

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

A Conversation with
The Honorable W. Homer Drake, Jr.
on September 12, 2012

Conducted by Patrick Emery Longan
and Michael D. Sabbath

PROFESSOR LONGAN: Your Honor, thank you for agreeing to be here with us this afternoon.¹

JUDGE DRAKE: Thank you for wanting to take this oral history. I deeply appreciate it.

PROFESSOR LONGAN: We are looking forward to it. Of course, we're here with your friend, Mike Sabbath, of Mercer Law School, and a collection of students, family, and friends. We appreciate all of you being here.

JUDGE DRAKE: Yes, we do.

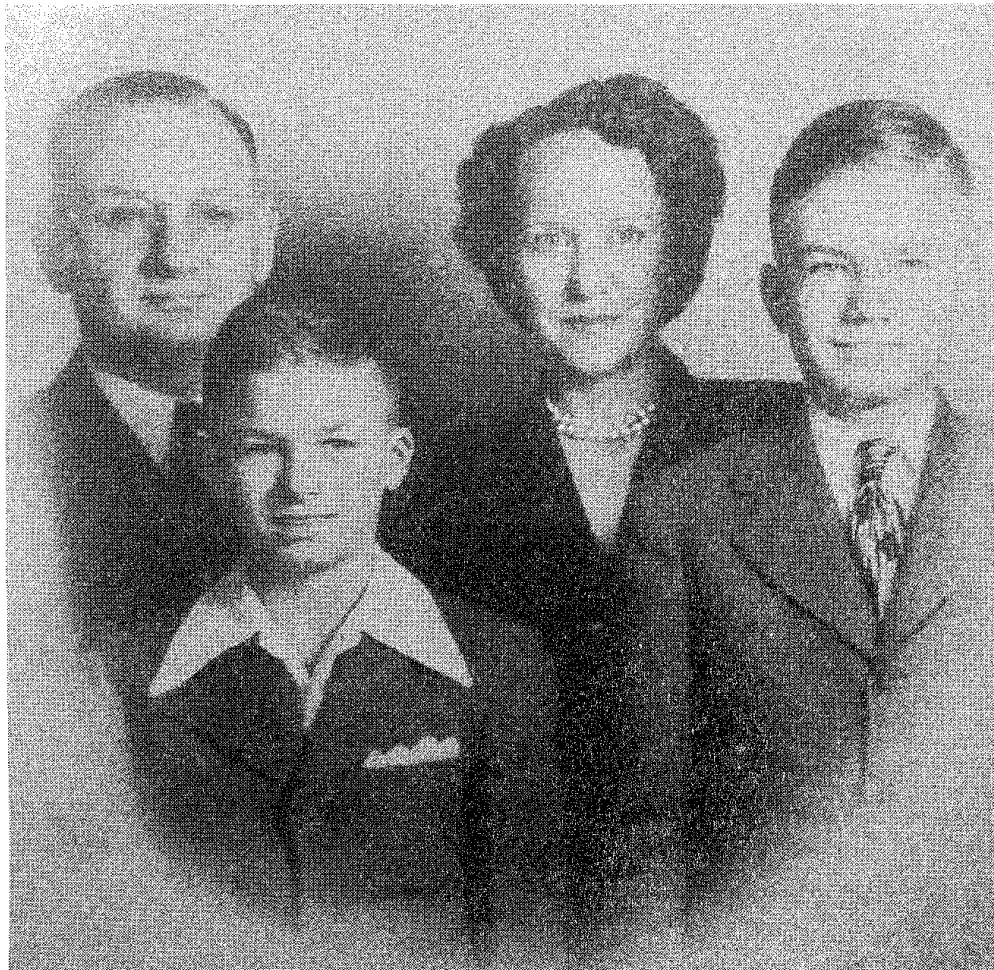
PROFESSOR LONGAN: We are here, of course, to talk about you, your life, your career as a judge, and your service to Mercer University over the last sixty-some-odd years.

JUDGE DRAKE: Quite a few years.

PROFESSOR LONGAN: We need to start at the beginning, and so I would like for you to talk about your time growing up in Newnan, Georgia.

JUDGE DRAKE: I grew up in Newnan, but prior to that time, I was born in Colquitt, Georgia, which is a small South Georgia farming community of about 2,000 people in Miller County. At the age of five, we moved to Cuthbert, Georgia, about fifty miles up the road. My dad was the superintendent of schools in both communities. Then, we moved to Newnan when I was eight. That was in 1941, which was about three months before the beginning of the second World War.

Newnan was a great place to grow up. It was a very affluent West Georgia cultural little town of about 7,000 people at that time. It's about 35,000 now because of the sprawl of Metro Atlanta. But since my dad was the superintendent of schools, my brother and I were admonished to observe the right kinds of deportment, which we tried to do throughout our youth.



Drake Family Photo. Judge W. Homer Drake, Jr. with parents and younger brother, Henry. *Photo courtesy of W. Homer Drake, Jr.*

PROFESSOR LONGAN: Judge, as you know, throughout our conversation this afternoon, from time to time, I am going to show you some items from your scrapbooks that you were so generous to share with us. The first thing that I would like to show you is a picture of, well, why don't you tell us who those people are.

JUDGE DRAKE: That is a picture of my mother and father and my brother, Henry. When that was taken, I don't know, but probably in Newnan. My brother was about three and a half years younger; and he went on to become a doctor and died prematurely at age sixty-two. We had very loving parents, and I might say, very educated parents — particularly my father — but they both stressed the importance of a good education and a good character and spoke to us quite a lot about that. So we tried to do what they wanted us to do.

PROFESSOR LONGAN: Well, I think I have some evidence that you did, Your Honor. We have here your fourth grade report card.

NEWMAN PUBLIC SCHOOLS													
MONTHLY REPORT													
Name <u>W. HOMER DRAKE</u>										Grade <u>4th</u>			
Year <u>1941-1942</u>										School <u>TEMPLE AVE.</u>			
SUBJECT	1ST PERIOD	2ND PERIOD	3RD PERIOD	4TH PERIOD	EXAM.	TERM AV.	5TH PERIOD	6TH PERIOD	7TH PERIOD	8TH PERIOD	EXAM.	TERM AV.	YEAR AV.
Department	A	A	A	A		A	A	A	A	A		A	A
Days Absent	1/2					2	0		2				
Times Tardy													
READING	A	A	A	A		A	A	A	A	A		A	A
WRITING	A	A	A	A		A	A	A	A	A		A	A
ARITHMETIC	A	A	A	A	A+	A	A	A	A	A	B	A	A
LANGUAGE	A	A	A	A	A	A	A	A	A	A	B+	A	A
GEN. LAPHY	A	A	A	A		A	A	A	A	A		A	A
SPELLING	A	A	A	A	100	A	A	A	A	A	A+	A	A
HEALTH							A	A	A	A			
DRAWING	A	A	A			A	A						
										TEACHER <u>BARBARA HENNING</u>			

W. Homer Drake, Jr., Newnan Public Schools Fourth Grade Report Card (1941-1942). Copy courtesy of W. Homer Drake, Jr.

JUDGE DRAKE: My father would accept nothing less than the best grades, you understand, so that was made clear. We had a quite normal childhood, but nevertheless with great expectations. My parents believed that knowledge combined with good character would lead to ultimate success in whatever you wanted to do.

PROFESSOR LONGAN: What did you do for fun growing up in Newnan?

JUDGE DRAKE: That was the beginning of the second World War. For fun, on Saturday mornings, we went to the movies. This was done all over the South, I'm sure. It cost about twelve cents. We played sports and generally enjoyed our childhood with friends who lived very close to us. Newnan was, as I said, a very exceptional town. I had a very enjoyable youth.

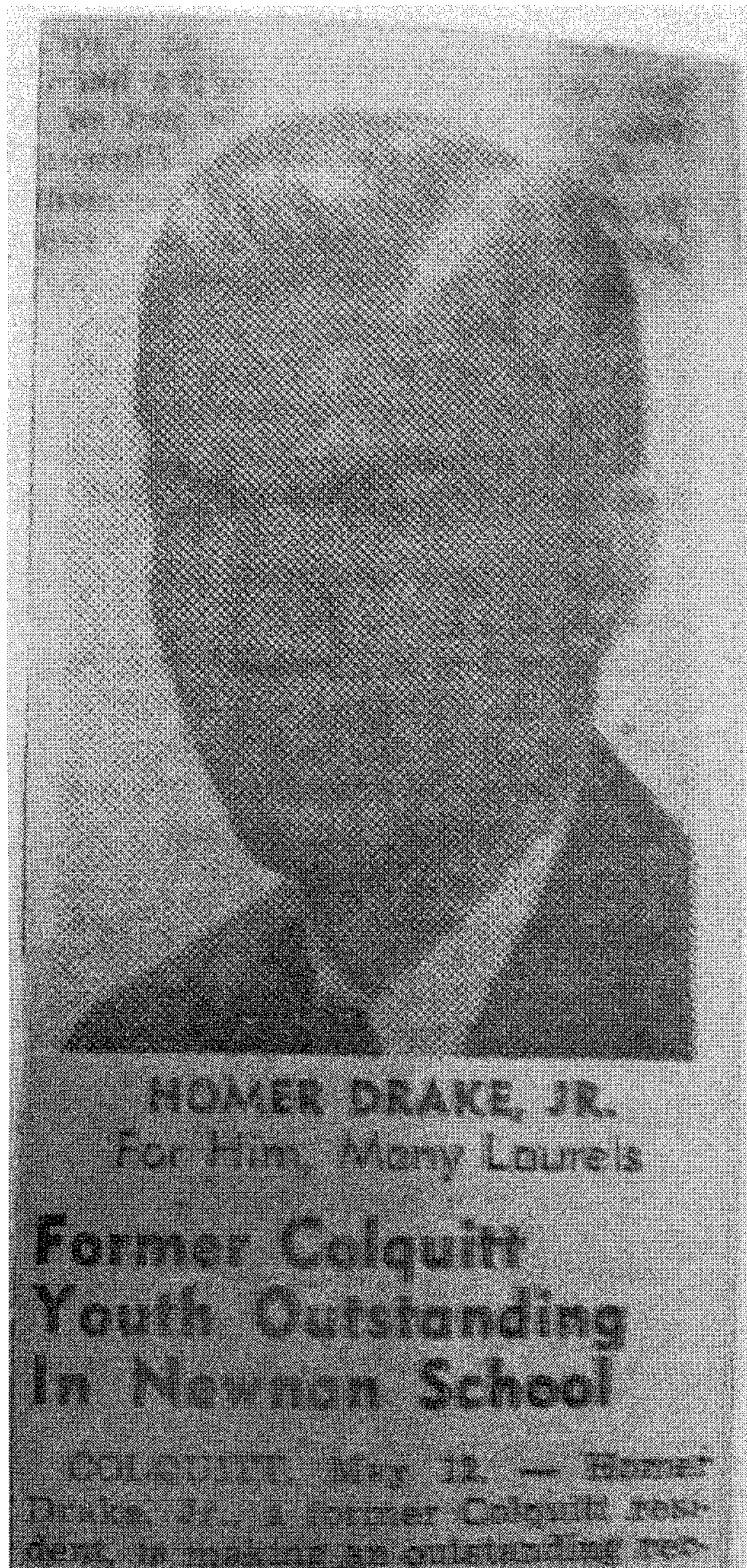
My dad was a scholar, I would say, and he believed in passing along to his boys some advice. He was a great admirer of English literature — Shakespeare, Rudyard Kipling. You might remember this quotation from Hamlet when Polonius told his son, Laertes, that “above all, to thine ownself be true, and then as night follows day, you cannot then be false to any man.” He ingrained that into our heads.

