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Memorial Essay in Honor of Professor Emeritus Joseph Webb McKnight: Yet Another Historical Joinder Between Texas and Mexico: The Ongoing NAFTA Saga

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MEMORIAL ESSAY IN HONOR OF
PROFESSOR EMERITUS JOSEPH WEBB
McKNIGHT: YET ANOTHER HISTORICAL
JOINDER BETWEEN TEXAS AND MEXICO:
THE ONGOING NAFTA SAGA

*Joseph J. Norton**

THIS essay is intended to pay a modest, but most sincere, memorial tribute to my late colleague, friend, and mentor, Joseph Webb McKnight.¹ After a brief personal tribute to Joe, I will proffer a few selective reflections on how Joe's approach to law and legal history might be relevant to the current negotiations among the U.S. and Mexico respecting the Treaty Establishing the North American Free Trade Agreement (NAFTA Treaty)² and its ancillary (but separate) agreements on the environment³ and labor.⁴ Though Joe did not have a particular interest in NAFTA, he was most interested in the inter-relations between Mexican culture, law, and practice and their U.S./Texas counterparts.⁵ While one might think of Joe as the consummate Anglophile (à la his ermine-trimmed Oxford graduation gown and mace leading our annual graduation procession, his multiple degrees from Oxford, and his summer parties in Oxford for our Oxford summer school students), it needs to be borne in mind that Joe and his family's heritage is Texas through and

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1. Obituary of Joseph W. McKnight 1925–2015, LEGACY, <http://www.legacy.com/obituaries/name/joseph-mcknight-obituary?pid=1000000176732363&view=guestbook> [https://perma.cc/F8ZF-2FJQ].

2. North American Free Trade Agreement, Can.–Mex.–U.S., Dec. 17, 1992, 32 I.L.M. 289 & 605.

3. North American Agreement on Environmental Cooperation, Can.–Mex.–U.S., Sept. 14, 1993, 32 I.L.M. 1480 (U.S. has executed pursuant to an executive order).

4. North American Agreement on Labor Cooperation, Can.–Mex.–U.S., Sept. 14, 1993, 32 I.L.M. 1499 (U.S. has executed pursuant to an executive order).

5. See, e.g., Joseph W. McKnight, *The Spanish Legacy in Texas Law*, 3 AM. J. LEGAL HIST. 222 (1959).

through,⁶ and his primary scholarship⁷ has been on the influences of Spanish-Mexican law on Texas law (particularly as to family law and property law). While Joe embodied “an open mind and an appreciation of different perspectives and cultures[,] . . . he is a Texan in the most fundamental sense.” In a real sense, notwithstanding initial outward impressions, Joe was a “traditional Texan,”⁸ born and raised in San Angelo (Southwest Texas) and a fourth generation Texan.⁹

I. PERSONAL TRIBUTE TO PROFESSOR JOSEPH WEBB MCKNIGHT

Joseph Webb McKnight was one of my initial contacts with the SMU Dedman School of Law. Prior to my first meeting with Joe in the early 1970s, my professor of Civil and Roman Law at the University of Edinburgh, Scotland in the late 1960s (when he learned my family had just moved to Dallas) strongly suggested I meet with Joe. Joe had been a visiting professor at Edinburgh (Scotland is a mixed law system), and historically, Texas evolved as a mixed legal system.¹⁰

In addition, a senior academic from Oxford also encouraged me to get with Joe; Joe had been a Rhodes Scholar at Oxford and had built a reputation as a common law historian as to its reception under American law. Further, there was a senior Mexican legal scholar I met at the University of Michigan who echoed the same encouragement—apparently, Joe was well-known in Mexican academic legal circles.¹¹

Moreover, when I came to Dallas in 1972 to work at the Locke Purnell law firm, one of the oldest law firms in Texas and the second largest in Dallas (I would be number twenty-seven—can you imagine how much has changed in the law firm landscape in Dallas and Texas over the past four decades!), the senior partners at the firm spoke most highly of Joe. What they shared in common with Joe was their love of the law and of legal history and their high ethical standards. At that time, SMU had the largest international and comparative law collection west of the Mississippi, and the Locke firm had the largest such collection of a law firm in the Southwest (including a complete set of all English and Commonwealth law reports). I soon came to realize that Joe was a prime “mover” in helping the SMU law library build up its superb English and Commonwealth law and Mexican–Spanish law collections.¹²

6. See John B. McKnight, *Patris Mei Laudatio Ovatioque*, 55 SMU L. REV. 9, 9 (2002); see also B.F. Hicks, *Joseph and Mimi McKnight Tribute*, EL CAMPANARIO, at 4 (2012).

