

FIRST ANNUAL GEORGIA CONVOCATION  
ON  
PROFESSIONALISM

---

*I swear that I will truly and honestly, justly  
and uprightly demean myself, according to the  
laws, as an attorney, counselor, and solicitor,  
and that I will support and defend the  
Constitution of the United States and the  
Constitution of the State of Georgia. So help  
me God.*

ATTORNEY'S OATH, STATE BAR OF GEORGIA  
EFFECTIVE OCTOBER 14, 1988

PROCEEDINGS  
OF THE  
FIRST ANNUAL GEORGIA CONVOCATION  
ON  
PROFESSIONALISM

“THE PRACTICE OF LAW —  
IS THERE ANYTHING MORE TO IT THAN MAKING MONEY?”

Convened by Chief Justice Thomas O. Marshall

In Conjunction with  
The State Bar of Georgia

Macon, Georgia  
October 14, 1988



Edited by Michael L. Goldberg, Ph.D.

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Published by the  
Institute of Continuing Legal Education in Georgia  
P.O. Box 1885 • Athens, Georgia 30603-1885

Publication No. 895555  
ISBN 1-55816-000-0

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## *Foreword*

On October 14, 1988, Georgia's first Annual Convocation on Professionalism was held in Macon. Convened by the Chief Justice of the Supreme Court of Georgia, and held in conjunction with the State Bar of Georgia, the Convocation's 120 distinguished participants, drawn from the ranks of the state's law firms, courts, law schools, and bar, were confronted with one overriding question: "The Practice of Law — Is There Anything More To It Than Making Money?"

The Convocation was made possible through a generous grant from the **Georgia Bar Foundation**. Its proceedings, which were transcribed by Brown Reporting Services, have been edited for publication by Dr. Michael L. Goldberg, Special Consultant to the Georgia Supreme Court. The publishing of these materials was made possible by the generosity of The Institute of Continuing Legal Education in Georgia.

THOMAS O. MARSHALL  
CHIEF JUSTICE, SUPREME COURT OF GEORGIA

Distinguished judges, distinguished attorneys, it is a pleasure to welcome you to the convocation on professionalism. I want to thank all of you for coming here today to explore the question before us: "The Practice of Law — Is There Anything More To It Than Making Money?"

That question is not a rhetorical one. Just consider the following bits of news reported within the last few weeks:

Item: The *Atlanta Business Chronicle* conducted a survey of managing partners of law firms. The survey asked the partners to list the most serious problems facing legal practice in the next century. First on their list was "the decline in professionalism." Second was "greed."

Item: *The New York Times* carried an essay by Scott Turow, author of the best-selling novel, *Presumed Innocent*, and *One L*, an account of his experience as a first-year law student at Harvard. Turow's essay was adapted from the afterword of the new edition of *One L* and was written from the perspective, not of a first-year law student, but of a practicing lawyer with a decade of experience. From that vantage point, Turow observes that in the practice of law:

...There is a good deal of misbehavior in the profession. Suspicion runs deep through this supposed fraternity; most lawyers...will admit having been exposed, almost routinely, to conduct by other lawyers that crosses the lines of the acceptable and the ethical...

Indeed, the distrust of lawyers for one another is part of what I would call...the legal malaise. Many lawyers do not like to practice. They regard themselves as imprisoned

Proceedings

in gilded cages, highly paid, well regarded, and unhappy... On one side stands the adversary, of dubious ethics and limitless zeal; on the other, the client, waiting hungrily for favorable results. Together they make for a stressed-out existence of economic pressure and ceaseless competition...

Item: A story carried over the wires — and editorialized in *The Atlanta Constitution*—reported on the activities of Whitney North Seymour, the special prosecutor in the Michael Deaver case. You will recall that Mr. Seymour successfully prosecuted Mr. Deaver for illegitimately cashing in on his White House experience. He argued that high officials must adhere to higher standards of ethics.

