

# REFLECTIONS ON THE TEXAS LAWYER'S CREED

BY

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JUSTICE EUGENE A. COOK, AND JUDGE LAMAR MCCORKLE

*The Texas Bar Journal asked four of the principals involved in the drafting of the Texas Lawyer's Creed to offer their personal reflections on its 20th anniversary. The authors have collaborated on an article, available at [www.texasbar.com/tbj](http://www.texasbar.com/tbj), which details judicial references to the Creed. At the time the magazine went to press, the authors were preparing a one-hour ethics CLE webcast that will be available through [www.texasbarcle.com](http://www.texasbarcle.com).*

## HAGANS: *We Can Do Better*

I am proud to be a lawyer. I am proud to have been part of the group of people who came together to generate the Texas Lawyer's Creed. Do I think the Creed has been beneficial? Yes, I do. Do I think that the Creed was the final and complete answer to the problem? Of course not.

The atmosphere in which the Supreme Court of Texas Committee on Professionalism began its work was charged with fear that unprofessional conduct had reached epidemic stage. It should not be forgotten, however, that respected members of the bar were concerned that the Committee's work would simply become a tool to stifle creativity and improperly sterilize the litigation process.

I was honored when Justice Eugene Cook called me, a plaintiffs' lawyer, and asked if I would serve as vice chair of the Committee alongside Blackie Holmes, a defense lawyer. I continue to feel honored that I had the opportunity to participate with the many outstanding members of the bar who participated in this effort. The Committee represented a cross-section of the bar in terms of geography and the types of law members practiced.

I remember the sessions in which the drafting subcommittee met to discuss both general topics and very specific details of how things should be expressed. The subcommittee included U.S. District Judge Norman Black, State District Judge Lamar McCorkle, and attorneys David Keltner, Blackie Holmes, and myself. Justice Cook attended and actively participated in the meetings. Although the group was amiable and professional, there were vigorous discussions about what to include. One principle permeated the process: we agreed to seek the best possible product, not just what was acceptable to a majority of the Committee.

The subcommittee unanimously approved the final product before it was submitted to the entire Professionalism Committee.

Over the last 20 years, I have often been reminded that professionalism is more a journey than a destination. It is more a process than a goal or standard. I have also noted that the term *professionalism* is easier to define than to apply. I once commented to a CLE audience that many lawyers think of professionalism as follows:

Professionalism is the way I conduct myself and treat others. Unprofessional conduct is the way others practice and treat me. Few lawyers perceive their own conduct, however inappropriate it may be objectively judged, as unprofessional.

There are many things that affect the way in which we conduct ourselves — the desire to attract or

keep clients, the stakes involved, a society that embraces the philosophy that the "ends justify the means," a changing judiciary, and a social and political atmosphere in which lawyers generally — and trial lawyers specifically — are targets of rhetorical attack. All of these things contribute to the way in which lawyers conduct themselves.

One specific area of concern is the increasing politicization of the judiciary and the judicial process. The judiciary, as one of the three branches of government, has always been a part of the political process. Whether judges are appointed or elected, the selection process seems to focus more on their political affiliation and ideology than on their judicial qualifications. I remember a campaign by a civil district judge seeking re-election in which he stressed his strong belief in the death penalty. While this may have been politically attractive, it had nothing to do with the cases that came before him on his civil docket.

During the last 20 years, technology has had an impact on professionalism — largely, in my opinion, a negative impact. One of culprits is the increased use of email as the primary method of communication. Perhaps I am just old-fashioned. However, I frequently see examples of mean, nasty, and offensive statements in emails that would never be uttered in person. The challenge to be professional is a difficult but worthy goal.

One way that we can all improve the process is to respect the process. Today, the entire judicial process is under attack. When



judges or juries rule for you, they are generally viewed as brilliant and thoughtful. When they rule against you, they are often vilified as stupid and corrupt. As professionals, we can do better.

