Professionalism in Action: Lessons learned from the life of Oliver W. Hill, Esq. (Jonathan K. Stubbs, Presenter)[1]

Old Dominion Bar Association

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Summary Overview

I. Introduction

A. The objectives of this course include:

1. Evaluating what "professionalism" means. The specific course focus is the legal profession.

2. Analyzing relevant rules of conduct relating to lawyer professionalism.

3. Discussing practical examples of professionalism as reflected in some of the work of a well respected human rights lawyer: Oliver W. Hill, Esq.

B. Course materials:

1. OLIVER W. HILL, THE BIG BANG, BROWN V. BOARD OF EDUCATION AND BEYOND: THE AUTOBIOGRAPHY OF OLIVER W. HILL, SR. (Jonathan K. Stubbs, ed. 2007)

2. The Virginia Rules of Professional Conduct
   Focus will be upon:
   a. Rule 1.1 Competence
   b. Rule 1.2 Scope of Representation
   c. Rule 1.3 Diligence
   d. Rule 1.4 Communication
   e. Rule 1.14 (Lawyers' Duties to Clients with an Impairment)
   f. Rule 1.7 Conflicts of Interest
   g. Rule 6.1 Voluntary Pro Bono Publico Service
   h. Rule 7.3 Direct Contact with Prospective Clients

3. Law Journal Articles

Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW. No. 4 (2008)

Professionalism in Practice, 84 A.B.A.J. 48(1998)

Jerome J. Shestack, Taking Professionalism Seriously: The *president of the American Bar Association outlines six criteria for lawyers to follow in the pursuit of excellence*, 84 A.B.A.J. 70(1998).

4. Illustrative cases include:

    a. Alston v. Sch. Bd. of Norfolk, 112 F.2d 992 (1940), cert. denied 311 U.S. 693 (1940).
    b. Gaines v. Canada, 305 U.S. 337 (1938).
    c. Sipuel v. Bd. of Regents, 332 U.S. 631 (1948).
    d. Sweatt v. Painer, 339 U.S. 629 (1950).
    e. McLaurin v. Oklahoma St. Reg., 339 U.S. 637 (1950).
    f. Brown v. Bd. of Educ., 347 U.S. 483 (1954)
    g. NAACP v. Button, 371 U.S. 415 (1963)

C. Course Schedule (**1hour**)

1. Introduction

    a. Discussion of what constitutes professionalism (**10 minutes**)

        i. Critical evaluation of ABA Journal articles
        ii. Consideration of lawyer/participants' individual perspectives on professionalism

    b. Analysis of relevant provisions of Virginia Rules. Theoretical concerns underlying each rule as well as practical examples will be discussed using as a starting point the work of Oliver W. Hill, Esq. Specific cases which will be discussed are listed above (Section I, B,4). Mr. Hill's autobiography provides highly recommended reading. **30 minutes**)

        i. Rule 1.1 (what constitutes competence
        ii. Rule 1.2 (how is the scope of representation determined, and what is the lawyer's appropriate role(s))
        iii. Rule 1.3 (mandates lawyer diligence in representation)
        iv. Rule 1.4 (importance of clear communication between lawyer and client)
        v. Rule 1.7. (recognition and avoidance of conflicts of interest)
        vi. Rule 1.14 (duties to client with an impairment)
        vii. Rule 6.1 (lawyer's responsibility to provide public service)
        viii. Rule 7.3 (limitations on lawyer direct communication with prospective clients)

II. Discussion of current areas needing law reform, and challenges of professionalism in helping to effect such reform. **(20 minutes**)

I

Course Presentation

A. *Course coverage*.

This course explores several related questions.

1. What is professionalism? More particularly, what do lawyers mean by professionalism?
2. What are examples of the relationship(s) exist between professionalism and the Rules of Professional Conduct?
3. What are some examples of professionalism in action as reflected in the life of Oliver W. Hill, Esq.?

Each of these questions is considered in turn.

B. *Professionalism: Some Bench/Bar Perspectives*

In 1998, the ABA Journal published a discussion of a distinguished panel of lawyers, judges and legal educators who evaluated what constitutes professionalism.[2] A smorgasbord of the panel's responses regarding what constitutes professionalism as well as contemporary professionalism problems follows:

1. "A group of men pursuing a learned art as a common calling in the spirit of a public service, no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose. Gaining a livelihood is incidental, whereas in a business or trade, it is the entire purpose." F. W. McCalpin citing Dean Roscoe Pound.

2. [A]t its core, I have defined it simply as ordinary morality. Dean Burnele Powell.