And yet, even before sentence had been passed on Deaver, Seymour had sent letters to college campuses to promote himself as a paid speaker: “As a result of my indoctrination in the ways of Washington as independent counsel, I have developed quite strong views on how to achieve a higher standard of ethics in government.”

And Mr. Seymour’s response to charges that he has tried to capitalize on his public role by demanding from \$2,500 to \$5,000 per campus visit? His fee, he says, is “way below market.”

And that really is the bottom line here for our discussion today. Is the practice of law to be guided by the market alone?

Notice: I did not suggest — and do not mean to suggest — that market forces and economics ought not to play any role in our practice. I do ask, however, whether they ought to play the **only** role in our practice. Hence, my original question, and the question of this meeting: Is there anything more to law practice than money-making?

As I said before, so I say again. I am not asking

you a rhetorical question. If all there is to being a lawyer is making money, let us just say so and stop wasting everybody's time—and money—with all of our talk about ideals, aspirations, and professionalism. You know, the word "profession" comes from a root meaning "to avow publicly." If it is true that our profession is finally about nothing more than money-making, let us at least have the integrity to declare that publicly.

But I hope that there is more to our professional practice than that, and I deeply believe that many of you hope that, too. I say "hope" rather than "know," because at this point, that is all it is—just a hope. Sure, lots of folks, both inside the bar and out, have talked about improving professionalism among lawyers. But so far, what we have gotten for the most part is just talk. There is very little evidence to show how—or whether—such high-sounding talk can be translated into down-to-earth action.

And it is action more than just talk that we are after here today. This morning, our keynote speaker, Professor Cal Woodard of the University of Virginia, will describe what kinds of actions in the past have led to the current state of affairs in our profession. This afternoon, our breakout group moderators will help us investigate the ways in which our actions in our firms, in our courts, in our law schools, and in the bar itself affect the very character of our profession. This evening, we will reconvene under Presiding Justice Harold Clarke to determine which actions, if any, we resolve to undertake to help insure that ours remains a profession in the highest sense of calling and vocation.

In just a few moments, Jim Elliott, President of the State Bar, will share with you his thoughts and hopes for this convocation. But before he does, I personally want to thank him for his leadership and support in this effort. Furthermore, I want to thank

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Marshall



the Georgia Bar Foundation for its generous financial support in making this convocation possible.

Finally, let me once again thank all of you for coming here today to help answer what may ultimately be the weightiest legal question of our time.

Let me now turn the chair over to my colleague, Presiding Justice Harold Clarke.

**PRESIDING JUSTICE HAROLD G. CLARKE**

Thank you, Mr. Chief Justice.

Your presence here today is strong evidence of your concern for professionalism. Judge James Hill said to me earlier that talking about professionalism to this group is like preaching to the choir. But even if that is true, maybe we can turn the choir into a group of evangelists to send back out to other congregations to pull more people into the tent of professionalism.

I am pleased now to be able to present to you someone who has done a wonderful job as President of the State Bar of Georgia, Jim Elliott.

**STATE BAR PRESIDENT A. JAMES ELLIOTT**

We are really here today for at least two purposes. The first is to step back from the trees for a minute to take a look at the forest, and the kind of trees I have got in mind are those depositions that have to be taken, or those court calendars that have to be met, or those documents that have to be drafted and reviewed. The "forest" we are talking about is the forest of the legal profession and its present state.

As the Chief Justice has mentioned, the title of today's convocation suggests an answer; but as he has also pointed out, the suggested answer is **not** that we totally ignore economics. Instead, we are going to re-examine the balance that exists between our

revenue-producing activities on the one hand and our activities which produce no revenue on the other.

Not long ago, I wrote a little piece for the president's page of the *State Bar Journal*, and I got two surprises from it. The first surprise was that anybody read it. The second surprise was that of the 200 responses I received, only one came from a lawyer under the age of forty.

Now, if someone were cynical, I suppose he or she might draw the inference that young lawyers really do not care about what is going on in the profession. However, such an inference would be totally incorrect. Maybe a more accurate inference would be that those of us who are older have not devoted the time our predecessors did in emphasizing the importance of professionalism.

