told the Commission. According to a 2007 survey of youth in custody by the Texas State Auditor's Office, 65 percent of juveniles surveyed thought the grievance system did not work....

"Victims and witnesses often are bullied into silence and harmed if they speak out. In a letter to the advocacy organization Just Detention International, one prisoner conveyed a chilling threat she received from the male officer who was abusing her: "Remember if you tell anyone anything, you'll have to look over your shoulder for the rest of your life." (Executive Summary, finding 5)

"But correctional facilities substantiate allegations of sexual abuse at very low rates. According to the Bureau of Justice Statistics, facilities substantiated just 17 percent of all allegations of sexual violence, misconduct, and harassment investigated in 2006. In 29 percent of the alleged incidents, investigators concluded that sexual abuse did not occur. But in the majority of allegations (55 percent) investigators could not determine whether or not the abuse occurred. Substantiation rates in some states are considerably lower than the rate nationally. Standards that mandate investigations and improve their quality should increase the proportion of allegations in which the finding is definitive and perpetrators can be held accountable.

"Despite that fact that most incidents of sexual abuse constitute a crime in all 50 States and under Federal law, very few perpetrators of sexual abuse in correctional settings are prosecuted. Only a fraction of cases are referred to prosecutors, and the Commission repeatedly heard testimony that prosecutors decline most of these cases. Undoubtedly, some investigations do not produce evidence capable of supporting a successful prosecution. But other dynamics may be at play: some prosecutors may not view incarcerated individuals as members of the community and as deserving of their services as any other victim of crime." (Executive Summary, finding 5)

The National Commission has proposals to make the complaint system easier to use and the odds of success more even. Those proposals are needed for torture of all kinds, not just sexual assault. As the commission warns, no progress can be made without support from the union movement.

The commission report advocates treatment for victims of sexual assault – treatment that is important for all forms of torture.

"Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse. Correctional facilities need to ensure immediate and ongoing access to medical and mental health care and supportive services.

"As corrections administrators work to create a protective environment in the facilities they manage, they also have a legal duty to ensure that when systems fail and abuse occurs, victims have access to appropriate medical and mental health services. Healing from sexual abuse is difficult; without adequate treatment, recovery may never occur.

"Although sexual abuse typically leaves few visible scars, most victims report persistent, if not lifelong, mental and physical repercussions. After Sunday Daskalea was abused on multiple occasions by staff and other inmates in the District of Columbia jail, she became crippled by fear and anxiety. She slept only during the day, afraid of what might happen to her at night. Even after being released, Daskalea suffered from insomnia, struggled with eating disorders, and spent months emotionally debilitated, withdrawn and depressed. At age 18, Chance Martin was sexually abused while incarcerated in the Lake County Jail in Crown Point, Indiana. 'I've abused drugs and alcohol and tried to kill myself on the installment plan,' Martin told the Commission.

"The psychological aftereffects of sexual abuse are well documented. They include posttraumatic stress disorder, anxiety disorders, fear of loud noises or sudden movements, panic attacks, and intense flashbacks to the traumatic event. Each of these consequences alone has the ability to re-traumatize victims for years. The trauma can also lead to serious medical conditions, including cardiovascular disease, ulcers, and a weakened immune system. Studies indicate that sexual abuse victims have poorer physical functioning in general and more physical ailments than non-abused individuals, even after controlling for emotional disturbances such as depression. In addition, many victims are physically injured during the course of a sexual assault. A study of incarcerated men showed that more than half of all sexual assaults resulted in physical injury. Moreover, the study found that internal injuries and being knocked unconscious were more common outcomes of sexual abuse than of other violent encounters in prison....

"Given the potentially severe and long-lasting medical and mental health consequences of sexual abuse, facilities must ensure that victims have unimpeded access to emergency treatment and crisis intervention and to ongoing health care for as long as necessary—care that matches what is generally acceptable to medical and mental health care professionals." (Executive Summary, finding 6)

Finally, lawyers have been a major source of protection for those who engage in prison rape and other forms of torture. While many lawyers have a cultivated sense of fairness, and few would themselves engage in acts of brutality, lawyers regularly represent the

police facilities, prisons, military installations, hospitals and nursing homes where torture and sexual assaults happen.

