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JOE MCKNIGHT: FRIEND, MENTOR, SCHOLAR & LEGEND

*Brian L. Webb**

I am honored to be part of this tribute issued to Prof. Joseph W. McKnight. It's tempting to say simply that he was the greatest man that ever lived, but even Joe might agree that is something of an overstatement. But if the discussion is confined to Texas family law, it's probably just a slight exaggeration, if any at all. He would be the first to tell you of the many significant contributions to the field by many other people, and he would extol their talents and devotion to the cause at great length. But the truth is that Joe McKnight was uniquely equipped to bring the Texas Family Code into existence and to continue to shape it and mold it as it evolved over the subsequent decades. And his active involvement in Texas family law continued literally until the very end of his life. In the process, he brought great credit and enhanced stature to SMU.

More on that side of Professor McKnight later, but first I want to share with you the type of person he was. Obviously he was, as they say, scary smart. He was a Rhodes Scholar, which only begins to hint at the depth of his intellect. He was a serious scholar whose work was universally respected and acclaimed in academic and legal circles. And he was a wonderful teacher who passed along his knowledge and insight to literally thousands of lawyers who were fortunate enough to be his students and/or to hear him speak at continuing legal education seminars throughout his career. But even more than that, Joe was charming and funny and mischievous and friendly and generous and kind. His wit could be razor sharp but almost always delivered with that twinkle in his eyes and a sly smile. He was a good person. Make that a *great* person.

I first met Joe as a 1L at SMU Dedman School of Law in 1972, and over the next 43 years or so we became fast friends. At that first meeting, relatively speaking, he knew everything and I knew nothing. And by the way that relative position between us never changed much over all of the years. Despite that he was friendly and engaging and open. Understand that in that day and age, there was no email, there were no texts, there was no social media, there weren't even cell phones, and law students and professors did not engage and intermingle much. In fact, we were scared to death of them to the point of avoiding eye contact lest we be questioned or judged by them, and they, for the most part, seemed perfectly content with that relationship. Joe and I began to become friends as I

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took his class in Texas Matrimonial Property where I made a huge impression by admitting I wasn't prepared when he called on me. He, of course, invited me to perform anyway, and after leading me through the facts and discussion and analysis and pinning me down to an answer, he asked me a question that I've never forgotten. "Mr. Webb, would you be surprised to know that the Texas Supreme Court does not agree with you?" Of course I wasn't surprised, but he did it all with that impish grin on his face and that twinkle in his eye that seemed always to be there, so it was almost fun. Almost.

I was part of the civil clinic for a semester and a summer, and it just so happened that Joe shared a secretary with the clinic, and her office was down in the basement with us. As a result, Joe was a frequent visitor who seemed to prefer mingling with the clinic staff and students to the solitude of his ivory-tower office. This was at a time when the final touches were being put on the Texas Family Code by the Legislature, and Professor McKnight was constantly on the phone at the conference table in the clinic cajoling, berating, or explaining in order to get the Code finalized. By the way, the Texas Family Code was the very first Family Code in the United States and was pretty much Joe's baby from the beginning. He got the ball rolling in the early and mid-'60s and kept it going until it became the very foundation of Texas family law.

One of my very favorite Joe McKnight stories happened during this period when we were sharing space at the SMU Legal Clinic. We all came in one day, and taped to the inside of the door jamb leading to the clinic was an article that had been clipped out. The article included a statement that Professor Eugene Smith was the "Father of the Family Code." Joe had added an addendum neatly typed and taped to the bottom of the article, which said the following: "If Gene Smith is the Father of the Family Code, then I am the Creator of the Family Code and our relationship is not unlike that of man to God." Joe was fair and kind and believed everyone should get credit they were due, but there was not a shred of false modesty in his makeup! By the way, I never had a conversation with Joe where Gene Smith's name came up that Joe didn't go out of his way to praise and credit Gene for all of his contributions to the Code project.

That Family Code was tiny compared to what the current code has evolved into (for better or worse), but it was a hugely significant achievement when it came on line in the early '70s. For the first time, people could know what the answers were to the burning questions in family law, and they had a source to find those answers. From a hodge podge of constitutional provisions, statutes, and cases, figuring out how to resolve the issues that come up in divorce and custody cases was more often than not a hit-or-miss proposition. Joe and his friends brought it all together and gave it structure and order, and along the way made significant revisions that not only impacted the practice but also spurred significant societal changes. Married women were finally given the right to contract regarding their own property and eventually all the requirements that re-

quired their husbands to join in transactions in order to be valid fell by the wayside. It was also the beginning of the end for gender being the determining factor in deciding which parent would prevail in a custody suit. The body of law was made cohesive by the Code, which in turn led to its evolution being more logical and rational. On a day-to-day basis, lawyers who never could have had the wherewithal to gather all of the research which might come in to play in the typical divorce now had it at their fingertips. They became better lawyers as a result, and their clients certainly fared better. Again, it's hard to realize the enormity of this sea change from our perch 50 years later, but it was enormous, and it had never been done anywhere else in the country, and it wouldn't have happened here in Texas if it hadn't been for Joe McKnight.

Over the years Joe continued to be a regular contributor as the author and proponent of significant constitutional amendments (pre- and post-marital agreements, for instance), as the author and proponent (or sometimes opponent) of legislation, as a frequent author and lecturer on the CLE circuit, and of course, humming along in the background through it all, his extraordinary career as a professor at SMU Dedman School of Law.

As the years went by, he and I became closer and closer as we worked together (and occasionally against each other) in lawsuits and on various bar committees and in family law speciality organizations. We worked together on CLE programs and were fortunate that as a result we were able to spend a significant amount of time in each other's company. All of this culminated with my being given the distinct honor of being asked to team teach the Texas Matrimonial Property class with Professor McKnight at SMU. We did this for 4 years before Joe passed, and it was a truly wonderful experience. He was my teacher, my mentor, my colleague, and my friend. And now twice a week during the school year we shared time in the classroom with each other and with the students, and perhaps even more enjoyably, time together before and after each class.

I mentioned earlier that Joe was uniquely positioned to bring the family code and the modern family law practice into being. Only Joe was a legal historian with the knowledge necessary to bring together and coalesce all of the historical influences and contributions that eventually became part of the Family Code. No one had the interest in family law combined with the knowledge of the Visigoths and the encyclopedic knowledge of Texas constitutional history to have pulled this together. No one else had the influence over their law school necessary to persuade that institution to provide the meeting space for those around the state involved in the process to gather and also to underwrite the expenses of those meetings significantly. No one else had the gravitas that it takes to make the law simply by speaking aloud what he thought the law was and should be. When he spoke, legislators and Judges knew that he was not just an expert, but THE expert (If you read some of his writings he sometimes cites himself, who better?). He had a burning interest in family law

and the people that it served which never faltered. He was doing uncompensated CLE programs for the State Bar and others right up until the last very few years of his life, and his career as a professor at SMU is unparalleled. During that last semester that he and I taught together, he was completing his 60th year as a law professor at SMU, and his last appearance in class was literally two weeks before his death at the age of 90. And you could always see his spirits lift as he entered the classroom and had the opportunity to interact with a new group of bright, young minds.

He was truly a giant. He loved being a Family Lawyer, and he loved the life he had made for himself. He loved being Joe McKnight and we all loved him for what and who he was.