Of course, we all tend to say to young lawyers that public service is important. Nevertheless, one of our problems is that we also send a lot of other signals, and most of those signals say something to the contrary. Because these are bright kids coming in, they pick up very quickly that the partners who seem to be prospering are generally not the ones thought of as being the most public-spirited. With starting salaries now reaching \$55,000 in some Atlanta law firms, we obviously expect and demand that young lawyers be productive. But we need to persuade them that being a good lawyer entails substantially more than simply becoming technically proficient.

Most of you occupy a special place in your organization, and in that position, you have some responsibility for the economic health of the organization. But most of you also have another special responsibility; you help set the philosophy that guides the organization, the philosophy that ends up structuring the institutional personality of your firm.

*“. . .being a good lawyer entails substantially more than simply becoming technically proficient.”*

Elliott

Consequently, all of us here have the opportunity and the ability to have a real impact, an impact that can be positive and that can be immediate on our firms and on our courts. Earlier, I mentioned there were a couple of purposes to this meeting. In that respect, the convocation's second purpose is to leave here with a realistic plan of action that will have a major positive impact on the profession.

I'm glad you're here, and I think we have a unique opportunity to do something that is very good.

Thank you.

**JUSTICE HARDY GREGORY, JR.**

It is my privilege to introduce Calvin Woodard to this gathering of distinguished Georgia lawyers. Professor Woodard, a North Carolinian by birth, was educated at the University of North Carolina, B.A. degree; Yale, L.L.B. degree; and Cambridge University, Ph.D. degree. Although he engaged in the practice of law with Sullivan & Cromwell of New York City from 1953 to 1955, he has devoted most of his career to his talent of teaching law to others.

After teaching history for a short time at Yale, he moved to the University of Virginia in 1964, and he has taught law there ever since except for special assignments at other institutions, such as Stanford and the University of Hanover, West Germany. He is now a professor at the Virginia Law School, where he not only teaches typical law students, but also anchors the graduate program for judges. In this latter capacity, he has taught and greatly influenced approximately ten percent of the sitting appellate judges in the United States. While he has taught in the fields of legal history, legal process, torts, and

welfare state, I believe his allegiance is to the subject of jurisprudence.

Those of you who know him will appreciate the difficulty one faces in attempting in a brief introduction to convey a glimpse of the towering intellect and winning personality wrapped in the package of electrifying scholarship known as Cal Woodard. How I wish I might convey something of the charm, the warmth, the sincerity, and even the open-mindedness of this man. On the latter point, I note that Cal once gave a law examination in which he posed as the third and final problem this question: "Ask yourself—and answer—a question that you would have liked to ask in class."

Cal Woodard.

#### **PROFESSOR CALVIN WOODARD**

I want to start these remarks with the idea that we really are at a paradoxical situation. We heard at the outset a statement of the state of the profession from the Chief Justice and others which is certainly true. But now I want to ask you for just one moment to imagine yourself a man from Mars or a person from a Third-World country coming to this country and looking at our legal profession. This is what I suggest such a person might find:

Surely, the promise of American law is being fulfilled before our very eyes, for I see a nation 'under law,' neither under the invincible dispensations of a single religious faith, nor under the mandates of a single monolithic moral code. Instead, I see us under a law over which all the people are sovereign, and I see law and, therefore, lawyers playing an ever-increasing role in every aspect of

It is by doing just acts that the just man is produced. Without doing such acts, no one would have even a prospect of becoming good. Most people, however, do not do such acts but take refuge in theory and think they will become good in that way. They, thus, behave somewhat like patients who listen attentively to their doctors, but who do none of the things that their doctors prescribe. As these people will not be made well in body by such a treatment, others will not be made well in soul by such a diet of theory.

May your discussions today produce the kind of remedies that will actively nourish both the body and soul of your profession.

