

LIVING TRADITIONS:  
CONVERSATIONS WITH LEADERS OF THE  
GEORGIA BENCH AND BAR

A Conversation with  
Justice Harold G. Clarke

November 3, 2009

Interview Conducted by  
Patrick Emery Longan and Stuart E. Walker

*PAT LONGAN:* We're here this morning to talk with Justice Harold G. Clarke about his life. We've got with us Stuart Walker from the Martin Snow law firm in Macon; and, of course, as you know, I am Pat Longan from the Mercer University Law School. This is part of a series of interviews that we are conducting with distinguished Georgia lawyers and judges through a generous grant from the Foundation of the American College of Trial Lawyers. We appreciate you taking the time to be with us this morning and certainly appreciate the support of the Foundation and the Mercer University Law School. So, thank you for being with us.

*JUSTICE CLARKE:* Well, it's a real exciting occasion. And let me ask your understanding about two things I've got this morning that are difficult for me. One of them is my hoarseness that comes with this time of year. The other one is that last summer I had two strokes, and I have some difficulty in going back and recovering words that are very simple words but are difficult for me to come back and pull together. But at any rate, it's a joy to be here, and I hope you will enjoy doing this.

*PAT LONGAN:* Absolutely. Don't you worry about your hoarseness or anything else. We're just going to relax and have a good conversation this morning. I want to start by talking about where we are. We are conducting this interview in a building that has some special significance to you, and I would like you talk about this building and its role in your history.

*JUSTICE CLARKE:* Well, to begin with, I was born in this building. My birthplace was diagonally across the hall from where we are sitting. Being born at home was not unusual in those days. We had no hospital, and the doctors did what they needed to do in their patients' homes.



Justice Harold G. Clarke's birthplace and childhood home: 87 North Lee Street, Forsyth, Georgia. *Photograph courtesy of Harold G. Clarke.*

The building itself, as best as we've been able to develop, was really built in the very early 1800s, 1826 or 1827. The original building only had four rooms. The room where we are sitting was not here. The house began right back here [pointing]. And it was what they call a two over two. They would have two rooms

upstairs and two rooms downstairs, and the front staircase that's outside, I think, was not here at all. The back staircase was there, and through the years it was changed, and you can see some of the things like the halls and so forth, were different from the ones in the additions. Most of the additions were made in the 1890s era. Then there were some additional ones in the early 1900s. I think that during my lifetime they were all here. There, of course, have been a few changes in my lifetime, but basically it is the same building. And it was a great place to live.

The interesting part is that this was a thick and well-filled area with houses, and today the only house on this street is this house. No one lives in this house anymore, but I'm delighted that it's being used and still exists. I can see so many of the things that happened and what it was like. [Justice Clarke's childhood home now houses the law firm of Haygood, Lynch, Harris, Melton & Watson.]

When I was a mere youngster, the street out in front of here was not paved. That took place about the time I was six years old. But I can remember some of that taking place right in front of where we are sitting now. But it's seen a lot of years, and I'm afraid to say that I have seen a lot of years, but it has all been fun. There are a lot of sad things, there are a lot of happy things, but there are fewer and fewer of the people who ever knew this era that are with us anymore.

*PAT LONGAN:* You grew up in this house and then eventually practiced law in this house.

*JUSTICE CLARKE:* Yes. And I didn't practice law very long in this building. We were in another building about two blocks away, closer to the courthouse, and I practiced there for many years. Then we moved into this building after my parents both died. I think I practiced here for about five years, and about thirty years in the other building. That was a different place and a different era.

*PAT LONGAN:* You mentioned growing up here and the street in front wasn't paved, and it reminded me you've written a lovely book about your early life, *Remembering Forward*, and I just wanted to ask you a couple of things about that. One in

particular that struck me was that you weren't apparently a very good student at first. Can you tell us about what that was like?

*JUSTICE CLARKE:* Well, there are several things I could tell you and some I would not tell you.

*PAT LONGAN:* You are being recorded, Your Honor.

*JUSTICE CLARKE:* I understand. I guess I was timid in a way but in another way I was probably pretty forceful in what I thought I needed to do. When I got to first grade, I didn't like it, and the main reason I didn't like it was because I didn't know that they had any kind of facilities other than the, you know, school rooms. About three or four days after classes started somebody told me that there were boys' rooms and girls' rooms; and, so, this youngster who was smaller than me — probably smarter, too — said, "Oh, yes, we've got these places down in the basement where you can use the restroom." I thought that was a delight because it was certainly hard until we knew that. And so, I ran down there, but what he he had pointed out to me was a room that was the girls' room. I could hear all the gigglings of the little girls, and I came out red-faced.

When I got outside, the little fellow who told me to come out there was standing there looking at me with a red face. And, of course, I was angry and he was small and I was bigger. I started swinging and I hit him once or twice, which was not a wise thing to do. So he went into the school, this was during recess, and a few minutes later a young lady, who was about three years older than me and lived directly across the street from us where the bank is now, came out and said she just saw Walter coming down the street with Miss Childs, who was the head lady at the school at that time. She said that she was going to put Walter on the electric spanking machine.

I know now that there's no such thing as an electric spanking machine, but I didn't know it at the time. So I went running off, and they couldn't find me. They finally found me in one of the upper rooms in this building, and the teacher was nice enough to come running after me thinking perhaps I had gone home. They were going room to room, and one of the rooms had a great big thing to put stuff in and I climbed in and

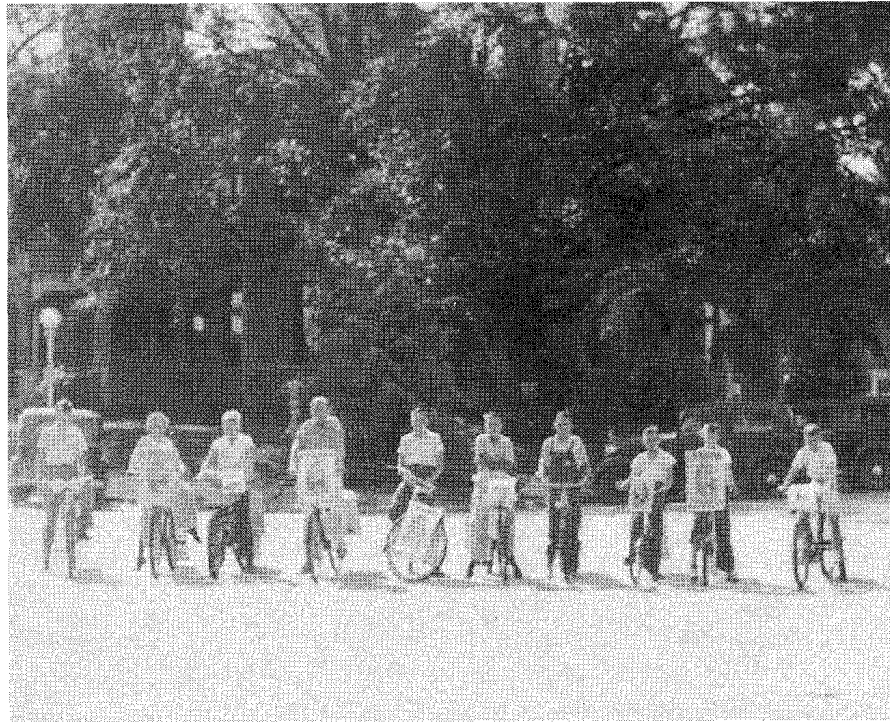
was hiding there. And, finally, they recognized it some way, and I don't know exactly what happened but I just didn't cotton too well to going back to school. I don't know whether the spanking machine caused that or what.

But at any rate I had to go to summer school to make the first grade. And I probably was the first fall out in this school, or any school really, after being there about three days and having a fall out. So, that was one of my bad pictures about school. I always thought that school was very dark, and it probably was. But as time went on, I began to like it a little better.

At first, one of the real problems, I just could not get the hang of reading, and in this day and time we know what that is. In those days we really didn't know. So, I suffered as much as I could in figuring what words were, and finally, about the fifth grade, I began to catch on. And little by little things took off, and I would say that I had a successful high school experience, better than I did in the other schools.

