The Tenth Annual
Chester Bedell Memorial Lecture

"THE INDEPENDENCE OF THE AMERICAN LAWYER"

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By
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LORD WILLIAMS OF MOSTYN QC

London, England

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Lord Gareth Williams was called to the Bar (Gray's Inn) in 1965 and he has practiced as a Barrister in London since then. He has served as Queens' Counsel and Chair of the Bar Council and was the Front Bench Spokesman for the Official Opposition (Labour Party) for Northern Ireland in the House of Lords in 1993 and the Front Bench Spokesman for Legal Affairs in the House of Lords in 1992. He also chaired the Professional Conduct Committee, is a Fellow of the University College of Wales and has taught and lectured extensively in the United Kingdom and in the United States of America. Lord Williams's practice has primarily been in the area of defamation and media law and his notable clients include the Princess of Wales, Elton John and the newspapers of Great Britain.

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LORD WILLIAMS

Many thanks for your generous invitation to deliver this brief speech at the Chester Bedell/Trial Lawyers Section Luncheon. It is always a great pleasure to speak to Florida lawyers and in particular, I am very pleased that Mrs. Chester Bedell is present with us here today.

We need to ask ourselves what it is that links us as trial lawyers separated in our daily work by thousands of miles. There are two views.

The first is that the common characteristics of trial lawyers everywhere are threefold: first, barking egomania; second, rat-like cunning; and third, the determination to be the well-paid centre of attention at all conceivable times.

There is a nobler view. It recalls the ineffable feeling we all had starting off as law students that we are no more than privileged foot soldiers in the great army of justice. I hope that this more profound view is the preferred conclusion.

There is much discussion in United States political circles about the budget deficit. As lawyers, we need to attend to what I believe

is a functional deficit in our system. Let us look for a moment at the criminal justice and civil justice systems. A criminal justice system, to be acceptable, should deliver the following: One, that an innocent man should not be arrested; if arrested, should not be charged; if charged, should be acquitted; if convicted, should be able to have the conviction speedily and promptly overturned. Two, a guilty man should be charged; if charged, convicted; and if convicted, sentenced appropriately. Three, the system should be efficient and cost effective. Four, it should conform to civilized standards of the society in which it operates.

I am sorry to say that the criminal justice system in the United States and the criminal justice system in the United Kingdom too often fail to deliver those minimum criteria. How can it be justified that a man is kept in a condemned cell for more than ten years awaiting, uncertainly, the date of his execution. I am not entering into the debate about the rightness or wrongness of capital punishment, simply observing that it cannot be tolerable that a human being can be left in limbo for so long. Are the poor, the black, the weak and the vulnerable fairly treated by the criminal justice system as compared with the treatment which is given to those who are well connected, wealthy and articulate? I doubt it.

What should be the aims of a civil justice system? I suggest it should be speed, certainty and the provision of remedies at a known and moderate cost. Ladies and gentlemen, in those objectives, we fail. There is no one in this room who could afford his or her own services. That is a very sobering assessment with which no one can disagree. Civil litigation is in many ways a modern relic of medieval armies jousting in battle. No one can afford it. The system has become perverted so that very few

individuals of calm and rational disposition would ever enter into civil litigation. That means that rights go unasserted. A right which is not capable of being enforced is no true right.

Lord Woolf is at the moment carrying out a review of the system in the United Kingdom. There are interesting developments. The Small Claims Court dealing with claims of perhaps $5,000 is a great success. It is intended that the parties should appear without representation. There are small court fees to be paid but attorneys' fees are not recoverable. The judge is required to be pro-active and to manage cases. Judges will be encouraged to set timetables and insist that they are adhered to. The hope would be a period of not more than 28 weeks from beginning of action to trial or conclusion. Judges will need to be trained in management techniques. There is increasing attention paid to early disclosure and mutual exchange of witness statements so that litigation by ambush becomes unknown. The techniques of mediation and alternative dispute resolution are much encouraged. So the earliest steps are being taken to improve and develop a system.

We need to look with great care at the judiciary. What is it that we look for from judges and how do we provide assistance for judges? A proud claim that we can make in the United Kingdom is that no judicial appointment is in any degree a political donation. That is not always true at all levels in the United States. There should be no political connection to any judicial appointment nor in my opinion any question of election or de-selection at the whim of a possibly ill-informed electorate. Forgive those harsh words, but my belief is that the judge's gown should not be given or taken away according to the whims of a weathercock electorate. Our system of monitoring and training of judges is lamentable. A full- time judge after appointment has the

commitment only to training or retraining for one week every five years. I know from Mark Hulsey that the scrutiny of judicial appointments is much more systematic and structured in the United States and I believe that we have much to learn from your example.

