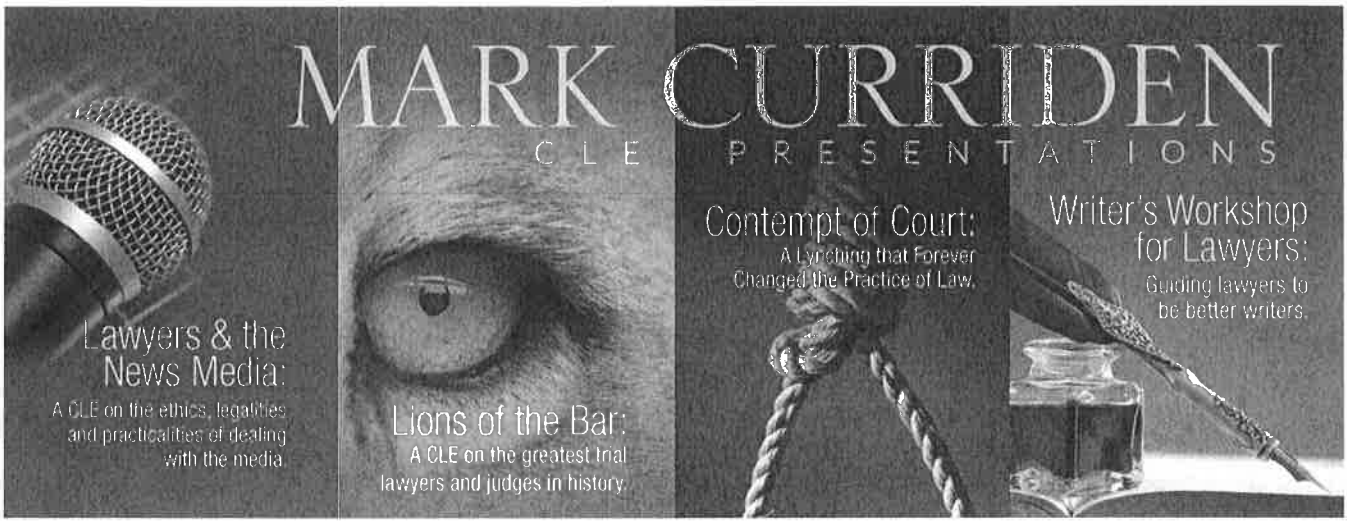

Contempt of Court:

A Lynching that Forever Changed the Practice of Law

A century ago, a young black man from Tennessee was falsely accused of rape and railroaded through the criminal justice system. The judge appointed unqualified lawyers and told them they didn't have to do any work on his case. Those lawyers convinced their client to waive his rights to appeal and accept the death sentence.

The only two African-American lawyers practicing in Tennessee and Georgia stepped forward to file the first federal habeas corpus petition in a state criminal case on his behalf. They convinced the U.S. Supreme Court to intervene, only to have an angry lynch mob burn their homes, chase them out of town and murder their client.

The Virginia State Bar Association has invited Mark to make his Contempt of Court CLE presentation three times, including most recently on March 3. Click here to see the program's brochure.

This CLE Ethics program chronicles the amazing story of Ed Johnson and his two heroic lawyers – a story buried in dusty old law books for decades and brought to life by lawyer/journalist Mark Curriden.

This historical story features the first lawyers of color to be lead counsel in a case before the Supreme Court. It also showcases the first and only criminal trial ever conducted before the Supreme Court. Experts say this little known case dramatically reformed the American justice system and redefined the practice of law.

This CLE exemplifies why lawyers as advocates for the poor and downtrodden are best positioned to take the steps necessary to uphold the rule of law. Through the eyes and actions of the lawyers in this case, attorneys are able to see what it is like to represent a client who is a curse on society. And it also shows how lawyers should use the law and the courts for the protection of individual rights even when the courts themselves are part of the problem. This case is a gut-check for lawyers about why they entered the legal profession.

The Contempt of Court CLE is idea for either a one-hour program over lunch or dinner or a three-hour CLE. It is the idea CLE for diversity programs, luncheon programs that promote pro bono efforts and law firm retreats.

For more information about Mark's CLE's, please contact Mark Curriden at 214.232.6783 or *mark.curriden@texaslawbook.net*

The Contempt CLE has been approved for Ethics credit in nearly every state. *Click here* to see an outline and background information needed for CLE Ethics approval.