7. See generally Gregory L. Ivy, *Publications of Joseph W. McKnight*, 55 SMU L. REV. 367 (2002).

8. McKnight, *supra* note 6, at 9.

9. See McKnight, *supra* note 6 at 9–10.

10. *C.f.* McKnight, *supra* note 5, at 231, 236.

11. For example, in 1988, Joe was inducted as an academico (*honoris causa*) in the Academia Mexicana de Derecho Internacional.

12. See Bill Hicks, *Joseph W. McKnight: Man of Scholarship and Service*, TEXAS BAR BLOG (Apr. 21, 2015), <http://blog.texasbar.com/2015/04/articles/people/joseph-w-mcknight->

A further source of my initial knowledge of Joe was two of the young law associates at the Locke firm with whom I started law practice; both were SMU Law alums and both were devoted students of Joe. One came to hold high national office after becoming president of the Locke firm and of the Dallas and Texas Bars. The other came to be senior partner with a major international and Texas law firm. As we shared time together, the deep, warm, and humorous affection and the highest respect they had for Joe became clear. In fact, it seemed that everyone whom I came to meet who knew Joe (whether faculty colleagues, students, judges, practicing lawyers, church parishioners, etc.) had his/her own special story about Joe. As my close colleague, Roy Anderson, so succinctly and aptly concluded at our faculty's 75th birthday celebration for Joe at the Tower Club in Spring 2001: "I have never met anyone who reminded me of Joe McKnight."¹³ Indeed, Joseph W. McKnight was "unique," "a one of his kind."

When I first met Professor McKnight informally in 1972 in the English and Commonwealth section of our law library, I was not sure what exactly to expect. But the person I met then became one of the main reasons I chose SMU as my lifelong "academic home." Not only was Joe both an internationally respected common law scholar and civil law scholar, he had helped make our law library internationally known. In addition, he was most highly respected as a Texas lawyer, being the leading expert in Texas family and community property laws. Even more significantly, he was genuinely loved by his students. And, equally significant, Joe loved real, hard-covered books (old and new), and he saw the law library as the "lifeline" of our SMU legal academy.

As another of my close colleagues (Bill Dorsaneo) noted at Joe's 75th, Professor McKnight provided the model for young SMU law professors to aspire. We were to be good legal scholars and good law teachers, and we were to be actively involved in the Dallas and broader Texas legal communities, contributing the best we could to relevant legal reform in our area(s) of expertise.

Behind his "eccentric" ways, Joe took a very nurturing interest in the young SMU law professors including, the not-so-young-now Professors Emeriti Wingo, Daly, Moss, Bridge, and Armour; current Professors Anderson, Bloom, Dorsaneo, Lischer, Norton, Reed (deceased), Shuman (deceased), and Winship; and the young (or younger) faculty such as Professors Forrester, Gaba, Hanna, Mayo, Thornburg, Pryor (now at UNT Dallas College of Law), Spector, and Tate.

man-of-scholarship-and-service/ [<https://perma.cc/C6YN-K7CA>] ("In 2012, McKnight donated his collection of rare legal history books to the SMU Dedman School of Law. The collection of more than 6,000 was valued at almost \$7 million dollars. McKnight collected the books over 40 years.").

13. Remarks confirmed with Professor Anderson.

II. SELECTIVE REFLECTIONS ON THE NAFTA RENEGOTIATION PROCESS

Professor McKnight had the special ability and sense to view law in a long-term sense, looking backward and going forward. He also saw the legal process not as linear, but as organic, with many “ups and downs” over time; he understood that various laws and various legal systems can eventually interconnect in a functional manner. Believe it or not, Joe had a very practical view of the law and its underlying policies. This is one reason why Joe could deal with the interactions of English Common Law and the Spanish–Mexican civil law with Texas and the Southwest U.S. and why Joe was so well-respected with the practicing Bar. Another reason flows from Joe and his family’s deep and long roots in Southwest Texas,¹⁴ where the mixing of Anglo and Mexican cultures has been an enriching reality of daily life. Joe understood that, in moving forward, Texas could not be Texas without this ongoing cultural, societal, and legal amalgam.