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### HOLMES: *Professionalism from Within*

It does not matter the year or era, the core principles of professionalism remain the same. Civility and credibility are paramount. True professionalism cannot be legislated. Ethical conduct can be codified, but professionalism must come from within the lawyer. A lawyer can be ethical but not professional. If we want professionalism to be a reality, then we must be willing to make a commitment that it will not only be reflected in our daily conduct but will be enshrined in our hearts as well. It seems to me a lawyer should and must want to be civil and credible in dealing with those who are a part of the practice of law. Why not?

When I began practicing law in 1959, it was considerably different. The level of technology was not as advanced. I dictated to a secretary across my desk, and she used carbon paper to make duplicate copies. Reproduction of documents was accomplished by wet and sticky cylinders, which smelled and took forever to dry. Even the switchboard operator at my firm used the old "hello girl" phone banks that required the use of a cord to make a connection on incoming or outgoing telephone calls. Briefing a legal topic was really an art, and the use of the Blue Book and Shepardizing resulted in cases found that were not always discovered by your adversary. Today's technology makes it a lot easier to spit out generic discovery forms and reams of paperwork. The paper battle is horrendous, and we are all guilty of it. I truly believe if your first motion to compel discovery contains a demand for sanctions, then counsel should be required to write the motion in longhand. Technology has to some extent affected our civility to one another in what should be an admired profession.

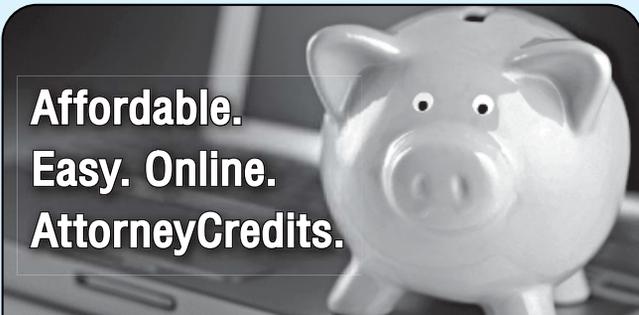
Not too long ago, the scheduling of a deposition was done by agreement through a telephone call or written inquiry setting forth realistic dates for taking the deposition, not only as to the day but the time in the future. Now, many times the first knowledge that a deposition is scheduled is the notice and *duces tecum* you receive, and so often the dates are not convenient. As a result, telephone calls are necessitated that should have been made in the first place, or the preparation of a motion to quash is required, all of which results in unnecessary time and expense to the client.

The Texas Lawyer's Creed and guidelines for professional courtesy are attempts to put the word "fun" back into the practice, advance the administration of justice, and elevate the legal system to the exalted plateau it deserves. Some believe that through obnoxious, belligerent, and discourteous behavior, the adversary will be intimidated and provoked into similar conduct or wilt under the attack. The opposite should be true, for if you stand by the traditions of courtesy and civility, the adversary might truly see the futility in those efforts and raise such

conduct to your level rather than your stooping to the low road.

It is hard to say what the causes are for the situation in which we find ourselves. Is it increased salaries to associates who feel the need to worship at the altar of the billable hour resulting in unnecessary paperwork and fudging on timesheet entries, or competition for legal representation, or lack of true implementation of a mentor system, or just downright erosion in the character of society? Rena Pederson, writing in the *Dallas Morning News*, observed that the code of personal behavior established by the 110 Rules of Civility authored in 1745 by George Washington when he was 14 years of age are relevant today. In making this observation, she stated, "Since the social revolution of the 1960s, the trend has been to be non-judgmental. Which meant we leveled down. Everything became relative. Any new way was considered better than the old way. Do your own thing replaced do the right thing. Somewhere along the way we forgot that just because we have the freedom to act to extremes doesn't mean we should." Whatever the reason, it is up to us to right the wrong.

The creeds and guidelines that many have worked very hard to prepare will only change the lack of professionalism if a full, good-faith effort is made by all of us to read, abide by, and communicate to each other these guidelines. While the finger can be pointed at many, it is incumbent that we start with ourselves as members of the practicing bar, to work together in an



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attempt to change the problem. The time has come where we, as members of a prestigious profession, start behaving as such, especially among ourselves. Only by unified effort within the legal community will the erosion of professionalism be reversed. The guidelines and creeds are a magnificent start to the solution of the problems within the legal community.

