

CHAPTER SIX

ADVICE TO YOUNG LAWYERS ON PROFESSIONALISM, ETHICS, LEGAL HISTORY, ADR, ETC.

Remarks of presiding Judge Braswell D. Deen, Jr.

Appellate Admissions Ceremony

Georgia State Capitol

November 5, 1990

QUEST FOR JUSTICE:

Both Appellate Courts extend our personal congratulations to you as the oath of office is administered this morning. This is a significant occasion of achievement and accomplishment and represents hard work and many sacrifices made by you and your family. You are now ready to embark upon your quest for justice on behalf of your clients and to accept the challenge of seeking answers to complicated, complex, and difficult factual and legal questions. We welcome you into a great profession.

PAST, PRESENT, FUTURE, ROOTS AND VISION:

Of the many important subjects in the law being given particular consideration in our state today, two subjects receiving significant and special stress are the importance of legal history and reemphasis upon professionalism among the bench and bar. These two subjects are really tied together.

The best way to consider enhancing professionalism is to first view the past and then observe what we are doing in the present so that we may improve in the future. You have heard those prophetic words of old: "WHERE THERE IS NO VISION, THE PEOPLE PERISH." Outstanding historian, Dr. Henry Reiff of St. Lawrence University, has added a variation upon that theme: "WHERE THERE ARE NO ROOTS, PEOPLE WITHER."

YOU DON'T KNOW ANYTHING:

This morning let us look back 115 years. In 83 GA. 814, are the words and remarks of Judge J.W.H. Underwood of the old western circuit in Rome, GA. Those who were present and heard the remarks he made to a group of lawyers, being admitted to the bar in July 1875, said that they could never forget what he said. Judge Underwood, sitting on the bench with his hat on, as was his usual custom, with legs crossed and shaking his right foot, said: "Now, young gentlemen, I want to say a thing or two to you. You have passed a better examination than most young men who are admitted to the bar. Like those young fellows just back from graduation at the college, you think you know a great deal. It is a great mistake; you don't know anything. If you are ever of any account, you will be surprised at your present ignorance. Don't be too big for your breeches. Go 'round to the justices' courts and try to learn something. Don't be afraid; let off on a high key; you will speak a great deal of nonsense, but you will have one consolation that few will know it. The great mass of mankind takes sound for sense. Never mind about the character of your case; pitch in, you will be as apt to gain as to lose. Don't be alarmed at the wise-looking justice. He don't know a thing. He's a deadbeat on knowledge. Stand to the rack, fodder or no fodder, and you will see daylight

after a while.

MANY MEN PRETEND TO KNOW

The community generally supposes that you will be rascals. There is no absolute necessity that you should be. You may be smart without being tricky. All lawyers ought to be gentlemen; most of them come up to the standard; a few are a disgrace to the fraternity. They know more, generally, than any other class, but not much in particular. They know but little of sand stories, carboniferous periods, and ancient land animals known as fossils. Many men pretend to know a great deal on these subjects; they know but little; they are superb humbugs, fossils themselves. Stick to your profession, study hard, work hard, be honest, do your duty and collect your fees. You are dismissed with the sincere hope of the court that you will escape a calamity that befalls many lawyers, and not make asses of yourselves." So much for Judge Underwood's words of wisdom.

BOTH SIDES CITING MY CASE

Twice a year for the past 26 years I have had the pleasure of listening to over 50 speeches at different Appellate Admission Ceremonies. I may have heard one or two of the same talks on more than one occasion from some of us judges. Some of our remarks may be a lot like opinions we write -- some good and some bad. I remember one time at oral argument that the lawyers on both sides were relying on a case authored by me. I asked one attorney what he thought of the case, and he said, "Your Honor, of all the good and bad opinions I've read, this is one of them." This reminds me of the story about Preacher Jones, who tried to see the positive side of everything.

The preacher, who was always trying to check on his church members, asked Susie Smith how she was doing, and she replied, "Pretty good." Jones then said, "That's good -- real good." She said, "Well it's mostly good but not altogether good because my old boyfriend got married last month." Jones said, "I'm sorry, that's real bad." Smith said, "It is bad but not altogether bad, as I married another fella last week." Jones smiled and said, "I'm happy and this is very good." She said, "Well, preacher, it's only partly good because my husband drinks and cusses something awful." He responded, "That's bad"; She said, "Well, it's mostly bad but not altogether bad because he is worth several million dollars," Preacher Jones clapped his hands, saying, "This is nice, this is good." Susie replied, "Preacher, that is partly good but not altogether good because he said I couldn't have a dime of his money until his death." Jones said, "Oh, this is bad, real, real bad." Smith said, "Yes, it is bad but not altogether bad 'cause he did put me in a new home with servants, a swimming pool and a Cadillac." Hey, this is great -- real, real good," said Preacher Jones! "Well it's partly good," said Smith, "but the house burned last night." "Oh, I am sorry," said Jones, "that's real bad." Susie said, "It is partly bad, Preacher, but not altogether bad because my dear old husband was in the house when it burned."