In very much wanting to contribute a piece to this Symposium, I had initial difficulty in where to start. As “brought home” to me at the international and comparative law conference our law school had in Spring 2001 to honor Professor McKnight, Joe’s legal contributions over the years were indeed most significant and varied.¹⁵ However, in chatting at the time with Joe’s co-senior faculty member, the late University Professor Emeritus Alan Bromberg, I came to better appreciate that, though Joe is indeed a “one-off” (as was Alan), he has been quite *traditional* in terms of the type of legal academic our former Dean Storey sought: one with an international/national stature, who was recognized as the best in his area of expertise as to Texas law and practice and who would make substantial contributions to SMU and its “Law Center”¹⁶ and to law reform and judicial development in one’s area. In reflecting on this, and particularly on this later aspect of legal and judicial reform, I came to the judgement that maybe some brief reflections on the current troubled state respecting the current renegotiation of the NAFTA Treaty and its side agreements¹⁷ might be relevant for this special law journal issue.

Let me briefly explain. Professor McKnight, as a world-class historian on Texas (Tejas), was well aware of the numerous “peaks and valleys” in Texas/U.S.–Mexico relations over the past two centuries.¹⁸ From a vast and largely barren swath of arid land north of the Rio Grande River that was sparsely populated by a few Hispanics around the San Antonio and

14. See generally McKnight, *supra* note 6.

15. See generally Ivy, *supra* note 7.

16. As noted on the inscribed building stone above the entrance of Storey Hall, our law school was conceived of as a “Legal Center,” the first in this country.

17. See generally OFFICE OF THE U.S. TRADE REPRESENTATIVE, *Summary of Objectives for the NAFTA Renegotiation* (July 17, 2017), <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf> [<https://perma.cc/287N-RLR3>].

18. See, e.g., T.R. FEHRENBACH, *LONE STAR: A HISTORY OF TEXAS AND THE TEXANS* (2000 ed., DeCapo Press 2000) (1968).

Goliad areas (with various Indian tribes and a few Anglos and persons of African descent)¹⁹ to becoming currently the second most populous state in the United States with a total population exceeding 25 million (39% of which are Hispanics/Latinos),²⁰ Joe recognized the numerous and inseparable cultural, societal, and legal interconnections between Texas and Mexico. He took a pragmatic, non-ideological approach to discerning the practical pros and cons of these interconnections. For example, a long time back, Joe brought to my attention that NAFTA was really the progeny of the U.S.–Mexico Bracero Program of the 1940s and 1950s respecting immigrant Mexican farm workers, a program that was highly controversial,²¹ and then of the Mexican Government’s–U.S. Maquiladora Program of the 1960s–1980s, also highly controversial.²² Joe saw NAFTA as part of an ongoing “process” of redefining U.S.–Mexico relations. Today, most senior Texas political and business leaders echo the benefits of NAFTA to the Texas economy and society, and they strongly support the continuation of NAFTA (with some reasonable modifications to make the Treaty consistent with economic developments over the past two decades).²³

Now, NAFTA entered into force on January 1, 1994, with the three contracting parties, the U.S., Canada, and Mexico, representing at that time the world’s largest trade block and the most advanced “free trade” treaty devised by the U.S. NAFTA was preceded by the U.S.–Israeli Free Trade Agreement (FTA) (entering into force on August 19, 1985)²⁴ and by the U.S.–Canadian FTA (entering into force on January 1, 1989).²⁵ At that time of its entering into force in 1994, the NAFTA Treaty was recognized as the “gold standard” of regional free trade arrangements, which covered not only trade in goods, but also services, rules of origin, foreign direct investment, financial services, intellectual property, agriculture, land transportation, energy, government procurement, temporary entrance of business persons, institutional structure, dispute resolution, and ongoing review mechanisms, along with special provisions on certain “protected industries” (e.g., automotive goods and textiles) and with detailed side agreements on the environment and labor.²⁶ The NAFTA

19. *Census and Census Records*, TEXAS STATE HISTORICAL ASSOCIATION, <https://tshaonline.org/handbook/online/articles/ulc01> [<https://perma.cc/MZ3J-QKUS>].

20. *Quick Facts*, U.S. CENSUS BUREAU (July 1, 2016), <https://www.census.gov/quickfacts/fact/table/TX/PST120216> [<https://perma.cc/EFV9-KC3J>].

21. *See* BRACERO HISTORY ARCHIVES, <http://braceroarchive.org/> [<https://perma.cc/TGZ2-HPF6>].

22. *See, e.g., Maquiladoras*, TEXAS STATE HISTORICAL ASSOCIATION, <https://tshaonline.org/handbook/online/articles/dzm02> [<https://perma.cc/32V7-FPGB>].

23. *See* Erica Greider, *Trumpeting Trade*, TEXAS MONTHLY (Oct. 2016), <https://www.texasmonthly.com/politics/why-nafta-has-been-good-for-texas-no-matter-what-donald-trump-says/> [<https://perma.cc/5Z9E-65FS>].

