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The Legacy of Professor Joseph Webb McKnight

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THE LEGACY OF PROFESSOR JOSEPH WEBB MCKNIGHT

*Nathan L. Hecht**

THANKFULLY, I was in my third year at Southern Methodist University Dedman School of Law when I saw the movie, *The Paper Chase*,¹ based on John Jay Osborn Jr.'s 1971 novel of the same name,² which I had not read. In his first year at Harvard Law School, Hart is taking contracts from Kingsfield, an austere professor (played to perfection by John Houseman, who won an Oscar for his performance) with zero tolerance for poorly prepared students in his large class. I will never forget the moment when, in response to Hart's feeble answer to a question, the imperious Kingsfield summons him to the front of the class, hands him a dime, and says, "Call your mother. Tell her there is serious doubt about you ever becoming a lawyer." Hart calls him an SOB, Kingsfield pleads guilty, and Hart ends up getting an "A" in the course. The ending does not make the year seem less an ordeal. I say I am thankful I was in my third year when I was introduced to *The Paper Chase* because, had I read the book before I started my first year, I would have been even more terrified than I was. There were no lawyers in my family, and I was not sure what to expect. In my very first class, civil procedure, the professor, a Kingsfield-like curmudgeon, began by calling on a student (not me) and tormenting his victim with questions the entire period, eliciting from him at one point the averment that whatever a judge says is right. The hundred or so of the rest of us, having been spared by Providence, emerged shaken.

Law school professors could be formidable figures. Some had not only studied the law—they had made it. But they were not all crusty Kingsfields. Joseph Webb McKnight was not. I thought he had something of an Oxford don's air about him (I knew he had studied at Oxford but did not know he was born and raised in San Angelo). He had an engaging gentility, was always interesting and interested, a bit quirky, and quick to find humor. He seemed perpetually in thought, slightly distracted, as he moved through the Quadrangle to class and back to his office, which was forever cluttered with piles upon piles of papers, projects poised for his

* Chief Justice, Supreme Court of Texas. Part of this article is drawn from remarks delivered by the author at a symposium held at SMU's Dedman School of Law in May 2014 on the occasion of Professor McKnight's retirement, and from a short piece by the author earlier this year for the *Journal of the Texas Supreme Court Historical Society*.

1. THE PAPER CHASE, 20th Century Fox (1973).
2. JOHN JAY OSBORN JR., THE PAPER CHASE (1971).

direction, arranged around him like the students in his classes. Usually in a dark suit and thin, dark tie, he looked a little ruffled, the cuffs of his white shirts fraying. He was not the imposing Kingsfield. Yet he was to Texas law of family relations, matrimonial property, homestead, and creditors' rights who the fictional Kingsfield was to contracts.

When I arrived at SMU, Professor McKnight was beginning his seventeenth year on the faculty. I did not know it at the time—Professor McKnight was spared 1Ls, and we him—but he had just finished shepherding the 1970 Texas Family Code³ through the Legislature, serving as one of the Code's principal drafters.⁴ Like others engaged in that project, Professor McKnight was fully knowledgeable of the law and its practical operation. But his single, unmatched contribution was his thorough study and understanding of the law's ancient sources and development and its association with Texas history and values. Although the Republic of Texas adopted the common law of England in 1840,⁵ the civil law of Mexico and Spain continued to influence Texas law. That influence was especially powerful on property rights⁶ and family law⁷ but in other areas as well. Professor McKnight's 1959 article, *The Spanish Influence on the Texas Law of Civil Procedure*,⁸ was cited as gospel immediately⁹

3. Act effective Jan. 1, 1970, 61st Leg., R.S., ch. 888, § 1, 1969 Tex. Gen. Laws 2707.

4. See *Weatherford v. Elizondo*, 52 F.R.D. 122, 127 (S.D. Tex. 1971) (referring to Professor McKnight as "the principal source of drafting, study, and research" for the Texas Family Code); *Stites v. Gillum*, 872 S.W.2d 786, 795 (Tex. App.—Fort Worth 1994, writ denied) ("Professor McKnight has been on the faculty of Southern Methodist University School of Law since 1955 [then nearly forty years], and actively studies and researches family law issues"); *Ramirez v. Ramirez*, 524 S.W.2d 767, 769 (Tex. Civ. App.—Corpus Christi 1975, no writ) (citing Professor McKnight's commentary on the drafting process as a first-hand participant); Joseph W. McKnight, *Title I: Husband & Wife*, 5 TEX. TECH L. REV. 281, 337 (1974) (describing the drafting process).