*(The two breakout sessions were then held; six breakout groups met during these sessions, which lasted over three hours. Following the session, the convocation as a whole was reconvened.)*

#### JUSTICE CLARKE

I was asked to listen to what the six group leaders had to say when they came out of your meetings and to attempt to bring together some brief statement of what might be called a consensus.

The first breakout session, you remember, was for the purpose of considering whether there is anything more to law practice than just making money. I can report to you that the consensus is: "Yes, there is more." I can report to you also that the consensus is that, nevertheless, it is necessary to make some money. We do have obligations to ourselves and our families, and as a matter of fact, it

was the conclusion of at least one group that lack of money can sometimes be the cause of lack of professionalism.

Several of the groups arrived at this conclusion: things are not as bad as they are sometimes perceived to be. Perhaps we always think things are a little worse than things used to be, because we yearn for the good old days. But maybe the good old days were never as good as we thought. Nevertheless, even if we are not as bad as we sometimes think we are, appearances are important. We live in the age of the image, and we cannot ignore what our image might be. We face criticisms, and we must be able to respond to the criticisms. The response that I hear from the six breakout groups was that we need to do better.

One of the things that was pointed out is that law practice has become too impersonal. There is a lack of acceptance of personal responsibility for the acts of the lawyer; there is a lack of personal relationship between the lawyer and the client; there is a lack of personal relationship between the lawyer and other lawyers. This theme seems to have been an important thread that ran through the various groups.

Lawyers have become in some instances too anonymous. Now, that is not to say that they ought to try to get a lot of publicity, but at least they ought to be human beings in the eyes of their clients. Part of the reason for that condition is a lack of time. One group said that lawyers do not even have time for themselves; in that group's words, "Lawyers have become anonymous even to themselves."

What are some of the means, then, to overcome these problems? One of the groups came up with a character profile of a good lawyer. I have listed the characteristics given by that group, and I have added to them some of the characteristics listed by other groups.

*"...law practice  
has become too  
impersonal...  
Lawyers have  
become...too  
anonymous."*

Clarke

*Character  
Profile  
of a  
Good Lawyer*

- ❖ First, a lawyer should be honest and truthful.
- ❖ Second, a lawyer should be competent in the area of his or her own practice, but also knowledgeable in other areas of practice in order to be able to help clients find other lawyers competent in those areas.
- ❖ Third, a lawyer should be courteous as well as zealous in the representation of the client. Here, we pick up over and over again the idea that we need a greater degree of civility in the practice of law.
- ❖ Fourth, a lawyer should be fair and ethical.
- ❖ Fifth, a lawyer should be reliable.
- ❖ Sixth, a lawyer should have a social conscience. That means that lawyers ought to be dedicated to service to the public and to society. Lawyers ought to be willing to take up an unpopular cause or to engage in pro bono work even when it is unpleasant or costly, or both.
- ❖ Seventh, a lawyer should be willing to exercise independent judgment; that may mean a confrontation at times with the lawyer's own client.
- ❖ Eighth, a lawyer ought to think positively about the profession.

At that point comes another observation made by several of the groups: law practice is somehow just not as much fun as it once was.

Last, the groups felt that there is a difference between ethics and professionalism; ethical conduct is the minimum standard demanded of every lawyer while professional conduct is a higher standard that is expected of every lawyer.

Now let me turn to the reports coming out of the second breakout session, "How Can Professionalism Be Institutionalized?" Each of the groups seem

to have uniformly divided the focus of their discussion into four parts: law schools, law firms, the bar, and the courts. I will take the law schools first, because that is where the prospective lawyer arrives first.

Among those things suggested by the groups is that there ought to be courses on professionalism, which ought to be taught by one of the top members of the faculty, somebody recognized as being an outstanding faculty member. Furthermore, there ought to be a program of lawyers-in-residence at law schools, consisting of practicing lawyers or even judges, who would come to the law school and spend some considerable period of time there to meet informally with students and discuss what real lawyering is like and what the obligations of the lawyer might be. Along similar lines was a suggestion for law schools to organize an American Inns of Court; one has in fact already been formed in this state. The NITA programs were also felt to be important as settings in which lawyers and students can get together to study a system of trial practice. Finally, it was suggested that law schools ought to encourage externships as a way of encouraging the interaction between the students and practicing lawyers.

