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## Introduction and Table of Contents

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# A TRIBUTE TO THOMAS E. McHUGH: AN ENCYCLOPEDIA OF LEGAL PRINCIPLES FROM HIS OPINIONS AS A JUSTICE ON THE WEST VIRGINIA SUPREME COURT OF APPEALS

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## I. INTRODUCTION

This encyclopedia of legal principles represents the legacy of Thomas E. McHugh's outstanding work as a justice on the West Virginia Supreme Court of Appeals. Justice McHugh was elected to the Supreme Court of Appeals on January 1, 1981, and remained until his retirement on December 31, 1997. During his tireless and dedicated years on the court, he served as chief justice for a total of four years. The high esteem in which Justice McHugh was viewed by his colleagues was echoed by Justice Albright at a sine die when he remarked: "Chief Justice McHugh, you will always be my Chief Justice." A reporter captured the eloquence and statesmanship that embodies the life of Justice McHugh:

Justice McHugh is a very astute man with a mild manner and a compassionate nature. His demeanor is that which others in similar lofty circles would do well to emulate. He does not seek media attention — in fact, the opposite holds true. He is candid when he can be, tactful when he should be and quite humorous when you allow him the opportunity. He is a man that many are proud to call friend and all are honored to call Chief.<sup>1</sup>

Justice McHugh wrote 486 opinions under his name.<sup>2</sup> The material that

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<sup>1</sup> Lisa A. Stamm, *Chief Justice Thomas E. McHugh Takes the Helm Once Again*, W. VA. LAW., Jan. 1996, at 14.

<sup>2</sup> Justice McHugh wrote more than 500 per curiam opinions, which traditionally do not carry the name of the writer. He also concurred in the following opinions: *Coleman v. Sopher*, 499 S.E.2d 592 (W. Va. 1997) (McHugh, J., concurring); *Sorsby v. Turner*, 499 S.E.2d 300 (W. Va. 1997) (McHugh, J., concurring); *State ex rel. Melanie Kaye P. v. MacQueen*, 484 S.E.2d 635 (W. Va. 1997) (McHugh, J., concurring in part); *Phillip Leon M. v. Greenbrier County Bd. of Educ.*, 484 S.E.2d 909 (W. Va. 1996) (McHugh, J., concurring in part); *Dent v. Fruth*, 453 S.E.2d 340 (W. Va. 1994) (McHugh, J., concurring); *Largent v. West Virginia Div. of Health*, 452 S.E.2d 42 (W. Va. 1994) (McHugh, J., concurring in part); *Triggs v. Berkeley County Bd. of Educ.*, 425 S.E.2d 111 (W. Va. 1992) (McHugh, J., concurring in part); *State v. Morris*, 421 S.E.2d 488 (W. Va. 1992) (McHugh, J., concurring in part); *Schartiger v. Land Use Corp.*, 420 S.E.2d 883 (W. Va. 1991) (McHugh, J., concurring in part); *TXO Prod. Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870 (W. Va. 1992) (McHugh, J., concurring); *FMC Corp. v. West Virginia Human Rights Comm'n*, 403 S.E.2d 729 (W. Va. 1991) (McHugh, J., concurring in part); *Roberts v. Gatson*, 392 S.E.2d 204 (W. Va. 1990) (McHugh, J., concurring in part); *Tankersley v. Tankersley*, 390 S.E.2d 826 (W. Va. 1990) (McHugh, J., concurring); *P.G. & H. Coal Co. v. International Union, United Mine Workers of Am.*, 390 S.E.2d 551 (W. Va. 1988) (McHugh, J., concurring); *United Eng'rs & Constructors, Inc. v. Rose*, 363 S.E.2d 477 (W. Va. 1987) (McHugh, J., concurring); *Fox v. State*, 347 S.E.2d 197 (W. Va. 1986) (McHugh, J., concurring); *State ex rel. Cohen v. Manchin*, 336 S.E.2d 171 (W. Va. 1984) (McHugh, J., concurring in part); *State v. Clayton*, 317 S.E.2d 499 (W. Va. 1984) (McHugh, J., concurring); *State v. Young*, 311 S.E.2d 118 (W. Va. 1983) (McHugh, J., concurring); *Mason County Bd. of Educ. v. State Superintendent of Sch.*, 295 S.E.2d 719 (W. Va. 1982) (McHugh, J., concurring in part); *Smith v. West Virginia State Bd. of Educ.*, 295 S.E.2d 680 (W. Va. 1982) (McHugh, J., concurring in part); *Anderson's Paving, Inc. v. Hayes*, 295 S.E.2d 805 (1982) (McHugh, J., concurring).

follows sets out every syllabus point of law created in each opinion authored by Justice McHugh.<sup>3</sup> The syllabus points are organized under appropriate legal headings.<sup>4</sup>

Justice McHugh's judicial career belongs to history now. The work that became his life as justice on the West Virginia Supreme Court of Appeals is set out here for present and future legal minds to study. It is with the utmost humility that we give you the legal thoughts of a dear friend and West Virginia's judicial icon—