My dad believed in self-control, and he also told us many times to live your life as if one day you are going to be investigated, because, one day you will be, and that will be by yourself. And when that happens, you're going to want to like what you see. I have never forgotten that.

PROFESSOR LONGAN: Well, you must have taken his advice as a young man because as you see here, you graduated from, I assume, that's Newnan High School?

JUDGE DRAKE: Newnan High School. That was probably in the Colquitt paper, the *Miller County Liberal*.

PROFESSOR LONGAN: It says, “for him many laurels.”



Homer Drake, Jr., For Him, Many Laurels. *Clipping of Colquitt, Georgia, May 12 newspaper article courtesy of W. Homer Drake, Jr.*

PROFESSOR SABBATH: After that, you spent some time at Mercer University, and Mercer is going to come up a lot during our conversation at various points in your life. But you chose to come to Mercer to get your undergraduate education. This was the beginning of something like sixty years of your association with Mercer?

JUDGE DRAKE: That's about right.

PROFESSOR SABBATH: What made you choose Mercer, and what was it like in the early 1950s at Mercer University?

JUDGE DRAKE: All right, I'll tell you. First of all, I really wanted to go to Mercer at the outset, but my dad was a graduate of the University of Georgia. I went to all the Georgia football games growing up, so I ended up going to the University of Georgia for one year. I didn't particularly enjoy that year, although I was successful academically. Growing up, I was very active in the church, and Mercer, at that time, was a very small Baptist-oriented school. I had been to Mercer during my high school years for debate tournaments and for one athletic contest, so I was familiar with the school. And so, after a year at Georgia, I transferred to Mercer. Everybody in Newnan thought that I was coming to Mercer to be a preacher, but that didn't happen. When I arrived at Mercer, I immediately found myself in the company of many pre-law students, so law school became my focus.

Mercer University back then had about, I would say, 1,000 students in the early 1950s, and that was during the Korean War. Many students were members of the ROTC because, if we had to go into the service, we wanted to go in as an officer. The only graduate school at Mercer at that time was the law school. Since then we have added nine more schools, and a great deal more students, as you know.

But the school had some very rigid standards back then. You had to attend chapel three times a week. They assigned you seats and took the roll, so you had to go.

PROFESSOR LONGAN: They were serious.

JUDGE DRAKE: Serious. And there were many restrictions on the women. The men had about three dormitories: Sherwood Hall, Shorter Hall, and Roberts Hall. I think the women had one: Mary Erin Porter Hall, or, as we called it, MEP.

Mercer had some great teachers, many in the Christianity department, who were very impressive to me. Dr. Lewis Batts, Dr. Harold McManus, and Dr. Kelley Barnett, were some of those. The pre-med department was outstanding. If you were in undergraduate school at Mercer and were in the pre-med program, it was almost a sure thing that you would be admitted to medical school.

PROFESSOR SABBATH: Do you have classmates you've maintained contact with throughout your life?

JUDGE DRAKE: There is one in particular that was a good friend. He was from Nantucket Island, Massachusetts. His name was Wayne Holmes, and we corresponded until his death this last year.

I would say that the law school back then was about 80 to 100 students. The law school was located on the campus in the Ryals Law Building, and we had some great law professors. Hodge O'Neal was the dean, and I think you know two of the other deans who came later — Ed Wilson, who subsequently was mayor of Macon, and Jim Quarles. Professor Jim Rehberg was there then. I believe he taught here until his mid-80s, did he not, Michael?

PROFESSOR SABBATH: Yes; he was 85.

JUDGE DRAKE: We had some other very good professors — one named Charles Nadler. A room here at the law school is named for him. Nadler was a lawyer from Cleveland, Ohio, who made a lot of money in his law practice in the 1930s. He married a Macon girl, moved here, and taught for a few years. He was paid only a dollar a year and happened to teach bankruptcy law. Oddly enough, my highest grade in law school was in that course, which was an omen, I suppose.

PROFESSOR LONGAN: How has that worked out for you so far?

JUDGE DRAKE: Quite well, although I had no idea at that time that my professional career would revolve around bankruptcy law.

PROFESSOR SABBATH: So undergraduate students brushed elbows with the law students back then?

JUDGE DRAKE: Yes, they did, but not too much. Most of the law students were Korean War veterans. That war had just ended, and they came back and went to law school. They were married, but some of the students, like myself, were still living in the dormitories, with all of the distractions that you can imagine. The fact is that most of our Korean veterans were settled and married, so, as a result, they made some of the best grades in our classes. I like to tell folks that I finished fourth in the class, which sounds quite admirable, until you consider that there were only about eighteen in the class, so that's not so impressive.

PROFESSOR LONGAN: Well, Judge, you did okay. I mean after all, at least according to your scrapbooks, you were the president of the law school student body.

JUDGE DRAKE: Well, that may be, for I thoroughly enjoyed law school. I was very, very happy here and don't know of a better place for anybody to secure an education, either undergraduate or professional. I enjoyed every minute of my college and law school experience at Mercer.

PROFESSOR LONGAN: Can we talk about the ROTC experience you had, because part of that was during law school as well? I wanted to ask you because it seems that ROTC has been a very important influence on you.

JUDGE DRAKE: The ROTC program at Mercer was a Quartermaster ROTC, and we had, I suppose, about 200 in the program. Remember, at this time, every male student had some kind of military obligation. Following graduation, after receiving

our army commissions, we went to officers' training school at Fort Lee, Virginia. It was there that my Dad called me on a Sunday morning and told me that I had passed the Georgia Bar Examination.

Drake Elected President Of Law School Students

By Gilbert Wildes

Homer Drake, Newnan, has been recently elected president of the Walter F. George School of Law, succeeding Jose M. Arsuaga, who is graduating and returning to Puerto Rico.

Robert Sparks, Atlanta, newly elected secretary will succeed Mary Wainwright, who graduates in March.

Incoming president Drake is vice president of Delta Theta Phi law fraternity, recently served as chairman of Law Day, and served as a Justice of the Court of Corrections during his freshman year. "Bodip" Sparks is current vice president of

Other Officers

Other officers include John Harrison, Macon, vice president; Jim Greene, Cartersville, treasurer; Eugene Heinrich, Warner Robins, parliamentarian; and Hylman Wall, Douglas, and Roy Patterson, Mac-

Drake Elected President of Law School Students. *Newspaper clipping* courtesy of W. Homer Drake, Jr.

PROFESSOR LONGAN: That was good news.

JUDGE DRAKE: That was excellent news. The very next morning, Monday, I went down to the personnel office and asked for the forms to transfer my commission from the Quartermaster to the JAG Corps. Before my transfer came through, I was assigned to the Third Infantry Division at Fort Benning as the graves registration officer in a company. Right after that, we went on maneuvers in the wilds of Louisiana near Fort Polk. And on maneuvers, I was the petroleum, oil, and lubricants officer, and the PX officer.

PROFESSOR LONGAN: Not your highest and best use.



W. HOMER DRAKE, JR.

Homer Drake, Jr. Now With Law Firm In Atlanta

The Atlanta law firm of Arnall, Golden and Gregory announced this week that H. Fred Gober, former associate, has become a

Homer Drake, Jr. Now With Law Firm in Atlanta. *Newspaper clipping courtesy of W. Homer Drake, Jr.*

JUDGE DRAKE: I knew little about what I was doing, but while there, word came that my application for the JAG Corps had been approved. Relieved and happy, I stayed in Louisiana for the next two weeks finishing my tour of duty on this maneuver, which pleased my superiors, but I could hardly wait to get back to the Division to go into the JAG Corps.

PROFESSOR LONGAN: Talk a little bit about your time in the JAG Corps. I know from our previous conversations how much you enjoyed that.

JUDGE DRAKE: I enjoyed it so much I almost made a career of it. I got a great deal of trial experience. I was trial counsel for the Division and prosecuted all kinds of criminal cases: murder, rape, robbery, all kinds. We were trying general court martials. I spent three years at Fort Benning as trial counsel and then chief of military justice. I was offered and accepted a regular Army commission, for I intended to stay in the Army as a career. I enjoyed the discipline. I enjoyed the atmosphere.

PROFESSOR LONGAN: What did you like about trying cases in the courtroom? You have a lot of experience doing that.

JUDGE DRAKE: I thoroughly enjoyed the trial experience and the combative nature of the courtroom. But my plans of an Army career ended quickly. That happened one day when Governor Ellis Arnall called me on the telephone. He was a native of Newnan, a long-time family friend, and had been governor of Georgia back in the early 1940s. Governor Arnall called and said, "Homer, the next time you're in Newnan, I would like to see you."

PROFESSOR LONGAN: That sounds like a command performance.

JUDGE DRAKE: It was a command performance, which was, I suspect, arranged by my father and mother, who did not want me to pursue a military career. I went to see Governor Arnall

when I next came home, and he offered me a position in his law firm in Atlanta. He and my dad had always been good friends; so, you know, two and two makes four. That's how my plans to have an Army career came to an abrupt halt. At that time in my life, I never realized the impact of that call — it was to affect my life immensely.

PROFESSOR SABBATH: You know, it's interesting. I assumed it was a large firm.

