

IN MEMORIAM
CHARLES TILFORD MCCORMICK

Family, Community and Early Life

Charles Tilford McCormick was born on June 29, 1889, in Dallas, Texas. He died on December 22, 1963, in Austin, after an illness of several months, and was buried on December 24 in Austin Memorial Park.

He was the second child of his parents, Joseph Manson and Mary McCoun McCormick. His mother's ancestors had followed a typical pioneer westward migration, starting from Virginia and moving through Kentucky into Missouri, where his mother was born and lived until her marriage. His grandfather, Andrew Phelps McCormick, was an eminent jurist, a member of the Fifth U.S. Circuit Court of Appeals. His father had a distinguished career at the Dallas Bar.

The McCormick forebears were Scotch-Irish Presbyterians from Ulster County, Ireland. They settled in Rowan County, North Carolina, later moving westward to Kentucky and Missouri, then back to Christian County Kentucky. An early Andrew McCormick was an influential member of the Austin Colony and a great great grandfather, Josiah H. Belly was the trusted friend and most efficient helper of Stephen F. Austin, taking charge of the Colony when Austin was in Mexico City on Colony business.

Charles attended the Dallas Public Schools through the second year of high school, when he entered The University of Texas. He received his B. A. degree from Texas in 1909. Then he entered the Harvard Law School, where he was graduated cum laude in 1912. He returned to Dallas and was admitted to the Bar in October, 1912. He practiced with his father's firm, Etheridge, McCormick, and Bromberg. He entered the army in 1917, and became a captain. After he left the army In May, 1919, he was employed by the Standard Oil Company of New Jersey, first in their legal department in New York City, and then with problems of labor relations with the subsidiary Carter Oil Company in Oklahoma. After a year he resigned and returned to Dallas to practice law with his father.

On October 19, 1920, Charles married Irelene DeWitt in Dallas. The union was an ideally happy one. Irelene was his constant support, providing him a gracious home, entertaining their friends and visitors, and helping him in every possible way. Irelene is an outstanding personality herself and together they were a remarkable couple.

After being brought up in the Methodist Church, Charles was confirmed in the Episcopal Church while he lived in Chicago. After he moved to Austin he served on the vestry of All Saints Church for many years. He was senior warden twice, chancellor of the parish, and a trustee of Grace " Hall. At one time he represented Grace Hall on the Austin Council of Churches.

At times he served on the Board of the Community Chest and directed the campus drive for funds. He also served on the Board of the Austin Mental Health Association.

At an early age Charles developed a love of reading. In addition to his legal studies, he read widely in history, biography, and philosophy. He was fond of good mystery stories and collected the books of Eric Ambler and Raymond Chandler. He had a special admiration for Winston Churchill whose works he collected.

In his earlier days Charles was an enthusiastic swimmer and tennis player, also an expert horseman from an early age. During World War I, while an aide to General Garton, he took advanced equitation courses. He was fond of classical music, the theater, and motion pictures and, enjoyed traveling in this country and abroad. He and his wife made several extended trips to Europe

Everyone who knew McCormick admired his high ideals, his complete integrity, and his constant courtesy, friendliness and dignity.

Teacher and Administrator

In 1922 McCormick was offered a position as professor of law in The University of Texas School of Law and he never regretted his decision to abandon the more financially profitable work of the lawyer for a life of scholarship and teaching. His talents and accomplishments soon attracted national attention, and in 1926 he joined the faculty of the Law School of the University of North

Carolina. After one year, he became Dean of that school. The high standards that he set for himself as a teacher, writer and administrator, together with the strong character and unusual self-discipline, which made their achievement a reality, did much to establish for the University of North Carolina Law School the reputation for excellence it still enjoys.

When the great John Henry Wigmore was about to retire as professor of law at Northwestern University, he asked that McCormick be chosen as his successor to carry on his work in the field of Evidence. Dean McCormick accepted the position that was offered and for nine years was a distinguished member of one of the nation's most highly respected law faculties.

