

IN MEMORIAM

JOSEPH PARKER WITHERSPOON

Joseph Parker Witherspoon, the Thomas Shelton Maxey Professor of Law Emeritus at the University of Texas School of Law, died June 21, 1995, after a long and incapacitating illness, at age 78. He was survived by his wife of 58 years, Catherine; son Joseph and his wife, Ann; son John and his wife, Patricia; son Thomas; son James; six grandchildren: Timothy Knobloch, Kelly Witherspoon Zabcik, Adam Witherspoon, Althea Witherspoon, Terry Witherspoon, and Andy Witherspoon; and one great-grandson, Ryan Zabcik. All three sons followed their father in becoming graduates of the University of Texas Law School. Professor Witherspoon had been a member of this faculty since 1948 until his retirement on emeritus status in 1984.

I. The Early Years

Born in Stamford, Texas, on December 3, 1916, Joe was reared in Wichita Falls, Texas, attended Wichita Falls Junior College and the University of Chicago, where he was elected to Phi Beta Kappa and received a Bachelor of Arts Degree in Political Science. While there, he met another political science major, Catherine Leavy, whom he married in 1937. He was employed by a business corporation until 1942, when he was commissioned in the U.S. Naval Reserve and served more than three years of active duty in the Pacific Theatre during World War II. He continued to serve in the Reserve after the war, ultimately attaining the rank of Captain and Commanding Officer of the Naval Reserve Law Company 8-3 in Austin. Following his service in the war, Joe enrolled at the University of Texas School of Law. He and Catherine ("Cacki" to her friends) had two children--Vicki and Joe--at that time. Despite his family obligations, which he took very seriously, he achieved an exceptionally outstanding student academic record here. He was Legislation Editor and Notes Editor of the Texas Law Review and was elected to Chancellors, the law school honorary society limited to students with the very highest grade averages. Joe was ranked first in his senior class. Dean Charles T. McCormick and the faculty were sufficiently

impressed that they offered to him a tenure-track faculty position upon his graduation in 1948. He accepted.

II. Teacher and Scholar

Joe taught Conflict of Laws, Jurisprudence, Constitutional Law, Civil and Political Rights, Administrative Law, Legislation, and Antitrust Law. For some of these courses, Joe prepared his own teaching materials.

Joe was a challenging teacher. His preparation for classes was exhaustive. In class, he was serious, probing and enthusiastic. He set high standards for himself and expected his students to perform at a high level. Yet he was friendly and caring in his relations with students. It became well known around the school that Joe devoted an unusual amount of time to mentoring individual students who were having academic difficulties, especially racial minority students. For a number of years, he served as faculty sponsor for the Thurgood Marshall Legal Society, whose members were mainly African-American law students.

During leaves of absence, Joe served as a visiting professor at Boston College and Southern Methodist University. He also spent one year as a Rockefeller Foundation Fellow at the Harvard Law School, which rewarded him a Doctor of Juridical Science degree in 1961. His dissertation addressed the subject of administrative discretion to determine statutory meaning, and much of its content was published in several law review articles.

Published writings by Professor Witherspoon are characterized by exceptional thoroughness. No relevant source or idea seems to have been overlooked. See, for example, his law review articles addressing thorny problems of interpretation of statutes, particularly *Administrative Discretion to Determine Statutory Meaning: 'The Middle Road,'* 40 Texas Law Review 751 (1962). After an exhaustive discussion of views of other scholars, he set forth his own proposals for courts and administrative agencies in statutory interpretation that would be flexible, yet principled. [He probably would criticize this characterization of his position as simplistic.] Later, in 1968, reflecting his active involvement in getting civil rights legislation

adopted on state-wide and local levels, the University of Texas Press published his book, *Administrative Implementation of Civil Rights*. In this pioneering work, he reviewed existing experience with state and local human relations commissions as well as several model civil rights statutes which he drafted.