Legal ethics, as we know it, is an oxymoron. The highest value in the legal profession is loyalty, and the profession reserves its worst punishment for lawyers who betray their clients. The first duty of a lawyer is to protect the client, even the client who behaves badly. The lawyer with moral objections is free to resign and look for clients elsewhere, but she dare not denounce her client. A doctor who failed to report a patient for child neglect might lose her license to practice, but a lawyer who did that might never work as a lawyer again.

Economic pressures give lawyers more incentive to defend torture than prosecute it. A local jailer accused of raping a prisoner will likely have multiple layers of legal protection, perhaps including a union lawyer, a city attorney, and an insurance company defense lawyer. A federal officer accused of rape or torture might have many more layers of protection. A lawyer in one of these defensive roles may wonder, privately, how she found herself in this unsavory predicament, but since the prime directive of her profession is to be loyal to her employer, she will defend brutality with professional zeal. Zealous defense by lawyers is a major reason why police and prison guards are largely immune from punishment and why torture and prison rape persist in the face of universal moral condemnation.

Those who oppose torture and prison rape – and I count the American Bar Association in that company -- should revisit legal ethics. As the Nuremberg trials demonstrate, there are higher professional values than loyalty to one's employer. This is not a plea to put the lawyers involved in the recent torture scandals on trial, rather it is a plea for future policies to put outer limits on the types of client activity that lawyers may zealously defend. If there is any activity that justifies a lawyer reporting her client to the authorities, it is torture, and if there is any propitious time to ask the legal profession to revisit its injunction-of-absolute-loyalty-to-the-client, it is now.

Sincerely,

Erick Williams

Erick Williams

NCSC
National Center for State Courts

A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Tom M. Clarke, Ph.D.
Vice President
Research and Technology
Williamsburg Office

June 24, 2009

Thomas Wells, Esquire
Maynard Cooper & Gale PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203

Dear Mr. Wells:

I greatly appreciate the time and courtesy you made available to me when I was in Alabama earlier this month as part of a study of judicial campaign oversight committees. I learned a great deal about the organization and activities of the Alabama Judicial Campaign Conduct Committee and gained valuable insights into the contribution such committees can make. A parallel study will be conducted in September in Ohio, where a statewide oversight committee has existed since 2002 and local committees since at least 1985.

Please be assured that I will respect my commitment in terms of the confidentiality of what you told me. Also, I will send you a copy of the report based on this project.

With sincere gratitude for the opportunity to speak with you during our visit, please accept my thanks and best wishes.

Sincerely,

David Rottman

DR/sm

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR (RET.)

June 26, 2009

Mr. H. Thomas Wells, Jr.
American Bar Association
1901 6th Avenue North
Suite 2400
Birmingham, AL 35203-2618

Dear Mr. Wells,

This is to thank you again for your effort in putting on the meeting in Charlotte concerning the role of fair and impartial state courts. The participants were impressive and I thought the meeting was effective. As you know only too well, most litigation in this country is handled in the state courts. The federal courts only have a small role to play. It is truly surprising that so many states in this country still have partisan election of judges and permit large campaign contributions to be made for those elections. The result is an increasing disenchantment in the minds of citizens about the nature and role of these state courts. I hope that efforts, such as yours, will encourage more states to reexamine their method of judicial selection. Thank you for your own constructive help during your term as American Bar Association president.

I want also to let you know that the lovely Indian pendant is something I will wear often and treasure always. Thank you, and thank you for your excellence service on behalf of the ABA.