I think there were six grades in the first school and the rest of it was in the high school building. We only had that short period of time for the mixing up of the grammar school and the high school, but they were separated in their teachings and so on, of course. But by the time I was in high school, I would say that I was successful there and ended up being president of the class and captain of the football team, which wasn't a very good football team. Then I ended up winning the contest for the Beta Clubs for the year for Georgia. So, those were happy years, and I liked it all very much by that time. And I think one of the reasons was because the friends I had were very bright, and you are always trying to keep up with your friends, and that helps get you where you're going.

*PAT LONGAN:* Well, as I mentioned, when I read this book it took me to a time and a place that I didn't live through. I didn't have the same experiences that you did, and as I read it I wondered, and now I get to ask you, whether the way you were brought up and where you were brought up had any effect on the kind of judge you became or the kind of lawyer that you became later in life?



Justice Clarke (unidentified) and his childhood pals engage in some grassroots, hometown politics. *Photograph courtesy of Harold G. Clarke.*

*JUSTICE CLARKE:* I had not thought of whether that had any effect or not. I would think that if there is one thing that got me interested in being a lawyer early on was the fact that my mother had really pushed me in that direction. Her father was a lawyer and most of the people in her family were lawyers. Her uncle was a lawyer and there were five members of the Georgia Supreme Court who were members of that family, maybe not as closely both in time or in relationship, but there were five, and two of us served together that were kinsman and we were both in the same family. So, it just became real natural I think.

*PAT LONGAN:* Do I remember right, that you spent some time watching trials at the courthouse when you were a young man?

*JUSTICE CLARKE:* That was always fun to me. We only had four court sessions, or months, a year. And we looked forward to that. And in particular, there was a very good friend of mine, Barry Sutton, who is a retired lawyer now. He lives in Tennessee and has been there for many years. And, incidentally, they named an elementary school recently for his mother, who was the first superintendent in the school system.

But it was great fun watching the trials as a young man. Some trials were boring, and some of them were nothing but exciting. Lawyers were different than they are now. Back then they tended to be very flamboyant. And one old lawyer who became a good friend of mine, even though he's much older, was one of the most flamboyant people you ever saw. I really enjoyed hearing him trying cases. He was a lot of fun to be around.

*PAT LONGAN:* Well, you graduated from high school just around the beginning of the second World War and went to the University of Georgia for some time before you went into the Army. Can you tell us about your college days before you went into the Army, and what it was like at the University of Georgia?

*JUSTICE CLARKE:* Well, there was one thing that was a delight. There were five women students for every one man, and that was a delight at that time. But, of course, before long I was one of those who was no longer there. Those years were a real joy and fun. I think the University of Georgia had at that time less than 2,000 people, and most of those were girls. By the time I came back, there were about 7,000; and, so, the change was underway.

And I know when I got into law school, our class was the biggest class the University of Georgia ever had in law school. They didn't have another class that big for another ten years or more, because of the great number coming back from the Service. Some of them were like one good old friend of mine who was exactly ten years older than I was, but we didn't particularly notice the difference, especially those of us who had been in the Service. It was fun both times, but I don't think any of it was quite as much fun as the first time.

*PAT LONGAN:* After just a year and a half in college, you entered the Army, and I'm wondering if you would talk about your experience in the Army. You were in Japan?



Harold G. Clarke overseas during World War II. *Photograph courtesy of Harold G. Clarke.*



*JUSTICE CLARKE:* Yes. I had thought that I was going into the Navy as a pilot, and I took all the exams and they indicated that I would be among the next group, but it turned out that they stopped that group. I guess they had as many pilots as they needed. So then I said, "Well, I'll just wait until they call me." I went into the Army and went through basic training at Fort Knox and was qualified to be a gunner for tanks. It was like little boys playing for fun, you know. And about that time, the war was ending, and we didn't know what to expect.

I was sent to California and didn't know where I was going. We stayed there for a little while and got on a ship and they would not tell us where we were going. We went under the Golden Gate Bridge, and then they told us we were going to Seattle, Washington. We took a few days going easily up the coast and came to Fort Lawton. And from there, after a few days, we got on a ship and started east. It turned out that by that time there was no more battling in Japan, of course, and there were some places like Okinawa and the Philippines where there was some combat going on.

But we were told that we were on the first American ship that went directly from the United States to Japan. There were great numbers who had come from the Philippines to Okinawa and various other places. And we came in as replacements for those who had been doing all the fighting. There was an old song — I wouldn't try to sing it to you even if I wasn't hoarse — about "I'll be in Japan always wearing these O.D.'s always."

But I went into the assignment to the headquarters, whatever they call it now, and they sent us around to assign us to some position. By that time I was a private first class, and I did some interviewing, and this man who was interviewing me, I think was a lieutenant, asked me what I had been doing. I told him that I had been going to school and that I had been exposed to the newspaper business because my father owned a little newspaper here in Forsyth, Georgia, and I had worked around there doing whatever they wanted me to do. I then told him that I had edited the high school newspaper, and he said, "Well, we might put you in a position as a proofreader at the *Stars and Stripes*." Well, of course, I was excited about that because that was something I enjoyed and would like.

And the thing that was so funny was that within three months most all of the old-timers were no longer there. Let's see, I think the news editor of the *St. Louis Post Dispatch* was one of the editors at the *Stars and Stripes*. There was another editor from a well-known paper in Denver. And there were other people too. One was a sports writer. The point I'm making is these were very good newspaper people, and a youngster like me was enjoying all of it.

Well, pretty soon they were gone. Within a few months, I went from being a proofreader to being one of the people who sat around planning the things that were going to be worked on in the paper that day. And, interestingly, the newspaper itself had several thousand daily articles. And it went to all of Japan and to locations in China and Korea and the Philippines. It was a well-put-together paper in spite of the fact that most of us by that time didn't really know what we were doing.

We ran into all sorts of interesting things. For a time I covered the war crimes trial with Tojo and his crowd. Each participant had these earphones where they could pick up their own language. And it turned out to be very dull because it was just reading stuff into the record, and I was kind of glad to get out of that. I was there the day they promulgated the document that is the basic document for government in Japan, the constitution. They called it something else. But it was patterned almost exactly after our American Constitution except one thing that was interesting. It had what amounted to a women's right provision that we still don't have in this country. And the reason for that provision was that a fairly young woman who worked for the Army, but she was not in the Army, just insisted that it be included. She was a right forceful lady, and as far as I know to this day they have that same provision that we don't have.

*PAT LONGAN:* An Equal Rights Amendment for the Japanese Constitution?

*JUSTICE CLARKE:* That's right. Sometime you all might be interested in reading a book called *Embracing Defeat* written by John Dower who some people say was the leading writer of things in the Pacific theater and in the battles of that era. *Embracing Defeat* picks up right after the war, and it had many of the things

in it that I actually saw. As a matter of fact, some I saw were not what he saw, but I saw them with my eyes. Dower saw the same events in some other way.

*PAT LONGAN:* There's a lesson there somewhere.

*JUSTICE CLARKE:* Those were interesting things, but the time I guess would prevent us from going through all those. Let me share another fascinating story. The *Stars and Stripes* was produced by non-commissioned officers, so we got to see what was going in the paper but no officers were to look at it until it went out. Well, we produced the whole paper ourselves, but we had it printed at the *Asahi Shimbun*, which was, and still is, I guess, the largest paper in Japan. It was said to have the largest circulation of any paper anywhere. I don't know whether it's true or not. But we used their presses to turn out the *Stars and Stripes*. It didn't take them very long to print it with as big an organization as they had.

One time one of the Japanese-language papers, I forget which one it was now, printed an article in which somebody wrote saying that some changes ought to be made, that we ought not — when I say “we” I'm talking about the Japanese — begin worshiping MacArthur. They would come out and greet him as came out of his office and he would tip his hat. He was a showman; he really was. They were really worshiping him, and this Japanese paper said that that ought not to be because that's what caused such a mess with the Emperor, so we ought not to be worshiping MacArthur any more than we would anybody else.

A couple of days later, one of the English-language papers printed the same story about not worshiping MacArthur. Well, when the American folks saw that story saying that MacArthur wasn't God, they took all those papers and cut them up. We were really astounded at what was taking place, of course, because they never came and looked at our papers.