Dean Ira P. Hildebrand retired from his administrative duties at The University of Texas law School in 1940. A man with a Texas background was needed to replace him. McCormick's eminence as a scholar and teacher, together with his successful administrative experience at North Carolina, made him the natural choice of the faculty, the Board of Regents, and the Texas Bar. Despite the attractiveness of the idea of returning home, it must have been with reluctance that he gave up for a time the insulation from administrative pressures to accept the challenge presented. In 1940, the outmoded physical facilities of the Law School were crowded with twice as many students as the building was designed to accommodate. Although tremendous progress had been made under Dean Hildebrand, the Library was woefully inadequate, the faculty too few in number and the salary scale discouraging to a Dean faced with the problem of recruiting. The virtual certainty of war beclouded an otherwise uncertain future. With the courage and quiet determination that always characterized him, McCormick assumed leadership. His purpose to convert a good law school into a great one never varied. He was a practical administrator who recognized the limitations of the moment seizing every opportunity for the accomplishments immediately possible while planning for the future. Under his leadership the curriculum was modernized and emphasis was given to the emerging field of public law. Training in legal writing was instituted through the expansion of the seminar program and the establishment of competition in brief writing and argument. A Legal Aid Clinic, created in cooperation with the Travis County Bar Association,

gave an opportunity for practical experience to senior students and provided a needed service for the indigent. A Bench and Bar lecture series was begun to bring to the Law School the experience of lawyers and judges. The faculty was drawn into closer relations with the practicing Bar. A placement service provided assistance for both the graduate and the law firms. There were other needed innovations.

McCormick led by example, and his devotion to scholarship was an inspiration to faculty and student body alike. The same integrity that pervaded his personal life characterized his work as a dean and as a teacher.

His nine years as dean were trying ones. During the war years the enrollment dropped to 10% of the 1940 figure. None realized better than he that a new social and economic order would follow the war and would greatly increase the need for attorneys of competence and vision. Although most of his faculty went into the armed services or took positions with civilian agencies involved in the war effort, he managed to maintain high standards of instruction for the few students that remained and the nucleus of a good faculty was kept together. At the same time, plans were laid for accommodating the great wave of students that would be returning when peace was restored. In the year of peak enrollment after the war nearly 1,200 students crowded the halls and sat in classroom and library windows when there was no more space for chairs. He recruited an outstanding faculty, many of whom came despite offers of substantially higher salaries elsewhere in order to be associated with this great man. It is difficult to over-estimate the effect of his prestige in this respect. He bore the harassment of his difficult job in unusually trying times calmly and with patience, but he looked forward to the time when he could again devote all of his energies to teaching and writing. In 1949, after plans for a new building were on the drawing board, he resigned as Dean to become Distinguished Professor of Law and to assume full time teaching responsibilities.

The years that followed were happy ones. Both at Texas and at the numerous schools where he served as visiting professor, such as Harvard, Yale, Columbia, New York, and the

University of California at Berkeley, Los Angeles, and Hastings, and Chicago, Stanford and Washington. Professor McCormick enjoyed his hours in the classroom and his contact with students. Although his mastery of subject matter was awe inspiring, he never lost sight of the fact that even fundamentals may be difficult for the beginner. He was demanding in his requirements for daily preparation by his students, but here again he led by example. Since his spoken words were as carefully chosen as those he wrote, his classes sparkled with interest and color. The thoughtful student was stimulated and was inspired to leave the law better than he found it. In his classes as in his writing he skillfully blended the practical with the theoretical, demonstrating that in good legal scholarship the two approaches cannot be separated. He was unpretentious, easy in manner, and his warmth and innate kindness have endeared him to hundreds of students who will always treasure the memory of their association with this truly great teacher.