With best regards,

Sandra Day O'Connor

(602)488-2200

Date: 7/2/09

To: Mr. Thomas Wells, Esq.
President, ABA

From: Rosalynn Lewis
rlanointed@fastmail.us

RE: Mr. Thomas Mars, Esq
Wal-Mart

I send the following FYI:

1. Cover letter dated 7/1/09 — 1 page
2. Summary of Attorney Misconduct — 2 pages
3. Record of Events — 7 pages

Total pages including transmittal — 11 pages

July 1, 2009

To: Mr. Thomas Wells, Attorney and President
American Bar Association

From: Rosalynn Lewis

Re: Mr. Thomas Mars, Attorney at Wal-Mart and
Chairman of ABA Minority Counsel Program Steering Committee

I spent 3 ½ years continuously and another 1 ½ years intermittently thereafter, studying and researching the assaults launched against Wal-Mart. Satisfied that I understood what was happening and how to restore peace in its borders, I called almost everyday for two years seeking an audience to make my presentation.

Finally in June, 2007, God advanced His plan to vindicate this company founded by one of His faithful Sam Walton. From that presentation heard by his son, Rob Walton, Chairman of the Board of Wal-Mart, almost a year later, my company was hired. The Legal Department at Wal-Mart headed then by Thomas Mars (promoted February, 2009) was instructed to enter into contract with my company.

You will read how instead of executing a Contract, Mr. Thomas Mars had a court restraining order prepared naming himself and his reporting superior Mr. Thomas Hyde as Plaintiffs, used the Chief of the Sheriff Department in Phoenix, Joe Arpiao to personally attempt to intimidate and frighten me, had me illegally arrested, held in jail without going to court, the sheriff refused to let me speak with an Attorney and he had me drugged twice.

You will read how I was transferred to a mental hospital where I was given drugs every day and regularly instructed never to call Wal-Mart again; to forget about working for Wal-Mart; to find something else to do. Why has such elaborate and illegal steps been taken in an attempt to prevent me from working for Wal-Mart? I know!

I have filed a complaint with the Arkansas Disciplinary Committee; a case number has been assigned and they are investigating. I am an African-American woman writing to request that you reconsider your association with this person holding the above referenced position with ABA.

I fully expect that in the spirit of defending liberty and pursuing justice, Mr. Mars along with other attorneys will loose their licenses permanently and be sent to prison for a long time, for conspiracy against myself and Wal-Mart, fraud, deceiving investors, cooking the books and more.

SUMMARY OF ATTORNEY MISCONDUCT

Failure to comply with an obligation or prohibition imposed by the Arkansas Rules of Professional Conduct as revised May 1, 2005, is a basis for invoking the disciplinary process.

I am writing this office to file a complaint against four attorneys working for Wal-Mart, who have banned together with others and launched a conspiracy in an attempt to restrict my business dealings with this company. As you read the attached Record of Events, you will see that they along with other non-attorney's have launched a conspiracy against Wal-Mart and myself. You will also see how they have carefully chosen and positioned people in strategic areas of responsibility to carry out their objective.

Example: Mr. Thomas Hyde, an Attorney holds several Executive positions of responsibility at Wal-Mart. He is over Legal – this Department has refused to execute my contract with Wal-Mart and issued a restraining order using the law's procedure for illegitimate purposes and he has not been consistent with requirements of honest dealings with his employer nor myself. He is over Ethics – Nothing has been done with the complaint I filed with Global Ethics back on October 14, 2008; but a lawyer called me from Washington D.C. on October 21, 2008 to investigate my legal complaint against him. He is over Government – Wal-Mart's name has been removed from the Security & Exchange Commissions' website but can be accessed from Wal-Mart's website.

Rule 8.4 Misconduct states that" it is professional misconduct for a lawyer to b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation d) engage in conduct that is prejudicial to the administration of justice."

Rule 8.4(a) DR 1-102 (A) states that "a lawyer shall not 1) circumvent a disciplinary rule through the actions of another and 2) engage in illegal conduct involving moral turpitude."

Rule 8.3 Reporting Professional Misconduct states that "a lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyers' honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority."