"This is an amazing story that every lawyer should know. Its about the rule of law. Its about judicial independence. Its about zealous advocacy." - ***Honorable Patrick Higginbotham, U.S. Court of Appeals for the Fifth Circuit***

"Mark has taken some of the most important issues facing the legal profession and brought them home in this incredible story. This case is truly the beginning of federal habeas corpus as we know it today. - ***Michael Tigar, famed professor of constitutional law and criminal defense lawyer***

"It is the best CLE ethics program I have ever attended."– ***AT&T General Counsel Wayne Watts***

"It is the only CLE ethics program I've handled where my lawyers were so moved that some of them actually cried. I strongly recommend Mark's presentation."– ***New Hampshire Bar Association CLE Director Joanne Hinnendael***

"Mark's program is the only CLE ethics presentation that has ever been turned into a major motion picture. Lawyers and judges love his CLE."– ***South Carolina Bar Association CLE Director Terry Burnett***

Contempt of Court & the ABA Model Rules

[CLE Ethics]

On August 27, 1908, the American Bar Association adopted the original Canons of Ethics. Two days later, at an oral argument in *U.S. v. Shipp*, Supreme Court Justice Oliver Wendell Holmes publicly commented that it was a shame that the ABA's actions came too late to help Ed Johnson. Nine decades later, Delaware Supreme Court Chief Justice Norman Veasey, who chaired the ABA's Ethics 2000 Commission, stated that Noah Parden embodied a lawyer's responsibility to his/her client. Across the country, judges – state and federal, trial and appellate – have commented that there is no better example of how lawyers should and should not behave than the century old case of Ed Johnson. Jurist, such as the Hon. Roger Gregory, Patrick Higginbotham, and Judith Kaye, have stated that Parden and his partner, Styles Hutchins, and how they handled this case, should be the role model for all lawyers.

These judges say the Johnson/Shipp case is a clear reminder of why we became lawyers and how lawyers, in the words of the Preamble of the ABA's Model Rules of Professional Conduct, have a "special responsibility for the quality of justice." A good example occurs early in the case (pages 60-61) when the trial judge, Samuel McReynolds, chooses and appoints two lawyers because he knows they do not have the skills to win the case. The judge gets the approval of the district attorney, Matt Whitaker, before making the appointment official.

Preamble and Scope:
[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.

(Pages 70-71) – The first lawyer appointed by Judge McReynolds to represent Johnson, Robert T. Cameron, tells the newspaper that he didn't want to represent Ed Johnson, that he was being forced to represent Johnson by the judge, that he hoped his clients wouldn't hold his involvement in the case against him (he made this statement after one of his best paying clients fired him), and that he hadn't made up his mind yet on the guilt of his client.

(Pages 71-72) – In a letter to the newspaper, Johnson's second lawyer, W.G.M. Thomas, writes that he didn't want to represent Johnson either, that he is doing so to obey the orders of the judge, that he is working to ascertain the guilt or innocence of Johnson, and that if Johnson is guilty, then he should die.

(Page 63) – Attorneys Cameron and Thomas do not object when the judge tells them that the case will go to trial in seven days. Nor did they object when the judge told them that they wouldn't have to do much work because Johnson's guilt was certain.

(Pages 122-127, 162-163) – Defense attorney Thomas goes behind his co-counsel's back to the judge and prosecutor, seeking the appointment of three additional lawyers to advise the defense on whether to provide an appeal. Thomas and these three new lawyers advise Johnson to waive his rights to appeal and accept the death sentence.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(Pages 5-19, 173, 220) – Parden wrote about the case at length in Chattanooga's black-owned newspaper, *The Blade*, in an effort to better educate the public about the court system. He also spoke at churches and community functions. We know as much as we do about this case because of Parden's extensive writings.