5. Act approved Jan. 25, 1840, 4th Cong., R.S., § 1, 1840 Repub. Tex. Laws 3–4, reprinted in 2 H.P.N Gammel, *THE LAWS OF TEXAS 1822-1897*, at 177–78 (Austin, Gammel Book Co. 1898).

6. See, e.g., *Severance v. Patterson*, 370 S.W.3d 705, 716–17 n.16 (Tex. 2012); *Kraft v. Langford*, 565 S.W.2d 223, 228–29 (Tex. 1978); *Manry v. Robison*, 56 S.W.2d 438, 443–49 (Tex. 1932); *Miller v. Letzerich*, 49 S.W.2d 404, 408 (Tex. 1932).

7. See, e.g., *Leake v. Saunders*, 84 S.W.2d 993, 994 (Tex. 1935) (explaining the civil and common law influences on coverture); *Dickson v. Strickland*, 265 S.W. 1012, 1022 (Tex. 1924) (explaining the civil and common law influences on coverture); *Pettus v. Dawson*, 17 S.W. 714, 714–15 (Tex. 1891) (discussing heirship); *Eckford v. Knox*, 2 S.W. 372, 373–74 (Tex. 1886).

8. Joseph W. McKnight, *The Spanish Influence on the Texas Law of Civil Procedure*, 38 TEX. L. REV. 24, 36–38 (1959).

9. *Mercantile Nat'l Bank at Dall. v. Langdeau*, 331 S.W.2d 349, 355 n.9 (Tex. Civ. App.—Austin 1959), *rev'd sub nom.* *Langdeau v. Republic Nat'l Bank of Dall.*, 341 S.W.2d 161 (Tex. 1960), *rev'd and remanded*, 371 U.S. 555 (1963), *on remand*, 365 S.W.2d 783 (Tex. 1963) (affirming court of appeals). The question was whether a federal statute permitting a national bank to be sued in its county of domicile was actually mandatory, precluding state law permitting suit elsewhere. *Langdeau*, 331 S.W.2d at 349. The Texas Court of Civil Appeals in Austin answered yes, as did the United States Supreme Court, reversing the Texas Supreme Court. *Langdeau*, 371 U.S. at 557, 567. The court of appeals cited Professor McKnight's article for the proposition that "[b]oth the common law and the Spanish law permitted suits to be maintained where the defendant resided" and evidence that the Congress was well aware of the law of venue. *Langdeau*, 331 S.W.2d at 355 n.9.

and years later.¹⁰

Which was typical of Professor McKnight's articles: they were frequently cited as authority, not a common role for law review articles. A prolific writer and author of several books,¹¹ articles were his media of choice. The first *Annual Survey of Texas Law* published in 1967 in the *Southwestern Law Journal* (now the *SMU Law Review*), contained Professor McKnight's article on matrimonial property,¹² and for the next forty years, every *Annual Survey* contained his views on the latest developments in his fields of interest.

A survey of court decisions citing Professor McKnight's articles over the years proves my point:

- Two 1968 articles,¹³ each cited in two cases, explained that a wife's recovery for injuries was a separate right under Spanish, Mexican, and early Texas law,¹⁴ and that she had the right to settle her claim. One court referred to one article as “[o]f considerable interest and persuasion.”¹⁵
- When he stated in a 1973 *Annual Survey* article that Family Code drafters had made a mistake,¹⁶ the court took his word for it.¹⁷
- A 1975 *Annual Survey* article¹⁸ was cited for the proposition that a spouse's conveyance of an undivided one-half interest in community property to a third party is an invalid attempt to involuntarily partition the community.¹⁹
- A 1976 *St. Mary's Law Review* article²⁰ regarding a divorce court's duty and power to consider military retirement benefits in dividing the community estate was cited by the Supreme Court of Texas.²¹
- A 1979 *Annual Survey* article²² was cited on the question of whether a spouse's contribution to the purchase of property made it

10. *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831, 874 n.34 (5th Cir. 1993).

