



## Alabama Law Scholarly Commons

---

H. Thomas Wells, Jr. ABA President  
(2008-2009) Collection Speeches

H. Thomas Wells, Jr. ABA President  
(2008-2009) Collection

---

2009

### 2009-04-28 H. Thomas Wells, Jr. ABA Presidential Speech

H. Thomas Wells Jr.

University of Alabama School of Law

Follow this and additional works at: [https://scholarship.law.ua.edu/wells\\_aba\\_speeches](https://scholarship.law.ua.edu/wells_aba_speeches)



Part of the **Law Commons**

---

**Thank you, everyone, for being here today. I especially want to thank the leadership and staff of the Bar Association of Metropolitan St. Louis for inviting me, for organizing my trip, and for making me feel so welcome. You have a fine and generous tradition of bringing ABA presidents to your beautiful city, and I'm really happy to be a part of it.**

**It's an honor and privilege to lead the ABA. We're the world's largest voluntary professional membership organization, the voice of the American lawyer and an advocate for justice.**

**I've had the good fortune to observe and learn about the great things our profession is doing here in St. Louis to promote justice and improve how we serve the public.**

**And it's wonderful to be here with today's honorees, all of whom showcase how lawyers make a positive difference in our society.**

**While I've been here, however, I have to admit something: It's strange being the only one in the room who *doesn't* have an accent.**

**As you know, I'm from Alabama. What you might not know is that I'm actually the third ABA president from Alabama. The first was Henry Upson Sims, who was also from my hometown of Birmingham.**

**I think about Henry Upson Sims a lot these days. You see, 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—smack dab in the middle of the stock**

**market crash and the beginning of the Great Depression.**

**Of course, we're living in some very interesting times of our own. Our profession is grappling with the downturn, and individual lawyers are hurting. Bar associations are doing a lot to ramp up their already considerable services for career development and professional growth.**

**The ABA has compiled our online resources into one Economic Recovery Resources web portal. You can access it**

**for free on our home page at  
[www.abanet.org](http://www.abanet.org).**

**And, in late June, I'm convening a small caucus of experts and leaders from the practice of law, the organized bar, and academia on the effects of the recession on the legal profession and the role of bar associations in providing services and assistance to those effected. We will examine what happened and why, and address lasting effects and changes to the profession.**

**I'm confident that our profession, and our bars, will emerge stronger as a result**

**of the challenges we face. Indeed, at the ABA we tracked our membership numbers during the most recent recessions and found that those numbers actually increased during difficult times.**

**Why? Though we can't reverse the business cycle, it's during times like these that our members can make best use of our programs, publications, and other activities. It's the best time to share best practices on career and professional development, law firm management, and substantive law practice issues.**

**This is an opportune occasion for lawyers to seek out these resources, get involved, and make a difference for our practices, our profession and our communities.**

**Even during these hard times, we know that we can sometimes be pretty good at making a dollar, but as lawyers we're at our dead-level best when we're making a difference.**

**This recalls the theme of this year's Law Day, which we're celebrating this week. That theme, of course, is the bicentennial of the birth of Abraham**



**Lincoln, a great American who answered his calling to practice law, who led in interesting times of his own, and who, indeed, made a difference.**

**When President Eisenhower established Law Day 51 years ago, he emphasized that our freedom depends on our continuing commitment to the rule of law.**

**Lincoln devoted much of his adult life to the practice of law. He was our quintessential lawyer-president.**

**We celebrate Lincoln today, grounded in his practical and principled**

**understanding of American law and  
adhering to his own strong sense of moral  
clarity.**

**His example calls to mind what I've  
long cherished about being a lawyer. The  
profession we share with Lincoln is much  
more than a job or a trade. In the South,  
we say lawyers are "called to the bar."  
Our call to the bar unites us on our  
common core values and enables us to  
make a difference as a profession.**

**What are those common core values?  
One certainly is access to justice. And that**

**brings us back to the interesting times  
we're living in.**

**Americans are hurting from the  
economy—and difference we make to  
promote access to justice is more needed  
than ever.**

**State and local bar activities in St.  
Louis and throughout the nation 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.**

**That's why we in the legal profession look beyond our narrow self-interests to fundraise for local legal services programs. Why we promote free legal services to the poor through pro bono activities. Why we advocate before Congress to adequately fund the Legal Services Corporation.**

**This is all the more important these days, as the economic crisis is sharply**

**reducing the investment returns of endowments and other programs that fund legal services.**

**One of my favorite ABA initiatives is our annual ABA Day on the Hill in Washington, where we lobby lawmakers for legal services funding and other issues for which our profession makes a difference. We were just there last week, and it was great to see Judge Teitelman representing Missouri.**

