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James L. Branton

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IN MEMORIAM

FRANKLIN S. SPEARS: A PROUD LEGACY TO TEXAS JURISPRUDENCE

JAMES L. BRANTON*

The early loss of Justice Franklin S. Spears, first from the Supreme Court of Texas and a few short years later from private practice, makes those who knew him wonder, "what might have been," but for his damaged heart that prompted first a heart transplant and, five years later, his early demise from heart failure. I knew Franklin S. Spears from afar when he was a state senator, a candidate for Texas Attorney General, and a young lawyer in private practice, when he was garnering awards such as Outstanding Young Man in San Antonio and entertaining San Antonio with his barbershop quartet, "The Chordsmen," which went on to gain national fame.

In 1972, a vacancy in the 57th Judicial District Court of Bexar County suddenly materialized with the resignation of Judge Solomon Casseb, Jr. Young Franklin S. Spears, then 40 years old, acting with his usual decisiveness and no doubt using the political

* Partner, Branton & Hall, P.C., San Antonio, Texas; LL.B., University of Texas; B.A., University of Texas; U.S. Air Force Academy.

acumen that traced back to his days as president of the student body at the University of Texas, made an early announcement that he would seek election to fill the vacancy. The alacrity with which he made his announcement, coupled with his popularity, allowed him to avoid the free-for-all that usually accompanies an empty seat in the judiciary. Thus, in 1972, Franklin S. Spears was sworn in as judge of the 57th District Court, a position he was to hold until his election to the supreme court eight years later. Franklin Spears's leadership abilities, which had thrust him into the forefront in school, politics and the practice of law, were to serve him well as a trial judge.

To appreciate the skill and efficiency with which Judge Spears ran his court, one must only look at Franklin Spears the person. He was always a man of great patience and understanding, never exhibiting animosity even while being critical. He was gentle and compassionate, yet always firm and in control, and he seemed to know exactly where he was going and how he was going to get there. He was one of the most articulate people I have ever known. This singular trait was later to prove to be a powerful asset in the world of writing opinions as a supreme court justice. This was obviously an inherent attribute, as he was always articulate, whether in court, making a speech, or engaging in private conversation. Even in an interoffice memorandum, of which I received several during his last years while he was of counsel to our firm, he was unfailingly articulate and to the point. Franklin was never one to "beat around the bush." He wanted to know where you stood, and he was willing to let you know where he stood. This quality made him an outstanding trial judge. While it made some attorneys in his court uncomfortable when trying to play both sides of an issue, they had to admire his forthrightness and his reciprocal requirement from others.

For example, I remember being in his court when the defense attorney in a workers' compensation case wanted to put on evidence of a pre-existing injury that was not admissible unless it was being offered to show "sole cause" of the present incapacity. The strategy inevitably used by defense counsel was to plead sole cause, and then argue for admission of evidence of prior injuries. The attorney, however, would never follow up with evidence connecting the prior injuries to the present incapacity nor with any evidence that the current injury was not a cause of the plaintiff's

incapacity. In the meantime, through the admission of evidence of prior injuries, the defense would have accomplished the goal of creating doubt in the jury's mind and generally "muddying the water." Franklin was the first judge I ever saw demand to know up-front from the defense lawyer whether, during the trial, counsel was actually going to offer evidence that the prior injury was the sole cause of the present incapacity such that the issue would be submitted to the jury. In the face of this direct inquiry, the defense lawyer readily admitted that he had no evidence other than the mere existence of an old injury and, indeed, had no evidence that the present injury did not contribute to the plaintiff's present incapacity. Even the defense attorney had to respect the reality and lack of game-playing that such court action injected into the proceeding. It is rare to see a trial judge confront such tactics in advance and demand an honest representation from the attorney as to what was going to be presented at trial, so that the judge could make a realistic and fair ruling at the motion-in-limine stage of the proceeding. What endeared Judge Spears to attorneys appearing before him was that he demanded such honesty and candor from the lawyers on both sides of the trial docket.