[2] American Bar Association, *Professionalism in Practice*, 84 A.B.A. J. 48 (1998). See also, AMERICAN BAR ASSOCIATION COMMISSION ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986).

3. [W]hether you were at the table making the rules in the first place or not, how would I want to be treated? [T]hat question is the defining question for professionalism. Dean Burnele Powell.

4. I see a lawyer's professional responsibility as going outside the rules that we evolve and determine for ourselves. It is how we relate to the public outside the profession rather than how we treat each other within the profession. F. W. McCalpin.

5. The first element is pursuing a learned art, and that's certainly introspective. The second is a common calling and the third is the spirit of public service -- those two go hand in hand. The fourth is no less because it is a means to make a livelihood. J.P. Martinez.

6. Professionalism is being emphasized in many law schools... Several years ago I gave a talk at a Northern university about ethics and about taking the high road and the value system. After the talk, a young lady said, "Judge, I've been here for two years, and nobody has ever said that to us." A professor standing nearby said, "We are not here to teach values." I thought to myself, "Good night! What is the law except an expression of our values?" Judge W. Hoeveler.

7. Our economics of the profession have improved greatly, but I suggest to you at a cost to professionalism. It seems to me we have gained influence but at the risk of losing our professional soul. That is something that is new in the last 50 years, and it's a challenge to prevent. As the affluence has risen, we have seen more questions about professionalism. F. W. McCalpin.

8. You can't place blame on anybody else, because every time the young lawyer stays and tolerates it, it's partially that young lawyer's problem. Every time a senior lawyer hears the middle level lawyer use the firm name that bears the senior lawyer's name and talks about having that drive to 3,000 hours and doesn't correct that middle person, it's the senior lawyer's issue. And every time the middle manager promotes that, it's that person's issue.

You can't walk away from it. It's our problem if we're condoning the activity. And if I stay, if I'm somebody who stays in a firm where they will not tolerate the public service work, just to make that top money at the cost of professionalism -- it's my fault, too. J. P. Martinez.

Each of the eight descriptions above could be the basis for extended (book length) discussion. We will briefly consider only the first three. (The other quotes furnish food for thought and discussion both during and after the course.)

For many people, Dean Roscoe Pound's description encapsulates the classic definition of lawyer professionalism:

> A group of men pursuing a learned art as a common calling in the spirit of a public service, no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose. Gaining a livelihood is incidental, whereas in a business or trade, it is the entire purpose.

Pound's definition is problematic. It raises, but does not resolve, the following issues:

What precisely is a "learned art?" Pound seems to assume that we all know what he means, but one might ask a concrete question to crystallize the problem: What makes law a learned art as contrasted with being a nursing assistant, or auto mechanic or community organizer? Does spending years in formal academic settings and receiving certification of proficiency make a person learned?

Or is professionalism more a function of the "common calling?" If so just what is the common calling? For example, is serving people who have debilitating illnesses, debilitated communities, or decrepit automobiles a calling? How is such public service significantly different from advising an individual on how best to settle an insurance claim arising out of an auto accident?

And just what is public service? Is it simply attempting to help members of the general public individually, or does it also mean trying to insure that the assistance that one renders contributes to the common good? For instance, one might ask whether one furthers the common weal by helping a slum landlord evade ordinances designed to promote habitable housing.

Furthermore, lawyers are officers of the court - a public institution - oriented towards achieving justice for all. Since lawyers hold a (quasi?) public office, what are the implications of being court officers? Stated differently, what duties do we owe to the general public as officers within a system of public justice?

Pound's definition does not resolve these matters. In fact the list of unresolved issues could go on. As one thoughtful legal scholar states:

> A threshold question is whether we are all on the same page, or even in the same book, with respect to what we are trying to fix….[A] central part of the "professionalism problem" is a lack of consensus about what exactly the problem is, let alone how best to address it." Professionalism" has become an all-purpose prescription for a broad range of complaints, including everything from tasteless courtroom apparel to felonies like document destruction. For some lawyers, the term evokes some hypothesized happier era "just over the horizon of personal experience," when law was less competitive and commercial and more collegial and civil. For other lawyers, the concept carries less appealing symbolic freight. These nostalgic appeals seem like opportunities for pompous platitudes and selective recollection. After all, the good-old days were never all that good for many lawyers who did not fit within well-off white male circles, or for many clients who bore the costs of anticompetitive bar practices.[3]

Dean Burnele Powell articulated another view of professionalism. Powell stated that professionalism "at its core is ordinary morality." In other words how would one wish to be treated, "whether you were at the table making the rules in the first place or not… [T]hat question is the defining question for professionalism."[4] What constitutes ordinary morality? Again, volumes could be written. However, for the purposes of this of professionalism discussion we will make several assumptions:

1. Professionalism encompasses some notion of public service,
2. Public service ought to be broadly defined, and
3. The public servant renders such service at least as much for the benefit of the

[3] Deborah Rhode, *Defining the Challenges of Professionalism: Access to Law and Accountability of Lawyers*, 54 S.C. L. Rev. 889-90 (2003).
[4] Professionalism in Practice, supra note 3 at .

person receiving her services as for the public servant's own personal benefit.