That night a group of us went over to this little press club where the newspaper folks hung around. It was a little shabby place. We went in and we told everyone what we saw. One of the ones we told was from *Time* magazine, and he wrote a piece about that. And the headline was “Holy Mac,” and that got some laughs at any rate.



Harold G. Clarke (third from the left) poses with the editorial staff of the *Stars and Stripes* newspaper during World War II. *Photograph courtesy of Harold G. Clarke.*

One night we were at the paper, and I answered the phone. The person on the other end wouldn't tell us who he was, but he said that if you want to see and talk to Tokyo Rose, she was going to be released that night. So another GI and I got in the car and took off going to where the man told us that she would be released. And sure enough, she was being released. We started an interview but didn't get very far. The funny part was that we didn't have a photographer with us at that time. It was just the two of us. We went in the photography room and borrowed a big camera. Neither one of us really knew how to operate the thing but we had seen other people do it. So I grabbed it, went

over there, and was taking pictures everywhere. And I was thinking, well, that's going to get in the big papers all over everywhere with my name in it.

Well, none of our pictures came out. We didn't punch the right buttons I guess. We did a little interview with her, but she was turned loose and went back to the United States. They tried her later after they got her over here, and she was in jail for some little time but then released. I understand she died in Detroit where she had relatives. I think that's where it was. That was a good many years ago.

The fellow who went with me to see Tokyo Rose wound up working in Japan as a journalist for the United Press. When he left, I got his old job at *Stars and Stripes*, and I was managing editor for the rest of the time I was there. He was later killed during the Korean War when a plane he was traveling in was shot down.

*PAT LONGAN:* Well, of course, you went from being proofreader to being managing editor of *Stars and Stripes*?

*JUSTICE CLARKE:* Yes. We didn't know much of what we were doing, but we were having a lot of fun with it.

*PAT LONGAN:* Well, when you came back from the War, you went back to the University of Georgia, and that's when you did your law school at Georgia?

*JUSTICE CLARKE:* Yes. When I got back, a lot of the people who came back were the same old friends that I had known before. Some of the others I had not known but we became friends quickly. One of them is a fellow who I practiced law with up until three years ago, and he came back about the same time I did. We laugh about this a lot, but at that time you could take a whole lot of tests as an undergraduate, and if you could pass those tests you got credit for that course. We went in and tried to take those tests, as many of them as we could. We weren't learning anything but we were getting credit. And those credits counted toward law school. They shouldn't have, thinking back on it, but they did. Of course, the man I'm talking about is Carl Sanders, who ended up being governor later on.

His brother is one of my closest friends. Carl was about two years older than I am, and his brother was a little younger than me.



Harold G. Clarke shows off his dance moves at a military ball.  
*Photograph courtesy of Harold G. Clarke.*

But yes, we got back and everybody was going to summer school because it was rush, rush, rush. You got out of the Service and hit the ground rolling because we felt like all the good jobs are going to be gone if we didn't get out and get them soon. And I guess there was a lot of truth to that. I was like the others, and I was trying to move fast. Nowadays students want to stay in as long as they can, at least that's how it seems. In fact, I've got a grandson who is just starting law school, and he's twenty-six years old. That almost sounds like back during the War days.

Those were interesting years but they were not the traditional college years that you knew before. They were fast-moving. I graduated in 1950. Back then you could take the Bar Exam way ahead of time. I took the Bar Exam in December of 1949. You didn't get the results until after the first of the year, of course, so I was admitted in February of 1950. But there is something that was more pressing and impressive to me at the time, something that took place the same day that I found out I passed the Bar Exam.

*PAT LONGAN:* I was going to ask you about that. We need to know about the much more important thing that happened to you the day you got your Bar results, which is a big day by itself.

*JUSTICE CLARKE:* That's right. It was in February of 1950, and I had come home for the weekend. I had a friend who was going to school at Mercer, and I'm not sure whether he was at Mercer at that time, but he had been. And he said that he had a date with somebody at Wesleyan at the old seminary. He said he could get me a date, and I said, "Okay, that's fine." Well, he did get me a date and she was a nice young lady, but I was a whole lot more taken with the other girl.

*PAT LONGAN:* His date?

*JUSTICE CLARKE:* His date, yes. And that always causes a little bit of a problem, so for a little time I was going to be gentlemanly like and I looked at her with great pleasure and concern that I wasn't the one with her. Finally I found out that they were not dating after a little while, so I called her, and she sits right across from me right now.

*PAT LONGAN:* How did that work out for you, Your Honor?

*JUSTICE CLARKE:* It worked out very very well. We got married two years after that. It's been a delight the whole time. We have four children and they're delights. We have six grandchildren and they're delights. And we've been very happy.

*PAT LONGAN:* I should have mentioned when we started that we're honored to have Mrs. Clarke sitting in with us today along with the Dean of the Mercer Law School, Daisy Floyd.

*STUART WALKER:* I understand that when you came back to your hometown in 1950 to begin your law practice you had an unusual distinction of coming back not only to a law practice but also to run the local newspaper that your father had run during your childhood.

*JUSTICE CLARKE:* Well, it wasn't exactly like that. When I first came back, my intention was to go ahead and take over the newspaper. My father had already retired and had leased it to somebody else, and he said he would be happy for me to take over. And I thought, "Well, that would be good. What you can do, you can run the paper and you can get into the law practice." Well, it just didn't work like that. For one thing, it was just a different world. I started out just running the paper thinking that any day now I was going to switch over. Well, it was about six years before I actually got into the law practice.

What happened was that finally the people we would hire to help for one reason or another just didn't work out, so we began to look for a buyer for the paper. At first, we were looking for somebody who would come in and own the paper for an interest in the paper. And what I was thinking about, perhaps, was getting two or three small papers in the general area. There was a gentleman over in Monticello who had died and left his interest in the paper to a fellow who apparently wasn't going to live there, and that looked engaging. That didn't work that well but finally we found a fellow from Monticello who would take over the paper. And he was the one who didn't work for several reasons. Then there was a man in the little town of Zebulon who



had a paper and who wanted to get another one, so we sold it to him. I think he would have done well except that within a few months he died of, I think, a heart attack. So that just went to pot. By that time I was already out of it, and that paper fizzled out because the man had died. Even though the paper was well over a hundred years old, it was gone.

By then I had started practicing law full time. But for a time I was doing that and doing some work with the paper still. Hugh Sosebee, Sr., who wasn't that young anymore, took me in as a young partner. After a few years Hugh became a superior court judge, and I had some other folks that came along. The person who had some staying power during all of that period has been Charlie Haygood. I used to be a Scout Master for a while, and Charlie was one of my youngest Scout Masters at that time. He later went to law school. First he became a graduate of the Forestry School and then came over here to Forsyth to practice law. So Charlie and I did practice together. Then Larry Lynch practiced along with us, and everybody else here at the firm came after I did. Charlie and Larry picked good people to fill up the rest of the firm. Charlie and I have had a good relationship since then and continue to do so.

Were there any other questions about that aspect of my life?

*STUART WALKER:* I was going to ask you to share with us your memories about what running a general practice would have been like in a place like Forsyth in the late 1950s and the 1960s, what sorts of cases you might have had.

*JUSTICE CLARKE:* Well, we had every kind of case that came down the pike. That's the way it was in those days. I did most of the trial work. A lot of our work then, and now, was real estate work. Real estate work probably has suffered some now, but I think, even so, the firm still does a fair portion of it.

I know you might be interested in the first case that I tried in the superior court by myself. It was not a jury trial. It had to do with the question of who would have the custody of two children. They were twins. Their mother was from this county, and their father was living somewhere up north. She came down here to visit her parents, and she died while she was here. Her health was bad already. But the father never came back until

about five years later to claim custody of the children. There had been no official determination until that time about who would take custody of the children. We figured the father was wanting the children because in the meantime he had remarried and had some other young children. Now these twins, who were about five or six years old, could look after those new children. And these children didn't know anything about Detroit, or wherever it was.

So we ended up in court about who was going to have custody of the children. Our claim was that he had given up the children. We had a hearing before the judge, and we put up what I thought was going to be a good case. It was a hot summer day, no air conditioning, and the windows were open. People were around in there watching the trial as they used to do in the old days. And I was nervous, as you might think, because I was all by myself and I was trying the thing even though I was a little older than some of the very young ones. But after stammering around like I am now, a bird flew through the window and hit me right back of the head. Well, everybody, including the judge, was laughing and that sort of relieved my anxiety. But at any rate, I was more at ease because of the bird. And we finally got custody of the children.