Once, when arguing a motion before Judge Spears, I, too, was the recipient of such a demand to know exactly what my position was on certain points in my defense against a motion for summary judgment. My attempt at being a moving target, and my efforts to avoid addressing a fundamental issue, were unsuccessful. This experience demonstrates not only the manner in which Judge Spears approached the decision-making process, but also his insight and discernment of legal issues.

While the ambiance in his court was one of candor, an equally obvious distinction he enjoyed was the style and charisma with which he ran his court and handled the jury. His direct and articulate approach, combined with his always friendly manner and his handling of difficult situations with ease and grace, made any juror enjoy being in his court. Even losing a case in his court, as I have done, was made easier by the atmosphere that he engendered in the courtroom and in the proceeding. While he maintained his court professionally and with dignity and fairness, he defused difficult situations by the sheer force of his personality rather than by dictatorial judicial force. However, as a judge, he would not have hesitated to use such authority had it been necessary.

It came as no surprise that when Judge Spears made the decision in 1978 to seek election to the Supreme Court of Texas, both plaintiff and defense lawyers stepped forward to support his candidacy. This broad support demonstrated the respect that the entire Bar had for him based on his demonstrated fairness and evenhandedness as a trial judge. Charles Smith, an insurance defense lawyer, and I, a plaintiff's lawyer, served as co-chairs of his local fund-raising committee. The only ones less than enthusiastic on his behalf were those who selfishly did not want to lose him as a trial judge. During the fund-raising activities, I remember pointing out to a group that because of Judge Spears's youth, we were electing someone who could serve easily for twenty-five years on our highest court and thus make an indelible mark on the jurisprudence of our state. Little did we know that that projection would be cut in half because of his health. On the other hand, through his judicial skills, dedication and leadership, he left a proud legacy to Texas jurisprudence in a much shorter time, the twelve years that he spent as a justice of the Supreme Court of Texas.

Judge Spears and his wife Becky moved to Austin after his election, but they never ceased being San Antonians, always maintaining their ties with San Antonio. I was privileged to see a great deal of Franklin and Becky during the mid and late-80s, when I served as a director of the State Bar of Texas. During that time, Justice Spears was the supreme court liaison to the State Bar of Texas, the agency or arm of the supreme court responsible for governing the legal profession in Texas. Although Texas has always been blessed with a relatively good working relationship between its Bar and the supreme court, there are, nevertheless, tensions between the two. Good will and mutual respect have been the lubricants that account for a historically efficient and smooth-running State Bar under the aegis of the supreme court. Justice Spears personified that ideal working relationship. He was always present at, and participating in, both business and social meetings of the Bar; yet, he maintained that necessary aloofness and distance that kept the Bar independent from, but supported by, the supreme court.

The era in which Justice Spears served on the supreme court saw many developments and refinements in our civil justice and tort systems. In the last half of the twentieth century, most of the landmark decisions were handed down in the 1980s, and many of them were authored by Justice Franklin Spears. Always a believer

in stare decisis, Justice Spears's majority opinions that changed the law or procedure never did so without identifying a compelling reason based on sound legal principles. He eschewed any overruling of precedent simply because the law was antiquated or even because it had a logical flaw, if there were no other shortcomings.¹ In his scholarly article on stare decisis, which Justice Spears co-authored with Daniel L. Rentfro, Jr., after retiring from the court, Judge Spears defined stare decisis and defended its legitimacy. He gave these reasons for overruling precedent: (1) a decision no longer represents community-held values, (2) the need to choose between conflicting decisions in order to remove confusion from the law, (3) the discovery that an earlier case was simply misdecided (e.g., a decision made while overlooking an earlier precedent that would have caused the court to decide otherwise); and (4) a demonstrated breakdown in a theory of a case when applied to facts and existing rules.²

Because he was such a student of stare decisis and because the law was practically a religion to him, it is no wonder that Justice Spears wrote the majority decisions that brought Texas jurisprudence into the twentieth century, if belatedly, and in line with almost all other states. It is not surprising that he sought to clarify the law in areas where there were contradictory decisions that had been ignored for decades, as in *Burk Royalty Co. v. Walls*.³ In *Walls*, over one hundred years of conflicting definitions of "gross negligence" were finally clarified for the practitioner. The end result was not the adoption of a "liberal" rule, but rather the return to the hundred-year-old rule written in a decision in 1888.