JUDGE DRAKE: It was not a large firm. It was composed of Ellis Arnall, Sol Golden, Cleburne Gregory, Fred Gober, Elliott Levitas — you may remember Elliot Levitas, a Rhodes Scholar and later a congressman from Atlanta — and myself. I enjoyed my one-year stay there, but drawing leases and contracts and never seeing the courtroom was not enough of a challenge for me.

PROFESSOR LONGAN: It sounds deadly dull.

PROFESSOR SABBATH: And then you left to come start a small firm in Macon. What did your father think about you leaving?

JUDGE DRAKE: Well, he really didn't object to it since he realized I needed to do something else. There was a friend with whom I went to law school. His name was Fred Hasty, and he and I began a law firm here in Macon called Hasty and Drake.


PROFESSOR LONGAN: You made the paper.

JUDGE DRAKE: Yes, that's true, the *Macon Telegraph*. Fred and I practiced together for about six or seven months, but I still just couldn't find the proper fit for me. Then a door seemed to open in my direction.

John Kennedy had won the U.S. presidency in 1960, and I was, as most everyone in Georgia was back then, a Democrat. After Kennedy's election, Floyd Buford was appointed U.S. Attorney here in Macon, and he asked me to come to his office. This was at the suggestion of Senator Talmadge, who was asked

by my good friend and neighbor, Walter Sanders, a practicing attorney in Newnan and a good friend of Senator Talmadge, to write Floyd on my behalf. So, with their help, Floyd Buford offered me a job as an Assistant U.S. Attorney in Macon.

The Macon Telegraph and News



Formation Of Law Firm Is Announced

Macon attorney Fred M. Hasty and W. Homer Drake Jr., who was formerly associated with the law firm of Arnall, Golden and Gregory of Atlanta, announced yesterday the formation of a partnership under the firm name of Hasty and Drake for the general practice of law with offices in the Southern United Building.

Drake, a newcomer to Macon, was born in Colquitt and has lived in Newnan most of his life. He was educated in the public schools of Newnan, the University of Georgia and Mercer University, where he was graduated with an AB degree in 1954 and with an LL.B degree from Mercer's Walter F. George School of Law in 1956.

While at the University of Georgia, Drake was a member of the Sigma Chi social fraternity, and while at Mercer he was president of the law school student body, chief justice of the Court of Honor, president of the Delta Theta Phi law fraternity, president of the Blue Key National honor fraternity and chairman of Mercer's 1954 Law Day.

After receiving his LL.B degree in 1956, Drake served in the Judge

W. HOMER DRAKE, JR.

Formation of Hasty and Drake Law Firm Announced. *Newspaper clipping courtesy of W. Homer Drake, Jr.*

I accepted that job, and then strangely enough, about two months later, before I was scheduled to come on board here in Macon, I got another call from Walt, and he said, "Homer, I have changed my mind. I think it would be a lot better for you to come back to Newnan to be the law clerk to my good friend Lewis R. Morgan." Judge Morgan was either the first or second U.S. District Judge appointed by President Kennedy. Walt said that Morgan was going to be appointed very shortly. Because I had great confidence in Walt Sanders' advice, I went to tell Floyd of my decision. Fortunately, he understood, and he was excited that I had this opportunity.

I then moved back to Newnan. Judge Morgan's principal office was in Newnan, and that's how I began my career in the federal court system.

PROFESSOR LONGAN: I think we have the clipping from when Judge Morgan was sworn in.

JUDGE DRAKE: That's right. I finally had found my niche with a great mentor. You will notice in the clipping that the other two judges were up in years. Those were the only three judges we had in the Northern District at the time. The other two were Judge Frank Hooper and Judge Boyd Sloan. Judge Morgan, being only 48 years old, was assigned most of the larger cases that were filed in the Northern District.

You might remember the libel case of Georgia's football coach, Wallace Butts, against the *Saturday Evening Post*, whose parent company was the Curtis Publishing Company.² I believe it was in 1963 when the *Post* ran an article accusing Coach Butts and Coach Bear Bryant of conspiring to throw the Georgia/Alabama game in Birmingham at Legion Field. That case attracted attention from all over the country. Judge Morgan was assigned that case, and I worked on that very closely with him. Coach Butts won a \$3 million judgment against the magazine.

PROFESSOR SABBATH: That was quite a bit of money back then, too.



Staff Photo—Kirk Wooster

NEW FEDERAL JUDGE WITH TWO OF HIS FELLOW JURISTS

L-R: Judges Boyd Sloan, Lewis Morgan and Frank Hooper

Judge Morgan Is Sworn In

By ACHSAH POSEY

Amid speeches of congratulation, Georgia's sixth federal district judge, Lewis R. Morgan of LaGrange, was sworn in Tuesday in the Old Post Office Building.

Gov. Ernest Vandiver and judges from federal, state and some city courts around the state were present for the ceremony along with representatives from various federal offices in the Northwest.

Morgan was presented to the court by his longtime friend and colleague, Walter D. Sanders, who said of him, "In my opinion he is the best-grounded and most well-rounded personality I have ever known."

Good wishes from the American Bar Association were delivered by E. Stuart Campbell, Atlanta

at the bench, beside Judge Frank Hooper.

Both Judge Hooper of Atlanta, and Judge Boyd Sloan, Newton, expressed pleasure at having assistance in trying to bring the court calendar up to date, and took particular pleasure in the choice of Morgan.

Judge Hooper, who interrupted his vacation for the ceremony, said, "I know of no person better qualified for this office."

Sam Boykin presented the newly installed judge with a robe which the government does not furnish, donated by his friends in Troun, Coweta and Carroll counties.

Good wishes from the American Bar Association were delivered by E. Stuart Campbell, Atlanta

self and Sen. Herman Talmadge in recommending him.

Morgan's appointment fills one of the 73 new federal judgeships created this year. The case load per judge in civil cases in the Northern district had risen to 20 per cent above the national average, and two-and-one-half times the national average of criminal cases.

Judge Lewis R. Morgan is Sworn in. Shown from L-R: Judges Boyd Sloan, Morgan, and Frank Hooper. Newspaper clipping courtesy of W. Homer Drake, Jr.

JUDGE DRAKE: Yes, and that was only the punitive damages award. The compensatory damages were set by the jury at

around \$60,000. They told us the trial would take two or three months, but Judge Morgan was very insistent on things being done quickly, so the case was tried in two weeks time. I got that from him, because I still run my courtroom the same way, very formally.

Bill Schroeder of the Atlanta law firm of Troutman, Sams, Schroeder and Lockerman was Coach Butts' attorney. The attorney for the Curtis Publishing Company was Kilpatrick, Cody, Rogers, McClatchy and Regenstein — now Kilpatrick, Townsend and Stockton. Welborn Cody, who was a senior partner, tried the case for the magazine, along with his young associate, Emmet Boundurant. In his closing argument, Schroeder, who was quite a showman, said, "Ladies and gentlemen of the jury, when Coach Butts dies, they are going to put him in a red and black coffin. He's going to have a football cradled in his arms, and on the outside of the coffin will be these words: 'Glory, glory to Old Georgia.'" You can imagine how that affected the jury.

PROFESSOR SABBATH: Brought tears to their eyes.

JUDGE DRAKE: And resulted in the verdict I just mentioned.

PROFESSOR SABBATH: Judge Morgan obviously was a mentor to you. Were there others at the time whom you considered mentors?

JUDGE DRAKE: Well, I have already mentioned Governor Arnall and Walter Sanders, and there was, of course, Judge Griffin Bell. Judge Bell's office was right down the hall from Judge Morgan's, so I saw him quite frequently. I got to know him well in the early 1960s. A lot of meetings concerning Mercer University affairs were held in Judge Bell's conference room at that time, so I was involved with many things having to do with the law school. Judge Bell was also very much involved with Mercer activities at that time.

PROFESSOR SABBATH: You went from being a clerk at age 31, very young, to being a referee at the bankruptcy court. Now, tell me how that came about and what you thought when it was

first suggested to you that you accept that position.

JUDGE DRAKE: Well, let me go back and remind you that the highest grade I made in law school was in bankruptcy law.

PROFESSOR SABBATH: You had not seen much of it since then.

JUDGE DRAKE: I had not been that involved in bankruptcy law except for appeals that came to the district court, to Judge Morgan from the referees in bankruptcy in Atlanta. There were two referees in Atlanta then. One of them was Judge Hooper's former law clerk, who was leaving to teach law, and who later went on to become a professor at the University of Georgia. His name was Ray Phillips. The other was Judge Ellis Mundy, who was the U.S. Attorney under President Harry Truman. When Eisenhower became president in 1953, Judge Mundy was replaced by Ed Dorsey in Atlanta as U.S. Attorney, and then Judges Hooper and Sloan, the only two district judges prior to Judge Morgan's appointment, appointed Judge Mundy as referee in bankruptcy. So Judge Mundy was still there.

I became a referee because I was the law clerk to the chief judge. Back then the district court made those appointments, so Judge Morgan said, "Homer, if you will stay with me an extra year, I'll appoint you referee in bankruptcy." That sounded good to me, because that position paid a good salary.

PROFESSOR LONGAN: Let's be sure what we are talking about here, Judge. This is the paperwork of your appointment as referee, and that shows salary upgraded to \$15,000 a year.

JUDGE DRAKE: Well, that was a lot of money back then. I was making about \$10,000 as a law clerk, and the district judge was making \$22,000. I'll tell you more about that later.

I thought that would be quite a challenge, but when I got there, the office was in shambles. They held "court" in a very informal setting. The term "referee" was an unfortunate name for the acting judge, and it took us nine years to get it changed to bankruptcy judge. The general public didn't know the difference between a referee and a trustee.



A Young Judge W. Homer Drake, Jr. early in his judicial career, with photo of Judge Griffin B. Bell on the credenza in the back.
Photograph of W. Homer Drake, Jr.

Judge Mundy was holding court around a table in his office with no robe, no anything. There were no accoutrements of office of any kind, which was anathema to me, having been with

Judge Morgan and seeing what a court should be. So I set about doing what I could to change that, and because I had the support of Judge Morgan, Judge Bell, and several others, I was successful.

I began wearing a robe. You can image how the Bar in Atlanta viewed this young, 31-year-old trying to change things so drastically. However, they responded favorably very quickly. As a matter of fact, we had a courtroom assigned to us, such as it was, as well as what passed as a bench. Several of us recently-appointed referees throughout the country then set about making an effort to upgrade the bankruptcy court into what we thought it should be.

