

# Mercer Law Review

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Volume 72  
Number 3 *Lead Articles Edition*

Article 3

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5-2021

## Foreward

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### Recommended Citation

Longan, Patrick (2021) "Foreward," *Mercer Law Review*. Vol. 72 : No. 3 , Article 3.

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# Foreword

## Symposium on Ethics, Professionalism, and the Role of the Attorney General of the United States: Lessons from History

by Patrick E. Longan\*

### I. INTRODUCTION

In October 2020, Mercer University School of Law hosted the 21<sup>st</sup> Annual Georgia Symposium on Legal Ethics and Professionalism. The symposium brought together scholars and distinguished guests to discuss the proper role of the Attorney General of the United States and related lessons that we may learn from history. In addition to the authors of the articles in this volume of the Mercer Law Review, we were honored to have with us as commentators The Honorable William S. Duffey, Jr., retired United States District Judge for the Northern District of Georgia, Doc Schneider, senior partner at King & Spalding, and Rod Rosenstein, partner at King & Spalding and former Deputy Attorney General of the United States.

Mercer Law School held the first Georgia Symposium on Professionalism and Ethics in 2001, and since then the symposium has rotated on a yearly basis among Mercer, the University of Georgia, Georgia State University, and Emory University. The funding for the symposia comes from endowments of \$250,000 that went to each of these four schools as a result of the settlement of claims of litigation misconduct in a case before United States District Judge Hugh Lawson

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of the Middle District of Georgia. We have Judge Lawson to thank for the ingenuity to suggest using funds that were paid as part of the resolution of allegations of unethical conduct to endow symposia about legal ethics and professionalism. Over the years, the symposia have covered many different topics. In the ones sponsored by Mercer, we have dealt with the ethics of settlement negotiations, ethics and professionalism in the digital age, and the disclosure obligations of prosecutors, among other topics.<sup>1</sup>

No topic we have chosen, however, is as timely or as important as the issues that surround ethics and professionalism as those concepts apply to the discharge of the responsibilities of the Attorney General of the United States. The recent tenure of William Barr as Attorney General was, to put it mildly, controversial.<sup>2</sup> But the proper role of the Attorney General has been an issue periodically throughout the history of the United States.<sup>3</sup> Our premise in choosing this topic for this year's symposium is that, by learning about the history of the office and the men and women who have occupied it, we can help future attorneys general to do this difficult job the right way.

The articles that appear in this volume serve that purpose admirably. Professor Nancy Baker puts the office of Attorney General in broad historical context and describes its essential "duality," in that the Attorney General inevitably owes duties to the president and to the law.<sup>4</sup> Professor Baker explores the sometimes-conflicting norms that Attorneys General are expected to observe, including independence, non-partisanship, loyalty, and the protection of appearances, and she

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<sup>1</sup> See Patrick Emery Longan, *Educational Interventions to Cultivate Professional Identity in Law Students: Introduction*, 68 MERCER L. REV. 579 (2017); James P. Fleissner and Patrick Emery Longan, *Foreword: Defining and Enforcing the Federal Prosecutor's Duty to Disclose Exculpatory Evidence*, 64 MERCER L. REV. 635 (2013); Patrick Emery Longan, *Foreword: Ethics and Professionalism in the Digital Age*, 60 MERCER L. REV. 845 (2009); Patrick Emery Longan, *Judicial Professionalism in a New Era of Judicial Selection*, 56 MERCER L. REV. 913 (2005); Patrick Emery Longan, *Ethics in Settlement Negotiations: Foreword*, 52 MERCER L. REV. 807 (2001).

<sup>2</sup> For a brief overview of the criticisms of Mr. Barr's service in the Trump Administration, see Patrick E. Longan and James P. Fleissner, *Partisanship and the Attorney General of the United States: Timely Lessons from Edward Levi and Griffin Bell about Repairing a Politicized Department of Justice*, 72 MERCER L. REV. 731, 731–32 (2021). For analysis specifically of Mr. Barr's handling of the civil unrest that followed the killing of George Floyd, see Lonnie T. Brown, Jr., *Civil Unrest and the Role of the Attorney General: A Comparison of Ramsey Clark to William Barr*, 72 MERCER L. REV. 789, 822–28 (2021).