III. Lawyer

On several occasions, Joe applied his considerable skills as a lawyer in non-academic venues. He was granted a leave of absence in 1951-1952 to serve as Branch Counsel in the Office of Price Stabilization in Washington, D.C. He was a legal consultant on anti-trust matters for Humble Oil and Gas Company in Houston from 1957-1962. Later he served as a legal consultant to the United States Civil Rights Commission on legislation establishing human relations commissions. In these and other areas, attorneys and governments, local, state and national, frequently sought his services, especially to draft legislation. One of the most challenging tasks undertaken by him was drafting legislation for Alaska concerning the difficult problems posed for the State of Alaska by the proposed Alaska Pipeline. He generously donated his services in support of causes important to him, particularly civil rights and the Right-to-Life Movement. Nearly all of the outside legal work performed by Joe pertained to aspects of law related to his law school courses and enriched his teaching of those courses.

Joe was sometimes retained to write briefs and make oral arguments in cases pending in appellate courts. The thoroughness that characterized his academic writing was also manifested in his briefs. In a case familiar to one of the writers of this memorial, a prominent opposing attorney conceded in oral argument before the Supreme Court of Texas that his brief was not nearly as complete and detailed as Joe's, and attempted to persuade the court that deciding the case did not require delving into many matters addressed in Joe's brief.

IV. Social Justice Advocate

To a much greater extent than most people, Joe was committed to taking action to remedy social conditions he perceived to be seriously harmful. Some of this was on a personal level. He

once helped a poor person get new artificial legs. He also represented African-American barber college students *pro bono* to remedy discrimination in the training they were receiving. As mentioned earlier, his social activism often took the form of drafting and advocating proposed legislation. A significant example was his work to get the City of Austin to adopt a human rights ordinance, or at least establish a human relations commission. In that struggle as well as others, he often expressed his views publicly, sometimes severely condemning action or non-action by governmental entities, businesses and others. One such instance was an article he wrote for *The Daily Texan*, February 14, 1967, in which he declared that, “by and large, the members of the majority group apparently do not really care about the welfare of their fellow citizens who are Negroes, the Latin-Americans, and more generally, the very poor.” In an earlier issue of *The Daily Texan*, October 29, 1965, a news story headlined “Witherspoon Slams Race Relation Board” reported Joe’s strong condemnation of the Austin City Council for failing to establish an official race relations board. In 1968, he went before the Austin City Council on behalf of Mexican-American groups to protest police department procedures for handling charges of police brutality in a case involving two young, unarmed Mexicans who were shot in the back while fleeing Austin police officers after stealing a car. The procedures were changed to conform to Joe’s proposal that in such cases officers involved in the shooting be assigned to desk duty until the shooting can be investigated.

One not unexpected result of his activism was his being labeled a “radical” and included in the category of “bomb thrower” law school faculty members by then-Chairman of the Board of Regents Frank Erwin, who tried but did not succeed in getting legislation passed that would have allowed the governor to control the salaries of Joe and five other of his colleagues.

Even when it came to his own university, Joe did not hesitate to speak out against discrimination. In 1961, University regulations excluded African-American students from participation in sports programs, dormitories, and other services available to other students. Black students staged a sit-in at Kinsolving dormitory to protest the regulations. Those students who

admitted to participating in the sit-in were summarily placed on probation while those who refused to answer the charge were given even longer probation. Joe composed a letter to then-President Smiley, which a number of the law faculty signed, protesting the illegality both of the regulations and the process by which the students were charged. Further, at a special faculty meeting called to discuss the situation, he charged that the “procedure followed in this instance was wholly without warrant and violated the due process and equal protection clauses of the Fourteenth Amendment”.

Joe was not content merely to criticize others. He took action to improve social conditions. In 1968, he organized and chaired a conference on “Human Rights and the Law,” which drew civil rights leaders from all over the United States. He drafted a fair housing ordinance which ultimately was adopted in large part by the Austin City Council. He also drafted and proposed a Texas civil rights act, and testified for its adoption. He was deeply saddened by the failure to enact it. But he continued this struggle. He served as chairman of the Lieutenant Governor’s Advisory Panel on Civil Rights from 1969-1971.