PROFESSOR LONGAN: Judge, I think this picture is from 1964. I'll point out Judge Bell on the credenza back there; is it not?

JUDGE DRAKE: That's exactly right.

PROFESSOR LONGAN: Now, this is the same time period you're talking about as you were trying to upgrade from the referee around the table.

JUDGE DRAKE: That's right. That picture is about 48 years old.

PROFESSOR SABBATH: Before Pat talks about all the work you did to upgrade the bankruptcy practice, I want to detour a little to your personal life. It was about this time that a very important event took place. You married a Miss Ruth Bridges from Dawson, Georgia.

JUDGE DRAKE: The most important event in my life.

PROFESSOR SABBATH: Tell us about how you met Ruth and about your courtship, just so we understand your personal life a little better.

JUDGE DRAKE: When I was at Mercer University, I knew who Ruth was, and she knew who I was. I was a senior in law

school, and she was a freshman in the undergraduate school. I was dating one of her sorority sisters, who was also in law school. Ruth and I did not formally meet, I don't think, but I went to some intramural basketball games and volleyball games, in which Ruth participated.

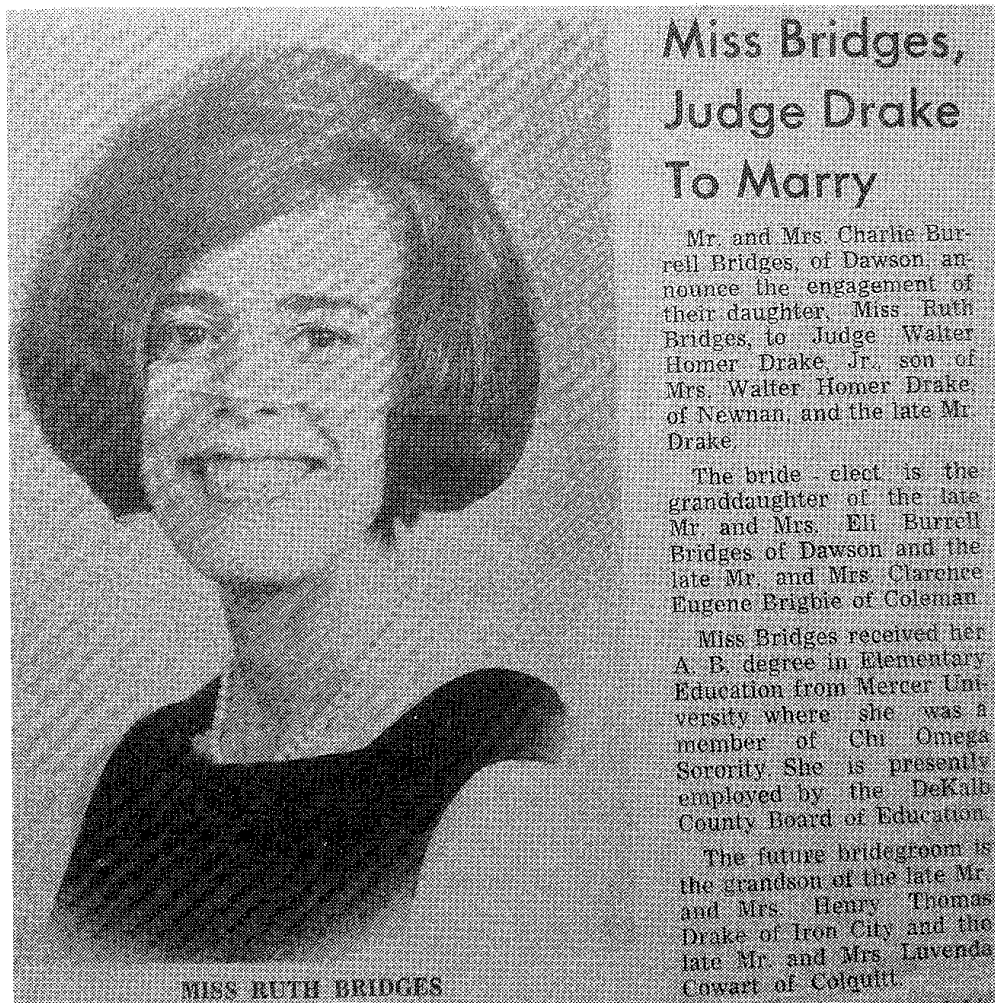
PROFESSOR SABBATH: She was a volleyball and basketball player?

JUDGE DRAKE: Yes. And then later on, oddly enough, Ruth was a fifth grade elementary school teacher in DeKalb County, but she did not like Atlanta that much and was looking for an opportunity to teach somewhere else. A friend of hers happened to tell Ruth one morning that she was going to Newnan, and that she should come with her to see if she liked the school system in Newnan. So Ruth came down to Newnan, happened to meet my father while she was there, and he offered her a job. Ruth said, "Well, Mr. Drake, that sounds mighty good, but I don't believe I can afford to give up the salary in Atlanta." My father said, "Oh, yes, we can pay you the same salary." So she accepted his offer.

Ruth moved to Newnan in 1962 or 1963, and we began dating off and on for the next five or six years. She finally went back to Atlanta. I was so involved in my career that I didn't devote enough time to this young lady, who eventually became my wife. When Ruth came back to Atlanta to teach, I already had an apartment in Atlanta at Cross Creek and was on the Bench. We dated rather seriously, got engaged, and married in 1969.

PROFESSOR LONGAN: And you made the paper again.

JUDGE DRAKE: It's the best thing that ever happened to me; for, you know, she is the love of my life. I can talk about Ruth all day and about our two wonderful boys we had together, Walter and Taylor, and our six grandchildren, one of whom is here today, Harrison, whom we love so much. But I'd better get off that subject, because if I talk about Ruth too much, I get rather emotional.



Engagement Announcement: Ruth Bridges and Walter Homer Drake, Jr. *Newspaper clipping courtesy of W. Homer Drake, Jr.*

PROFESSOR SABBATH: Your father played a role again by hiring her. Your father has been a real influence in a lot of different ways in the direction your life has taken.

JUDGE DRAKE: Oh, yes. He and my mother were quite influential in my life. You know, there is always a lot of love and advice behind any kind of success. That's a good example.

PROFESSOR SABBATH: In your marriage, for example.

JUDGE DRAKE: That is especially true in my marriage.

PROFESSOR LONGAN: Judge, the bankruptcy system was one thing when you started, and it's another thing today. That evolution and how that happened, particularly leading up to the Bankruptcy Reform Act, is a story that needs to be told; how that came about and particularly your role. I don't want you to be bashful about this. Tell us about how it got started that you and some of your colleagues on the Bench got interested in seeing these major changes, and what steps did you take to see it come about? I am going to ask you along the way about the obstacles you encountered because there were a number of them.

JUDGE DRAKE: This began in the late 1960s. Several of us had been appointed at about roughly the same time, about seven people, I would say, countrywide. I'll name them: Conrad Cyr from Maine, Joe Lee from Kentucky, Bob Morton from Kansas, Dan Cowans from California, Arthur Moller from Houston, John Copenhaver from West Virginia, and myself. A couple of others who had been with the system quite a while, Clive Bare from Knoxville, Tennessee, and later on Asa Herzog from New York City, also rendered valuable assistance.

All of us were experiencing difficulties, some of which I have mentioned to you, and we were determined to do what we could to upgrade the system and create a court that could get the job done to serve the public appropriately. Under the Bankruptcy Act of 1898, clarified further by the Chandler Act of 1938, which created the rehabilitation systems – Chapter 13 and others – the role of the bankruptcy judge was severely limited, not only by virtue of the unfortunate name “referee” in bankruptcy, but as to the question of jurisdiction as well. Summary jurisdiction was reserved for the bankruptcy court, and plenary for the district court, mainly.³ We set about to change that.

About that time, some of the leading bankruptcy lawyers in the country, principally members of the National Bankruptcy Conference Professors – lawyers in big metropolitan areas – professors like Frank Kennedy of Michigan, Vern Countryman of Harvard, Larry King of New York University, and Charles

Seligson, who was quite a moving force in this – convinced Congress to create a Bankruptcy Commission. This Commission was made up of nine members, three of whom were to be appointed by the President, two by the Chief Justice, two by the Majority Leader of the Senate and two by the Speaker of the House.

PROFESSOR LONGAN: Now, this was to study changing the system?

JUDGE DRAKE: Yes, the resolution that the Senate adopted, Senate Resolution 88, made clear that the Senate wanted the Judicial Conference of the United States – meaning the Chief Justice, Warren Burger, at the time – to appoint two referees in bankruptcy as his representatives on this Commission, because, obviously, we knew more about the subject than anybody else – certainly more than district judges or circuit judges. The House of Representatives, however, deleted this provision, bowing to the wishes of the Judicial Conference. The final version, Senate Joint Resolution 88, was enacted into law on July 24, 1970, as Public Law 91-354. This deletion by the House of the Senate's wishes provided Chief Justice Burger the opportunity to ignore the very people who knew the most about the bankruptcy system, and he appointed two district judges who felt as he did about upgrading the bankruptcy courts.

PROFESSOR LONGAN: It wasn't just any two district judges?

JUDGE DRAKE: No, it was not just any two. One was the Chairman of the Bankruptcy Committee of the Judicial Conference, Judge Edward Weinfeld of New York; the other one was Judge Hubert Will of Chicago.

Even though we had no representation on the Commission, we did the best we could through the National Association of Referees in Bankruptcy, in that we earnestly tried to cooperate with the Commission to upgrade the system. I testified before the Commission twice and tried to work within the framework of the judiciary, and not outside it, to have our voice heard. Well, our voice was not heard by Judge Weinfeld, who was chairman of the Bankruptcy Committee, or by many of the circuits and many

of the districts who made up the Article III bench in this country, most of whom did not want this elevated bankruptcy court.

PROFESSOR SABBATH: Why not? What was it?

JUDGE DRAKE: I think it was a turf thing. They thought that perhaps an elevated court might somehow jeopardize their prestige or position; so, we had extreme difficulty with some members of the Article III bench. We did not experience that opposition in Atlanta, or in some other major cities. The seven judges mentioned earlier had a great deal of latitude in their particular districts in trying to accomplish what the court should look like within the judiciary.