(Pages 5-19, 150-187) – Parden was very mindful of the deficiencies in the administration of justice and the need for protection of the rule of law, as required above. It was this interest and commitment that led Parden and Hutchins to file this extraordinary, historic federal *habeas* petition at a time when such petitions were considered frivolous, and raising constitutional objections on issues that would resonate for the next century. This entire story is the struggle over this paragraph.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

(Pages 5-19, 136-187, 219, 234, 243-245) – Parden and Hutchins were clearly led by their personal conscience, morals, and beliefs, as well as a desire to improve the law and the legal profession. These lawyers knew accepting this case would destroy their practice, their financial livelihoods, and even threaten the lives of them and their families. This was the most politically and racially divisive case in decades. The homes and offices of these lawyers were destroyed. They had to flee Chattanooga for their lives. And their client was lynched. Through it all, these lawyers demonstrated their professionalism and commitment to the protection of the rule of law and the defense of their client's rights. Throughout all of this, Parden and Hutchins developed an extraordinary legal strategy (filing the federal *habeas* petition, convincing the U.S. District Court to let them question witnesses under oath, and then their direct appeal to the Supreme Court of the United States) that forever changed the criminal justice system in this country.

As Paragraph 16 states, **"The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law."**

(Pages 159-160) – District Attorney Whitaker personally attacked Parden calling him a liar, and stating that Parden's claims were "made of a desire to misrepresent the judiciary and made with a malignant purpose and a wicked heart."

Client-Lawyer Relationship
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.

(Pages 60-61) – The two original lawyers appointed by Judge McReynolds – Robert Cameron and W.M. Thomas – allowed themselves to be used by the judge. Cameron had tried only a handful of cases in his life, and those were no-fault divorces. He had never handled a criminal case and he certainly wasn't qualified for this one. Thomas openly admitted he didn't try criminal matters.

(Pages 70-71) – The first lawyer appointed by Judge McReynolds to represent Johnson, Robert T. Cameron, tells the newspaper that he didn't want to represent Ed Johnson, that he was being forced to represent Johnson by the judge, that he hoped his clients wouldn't hold his involvement in the case against him (he made this statement after one of his best paying clients fired him), and that he hadn't made up his mind yet on the guilt of his client.

(Pages 71-72) – In a letter to the newspaper, Johnson's second lawyer, W.G.M. Thomas, writes that he didn't want to represent Johnson either, that he is doing so to obey the orders of the judge, that he is working to ascertain the guilt or innocence of Johnson, and that if Johnson is guilty, then he should die.

(Page 63) – Attorneys Cameron and Thomas do not object when the judge tells them that the case will go to trial in seven days. Nor did they object when the judge told them that they wouldn't have to do much work because Johnson's guilt was certain.

(Pages 122-127, 162-163) – Defense attorney Thomas convinces the judge to appoint three additional lawyers to help him convince Johnson that he should waive his right to appeal. Thomas claims that he has done his duty as a lawyer in representing Johnson at the trial, but that this obligation or responsibility does not continue. Thomas admits that the lynch mob influenced his decision-making.

(Pages 3-19, 150-187) – By contrast, Parden and Hutchins put everything at stake for their client and for the protection of the rule of law. Not only did the lynch mob not influence Parden and Hutchins, it made them more determined. They faced significant racial hatred, and even some in the black community felt they should back away. Instead, these lawyers actually intensified their efforts. The thoughtfulness and preparation Parden and Hutchins put in this case despite the extraordinary circumstances, was truly historic and a model for all lawyers.

Rule 1.7 Conflict of Interest: General Rule – The commentary (p. 1) on this rule is particularly interesting because it states, "Loyalty and independent judgment are essential elements in the lawyer's relationship to a client." As noted above, Thomas and Cameron had no loyalty to their client and were far from independent, as their recommendations to their client and their actions in their representation of their client repeatedly demonstrated that they were influenced by the fear of the mob and by their fear of personal or financial harm that they might suffer. (Paragraph two of the commentary specifically states that "A lawyer may not allow business or personal interests to affect representation of a client.") By contrast, Parden and Johnson nearly sacrificed their careers and their lives to defend their client.

Rule 1.9 Conflict of Interest: Former Client – A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(Page 260) – Lewis Shepherd, who did zealously advocate for Johnson during the trial, suddenly shows up representing one of the leaders of the lynch mob in the contempt trial before the U.S. Supreme Court.

Rule 2.1 Advisor – In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

See response to Rule 1.1.

Rule 3.1 Meritorious Claims and Contentions – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

(Pages 3-19, 150-187, 250-270) – This is interesting on two fronts. First, under the existing law in 1906, Parden and Hutchins were clearly reaching in their federal *habeas* petition. And the Attorney General of the United States was clearly reaching when he brought the contempt case against Shipp and the others. But both were very legitimate. Most argued at the time that both actions were frivolous and not in good faith. These were the very reasons that Thomas argued post jury verdict that there should be no appeal of the verdict and that his client should be hanged.

