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Remarks to the House of Delegates

American Bar Association Annual Meeting

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Mr. Chair, members of the House of Delegates, colleagues and friends.

Thank you for your warm welcome.

Please join me in welcoming to the House my wife, Dianne, and our children Christian, Jordan, Elizabeth, Amanda, Nicholas and Abigail.

I thank my colleagues at Kirkpatrick & Lockhart Nicholson Graham, especially Peter Kalis, Chairman of the firm, for their unwavering support.

On behalf of the Association, I extend thanks to the Hawaii Annual Meeting Advisory Committee, ably co-chaired by Alan Van Etten and Jim Kawachika, for planning this outstanding annual meeting. Because of their hard work the past two years, we are enjoying the spirit of Aloha.

None of what we do, of course, would be possible without the tremendous efforts of our ABA staff, led by Executive Director Bob Stein, who completes twelve years of remarkable service to the Association this month. Please join me in expressing our heartfelt thanks, and best wishes, to our staff, and to Bob and Sandy in all their future endeavors.

In these, my final remarks to the House as president, I want to share with you my thoughts about what the Association has meant to our members, our profession and our fellow Americans this past year; and, to look forward -- to the place that the Association must occupy in the future.

My colleagues, the Association has never been stronger, nor more admired than it is today. The respect accorded to the ABA in our country and throughout the world is extraordinary.

Your outstanding work and that of our fellow members serving on Association Sections, Divisions, committees, and other programs, has never been more appreciated than in the past year. I know this first-hand because in my 365 days in office I have been "on the road" for more than 330 of them, and I have met and spoken to and with thousands of people at home and abroad.

If you had been at my side, you would have felt the immense pride that I felt listening to expressions of deep respect for the positions taken by our Association on issues that affect not only Americans and our justice system, but also people and justice systems all over the world.

It is not possible in a few minutes to mention even a handful of the many things that our members have accomplished during the past year. I will mention several that have benefited the Association, our profession and society.

For the good of the Association, two months ago we instituted the first permanent Long-Range Planning Committee, and adopted the first comprehensive Strategic Plan, in the history of our Association.

The importance of this development cannot be overstated.

By having a permanent committee of the Association dedicated to implementing, monitoring and updating the Strategic Plan in areas including finances, programs and membership, we now will be able to better position the ABA for the future.

I thank Michael Bedke, whom I appointed to chair the Ad Hoc Long Range Planning Committee when I took office, and who will chair the Permanent Long Range Planning Committee this coming year, for his leadership, and also his colleagues who gave so much to this historic effort.

Bob Stein's announcement that this would be his final year as Executive Director left big shoes to fill. But the outstanding nine-member Search Committee that I appointed, under the excellent leadership of past ABA President Robert J. Grey, Jr., worked diligently to find an outstanding Executive Director who will guide us into a new era ---Henry F. White, Jr. We owe a large debt of gratitude to Robert Grey and his colleagues on the Committee for accomplishing this critically important task.

Please join me in expressing our sincere thanks to them.

At the start of this year, we enhanced and restructured the three entities of the Association dedicated to diversity issues, and placed them under the oversight of the new ABA Center for Racial and Ethnic Diversity. I thank past President Dennis Archer for agreeing to lead the new Center's impressive board and staff. They are helping

ensure that our Association and profession reflect, as they must, the magnificent diversity of our society.

I urge you and all our Association entities, and law offices across America, generously to support the Legal Opportunity Scholarship program, inaugurated by past president Bill Paul, which has helped more than 120 talented young men and women of color to attend law school.

Last November we convened a groundbreaking Diversity Pipeline Conference in Houston, keynoted by former Attorney General Janet Reno, and attended by leading educators from grade school to law school, and leaders of our profession and business. They strategized on how we can reverse the troubling trend of decreasing law school admissions of young people of color.

The just-issued report on the Conference provides a blueprint for expanding the pipeline of diverse young people flowing into the legal profession. Now we must build on the important progress begun at the Pipeline Conference.