The proverbial bottom line to this description of professionalism is that the public servant (broadly defined) is a "servant leader." In other words, the public servant provides leadership including guidance, direction, counsel, and concern for others. Servant leadership is "other regarding"- the leader considers the person she is attempting to help to be "worth it."

For instance, a night nurse may exhibit servant leadership by responding compassionately and skillfully to the needs of a gravely ill patient for pain relief. Such leadership falls within the parameters of professionalism. The nurse provides such service for the benefit of the patient (a member of the general public) as well as for his own material gain.

Servant leadership can be considered an example of professionalism. Whether one can be a professional without being willing to serve others is an interesting question which will be part of the discussion when looking at the practical example of Mr. Hill's legal work. We will also discuss the extent to which servant leadership and professionalism are distinguishable. For our present purposes a lawyer who acts as a servant leader is also a lawyer who demonstrates professionalism because the lawyer treats others as she would wish to be treated if the roles were reversed.[5] In this sense, professionalism or servant leadership is consistent with Dean Powell's view or ordinary morality.

C. **Illustrative Virginia Rules of Professional Conduct**

[5] Luke 6:31 puts it this way: "Do to others as you would have them do to you." (New International Version).

We turn now to the question of the relationship between professionalism and some of the applicable rules of professional conduct. This analysis is not an exhaustive evaluation of all the rules and their comments. Rather, in its consideration of several rules, the evaluation will give some sense of how professionalism is embedded within the Virginia Rules of Professional Conduct.

The starting point is competence. Rule 1.1 of The Virginia Rules of Professional Conduct states: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." To be a consummate professional, the lawyer servant leader must have prepared herself well in a variety of ways. Essential elements of preparation include detailed analysis of the law and facts as well as thoughtful consideration of the fairest, most efficient way to deal with the situation facing her.

Similarly, the lawyer servant leader must remember that she works for and with the client, rather than the other way around. Thus Virginia Rule 1.2(a) states:

> A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

The client decides, with input from the lawyer, what are the client's goals. The lawyer may or may not agree with the client's objectives. The lawyer primarily focuses upon the means to obtain the goals. Provided they do not prevent her from giving competent representation, the lawyer's feelings are immaterial. Indeed, the

Rules provide the lawyer with some insulation from public or self-condemnation from representing a client whose ends or deeds one finds personally disgusting. Virginia Rule 1.2 comment 5 points out that clients with controversial views deserve representation, and that the lawyer's representation is not necessarily an endorsement of the client's beliefs.

In short, Model Rule 1.2 furnishes additional support for the concept of the lawyer servant leader: the lawyer puts the client's goals first even if the lawyer disagrees with them. Providing such assistance to members of the public, especially when such individuals are despised and rejected, is consistent with Dean Powell's notion of professionalism as "ordinary morality".

The Virginia Rules mandate that the lawyer act diligently: "A lawyer shall act with reasonable diligence and promptness in representing a client." It is not enough to prepare well and put the client first. The lawyer must also attempt to implement the plan of action to which she and the client agree. The Rules recognize that the lawyer must balance a client's interest with other obligations so that nothing "falls between the cracks." In this vein, the notion of lawyer servant leadership recognizes that there are professional duties to others than the client, and that in some situations, those duties trump duties owed to the client. Preventing the client from defrauding the court exemplifies a duty outranking effective client representation.[6]

Another essential Rule involves communication. Thus, Rule 1.4 (b) states: " A lawyer shall explain a matter to the extent reasonably necessary to permit the client

[6] Virginia Rule 3.3.

to make informed decisions regarding the representation." Clear communication is fundamental to a productive client-lawyer partnership. The client needs to know the various options as well as the risks and rewards associated with each.