In Spears's well-reasoned opinion of *Sanchez v. Schindler*,⁴ the pecuniary loss rule in the case of a wrongful death of a child was finally overturned, bringing Texas in line with the thirty-five other states that had already discarded the rule of an agrarian society that viewed children solely as economic units.

1. See Honorable Franklin S. Spears and Daniel L. Rentfro, *Is Stare Decisis Obsolete?* (suggesting good reasons for overruling cases and noting supreme court's departure from stare decisis) in STATE BAR OF TEX., PROF'L DEV. PROGRAM, ADVANCED DTPA/INSURANCE/CONSUMER LAW COURSE V-2 to V-4 (1993).

2. See *id.* at V-6 (relying on and citing, *inter alia*, BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS, 149-150 (1921)).

3. 616 S.W.2d 911 (Tex. 1981).

4. 651 S.W.2d 249 (Tex. 1983).

Because our economy was becoming less “goods-based” and more “service-based,” Justice Spears’s majority opinion in *Melody Home Manufacturing Co. v. Barnes*⁵ applied the law of implied warranty that applied to the sale of products to the sale of services. This change simply recognized what Professor Kornhauser would call a “change in the world.”⁶

Justice Spears wrote the majority opinion in *Duncan v. Cessna Aircraft Co.*,⁷ which corrected problems with the submission to juries of cases involving both negligence and strict liability with multiple defenses that apply to one, but not both, theories of recovery. The comparative causation scheme adopted in that opinion resolved the intractable dilemma that trial practitioners had faced in such cases—a dilemma which the legislature had failed to resolve, notwithstanding the court’s earlier invitation to the legislature to address the issue.

One could cite many more landmark cases in which Justice Spears wrote the majority opinions, and one could describe the many legal articles authored by him. Even though space does not allow their discussion, certainly the following often-cited cases should not go unmentioned: *Bedgood v. Madalin*,⁸ *Corbin v. Safeway Stores, Inc.*,⁹ *Jampole v. Touchy*,¹⁰ *Nelson v. Krusen*,¹¹ *Yowell v. Piper Aircraft Corp.*,¹² *Moore v. Lillebo*,¹³ *El Chico Corp. v. Poole*,¹⁴ *Aranda v. Insurance Co. of North America*,¹⁵ *Vail v. Texas Farm Bureau Mutual Insurance Co.*,¹⁶ *Archibald v. Act III Arabians*,¹⁷ *Cosgrove v. Grimes*.¹⁸

5. 741 S.W.2d 349 (Tex. 1987).

6. Honorable Franklin S. Spears and Daniel L. Rentfro, *Is Stare Decisis Obsolete?*, in STATE BAR OF TEX., PROF'L DEV. PROGRAM, ADVANCED DTPA/INSURANCE/CONSUMER LAW COURSE V-3 (1993).

7. 665 S.W.2d 414 (Tex. 1984).

8. 600 S.W.2d 773 (Tex. 1980).

9. 648 S.W.2d 292 (Tex. 1983).

10. 673 S.W.2d 569 (Tex. 1984).

11. 678 S.W.2d 918 (Tex. 1984).

12. 703 S.W.2d 630 (Tex. 1986).

13. 722 S.W.2d 683 (Tex. 1987).

14. 732 S.W.2d 306 (Tex. 1987).

15. 748 S.W.2d 210 (Tex. 1988).

16. 754 S.W.2d 129 (Tex. 1988).

17. 755 S.W.2d 84 (Tex. 1988).

18. 774 S.W.2d 662 (Tex. 1989).

