

# On the Remarks of Joseph B. Cumming

by Charles Longstreet Weltner\*

The unique aspect of Cumming's remarks is their wide divergence from the expectable orotundity of the day—and, indeed, from the usual combination of the fulsome acclaim of colleagues and a modest praise of self. Cumming came to the 1886 meeting as President of the Georgia Bar Association neither to praise Caesar nor anyone else. He came not as bearer of glad tidings, but as prophet of wrath. Lawyers, he said, are by virtue of their positions the trustees of the public opinion. But, he said, lawyers cannot deserve that high degree of trust when their principal concern is self interest.<sup>1</sup> Cumming reported that he had observed a growing tendency among lawyers to regard the practice of law as a trade rather than as a profession,<sup>2</sup> and was troubled by Georgia lawyers' failure to recognize that "the idea of profession is of something higher than trade, tending away from, instead of to, the sordid."<sup>3</sup>

Nor was he alone in that perception. In the preceding year, Cumming had delivered a report on legal education to the Georgia Bar Association's annual meeting.<sup>4</sup> In response, General A. R. Lawton remarked: "When a

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1. At the preceding annual meeting, Cumming had other hard words for his peers. "The Bar of Georgia, as it now is, is not altogether worthy of this important trusteeship." Cumming, *Lawyers, The Trustees of Public Opinion An Address Delivered Before the Georgia Bar Association August 26th, 1886*, in *REPORTS OF THE FIRST, SECOND, THIRD ANNUAL MEETINGS OF THE GEORGIA BAR ASSOCIATION* 88, 92 (1886), reprinted in 41 *MERCER L. REV.* 535 (1990).

2. "[A]nd there are some startling whispers to the effect that trade ideas and methods do prevail to some extent in the profession. And, alas! alas! may it not be true, that the holy horror with which our fathers would have regarded such things may have yielded somewhat to a spirit of tolerance of them?" *Id.* at 95.

3. *Id.* at 93.

4. General Minutes, *Remarks of Joseph B. Cumming*, in *REPORTS OF THE FIRST, SECOND, THIRD ANNUAL MEETINGS OF THE GEORGIA BAR ASSOCIATION* 5, 25-30 (1885).

man is admitted to the Bar he enjoys and acquires that which other men have not, and thus the community is called upon to trust him."<sup>5</sup>

A year after Cumming's presidential address, I. E. Shumate read to the annual meeting a paper entitled "Professional Responsibility," wherein he referred to Cumming's 1886 speech, as follows:

It is not too much to say that the lawyer who fails to actively exert his influence, wherever he touches society—whether in the discharge of his professional duties at the bar, or in the counsel chamber, or in public assemblies, or in private conferences—who fails, by every means he judges to be effective, to give such tone to public sentiment, with direct reference to pending questions, as will restrain political zeal within the bounds of truth and justice, and confine business schemes within the limits of common honesty, fails to recognize and to meet his responsibility.<sup>6</sup>

The substance of Cumming's remarks was reiterated in the 1888 presidential address of Walter B. Hill:

On principle, there is no middle-ground between the two opposing views that the law is a trade or a profession. If it is a trade, leave it to the free play of purely commercial considerations. Let every dunce and every sharper have the right to try his luck at it. But if it is a profession, and confers upon its members great privileges in the conduct of litigation, then let the doors be closed to all except those who are willing to labor for, and are found to possess, the requisite qualifications.<sup>7</sup>

There were strong voices to be heard in that time, and Cumming's was among the strongest. Georgia lawyers can commend the courage that led him to speak to his constituents at the bar with such candor.<sup>8</sup>

It is hard to think upon these words without being brought back rudely to the present. The past two years have witnessed heightened interest among the leadership of bench and bar in the idea of "professionalism,"

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5. General Minutes, *Remarks of General A. R. Lawton*, in REPORTS OF THE FIRST, SECOND, THIRD ANNUAL MEETINGS OF THE GEORGIA BAR ASSOCIATION 5, 47 (1885).

6. Shumate, *Professional Responsibility*, in REPORTS OF THE FOURTH, FIFTH, SIXTH ANNUAL MEETINGS OF THE GEORGIA BAR ASSOCIATION 99, 100-01 (1887). Compare that high hope with Cumming's acerbic comment: "[Lawyers] are in the front because the masses are moving in that direction. They would lose no time in getting at the head of the movement if it changed direction." Cumming, *supra* note 1, at 95.

7. Hill, *Address*, in REPORTS OF THE FOURTH, FIFTH, SIXTH ANNUAL MEETINGS OF THE GEORGIA BAR ASSOCIATION 51, 80-81 (1888).

8. It is worthy of note that Cumming's great-great grandson Joseph B. Cumming, Jr., presently professor of journalism at West Georgia College and formerly bureau chief of NEWSWEEK, has followed a career in journalism and teaching that parallels that of his forebear, in his willingness to call to account his own generation, and to point out failings that most others would dismiss with a sense of resignation.

principally through the efforts of former Chief Justice Thomas O. Marshall and Chief Justice Harold G. Clarke, and of immediate past State Bar President A. James Elliott. That interest has resulted in three substantive meetings: a consultation of bar leaders sponsored by Emory University in March 1988, and two convocations, held in Macon, in October 1988, and in Decatur, in October 1989.<sup>9</sup> In an uncanny echo to Cumming's remarks, one of the participants of the first meeting observed:

I have concluded that we as lawyers are something kind of special . . . . We have a lot of influence over what happens in this society . . . . [W]hy is it that we are so seldom found at the front of resisting and opposing that which we know is wrong in our society while we are just as infrequently found at the forefront of promoting in our society that which we know is right.<sup>10</sup>

The theme of the convocation in Macon, when viewed in the light of our nineteenth century review, was a familiar one: "The Practice of Law—Is There Anything More To It Than Making Money?" The keynote speaker remarked:

[W]hatever the profession may be, part of its obligation is to make its own image, and not only to make it, but to make it an appropriate image for the activities it does . . . . [T]here is a sacred trust between the bar and the law in the broadest sense, a trust that might thus be called a fiduciary responsibility.<sup>11</sup>

I am glad that Mercer Law Review has chosen to revisit these old speeches. Their language is florid, their metaphor is expansive, and, from our coign of vantage, their general aspect seems a bit hyperbolic. But there are old truths to be found in them, along with the sense that we have not come so far as we had thought. That should add a sense of urgency to our current efforts to encourage the Bar along the lines of the public interest, and to recast it more nearly to fit its cherished image of itself—as profession.

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9. The Georgia Bar Foundation provided the funds for the first convocation.

10. F. Ward, *Report of a Consultation on Professionalism and the Law*, at 28-29 (Mar. 31, 1988).

11. C. Woodard, *Report of First Annual Georgia Convention on Professionalism*, at 17 (Oct. 14, 1988).