Moreover, the Virginia Rules require lawyers to be cognizant of potential conflicts of interest with clients, third persons, and the lawyer herself. Rule 1.7 provides:

> a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.[7]

Concurrent conflicts are particularly problematic where several clients with a common objective but potentially differing interests seek the lawyer's assistance. A familiar situation involves several criminal defendants accused with the same crime who seek joint representation by a team of lawyers from the same firm. If the prosecution offers a plea, an individual defendant's interest in securing the best deal for herself may collide with the interest of the defendants as a group to present a united front.

Another area of special concern involves clients whose decision making ability is impaired – for instance due to illness or because they are minors. Virginia Rule 1.14 (b) states that "if the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial … harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably

[7] Virginia Rule 1.7.

necessary protective action." For instance the lawyer can seek a guardian ad litem, guardian or conservator.

Because lawyers are generally well versed in the art of persuasion, the Virginia Rules attempt to protect the general public from lawyers seeking to obtain employment by in-person solicitation. Rule 7.3 specifically states:

> (a) A lawyer shall not, by in-person communication, solicit employment as a private practitioner for the lawyer, a partner, or associate or any other lawyer affiliated with the lawyer or the firm from a non-lawyer who has not sought advice regarding employment of a lawyer if:
>
> > (1) such communication contains a false, fraudulent, misleading, or deceptive statement or claim; or
> >
> > (2) such communication has a substantial potential for or involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, over persuasion, overreaching, or vexatious or harassing conduct, taking into account the sophistication regarding legal matters, the physical, emotional or mental state of the person to whom the communication is directed and the circumstances in which the communication is made.
> >
> > In-person communication means face-to-face communication and telephonic communication.

Rule 7.3 reflects among other things, the concept of a lawyer's fiduciary duties to use her skill and knowledge for the benefit of those she serves rather than for her own material benefit.

The last rule for evaluation before considering examples of professionalism (servant leadership) in action involves lawyers' duties to provide pro bono service. Virginia Rule 6.1 (a) says that:

> A lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.

This rule mandates a modest goal for lawyers to achieve in helping members of the general public who might not otherwise be able to obtain legal services. Underlying the rule is a recognition that as human beings we share the responsibility to make our lives as members of a community (commonwealth) better. Because lawyers are entrusted with much: helping individuals maintain life, liberty and property. Much is also required.[8]

Attention now focuses upon examples from the life of Oliver W. Hill, Esq. which reflect professionalism in action.

D. **Professionalism in Action: Lessons from the life of Oliver W. Hill, Esq.**

Throughout his legal career, Oliver Hill exhibited many of the qualities constituting professionalism, including competence, diligence, respect for client decision making, clear communication, and avoiding conflicts of interest. In the best sense, Mr. Hill's work embraced servant leadership. An overview of a few salient points in the evolution of his calling to public service and the professionalism undergirding his activities, follow.:

Mr. Hill began preparing himself in college for a life as a social activist. In his autobiography, Mr. Hill said that during his sophomore year his step uncle, Sam, who was a lawyer, died and that his widow gave Mr. Hill some of his books:

> She gave me a 1924 United States Code Annotated and later some other of Sam's law books. The gift of the Code was significant in piquing my interest in law. Later upon reading the annotated Constitution which Natalie had given me, I learned that originally the Constitution didn't include Negroes, whether free or slave, in any positive fashion. We were merely regarded as three-fifths of a person for purposes of

[8] Luke 12:48 (b).

> determining representation in the House of Representatives for the benefit of slaveholders. In addition, the Constitution legalized American participation in the transatlantic slave trade until 1808. Moreover, the Founding Fathers provided slaveholders constitutionally guaranteed federal support in capturing and returning escaped slaves, as well as militarily suppressing the captives' attempts to obtain freedom. [9]

Mr. Hill decided to do something about the situation. As he put it:

> The thing that made me determined to go to law school was actually learning that it was the Supreme Court that had taken away our rights; and I saw no hope of regaining them through the political process prevailing in the late 1920s. At that time it was not even possible to get Congress to enact legislation to make lynching or murdering Negroes a crime. Therefore, I determined to go to law school, become trained as a lawyer, and endeavor to get the Court to reverse its previous error in *Plessy*.[10]

In law school, Mr. Hill and Justice Thurgood Marshall met on a daily basis to discuss cases. Under the tutelage of Charles Hamilton Houston, Hill, Marshall, Spotswood Robinson and others mapped a strategy to attack segregation systematically. It took twenty-four years to reach the *Brown* ruling. The legal struggle required carefully persuading the public as well as the courts that separate could never be equal.