Rule 4.1 Truthfulness in statements to others states "that in course of representing a client a lawyer shall not knowingly a) make a false statement of material fact or law to a third person.

Mr. Thomas Hyde and Mr. Thomas Mars (both attorneys in Arkansas) have taken a position in opposition to the directives of the governing body at Wal-Mart which was to enter into a Contract with my company for various services. To execute the conspirators plan to stop

me from beginning to work with Wal-Mart you will see how: Mr. David Blackerby (an attorney in Arkansas) and Ms. Ricki Cohen (an attorney in Phoenix) arranged for Joe Arpiao, Chief of the Sheriff's Department in Phoenix to personally harass me and attempt to intimidate me, arranged for me to be arrested illegally, held without going to court, continuously drugged and then released. I was repeatedly told while under custody never to call Wal-Mart again; to find some other work to do.

Rules of Professional Conduct prohibits an attorney from using a means having no purpose other than to embarrass, delay, or burden a third party. Thomas vs. Supreme Court Committee on Professional Conduct 252 S.W. 3d 125"

Mr. Thomas Hyde, Mr. Thomas Mars, Mr. David Blackerby and Ms. Julie Martin (all attorneys from Arkansas) have repeatedly lied to me about the status of my commission with Wal-mart, stalled in moving forward in executing the Contract with Wal-Mart and my company, failed to fulfill their professional responsibilities to seek a result advantageous to their employer, giving the co-conspirator's time to "cook the books" and perform other unethical acts to stop me from engaging in my chosen profession with this Company.

Members of the bar are expected to fulfill their professional responsibilities while still maintaining the highest standards of ethical conduct. Stilley v. Supreme Court Committee on Professional Conduct 259 S.W. 3d 395.

I look to you to protect the public and the administration of justice from these lawyers who have not discharged their professional duties in accordance with the Rules:

Ricki Cohen, Attorney at Lewis and Roca – Phoenix, AZ

Mr. Thomas Hyde, Executive Vice President
Legal, Compliance, Ethics, Government and Corporate Secretary
Has been changed to Legal, Ethics, Global Security, Aviation and Travel and Corporate Secretary while I was under arrest from his orders

Mr. Thomas Mars, former Executive Vice President
Legal Department – promoted February, 2009 while I was in jail from his orders to Executive Vice President and Chief Administrative Officer for Wal-Mart U.S.

Mr. David Blackerby – In-house staff Attorney at WM

Julie Martin, Director of Investigations or Research as WM

Stacey K. Gottlieb, Attorney at Steptoe and Johnson – Phoenix, AZ

RECORD OF EVENTS

Dated: October 27, 2008 Updated: June 11, 2009

In June, 2007, Rob Walton Chairman of the Board of Wal-Mart Stores, Inc., listened to my presentation in Casa Grande, AZ. to resolve the deluge of lawsuits (class actions) pending against Wal-Mart (WM) in all fifty states. The Plant Manager was very excited about the meeting; he requested a copy of my resume, asked me job interview type questions and said smiling if I were not financially comfortable, I would be. He left the room several times, returning to request or ask for various things from me. At the conclusion of the meeting, one of the Managers gave me a ride to greyhound to return to Phoenix.

As I waited for the bus to leave Casa Grande, AZ., Michael Paul, from the Bentonville Arkansas office called to offer WM's help in lodging. I gave him the requested information but the offer was later rescinded by both Michael Paul and Julie Martin; I was never given an explanation except to say that it was only something they(?) were considering.

On another occasion, Michael Paul called from Rob Walton's office asking if I needed anything, I recognized the Bentonville extension on my phone. This was after the offer to pay for my lodging was taken away by Julie and so I responded abruptly wondering what Michael Paul was doing. I reminded him who he owed his loyalty to; who was keeping a roof over his head and food on his table.