24. *See* Israel–United States: Free Trade Agreement, Isr.–U.S., Apr. 22, 1985, 24 I.L.M. 653.

25. *See* Canada–United States: Free Trade Agreement, Can.–U.S., Oct. 12, 1987, 27 I.L.M. 281 (entered into force Jan. 1, 1987).

26. SMU was involved with two of the initial major treatises on NAFTA. *See* Judith Hippler Bello, AMERICAN BAR ASS’N, THE NORTH AMERICAN FREE TRADE AGREEMENT:

Treaty soon became a prototype for regional economic cooperation and rule-based problem solving in the 21st century.²⁷

As noted by a former SMU colleague of Joe, Professor Emeritus Boris Kozolchik, NAFTA put into play a “continuous legal highway,” an example of which was the Mexican adoption of a new Commercial Law Code based on the U.S. Uniform Commercial Code.²⁸ Joe would be very much in favor of this type of law reform process. I suspect he also would have approved of the various “behind the scenes” groupings of U.S.–Mexican government officials, professionals, and academics who were exploring numerous practical avenues of achieving cooperative legal reform and the coalescing of related government policies.²⁹

Joe could be bombastic and even outrageous with some of his comments; but, behind these comments, Joe had carefully studied the particular issue and presented his views in an erudite manner and also with a touch of his unique humor. Is NAFTA “the worst treaty” ever entered into by the U.S.? Or is it the Trans-Pacific Partnership Agreement? Or the Iranian nuclear deal? Hyperbolic blustering sometimes can play a constructive role in debate and negotiations, if informed. Joe was always informed in his views and erudite in his presentation. In any renegotiation of NAFTA, Joe most probably would have explored its roots and linkage to the past Texas–Mexico relations, and he would have looked at it in terms of an ongoing “process” that could provide a solid foundation to an expanding rule-based approach to ongoing U.S.–Mexico relations and the enhancement of the legal and judicial systems within the NAFTA countries. I suspect he would have seen more benefits for Texas than negatives; having such deep roots grounding him in Texas, he would have looked forward with confidence to the further mixing (at times “colliding”) of cultures, legal systems, economies, and societies. Yes, after all the brouhaha, NAFTA will be sensibly renegotiated for the better.

But as the reader can discern, this short tribute is really not about NAFTA, but rather, it is about our late, dear colleague, Joseph W. McKnight. For myself, I always enjoyed the many casual chats with Joe, and I relished Joe’s mischievous comments at otherwise boring faculty and

A NEW FRONTIER IN INTERNATIONAL TRADE AND INVESTMENT IN THE AMERICAS, (J. Bello, A. Holmer, & J. Norton eds., 1994); *see also* JOSEPH J. NORTON AND THOMAS L. BLOODWORTH, NAFTA AND BEYOND: A NEW FRAMEWORK FOR DOING BUSINESS IN THE AMERICAS (Martinus Nijhoff Publishers, Terry K. Pennington ed. 1995).

27. The SMU Dedman School of Law and its International Law Review Association held one of the first national conferences on NAFTA in 1994 and instituted one of the first scholarly, quarterly journals on NAFTA in 1995 (now under the rubric of Law and Business Review of the Americas—eighteen volumes to date). The developments as to the NAFTA “process,” including efforts to expand NAFTA to a broader Western Hemisphere schematic (currently stalled), can be found in the annals of this review.

28. NAT’L LAW CENTER FOR INTER-AMERICAN FREE TRADE, TOWARD SEAMLESS BORDERS: MAKING FREE TRADE WORK IN THE AMERICAS (Boris Kozolchik ed., 1993).

29. *See, e.g.*, Rona Mears (one of our late, distinguished SMU Law alums), *NAFTA’S Impact on the Legal Profession*, in THE NORTH AMERICAN FREE TRADE AGREEMENT: A NEW FRONTIER IN INTERNATIONAL TRADE AND INVESTMENT IN THE AMERICAS, *supra* note 26, at 397.

committee meetings. He always had a valid point to make and as to which to challenge his colleagues, and we always left the meeting with an air of good will and good humor, thanks to Joe. What impressed me the most over the past four (plus) decades about Joseph W. McKnight was not only his wise sense of history (including that of our law school) and his love of real “books” but also his deep and sincere sense of humanity and caring. I owe very much to Professor Joseph Webb McKnight—personally and academically. Thank you so very much, Joe! Joe, I will always remember you. I miss you dearly.