After that, I saw the judge. He waited several days before he entered an order and he granted custody of these children. I saw him at the courthouse, and I went over and said, "Judge, I just want to thank you for what you did." He said, "Now, wait a minute. You don't do that. You don't tell the judge thank you for what he did. A judge does what he's supposed to do, not what's good and what's right, well, what good would be." But still, the business of thanking a judge is not in order.

I thought about that some, and it wasn't until years later that I had a murder case. I was appointed, as we all were back then. We had no official structure for appointment back in those days, except the judge would say, "Mr. Clarke, go out and talk to this man and represent him," and I said, "Yes, sir." I was appointed to represent a man and a woman. They lived out in the country, and I think they had walked all the way to town on a Saturday or something like that. They got back to their house, and they had been drinking along the way, I think. And after getting back to their little house out in the country, word came out from

somebody else's house that this woman had been set afire. The man was taking the woman, by himself, up to another house. This woman had been badly burned. There were burns on her back, and there were burns all over her face. They saw she was very badly injured, so they carried her to Grady Hospital in Atlanta, which was the center of that type of work. After a few days in Atlanta she died.

Of course, they said the man did it, which was the obvious thing because there were only two people there. But he kept saying, "No, I didn't do it." He explained that the only fire they had was an old-fashioned fire, and you had to go and throw some coal or kerosene on it to keep it burning. He said that she threw kerosene in the fire. He put gasoline in there and that's what the other folks were saying and it just exploded. Well, there wasn't any question but that it was gasoline, and no question but that her face was burned and that there were burns down her back. There were some relatives of the woman who claimed that the woman had given a dying declaration, and that she had said he had burned her. Well, the people who were there and had seen her all along the way, both the doctors and the others, said that she wasn't able to talk to anybody. But the kinfolk were still saying that he did it.

The man was indicted and went to trial. But before that, he would not communicate with me at all. I just couldn't get any kind of anything from him. Maybe an, "uh-huh" and "uh-uh," like that, you know. The first trial was one that didn't reach a verdict, and so, we had to try the case again. By this time, I began reviewing the evidence again. Their big argument was how did he throw all this gasoline on her like that. It just didn't make sense. She didn't do it to herself.

Well, I was looking through some of the evidence, and there was a jug that had had some gasoline in it, and it was covered with burned out gasoline. The thing that occurred to me was that if the gasoline had got into the jug, how did it get onto her back. That didn't make sense. It was all down her back, and it was in the jug. My argument was, what do you do if you have an explosion of gasoline into a container? What happens first? First, there is an explosion in there and it goes into the jug. And then what would be the first thing that the person who was holding that container, what would be the first move that person

would make? It would be like this [demonstrating], and that would come out and come down her back. And, so, that was the point that made the case come out like it did because the evidence showed that she did it herself but that it was accidental.

After we had the second trial, I was sitting there and I leaned over to my client. He didn't really know anything about what he was doing. He wouldn't talk to me or anything else. And I leaned over and said, "Well, we won." He looked at me and said, "Does that mean I can go?" And I said, "Yes, you can go." That's the last word I ever heard from him. I was angry by that time. I thought, here I have agonized over this case and I ought not to be left without a thank you. But then I thought back to that conversation I had years earlier with that old judge when he told me you don't thank a judge. What I didn't recognize was that the same thing was happening many years later, and that I was not entitled to any thanks. That then stuck with me for a long time, that you don't thank judges, they're doing their duty. And you don't thank lawyers for doing their duty, because part of what they do is just to do what's right and things will work out.

We had some cases that were big cases, or what you would call "big" cases, but those cases are not as big, really, in many ways as these others. The little children in the custody case, for example, those cases are the kind that you really get some satisfaction from more than the money. And, of course, we had some cases that we never got paid for, ones that turned out pro bono but were not intended to be pro bono. Sometimes folks just leave and you don't see them again. But that's all right. That's part of what you do. Sometimes you would get small amounts of money and that would be fine, too.

These small cases were, I think, more gratifying than the bigger cases that I happened to be involved with in Atlanta, where sometimes we lost and sometimes we won. One of the things I am most proud of, some years ago, about the time I left the practice in Atlanta, the law firm had a pro bono organization within the firm, and they expected you to do a certain number of hours of pro bono work each year. And the one who did the most won an award they named the Harold Clarke award. So, of course, as I say, that was one of the very gratifying things that happened.

I worried about going from a little small firm into a firm which now has 700 lawyers. I had no idea of what I would think about it and how I would work it. I knew a lot of the lawyers in the firm, but the first day that I was there sitting at my desk in the middle of the afternoon, I heard a lot of people yelling up and down the hall, some men and some women, and I got up to see what had happened. Our firm had just won a case. Having just walked in that day, I didn't know anything about it. Later I learned something about it. But these folks were cheering just like folks in a little firm cheered. And there's so many things like that. I think a good part of what you do as a lawyer is to appreciate what you do. Not all of it is about money.

*PAT LONGAN:* There's really something I wanted to ask you about because in hearing you talk about your practice it's obvious to us that you love being a lawyer. You loved what you did. A lot of people who will watch or read this interview will be law students and young lawyers who are looking forward to their careers. I was wondering if you could share with us about what was it that made you the happiest as a lawyer? What gave you the greatest satisfaction during those years you were actually practicing law?

*JUSTICE CLARKE:* Well, I would start off by saying what satisfied me the least, and I don't mean this in a bad way but the big cases don't have much thrill to them. I mean it's good to make the money, and I'm the last to say that it's not, but the little cases like the one involving the little twin girls and the one involving the poor fellow who didn't know what to say or what to talk about — I remember those cases a whole lot more than I do the cases that involved millions of dollars. I don't know how to put it except somehow these are the things you remember.

*PAT LONGAN:* Certainly in those examples you made a big difference in those people's lives — those little girls and your criminal defendant.

*JUSTICE CLARKE:* I think the man who was there when his wife was burned — even though I think that we were right in that case — was probably a bad man. I think he had beaten her

several times before all this took place, so I didn't feel too good about it. I didn't think he was guilty and I think justice ought to have been done, and I think it was. But I couldn't look at him as being a great individual. Now, I thought the grandparents of those little girls were really fine people.

I'll tell you about another memorable custody case. Charlie Haygood was working with us one summer while he was still in law school. The Department of Family and Children Services had come along and said, "We're going to take this little girl away from this mother because she's not fit to have her." Whether she was or not I can't really say. We were hired to try to help this woman keep the child. They had a closed hearing, but Charlie was able to come along with me as my assistant. We got down to the end of the case, and the lawyer for the State was saying that this woman wasn't fit to have these little children. In my argument I said, "Well, I would like to say just one thing, Your Honor. They do wonderful work at the Department of Family and Children Services, and I know the lady who has that job is a wonderful lady and she does great work. But there's one thing the Department of Family and Children Services can't do. They cannot provide a mother's love."

Well, when I said that, my client, she was a little fat lady, stood up and said, "Ohhhhhh," and fell down on the ground and fainted. Hugh Sosebee was the judge at that time. Hugh is very solemn in many ways. We were doing this in a smaller room, and he got up and he said, "We'll have a short recess." He walks with a long stride, and he walked over there and the only way he could get past this little woman who has fainted was just to step over her. He came over, looked down, stepped over her, and walked on out.

The result of that case was sort of something Solomon might have done. Judge Sosebee was very solemn, and he got up and said, "Well, I am going to let you keep these children, but I'm going to let the State keep you on probation." There's no such thing as that, you know. "If I ever hear of you doing these other things that you have been accused of doing, I'm going to do all sorts of things to you." I don't know exactly what words he used, but he was going to take the children away and so forth. It was a comical thing. She was supposed to pay me, and her mother was going to bring the money the next day, but they never

showed.

*PAT LONGAN:* Lesson learned.

*JUSTICE CLARKE:* Yes.

*PAT LONGAN:* I want to shift gears for a few minutes and talk about the time that came in the early 1960s when you got involved in politics, and you decided to run for the General Assembly. Can you tell me how that came about? And then I want to talk to you about what it was like to be in the General Assembly in Georgia in the 1960s because there was an awful lot going on.