Many important steps began in Virginia. For example, when Hill arrived in Virginia in 1939 to renew his legal career, he found that two other lawyers, Thomas Hewin, Jr., and Byron Hopkins, had filed a state court case challenging the grossly disparate salaries of black and white teachers. The school board failed to renew the contract of Aline Black, the plaintiff, and the state court dismissed the case.

Hill was undeterred and demonstrated the competence and diligence that were the hallmarks of his legal career. He conducted additional legal research, discussed the matter with his friend and former classmate, Thurgood Marshall who had experience with

[9] OLIVER W. HILL, SR., BROWN, THE BIG BANG AND BEYOND: THE AUTOBIOGRAPHY OF OLIVER W. HILL. SR. (100th Birthday Edition) 73, (2007).
[10] *Id.*

a similar case in Maryland, and decided to file a federal class action suit. In 1940, with assistance from Marshall and their former professors, William Hastie and Leon Andy Ransom, Mr. Hill argued and won his first federal appellate case, *Alston v. School Board of Norfolk*.[11]

To avoid the fate of Aline Black, Hill tried a creative legal strategy: he asked the Fourth Circuit to reconvene for a special term to hear his case. In his first federal appellate appearance, Hill recounts that:

> The clerk then called my case, Alston v. the School Board of Norfolk. … I got right to the point and started with my motion for a special term. Parker barked out, "Wait a minute. You mean to say that you want the United States government to go to all the expense, bring this entire entourage back, just to hear your case? What's so special about your case?"
>
> Well that gave me an opportunity; and I seized it! I immediately explained to the court what had happened with Aline Black's case that we had filed our complaint in August, that the defendants had finagled with us, and delayed the hearing. When the district court ruled against us, we couldn't possibly get ready for this term.
>
> The entire court got interested then. Soper seemed especially interested. While I do not remember his specific words, in effect he finally said, "Suppose we give you an injunction?" I immediately agreed. Anything they did would have been all right with me provided they kept our case alive.
>
> The Norfolk City Attorney who until this point had continued to sit out in the audience got nervous, jumped up, and came running up to the bar. He said it would not be necessary to enter an injunction. The court asked him if what I had said was true. He had to admit that it was. So he assured them that nothing was going to happen to Alston. The court then told me if anything adverse happened to my client to come back and they would do something about it. So as a consequence, no teaching personnel in the school system in the city of Norfolk got a contract until after our case was heard and decided in late August of 1940.[12]

[11] 112 F.2d 992 (4th Cir. 1940), *cert. denied* 311 U.S. 693 (1940).
[12] Hill *supra* note 9 at 134-35.

In substantial part through the diligence, competence, and courage of Oliver Hill and his colleagues, *Alston* established the right of black teachers throughout the Fourth Circuit to receive pay equal to that of their white counterparts. Before *Alston*, throughout the 4th Circuit it was common for black teachers to face situations where the most inexperienced, least well trained white teacher received a higher salary than the best trained, most experienced black one. For instance, in Richmond, the salary range for blacks began at three hundred and ninety nine dollars ($399.00) and capped at nine hundred and ninety nine dollars ($999.00) annually. The starting salary for white teachers began at one thousand dollars ($1000.00) per year.[13]

Methodically, Mr. Hill and his colleagues established precedent in the United States Supreme Court that undercut *Plessy.* Thus in *Gaines v. Canada* [14] the Court held that the state of Missouri was obliged to provide a legal education within the state to the African American plaintiff, Lloyd Gaines. Gaines had been previously denied admission to the University of Missouri's law school.[15] Tragically, Gaines' victory was more theoretical than practical: after the Court's decision Gaines disappeared and was never heard from again. Mr. Hill and others suspected foul play.[16]

In *Sipuel v. University of Oklahoma*,[17] the Court held that a black woman who was denied admission to the University of Oklahoma School of Law was entitled to be admitted. Sipuel had applied to the only law school in the state of Oklahoma and the state had denied her admission solely because of her race. The *Sipuel* court cited *Gaines* as authority for its unsigned opinion.

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[13] *Id*. at 127.
[14] 305 U.S. 337 (1938).
[15] *Id.* at 342.
[16] Hill, *supra* note 9 at 159.
[17] 332 U.S. 631 (1948).

Two years later, on the same day the Court decided *Sweatt v. Painter*[18] and *McLaurin v. Oklahoma State Regents*.[19] In *Sweatt*, the state of Texas had hastily built a substandard store- front "law school" as an alternative to admitting the African-American plaintiff, Sweatt. At first, the facility for prospective black law students had no full time faculty, no library, few books and no accreditation.[20] As Sweatt's case progressed through the courts, Texas provided the unaccredited school with a small full time faculty and a modest library collection.