11. *E.g.*, JOSEPH W. MCKNIGHT, *THE SPANISH ELEMENTS IN MODERN TEXAS LAW* (1979); JOSEPH W. MCKNIGHT & WILLIAM A. REPPY, *TEXAS MATRIMONIAL PROPERTY LAW* (1983).

12. Joseph W. McKnight, *Matrimonial Property*, 21 Sw. L.J. 39, 39 (1967).

13. Joseph W. McKnight, *Matrimonial Property*, 22 Sw. L.J. 129, 132 (1968); Joseph W. McKnight, *Personal Injury as Separate Property—a Legislative History and Analysis of the New Article 4615*, 3 TRIAL LAWYERS FORUM 7, 7–8 (1968).

14. *Weatherford v. Elizondo*, 52 F.R.D. 122, 127–28 (S.D. Tex. 1971); *Graham v. Franco*, 488 S.W.2d 390, 394–96 (Tex. 1972); *Jamail v. Thomas*, 481 S.W.2d 485, 489 (Tex. Civ. App.—Houston [1st Dist.] 1972, writ ref'd n.r.e.); *Kirkpatrick v. Hurst*, 472 S.W.2d 295, 301 (Tex. Civ. App.—Texarkana 1971), *rev'd*, 484 S.W.2d 587 (Tex. 1972).

15. *Weatherford*, 52 F.R.D. at 127.

16. Joseph W. McKnight, *Matrimonial Property*, 27 Sw. L.J. 27, 38–39 (1973).

17. *Ramirez v. Ramirez*, 524 S.W.2d 767, 769 (Tex. Civ. App.—Corpus Christi 1975, no writ).

18. Joseph W. McKnight, *Family Law*, 29 Sw. L.J. 67, 89 (1975).

19. *In re Morrison*, 913 S.W.2d 689, 692 (Tex. App.—Texarkana 1995, writ denied).

20. Joseph W. McKnight, *Division of Texas Marital Property on Divorce*, 8 ST. MARY'S L.J. 413, 441 (1976).

21. *U.S. v. Stelter*, 567 S.W.2d 797, 798–99 (Tex. 1978), *reversing*, 553 S.W.2d 227 (Tex. Civ. App.—El Paso 1977).

22. Joseph W. McKnight, *Family Law: Husband and Wife*, 33 Sw. L.J. 99, 100 (1979).

community.²³

- A 1981 *Annual Survey* article²⁴ on the 1948 amendment to the Texas Constitution allowing spouses to partition community property,²⁵ and a 1982 *St. Mary's Law Review* article on the effect of that amendment,²⁶ were cited as authority.²⁷
- I recently cited Professor McKnight's 1983 *Annual Survey* article²⁸ explaining, or debunking, "community debt."²⁹
- His 1984 *Annual Survey* article³⁰ was cited for the rule that when a person purchases real property with separate property and takes title in a deed to both the person and a spouse, a gift is presumed, while a grantor's reservation of an interest in real property to a spouse conveys no interest and is not a gift.³¹
- Professor McKnight's lengthy 1990 commentary on the Texas Family Code³² was cited on the right to reimbursement.³³
- Courts have cited his 1991 *Annual Survey* article³⁴ for the proposition that one spouse can contractually obligate the other's property but not the other personally.³⁵
- A 1996 *Annual Survey* article³⁶ was cited regarding legislative proposals for alimony and maintenance.³⁷
- A 1997 *Annual Survey* article³⁸ was cited on whether deferred compensation plans are community property.³⁹

23. *In re Sanger*, No. 06-99-00039-CV, 1999 WL 742607, at *4 n.5 (Tex. App.—Texarkana Sept. 24, 1999, no pet.).

24. Joseph W. McKnight, *Family Law: Husband and Wife*, 35 Sw. L.J. 93, 101 (1981).

25. Tex. Const. art. XVI, § 15.

26. Joseph W. McKnight, *The Constitutional Redefinition of Texas Matrimonial Property as It Affects Antenuptial and Interspousal Transactions*, 13 ST. MARY'S L.J. 449, 458 (1982).

27. *Winger v. Pianka*, 831 S.W.2d 853, 854-55 (Tex. App.—Austin 1992, writ denied).

28. Joseph W. McKnight, *Family Law: Husband and Wife*, 37 Sw. L.J. 65, 76-77 (1983).

29. *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651, 654-55 & n.21 (Tex. 2013); see also *Henry v. Henry*, No. 03-11-00253-CV, 2014 WL 1572478, at *2 (Tex. App.—Austin April 18, 2014, no pet.).