*JUSTICE CLARKE:* It was an exciting time and a fun time. I was still fairly young at that time and had three children. It was a time when the county-unit system was still in place. Who were the first two people to integrate the University of Georgia?

*STUART WALKER:* Charlayne Hunter and Hamilton Holmes.

*JUSTICE CLARKE:* Yes. They were about to be enrolled at the University of Georgia, and there were folks gathering in protest. I was not at the University at that time. I was well out of it. But I understand that they had a real uproar among some of the students — not all of them, of course. If one black person, under the laws as they existed at that time in Georgia, had gone into any school anywhere in Georgia that was part of the system, then all of the public schools in Georgia would be closed.

*PAT LONGAN:* By law?

*JUSTICE CLARKE:* By law, that's right. And there were a lot of people, saying, "We're just going to shut them down, and we'll let them have their own schools." There were some people who wanted to see that done, and I remember I had only been in the legislature a short time and I didn't know what to expect, of course. And I thought, "Well, if I vote like I know I'm going to

vote, that may be the end of my career, but I'm better off doing that than otherwise."

One positive thing Georgia did at that time was that a group of leaders — and I certainly was not one of them because I had not been there long enough to be a leader — went and met with the Governor a day or so ahead of the scheduled integration and they decided what they wanted to do. I have always heard that one of the two or three leaders among those who met was Carl Sanders. And they said, "Governor, we just can't shut down our schools." And Governor Ernest Vandiver agreed.

That next night — I think it was the next night — they had a meeting of both houses of the legislature, and the Governor made a speech saying that this just can't be. We've got to have the schools. I've got in my mind that there were only about three members of the House who voted to shut down the schools. That wouldn't have happened in some states at that time. It did not happen in some nearby states. So I think that Georgia has some reason to be proud about that.

Then right after that there was the county-unit system, which you're familiar with.

*PAT LONGAN:* Well, as I understand it, that made the rural areas of Georgia have disproportionate political power.

*JUSTICE CLARKE:* That's right. For instance, Monroe County at that time only had about 12,000 people. We've got many more than that now, but we had two units to vote for governor or whatever. Say if it's the governor's race, Monroe County would have two votes. Then the people in Atlanta would have more votes than that based on its population. Then *Baker v. Carr* decision came along and said that this sort of thing can't happen. We wrestled around about what we ought to do and finally resolved that — and this was probably during my second year in the Legislature — elections should be governed by the principle of one person, one vote. They called it "one man, one vote" at that time.

That was an interesting time. One of the toughest things back in those days was that the governor really ran everything. The governor would name who would be the Speaker and who would be the Floor Leader. A group came along and said they



thought the legislature ought to run its own show, and, "We'll vote and we'll say who the leaders are." That caused a big fuss. Vandiver was governor at that time.

There was a battle between the Governor and the Speaker and the Floor Leader — and it was a real battle. I remember that during one of the arguments, the Speaker stepped down from the podium, took the floor, and said, "Ladies and gentlemen of the House, I know that the Governor has got a lot of power and there's a lot of things he can do, but there's some things that I can do as well. I am the one who names the committees of this House. I'm the one who can recognize you when you ask to be recognized on the floor of the House, and I'm going to wield those powers." It turned out that a compromise was reached and it worked out okay.

*PAT LONGAN:* I want to ask you about some of the people who served with you back in those days. I would like to start with George Busbee. Could you tell me about him and what it was like to serve with him back then?

*JUSTICE CLARKE:* Well, one distinct thing was that George and I were almost exactly the same age. My sister for several years lived in Vienna, Georgia, and that was George's hometown. I would go down there occasionally and play with George and several other young men at that time, and we became good friends when we were just young boys. Then we were in school together. So, there was a strong tie between us.

*PAT LONGAN:* You also served with Tom Murphy. I'm sure there are some stories you can tell about serving with him.

*JUSTICE CLARKE:* Well, Tom was also one of my schoolmates in law school. I think he was one year ahead of me, and we knew one another well. He always was a pretty crusty sort of fellow, but he was good in his way of being crusty. He had lots of Irish in him, and it flowed freely. Sometimes he would come in just stormy, and the next time he would come in my office and sit down and say, "Let's talk about these things," as though no differences existed at all. That was his way, and it was a good way. He was an excellent Speaker.

*PAT LONGAN:* You also served with Zell Miller?

*JUSTICE CLARKE:* Yes, I did. I never served in the same body. He was in the Senate and I was in the House, but I always knew him during that period. He came to the legislature the same time that I came there. I was one who felt warmly with him.

*PAT LONGAN:* This was, I think it's fair to say, a turbulent time in the Georgia legislature. That's probably a mild term for it.

*JUSTICE CLARKE:* Absolutely.

*PAT LONGAN:* One of the things that was happening during the 1960s in the Georgia legislature was the eventual repeal of many of the segregation laws. Could you talk with us about what that was like?

*JUSTICE CLARKE:* Well, I had only been in the legislature just a couple of weeks when these issues arose. There had never been anything quite like it. Thinking back on it, the first thing that came along was the question of whether or not we were going to close the schools in Georgia. Not many folks would have thought that could be even talked about, but there was a hard core — some of the legislators — rushing for it.

The governor at that time was Ernest Vandiver, and he said, "We can't close the schools in Georgia. This is just something that can't be thought about." I thought that was a high point in Georgia history and ought to be thought of more by more people. In particular, it should be considered an honorable thing that Governor Vandiver did. He showed some real leadership, and as a result things worked out well. I think he should be honored for that more than he has been.

*PAT LONGAN:* At this point, Georgia is obviously dealing with the after effects of *Brown vs. Board of Education* and the orders of the federal courts to integrate public schools. What Georgia did was different from other Southern states as you have described, and I wanted to ask you why you think Georgia was

able to do that, in addition, I guess, to the leadership of Governor Vandiver?

*JUSTICE CLARKE:* Well, one of the things that happened is that a commission was created, and it was known as the Sibley Commission. Meetings were held all over the state, and people came in great masses. There were pretty strong feelings that people did not want the schools closed, and, of course, they were not. That was a wonderful time for the State of Georgia because the Arkansas experience, the Alabama experience, and the Mississippi experience. We just stood out above the other Southern people.

*PAT LONGAN:* Did you experience any backlash in your home district as a result?

*JUSTICE CLARKE:* That was an interesting thing. I came back really wondering, having been a first year member of the legislature, whether there would be an explosion when I came home. I never heard a single complaint. So all of that speaks highly of Georgia people.

*STUART WALKER:* Justice Clarke, throughout your years in the legislature you continued to maintain a private law practice here in Forsyth, and I was hoping you would be able to describe for us what your practice was like during the 1960s and 1970s, and how it might have evolved from when you first got out of law school.

*JUSTICE CLARKE:* Well, I was practicing law with Hugh Sosebee, who later became a superior court judge, and we had our office in a place that was about a block and a half from where we are sitting now. It was an interesting time, but we didn't know the difference. For instance, we had one secretary who worked part-time. We had manual typewriters. We didn't have any thought of the kind of things that you have in a law office today. A lot of the typing was done by us. I was a poor typist but I was fast, which didn't make for a lot of good results, really. But those were some of the things.

We did all sorts of things to make a living. We did some income tax work, heaven forbid. Oh, another thing, Saturdays were real busy times for country lawyers in that era. People would come into town and, without any advance warning, they would show up and they would have their little causes they wanted taken care of. Your pay was almost nothing. My wife would agree with that. But things changed as times went on, and that was the tail end of the old-fashioned way of doing it. Little by little we moved into the same sort of things that others had to do.

*STUART WALKER:* Who were some of the members of the profession you remember — prominent lawyers — during the time you practiced that you might tell us a little bit about?

*JUSTICE CLARKE:* Well, if you look at this part of the State, Charlie Bloch in Macon. The Joneses were strong and the Snows were strong, and many others in that area. Then thinking of the Atlanta area, they were already big, but the more interesting people were people like Ham Lokey and many others. The one I'm thinking about has a nephew who is practicing in Macon now, and his son is a very flamboyant criminal lawyer.