Another diversity priority, one that prior to this year had received scant attention, is the needs of persons with disabilities in our profession. At the first-ever and truly outstanding National Conference on the Employment of Lawyers with Disabilities, keynoted by my law partner and former US Attorney General Richard Thornburgh, the ABA Commission on Mental and Physical Disability Law underscored the challenges facing persons with disabilities in our profession.

I was pleased to support this groundbreaking Conference from the start of my year as President-Elect, and I urge you to draw on the Commission's resources in your efforts to open doors for persons with disabilities.

Another very important restructuring this past year was in the Association's expanding and increasingly important rule of law programs. The Board of Governors approved creation of the new ABA Center for Rule of Law Initiatives, or CROLI. The Center is now coordinating the excellent work of our four excellent regional rule of law initiatives in Africa, Asia, Central Europe/Eurasia, and Latin America.

I was pleased that Immediate Past President Grey accepted my appointment as the first chair of the new CROLI board. Under his excellent leadership, the Center has already achieved several successes, including last November's first-ever ABA International Rule of Law Symposium, conceived during President Grey's term, which attracted 400 leaders of government and leading lawyers from 40 countries on five continents.

In my travels abroad to support the Association's international rule of law initiatives, and at several conferences attended by hundreds of bar leaders of the world during the past year, I have stressed the great importance of unifying the legal profession throughout the world. While lawyers, and the legal profession, in different

nations, with different legal systems and traditions, face unique challenges, I have learned that those challenges also are remarkably similar, and ominous, in all countries.

I believe that certain fundamental principles are common to and bind all lawyers of the world. I also believe that for lawyers to vanquish threats to freedom in all nations, the bars of the world must think of themselves not as isolated, not as separate, but as one profession. That all lawyers must stand shoulder to shoulder, and help each other in the constant battle to secure the rights, and dignity, to which every human being is entitled.

It was in that spirit during a conference of bar presidents last November in Paris that I authored the Statement of Core Principles of the legal profession. The Statement was unanimously adopted by the more than one hundred bar leaders from around the world in attendance, and at my request this House unanimously adopted it at our Midyear meeting.

A growing number of bars throughout the world have adopted it.

The Statement of Core Principles -- in simple language that is understandable by non-lawyers and lawyers alike -- states that the legal profession throughout the world, in the interest of the public, is committed to the core principles of an independent judiciary and an independent legal profession, without which the rule of law and freedom cannot exist, and access to justice for all people throughout the world, which is only possible with an independent judiciary and independent legal profession; and that these core principles shall not yield to any emergency of the moment.

There is no question in my mind that the American Bar Association is a brightly shining beacon to the lawyers of the world in our shared commitment to the rule of law and to those immutable core principles.

Earlier this year the Board of Governors unanimously approved my request to enter into a Memorandum of Understanding with the national bar of China, and last Friday approved similar agreements with the national bars of Russia and Japan. The agreements, which I have executed on behalf of the Association, will be of great benefit to the Association's rule of law programs, and will enable American lawyers to learn more about the laws and legal systems of those nations.

This past year we re-dedicated our Association, and the lawyers of America, to a Renaissance of Idealism in our profession --- to the noblest principles that define the legal profession: to provide pro bono legal services to assist the poor, disadvantaged and underprivileged; and to perform public service that enhances the common good.

My appointment of the ABA Commission on a Renaissance of Idealism in the Legal Profession, led by Honorary co-chairs Justice Ruth Bader Ginsburg and Theodore Sorensen, and chair Mark Agrast, has led to a range of useful resources and policy proposals that will enable more lawyers to do more pro bono and public service work.

The Renaissance Commission's useful online *Best Practices Resource Guide*, available on the ABA website, includes examples of more than 160 innovative and successful programs in a variety of practice settings that can be implemented in law offices throughout the country.