The Bar in England and Wales is a referral profession. That is to say no member of the public can come directly to a barrister. He has to approach the barrister through a solicitor who is an attorney in general practice. This means that the Bar can offer a specialist service of advice and advocacy on the basis that the whole of one's professional life is devoted to just that advice and advocacy. In the chambers of which I am head we have about thirty members. Partnership between us is forbidden. This means that public choice is retained on as wide a basis as possible. If all thirty of us were partners, the public would have a choice of one. At the moment they have a choice of thirty. I frequently act against my colleagues in chambers without any difficulty. This means that of about eight thousand members of the bar, all are available to the members of the public who require their services.

We have a strict ethical code of conduct laid down by the Bar Council. There are two aspects of great importance. First, there is the cab rank principle, an ignoble name for a worthy concept. It means that any barrister is obliged to provide his services for any client who reasonably needs them irrespective of political view, unpopularity of case or even the fact that the lay client is utterly despicable. This is a matter of great importance. I believe it to be fundamental to the practice of law. If upheld, it means that the black defendant in a Southern State is entitled to proper representation as a Jewish defendant would have been with such a system in Nazi Germany. It presently includes an obligation to do

work at Legal Aid rates, that is out of public funds. This is much less well paid than the market rates would provide. If those principles are significantly eroded, the independence of the barrister and therefore the protection of the public will be significantly attacked. Generally speaking, we are forbidden to have a retainer. I believe this is in the public interest. No large corporation can purchase the services of a barrister in order to deny those services to a possible opponent.

Barristers in England and Wales prosecute and defend. When I did a good deal of criminal work, I frequently prosecuted a murder one week and defended a different defendant in a murder case the following week. We act for plaintiffs and insurers in personal injury cases. This is important. It ensures and protects the independence of the barrister since he is not there to be merely the paid servant of a client of the moment.

My late father was a schoolteacher in a small village in North Wales. He was also a lay preacher. He thought the parables had some worth. May I trouble you for a moment with the parable of the wealthy defendant. In London last June, a well-known pop musician killed his wife and her male friend. He stabbed them both to death. He caught a train to Scotland two or three hundred miles from London. By chance there was a film camera on the same train. He left a note with his lawyer. He was eventually arrested and charged with murder. Thereafter his barrister could not comment while the case was in progress since this would be a disciplinary offence under the Bar rules. No material could be published of any sort which might prejudice his fair trial. If such material were published, it would be contempt of court punishable by fine or imprisonment. This prohibition would include alleged expert comment as well as the disclosure of factual

material. The preliminary proceedings, although held in public, would not generally be published. He would have counsel representing him whose legitimate purpose was the attainment of a true verdict according to the evidence and the rules, not personal self- aggrandizement or self-advertisement. The jury selection would last perhaps a morning or rather less time than we have spent on our lunch and speeches. The prospective jurors would be asked simple questions such as, "Do you have any connection with the defendant or any witness or any prosecution witness?" The trial would last about three weeks or so. Every evening the twelve jurors would go home to their families. They would be warned not to discuss the matter that they had heard in court or the case that they were trying. They could read newspapers and watch the television. The verdict would be returned. There would be an absolute statutory prohibition on jurors giving interviews, writing books or newspaper articles, whether following acquittal or conviction. Jury service would be regarded as one of the most important public duties, perhaps the most important that a citizen can carry out. Each juror would have modest expenses for their public duties. Counsel would not comment during the case or abuse or insult the other side. They would be expected to be polite and civil to their opponents and the judge. I note from your smiles that you know the moral of the parable. I suggest that it would be a rather better system than the circus presently occurring at Mr. O.J. Simpson's trial on the West Coast. No thoughtful lawyer — or indeed thoughtful member of the public — can, I suggest, possibly defend what is happening in Mr. Simpson's case.

As lawyers, we forget too often the infinite privilege that is given to us, namely the rights of audience in an interesting and fascinating life with constant variety. We too often fail to return

anything of significant value to the system we should serve. The true engine of legal reform should be practicing lawyers. If we do not reform ourselves, our practices, our thought processes, others often ill-disposed towards us will do it for us. Sometimes we hear complaints about the capping of fees or the capping of damages. Those complaints may have value and virtue but we should never forget that our colleagues in Sri Lanka often, sometimes in India and Pakistan, frequently in the former Soviet Union and in China, are killed, abducted, tortured, driven abroad far from homes, families and practices. It is their lives that are capped and not their remuneration. So we should always bear in mind that proper perspective and that privilege brings with it corresponding duties.

Thank you once more for your invitation. I never fail to reflect with gratitude on your generosity and warm hearts.

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
Lord Williams of Mostyn QC	1995

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.