We are a profession and must never forget it. Each day we must renew our commitment to those principles that make the practice of law such a noble endeavor.

*James H. "Blackie" Holmes III is a partner in Burford & Ryburn, L.L.P. in Dallas.*

### COOK: *The Need for Heroes*

By 1988, lack of professionalism had reached epidemic proportions. Attending an American Bar Association program in Chicago, I learned how widespread lack of civility was in the practice of law. I wanted to use the influence of the Court to address the problem.

After discussion, the Court established an Advisory Committee on Professionalism. One of the goals was to represent all aspects of the legal profession. The Court appointed plaintiff and defense lawyers, law school deans and professors, federal and state judges, sole practitioners, and attorneys from medium and large firms. The committee devoted its work to how we could improve the practice of law. Our ancestors would have been proud of the committee and how it handled its task. The lawyers faced the problems with a spirit of common calling.

For many years, I was a volunteer in Special Olympics Texas. One of our oft-repeated mottos is "Together we all win." I appointed Fred Hagans and Blackie Holmes as vice chairs and I served as overall chair. There was no clash of egos. Committee members were able to focus on the common good. Committee members included Judge Norman W. Black, David Burrow, Tom H. Davis, Judge Lamar McCorkle, Dean Frank Newton, Dean Charles Barrow, Bob Sheehy, and Jim Branton. One of my law clerks, Warren Harris, assisted us.

Is the problem cured? No, but we have made noticeable progress. Our long history shows that we will not surrender our proud heritage.

In 1997, while driving to the office, I heard a radio program that was bashing lawyers. I thought, "Why doesn't someone talk about all the good lawyers have done?" I called the ABA and asked to be connected with the department that would have such information. No such luck. I then called the State Bar of Texas and a number of legal organizations. Still no luck. I decided to research and write about my findings. The result, "I'm proud to be a lawyer," was published as an op-ed in the *Houston Chronicle*.

I need heroes. I always have. They give me strength and hope and courage. Many lawyers have been my heroes. And for this I am grateful.

Lawyer bashing is a national pastime, the theme of regular articles and letters to editors, the punch line to countless jokes, and a surefire ratings booster for talk-show hosts.

Despite these insults, I am proud to be a lawyer. I know

what many members of the public apparently do not — that history is filled with generations of lawyers who, like those that Shakespeare's Dick the Butcher would kill, have stood against tyranny to build a free society.

Of the 56 men who signed the Declaration of Independence, 25 were lawyers. Of the 55 delegates to the Constitutional Convention in Philadelphia who hammered out the Constitution, 31 were lawyers. More than half of the nation's presidents have been lawyers. Most Americans know that Abraham Lincoln, president during the Civil War, was a lawyer. But many do not know that Woodrow Wilson, who led us through World War I, was a lawyer or that Franklin Delano Roosevelt, president during most of World War II, was also a lawyer.

Lawyers were no less active as leaders during other challenging periods in American history. Who can remain untouched by the work and words of Barbara Jordan during Watergate: "My faith in our Constitution is whole. It is complete. It is total."

Jordan was not the first Texas lawyer to defend the cause of freedom. Six stubborn lawyers fortified themselves with 180 other souls to defend the Alamo against impossible odds. William Barrett Travis, commander of the Alamo, was only 26 years old when he wrote an open letter to the people of Texas and all Americans, promising that he would "never surrender or retreat." What most people do not know is that Travis had a law practice in Anahuac and, later, in San Felipe, before he sacrificed his life at the Alamo.

The colorful James Butler Bonham was 29 years old when he died at the Alamo. Long before he traveled there, he achieved fame as a spirited lawyer in South Carolina. Those who believe that lawyers never act for anything but profit should read the letter to Gen. Sam Houston in which Bonham volunteered his services as a soldier: "Permit me through you to volunteer my services in the present struggle of Texas, without condition, I shall receive nothing, either in the form of services, pay, or land, or rations."