The Commission's excellent DVD video, featuring truly inspiring interviews with Justice Ginsburg, Mr. Sorensen and Dennis Archer about the role of the lawyer has been distributed nationwide. I urge you to use it whenever you speak at any gathering of lawyers or non-lawyers. It eloquently reminds all of us what lawyers mean to society.

I am pleased that Mr. Sorensen will deliver the keynote address at the Pro Bono Luncheon immediately following this session of the House. He is sitting with my family in the well of the House, and I ask you to join me in thanking him for his valuable contributions to this important endeavor of our Association and profession.

The Commission's policy proposals at this meeting have identified new strategies for encouraging pro bono and public service work by lawyers in all practice settings. One of the Commission's proposals represents an important bridge to our next generation of lawyers, by calling on law firms to report on their pro bono hours and programs in interviews with law students.

I encourage you to support the Commission's policy proposals when they are presented to you.

During the past year, we undertook several important initiatives to protect our constitutional system of government.

The ABA Commission on Civic Education and the Separation of Powers, led by Honorary Co-chairs Supreme Court Justice Sandra Day O'Connor and former Senator Bill Bradley, and by chair Robert Rawson, has elevated the prominence of the issue of civics education and the separation of powers in our nation's schools. Among its activities, the Commission launched a national "Dialogue" series on the separation of powers, and the theme for Law Day 2006 was "Separate Branches, Balanced Powers."

Our Law Day programming reached tens of thousands of children and adults nationwide, and it has helped to refocus attention on the need for comprehensive civics education about the separation of powers doctrine, particularly the importance of an independent judiciary.

In addition, Justice O'Connor, Senator Bradley and I participated in a program taped by Court TV focusing on the importance of the separation of powers doctrine. Excerpts from this program are included in the DVD that is at your seat.

The Commission is presenting a report with recommendations to the House at this meeting that calls on policymakers at all levels of government to ensure that all students in our schools receive civic education that will enable them to protect their cherished freedoms. I urge you to support the common-sense recommendations.

I am pleased that all of the Commission members have agreed to serve another year, and that the Commission's important work will continue with Justice O'Connor's enthusiastic leadership.

Another recurring, and deepening, challenge we face in our country is serving the legal needs of lower-income Americans.

The Task Force on Access to Civil Justice that I appointed a year ago, chaired by Justice Howard Dana, has developed two thoughtful recommendations for improvements to our civil legal aid systems, to be considered by the House at this meeting.

The first proposes a set of uniform and necessary Principles of a State System for the Delivery of Civil Legal Aid.

The second presents our Association with a truly historic opportunity to endorse an idea whose time has come: a defined right to counsel for lower-income Americans in certain serious civil legal problems. I believe that the establishment of a right to counsel in those civil matters that threaten a poor person's basic human needs --- family, shelter, and health --- is the defining justice system issue for our profession, and for our nation, in this century.

No one in America should have to face the loss of such basic rights without the aid of a lawyer. *No one.*

The promise of equal justice, and equal access to justice, for all in America *demand*s that we address the vast unmet legal needs of America's fifty million poor Americans. I ask that you support this resolution.

I am pleased to report to you that the Board of Governors has approved my request for creation and funding of the new ABA Resource Center for Access to Justice Initiatives. The new Center, under the supervision of our Standing Committee on Law and Indigent Defendants, will provide expert technical assistance and guidance to help our 50 states and territories improve the delivery of legal services to the poor.

The unavailability of needed legal services was exacerbated by last season's devastating hurricanes. Katrina was not only one of the worst disasters in our nation's history, but it also precipitated the largest legal services crisis we have ever experienced. I thank the dedicated members of the ABA Task Force on Hurricane Katrina, chaired by past ABA president N. Lee Cooper, and all ABA entities that have contributed so magnificently to the efforts to help hurricane victims with the myriad legal problems arising from these devastating storms.

It will take many years before this vital region of our nation fully recovers, and we have much work yet to do. I urge you and our colleagues throughout the country to stay the course in providing pro bono services to the hurricane victims for as long as it takes.