McCormick continued as a professor of law until he reached retirement age, and then, on modified service from 1959 until the end of the Fall Semester of 1962-1963 when he resigned. In 1961 he was given the additional title of Dean Emeritus in the Law School. When he retired as Dean the student body and several of his associates honored him with a group of articles published in Vol. 28, pages 1-22, Texas Law Review, and when he retired as Distinguished Professor of Law in 1961 Texas Law Review dedicated its December issue (Vol. 40, No. 2) to him with articles written by his long-time friends.

Scholarly Works

Superlatives become understatements when one attempts to describe Charles McCormick's scholarly works. He devoted himself to his work with wholehearted dedication and he was tremendously effective. Looking at the appended bibliography (available from the Office of the General Faculty upon request) will give some idea of the quantity, but sampling is required to get some appreciation of the quality, and only those who worked in the same areas of the law can fully appreciate his stature as a writer and the value of his contributions to legal literature. What they

have written about his work shows that he achieved heights in legal scholarship that few attempt and fewer still attain. He ranks among the great legal scholars.

The three areas of the law into which he poured almost all of his productive efforts as a writer -- Federal Procedure, Damages, and Evidence -- are large, important areas. In all three he made many valuable contributions to the development of the law; in the two latter areas he created masterpieces, his large works, great and enduring works which established him as an outstanding scholar. They are his Handbook on the Law of Damages, published in 1935, and his Handbook on the Law of Evidence, published in 1954, both of which are succinct treatises.

The Damages book is his earlier masterpiece. He produced it after he had been teaching a course and writing articles on that subject for several years. The subject is large in scope, and writing the book was an ambitious undertaking. Variations in rules and principles for measuring damages and in procedural attitudes and customs from one jurisdiction to another made it impossible to present in one volume an authoritative statement of the law in all common law jurisdictions. He did attempt within one volume of slightly over 800 pages, "to reveal to the student or lawyer the array of expedients which should be considered in preparing and trying cases on the issue of amount " to "parade the varied doctrines for review." Knowing the possibilities, he recognized, would make the difference between "mere routine management of a claim or defense, and the fertile and resourceful handling, ... which marks the skilled forensic artisan."¹ The attempt was eminently successful and established McCormick as "the outstanding authority" on Damages.² Reviewers noted the "new and rather brilliant explanation and discussion" of the theories involved,³ the "shrewd and incisive comment" upon the way the rules work, "and the "untiring effort to penetrate the, 'cloudy concepts' which obscure the law in action."⁴ Its peculiar excellence rested primarily on the "intrinsic superiority of its workmanship from page to page," it was said.⁵ "For its fine sense of proportion, for clarity and precision in statement and arrangement, for intelligent criticism of the rules in terms of social and economic values, for astuteness in discrimination and fidelity to details, for careful and scholarly treatment throughout," the book was

pronounced "a model of skilled workmanship,"⁶ a treatise "entitled to rank among the best products of American legal scholarship."⁷ From that day to this, almost thirty years, the book has served law students and teachers', lawyers and judges as the definitive and authoritative text on Damages, and will continue to serve through the years to come as a classic in the field.

The Evidence book is his greatest masterpiece. Writing it was the climax of a lifetime of preparation. Valuable insights from his seven years of law practice in Dallas are reflected in it. For more than a quarter of a century: prior to its Publication, going back at least as far as 1924, he had been teaching in the field, writing law review articles, and working with others to bring about needed reforms. In 1937 in collaboration with Professor Roy Robert Ray he had produced an exhaustive treatise on the Texas Law of Evidence, which was appraised by a careful critic as the "best single volume treatise on the law of evidence that has appeared in America since the beginning of the present century."⁸ Also he had prepared two editions⁹ of a casebook on Evidence national in scope, which had gained immediate acceptance by law teachers and had become one of two leading casebooks in the field.¹⁰