So, finally, Joe Lee from Kentucky, who was the principal drafter of the Judge's Bill, wrote Judge Weinfeld a letter seeking an audience with him to tell him that we needed representation on the Judicial Conference's Bankruptcy Committee. Judge Weinfeld told Judge Lee, "We're not going to have any referees on this Bankruptcy Committee of the Judicial Conference, and if you think you need to have some input into what's going on with the Commission, you can just go to Congress." Of course that's what we were waiting to hear. We never let Judge Weinfeld, Chief Justice Burger, or any of the others forget that invitation.

So from that point forward, we ignored the Judicial Conference and went directly to Congress. The Bankruptcy Commission reported its bill out in about 1973, a bill which recommended that most of the functions of the bankruptcy court be handled by an administrator to be appointed by the President. Access to the judicial process, meaning to a judge, was cast aside, for this administrator was to run the system, except for a few cases that would be tried by, say, about fifty district judges.

PROFESSOR LONGAN: To our ears today that sounds very strange.

JUDGE DRAKE: It was then.

PROFESSOR LONGAN: It's judicial power.

JUDGE DRAKE: Well, it's a question of access to the judicial process, which we wanted to maintain, of course. And so after that bill was offered, we decided to write our own bill, called the Judge's Bill. That was done over a period of months. We had meetings with several influential lawyers in the country who were experts in the field of bankruptcy law, most of whom were members of the National Bankruptcy Conference, as well as with some members of the Commission staff, like Charles Seligson, Frank Kennedy, and Vern Countryman. We met two or three times in my office in Atlanta to try to work out our differences and make the court what it should be. We made a great deal of progress with them, but not enough.

It was about this time that the Judicial Conference, through the efforts of Judge Weinfeld and Chief Justice Burger, decided that the recent raise for U.S. district judges to a salary of \$40,000, along with the corresponding raise for referees in bankruptcy to \$36,000, was not to be. They considered the \$36,000 entirely too close to their own salary. So they ignored the will of Congress and reduced referee's salaries to \$30,000 from \$36,000. You can imagine what effect that had. It was extremely frustrating to all of us. We lost \$6,000 per year in salary for a period of several years as a result of that action by the Judicial Conference.

This caused a redoubling of our efforts in Congress. About this time, the Committee on Bankruptcy Rules of the Judicial Conference came out with a new set of rules, which it does periodically still, among which this time was a change in the title, a matter which we had been working on for many years, from referee in bankruptcy to bankruptcy judge. Consequently, we immediately changed the name of our conference to the National Conference of Bankruptcy Judges.

I happened to be President of the National Conference at that time, and scheduled our annual convention in Atlanta, at which Judge Griffin Bell took a major part. Then-Governor of Georgia, Jimmy Carter, along with the then-Mayor of Atlanta, Maynard Jackson, came to speak at my invitation. The speaker at the concluding dinner was Senator Herman Talmadge. The Conference was held at the Hyatt-Regency in downtown Atlanta. We had more people there than we ever had before. It provided for us a wonderful opportunity, because Senator Talmadge had a great deal of influence in Congress, particularly with the

chairman of the Judiciary Committee, Senator Sam Ervin of North Carolina, who had just been appointed chairman of the Watergate Committee to investigate President Nixon. Charles Campbell, a friend and former aide to Senators Russell and Talmadge, made it possible for me to provide the proper input into Senator Talmadge's speech.

PROFESSOR LONGAN: Let's talk about that speech. What did you have the Senator say?

JUDGE DRAKE: Well, we did not want the administrator. That would have destroyed the system and would have decimated access to the judicial process.

PROFESSOR LONGAN: And that was the Commission recommendation?

JUDGE DRAKE: Yes, Senator Talmadge made it clear in the speech that he was totally against any additional federal bureaucracy that would spend untold millions of dollars at the taxpayer's expense.

PROFESSOR LONGAN: That's a line he had probably used before in other speeches.

JUDGE DRAKE: Many others. But it left no doubt that Senator Talmadge did not like the administrator concept because it was just an extension of another executive branch spending too much money. We got that across in his speech. Senator Talmadge was very kind to come to Atlanta to deliver that for us, and it helped tremendously.

PROFESSOR LONGAN: He actually did more than that. This is his letter to you about that speech. What did he do with the copy of the speech?

JUDGE DRAKE: He put it in the Congressional Record. Senator Talmadge did some other things for us. He got us an appointment – Judge Cyr and I – with Senator Ervin, who was chairman of the committee that had already held up the Federal

Rules of Evidence for several weeks. We certainly didn't want him holding up the bankruptcy rules I just mentioned to you, which changed the title to Bankruptcy Judge. Judge Cyr and I went to see Senator Ervin and had a very cordial meeting with him. He promised us that he was on our side. Senator Ervin told us that he thought very highly of his good friend, Senator Talmadge, so that helped greatly in getting done what we wanted done.

About that time, as a result of the continued frustration we were experiencing, we seemed to be making very little progress. Some of us became a little disheartened and frustrated, particularly with the loss of the money. So, along with many others, I elected to go into private practice. The law firm I selected in Atlanta did not have a bankruptcy practice, and they wanted one very badly. This law firm, Swift, Currie, McGhee and Hiers, was well thought of in Atlanta. It enjoyed a splendid reputation.

PROFESSOR LONGAN: I want us to talk about that, but I want to see if we can finish the story of how the Bankruptcy Act came to be.

JUDGE DRAKE: Yes, we'll do that, but this was an interruption in my judicial career. However, this interlude did not dissuade me from continuing to work to improve the bankruptcy system. As a matter of fact, it might have given me a little bit more leeway, being in private practice, for I continued to lecture at seminars all over the country for the next three years before coming back to the Bench. The Bankruptcy Act of 1978 was the result of all of the combined efforts that the Bankruptcy Commission, the bankruptcy judges, and the National Bankruptcy Conference extended in those eight or nine previous years, and I think it's the best piece of bankruptcy legislation ever passed in this country. For the most part, it still governs the conduct of bankruptcy proceedings, except for the structure itself, which the Supreme Court changed in 1982 in the *Marathon Pipeline* case.⁴

PROFESSOR LONGAN: Now, when the legislation was passed, was it mostly in the form of the Judge's Bill?

JUDGE DRAKE: It was a combination of the two. We prevailed in getting rid of the administrator concept, and it left everything in the control of the judiciary, where it belonged.

PROFESSOR LONGAN: The Judge's Bill, would that have made bankruptcy judges Article III judges?

JUDGE DRAKE: We would have preferred that result, but that was not going to fly at that time. The Commission wanted to make it Article III, except that they just wanted about 50 judges, and we had over 250 judges on the Bankruptcy Bench. Those of us who were officers of the conference, and were judges ourselves, knew that unless they made the incumbents Article III judges, the political process being what it is, and the fact that we were prohibited from engaging in politics once we were on the Bench, made it unlikely that many of our people would ever receive that Article III appointment and serve on the newly proposed Bankruptcy Bench.

So the final resolution was to provide incumbent bankruptcy judges a transition period of five years before the presidential appointments would begin. President Carter waited until the final day after Congress had passed it to sign the bill, and he did that over the strident and vehement opposition of the Chief Justice of the United States.

PROFESSOR LONGAN: Tell us that story.

JUDGE DRAKE: Chief Justice Burger even wrote the President a letter telling him that he should not sign this legislation because it would decimate the federal judiciary. The Chief Justice indicated that he might even go to the White House to see the President about it. Personally, I don't know whether or not he actually did so.

PROFESSOR LONGAN: Why would the Chief Justice of the United States want to go to the White House to discuss legislation?

JUDGE DRAKE: I have no idea, but he was not our friend and that's putting it mildly.

PROFESSOR SABBATH: But you did have friends.

JUDGE DRAKE: We did have friends, and we had friends where it counted.

PROFESSOR LONGAN: So it's on the President's desk, and the Chief Justice has said don't sign it.

JUDGE DRAKE: Stuart Eizenstat, who was one of his top advisors; Bob Lipshutz, Chief of Staff to the President, who very much wanted this legislation that we had written enacted; and Judge Griffin Bell, who was the Attorney General at this most appropriate time — all three urged the President to sign the bill, and he signed it on the last day. What it did was to make the appointment of bankruptcy judges a presidential appointment, but for a limited period — in other words, not during good behavior, not a life tenure appointment. Instead, appointments were for a period of fourteen years — a legislative court, in other words, instead of a constitutional court, and as I said, with a transition period of five years for bankruptcy judges then serving, after which time the judges would have to be appointed by the President.

But that didn't materialize, because in 1982, the U.S. Supreme Court issued their *Marathon Pipeline* decision, saying that there are certain things that a "legislative judge" (Article I judge) cannot do that have to be reserved for an Article III "constitutional judge," including matters having to do with state law, contract claims, etcetera. That did not help improve the bankruptcy process, so we all went back to the drawing board. At that time, the people involved in bankruptcy — the major practitioners, the professors, and the bankruptcy judges — urged very strongly the creation of an Article III Bench as being the only way to solve the problem. And it was. It still is. And until that happens, we will never have the system that we deserve in the bankruptcy court.

This was the first shot across the bow — and it should have alerted everybody that that's going to have to happen eventually — but, still, it was stymied by the Article III Bench, including the Supreme Court. So, what Congress did was to make the bankruptcy court a unit of the U.S. District Court, moving the

appointment, though, from the district court to the court of appeals where it should be, because, if you're going to have any appointment of bankruptcy judges within the Judiciary, it should come from the court of appeals and not from the district court Bench. However, because the bankruptcy court was now a unit of the district court, Congress thought that the equity power that bankruptcy courts must have in order to get the job done in handling the rights of creditors, debtors, and third parties – such equity power – should flow from the district court, which is an Article III court, to the bankruptcy court – a convoluted system to say the least.

PROFESSOR SABBATH: It's interesting to me how many Southern people were involved in all of this; Talmadge, Bell, Eizenstat, and you – the role that Georgia lawyers and Georgia people played in shaping our bankruptcy laws.

JUDGE DRAKE: That's right. President Jimmy Carter happened to be in office at that time, and his close aides, people like Stu Eizenstat and Bob Lipshutz, were very involved with the process. Lipshutz was a friend of Morris Macey, the most prominent bankruptcy lawyer in Atlanta for many years in the 1950s, 1960s, and 1970s.

PROFESSOR LONGAN: It just so happened that Judge Griffin Bell was Attorney General of the United States.