Concerning law firms, some of the things suggested include: in-house seminars on professionalism; pro bono work; credit for billable hours for the pro bono work performed by associates; having partners as well as associates engage in pro bono activities; and hiring on the basis not only of grade point average and class standing, but also according to criteria pertaining to an individual's aspirations and character.

A strong suggestion coming from every group was that law firms ought to institute mentor programs. The older lawyers ought to make themselves

*"...ethical conduct is the minimum standard demanded of every lawyer while professional conduct is a higher standard that is expected of every lawyer."*

Clarke



*“...law firms ought to institute mentor programs. The older lawyers ought to make themselves available to the associates as . . . ‘heroes.’”*

Clarke

available to the associates as counselors, role models, or even, according to one word that kept recurring, “heroes.”

There were other suggestions, some of which were very innovative. For instance, there was some conversation about the possibility of abolishing the whole idea of billing by the hour in favor of returning to value billing.

Also suggested was the encouragement of bar activities. Involvement in those activities provides the opportunity to meet and be with other lawyers so that as a result of such interaction, lawyers can begin to recognize the mutual problems they share.

Regarding the institution of the bar itself, comments were made that local bar associations ought to be more active; there ought to be more meetings so that lawyers would not be anonymous to one another. An important suggestion was that young lawyers who are not in law firms should be given an opportunity to have the involvement with older lawyers through mentor programs instituted by the State Bar or by local bars. Older lawyers interested in helping could be invaluable there, even if they are retired older lawyers.

Finally, concerning the courts, interesting things were also suggested. Trial judges might do well to call lawyers into chambers to correct them privately when they see them engaging in unprofessional conduct. Similarly suggested was that trial judges could also praise lawyers privately who engage in exceptional professional conduct.

Additionally, the suggestion came from several of the groups that the courts ought to be more active in their enforcement of professional conduct, but that in doing so, the courts ought to be consistent.

Court encouragement of pro bono activities was also mentioned repeatedly. That idea is obviously very much on our minds regarding the need to

institutionalize professionalism.

Last, the suggestion was made that the courts may have fostered unprofessional activities by deciding too many cases on technical grounds so as to encourage the lawyers to "blind-side" one another. Consequently, we in the court system ought to be careful not to elevate form over substance.

In sum these were a few of the major points that I perceive coming from the discussion groups.

**JUDGE ROBERT E. MCDUFF**

May I make this motion from the floor, Mr. Justice? It seems in order. I believe you have distilled the thinking of the convocation in very fine fashion, and I would move that your remarks be adopted as a report of this convocation and sent on to the State Bar for its consideration and further action.

**JUSTICE CLARKE**

If there is no discussion, those favoring the motion say, "Aye!"

The "Ayes" have it; the report is adopted, and we shall send it to the State Bar for consideration.

It has come to my attention that there are people who would like to offer comments and recommendations at this time. I recognize Ben Weinberg.

**MR. WEINBERG**

Our group had a very interesting afternoon, and I know of two or three things that I plan to attempt to inaugurate in our firm, one of which is the enhancement of our existing mentor program.

Another thing that I intend to recommend to the

**JUSTICE CLARKE**

Gene Mac Winburn.

**STATE BAR PRESIDENT-ELECT  
GENE MAC WINBURN**

I think we would miss an opportunity if we did not provide some continuity. While it is good to have things to take back, I think it is most important that we continue moving forward; therefore, I move that we do this again.

**JUSTICE CLARKE**

You have heard the motion. Is there a second? I heard a second. Any opposed? All in favor say, "Aye!" The motion carries. Thank you very much.

And now, I would like to present to you my good friend and colleague, Justice Charles L. Weltner.

**JUSTICE CHARLES L. WELTNER**

In the second year of George II, which was four years before the founding of the Colony of Georgia, namely, in the year 1729, Parliament passed an act to regulate attorneys and solicitors. The regulation contained in that act of Parliament was a requirement that every attorney and every solicitor take a prescribed oath.