**Aside from our inspiring walks through the halls of Washington, there's something I really love about ABA Day. It**

**underscores that our profession isn't about lobbying for our own self-interests. It's about advocating on our core values that help society.**

**Issues like access to justice.**

**And like an independent judiciary.**

**Here, too, the recession has made this core value more critical and timely than ever. Hardly a week passes without news of jurisdictions severely cutting criminal, civil, or juvenile justice programs due to revenue shortfalls.**

**Our ability to maintain courts as an independent branch of government is**

**undermined if they don't have the resources they need to carry out their work.**

**This is a principal issue for a national summit the ABA is convening on fair and impartial state courts in May. We're fortunate to have the endorsement of Justice Sandra Day O'Connor, our honorary chair.**

**Delegations have been invited by the chief justices of more than 30 state supreme courts, indicating how much the issue is resonating throughout the country. These delegations will represent**

**all three branches of state government and justice-system leadership. They will develop strategies to maintain adequate justice-system budgets and ensure their courts' institutional legitimacy by promoting communication, cooperation, and collaboration among the three branches of government.**

**We look forward to the participation of Missouri's distinguished delegation. It will include Missouri Supreme Court Judges ["judges," not justices] Fischer and Teitelman, Deputy State Courts Administrator Gary**



**Waint, and former state legislative leader Michael Gibbons.**

**Aside from resource issues, courts face challenges to their independence in many other ways.**

**One, of course, is front and center here in Missouri.**

**As you're struggling with the Missouri Plan, let me try to put things in perspective and offer a few observations about how we pick judges in my home state.**

**In Alabama, we elect most of our state court judges in partisan elections. These**

**highly politicized judicial elections  
undermine public confidence in a fair and  
impartial judiciary.**

**In a recent address to the Conference  
of Chief Justices, Justice O'Connor said:**

**"While our judiciary has always faced  
significant attacks, some appropriate and  
others not, the single greatest threat to  
judicial independence is *fairly modern* and  
*uniquely American*. And that is the flood  
of money coming into our courtrooms by  
way of increasingly expensive and volatile  
judicial elections."**

**This threat was emphasized again by Chief Justice Margaret Marshall of the Mass. Supreme Court, who addressed the ABA House of Delegates in February as President of the Conference of Chief Justices, when she said:**

**"When judges have to look over their shoulders before deciding a case – or worse, when they made an implied promise to look over their shoulder before deciding a case – when litigants enter the courtroom hoping their attorney has contributed enough to a judge's election coffers, we are in trouble, *deep* trouble."**

**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 told a reporter that the amount we spent on this race was obscene—and I meant it.**

**Let's put things in perspective. That \$5 million far exceeded the amount of money my state spends on legal services for the poor.**

**This situation is shameful, 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. 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.**

**The issue hit home for me last fall, when my colleagues in the ABA leadership from across the country attended a meeting in Birmingham the weekend before the elections. They told me they were shocked by the sensational TV ads for state supreme court candidates to which most Alabamans sadly have become accustomed. They were justifiably appalled at the negative content and endless repetition.**

**It is inappropriate to put judges and judicial candidates in positions where they must campaign on issues that will**

**appear before them on the bench. It is wrong to set them up so they must rely on financial contributions from interests that argue before the courts. No matter how responsible and fair-minded judges in these circumstances are, it's difficult to shake the resulting perception that some litigants cannot get a fair shot at justice.**

**There's another story many of you are familiar with—not from Alabama, not in Missouri, but from West Virginia. A 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—*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.**

**Think about this here in Missouri. The  
citizens of my state, quite frankly, are  
envious of states like Missouri, where  
judges are appointed first and foremost  
on the basis of their qualifications, not on  
who raises the most money.**

**Critics say that merit selection merely  
disguises the politics of judicial selection.  
No one, however, is naïve enough to  
believe that politics can be removed**

**entirely from judicial selection—but it can certainly be kept in check.**

**Let me invoke an analogy. For what it's worth, I understand that President Lincoln was known for his analogies, so I suppose I'm entitled. My analogy involves my great love of golf:**

**Lurking inside every sand wedge is a two iron trying to get out. The trick is keeping that two iron from escaping and ruining your game.**

**It is the same with the politics in judicial selection: You must keep the politics that always lurks in the process**

**from jumping out and damaging public perception.**

**So I leave you with that thought. Be proud of our great profession as we celebrate Law Day. Go out and answer the calling we share with President Lincoln. Make a difference in these interesting times. Thank you so much.**