<sup>3</sup> Longan & Fleissner, *supra* note 2 at 732–34.

<sup>4</sup> Nancy Virginia Baker, *History, Norms and Conflicting Loyalties in the Office of Attorney General*, 72 MERCER L. REV. 833, 853 (2021).

provides examples of Attorneys General who have succeeded and failed in various ways to do so.<sup>5</sup> Professor William Casto takes on the difficult philosophical questions that arise when a President decides to act unlawfully and seeks the assistance of the Attorney General.<sup>6</sup> Professor Casto draws upon the experiences of Robert Jackson, who served loyally as Attorney General for President Franklin D. Roosevelt despite Roosevelt's insistence on taking actions, including the Lend-Lease deal with Great Britain, that clearly violated the law.<sup>7</sup> Professor Lonnie Brown starkly contrasts the handling of civil unrest by Ramsey Clark as Attorney General in the 1960's with that of William Barr as Attorney General, first in the early 1990's and later in the Trump Administration.<sup>8</sup> That analysis leads Professor Brown "to the somewhat troubling but unsurprising conclusion that perhaps it is the attorney general that shapes the role, rather than the role that shapes the attorney general."<sup>9</sup> Professor James Fleissner and I reach a similar conclusion in our article, that the character of the person chosen for the job of Attorney General is the key to keeping partisan politics out of the Department of Justice.<sup>10</sup> We discuss the lessons of the service of Edward Levi and Griffin Bell as Attorneys General in the aftermath of the Watergate scandal.<sup>11</sup>

We wish to express our gratitude to Lauren James, Editor in Chief, Breyana Fleming, Lead Articles Editor, and Jameson Fisher, Eleventh Circuit Survey Editor, of the Mercer Law Review. We also thank Chris Osier, Mercer Law School's Director of Information Technology, and the two faculty advisers of the Law Review, Professor Mark Jones and Professor Karen Sneddon. Without their assistance, cooperation, and patience, the symposium and the publication of the articles that came out of it would have been impossible.

We closed the symposium with these words of Edward Levi from May 1976. As we reflect upon the lessons of history about the proper role of the Attorney General, these words serve as a fitting benediction, reminding us of the importance of the rule of law in our system of government and of the special role of the Department of Justice:

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<sup>5</sup> *Id.* at 841–53. See also NANCY V. BAKER, CONFLICTING LOYALTIES: LAW AND POLITICS IN THE ATTORNEY GENERAL'S OFFICE 1789–1990 (1992).

<sup>6</sup> William R. Casto, *Serving a Lawless President*, 72 MERCER L. REV. 855 (2021).

<sup>7</sup> *Id.* See also WILLIAM R. CASTO, ADVISING THE PRESIDENT: ATTORNEY GENERAL ROBERT H. JACKSON AND FRANKLIN D. ROOSEVELT 59–82 (2018).

<sup>8</sup> Brown, *supra* note 2.

<sup>9</sup> *Id.* at 794. See also LONNIE T. BROWN, JR., DEFENDING THE PUBLIC ENEMY: THE LIFE AND LEGACY OF RAMSEY CLARK (2019).

<sup>10</sup> Longan & Fleissner, *supra* note 2 at 744.

<sup>11</sup> *Id.* at 764–87.

It is commonplace to speak of the skepticism which many feel toward our governmental institutions and offices because of the difficulties of years past. Skepticism has its uses, but the claims of our republic and of our democracy require an equally robust faith. You and I share and take most seriously the duty to justify and to help in the continuation of this faith. This is the calling of our craft. We cannot have a government of law without the belief in a government of law. So, as any fiduciary, I would hope a position representing the work of many, and charged with the enforcement of the rule of law, would be regarded as worthy of its trust. I do not claim this as a great accomplishment, but one which we must always make clear is to be expected.<sup>12</sup>

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<sup>12</sup> Address by The Honorable Edward H. Levi Attorney General of the United States Before the Federal Bar Council's Law Day Dinner Upon Receipt of the Learned hand Medal for Excellence in Federal Jurisprudence 1 (May 4, 1976), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/05-04-1976.pdf>.