A book like his Handbook on Evidence was badly needed. "The doctrines of evidence and the decisions on evidence questions are as the sands of the sea," he observed in the preface.¹¹ So vast and complicated are the theories and distinctions accumulated through the centuries that trial lawyers and judges cannot hope to achieve mastery of them. The rules of evidence must be simplified, but efforts at simplification have been remarkably unsuccessful although much progress has been made in accomplishing other procedural reforms. Resistance to reform may have been caused in part by the inability of bench and bar to achieve a critical perspective of evidence law as a whole.¹² Until McCormick's book there was current no work which provided a reasonably convenient over-all view. Wigmore's late edition, a ten-volume treatise was too bulky and detailed to serve the purpose. "There was need for a book "both critical in approach and compact in size which traces the origins of the rules, identifies their original purposes, appraises

the way they work today and evaluates their fitness to survive." McCormick's book met those specifications and filled the need.¹³

It was everywhere acknowledged to be "the outstanding one-volume work" on evidence.¹⁴ Reviewers characterized it as "superb,"¹⁵ a "first class work,"¹⁶ "all that has so long been anticipated by those cognizant of the author's unchallengeable standing as one of the masters of the American Law of evidence."¹⁷ It is in constant use today by all who are concerned with evidence law, lawyers and judges, as well as law students and teachers, and is making immeasurable contributions to the administration of justice today and to the development of the evidence law of tomorrow.

In the writing of this book, as in his other work, a primary objective was the improvement of the administration of justice. He was therefore never content with mere exposition of existing doctrines; he was constantly probing for reasons, subjecting the doctrines to searching critical scrutiny. He marshaled the arguments of others pro and con on controversial issues, but he also included his own insights and judgments, and it is from those original contributions that the value of the book is mainly derived. They are the seasoned, mature judgments of a powerful intellect, based on thorough familiarity with the realities of litigation and a wealth of information derived from wide-ranging research.

McCormick's contributions in the field of federal jurisdiction and procedure were not small; they only appear dwarfed by comparison with his monumental achievements in the other areas. One of his earliest law review articles was in this field, advocating the fusion of law and equity in the federal courts,¹⁸ a reform that was accomplished many years later by the adoption of the Federal Rules of Civil Procedure.¹⁹ In addition to his law review articles in this field he collaborated with James H. Chadbourn in the preparation of a casebook, Cases and Materials of Federal Courts, which was given a very high rating as an instructional tool,²⁰ "a book wrought with care and mastery"²¹ The book has been widely used and is now in its fourth edition. The

original co-authors collaborated on three editions: 1946, 1950 and 1957. Professor Charles Alan Wright joined them in the preparation of the fourth edition in 1962.

McCormick's productive scholarship continued until his death. In the later years his efforts went into law review articles and into new editions of his earlier works. He prepared the third edition of his casebook on Evidence in 1956. At the time of his death he was collaborating with Professor Alexander D. Brooks in the preparation of a fourth edition, of that casebook. A second edition of the Texas Law of Evidence co-authored by McCormick, Ray, and Professor William F. Young, Jr., was published in 1957. A second edition of the casebook on Damages had been prepared in 1952 in collaboration with Professor William F. Fritz. Other work in progress at the time of his death included collaboration with Dean Richard C. Maxwell in a revision of the Damages treatise and with Professor Roman E. Degnan in a revision of the Evidence treatise.

A rare literary talent is reflected in all of McCormick's writing. He wrote with power, grace, and wit. The light in which he viewed his subject matter was full and strong. He examined the problems closely, studying the details with painstaking care, and he examined them with perspective, studying their interrelationships. Then with bold and masterful strokes and consummate skill he portrayed what he saw. Drawing on a broad and rich cultural background, he was able to select exactly the right words and the perfect figures of speech for revealing his ideas with full clarity, including the most delicate nuances. As he painted his pictures with words he was able in some mysterious way to bring them to life on the printed page. He was a profound scholar; he was also a creative artist.