For the benefit of the clients we serve, and all Americans, the ABA this past year vigorously defended the attorney-client privilege from erosion by federal government policies.

The policy adopted by this House last August has enabled the ABA to strengthen its defense of the attorney-client privilege and work product doctrine. It helped to persuade the U.S. Sentencing Commission last April to delete from the Sentencing Guidelines provisions that gave "cooperation credit" to defendants who waive these protections.

The Task Force continues to negotiate with the U.S. Department of Justice to eliminate policies that encourage prosecutors to require waiver of these fundamental rights in return for "cooperating" during investigations. These policies are an affront to our justice system and to the rights of Americans protected by the 5th and 6th Amendments to the Constitution.

The Task Force is bringing two new policy recommendations to the House at this meeting. I urge your support for them.

The ABA this past year also contributed significantly to the important national debate on immigration policies. At the Midyear Meeting in Chicago, the House adopted a set of seven policy recommendations put forth by the ABA Commission on Immigration that are influencing Congressional debate.

The ABA this past year was a leading force in protecting an independent and well-qualified judiciary at the federal and state levels. I am particularly grateful to the members of the Standing Committee on Federal Judiciary, and the committee's chair, Stephen Tober, for the simply outstanding service they have performed in evaluating federal judicial nominees -- including three appointees to the Supreme Court of the United States (one of whom withdrew during the evaluation process). As we all witnessed during the televised Senate confirmation hearings, the Committee received the accolades of the entire Senate Judiciary Committee, and made all of us proud.

Please join me in thanking Chair Tober and his colleagues.

Two weeks ago, I responded to an irresponsible and mean-spirited Wall Street Journal editorial attacking the work and personal integrity of members of our Committee. Such attacks reveal more about the attacker than the target, and indicate a bully mentality designed to distort the truth and divert attention from the issues at hand. Professionalism and ethics in journalism, and membership in civil society, require more.

As I have said to this House on prior occasions, the Association will not allow any interest group, nor ideologues or extremists, to undermine the quality or independence of the judiciary. The Association's only interest -- and the guiding principle of our Standing Committee on Federal Judiciary -- is that the American people have an outstanding, independent, and well-respected federal bench.

Nor can we stand quietly when Congress considers ill-advised legislation that poses a dangerous threat to the independence of the judiciary such as that reflected in the now pending bill that would create an Inspector General to oversee the federal judiciary.

We must oppose such threats to the judiciary, and I urge you to support the Inspector General resolution that will be presented to the House at this meeting.

Another great -- perhaps the greatest -- responsibility that all lawyers share is to safeguard the rule of law and the freedoms guaranteed by the Constitution.

This past year the Association has played a leading role in examining the dangers posed to the separation of powers doctrine, and to the liberties of Americans by two government programs: secret spying on Americans that violates the 4th Amendment, and the use of presidential signing statements that violates the separation of powers doctrine and the Constitution.

I thank Neal Sonnett for chairing the two bi-partisan and expert ABA task forces that I appointed during the past six months to examine each of these very troubling issues.

At our February Midyear meeting, the Task Force on Domestic Surveillance in the Fight against Terrorism presented a unanimous report with recommendations that were adopted by an overwhelming vote of this House. The new policy has enabled the Association to speak out in Congress and in the media about the administration's duty to follow the clear mandates of the Foreign Intelligence Surveillance Act (FISA) when engaging in electronic surveillance within the United States.

Our policy clearly is making a difference on this issue. During ABA Day in Washington in May, numerous members of Congress, Senators Ted Kennedy and Arlen Specter among them, praised the ABA's policy, and said that it is helping to shape Senate proposals to amend FISA.

Three weeks ago, I explained the Association's policy in testimony to the U.S. House of Representatives Permanent Select Committee on Intelligence, as that committee considers proposals to amend FISA.

We must continue to advocate strongly for retaining the protections contained in FISA, and to urge that any revision to FISA must continue to preserve rights protected by the Fourth Amendment.

The Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, which I appointed this spring, is bringing to this meeting an historic and unanimous report with recommendations that has received overwhelming support throughout the US. This is another bi-partisan group of highly respected experts on the constitutional issues surrounding the use, and misuse, of signing statements attached to legislation that the president has signed into law.

The Task Force includes liberals and conservatives, Democrats and Republicans, former members of all three branches of government, and distinguished constitutional and presidential scholars – all of whom devoted enormous amounts of time and energy to the production of a unanimous report with recommendations.

The report and recommendations oppose, as being contrary to the rule of law and our constitutional system of separation of powers, the use of presidential signing statements to decline to enforce all or part of a law that Congress has enacted.

The Task Force provides common-sense policy recommendations to the President and Congress to avert a constitutional crisis, one that will surely confound us if the current use of presidential signing statements continues unchecked.

This is not about partisan politics – it is about protecting the fundamental principles of separation of powers, and checks and balances, which have sustained our republic for more than two centuries.

I urge you to support the recommendations.

I conclude with this.

Hundreds of editorials, op-ed pieces and news articles during recent months have chronicled the Association's efforts to protect the institutions of our democracy and the rights of Americans. The Association has been described in terms such as "pre-eminent," "esteemed," "highly respected," and "powerful."

Morale among ABA members is high. ABA membership is up by almost 18,000 compared to June 30 a year ago. It could reach an all-time high of 430,000 by the end of this calendar year.

I have received countless messages from people throughout America during the past months – including citizens, lawyers, judges and legislators.

The messages simply but eloquently express heartfelt thanks and gratitude of fellow Americans for our efforts to protect their cherished freedoms.

Many of them have moved me, and I want to share several with you.

A congressman wrote:

You are making me proud to be a lawyer—again. Your clear and courageous defense of our Constitution and the separation/balance of powers it sets out deserves credit....Thank you!

A judge wrote:

It is public stands like this [protecting privacy rights] that proves yet again how important our Association is to the continuance of the rule of law... in America.

A man from Texas wrote:

I ... offer my sincere thanks and encouragement to [the] ABA Task Force on Presidential Signing Statements. I am truly hopeful that [the Task Force's recommendations may be [the] key to saving our Republic. Thank you! I'll never tell another lawyer joke. [You have my] respect and admiration.

And this one from a long-time employee of the Association similar to many others from our staff:

[This year has] shown the lawyers of America that the ABA does have an important role to play. Let me be just one more voice to say BRAVO! I have been with the ABA for 15 years. You have reminded me why I am proud of it. Thank you.

This one perhaps best sums up the many messages I have received:

“The American Bar Association during the past twelve months has demonstrated extraordinary leadership and courage on behalf of the American people.”

My colleagues, these messages underscore a vitally important point -- that the Association must continue *proactively* to confront, to embrace, and not sidestep, its leadership role in safeguarding the institutions of our democracy, the rights of the American people, and the rule of law. Our fellow Americans, as never before, now look to our Association -- with hope, trust and respect --- for leadership.

We must not turn a deaf ear or a cold shoulder.

In a speech that was to be delivered in Dallas on November 22, 1963, President John F. Kennedy said this:

“We in this country, in this generation, are – by destiny rather than choice, the watchmen on the walls of freedom.”

In our generation, it is the lawyers of America who -- by destiny and by choice -- are now the watchmen on the walls of freedom.

Today it is the American Bar Association that is protecting the separation of powers, and the balance of powers, by checking the constitutional excesses of any branch of government.

Issues such as torture of human beings, denial of due process to detainees, secret surveillance of American citizens, and disrespect for the doctrine of separation of powers and checks and balances, are not partisan issues. They affect all Americans, define us, and threaten fatal harm to our republic.

We must have the courage to address these issues, in a non-partisan way, with vigilance and without equivocation. That, after all, is why the American Bar Association exists, and why it enjoys such respect throughout the world.

My colleagues, it has been an honor to serve with you. Now, it is time for me to take my leave.

You have my very best wishes.