

The Ninth Annual  
Chester Bedell Memorial Lecture

“THE INDEPENDENCE OF THE AMERICAN LAWYER”

*Presented to The Florida Bar*

By

*The Chester Bedell Memorial Foundation*

*in cooperation with*

*The Trial Lawyers Section*

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THE HONORABLE WILLIAM S. SESSIONS

Washington, D.C.

## THE HONORABLE WILLIAM S. SESSIONS

began his law career in Waco, Texas in 1959. After many years of practicing in Waco, he then moved to Washington, D.C., where he worked in the United States Department of Justice for approximately two years. He then returned to Texas where he served as United States Attorney in San Antonio. Beginning in 1974, he served as U.S. District Judge for the Western District of Texas until 1978 when he became Director of the Federal Bureau of Investigation. Since 1993, he has been studying and lecturing on various aspects of law practice.

### "THE INDEPENDENCE OF THE AMERICAN LAWYER"

#### MR. SESSIONS:

Coming to Orlando shortly before the annual remembrance of our Declaration of Independence on July Fourth gives special significance to the meaning and purpose of this memorial lecture. There is no other document, anywhere in this world, that reminds us of the blessings of freedom and liberty more dramatically than that document. The annual tradition of reading and discussing the Declaration on the Fourth of July is one that has contributed significantly to the determination of the Sessions Family to do our part in sustaining this great country in its struggle to preserve democracy around the world.

Liberty and independence are inseparable. Without an independent spirit and without determination, liberty--and thus independence--can be lost. Without the rule of law, which we all cherish, liberty and independence would almost certainly be lost.

America's lawyers and judges hold the crucible in which the rule of law is held. The preservation of both the crucible and the contents is a responsibility which the profession, and each of its members, must shoulder with an understanding of its critical importance to the world.

It has been said that “Liberty means responsibility which is why most men dread it.” Ambassador Sol Linowitz, in his book The Betrayed Profession: Lawyering at the End of the Twentieth Century opines that,

“Too many of us seem to have forgotten who we are and what we are supposed to be. Too many seem to ignore the fact that in becoming lawyers, we assume solemn responsibilities and obligations that are an integral part of our calling...”

Chester Bedell is quoted as saying:

“I have only one speech. When I have an opportunity to speak to a group of lawyers, I find that I inevitably say during the course of my talk that the preservation of the independence of the Bar is essential to the preservation of our freedom.”

The significance of the health of the Bar of the United States and of its ability to remain independent and vigorous seems to me to be very clear and unmistakable. The fact is that millions of people around the world, who were once subjugated and suppressed, look to the West, often to America, for guidance on how to create a lasting democracy that will protect them as the Constitution and laws of the United States protect us.

That system, as Brendan Sullivan observed before this group in June of 1990, is “the best and fairest system in the world; and of course, we as lawyers are more than an important part of that system — we are the system.”

What the world wants desperately, and looks to the United States to provide, is a means to replicate the spirit, and much of the functioning, of our system, the underpinning for which is the rule of law.

Henry L. Stimson, the Secretary of War during World War II, focused on the responsibility of lawyers in 1948, three years after the end of World War II:

“Through many channels I came to learn and understand the noble history of the profession of the law. I came to realize that without a Bar trained in the traditions of courage and loyalty, our Constitutional theories of individual liberty would cease to be a living reality. I learned of the experience of those many countries possessing constitutions and bills of rights similar to our own, whose citizens had nevertheless lost their liberties because they did not possess a bar with sufficient courage and independence to establish those rights by a brave assertion of the writs of habeas corpus and certiorari. So I came to feel that the American lawyer should regard himself as a potential officer of his government and a defender of its laws and constitution. I felt that if the time should ever come when this tradition had faded out and the members of the Bar had become

merely the servants of business, the future of our liberties would be gloomy indeed.”

Many of us sense that to many lawyers in the United States today, the legal profession has become a business — that the billable hour reigns supreme and thus, only a business standard of ethics applies to our professional conduct.

Recently, a lawyer in Washington, D.C., in rising to his own defense about accusations of unethical conduct, uttered words that criticized “those who do not understand, nor wish to understand the role and obligation of a lawyer.”

In commenting on that lawyer’s assertion, a senior writer for a national law publication observed that:

“Perhaps it is true that those of us outside the profession just don’t know good lawyering when we see it. We know the essence of zealous advocacy is the use of boldness and knowledge to head off problems. We also know, however, that too often members of the Bar believe that their license to practice law is a permit to throw their weight around, to obfuscate, to push the envelope of what they and their clients can get by with, and the difference between the two is not always a bright line.”

Abraham Lincoln, in 1850, warned that, “There is a vague popular belief that lawyers are necessarily dishonest.”

One hundred and forty-four years later, Ambassador Sol

Linowitz reminds us that, “Lawyers are viewed with distrust, dislike and suspicion.”

Some lawyers take comfort in the fact that this is, seemingly, not a new problem.

James J. Kilpatrick, a columnist, recently said that he had read hundreds of quotes about lawyers and found only two that were positive in nature.

Without respect for lawyers, can there be respect for law?

Without respect for lawyers who occupy the benches of this country, can there be respect for law?

If there is no respect for and trust in the courts or the lawyers who are essential to their functioning, can the rule of law, the foundation of American society, survive?