Michael Paul and Julie Martin also discussed coming to Phoenix from Bentonville, to discuss my plan regarding my presentation to Rob Walton. She finally arrived in Phoenix in July, 2007 with a Stacey K. Gottlieb (Attorney from Steptoe and Johnson) and a Mexican she identified as her "bodyguard." She chose the court house in Phoenix using one of their conference rooms, as the meeting place. During the meeting Julie asked many questions. At the conclusion she requested a copy of a contract (draft) between WM and my company and asked if she could take the notes I had prepared on the easel prior to their arrival. As I watched her carefully fold the easel paper, **Stacey handed me a plain white letter size envelope.**

As I settled in on my journey back to downtown Phoenix, **I opened the envelope and it was a letter written on Steptoe's stationary forbidding me to contact anyone at WM ever again except Michael Paul and that if I did, I would be arrested - first concrete evidence that a conspiracy to stop me from working for Wal-Mart has been launched.**

Conspiracy – An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective and action or conduct that furthers the agreement; a combination for an unlawful purpose 18 USCA 371. Also referred to as an intra-enterprise conspiracy per Black's Law Dictionary
Conspiracy in restraint of trade – a limitation on business dealings or professional or gainful occupations.

Chain conspiracy – a single conspiracy in which each person is responsible for a distinct act within the overall plan....All participants are interested in the overall scheme and liable for all other participants' acts in furtherance of that scheme. Conspiracy 24(3). C>J.S. Conspiracy 117-118

Civil Conspiracy – An agreement between two or more persons to commit an unlawful act that causes damage to a person or property. Conspiracy 1.1 C.J.S. Conspiracy 2-3, 8, [14-17]

Upon Julie Martin's return from our meeting, she was promoted to Director of Investigations reporting to Mr. Lee Scott former CEO per Michael Paul who reports to Julie. During the two months that I spoke exclusively with Michael Paul he would not say who Julie gave the contract to but regularly stated that Wal-Mart was not interested in hiring me; that my services were not needed. He would not say who specifically made this decision. When I asked why I am encouraged to continue to call him he had no answer. Seeing that this arrangement was futile and that Julie was not going to accept any of my calls, I begin calling **Thomas Mars the Executive Vice President of the Legal Department at WM.**

I called and left messages on his voice mail, speaking sometimes with his secretary Sharon and other secretaries in the legal department for about five months and never found out if he or anybody else besides Julie had a copy of my contract.

On January 28, 2008, I got an opportunity to talk with Mr. Mars at a fifteen minute meeting in Phoenix. He asked me job interview type questions and I gave him an up-dated contract with a cover letter for his review. He insisted on reading the two page cover letter in my presence, stating that he had the time and skimmed the contract.

The primary difference between the contract that I gave Julie Martin and the contract I gave Thomas Mars, was in the latter it made provisions for a micro team – personnel to be drawn from WM personnel who would focus solely on our victory. It also gave financial rewards for achievements i.e. money for each class action dismissed, reversed or annulled, money for each count reversed or annulled, money if dismissed with or without prejudice, etc. Additionally, the new contract outlined more specifically what we were going to do. Our results were measurable (up to 30 class actions defeated and Duke vs. WM defeated which was not included in the 30

count) and had a time limit. These and other features were not in the contract given Julie in 2007.

Upon his return to Bentonville, I spoke with Karen Zimmery, Mr. Thomas Hyde's secretary who stated that Mr. Mars had met with Mr. Hyde, Executive Vice President Legal, Compliance, Ethics, Government and Corporate Secretary, the first day he returned from our meeting and that he was fully aware of the contract and its content.

At the request of Thomas Mars on February 11, 2008 I sent him a work action plan, outlining how I would approach starting the work once the contract was finalized.

I continued to call afterwards for status regularly. Seeing that it was going nowhere, I began to call around August 8, 2008 to **Thomas Hyde, the attorney over Legal, Compliance, Ethics, Government and Corporate Secretary for WM who responded through David Blackerby only after I phoned Carrie (Rob Walton's daughter) and Greg Penner (her husband and a Board of Director for WM.).**

Mr. Hyde and Mr. Mars insisted that I speak with David Blackerby ONLY, an in-house attorney at WM, regarding this matter. I sent a letter to the Penners on or about August 19, 2008. David Blackerby was outraged and he said he was expressing the sentiments of both Mr. Hyde and Mr. Mars and I should stop immediately.

