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H. Thomas Wells Jr.

University of Alabama School of Law

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Thank you, _____, for your introduction. And thank you, everyone, for being here today.

It's great to make an appearance here in Montgomery, so close to Birmingham—and I'll tell you why. Today marks my 199th day on the road since I became president-elect last year. At least I get to go home later today, which is something I can't do for most of my trips. It's getting to the point where my wife 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 in Birmingham, where I could get to see my favorite shoe doctor and have access to another pair.

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 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 reverts at least a little back to Alabama. 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. The Presiding judge, Scott Vowell, 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.

We're living in some interesting times of our own, obviously. Americans are hurting from the economy—and the legal profession's considerable efforts to promote access to justice are more needed than ever.

State and local bar activities help provide free legal services for people whose homes are being foreclosed, for folks who are facing bankruptcy from credit card debt, for people who need legal help securing unemployment benefits.

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 I enjoy shining a spotlight on and encouraging these initiatives.

Among our many access-to-justice projects, I'd like to tell you about one that's particularly dear to my heart: 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.

We need courts that are fair and impartial in order to have equal treatment under the law, and to protect

our personal freedoms that our laws guarantee. Judges should be accountable only to the law and the Constitution, not to the whims of the day or to popular public opinion.

This is a problem relevant to our state courts here in Alabama, and it's something to consider for our federal courts as well. I'll talk about the federal courts a little later, but first let me offer a few observations about how current highly politicized judicial elections for our state courts undermine public confidence in a fair and impartial judiciary.

In the election we just had, candidates for the open Alabama Supreme Court seat and outside interest groups spent almost \$5 million on the race. It was the most expensive supreme court election in the country this year. I have said that the amount of money spent on this race was obscene, and I meant it.

Earlier I mentioned access to justice and legal services for the poor. Well, guess what? That \$5 million far exceeded the amount of money Alabama spends on legal services for the poor. In fact,

Alabama is one of the lowest contributors to legal services for the poor in the nation.

That distinction obviously isn't something for us to be proud of. But if you think that's bad, here's another distinction of ours. From 1993 through 2006, Alabama led the nation in Supreme Court campaign spending.

This situation is shameful—a threat to fair and impartial courts—and we need to do something about it.

Why? Because judicial campaign contributions often come from special interests that expect their influence to

shape how judges rule on cases—and that's a threat to America's rule of law that's respected throughout the world. The Republican candidate received money largely from business interests, while the Democrat got money from trial lawyers.

Maintaining fair and impartial courts is important for public confidence in the courts—yet the current situation doesn't help. National polls show that three in four Americans believe campaign contributions affect judges' decisions.

Do you think campaign contributions affect judges' decisions? Let me tell you a story—not from Alabama, but from West Virginia. A little while back, a candidate for the state supreme court received a \$3 million contribution from the CEO of a coal mining company. The candidate won the election. Soon thereafter, the justice provided the deciding vote in overturning a \$50 million verdict against the same mining company. There's a case now before the U.S. Supreme Court—it's called *Caperton v. Massey Energy*—where the court will rule whether the

West Virginia justice should have removed himself from considering the state court case.

Still, though, regardless of whether the justice should have ruled on that case, think about the underlying issue—a \$3 million campaign contribution from a party who appears before the courts . . . for a judge who is sworn to be fair and impartial.

So, what's the solution here in Alabama and elsewhere? Alabamans elect their judges, but it's not something every state does. In a majority of states, in fact,

at least some judges—if not all judges in the state—have been recommended by a nonpartisan commission for appointment by the governor. The nonpartisan commission solicits applications for judgeships, interviews applicants, and recommends appointments only on the basis of experience and judicial temperament. Political ideology is not a factor. It's a plan called merit selection.

Here in Alabama, voters in Lauderdale County and Shelby County just approved measures to adopt merit selection for interim judicial positions.

Similar commissions already operate in Baldwin, Jefferson, Madison, Mobile, Talladega, and Tuscaloosa Counties.

Most of us admit that moving from judicial elections to merit selection can be a tall order politically, so there are other proposals for turning down the heat of politics in how we select judges and ensure public confidence in an impartial judiciary.

We could have public financing of judicial races.

We could switch to nonpartisan elections—so that judges who are

supposed to be fair and impartial aren't identified with one political party or another.

Whatever system we come up with is bound to be better than maintaining Alabama's distinction as the state with the most expensive judicial races.

Now, let's move on to our federal judgeships. Unlike state judges, federal judges are nominated by the president and confirmed by the Senate. Federal judges serve for life and make decisions that affect the Constitutional rights of all

Americans—so it's an important issue for all of us.

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 overwhelming workloads for the judges and backlogs of cases in our federal courts. As they say, justice delayed is justice denied—and we obviously want to avoid this.

The judicial confirmation process 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.

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 to wide acclaim 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 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 statements we're hearing from our president-elect and Republican leaders alike, anything that reduces gridlock in Washington is an idea whose time has come.

Given the spirit of bipartisan cooperation we're seeing, I think we're going to get a lot of traction with this idea, and I'll be encouraging Senators Shelby and Sessions to take a look at the idea. I

also plan to talk more with Rep. Artur Davis from Birmingham. He's the ranking Democrat in Alabama's congressional delegation, and he has expressed interest in setting up nominating advisory commissions for recommending judicial candidates to President-elect Obama.

I've enjoyed sharing with you some ways we're working to make a difference to boost confidence in our state and federal courts—in these interesting times of our own. Thank you for your time this

**afternoon. I'd be happy to take any
questions.**