It is hard to resist adding a few observations about the work habits of this man who accomplished so much in such a competitive world. His work ethic would set an example for all of us. As lawyers, we often poke fun at ourselves about putting off tasks, but that joke would not apply to Franklin Spears. He would sit down with his yellow pad and No. 2 pencil and would seldom get up until the job was done. His discipline and concentration were phenomenal. However, I never saw him display any irritation at being interrupted, which we all know is inevitable in a busy law office. He was quick to compliment one for a job well done. Maybe this was part of his charm with the office staff.

The briefing attorneys who served Justice Spears during his 12 years on the supreme court submitted written dedications to be included in the two-volume set of Justice Spears's opinions that was presented to him by the supreme court at his retirement. The variety and differences in these dedications assure the reader that there has been little or no collaboration among the briefing attorneys in their preparation. However, basic themes that describe Justice Spears clearly emerge: all speak, directly or indirectly, of his honesty, integrity, and commitment to principle; likewise, his compassion and sense of fairness are inevitably highlighted. It is clear, also, that they all believed that Justice Spears graciously balanced these virtues.

The following quotes eloquently describe Justice Spears, his contribution to Texas jurisprudence, and his style in those achievements:

1. Regardless of the outcome, whether you were the catalyst for a unanimous decision, the swing vote, or alone in dissent, your position was always firmly grounded on no other motivation than to do justice. Your scholarship and common sense always complemented and tempered one another. Your decisions were practical, yet no principle was ever bent, broken, or compromised in the name of pragmatism. Time after time you showed the courage and wisdom to not only decide the narrow issue at hand but to go further and explain how and why the decision was reached and how it would apply.¹⁹

19. Dedication from Mark L. Kincaid, Briefing Attorney to Justice Franklin S. Spears, Supreme Court of Texas; accompanying Justice Franklin S. Spears, Supreme Court of Texas: Collected Opinions (unpublished collection of Justice Spears's opinions) (on file with the *St. Mary's Law Journal*).

2. His opinions are thoughtful, straightforward, and practical, written with the knowledge and experience of a former trial judge. If there was a simpler or more accurate way of stating a sentence or concept, you can be assured that Justice Spears would find it. Even in oral argument, Justice Spears would always focus on the issue at hand, despite many attempts by counsel to cloud the facts and issues.²⁰
3. Your departure from the Court is a loss to all Texans, even those who never knew your name. I consider it to be a simple statement of fact that no other judge in this century has had such a profound influence on Texas jurisprudence as you. You literally changed the legal construct of the world in which we live, and these two volumes stand as proof of that fact.²¹

At Justice Spears's funeral on April 13, 1996, I shared the high honor of giving his eulogy, along with Chief Justice Tom Phillips, who spoke eloquently of Franklin's service as a justice and his dedication to "what was right," and former Justice Bill Kilgarlin, who spoke of Franklin's service in the Texas legislature, as well as his service on the court. Justice Kilgarlin described the inability to classify Franklin Spears as a conservative or a liberal, and echoed Chief Justice Phillips's theme, in stating that Justice Spears was devoted to the law and its correct application, and doing what was right.

In closing, I will share my eulogy, which described Justice Franklin S. Spears as a friend, a colleague, and truly a man for all seasons.

20. Dedication from David L. Roland, Briefing Attorney to Justice Franklin S. Spears, Supreme Court of Texas; accompanying Justice Franklin S. Spears, Supreme Court of Texas: Collected Opinions (unpublished collection of Justice Spears's opinions) (on file with the *St. Mary's Law Journal*).

21. Dedication from Christa Brown, Staff Attorney to Justice Franklin S. Spears, Supreme Court of Texas; accompanying Justice Franklin S. Spears, Supreme Court of Texas: Collected Opinions (unpublished collection of Justice Spears's opinions) (on file with the *St. Mary's Law Journal*).

EULOGY TO JUSTICE FRANKLIN SCOTT SPEARS

April 13, 1996
San Antonio, Texas
(by Jim Branton)

When Justice Franklin Spears retired from the Supreme Court of Texas, he had many opportunities available to him, and our law firm was honored to have him become "Of Counsel" to Branton & Hall. He had been a member of our firm in that capacity since that time.