He also said that he would come to Arizona to attempt to resolve this matter stating that it could not continue to go on this way. He put off coming from about August 19, 2008 until October 2, 2008; but the week leading up to his arrival he gave my name and phone number to a **Ricki Cohen, an attorney at Lewis and Roca.**

I told Ms. Cohen that some people were trying to stop WM from entering into a contract with my firm though the Executive Board of Directors have accepted our contract and work action plan and have hired us. Ms. Cohen's' response was "yes, I know."

Mr. Blackerby finally came to Arizona on October 2, 2008. In the meeting was Ricki Cohen, David Blackerby and myself. He pulled out the letter I gave Mr. Mars back in January, 2008 attached to the contract I gave Julie Martin back in July, 2007, which was not the contract the Executive Committee approved.

He asked me questions about how I proposed to help WM, specifically what was I going to do and he insisted that the contract given Julie Martin was the correct contract. Seeing that I was not going to agree to whatever he was steering me to do, a man entered the room and handed me a court restraining order that had Mr. Hyde and Mr. Mars and others as the Plaintiff and he attempted to take my picture. They said if I contacted anyone at WM that I would be arrested. I was only to communicate with Ricki Cohen at Lewis and Roca. I refused the service. The renegades who initiated this act do not possess the authority as they are working in opposition to the directives of the governing body at Wal-Mart who hired me and oversee them – the Executive Committee.

Blackerby asked me what I was going to do; I asked myself why was Mr. Blackerby trying to get me to accept less than what was agreed upon and a contract that was not approved?

Ricki Cohen escorts me to the elevator but she also rides down with me. Once outside there were cameras flashing, Joe Arpaio Chief of the sheriffs' office was there screaming at me as well as others yelling at the top of their lungs. Why did Ms. Cohen ride down on the elevator to point me out to people stationed to launch the renegades at Wal-Mart next attempt to stop me from pursuing what has been awarded to me?

On October 14, 2008, I called the Global Ethics Office for WM and filed a complaint against Mr. Hyde, Mr. Mars and Mr. Blackerby. As of this writing no action has been taken because Mr. Hyde is over Ethics; and after lying and refusing to fulfill the directives of the governing body at Wal-Mart, Mr. Mars has been promoted.

On October 21, 2008, a man identifying himself as Jim Hamilton from a Washington, DC law firm phone number (202) 373-6026 called and said he was given the case to investigate by a Gary Hill, Vice President of the Global Ethics office for Thomas Hyde.

I gave him most of the information contained herein but I also stated that I believed someone was either trying to steal my contract or may be in the process of doing so. I brought to his attention that the law firm Lewis and Roca is similar to my name *Lewis, Rosa*lynn. That Blackerby repeatedly stated that Ricki Cohen was presently working for WM and I was only to talk with her regarding this matter and she would call WM on my behalf if she deemed it appropriate. He also attempted to get me to say specifically how I was going to do what I stated in my contract in presence of Ms. Cohen.

Mr. Hamilton stated that the Global Ethics was not independent of WM; that it was one of WM's companies – which demonstrates why nothing has been done. Mr. Hamilton stated that he was investigating the allegations made about Mr. Hyde and did I accuse Mr. Hyde of stealing my contract. I stated I wanted the Global Ethics to look into this matter for it is certain Mr. Hyde is attempting to stop me from finalizing the contract between Wal-Mart and my company securing a restraining order naming himself (Mr. Hyde first) as one of the Plaintiffs. Why?