The Court ruled that the Texas law school for blacks failed to furnish substantial equality required under the Equal Protection Clause of the Fourteenth Amendment. Writing for a unanimous Court, Chief Justice Vinson stated:

> [I]n terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close.
>
> Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other

[18] 339 U.S. 629 (1950).
[19] 339 U.S. 637 (1950). For a poignant photograph of the denigrating conditions which McLaurin was compelled to endure while attending the University of Oklahoma, see http://www.loc.gov/pictures/item/00651024/ (Library of Congress, assessed Nov. 16, 2016).
[20] 339 U.S. at 633 (1950); Hill supra note 9 at 162-63

> officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.[21]

McLaurin ruled that an African-American graduate student could not be required to sit in separate sections of the classroom, library and cafeteria while attending a state graduate education program not offered at the black state college. Plaintiff, McLaurin, sought a doctorate in education, and, among other indignities, while in the classroom had to sit behind a railing and sign which read "Colored Section." The Court said:

> [T]he State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.
>
> Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained.[22]

These precedents lead Mr. Hill and other human rights advocates to conclude that the time had come to challenge segregation *per se*. As Mr. Hill said:

> In Sweatt, Chief Justice Vinson had talked about the intangibles. Those were some of the questions that we raised. Vinson seemed to be on our side and that persuaded us that it was time to ask the Court to rule regarding elementary and secondary schools like it had done with professional schools. We felt our strategy had succeeded and that we were in the position to achieve our primary

[21] 339 U.S. 629, 633-34 (1950).
[22] 339 U.S. 637, 641 (1950).

objective.[23]

In 1950, the NAACP national convention decided to change its legal strategy to attack segregation at its roots - to seek the reversal of *Plessy*.

Not long after the NAACP's change in strategy, Barbara Johns lead a walkout of black students at the all-black Robert Russa Moton High School in Prince Edward County. Johns called the law offices of Hill, Martin and Robinson. Mr. Hill explained to Johns that the NAACP had decided to no longer take separate but equal cases, already had a test case filed, and could make the legal point that Johns and her followers intended to make without filing another lawsuit. However, Johns pleaded earnestly with Mr. Hill and his partners, and they did not have the heart to turn the students down. Hill and Robinson had planned to meet clients in Christianburg; accordingly, they agreed to meet with the Prince Edward students on the way.

Hill and Robinson discussed matters among themselves and decided that they would tell the Prince Edward students to go back to class. After meeting the students, Hill and Robinson were so impressed with the students' morale and dedication that they told the students to talk with their parents. These two dedicated lawyers said that they would meet with them and their parents at a local church when Hill and Robinson returned.[24] Hill and Robinson demonstrated sensitivity to their prospective clients who in the eyes of the law were minors as well as to their heightened duties as attorneys to protect the interests of the children.[25]

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[23] Hill, *supra* note 9 at 163.
[24] *Id.* at 155-56.
[25] See Rule 1.14

At the ensuing meeting, Hill and Robinson carefully explained to the students and their parents the NAACP's legal strategy, and that the lawyers would not be able to take a separate but equal case. Based on the lawyers' clear and efficacious communication, the parents and children made an informed decision regarding the scope of the lawyers' representation and the tactics that would be used to obtain the students' objectives.[26] In addition, the thorough communication between Hill and Robinson and their clients helped avoid potential conflicts of interest regarding the goals of the representation.[27]

Moreover, Hill and Robinson's sense of professionalism lead them to do more than simply advise the students and their parents. The lawyers also suggested a community meeting to elicit comment and support from other local African Americans who would be affected by a challenge to a longstanding system of legal as well as social oppression. According to Mr. Hill:

> On that Friday night, the meeting was held. The church was packed to the rafters. The citizens had a long, serious, vigorous debate. Finally when the issue was put to the group whether to attack segregation per se, the group voted nearly unanimously to challenge segregation. Folks were fed up with the existing situation. They knew that something had to be done for their children, as well as for subsequent generations.
>
> Of course, as one would expect in such a large and diverse group of people there were some dissenting and doubtful voices. For example, a principal of a school in Cumberland County living in Prince Edward County argued that the better strategy was to attempt to make the schools equal. Some Negroes were also afraid that a direct challenge to segregation would make the white folks in the community mad. When looking at the types of schools the local authorities furnished the Negro population, you would have been tempted to say that the white folks were already acting like they were angry. Be that as it may, after a

[26] See Rule 1.2, Rule 1.4.
[27] See Rule 1.7

> thoughtful and thorough debate, the overwhelming majority agreed that we must do something. They voted to seek an end to segregation.[28]