We needed Justice Spears's help and expertise in upholding on appeal the most significant and substantial judgment our firm had ever achieved, and as many of you know, with the assistance of Justice Spears's leadership, that case was brought to a successful conclusion. Franklin reentered the world of private practice in an exciting and rewarding manner.

When Franklin wasn't working on an appeal or testifying as an expert witness, he was frequently involved in mediation and arbitration. With the passage of time, Franklin became in such demand as a mediator that there were times in which he would be involved in a separate mediation every day of the week. And as I traveled around the state as the State Bar president, I would run into people all over the state praising his effectiveness and success as a mediator. Recently, he spent days and weeks as an appointed Master, evaluating the privilege status of thousands of documents.

I was privileged to see him in an unusual role three years ago, when we actually tried a nonjury case together in Chief Judge Lucius Bunton's court in Midland. Needless to say, his traits of character and skills that made him a great jurist made him an equally effective advocate.

Charles Smith and I were reminiscing day before yesterday about how he and I, as representatives of the defense and plaintiff bars in San Antonio, met with Franklin to plan a joint plaintiff and defendant (bipartisan, if you will) fund-raising effort for his first campaign for the supreme court. The respect from both sides of the docket evidenced in that meeting was symbolic of Franklin's judicial career. He was respected and admired for his honesty and impartiality, as well as his enormous legal and judicial talent, by both sides of the docket, and that broad-based support he enjoyed as a district judge continued as a supreme court justice. Probably

the only support he didn't get from the lawyers of San Antonio when he decided to run for the supreme court were those who hated to lose him from San Antonio because he was such a popular district judge.

Franklin was the supreme court's liaison to the State Bar Board of Directors for many years, including my first term on the board in the mid-80s. He was a dynamic leader and beacon of wisdom in that capacity, just as he was in every other position he ever held. He was loved and respected by all. My wife would remember him from those days when he and Becky would attend all the State Bar functions, as a person always with a twinkle in his eyes, a kind word, and exciting to be around.

Franklin Spears demonstrated his dedication and service and remarkable talents throughout his lifetime, including at the University of Texas, where he was elected president of the student body, served as an associate justice of the student court, was elected to the Friar's Society and was named "Outstanding Student" during his senior year, just as he was later to be named "Outstanding Young Man in San Antonio" as a young professional and an elected member of the legislature. He served his country as an officer in the U.S. Army in Germany after having received his commission in the Army ROTC at the University of Texas, where he was named a distinguished military graduate. Early in his career as a lawyer in private practice, Judge Spears served both as a member of the Texas House of Representatives and later in the Texas Senate before he was elected judge of the 57th Judicial District Court of Bexar County, where he served for eight years before being elected a justice of the Supreme Court of Texas.

Many of the leading Texas supreme court decisions in our time were authored by Justice Spears. At an advanced litigation seminar, the cases mentioned time and again will often be landmark cases in which he wrote the opinions, cases such as *Vail v. Texas Farm Bureau Mutual Insurance Co.*, *Aranda v. Insurance Co. of North America*, *El Chico Corp. v. Poole*, *Yowell v. Piper Aircraft Corp.*, *Nixon v. Mr. Property Management*, *Duncan v. Cessna Aircraft Co.*, *Sanchez v. Schindler*, *Burk Royalty Co. v. Walls*, and on and on. Landmark cases—beautifully reasoned and articulated.

While he served on the supreme court, he was a frequent lecturer and was the author of several law review and other articles.

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Recently, he authored a scholarly article on stare decisis and the law for one of our advanced seminars.

Franklin has not only left a huge and positive imprint on Texas jurisprudence for generations to come, but he has left a wonderful imprint on all of us whose lives he touched. We have been privileged to have known a truly great and decent man of character, intellect, and compassion.

Franklin Spears's death is not only a tragic loss to his loving family and legions of friends and colleagues and those of us who worked with him, but a loss to our legal profession, the judiciary, and the citizens of San Antonio and the state of Texas.