JUDGE DRAKE: That did not hurt either. As a matter of fact, it meant a great deal.

PROFESSOR SABBATH: Well, you now have been on the Bench for a while. You've seen good lawyers and bad lawyers. We have students here and others who might be interested in what you have seen in your many years. What has impressed you about lawyers and what things have you seen where you would say to a student, "Don't ever do that." Can you give advice to our students out there about good lawyering in your court and good lawyering in general?

JUDGE DRAKE: Judges are different, you know. As I've alluded to earlier, I run a very strict court and formal courtroom. I expect lawyers to be prepared. I will not accept excuses from unprepared attorneys. But I do have some advice to give to young lawyers about things that they should probably avoid. For example, "Your Honor, I couldn't be here last week because I had to be in another court." Now, you can imagine how that might sit with the judge – not very well.

PROFESSOR LONGAN: Or, "I had an important case to tend to."

JUDGE DRAKE: Exactly. Or, "Your Honor, this matter is very complicated," indicating that perhaps the judge is too dumb to understand what's really going on or else the lawyer doesn't know enough about it to explain it in the proper form. Or, "Well, you know, Judge, I'm not really a bankruptcy lawyer." He or she may say, "Your Honor, I'm just standing in for somebody else because I'm not a bankruptcy lawyer." Well, you don't get mulligans in my court. If you come to court and you represent a client, I expect you to be prepared.

PROFESSOR SABBATH: You're suggesting that you do not just dabble in bankruptcy law. If you are going to represent somebody in your court, you'd better understand what you are doing.

JUDGE DRAKE: Exactly. Or, "Judge, I'm sorry, my secretary just didn't put this on my calendar." Don't ever say that to a judge. Never blame your staff. It's your responsibility, not theirs. Or, "Judge, I'll be brief." He is going to be brief because he doesn't know enough about his case. Or, "You know, Judge, I'll get to that later." Can you imagine saying that to a judge who has just asked a question?

PROFESSOR LONGAN: We try to train them better than that at Mercer Law School.

JUDGE DRAKE: Obviously, the judge has asked this lawyer a question, interrupting his presentation, or her presentation,

and he doesn't want to receive a comment – "You know, I'll get to that later." The attorney needs to be smart enough to interrupt his presentation and address what the court has brought to his or her attention.

PROFESSOR SABBATH: Well, without naming names, like outstanding lawyers such as Mort Levine, your friend sitting out there, have you seen an improvement in the general level of competency of bankruptcy practitioners? Have you seen a real difference between lawyers back in the late 1970s and 1980s and now?

JUDGE DRAKE: Oh, there's a considerable difference. Of course we had some very good attorneys back then, but there were very few. Most of the law firms in major cities, particularly in Atlanta, did not practice bankruptcy law. They farmed out matters that came to their attention in this field of law to a very few firms.

PROFESSOR SABBATH: Why was that?

JUDGE DRAKE: I don't know why. It was something that they just didn't want to do, so they refrained from coming to the bankruptcy court. The practice in bankruptcy court at that time was limited to a few. Consequently, this led some of the bigger firms to call it a "bankruptcy ring," which was far from the truth, since these were very competent people, but bankruptcy practice just didn't attract the attention of the big firms. I saw that as a problem.

PROFESSOR LONGAN: But that's changed?

JUDGE DRAKE: That's changed. What changed it in Atlanta was the creation of the Southeastern Bankruptcy Law Institute. We began this effort in 1973, and at the outset, I wanted it all headquartered here at Mercer University.

PROFESSOR LONGAN: Before we get into that, I want to go back for just a minute. We were talking about the advice you had for young lawyers, and I wanted to make sure we got it all.

JUDGE DRAKE: Okay. Never say to a judge, "You know, with all due respect, Your Honor."

PROFESSOR LONGAN: It's ambiguous how much respect is due.

JUDGE DRAKE: Well, not necessarily that, but the attorney is obviously responding to a question asked by the judge indicating that the lawyer thinks the judge is incorrect in the statement he's just made. You don't say things like that. That phrase is unnecessary. You never say that anyway, it's superfluous, and it makes the judge a little upset, to say the least.

PROFESSOR LONGAN: I know that over the years you have taken some lawyers aside to try to help them out. Can you talk about what you do?

JUDGE DRAKE: I don't believe in embarrassing lawyers in the courtroom in front of their clients. I think that's unnecessary, but sometimes you can't avoid it. You might have to be a little strict in what you say to them, but if it's bad enough or serious enough, I ask the attorney to come back to chambers. In the privacy of my office, I talk to them about what I expect and how I want them to handle their cases in the future. I just think that is more professional and it avoids attorney/client problems.

PROFESSOR LONGAN: I assume it tends to work?

JUDGE DRAKE: I think it works. It's worked in my court.

PROFESSOR LONGAN: Can we ask you just one more thing about the evolution of the bankruptcy system because, and I am going to let Professor Sabbath really ask this question, but I understand there has been a relatively recent development that maybe bodes ill?

JUDGE DRAKE: This is just a further erosion of what I mentioned before.

PROFESSOR SABBATH: The *Stern v. Marshall* case,⁵ which the bankruptcy attorneys know about, and my students will know about when we talk about it, draws into question whether the bankruptcy courts can hear certain types of matters, even though they clearly are the best suited courts to hear them. The issue is, will we just need legislation? If it's not going to come, will there be litigation for years to come to try and sort out what this means?

JUDGE DRAKE: I think unless we have legislation, yes, there will be years of litigation.

PROFESSOR SABBATH: So who is going to push for the changes that are needed?

JUDGE DRAKE: The court is much more elevated now, as a result of our efforts, than it was then. There is no comparison. Right now we're in the red zone. Before, we were on our own ten-yard line, to use a football analogy. But the case of *Stern* against *Marshall* held that a bankruptcy judge, without life tenure, could not decide a case in which a debtor had filed an unrelated counterclaim against a creditor who had filed a proof of claim in the bankruptcy case, even though that counterclaim had been designated by Congress as a core proceeding under 28 U.S.C. § 157(b)(2)(C).

That presents quite a problem. It was a close 5-4 decision in the U.S. Supreme Court, with the Chief Justice writing the majority opinion, saying that it was a very limited circumstance, and that it should not disturb the overall jurisdiction of the court. But a lot of courts that have considered this matter have gone much further, and have raised the question as to whether or not the bankruptcy court, as presently constituted, can handle any number of things involving state law matters. Courts have split all over the country about this situation, many adopting local rules to define further the core/non-core dichotomy,⁶ and saying that if the district court believes that this matter is beyond the jurisdiction of the bankruptcy court, that court could consider the bankruptcy court's decision to constitute findings of fact and conclusions of law, but that is so inadequate. The public suffers as a result. You're talking about additional months of delay in

resolving cases, and it is further indication of the fact that the only way we're ever going to resolve this matter and get a tribunal in which all the rights of the public can be decided in one forum is through the enactment of Article III legislation. Efforts are now being made again in that area to see that that comes about. Whether that will be successful, I don't know. I have been through this so long, and have experienced some victories and some disappointing defeats in the process. If we can just get Congress's attention and focus on this, I don't think we are going to have the difficulties we have had in the past. As I mentioned a while ago, the court has been elevated now to such a level that we don't have that animosity between the bankruptcy court and the Article III Bench that once existed in many districts.

PROFESSOR LONGAN: But it's going to take legislation?

JUDGE DRAKE: It will take legislation; there's no question about that, or else one of these days the Supreme Court is going to consider this matter again, and they're going to erode further the jurisdiction of the bankruptcy court. Now, you have major organizations in the country that can address this problem. We had very little help back then, but now we have the American Bankruptcy Institute; the SBLI, of course; the American Bar Association, which I'm sure now would support it fully; the Commercial Law League of America; and many, many others. I think this is a propitious time to make an all-out effort to get the court we've needed for a long time.

PROFESSOR LONGAN: Judge, when we were talking about the evolution of the Bankruptcy Reform Act, you mentioned that, in the midst of all that, you left the Bench for a while. Do you want to talk about why you did that, and then, why you came back?

JUDGE DRAKE: After many years of trying to work out our problems with the judiciary and finally creating this new system, a few of us became very frustrated with the progress. As I mentioned earlier, there was a law firm in Atlanta that was very interested in beginning a bankruptcy practice, so I resigned from

the Bench to practice law with the firm of Swift, Currie, McGhee, and Hiers. My practice was quite successful, I must say. There were about five or six young lawyers working directly with me in creating this bankruptcy practice. I was fortunate enough to attract a lot of cases countrywide because I had been on the Bench almost twelve years and knew people all over the country. The practice of bankruptcy law in a big city is such that you're called out of town and you're on the road a lot, speaking here and there at seminars and appearing in various courts. While I enjoyed law practice and was successful at it, my boys were growing up at home without their father being present. I did not like that, for I wanted to be there with them, as my family means much more to me than money. So I had that opportunity when Ezra Cohen, whom I had recommended to the district judges as my successor when I left the Bench, wanted to return to private practice. That enabled me to come back to the Bench and spend time at home with Ruth and the boys, and watch the boys grow up. It was one of the best decisions I ever made, and I have never regretted it.

PROFESSOR LONGAN: They were quite young?

JUDGE DRAKE: Very young. I think Walter was about nine when I came back and Taylor about six. So I got to see them grow up in their formative years, and I would take nothing for that.

PROFESSOR LONGAN: Judge, I want to switch gears here to another facet of your life that's been central to your achievements and your contributions, and that's Mercer University. This goes back to your time as an undergraduate and continues obviously today. Can you tell us about why you're so passionate about this University?

JUDGE DRAKE: I always have been. When I came to Mercer in 1951 as an undergraduate student, it was just a great attraction for me. I loved it then and I've loved it ever since. Mercer fit me like a glove, and I participated in campus activities from the outset and was extremely happy. I have already alluded to the presence of a great faculty, but we had a student body that I

think was also first class. That initial attraction expanded later on when I graduated from Mercer with a continued interest in alumni affairs and in law school activities. I told you we had a lot of our law school alumni meetings in Judge Bell's conference room in the Old Post Office Building in Atlanta. My association with Mercer has been one of the joys of my life.