30. Joseph W. McKnight, *Family Law: Husband and Wife*, 38 Sw. L.J. 131, 136 & nn.56-62 (1984).

31. *McCuen v. Huey*, 255 S.W.3d 716, 728 (Tex. App.—Waco 2008, no pet.).

32. Joseph W. McKnight, *Title I: Husband and Wife*, 21 TEX. TECH. L. REV. 911, 1016-17 (1990).

33. *Graham v. Graham*, 836 S.W.2d 308, 310 (Tex. App.—Texarkana 1992, no writ).

34. Joseph W. McKnight, *Family Law: Husband and Wife*, 45 Sw. L.J. 415, 424 (1991).

35. *Williams v. Norwest Bank Mont.*, No. 09-99-096-CV, 1999 WL 651072, at *3 (Tex. App.—Beaumont Aug. 26, 1999, no pet.) (per curiam); *Nelson v. Citizens Bank and Trust Co.*, 881 S.W.2d 128, 131 (Tex. App.—Houston [1st Dist.] 1994, writ denied).

36. Joseph W. McKnight, *Family Law: Husband and Wife*, 49 SMU L. REV. 1015, 1053 (1996).

37. *In re Combs*, 958 S.W.2d 848, 849 n.2 (Tex. App.—Amarillo 1997, pet. denied).

38. Joseph W. McKnight, *Family Law: Husband and Wife*, 50 SMU L. REV. 1189, 1201-02 (1997).

39. *Boyd v. Boyd*, 67 S.W.3d 398, 407 (Tex. App.—Fort Worth 2002, no pet.).

- A 2002 *Annual Survey* article⁴⁰ explaining the 1999 statutory changes regarding urban and rural homesteads was cited by the Fifth Circuit.⁴¹

Professor McKnight's most-cited article—eight times by my count⁴²—was his 1990 contribution to the *Annual Survey*, observing that it is harder to prove common-law marriage “[i]n a society in which non-marital cohabitation for extended periods of time is far more common than it once was”—a dry comment if ever there was one.⁴³ In one case, the Texas Supreme Court cited the article, over a dissent I joined, also citing it, reversing the court of appeals, which had also cited it.⁴⁴ When the Texas Supreme Court was debating the proper roles of state and federal constitutional analysis, Professor McKnight's article in the 1986 *Southwest Historical Quarterly* was cited by both sides.⁴⁵ I have not found a court that took issue with anything he wrote. That opposing sides would claim him for their own reminds me of the time he asked me, a law student, what the class had thought of one of his lectures. I replied we were all a little confused. “Splendid,” he said, genuinely complimented.

I did not take a course from Professor McKnight my second year. One afternoon, I found some reason to wander by his office—and later, again—and eventually, every week—more to chat than anything. Often, he would be musing over some fine—arcane, really—point of law. He told me that because of the size, nature, and history of the two countries, England required landowners to fence their animals in to prevent them from ranging about, while Mexico (like Spain) required landowners to fence others' animals out, favoring the open range. The issue had been of some importance in early Texas. Although the State had adopted the common law of England, it followed the civil law of the free range.⁴⁶ De-

40. Joseph W. McKnight, *Family Law: Husband and Wife*, 55 SMU L. REV. 1035, 1053 (2002).

41. *In re Bouchie*, 324 F.3d 780, 785 nn.29 & 31 (5th Cir. 2003).

42. *Bruce v. Elliott*, No. 05-10-00522-CV, 2012 WL 260025, at *2 (Tex. App.—Dallas Jan. 30, 2012, no pet.); *Thomas v. Sun Life Assurance Co.*, No. H-09-3162, 2010 WL 2991116, at *3 (S.D. Tex. July 26, 2010); *Lewis v. Anderson*, 173 S.W.3d 556, 560 n.1, 562 (Tex. App.—Dallas 2005, pet. denied); *J.C. Penney Life Ins. v. Heinrich*, 32 S.W.3d 280, 287 (Tex. App.—San Antonio 2000, pet. denied); *In re Mota*, No. 13-97-285-CV, 1998 WL 35277127, at *2 (Tex. App.—Corpus Christi Aug. 31, 1998, pet. granted); *Dalworth Trucking Co. v. Bulen*, 924 S.W.2d 728, 737 (Tex. App.—Texarkana 1996, writ denied); *Russell v. Russell*, 865 S.W.2d 929, 933 (Tex. 1993), *reversing*, *Russell v. Russell*, 838 S.W.2d 909, 913 (Tex. App.—Beaumont 1992); *Russell*, 865 S.W.2d at 937 (Gonzalez, J., joined by Hecht, J., dissenting); *Flores v. Flores*, 847 S.W.2d 648, 652 (Tex. App.—Waco 1993, writ denied).