*STUART WALKER:* Reuben Garland.

*JUSTICE CLARKE:* Yes, that's who I'm talking about. And, of course, one of the most colorful and successful criminal lawyers around was Garland. He was the one who got himself held in contempt and went to jail and was practicing law from the jailhouse.

*STUART WALKER:* From his cell? ◊

*JUSTICE CLARKE:* Yes. But there were many.

*STUART WALKER:* While you were still practicing law, you spent one year serving as the president of the State Bar. Would you describe what that experience was like for you. Any particular accomplishments you remember?

*JUSTICE CLARKE:* Well, I don't know that we accomplished a whole lot that year. Just before I became president of the Bar, its headquarters was moved from Macon to Atlanta, and it became more of a statewide organization then.

While I was in the legislature the State Bar was created. There was no such thing as the State Bar of Georgia up until that time. It was just a small organization and membership was voluntary. The legislature came along and wrote into the Constitution the existence of the State Bar as a wing of the Georgia Supreme Court, and since that time it has been a body of the Supreme Court and has operated in that way. Of course, the existence of the State Disciplinary Board came into being and there were many other things. Since then there have been a great number of various organizations created by the legislature. A number of organizations are part of the Supreme Court.

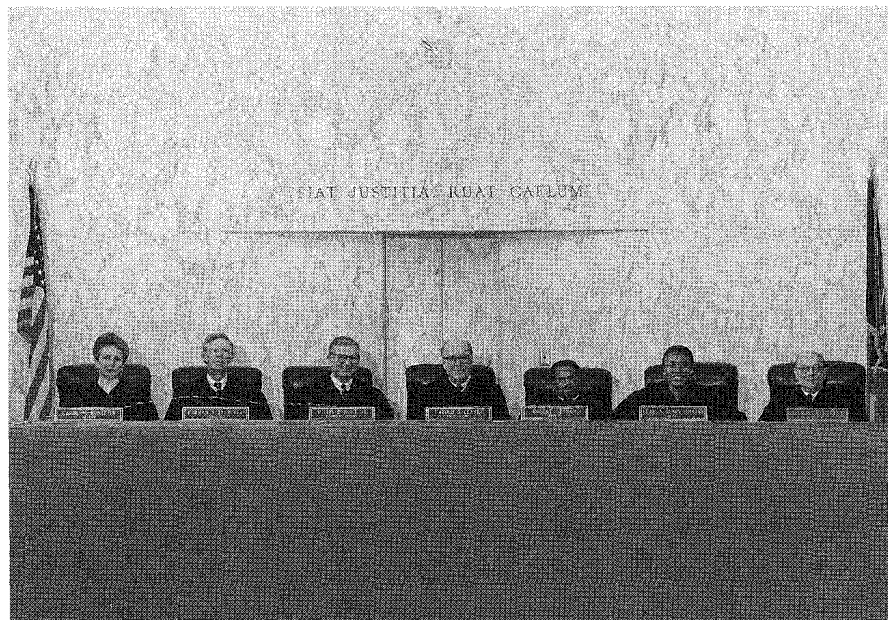
*PAT LONGAN:* We're at a point where I want to ask you about going on the Court. The time came when you were under consideration and eventually were appointed to the Supreme Court. How did that come about? What led up to that?

*JUSTICE CLARKE:* I had some ambitions along that line, and some of my friends sort of thought favorably towards that possibility. What you did at that time, and it's pretty much the same way now, if there was a vacancy somebody would come along and say, "I'm interested," and then you would submit an application.

The Constitution provides that the members of the Court are elected, but often people get their seats by way of appointment after someone dies or steps aside for one reason or another. At first the governor would just appoint people to fill these vacant seats by himself, and then a commission was created that would compile a list of potential nominees for the governor later to select from.

*PAT LONGAN:* This is the Nominating Commission you're talking about?

*JUSTICE CLARKE:* Yes.



The Supreme Court of Georgia: (left to right) Carol W. Hunstein, Norman S. Fletcher, Willis B. Hunt, Jr., Harold G. Clarke, Robert Benham, Leah Sears-Collins, and George Carley. *Photograph courtesy of Harold G. Clarke.*

*PAT LONGAN:* That Governor Jimmy Carter created, right?

*JUSTICE CLARKE:* Yes.

*PAT LONGAN:* Can you tell us about your experience with it? As I understand it, the Nominating Commission sends four or five names to the governor, and then the governor picks?

*JUSTICE CLARKE:* Yes.

*PAT LONGAN:* And Governor George Busbee selected you to fill a vacancy on the Supreme Court?

*JUSTICE CLARKE:* That's right.

*PAT LONGAN:* Tell me what you liked best about being on the Supreme Court?

*JUSTICE CLARKE:* Almost everything.

*PAT LONGAN:* Well, that's a general answer to a general question.

*JUSTICE CLARKE:* Yes, sir. Members of the Court did have their differences, and some of them were very strong differences, but there was never much rancor or anything of that sort. In my early days on the Court, I was next to the youngest one. Harold Hill was a little younger than me. The older Justices had a little different view than some of the younger ones. There were a lot of little mechanical things that were just ridiculous. For instance, if a case was assigned to Judge X, then Judge X would write an opinion, and he would bring it to the rest of the Court. And if the majority didn't vote for it, then they would send it back to the same judge and say, "Write it again in the other direction." Well, that was ridiculous. I was the one who first said, "Why don't we just send it to somebody else unless the one who originally had it came up and said, 'Well, I think I'm wrong and would do it another way.'"

There were lots of changes that came to the Court. A lot of them came from the people who went from our Court to NYU and underwent some wonderful training. I spent considerable time there on three different occasions. These changes were mechanical in many ways, but they were very important.

*PAT LONGAN:* From my reading, it seems that while you were on the Court you were labeled a liberal. You know, judges mostly don't like labels. Would you say you had a judicial philosophy of any kind?

*JUSTICE CLARKE:* I will say this, we had different attitudes about things from time to time, and I could go back and say, so-and-so is liberal and so-and-so is otherwise. We agreed on some issues and not on others. I don't want to start naming names.

*PAT LONGAN:* No, I understand. Let me change the subject just slightly. You had a chance to see a lot of lawyers argue in front of the Supreme Court, some better than others. Do you have any suggestions or tips for lawyers about being good appellate advocates in light of the years that you were on the Court?

*JUSTICE CLARKE:* Well, yes, I do have some feelings about it. Some lawyers tended to be too flamboyant, too much of a salesman of their positions, and sometimes they just talked too long. One of my pet peeves was people who would write about things or argue orally about things that are off the subject.

*PAT LONGAN:* Not in the record?

*JUSTICE CLARKE:* Well, maybe they were in the record, but maybe there weren't questions on that. A country lawyer told me one time that some people tend too often to go off running rabbits instead of staying on the subject, and the important thing is to get to the point. I think that's one of the most important things for any lawyer who is arguing a case, whether it be in a trial court or an appellate court.

*PAT LONGAN:* I read somewhere that you once wrote or said in a speech that the main thing for advocates is, first of all, to have a point; and then second, to stick to it.

*JUSTICE CLARKE:* That is true. Sometimes a lawyer will get his or her mind set on one thing and not get off that subject. Many other times, they'll have arguments that really don't fit the cause that they are arguing. If you can, pull it down to what's really important. There are too many lawyers who, in their arguments, will get bogged down with what they think is interesting without giving enough thought to what is important, and that is a real fault on the part of many lawyers. They'll get off on a long discussion of things that really don't mean anything.

*PAT LONGAN:* You said you enjoyed everything there was about being on the Court, but what was the most challenging or



difficult thing about being on the Court?

*JUSTICE CLARKE:* The most difficult thing, obviously, is death penalty cases. My leanings from the beginning were anti-death penalty, and I still feel that way. But when you get on the Court, you recognize that capital punishment is part of the Constitution, and you are forced to confront it. When I came on the Court, we had not had a death penalty case for a long time. And then we had a great number along when the United States Supreme Court reinstated the death penalty in 1976. These cases were by far the hardest, and I'm sure they still are.

*PAT LONGAN:* Well, Your Honor, I'm going to change our subject here and move on to the time when you became Chief Justice of the Georgia Supreme Court. How did your work change as you became Chief as opposed to a member of the Court?