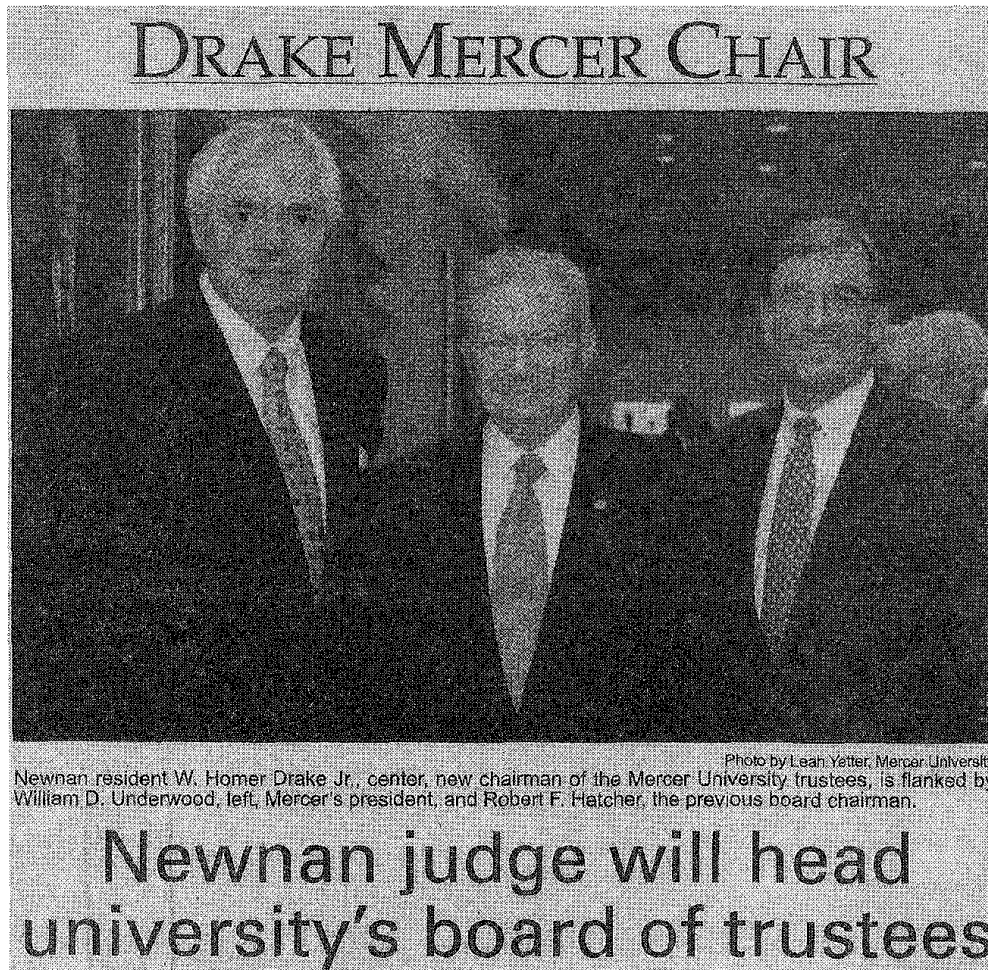
PROFESSOR LONGAN: You're wearing your Mercer orange tie.

JUDGE DRAKE: I always do. I've got about twenty.

PROFESSOR LONGAN: Can you talk about over that period of time how the University has changed?

JUDGE DRAKE: The University has gone from a small Baptist-oriented school when I first came here in 1951 to one of the great private universities in the country. We had only one professional school then – the law school. Now we have eleven different colleges and professional schools within the University. We have been really fortunate to have great leadership in the president's position of the University and in the position of dean of the law school, one of whom is sitting right here who served as dean for a couple of years, Mike Sabbath. Also, we have had very distinguished and able professors. Dr. Kirby Godsey was an outstanding president of the University for twenty-seven years and did a great deal to improve Mercer in so many areas. Bill Underwood, his successor, has been here for about seven years now, and is a great visionary educator. I doubt that you could find a finer college president in the United States. I am extremely impressed with him and enjoy working with him on the Board of Trustees to fulfill the vision he has for Mercer, which is that Mercer in about five years from now, will be the equal of any private university anywhere — in the class of Duke, Vanderbilt, Emory, and Tulane here in the Southeast. These students are very fortunate in having the opportunity to go to Mercer at this particular time.

PROFESSOR LONGAN: You served as chairman of the Board of Trustees?



W. Homer Drake, Jr., Chairman, Mercer University Board of Trustees. L-R: President William D. Underwood, Drake, and Former Chairman Robert F. Hatcher. *Clipping courtesy of W. Homer Drake Jr.*

JUDGE DRAKE: Yes, recently, for two years. I have been a member of the Board of Trustees for quite a while and just cannot tell you how much I love this University. We're enjoying a lot of different things that are happening right now. One of my loves and goals has been the resumption of football.

PROFESSOR LONGAN: I was going to ask you about that. We happen to have one of your football helmets.

JUDGE DRAKE: I have a Mercer "shrine" in my office, as you know.

PROFESSOR LONGAN: Can you tell us about the importance you see for the athletic program at Mercer, in particular for the return of football.

JUDGE DRAKE: Did you know that the first football game in this state was played between Mercer University and the University of Georgia in 1892? We lost that game. I won't mention the score.⁷ But the second game played in this state was between Mercer and Georgia Tech here in Macon. We won that game twelve to six, and throughout the fifty years we played football, we have defeated schools like Florida, Auburn, Georgia Tech, and many others. We have never defeated the University of Georgia in football for some reason, although we have come close many times.

Now, this resumption of football – and I stress the word “resumption,” because it is not the beginning of football, for it began here in 1892 – we are going to play on a different level this time and stress the student-athlete approach, the non-scholarship approach – young men who enjoyed playing football in high school, who desire to continue their love of the game in a college atmosphere, in what I might say will be in some of the finest facilities you will find anywhere in the country. These facilities are currently under construction on the Mercer campus.

PROFESSOR LONGAN: Which I will say because you won't, include the Homer and Ruth Drake Field House.

JUDGE DRAKE: That's right. We are very pleased about that and glad to have had a part in resuming football here because I think it has probably had more to do with the resurgence of the University recently than anything else. It's a great morale builder. Football is still king in the Southeast, and our response to resuming football has already been unbelievable, as some 3,000 season tickets have been sold, and they haven't even been released to the public yet for sale. The stadium is being increased to over 10,000 seats, and we are in a football-only league, called the Pioneer League. The schools within this league give scholarships in other sports, but not in football. So we are in pretty good company with schools like Davidson, Butler, Drake, Valparaiso, the University of San Diego, the

University of Dayton, Stetson, and the University of Jacksonville. And we're playing Carnegie-Mellon from Philadelphia here this next year. So we're in good company. We are looking forward to it, and it will be here before you know it.

PROFESSOR SABBATH: In addition to sports you have always had an interest in academics. You have written a number of scholarly articles and books and you've been an adjunct teacher at Georgia and Emory. In fact, you were my bankruptcy professor in 1973.

JUDGE DRAKE: Can you believe that? I recall that very well. The highest, and he won't say this either, but I will tell you the highest grade in the room of about 90-100 students was made by Professor Sabbath.

PROFESSOR SABBATH: You brought guests with you whom I didn't know at the time, people like Mort Levine and Gus Small. They were kind of "all stars," a fact that I realized when I got older and practiced law. You really did surround yourself with a group of extraordinary people who helped to teach us.

JUDGE DRAKE: I enjoyed the academic side of the law. I almost became a professor instead of a lawyer, as I came from an academic family, so, there's no reason why I should not have some love for academics. I enjoyed teaching at Emory and Georgia on an adjunct basis, all of this while I was on the Bench. But teaching at Emory at eight o'clock in the morning and getting to Emory in time for class from Newnan was a chore.

PROFESSOR SABBATH: It was hard for me to get up and be there at 8:00 in the morning and I lived right down the street.

JUDGE DRAKE: Lindsay Cowan was the dean at Georgia's law school in the 1970s, and he asked me to teach the Bankruptcy Law course. I arranged that around football weekends in Athens, much to the chagrin of the students. I had classes on Friday nights and Saturday mornings, so you can imagine how they loved that. But I enjoyed that teaching experience.

PROFESSOR SABBATH: And, you know, the SBLI, the Southeastern Bankruptcy Law Institute, continues to educate attorneys who practice in the area. Tell us how that came about and what you hoped to achieve when you started that organization.

JUDGE DRAKE: I've already mentioned to you the limited nature of bankruptcy practice when I took the Bench in Atlanta. There were just a few very good lawyers in bankruptcy practice. I could not understand why the bigger firms were not interested, particularly since so much money was generated in bankruptcy practice with all the big cases that were filed here, and there were some big ones. So I developed the idea that it would be a wonderful thing to find a way to involve the bigger firms, as well as the smaller firms, in bankruptcy law.

Originally, my thought was that Mercer, or perhaps Emory, should be involved. Ray Patterson, who was my classmate at Mercer, happened to be the dean at Emory at the time. He later went on to the University of Georgia as a professor. I thought he was going to be receptive to my idea, but something happened there that caused this not to work out. Ed Wilson was the dean at Mercer and was receptive as well. But there was a problem with Dr. Harris, Mercer's President. I don't know what the problem was.

PROFESSOR SABBATH: I remember Dr. Harris.

JUDGE DRAKE: So several of us in Atlanta got together and decided that we would just form our own corporation. We had it incorporated in Fulton County and called it the Southeastern Bankruptcy Law Institute, which was formed to educate members of the Bar in bankruptcy matters. In doing so, we brought professors and judges from all over the country to help us in that effort – many of the names I've already mentioned who helped achieve the passage of the Bankruptcy Reform Act of 1978 – professors like Frank Kennedy, Vern Countryman; judges like Conrad Cyr, Arthur Moeller, Joe Lee; and many, many others. So we had an all-star faculty at our earlier seminars.

We then proceeded to select the officers and members of the Board of Directors. There were about fifteen, mostly from

larger firms, some from smaller firms. We tried to achieve a balance. One of the rules that we promulgated, and we still adhere to, is that even though we have excellent lawyers here in Atlanta, along with as fine a Bankruptcy Bench as exists in the country, none of our lawyers or judges could serve as members of the faculty at any SBLI seminar. This rule has served us so well through the years, as it has avoided all kinds of jealousies. All participants have come from outside, and since we have plenty of well qualified, willing panelists from places other than Atlanta, it was not necessary to have any local involvement.