GARBLED VERBIAGE & VERBAL GARBAGE:

Whether our opinions or our remarks at admission ceremonies are more good than bad is based on one's point of view. Some expert once pointed out that in (A) writing a brief, (B) giving a charge to the jury, or (C) in writing an opinion, there is a difference in including garbled verbiage and verbal garbage. For example, some of our opinions may be

vague, such as:

Appellate Court:	"...the measure of the damages in this situation is the enlightened conscience of the jury..."
Interpretation:	The jury verdict was too high, but we aren't going to do anything about it.
Appellate Court:	"...the learned trial judge..."
Interpretation:	The dumb jerk should have known better.
Appellate Court:	"...we find no prejudicial error..."
Interpretation:	The trial judge goofed, but the defendant is guilty anyway, so what the hell.
Appellate Court:	"...we do not reach the question of..."
Interpretation:	They were too damned lazy to deal with it.

GEORGIA'S SIX DELEGATES:

As we honor the two-hundred-third birthday of our United States Constitution, I am sure almost all of you could name the six delegates from Georgia to the Constitutional Convention. Five of these six were attorneys. These five attorneys were William Few, from Augusta; William Houston, from Savannah; Nathaniel Pendleton, from Savannah; George Walton, from Savannah; and Abraham Baldwin, an educator,

theologian, army chaplain, and later a lawyer, from Savannah and also Burke County. The sixth delegate, Major William Pierce, was a businessman and legislator from Savannah. Only two of these, Few and Baldwin, signed The Constitution. Historian Charles Warren suggests that Pierce did not sign because he had gone to New York to fight a duel with a Mr. Auldjo. Alexander Hamilton was scheduled to serve as Auldjo's second in the duel. Ironically, another Georgia delegate, Pendleton, served as Hamilton's second when Hamilton was shot by Aaron Burr in the famous duel. Speaking of duels, you history buffs will remember that James Jackson, an attorney who was elected governor in 1798, was known as "The Prince Of Duelists" because he met opponents on the field of honor on 23 occasions, four of which were over the Yazoo Fraud Issue. Historian John M. Dooly once observed that Governor George M. Troup's "mouth was formed by God Almighty just to pronounce the word 'YAZOO.'"

LAST DUEL EVER FOUGHT IN GEORGIA:

Justice Samuel Bernard Adams of the Georgia Supreme Court fought a duel with a Savannah attorney, known as the "Last duel ever fought in Georgia." The lawyer may have questioned some of his opinions. After honor had been satisfied, they became warm and intimate friends.

TWO GUN CHARLIE WORRILL:

Another illustrious member of the Georgia Supreme Court, Justice "Two-Gun" Charles Worrill, at a time when one of his court orders was challenged by an attorney, replied, "Violate the . . . order, just a little, and we will soon find out what authority" I have. Some have said that it is a good thing Justices Adams and Worrill were not on the Supreme Court at

the same time, and particularly during the administration of Governor Jackson. We can agree that our profession, in elevating ethics and enhancing professionalism, has come a long way. Today we have more camaraderie, love, and affection. Today if you tell a judge you might want to question one of his opinions, it might provoke a milder reaction and response -- he won't fight you -- but it might be about like going in the grocery store to buy a ham and coming out with a cold shoulder.

LAWYERS BANNED FROM GEORGIA:

As we seek to elevate and enhance our image, we must acknowledge our shortcomings and seek to correct these deficiencies. We must also remind the public that lawyers and judges have been the bell-wethers and bell-ringers of leadership in the founding of our state and nation. Lawyers were originally banned by charter from Georgia not because of misdeeds, but primarily to perpetuate the monopoly of those providing legal advice coming from England. 31 of the 55 delegates to the Constitutional Convention were lawyers. 25 of their 56 signers of The Declaration of Independence were members of the legal profession pledging their lives, their fortunes, and their sacred honor toward the founding of freedom.