*JUSTICE CLARKE:* A great deal. It was much, much more time consuming. You get a lot of invitations. Some you like and some you don't. There are a lot of little meetings you need to go to and lots of administrative work. But it was all fun even though some things were difficult. For instance, getting IOLTA [interest on lawyer trust accounts] was not an easy job, but it worked. All sorts of new commissions were created. Some did not work and some did, and I'm glad that they did.

*PAT LONGAN:* One of the things that other people have written and said about you as Chief was that you used the job as a bully pulpit. Is it fair that you saw that as part of your role?

*JUSTICE CLARKE:* Well, I didn't start off that way. It was like any other thing when you get going in one direction, you then begin to expand in that direction.

*PAT LONGAN:* I want to ask you about the professionalism movement, and in particular the Chief Justice's Commission on Professionalism. This, obviously, was a topic that you thought was important. How did that come about? How did you become convinced that this was something that as a Justice on the Court,

as Chief, that you should be promoting?

*JUSTICE CLARKE:* It started with me in a different way. I got a phone call one day years ago from one of my law school classmates. He and his wife were both lawyers, and she held some office with a national lawyer's organization. He wanted to know if I would come and speak to them on the subject of professionalism. He said that they would pay my expenses if I'd come out there, and I said, "Well, where is it going to be?" And he said, "It's going to be in Pebble Beach, California." And I said to myself, "I think I can do that." It really was the beginning for me on the subject of professionalism.

So I wrote a speech for the meeting, and put it in the files. One day I was talking to one of my colleagues, Charlie Weltner, and I said, "By the way, let me show you this speech." And Charlie said, "Why don't you take it and expand it." I said, "Well, that's a good idea," so I did, and it was published in the *Georgia Bar Journal*. I got interested in it, and Charlie did too. The president of Emory University sponsored a little meeting one afternoon, and we talked about the issue. They had a number of top-notch lawyers to talk about it. It was decided that we would try to put together an organization, and it started with a statewide meeting. The meeting was held in Macon, and we talked about how to go about putting this professional organization together.

Well, anyway, we decided to have this meeting and get prominent lawyers from the state to participate. The topic would be "Is There More to Law Practice Than Just Making Money," and that seemed to catch on pretty well. Then we decided we would have smaller meetings around the state, and it just caught on. One day we were meeting about how to raise money. We talked to the ICLE people and decided that they could solicit contributions from the lawyers who came to their CLE programs. Then we went a step further and made contributions mandatory. We found almost no opposition to that being done, and the little money that was made was not a bad thing for anybody.

In the meantime, the professionalism movement just caught on more and more. I think Bucky Askew coming along was a big boost, and then Sally Lockwood followed. Of course, it has grown from there. It's been a great thing for the state. And, of course, what happened then is we began to get calls from all over

the United States. I've been to New Mexico, California, and all sorts of places where people from the other states wanted to know how they could put similar organizations together. Leaders have come to Georgia to think about how they could profit by such an effort.

*PAT LONGAN:* Why do you think the Georgia Commission has been so successful? It has had an effect nationwide and continues to be a leader in the professionalism movement. What is it about what Georgia has done that has made that possible?

*JUSTICE CLARKE:* Part of that is probably just sheer luck that you happened to have a group of people who were willing to work on it and had the ability to do something about it. I remember the day we were talking about money, and the first person to come up with the idea was Jim Elliott. And Jim said, "We'll go to the ICLE people and get it done," and they were happy to do it. But I don't know that Georgia was any different. Somehow we just caught a spark.

*PAT LONGAN:* Caught lightning in a bottle?

*JUSTICE CLARKE:* That's about it. It's been a thing that people like, and I think they still do it.

*PAT LONGAN:* One thing that some lawyers and law students find difficult is defining what that term, "professionalism," means. You have a view about how you define that word, so I would like you to share that with us. How would you define professionalism for lawyers?

*JUSTICE CLARKE:* Well, I think it's been talked about for a long time as being ethics. Too many people would say ethics and professionalism were the same thing, and I came to believe there was a difference. Legal ethics is a standard of conduct that is required of all lawyers. On the other hand, professionalism is a standard of conduct that is what ought to be. That's not exactly the way I had it.

*PAT LONGAN:* Oh, that's very close to how you worded it in your article.

*JUSTICE CLARKE:* Was it in that article? I thought it was later.

*PAT LONGAN:* I use it a lot. During the time you were Chief, you worked on other issues that you thought were important. I'd like to talk about a few of those. One of them was indigent defense. Can you tell me what was going on in Georgia at that time with indigent defense and what you were trying to accomplish?

*JUSTICE CLARKE:* Well, of course, we had the indigent defense organization at that time, but it was not funded in a way that it needed to be. It's still not. There's so much about that that it's hard for me to pick out a few things. Of course, the death penalty played heavily in that issue, more heavily than anything else, really.

The reason I was really active in that from the beginning is I had seen so much of it. I came from a little town where we had no indigent defense, but what would happen is you would come into the courthouse and the judge would just require all the lawyers to come to court that day, and he would look around and say, "Here's so-and-so who is charged with thus-and-so. Mr. Jones, do you have a lawyer?" "No, I don't have a lawyer." "Do you have anybody to pay for a lawyer?" He said, "No, sir, I don't." And the judge would say, "Well, now, Mr. Clarke, you go out and talk to him." So, I'd go out and talk a little bit, and the judge would call us back in and say, "We're going to try this case at two o'clock this afternoon," and you would go to court. It was just ridiculous, but that's what we had to deal with.

I tried murder cases, not many, but some of them. It doesn't take a lot to be a lot, really. But, of course, they didn't go that fast. They would give you an opportunity to have some time, but they gave you no money, so you were doing it for free. They would have witnesses in Missouri with no money to get them. You had to go do it yourself, and that was just a horrible situation. But we lived through it that way. I still don't like the way it is now, particularly the lack of money.

*PAT LONGAN:* One of the things you once said in your State of the Judiciary address to the legislature was that with respect to indigent defense you had a constitutional obligation to do it, but it was also just the right thing to do. Do you want to talk for just a minute about why in your mind that was one of the important things, because it was just the right thing to do?

*JUSTICE CLARKE:* When it comes to the business of trying people for serious penalties, maybe even death penalties, you very often have one class of people who have some means economically. On the other hand, you have some who do not have that, and it just is not right. I don't know of any other way to put it. You're just not being fair.

*PAT LONGAN:* When you were Chief, you had the Court Futures Study to try to streamline the Georgia Court system. You created the Racial Bias Commission, the Gender Bias Commission, and the Commission on Alternative Dispute Resolution. You were very busy as Chief on these important issues, and I wanted to invite you to talk about any, or all, of those and why you thought they were so important at the time and what's happened since.

*JUSTICE CLARKE:* Well, I think, for one thing, the system really needed to be streamlined. There wasn't enough time for everybody to get everything done, and the way to do it would be to select good, well-meaning, and capable people to serve on commissions. I think for the most part they have worked. I'm not close to it anymore, so I don't know how well they worked, but I would suspect that I would have heard if they were not working pretty well. I remember we had one or two judges who said judges just ought to be judges and the other matters should be left to the legislature. But the fact of the matter is, it never would have been done by the legislature. They just would not have acted on it, and the Court at that time was willing to do it.

*PAT LONGAN:* Just because the issues were so politically charged, the legislature wouldn't undertake them. Is that what you mean?



Justice Harold G. Clarke and his family gather for his portrait unveiling at the Georgia Supreme Court. *Photograph courtesy of Harold G. Clarke.*

*JUSTICE CLARKE:* It's partly that, but also they just were not dealing every day with the things that we dealt with. Why should we not reach out and do what we ought to be doing? I know there are those who say that's activism, and I don't have any problem with activism if that's what it takes. I don't really see any harm with activism personally.

*PAT LONGAN:* I know this is a question you don't want me to ask because you strike me as a very modest man, but if there is one thing that you are most proud of during your time on the Court, could you identify what that would be?

*JUSTICE CLARKE:* Well, I think professionalism is certainly among the top, and I think indigent defense would probably be the next because both of those have some real meaning. If you have bad lawyers then you've got a bad system for the citizens.