Despite an adverse decision at the district court level, Hill and Robinson appealed to the United States Supreme Court where the Prince Edward case was consolidated with three others with *Brown* being the lead case of the quartet. While Mr. Hill was the senior lawyer in experience and would ordinarily have been expected to argue the case in the Supreme Court, Hill believed that Robinson had a slight edge over him as an appellate lawyer. Hill "stepped back" to allow Robinson to argue the case in the highest court of the land. Hill recognized the potential personal conflict of interest in being able to say "I argued a case before the Supreme Court" (the capstone for many litigators!). Instead, he subordinated his interest to the client's interest in having the best legal representation at all stages of the process.

On May 17, 1954 the Court handed down its landmark decision in *Brown*. Writing for a unanimous court, Chief Justice Warren stated: "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does."[29] The Court overturned the separate but equal doctrine declaring:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth

[28] Hill, *supra* note 9 at 156.
[29] 347 U.S. 483, 493 (1954).

Amendment. [30]

In conclusion, diligent trial preparation, skilful trial and appellate advocacy, compassion, wisdom and courage were all required to undermine America's apartheid system.

Despite his many remarkable triumphs, Mr. Hill once recalled a case in which he believed that he did not reach the level of excellence that he set for himself. Mr. Hill represented a black young man named Mickens who allegedly raped a white woman. Mr. Hill was extremely ill and had not had time to prepare for trial. He felt pressured by the trial judge to go forward with the trial and he did. Mickens was convicted and sentenced to death. Fortunately, another attorney persuaded the governor to commute the sentence and got Mickens released on parole. In hindsight, Mr. Hill said that he should not have gone forward with the trial at that time.[31]

While an attorney should always strive to be well prepared, (s)he should also be honest with himself and the court when (s)he is not. As Mr. Hill stated, "the defendant's life is on the line."[32] Sometimes it may be physically or otherwise impossible for an attorney to competently practice. During those times, an attorney owes his/her client the duty of taking steps to become competent or ending the attorney-client relationship.

Finally, regarding public service, Oliver Hill devoted his legal career to public service. Much of his work in criminal law was pro bono (though it was not always intended that way). His clients (especially black criminal defendants) were outside the mainstream society, and Mr. Hill's representation of those clients was not likely to elevate him financially or socially.

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[30] *Id*. at 495.
[31] Hill, *supra* note 9 at 126.
[32] *Id*.

Nevertheless, Mr. Hill viewed his work as important because he was providing his clients with the full protection that the Constitution guaranteed. By defending those whose rights would most likely to be infringed, he helped protect the rights of the national community as a whole. In fact, Mr. Hill said that his firm often took cases "regardless of whether the prospects for fee recovery were good or poor, particularly in cases that had some potential to make a broader impact on the law."[33]

One challenge which separates the servant leader lawyer from others is her stance regarding financial compensation. Personal interest versus client interest versus public interest all converge. Mr. Hill put it this way:

> Looking back, it is fair to say that we might have turned away some non-paying cases. However, we had families to support, and our firm had always done more than its share of pro bono work.
>
> Fixing and collecting fees has always been my major problem. Maybe we should have run a tighter ship. However, one way or another, the money came in. We had to charge fees but the main focus always was on the humanitarian angle of a given situation.[34]

In addition, to service through the practice of law, Mr. Hill also held a number of public positions where he could attempt to further the common good. For instance, he was elected in 1948 to the Richmond City Council (the first African American to serve in such capacity since Reconstruction) and served on President's Truman's Commission on Contract Compliance (predecessor to the Equal Employment Opportunity Commission).[35] Further, in the Kennedy administration, Mr. Hill worked as Assistant to the Commissioner of the FHA for Intergroup Relations.[36] Mr. Hill's local and national

[33] *Id*. at 193.
[34] *Id*.
[35] *Id*. at 243-45.
[36] *Id*. at 189.

service provided little financial compensation (in fact he took a pay cut to work for the Kennedy administration).[37]

Professionalism as reflected in the life of Oliver Hill has challenges and rewards. Aside from modest financial compensation, Hill and his colleagues experienced censure and ostracism in response to their law reform activities. A prime example involved the Virginia General Assembly's attempt, in the aftermath of *Brown*, to crush the Virginia State Conference of NAACP Branches. Among other things, the General Assembly passed legislation that criminalized the NAACP's law reform activities. The Virginia NAACP, represented by Mr. Hill and Robert Carter, and the NAACP Legal Defense and Education Fund, represented by Thurgood Marshall and Spottswood Robinson, filed lawsuits challenging these Virginia ("massive resistance") statutes. In *NAACP v. Button*, writing for the majority, Justice Brennan stated:

> We conclude that under Chapter 33, as authoritatively construed by the Supreme Court of Appeals, a person who advises another that his legal rights have been infringed and refers him to a particular attorney or group of attorneys (for example, to the Virginia Conference's legal staff) for assistance has committed a crime, as has the attorney who knowingly renders assistance under such circumstances. There thus inheres in the statute the gravest danger of smothering all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority. Lawyers on the legal staff or even mere NAACP members or sympathizers would understandably hesitate, at an NAACP meeting or on any other occasion, to do what the decree purports to allow, namely, acquaint "persons with what they believe to be their legal rights and . . . [advise] them to assert their rights by commencing or further prosecuting a suit . . . ." For if the lawyers, members or sympathizers also appeared in or had any connection with any litigation supported with NAACP funds … they plainly would risk (if lawyers) disbarment proceedings and, lawyers and nonlawyers alike, criminal prosecution for the offense of "solicitation," to which the Virginia court gave so broad and uncertain a meaning.[38]

[37] *Id.* at 268-69.
[38] 371 U.S. 415, 434-35 (1963)

The Court perceptively recognized that under the new legislation, state officials would attempt to disbar civil rights lawyers. In fact, Mr. Hill's law partner, S.W. Tucker, was charged with violating the "running and capping" anti-solicitation rules, and faced disbarment proceedings. Represented by a legal team lead by Robert Ming (a well respected African American lawyer and former professor at the University of Chicago School of Law) and including Mr. Hill and Senator Henry Marsh, Tucker retained his license. Mr. Hill summed up this particular challenge as follows: "The so called "running and capping" regulations were another in a long line of state sponsored strategies to intimidate and silence citizens and advocates who dared to affirm their rights as human beings."[39] Indeed other southern states including Arkansas, Florida, Georgia, Mississippi, South Carolina and Tennessee, passed legislation attempting to intimidate activists and lawyers through use of similar anti solicitation statutes. [40]

Several ironies existed in this situation. First the Virginia rules of professional conduct were applied so as to prevent lawyer professionalism and to punish individuals dedicated to promoting the public interest. Second, a quarter century later, Mr. Tucker and Mr. Hill were honored for the pro bono services that almost resulted in Mr. Tucker's disbarment…

Thoughts for the Future

Oliver W. Hill, Esq.'s life of selfless service is his legacy. From law school until his death, Mr. Hill worked for the common good. His creative use of the law as a vehicle for non-violent conflict resolution improved life for all Americans. His work is

[39] Hill, *supra* note 9 at 190.
[40] 371 U.S. at 445 (Douglas, J., concurring).

incomplete, as we witness current attempts to undermine justice for all – including those who are today's social pariahs for instance the poor, immigrants, religious minorities and homosexuals. We are Mr. Hill's legacy and we further that legacy when we work non violently to change society for the better.

Selected Law Journal Articles

A. *Professionalism in Practice*, 84 A.B.A.J. 48 (1998)

B. Jerome J. Shestack, *Taking Professionalism Seriously: The president of the American Bar Association outlines six criteria for lawyers to follow in the pursuit of excellence*, 84 A.B.A.J. 70(1998).

C. Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW. No. 4 (2008)

Selected Virginia Rules of Professional Conduct

Rule 1.1

Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2

Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

Rule 1.3

Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

Rule 1.4

Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.7

Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

> **(1) the representation of one client will be directly adverse to another client; or**
>
> **(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph(a), a lawyer may represent a client if each affected client consents after consultation, and:

> **(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
>
> **(2) the representation is not prohibited by law;**

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) the consent from the client is memorialized in writing.

Rule 1.14

Client With Impairment

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Rule 6.1

Voluntary Pro Bono Publico Service

(a) A lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.

Rule 7.3

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(2) pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) give nominal gifts of gratitude that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

Selected Cases

A. Alston v. Sch. Bd. of Norfolk, 112 F.2d 992 (1940), cert. denied 311 U.S. 693 (1940).

B. Gaines v. Canada, 305 U.S. 337 (1938).

C. Sipuel v. Bd. of Regents, 332 U.S. 631 (1948).

D. Sweatt v. Painer, 339 U.S. 629 (1950).

E. McLaurin v. Oklahoma St. Reg., 339 U.S. 637 (1950).

F. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

G. NAACP v. Button, 371 U.S. 415 (1963).