The tradition of lawyers' courage and commitment to society continues in modern times. Disreputable lawyers are justly criticized. The public, as well as the legal profession, is well served by their exposure. But they are only a small part of the story of the legal tradition. That tradition has been built by the men of the Constitutional Convention, our nation's presidents and other leaders, and by the people laboring within the legal profession today. For every charlatan, we can find a dozen honorable lawyers to offset the jokes, the negative reports, and the dishonorable few.

As Americans and Texans, we have only to look back through our own history to find portraits of honorable men and women who have served society as lawyers. We have only to picture the Alamo and then, 46 days later, the Battle of San Jacinto and the commander who led Texas to victory in the war's decisive battle. He was Sam Houston, a courageous man, a hero committed to building a strong and free society, a capable leader. But first, he was a lawyer.

*Eugene A. Cook was a justice on the Supreme Court of Texas from 1988 to 1993.*

### McCORKLE: *Understanding Our Calling*

Two decades ago, we were engaged in intense professional debate and self-reflection about just how lawyers could properly pursue justice and the best interests of their clients by means considered by many to be unjust, unfair, unreasonable, or uncivil. It was a time when poor and sometimes malicious conduct by one attorney frequently prompted rationalization and relativism to justify equally repellant reprisals by another. Worse, perhaps, was the troubling perspective that a behavior was acceptable “because everyone is doing it.” During this time, there was much discussion about the erosion of public trust and confidence in the courts and the legal profession, and passionate discourse about what exactly constituted appropriate professional behavior. From this process of self-scrutiny came the Creed of Professionalism.

Our bench and bar were fortunate to have the leadership skills of Texas Supreme Court Justice Eugene A. Cook as chair of the Supreme Court committee dedicated to the task of facilitating the spirited exchange of ideas from representatives of all facets of our profession. As a member of the Drafting Subcommittee, I remember researching lawyer licenses, oaths, and codes of conduct in use across the country, as well as professional codes of conduct found in historical writings. For me, this broad view revealed fundamental and ageless truths about what it means to be called to a profession. The Drafting Subcommittee’s discussions were wide-ranging, historical, philosophical, pragmatic, and lively.

The full committee, as well as the entire Texas Supreme Court and Court of Criminal Appeals, considered the Drafting Subcommittee’s working draft. Throughout that review process, there was surprisingly little editorial change. The almost immediate consensus reached may have been attributable to the balance of the committee. More likely, however, was that the Creed gave voice to the cornerstones and timeless principles of justice and fairness of our profession. It articulated those principles in the context of contemporary practice.

The result of this collaborative effort was a unique creed. In my view, it is especially noteworthy for four aspects. The Creed of Professionalism was the first creed that:

1. Called upon attorneys to review the intent and terms of the creed with those they would represent. Each attorney proactively become an educator of all those unfamiliar with our duties and obligations as well as concepts of justice and of appropriate acts of professionalism;
2. Mixed the cornerstone principles of justice with specific acts and with the use of “I,” thereby encouraging a personal commitment by the reader;
3. Was aspirational in concept, simply crafted, and, unlike many codes, its design allowed it to serve as a simple, reflective reminder acting much as a written mentor on appropriate goals for our profession;
4. Recognized specific acts as absolute standards of accepted practice, thereby serving as a compass for those seeking guidance.

I share the view that the Creed continues to require support from the bench and bar to reinforce professionalism, especially in our present age of constant and rapid technological change. I also believe it has had a positive impact on trial practice. One example is the demise of the “My client made me do it” excuse and its progeny.

The contributions of so many in service to the law, most of whose names have been lost through time, should inspire us, reminding us of their past sacrifices and our obligations to all those we now serve. U.S. District Judge Norman Black, a thoughtful and gentle voice in our drafting conversations, is no longer with us and may now be considered among those great judges and lawyers who have given us our legacy. Today he might remind us that justice is more than sentiment and that we are a link in history, preserving the past while encouraging the next generation. I am grateful for the opportunity to have participated in giving voice to something larger than any one individual.

Judges and lawyers have been my heroes as they struggle daily to do the right thing. Whatever we do in service, whether the task is humble or great, we should understand our calling and rededicate ourselves to our profession through application of the principles found in our Creed.

*Lamar McCorkle was a Harris County district judge from 1986 to 2008.*



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