In addition to his individual efforts, Joe was a leader in organizing others to become directly involved in improving the welfare of racial minorities and the poor. Perhaps his most ambitious initiative was his role as a prime mover in establishing in 1966 in Austin the Citywide Committee for Human Rights (CCHR), which arose out of the early efforts to get Austin aboard in the civil rights area. This organization brought together for concerted action individuals and organizations concerned about social conditions in Austin, especially in East Austin. Perhaps the most remarkable program of this group was the establishment of a facility for rendering services to the East Austin community. These services included education for adults and children, job and placement counseling, youth activities programs, and advice about personal and family problems. The program was well received and grew rapidly. It started with but a handful of volunteers in 1966. By 1970 over 400 volunteers from 100 organizations were involved in serving nearly 750 persons per month in CCHR’s various programs. In addition some 21 major public and private sector employers regularly participated in employer interviews. At one time about 50 students

were being taught at no cost to them by over 250 volunteer teachers, many of whom he recruited. This program enabled a large number of persons to obtain the equivalent of a high school diploma. With great pride, Joe once mentioned that one of those persons had gone on to obtain a Ph. D. at the University of Texas. Others were enabled to prepare for civil service examinations, to obtain secretarial skills, and to acquire training for other jobs.

In addition to his organizational and managerial work for CCHR, Joe participated directly in its teaching and counseling programs. The CCHR discontinued its operations in 1975. By then the Austin Community College and other government agencies provided many of the same services.

Later, Joe increasingly devoted his time and energy to support of the Right-to-Life movement on both state and national levels. He participated in the meetings which led to the formation of the Texas Right-to-Life Committee and served as legal consultant to the National Right-to-Life Committee and the Bishops' Committee for Pro-Life Activities. He filed a friend-of-the-court brief in the landmark Supreme Court case of *Roe v. Wade*. He later testified before a Congressional committee in support of a constitutional amendment to override that decision.

Numerous awards were conferred upon Joe for his social activism, including an honorary doctorate from St. Edwards University, the Cardinal Newman Award for Human Rights Work, an award from the Texas Division of the NAACP, and the Rotary Club of Austin Community Service Award.

V. Character

This review of Joe's life as a lawyer, law professor, and citizen reveals quite clearly that he was a person of the highest integrity, passionately concerned about the welfare of the less fortunate among us, and fully committed to using his talents to the utmost to achieve his goals--to be a fine scholar, teacher, lawyer, and contributor to the welfare of his society. When he decided that a task was worth doing, he threw himself into it without reserve. Even after his retirement from teaching, when he turned his attention to a few avocational interests, he approached those interests

with his characteristically total commitment. It was not at all surprising to those who knew him to learn that he soon developed hundreds of varieties of the hibiscus and became a recognized authority on that flower in the local community. Joe loved the outdoors and enjoyed many hours working on his small ranch near Liberty Hill, where he raised cattle and goats, and also experimented with grafting pecan trees.

Joe was courageous. He braved heavy fire as commander of landing craft in the liberation of the Philippines during World War II, for which he received several decorations. As a social justice activist, he was never deterred by the certainty that his involvement in controversial and sensitive issues would invite criticism of him and even retaliatory action. No doubt some persons Joe had regarded as his friends drifted away as a consequence of their disagreement with some of his goals or tactics. Joe continued to exhibit great courage when he suffered a severe stroke that confined him to a hospital bed for several years until his death.

Joe's private life was no less exemplary than his public life. He was a good friend and congenial companion. He was devoted to his family. Despite the long hours he devoted to his professional and civic activities, he always found time to be a loving husband and father. He endured with strength and dignity the early deaths of his daughter and grandson. He willingly and graciously accepted into his household for many years his wife's sister and a son of his deceased daughter.

Perhaps prominent among the influences that shaped the values and principles that guided him were his religion and his study of philosophy and jurisprudence. He was an active member of the Catholic Church and became a Knight Commander, Order of the Holy Sepulchre of Jerusalem in 1977. He also was greatly influenced during his days as a student at the University of Chicago by courses in philosophy, including one taught by Mortimer Adler. We have no doubt, though we do not actually know, that Joe read all of the "Great Books" on Adler's list. And, as has been mentioned, a very substantial part of Joe's teaching, research and writing was in jurisprudence, with strong emphasis on natural law.

Joseph Parker Witherspoon was a remarkable person, who significantly influenced this law school, his many students, the Austin community, and others, including some who never heard his name.

Peter T. Flawn, President *ad interim*
The University of Texas at Austin

H. Paul Kelley, Secretary
The General Faculty

This Memorial Resolution was prepared by a Special Committee consisting of Professors Corwin W. Johnson (Chairman), Stanley M. Johanson, and J. Leon Lebowitz.

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