BURYING TWO IN ONE GRAVE:

All of us know the public's two favorite stories. "Here lies Sam Smith, a lawyer, an honest man." A reply is made, "Well -- when did they start burying two in one grave?" Then we hear the media and almost everyone else say: "Shakespeare had the right solution when he said, 'Let's kill all the lawyers.'" We have a duty then to clarify the record and note our exception. The character in King Henry VI, Part Two, Scene

2, Line 84, who said this, was named John Cade. He was giving advice to his friend, Dick, who was contriving a despotic scheme to create a totalitarian society overthrowing King Henry VI in favor of the Duke of York. Cade told Dick that the plan would not work as long as there was one lawyer alive to object. That's when he suggested that to take over the government, "The first thing we do, Let's kill all the lawyers." Shakespeare was making the point that lawyers were frontline defenders of our liberties and freedoms.

JOSEPH OF EGYPT - TRUSTEE OF LAW:

We must remind the public why other professionals are more popular. Doctors wear white coats and deal with help and healing, making most people happy. Judges and lawyers wear dark robes and suits and deal with arrows of adversarial articulation and attack. Justice Weltner of the Georgia Supreme Court has recently made an outstanding speech at a CLE Professionalism Seminar entitled, "When Right Makes Might." He makes a strong case of the notion that we lawyers have a virtual monopoly on the ultimate political power in this country; that in a nation of laws, in both the Legislative and Judicial branches of government, we are the expounders, interpreters and oracles of laws; and that the law must be the final master of the lawyer and the judge. Justice Weltner pointed to the great and peaceful empire of Egypt under the ethical professionalism of its great leader, Joseph, who was untainted by gift or bribe and who ruled all the people uprightly. As lawyers we have a great heritage of trusteeship. We must always be ready to improve our conduct as trustees of the law.

USING OUR HEAD...BEING ENTHUSIASTIC:

Speaking of leadership and of being a bell-ringer in

your community brings to mind Victor Hugo's character, Quasimodo, The Hunchback of Notre Dame, who rang the cathedral bell every day. When Quasimodo retired, after 25 years of faithful service, the cathedral had to consider new applicants for this position. 40 to 50 were considered. One man had arthritis in both arms and could not move them. The committee inquired, "Are you sure you can ring the bell?" He said, "Oh yes, I can use my head." He took a flying leap and hit the bell, and it rang -- so he was hired. Every day the bell rang, but one day he missed the bell, went out through the third-story window, and landed on the stone courtyard. The sheriff walked up and asked, "Who is that man?" A bystander said, "I don't know his name but his face sure does ring a bell." The church had to consider more applicants. Another man with arthritis in each arm showed up to apply. The priest said, "You look awfully familiar." The man said, "My twin brother used to be your bell-ringer. I can use my head and also ring the bell." The priest agreed to hire him. He rang the bell everyday until he missed the bell, went through the third-story window, and landed on the stone courtyard. The sheriff asked the priest, "Who is this man?" The priest replied, "I don't know his name but he's a dead-ringer for his brother!"

Now we lawyers need to use our heads, be leaders in our community, but none of us wants any time soon to be dead-ringers for anybody.

RIGHT & WRONG...YOUNG & OLD:

In conclusion, let me urge consideration by the State Bar, and particularly you younger members of the Bar, of adoption of a particular project or program promoting professionalism. We could and should create pools of volunteer speakers at the local community level. The local

and circuit bars throughout the state could encourage lawyers and leaders in other professions to be identified and available to visit private and public schools, when invited, to discuss what is right and wrong, legal and illegal, under our Georgia juvenile and criminal codes, and explain our state and federal constitutions, and other aspects of the law. The importance of mediation, arbitration, the jury trial and appeal need to be articulated to both young and old in our communities. This teaching function project can accomplish three goals:

BLESSED WITH GOOD LAWYERS:

A) It will be beneficial to our young people, as they need correct answers when dealing with the factual basis of techniques and strategies of problem-solving and for clarification of their values, consistent with and keeping with the law.

B) It will be helpful to lawyers. As they review the juvenile and criminal codes, lawyers will be compelled to reexamine their own ethics and values under the law.

C) The image of professionalism and the law will be greatly elevated, enhanced, and undergirded. Our profession will be the big winner. As young people and lawyers both benefit, our lay people will then rightly say that the public is blessed with good lawyers, that the bar is serving society, and that justice can be and is being administered as it should! This may be an idea whose time has come. If the state Bar will seize the opportunity to fill this perceived void, we can and will uplift professionalism and generate respect for the law in our state.

Thank you for your attention!