



## Alabama Law Scholarly Commons

---

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

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

---

2010

### 2010-01-20 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**

---

**2010 Judges Mid-Winter Conference  
January 20, 2010**

---

**WELCOME REMARKS**

- It is my pleasure to be with you this morning and to bring greetings from the American Bar Association.
- We congratulate the Alabama Judicial College for sponsoring this important event.
  - *Note: You may also want to extend a special thanks to the key organizers/facilitators for the event: Director Keith Camp and Assistant Director Wally Lowery of the Alabama Judicial College's Education and Planning Division. And the members of the Judges Education Committee.*

## HEEDING THE “CALL TO THE BAR”

- As you know, we have a saying in Alabama and the South; a saying that I understand isn't used in other parts of the country.
- We say that attorneys are "Called to the Bar."
- Think about that – as attorneys – we our “Called to the Bar” the moment we first stand and take our oath.
- An oath taken by generations of attorneys who often sacrificed all that they had, including in some instances their lives, to carry our nation forward toward liberty and justice.
- They understood, as we must understand, that the Constitution, no matter how revered, cannot fight for itself. It is up to all of us to bring life to those words on

the page by ensuring that all Americans have - **Access to Justice.**

## **ACCESS TO JUSTICE**

- Access to Justice - requires our legal profession to have an unwavering commitment to: pro-bono service, advocating for legal services programs, and maintaining an independent judiciary.

### **Pro Bono Service**

- The need for pro-bono service has never been more present than at this moment in our nation's history – as our country grapples with one of the worst economic crisis since the Great Depression.
- It has left an overwhelming number of Americans without access to an attorney at the very time they are falling victim to legal problems related to this recession.

- The good news is that according to the most recent ABA study, the number of hours of pro bono service has steadily increased per lawyer - per year - since 2004.
- But as much as we can celebrate this accomplishment - we must not become complacent in our obligation to expand our efforts to promote pro bono service.
- Nor should we allow the issue of “Access to Justice” to become purely academic.
- Let us never lose sight of the fact that we are talking about serving society – serving people.
- In Arkansas, for example, there lives a 6-year-old little boy named Brendan - who is trying hard to connect with his dad by looking at old pictures in a photo album.
- You see - Brendan’s father was killed while bravely serving this country during his second tour in Iraq.

- However, Brendan's father and mother were not married and, therefore, his mother had a difficult time receiving military survival benefits for her son.
- She couldn't afford a lawyer to work through the red tape and feared that she would have to struggle alone for the rest of her life - to support her son.
- But an attorney, who normally specializes in banking and estates, with no expertise in survival benefits - answered the "Call to the Bar".
- He took the case on a pro-bono basis and within a couple of months was able to win an order of guardianship and receive \$50,000 he put in a trust.
- Today - Brendan and his mother receive a monthly survivor's benefit of almost \$1100.00 – allowing them to

rest a little easier and focus on what's most important in their life – being a family.

- Wow - just take a moment to think about that story - it serves as an impressive reminder of why I became an attorney - to make a difference.
- The ABA works hard to ensure that attorneys have the necessary support and tools to make this difference.
- The ABA Division for Legal Services and its various committees, for example, work hard to:
  - Provide support and encourage lawyers to fulfill at least 50 hours of free legal services to the poor each year;
  - Move the ball forward nationally in realizing an important ABA policy: the right for everyone to have access to counsel in civil cases where basic human needs are at stake; and
  - Assist local jurisdictions to bring attention to the public defender crisis, which undermines the constitutional right of the accused to counsel.

**Advocating for Legal Service Programs.**

- It is equally important that as a legal profession we advocate for state and federal legislatures to provide maximum funding for legal services programs.
- This past year, for example, the ABA led a delegation to Capitol Hill - armed with a letter signed by 52 state and territorial bar presidents asking Congress for ½ a billion dollars to fund Legal Services Corporation - the single largest provider of civil legal aid for the poor in the nation.
- In addition to legal services funding, the ABA advocates for other access-to-justice issues:
- One of those issues is the Legal Services Benefit Act of 2009, which would restore the pre-tax status for group legal employee benefits.



- As many of you know, group legal services plans deliver preventive legal services for moderate-income Americans.
- As with legal services for the poor, we know that providing an attorney's help at the early stages of a problem can reduce the need for more costly government and other services down the road.
- The ABA also advocates for increased funding for the Legal Orientation Program for immigrant detainees administered by the Department of Justice.
  - I witnessed this program in San Diego. It informs detained immigrants of their legal rights, including the right to immediately return to their home country if they desire.
  - Given the costs of detention, we've been able to make a cost-efficiency argument with lawmakers in addition to the due-process argument.

## Independent Courts

- The recession has also made maintaining an independent judicial branch 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 threatened if they don't have the resources they need to carry out their work.
- That is why, during my Presidential Year, the ABA convened the National Summit on fair and impartial state courts.
  - Receiving the endorsement of Justice Sandra Day O'Connor, the honorary chair and keynote speaker, the ABA brought together delegations

sent by the chief justices of 34 state supreme courts and three territorial high courts.

- The delegations developed 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.
- The delegations also discussed the corrosive effects of big-money elections for state court judgeships, and how that undermines the public's trust and confidence that the courts provide equal justice for all.

**Caperton v. Massey Energy**

- There's a story many of you are familiar with. It sounds straight from John Grisham, but it's actually a true story, from West Virginia.
- A while back, a little-known candidate for the state supreme court received a \$3 million contribution from the CEO of a coal mining company.
- That \$3 million was a full 60 percent of the \$5 million total campaign contributions the candidate received. That candidate won the election, unseating the incumbent.
- Soon thereafter, the new justice provided the deciding vote in overturning a \$50 million dollar verdict against the same mining company. And that was after the opposing party asked the justice to recuse himself from the case, which he elected not to do.

- *Caperton v. Massey Energy (2009)* - went before the U.S. Supreme Court who held, in a 5-4 decision, that the conflict of interest was so "extreme" that the West Virginia Justice's failure to recuse himself constituted a threat to the plaintiff's Constitutional right to due process under the Fourteenth Amendment.
- Although reasonable legal minds may disagree about the Supreme Court's decision - as lawyers who are committed to equal justice under the law - we should all advocate for a court system with judges who are not merely politicians in robes, but who are chosen for their qualifications and commitment to the rule of law.

## CONCLUSION

- In closing, I would like to thank everyone for your kind attention and for supporting such an important event.

- Allow me to end with these last words of encouragement:  
We are all members of an honored profession built on the foundation of justice upon which our republic firmly rests.
- As stewards of justice, it is crucial that we never lose sight of the ideals consecrated in the U.S. Constitution and embodied in the Attorney's Oath - *to never reject the cause of the impoverished, the defenseless or the oppressed, but instead to always advance the cause of justice!*