It is hard to put into words what this Institute has meant to bankruptcy practice. The SBLI has contributed well over a million dollars – I would say close to a million and five – to law schools in Georgia and in the Southeast since its inception, and it continues to do so. We don't have the attendance we once had in the early 1980s, when we had some twelve to fourteen hundred lawyers and judges from all over the country here for a two and a half-day period for the SBLI seminar. Now it's about five or six hundred, but it is still the largest and most prestigious bankruptcy seminar in the United States. To the young people here who are interested in bankruptcy law, I would suggest that you always make it a point to attend the SBLI in Atlanta, which is held in the spring of every year.

PROFESSOR LONGAN: Now, I understand one of the things the SBLI has done, particularly for Mercer, is to help create the Drake Chair.

JUDGE DRAKE: Guess who holds that chair?

PROFESSOR LONGAN: Professor Sabbath became the first Drake Professor and now holds the Chair. We have the Drake Chair right here.

PROFESSOR SABBATH: We should point out that in addition to your generosity towards Mercer University, you have helped a number of schools in the Southeast. I think in addition to the chair here we have a library collection that is largely due to the SBLI.



Judge W. Homer Drake, Jr. with Mercer Law School Professor Michael D. Sabbath, the holder of the SBLI/Homer Drake Chair in Bankruptcy Law. *Photograph courtesy of W. Homer Drake, Jr.*

JUDGE DRAKE: Which is right here in the library of the Mercer Law School.

PROFESSOR SABBATH: Tell me the future. What do you see SBLI doing in the years ahead?

JUDGE DRAKE: Well, first, continuing to educate the members of the bankruptcy community. I think that is an extremely important thing to do. As I have said, we still have the most prestigious and well-attended bankruptcy seminar in the United States. They come from all over the country. What I also envision is involving the SBLI in helping to educate Congress about the necessity of alleviating the problems we face with this truncated and bifurcated bankruptcy system that we have now,

creating an Article III court at last. The SBLI is in the education business and Congress can use some educating in that regard.

PROFESSOR LONGAN: Judge, we've talked a lot about law, bankruptcy, and Mercer University. I want to turn our attention back to you and your personal history. In teaching the current generation of law students, I'll tell you one of the biggest concerns they have is how are they going to balance their professional demands with a private life and with family and with community? Somehow you have done that. You have had a full career and you have had a wonderful family life, and you've devoted yourself to your community and your church. How do you do it?

JUDGE DRAKE: I have done the best I can, and I had some help along the way from somebody named Ruth. You cannot imagine the help she has been to me and to my sons. But insofar as these students are concerned, there's a little book that was written by Arthur Harris called *Letters to a Young Lawyer*, one which I would recommend that each of you get a copy of and read.⁸ I do not know of any better advice that you can obtain than the advice you will find in this little book. It contains letters that a lawyer wrote to his son, who had just graduated from law school. It was originally published in 1912. I gave it to Taylor when he graduated, and its content is still as vibrant and applicable today as it was then; so, that's one of the suggestions I would have.

Of course, there is no substitute for hard work and commitment, and always remember that rewards come to those who are willing to pay the price; there's always a price in everything you undertake, and you have to remember that and decide for yourself whether the price is worth the prize, worth the goal. Dedication, commitment, and perseverance are attributes that I think you should always keep foremost in your mind, along with tolerance of others' beliefs, a willingness to get along with your fellow lawyers, and respect for the profession you have chosen.

PROFESSOR LONGAN: I want to direct your attention to the last picture. Who are those people?

JUDGE DRAKE: Those are six of my favorite people, my grandchildren. That picture was made when the stadium groundbreaking took place last year. We walked up to the University Center together and took that picture around the bear. I'm very proud of that picture.

PROFESSOR LONGAN: It looks like you're sending them in the right direction, a whole other generation of bears.

JUDGE DRAKE: That's right. I hope they all will go to Mercer.

PROFESSOR LONGAN: Judge, at this point what I would like to do is give the students, or really anybody in the audience, a chance to ask you any questions before we wrap up.

AUDIENCE QUESTION: First of all, I would like to say thank you for letting us sit in and listen to a little bit of your history. It has been a great privilege. I was wondering if you had any advice for the students who want to get into the bankruptcy practice. Besides getting involved with the SBLI, besides taking Professor Sabbath's class, what can we do to make ourselves more competitive when entering the job market?

JUDGE DRAKE: Good grades are a good start. I don't know of any better way to become a successful bankruptcy practitioner than to secure a clerkship with one of the bankruptcy judges upon graduation. That enables you to see the law up close and to observe what the judges expect. There you can meet all kinds of lawyers in the process, decide with whom you may want to practice; so, that's one thing that I would suggest that you pursue. And among other things, when you get out in practice, don't be too eager to leave what you're doing. I mean don't change jobs too many times. That does not look good on a resume. If you're seriously considering seeking employment elsewhere, just sit down and think about it. Be patient, and then you'll make the right decision, I'm sure.

PROFESSOR SABBATH: Judge, how about working for a trustee in a trustee's office? Is that good preparation?

JUDGE DRAKE: That would be another option, working for a Chapter 7 trustee or a Chapter 13 trustee. I don't think it's as valuable as a clerkship, but those are difficult to obtain, for usually only the better students are selected by judges.

AUDIENCE QUESTION: We have talked about the evolution of bankruptcy proceedings, and part of that I think is the evolution of technology, especially the use of the Internet. How has that changed bankruptcy law, and how do you see that continuing in the future?

JUDGE DRAKE: You may be talking to the wrong person about the Internet and all these new technical developments. I know all of the computer equipment is in my courtroom, but I don't use those very much. I am the old-fashioned kind of judge who believes in direct contact with lawyers and witnesses. I want to see their faces. I don't want to look at some computer. A lot of judges use those and are very adept at doing so, but I am not one of them.

PROFESSOR LONGAN: Other questions?

JUDGE DRAKE: Well, thank you for coming. I appreciate your attendance.

PROFESSOR LONGAN: Thank you, Judge.

(INTERVIEW CONCLUDED)



The Proud Grandfather and His Next Generation of Mercer Bears.
Photograph courtesy of W. Homer Drake, Jr.

ENDNOTES

1. The transcript of Judge Drake's interview has been edited in some minor respects for clarity.

2. *Butts v. Curtis Publ'g Co.*, 242 F. Supp. 390 (N.D. Ga. 1964).

3. Before the 1978 Bankruptcy Code (the "Code") was enacted to replace the Bankruptcy Act of 1898 (the "Act"), bankruptcy courts were of limited jurisdiction. Pre-code judges had "summary" jurisdiction over matters of administration within the bankruptcy case. Those types of matters were generally: the bankruptcy petition, claims issues and allowance, and issues regarding the property of the bankruptcy estate. The bankruptcy court did not have jurisdiction to hear "plenary" actions, which dealt with recoveries other than those resulting from disputes over assets in actual or constructive possession of the court during bankruptcy procedures.

4. *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 102 S. Ct. 2858 (1982). This case called into question the bankruptcy court's jurisdiction. The Supreme Court considered the question of whether bankruptcy judges serving under the Bankruptcy Act of 1978, who also lacked tenure and the salary guarantees of Article III, could constitutionally be vested with jurisdiction to decide a state law contract claim against an entity that was not otherwise part of the bankruptcy proceedings. The Supreme Court's decision recognized that there was a "public rights" exception that would allow a "legislative court" to decide; however, the Court ruled that adjudication of a state law claim was not a matter of public right and thus the bankruptcy court did not have jurisdiction to hear the contract claim. As a result of the *Marathon* ruling, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 to restore the authority exercised under the 1978 Act.

5. *Stern v. Marshall*, 131 S. Ct. 2594 (2011). The Supreme Court again addressed the bankruptcy court's jurisdiction. The Court held in a 5-4 ruling that a bankruptcy court lacked constitutional authority to finally adjudicate a debtor's state law counterclaim against a creditor, even if the creditor had filed a claim in the bankruptcy case. The parties, as well as the subject of the opinion, have become the most discussed Supreme Court case in recent times. Vickie Lynn Marshall, also known as Anna Nicole Smith, was on one side with E. Pierce Marshall; the son of Vickie's deceased husband, Texas multi-millionaire, J. Howard Marshall, III, was on the other side. Vickie sued Pierce Marshall in a state court alleging that he fraudulently induced his father

to sign a living trust that excluded Vickie. After Howard Marshall passed away, Vickie filed for bankruptcy, and Pierce filed a complaint for defamation. Vickie answered the complaint and filed a counterclaim for tortious interference. The bankruptcy court granted Vickie summary judgment and awarded her more than four hundred million dollars on her counterclaim. Pierce raised the issue that the court did not have jurisdiction because it was not a core proceeding as outlined in 28 U.S.C. § 157(b)(2)(C). The district court disagreed and determined it was required to treat the bankruptcy court's findings as a proposed rather than as a final judgment. The court of appeals ruled that the counterclaim was not a core proceeding, and the Supreme Court granted certiorari to hear the case. The Supreme Court held that the counterclaim was a core proceeding under 28 U.S.C. § 157(b)(2)(C), but that Congress had exceeded its own constitutional authority in passing the statute. The Court returned to the theme and ruling in *Marathon*, holding that the bankruptcy court's ruling exceeded the bounds of Article III of the U.S. Constitution.

6. Whether a matter is defined as "core proceeding" is a determination made by the bankruptcy judge pursuant to 28 U.S.C. § 157(b)(3). If the matter is a "core" matter, the bankruptcy court may issue a final order subject to appeal. If it is a "non-core" matter, the bankruptcy court may issue only proposed findings of fact and proposed conclusions of law to the district court. Sixteen core proceedings are listed in 28 U.S.C. § 157(b)(2). These are generally intended as matters concerning the administration of the bankruptcy estate.

7. This game is commemorated on the University of Georgia campus with a State of Georgia Historical marker at Herty Field, which reads in part:

This marker overlooks the site of the first intercollegiate football game played in the state of Georgia and one of the first to be played in the deep south. On January 30, 1892 Georgia defeated Mercer College 50 to 0 on the stubbly grounds that served as an athletic field. Several hundred spectators watched from the sidelines, some of them spilling out on the playing ground. Students living in New College close by the field had a splendid view of the action from their dormitory windows.

<http://www.lat34north.com/historicmarkers/MarkerDetail.cfm?KeyID=02917&MarkerTitle=Herty%20Field>.

8. ARTHUR MERTON HARRIS, *LETTERS TO A YOUNG LAWYER* (1912).