On December 2, 2008, I was arrested by three Detectives from Maricopa County Attorneys' Office, one Detective from Union Hills area and two Phoenix policemen. I was sent to bond court from the Sheriff's jail. The day before I was to go to court, late during the second shift, two sheriff officers came to my cell and moved me to the psych ward within the jail. They refused to take me to court the next day and refused to summon my attorney. During my stay in this ward, I was drugged two times; given two shots each time and transferred to the infirmary. After a great while, one morning they opened my cell in the infirmary and said I was being released.

They lied I wasn't being released. They transferred me they said to an outpatient medical facility for observation using a Sheriff's van because I had lost so much weight from fasting they wanted to make sure I was ok. They lied again; the place was a mental outpatient facility! After two nights of sleeping in a recliner on the third day after I said I was going to get a physical upon my release because I wasn't feeling well, I was sent to the hospital in an ambulance and stayed ten days as they worked to repair the damage done to my organs in the sheriff's jail.

When I felt better, I requested to be discharged and the hospital refused. They said I was under some sort of mental court order and could not leave. The room I was in was guarded twenty-four hours a day.

On the tenth day of my stay at the medical hospital, I was transferred by ambulance to a mental hospital that had its own court in the same building. I was given a public defender whom I told what had happen; her response was you shouldn't be here; I'll take care of it don't worry. She lied. When I went to the mental court, she conducted herself as though she was the prosecutor. I was declared insane and sentenced to continuously being drugged. During my confinement I was repeatedly told not to contact Wal-Mart, to forget about working for them; to find something else to do. I stayed in this mental hospital for a long time before I was released and told I was a ward of the Court and I was to take drugs everyday for one year.

This was the fulfillment of Ms. Ricki Cohen and Mr. David Blackerby's instructions given by Mr. Thomas Hyde and Mr. Thomas Mars who are working a self-serving agenda.

In delaying my company beginning to work, it gave the conspirator's time to use my work action plan and contract to dress up the Annual Reports giving the illusion that "all is well" without our services.

I state in our Contract that our desired results are to "mitigate pending litigation: all class actions and certain individual suits – so that the Companies' financial impact is minor. Minor defined – not sufficient to create a financial impact whereby the Company is forced to compromise its expansionary initiatives, close stores – liquidate to pay court judgments or abandon present policies of bonus or other salary considerations."

These are some of the things I note the renegades have done to distort the truth in an attempt to prevent me from beginning to work for WM:

1. The United States Security and Exchange Commission's website no longer provides information about Wal-Mart. For some time now, I have attempted to access the required filings for publically traded companies and the results are always "name not found."

2. United States Security and Exchange filings about Wal-Mart can be obtained from Wal-Marts website. Note: Peradventure you may be able to go in person and obtain copies from SEC, I have not tried this.

3. In Item 2, the reports that I read made no mention as to whether they were audited.

4. Hundreds of old cases have been removed from the annual report year reported and current reports, needless to say, make no mention of them. This gives the illusion at first glance, that the class action cases are being cleared up with minimal financial impact. The annual reports that I had with this information have been stolen.

5. In the latest Annual Report it is stated that employees were paid about $2b in benefits and bonus'. But how much of this amount represents their own money? Mr. Scott has stopped funding benefits completely in some off shore operations and in the United States he requested a 1% reduction in benefit funding from 5% to 4%.

6. The Company entered into an agreement with 63 class actions that is pending court approval and supposedly with a financial impact not to exceed $640m depending on

how many claims are submitted. But it does not give a range of what the administrative expenses and other costs are specifically that they state are additional. This amount could conceivably take the total well over $1b especially if attorney fees are in these undisclosed costs. I believe these can be reduced or defeated.

7. If you go to Wal-Marts website and search lawsuits/class actions you get nothing. The website use to give updated and regular information about the status of lawsuits pending especially class actions.

There is much more I see. Note: **My issue is solely with the renegades at Wal-Mart who are using their positions for self-serving purposes and not to advance the plans of the Executive Committee – the governing body at Wal-Mart.**

Why are illegal acts deployed to prevent me from beginning to work at Wal-Mart? What is the renegades' agenda that my beginning to work at Wal-mart would interfere with?