Rule 3.6 Trial Publicity
(Page 79) – District Attorney Whitaker makes highly racist and prejudicial statements to the newspapers that were published the morning of the Johnson trial designed to heavily influence the jury pool.

CONTEMPT OF COURT CLE PROGRAM

OUTLINE OF ETHICS/PROFESSIONALISM ISSUES

Ethical Issues Under the Rubric of Due Process

- Before the trial proceedings began, the trial judge improperly and prejudicially announced to the court appointed attorneys defending Ed Johnson that neither a Motion to Continue nor a Motion to Change Venue would be granted and that the judge would be angry if such motions were made. In so doing, the judge coerced and intimidated court appointed counsel so that they did not seek a continuance or a change in venue when justice demanded both to secure a fair trial. The bias of Judge McReynolds, his racist remarks, and lack of judicial independence due to public pressure was a huge factor.

- Judge's appointment of incompetent counsel—neither had ever tried a criminal case let alone a capital case. Canon 1A—"A judge should participate in establishing, maintaining and enforcing high standards of conduct."

- Judge's insistence on having trial in 11 days—not sufficient time for defense to prepare. Canon 3B(7)—a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. This also applies to the judge bullying the court appointed counsel into not making motions to continue or change venue.

- The Johnson/Shipp case is clear reminder of why we became lawyers and how lawyers and judges have "a special responsibility for the quality of justice." Preamble, ABA Model Rules of Professional Conduct. Here, the trial judge, Samuel McReynolds picks two lawyers because he knows they do not have the skills to win the case and abdicates this reponsibility.

- Canon 3B(2)—"a judge shall not be swayed by partisan interests, public clamor or fear of criticism". Here, Judge McReynolds decisions to hold trial so quickly and the appointment of inexperienced counsel was obviously influenced by the public outcry and media attention surrounding the alleged offense.

- The judge gets the approval of the District Attorney, Matt Whittaker, before making the appointment of counsel official. Abdication of judicial independence. Canon1—A judge should uphold the Integrity and Independence of the Judiciary.

- Johnson was denied a public and fair trial by an impartial jury in that only selected members of the community were allowed into the courthouse which was kept under armed guard by the Sheriff's Department; the jury consisted of only white men with African Americans being improperly and systematically excluded from jury service. The three white court appointed counsel were intimidated into

failing to challenge the denial of Johnson's fundamental constitutional and due process rights

- Johnson was denied fundamental fairness at his trial in that the complaining witness, the victim, could not swear under oath that Johnson was the man who attacked her; and, one of the jurors was so enraged that he had to be physically restrained from physically attacking Johnson as he uttered: "If I could get my hands on him, I would tear his heart out!" Johnson's court appointed lawyers did not request and the court did not grant a mistrial.

- Following his conviction of capital murder and imposition of the death penalty, Johnson's court appointed lawyers abandoned him. Moreover, despite the complete lack of due process and fairness in the proceedings, Johnson's court appointed lawyers, fearing community outrage and the danger of a lynching, persuaded Johnson to not exercise his constitutional right to appeal his conviction. Johnson's court appointed counsel failed to competently and diligently advise and represent Johnson. ABA MRPC, Preamble, cmt [2]: "As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." Moreover, the court accepted Johnson's waiver of his right to appeal, knowing that it was not an intelligent and voluntary waiver, but coerced out of fear of being lynched. Under no stretch of the imagination, even in 1906, was this a knowing, intelligent and voluntary waiver.

- Under current constitutional law and the rules of conduct, court appointed counsel are required to pursue the defendant's right of appeal even when there is no merit unless granted leave of court to withdraw. *Anders v. California*. Granted, counsel is bound by the client's decision not to appeal a conviction, but here Johnson's counsel talked Johnson out of exercising his right to appeal a conviction when an appeal had substantial merit. ABA Rule 1.16 allow a lawyer to withdraw from representation only for good cause or if withdrawal can be effected without material adverse effect. Johnson's counsels' conduct was tantamount to an improper withdrawal from representation under the current rules and constitutional precedent.

Professionalism/Ethics

- By contrast, Parden and Hutchins put everything at stake—their reputations, careers and safety—for their client and for the protection of the rule of law. ABA Model Rules of Professional Conduct, Preamble, cmt. [2]: "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."