Associate Justice Sandra Day O’Connor, speaking at Wake Forest University College of Law in April of 1993, candidly discussed the fact that a high percentage of lawyers in the United States were dissatisfied with the practice of law (among solo practitioners, 43% of all men and 55% of all women and in law firms, 28% of men and 41% of women).

My discussions with lawyers across the country, old and young, almost invariably brings out their opinion that the lack of civility and trustworthiness have become major problems in their own practice of law.

ABA President, William Ide, noted in 1994, that, “Our justice system is truly the foundation upon which this country was built” and that there is “a public perception that the system is a crumbling structure that is in terrible need of restoration.”

That restoration must begin with the leadership of lawyers who are clearly seen by the public to be worthy of having the trust and

confidence of the American people as well as the confidence of their peers.

Lawyers as individuals and lawyers who are independent advocates are firmly linked to the preservation, revitalization and enhancement of the system of justice in this country.

We must have enhanced leadership in ethics; the teaching of strong ethics by the law schools; the teaching and monitoring of the Bars' codes of professional responsibility; the development of codes of responsibility by lawyers in professional associations such as those of the American Trial Lawyers Association, the code of trial conduct of The American College of Trial Lawyers and the tenets of professionalism of the International Association of Defense Counsel.

We must have enhanced leadership in discipline within the profession. Strong support of the work of the discipline functions of the state Bar associations is sorely needed in every jurisdiction.

We must have enhanced leadership in the courts by judges who accept their critical role in the timely disposition of matters before the court and understand that reduction in the cost of litigation can flow from their strong guiding hand in the conduct of the litigation. Judge Learned Hand long ago taught us that you cannot ration justice.

We must have enhanced leadership from the law schools in the teaching not only of the law but of professional responsibility and ethics that lifts lawyering to the lofty and demanding requirements of the ethical practice of the law.

Justice Arthur T. Vanderbilt, the dynamic justice of the New Jersey Supreme Court in the 1950s, counselled that it was the task of a great lawyer, and I would add, an independent lawyer, "To do his part individually, and as a member of the organized Bar, to

improve his profession, the courts, and the law."

It is the independent lawyer who can and must lead the way. It can be the independent lawyer, like the yachtsman in the hard fought race who takes a new tack in search of stronger wind and supporting tide to close in at the finish line with a victory in hand.

It is the independent lawyer who will take the lead in pro bono efforts or will lead a firm to formalize its pro bono program to be able to accomplish extraordinary results of which the community takes notice.

An example: the experience of the Florida firm in taking up the cause of the survivors of the destruction of a Florida town in 1923 by the citizens of another nearby Florida town who believed that one of their citizens had been attacked by a resident of the town which they then destroyed in retaliation. The firm recovered millions in compensation and scholarship funding for the disadvantaged. That pro bono effort did not just "happen." The firm that carried that burden had carefully structured its pro bono program to be able to carry the effort to its spectacular conclusion.

Civility and trustworthiness will return lawyer by lawyer and encounter by encounter as lawyers are discouraged from pursuing costly and destructive courses of conduct to enhance the lawyer's reputation for toughness.

Public confidence will return through the efforts of independent lawyers to discourage litigation, to reduce costs, to truly work for the best interest of their clients rather than finding ways to drive up the fees or dreaming about bringing a paying client to the firm.

Public confidence and respect for our courts will be preserved by our efforts to support and improve them in order for them to better meet the true needs of the American people by unrationing justice

and making it available and affordable.

Public confidence will be restored by vigorous court-annexed arbitration and mediation programs which provide a safety valve for overloaded courts and show the citizenry that the courts can be innovative and handle the tremendous loads that are thrust upon them.

Public confidence and respect will be gained through the public's awareness of vigorous continuing legal education programs that enhance professionalism and make case evaluation and settlement of disputes more likely.

Public confidence and respect will be enhanced through trial advocacy training, continually pursued, which will ease the pressure on all courts, principally because the trial lawyers are better prepared on the law and procedure.

Public confidence and respect for lawyers and the law will be enhanced when the independent lawyer follows the admonition of Justice Arthur Vanderbilt "to act as an intelligent, unselfish leader of public opinion . . . within his or her own sphere of influence."

The independent lawyer will find the ways to express, in the public forum, the underlying principles that shape and govern our approach to life under the rule of law in this country and will inspire the public to better understand and participate in constructive community life.

Basic values will ultimately determine the quality of our national life.

Not only must we support the law and our institutions, we must stand for and express those values that truly govern the quality of life in America.

The independent lawyer will find the ways.

## THE BEDELL LECTURERS

David Boies	1986
Hon. Parker L. McDonald	1987
Robert W. Meserve	1988
Benjamin R. Civiletti	1989
Brendan V. Sullivan	1990
Julius LeVonne Chambers	1991
Roxanne B. Conlin	1992
Joe Stamper	1993
William Steele Sessions	1994

*The Chester Bedell Memorial Lecture on "The Independence of the American Lawyer" is an annual event at the Trial Lawyers' Section luncheon meeting at the Convention of The Florida Bar. The Bedell Foundation, which receives tax-deductible contributions for support of the Lecture, was created by the Jacksonville Bar Association in 1981, to help preserve the independent bar and to extend that sense of history, duty and destiny that Bedell exemplified in more than 50 years of practice in the courtrooms of Florida.*