43. Joseph W. McKnight, *Family Law: Husband and Wife*, 44 Sw. L.J. 1, 2 (1990).

44. *Russell*, 865 S.W.2d at 933, *reversing*, 838 S.W.2d at 913 (Tex. App.—Beaumont 1992); *Russell*, at 936 (Gonzalez, J., joined by Hecht, J., dissenting).

45. *Compare Ex parte Tucci*, 859 S.W.2d 1, 29 n.30 (Tex. 1993) (Phillips, C.J., concurring) (quoting Joseph W. McKnight, *Stephen Austin's Legalistic Concerns*, 89 Sw. HIST. Q. 239, 265 (1986): “[m]ost of the 1833 Constitution was an amalgamation of the Tennessee, Missouri, and Louisiana constitutions”), *with Davenport v. Garcia*, 834 S.W.2d 4, 7 n.2 (Tex. 1992) (Doggett, J.) (citing Joseph W. McKnight, *Stephen Austin's Legalistic Concerns*, 89 Sw. HIST. Q. 239, 246–47, 263–64 (1986), for authority that Stephen F. Austin was an advocate of a strong state constitution).

46. *Clarendon Land, Inv. & Agency Co. v. McClelland*, 23 S.W. 576, 578 (Tex. 1893).

viations from that rule were sensitive enough to require attention in the Texas Constitution.⁴⁷ Professor McKnight talked me into writing a paper on the subject for his class, and though it was all interesting enough, it was, I thought, the very kind of thing you do in law school that will be of no benefit in practice. Twenty-five years later, the Supreme Court of Texas, which by then I had joined, was called upon to consider “the creation of a new common-law duty to keep horses from roaming onto farm-to-market roads in areas that have not adopted local stock laws.”⁴⁸ After thoroughly reviewing the historical background, the Court declined the invitation. I thanked Professor McKnight for the head start on the research his assignment had provided. “Of course,” he said.

The one time I feared Professor McKnight had steered me wrong was when he convinced me not to study for the bar exam. “Surely you aren’t going to, are you?” he asked. The pass rate was around 80%. “When did you ever score in the bottom 20% on a test?” I remembered a few times, but he scoffed. He had been away from Texas, he said—whether studying at Oxford or practicing in New York City the short time he was with Cravath, Swaine, and Moore, I don’t recall—and had flown to Austin the morning of the bar exam. He had not studied at all but did spend the thirty minutes he had before the exam started to look over some notes. He got a 76, one point above passing. “I always regretted wasting that thirty minutes,” he told me. I decided if he could do it, so could I. But the night before the exam, I panicked and spent several hours trying to cram. I got an 84. Professor McKnight was right, but I’m still glad I crammed.

Like Kingsfield in his imaginary world, Professor McKnight profoundly influenced the real world—Texas law and generations of law students. Some teachers are memorable; few become a student’s friend. Joe and I became friends. He was the best kind of friend to have: loyal, supportive, but frank. After I came to the Supreme Court, I would return to Dallas almost every week and would work in a carrel in the Underwood Law Library, where I’d find him invariably in the Rare Book Room surrounded by leather-bound volumes of ancient law assembled for his attention like the piles of papers in his office. “Come in, Nathan” he’d say cheerily, almost immediately followed by, “I was just reading your opinion in [the latest family law case]”—and either—“I thought the Court was right”—or—“I greatly fear you got it exactly wrong.” Then we’d talk awhile, sometimes arguing, though never sharply, as people do now, but as if he’d just come from San Angelo, where he grew up, or from Oxford, which he loved so dearly.

47. Tex. Const. art. XVI, § 22 (repealed Nov. 26, 2001); Tex. Const. art. XVI, § 23.

48. *Gibbs v. Jackson*, 990 S.W.2d 745, 746 (Tex. 1999).