- MRPC, Preamble, cmt. [4]: "In all professional functions a lawyer should be competent, prompt and diligent."

- MRPC, Preamble, cmt. [6]: "As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest."

- Noah Parden wrote at length about Johnson's case in Chattanooga's black-owned newspaper in an effort to educate the public about the legal system. He spoke about the case at length at social and church functions. Much of what we know about Johnson's case may be attributed to Parden's extensive writings. Parden was very mindful of the deficiencies in the administration of justice and the need to protect the rule of law. It was this commitment that led Parden and Hutchins to file this extraordinary, historic federal habeas petition at a time when such legal actions were considered frivolous.

- ABA MRPC, Preamble, cmt. [7]: "Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service."

- ABA MRPC, Preamble. cmt.[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

however, qualified. All lawyers have a responsibility to assist in providing *pro bono publico* service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services."

- ABA MR 6.2, cmt. [3]: "An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality . . ."

Duty of Competent Representation

- The two original lawyers appointed by Judge McReynolds—Robert Cameron and W.M. Thomas were not competent to handle a capital murder defense. Cameron had tried only a handful of cases in his career and those were no-fault divorces. He had never handled a criminal case and was certainly not qualified for Johnson's case. Thomas openly admitted he didn't try criminal matters.

- ABA Model Rule 1.1: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Applying the Ethical Issues in Today's Legal Environment

- It is the rule of law and our judicial system that sets the United States apart from much of the rest of the world. As Supreme Court Justice Sandra Day O'Connor warned in the recent Supreme Court decision in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), involving an American citizen who was detained as an enemy combatant, "It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad."

- In June 2008, the U.S. Supreme Court ruled in *Boumediene v. Bush* that detainees at Guantanamo Bay have a right to appeal their detention in federal courts. Yet, facing Kafkaesque obstacles, lawyers representing detainees at the Guantanamo facility have been fighting for more than six years for meaningful, confidential access to their clients, and some have never actually met their clients. Detainees dubbed "enemy combatants" are not entitled to access to classified evidence against them. Some detainees have been held without formal charges for more than six years. Some have refused outright to cooperate or even communicate with their appointed counsel, severely hampering their defense. Pro bono attorneys have continued, despite these conditions, to persevere in efforts to provide due process and other basic protections for these clients. Lawyers from several private law firms have been honored for their pro bono service.

- Elizabeth Wohlford, Esquire in her article "Representing Repugnant Clients: Every Lawyer's Duty?" writes: Naturally, a lawyer must be concerned about the financial impact of or public reaction to publicly sensitive representation. Yet if law school loans prevent an attorney from protecting the Constitution and the efficient administration of justice, then that attorney is in the wrong profession and should never have incurred those loans in the first place." American Bar Association, *GP Solo*, No. 7, Vol.22 (Oct./Nov. 2005).

- The late Frank W. Dunham, Jr. succumbed to brain cancer and died in 2006 but not after having defended two notorious terrorism suspects, Zacarias Moussaoui and Yaser Esam Hamdi. Dunham and his lawyers battled the government all the while his client despised and personally attacked Dunham and his team. In spite of all the obstacles, Mr. Dunham personally argued before the U.S. Supreme Court the case of Hamdi, a U.S. citizen held as a combatant by the military. That case produced an important decision that upheld the government's power to detain Hamdi but allowed that he could challenge that detention in U.S. courts. Hamdi was released and flown to Saudi Arabia.

Ethical Duties of the Prosecutor

- The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel

- ABA Model Rule 3.8, cmt [1]: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons." Va. Rule 3.8 is identical except *that it excludes the duty of taking special precautions to prevent and rectify the conviction of innocent persons.*

- On the morning of the trial, District Attorney Whitaker makes highly racist and prejudicial statements to the newspapers were published the morning of Johnson's trial calculated to heavily influence the jury pool.

- ABA Model Rule 3.6 (a): A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

- (b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

Ethical Issues Regarding the Habeas Proceedings

- ABA Rule 3.1 (Meritorious Claims and Contentions): A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

- Under the law as it existed in 1906, Parden and Hutchins were clearly stretching in their federal habeas petition. Also, the Attorney General of the United States was clearly reaching when he initiated contempt proceedings against Shipp and others. Most argued at the time that these actions were frivolous and not well grounded in law or fact, and not brought in good faith.