The words of that oath were as follows: "I swear that I will truly and honestly demean myself in practice as an attorney...." That became the oath in our state until some time in the first quarter of the nineteenth century, when it was changed to contain the words of our present oath, the oath that each of you took upon admission to the bar. That oath for some reason contains, instead of the words "truly

and honestly," the words "justly and uprightly."

Some months ago at a consultation on professionalism held at Emory University, Judge Griffin Bell commented upon this and suggested that perhaps it might be a good idea to take those words "truly and honestly" and put them back into the oath administered to lawyers in our state. So I have the pleasure to announce to you that on September 28, 1988, the Supreme Court of Georgia adopted a new oath, and that oath reads as follows: "I swear that I will truly and honestly, justly and uprightly demean myself..." Interestingly enough, my friends, the effective date of that order was today, October 14, 1988.

**JUSTICE CLARKE**

Ladies and gentlemen, you have heard the new oath, and, of course, that now will be the oath that will be administered to all of the new admittees to the Georgia Bar.

However, it occurred to us on the Court that after having had a day such as we have had today, this might be a good moment for each of us to affirm our commitment to truthfulness and honesty by retaking the oath as it is now constituted and as it was more nearly constituted back some 200 years ago. So while each of you now is handed a card containing the oath, I call on the Chief Justice to come forward and administer the new oath to himself and each of you.

**CHIEF JUSTICE MARSHALL**

I want to make sure that everyone has a copy of the oath, and I might mention as a point of personal privilege, that as this is my fortieth year as a member

*"...on  
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oath."*

*Weltner*

*I swear that  
I will truly and  
honestly, justly  
and uprightly  
demean myself  
... as an  
attorney. . ."*

Attorney's Oath

of the Georgia Bar, it is a great privilege for me to be here tonight and to have this opportunity to administer this new oath to each of you who is willing to recommit yourself to the virtues and values expressed by it.

I therefore ask that the members of the Georgia Bar stand and raise their right hands and join me in taking this oath, repeating after me.

I (Your Name) swear that I will truly and honestly, justly and uprightly demean myself, according to the laws, as an attorney, counselor, and solicitor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.

Congratulations to each of you. At the request of the Presiding Justice, I hereby adjourn this meeting.

1. Though the convocation participants constantly referred to the need “to improve professionalism” and even gave a definition of professionalism, they gave few, if any, specific examples of what might constitute unprofessional conduct. What kind of actions or behavior would you deem “unprofessional”?
2. The convocation participants continually invoked the notion of “mentor” as a way of improving professionalism. In your judgment, how applicable is that notion to current law practice, given the size of your practice and the time pressures you face?
3. Of the four institutions comprising the framework of law practice, i.e., law firms, law schools, courts, and the Bar, which one do you believe can have the greatest impact in fostering professionalism? Why?
4. Which two or three actions by the legal profession do you judge to be absolutely crucial if it is to preserve a sense of professionalism?
5. If professionalism includes service “to the public good,” how specifically ought lawyers to provide such service? More basically, what, in your view, constitutes “the public good”?
6. Many of the speakers at the convocation seemed to indicate that professionalism has declined in recent years. However, several of the participants at Macon took a contrary view, claiming that while most lawyers’ commitment to professionalism has remained unchanged over the years, the public perception or public image of lawyers has undergone a drastic change. What is your

*Questions  
for  
Discussion*

opinion on the matter, and given your answer, what steps do you think the organized bar ought to take?

7. Many, if not most, of the people who claim that professionalism has declined lay the blame on changes in the economics of law practice that occurred during the 1970s. Is economics the sole factor at work, or are there others that you would cite as well?
8. As the convocation stressed, the idea of professionalism suggests certain images for lawyers, while implying various professional ideals. Name some lawyers, either real or fictional, who embody a professional ideal for you, making sure to articulate which specific ideals they embody.

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