*PAT LONGAN:* I want to ask you just one other question about your time on the Court. There came a time when you temporarily stepped down as Chief in deference to Justice Weltner, and I was wondering if you could talk about him, how you felt about him, and how stepping down temporarily came about.

*JUSTICE CLARKE:* Charlie and I were good friends. His office was right across the hall from my office for a good many years. Almost every morning we would have a cup of coffee together and sometimes we would argue and sometimes we would not. I have never known anyone who had as many interests as Charlie did. He was a remarkable individual. Charlie and I were distant relatives, and I think my numbers are right here that five members of the Georgia Supreme Court have been members of that family. Of course, the Weltners — most of them — went back long before ours did. But the kinship that existed between Charlie and me didn't have anything to do with formal kinship. I think we had some pretty similar beliefs in many ways and just enjoyed our time together, and I miss him a lot. But, then, that's off the subject.

*PAT LONGAN:* No, that's exactly the subject I wanted to ask you about first because I wanted to learn about him and let other people learn about him.

*JUSTICE CLARKE:* Well, one day Charlie came in my office and said, "I'm going to the doctor," and I said, "What about?" He said, "Well, I'm having trouble swallowing and talking." I said, "Well, let me know what the result is." I didn't take it seriously, and he didn't either. That afternoon he came in and said, "This thing is serious." He said that they were going to have to do some surgery on his throat. And, of course, it turned out to be cancer of the esophagus. So, he had surgery. He said that the doctor told him that he wouldn't live more than six months. And he said, "But I told them they're crazy. I'm going to live on for a long time. I can beat it." And I said, "I believe you can." Well, he didn't. He died within about that period of time.

To answer your question, though, I was talking to Alex Crumbley one day. Alex had been one of Charlie's partners. We

were talking about Charlie and what could be done. I don't know which one of us said that my stepping aside early as Chief Justice would be an appropriate thing to do, but we both thought that it would be. Of course, he didn't have any say-so on that, and I didn't know what the other members of the Court might think either, but they were in favor of it. It was in the summer at a State Bar meeting when I announced that I was stepping down and Charlie was coming in. He was going to come and stay until his term was up, and then I would pick back up at that time. So, that's what happened. He never really served very much because he wasn't able.

*STUART WALKER:* Justice Clarke, you decided to retire from the Court after thirteen years of service. Could you tell us what led to that decision to retire?

*JUSTICE CLARKE:* Well, I didn't know what I would do. I told a lot of people I was just going to take my toes and wiggle them in the sand, but I found out that that sort of thing was not too appealing. So one day Carl Sanders, who was another one of my schoolmates, and Jack Dalton came to me about coming to practice law at Troutman Sanders. This was while I was still on the Court, and I said, "Well, I can't talk about it now because I don't know what I'll do." Afterwards we talked about it again, and I thought about it for maybe a month or so. I think I went over to Troutman Sanders a couple of months after I left the Court.

Carl and Jack were both friends, and I spent a little time over there talking to them. One of the things that really made me concerned was that I didn't know whether it would be something I would like. And they said, "Well, if you don't like it, you don't have to stay. We're not going to haul you in." I finally said that was something I'd like to do, or to try anyway, but I still had some doubts in my mind.

The afternoon of the first day that I was there, I heard a bunch of women laughing and talking in one of the conference rooms. Then my secretary came over and said, "Come on up here. One of the secretaries is having a birthday party." I walked down there, and sure enough, all of these folks, the lawyers and all, had come down to get some ice cream or whatever it was,



and I began to realize that these were real human beings.

Later on in the day there was a great mass of cheers going up in the hall, and it turned out that the firm had just won an important case. Rather than being stuffy, they were human beings just like the people in Forsyth. They thought and acted the same way pretty much. I always felt a real friendship, and still do, with them. In fact, just the other day I got a telephone call from Jack Dalton saying he just wanted to see how I was getting along. It's a real friendship.

*STUART WALKER:* Were there things, after you had retired from the Court and were working with Troutman Sanders, that you missed about your service on the Court?

*JUSTICE CLARKE:* I couldn't put my finger on some things, but I will say this, I liked them both, and I really liked the little country practice, too. I even liked the time I spent in the newspaper business, but maybe I'm too easy to please. I don't know. But be that as it may, I have never had an unhappy experience with any of those things.

*STUART WALKER:* I wanted to talk with you about a distinguished award you received the year after you retired from the Court in 1994. You were the recipient of the Lewis Powell Professionalism Award awarded by the American Inns of Court. Previous winners had included Justice Powell and Justice Brennan of the Supreme Court, and Judge Wisdom of the old Fifth Circuit. I wanted to know about your reflections about having been honored in that way and what it meant to you to receive that award.

*JUSTICE CLARKE:* I said to myself that I didn't believe this because it wasn't deserved, but somehow it came along. But that is a valuable organization, and they do a lot of professionalism-related things. That's probably the biggest part of what they do. I was overcome by that honor, and it still holds a big place in my home today. They had a big thing in Washington, and it was nice. I appreciated it and still do.



Justice Harold G. Clarke cooling down after finishing the Peachtree Road Race in Atlanta, Georgia. *Photograph courtesy of Harold G. Clarke.*

*PAT LONGAN:* Well, Your Honor, there's really only one other question that I want to ask you, and it's one that I warned you I was going to ask you, and I know you've thought about how you want to respond. The question is this: This interview is going to be seen and read by a number of law students and young lawyers, and it's part of a series of interviews, as you know, I'm doing with distinguished Georgia lawyers and judges, and I'm asking each of the subjects of these interviews at the end if there is anything that they want to say, since they have the audience, anything they want to say to that generation — and for that matter future generations — of young lawyers and law students about what it means to be a professional and what it means to live your life in that way. And I know you want to refer to something that you wrote as you answer that, so I'm going to stop long enough to hand that to you. But that's really the last question I've got for you. If I may hand it to you.

*JUSTICE CLARKE:* Yes. Don't get frightened. I'm not going to read the whole thing. I mentioned earlier the piece that I wrote for the *Georgia Bar Journal*, and it's been published far and wide. I'm proud of that, probably as proud as anything I've ever done. And I'm going to pick up the topics in here.

The first one is the definition of professionalism, and this was done better later, but it really covers what I mentioned before about professionalism as related to ethics. We have already talked about that and there's no need to do that again.

Then we talk about the debts that lawyers have. The first one is a debt to the client, and that is hard work, not hard ball. That means you don't have to be mean to be successful. And, of course, I've got a whole lot of words concerning that.

The next one is debt to the law. A lawyer is a problem solver. That to me is so important that the real reason we have lawyers is we ought to be problem solvers rather than problem makers, and some of them are just exactly that.

Next one is the debt to justice to act in the public interest. We have covered that topic somewhat already.

The next one is debt to fellow lawyers; cooperation and civility. You get a lot more done if you can be nice to people. The last case I dealt with was a case that really ought to have been decided without going to trial. And I happened to run into

the opposing lawyer, and we talked a while. I finally said, "You know, we've got this case, and it really ought not to go to trial. It should be handled by summary judgment. No reason in spending all this money for this one thing or another." And he said, "Well, that's exactly what I think, too," and we did. The case went on for a couple of years because it was an important case, but we did not have to have any depositions. Everything was according to what was found in the books. The case finally went the supreme court. It never really went to trial. But at any rate, right after the case was over I got a letter from my opponent saying congratulations, you played it fair and square, and did a good job, or something like that. If you find more lawyers like that, you would be better off.

Next is a higher standard than ethics. That was what we talked about before.

But, at any rate, there is a lot more in it than I read for anyone who may be interested.

*PAT LONGAN:* Well, Your Honor, you don't have to worry about helping people find copies because I have made copies, and my students will read that article as their very first assignment in their class on professionalism in the Spring.

*JUSTICE CLARKE:* Bless you. It was published in May of 1989, and I think the trip to California was a year or so before that. It was not in exactly this form but pretty near it.

*PAT LONGAN:* Well, Justice Clarke, thank you so much for taking the time over these two days we've spent together to share your stories of your life and your career with me, with Stuart, and with our students.

*JUSTICE CLARKE:* Well, I appreciate very much the opportunity of being honored to do this. Thank you.

*PAT LONGAN:* We appreciate your time. Thank you.

*STUART WALKER:* Thank you very much.