Professional Recognition

Professor McCormick was constantly sought after by other law schools throughout his career. After returning to Texas in 1940 he was steadfast in declining tempting offers by schools of the highest standing. His succession to the professorship of Dean Wigmore of Northwestern in the field of Evidence brought him recognition from law schools everywhere, and his writings, in a

field thought by many to have been exhausted by Dean Wigmore, gave him high standing with all Anglo-American courts. In the reports of American Appellate courts and the writings of other authors are found countless citations and references to his books on Evidence, Damages and Federal Procedure. Legal scholars quickly accepted him as a worthy successor to the masterful Wigmore and time has validated their judgment for McCormick in later years more than any other writer in the evidence field has added much fresh thought and scholarship of the same high quality as that of the earlier master.

McCormick has received many professional honors. In Texas he served as chairman of the committee on Uniform State Laws, Model Code of Evidence and Bar Admissions. He was appointed by the United States Supreme Court as a member of the first United States Judicial Conference Advisory Committee on Rules of Civil Procedure, and by the President Eisenhower as a member of the National Oliver Wendell Holmes Devise Committee. He was a member and consultant of the American Law Institute, a member of the American, Texas, Illinois and Chicago Bar Associations, Phi Delta Phi legal fraternity, President of the Order of the Coif, National Honor Society and also President of the Association of American Law Schools, and during his career a member of many of its committees. The Doctor of Laws degree was conferred on him by Southern Methodist University.

McCormick's stature steadily grew with the years. He brought added recognition to every institution with which he was associated throughout his professional life and it is doubtful that any member of the law teaching profession ever received more generous recognition as a teacher, scholar and as a person, by those who came to know him personally or through his writings. His influence in the development of Texas University Law School and the recognition he gave it has not been surpassed by any one who has been connected with the school.

Respectfully submitted
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Leon Green, Chairman
W. O. Huie
Kenneth Woodward

FOOTNOTES

1. Foreword, McCormick, Damages vi (1935).
2. William L. Prosser, Review of McCormick on Damages, 20 Minn.L.Rev. 325 (1936).
3. Ibid.
4. Edwin V. Patterson, Review of McCormick on Damages, 36 Col.L.Rev. 863 (1936).
5. Bryant Smith, Review of McCormick on Damages, 14 Tex.L.Rev. 284 (1936)
6. Id at 285.
7. Patterson, op. cit. supra note 4, 36 Col.L.Rev. at 864.
8. Joseph A. Wickes, Review of Texas Law of Evidence, 16 Tex.L.Rev. 204, 218 (1937)
9. The original edition was published in 1940 and the second edition in 1948.
10. Roy R. Ray, McCormick's Contributions to the Law of Evidence, 40 Tex.L.Rev. 185, 186 (1961).
11. McCormick, Evidence xii (1954).
12. James H. Chadbourn Review of McCormick on Evidence, 43 Cal.L.Rev. 365, 366 (1955).
13. Ibid.
14. Ray, op. cit. supra note 10, 40 Tex.L.Rev. at 187.
15. Judson F. Falknor, Review of McCormick on Evidence 33 Tex.L.Rev. 977 (1955).
16. Edmund M. Morgan, Review of McCormick on Evidence, 8 Vand.L.Rev. 929 (1955).
17. Falknor, op. cit. supra note 15.
18. McCormick, Fusion of Law and Equity in United States Courts, 6 N.Car.L.Rev. 283 (1928).
19. Chadbourn, Charles T. McCormick: The Legal Scholar, 28 Tex.L.Rev. 12, 17 (1949).
20. Harry W. Jones, Review of 1946 edition of McCormick and Chadbourn, Cases and Materials on Federal Courts, 35 Cal.L.Rev. 165 (1946)
21. Paul A. Freund, Review of 1946 edition of the casebook on Federal Courts, 60 Harv.L.Rev. 495, 497 (1947).

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