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Justice McHugh dissented in the following opinions: *State ex rel. Melanie Kaye P. v. MacQueen*, 484 S.E.2d 635 (W. Va. 1997) (McHugh, J., dissenting in part); *Phillip Leon M. v. Greenbrier County Bd. of Educ.*, 484 S.E.2d 909 (W. Va. 1996) (McHugh, J., dissenting in part); *State v. Hicks*, 482 S.E.2d 641 (W. Va. 1996) (McHugh, J., dissenting); *Barnhart v. Redd*, 469 S.E.2d 1 (W. Va. 1996) (McHugh, J., dissenting); *State ex rel. Azeez v. Mangum*, 465 S.E.2d 163 (W. Va. 1995) (McHugh, J., dissenting); *Largent v. West Virginia Div. of Health*, 452 S.E.2d 42 (W. Va. 1994) (McHugh, J., dissenting in part); *Municipal Mut. Ins. Co. of W. Va. v. Mangus*, 443 S.E.2d 455 (W. Va. 1994) (McHugh, J., dissenting); *Lucion v. McDowell County Bd. of Educ.*, 446 S.E.2d 487 (W. Va. 1994) (McHugh, J., dissenting); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 446 S.E.2d 658 (W. Va. 1993) (McHugh, J., dissenting); *State v. Layton*, 432 S.E.2d 740 (W. Va. 1993) (McHugh, J., dissenting); *Kirkpatrick v. Mid-Ohio Valley Transit Auth.*, 423 S.E.2d 856 (W. Va. 1992) (McHugh, J., dissenting); *State v. Morris*, 421 S.E.2d 488 (W. Va. 1992) (McHugh, J., dissenting in part); *Triggs v. Berkeley County Bd. of Educ.*, 425 S.E.2d 111 (W. Va. 1992) (McHugh, J., dissenting in part); *Schartiger v. Land Use Corp.*, 420 S.E.2d 883 (W. Va. 1991) (McHugh, J., dissenting in part); *Town of Romney Hous. Auth. v. West Virginia Human Rights Comm'n*, 406 S.E.2d 434 (W. Va. 1991) (McHugh, J., dissenting); *Suter v. Harsco Corp.*, 403 S.E.2d 751 (W. Va. 1991) (McHugh, J., dissenting); *FMC Corp. v. West Virginia Human Rights Comm'n*, 403 S.E.2d 729 (W. Va. 1991) (McHugh, J., dissenting); *State ex rel. Moomau v. Hamilton*, 400 S.E.2d 259 (W. Va. 1990) (McHugh, J., dissenting); *Means v. Sidiropolis*, 401 S.E.2d 447 (W. Va. 1990) (McHugh, J., dissenting); *Milner v. Milner*, 395 S.E.2d 517 (W. Va. 1990) (McHugh, J., dissenting); *Hodges Realty Co. v. John Smiley's Motel, Inc.*, 395 S.E.2d 751 (W. Va. 1990) (McHugh, J., dissenting); *Noggy v. West Virginia Civil Serv. Comm'n*, 391 S.E.2d 100 (W. Va. 1990) (McHugh, J., dissenting); *Roberts v. Gatson*, 392 S.E.2d 204 (W. Va. 1990) (McHugh, J., dissenting in part); *Gant v. Hygeia Facilities Found., Inc.*, 384 S.E.2d 842 (W. Va. 1989) (McHugh, J., dissenting); *State ex rel. Caryl v. MacQueen*, 385 S.E.2d 646 (W. Va. 1989) (McHugh, J., dissenting); *Holdren v. Workers' Compensation Comm'r*, 382 S.E.2d 531 (W. Va. 1989) (McHugh, J., dissenting); *Daily Gazette Co. v. Caryl*, 380 S.E.2d 209 (W. Va. 1989) (McHugh, J., dissenting); *Committee on Legal Ethics of W. Va. State Bar v. Triplett*, 378 S.E.2d 82 (W. Va. 1988) (McHugh, J., dissenting); *State ex rel. Dep't of Employment Sec. of State of W. Va. v. Manchin*, 361 S.E.2d 474 (W. Va. 1987) (McHugh, J., dissenting); *United Mine Workers of Am. v. Faerber*, 365 S.E.2d 357 (W. Va. 1987) (McHugh, J., dissenting); *Crane & Equip. Rental Co. v. Park Corp.*, 350 S.E.2d 692 (W. Va. 1986) (McHugh, J., dissenting); *State v. Dolin*, 347 S.E.2d 208 (W. Va. 1986) (McHugh, J., dissenting); *Board of Educ. of Monongalia County v. Starcher*, 343 S.E.2d 673 (W. Va. 1986) (McHugh, J., dissenting); *Roberts v. Stevens Clinic Hosp., Inc.*, 345 S.E.2d 791 (W. Va. 1986) (McHugh, J., dissenting); *State v. Golden*, 336 S.E.2d 198 (W. Va. 1985) (McHugh, J., dissenting); *State v. Hartshorn*, 332 S.E.2d 574 (W. Va. 1985) (McHugh, J., dissenting); *State v. Collins*, 329 S.E.2d 839 (W. Va. 1984) (McHugh, J., dissenting in part); *State ex rel. Atkinson v. Wilson*, 332 S.E.2d 807 (W. Va. 1984) (McHugh, J., dissenting); *State ex rel. Cohen v. Manchin*, 336 S.E.2d 171 (W. Va. 1984) (McHugh, J., dissenting in part); *Ray v. McCoy*, 321 S.E.2d 90 (W. Va. 1984) (McHugh, J., dissenting); *State v. Bonham*, 317 S.E.2d 501 (W. Va. 1984) (McHugh, J., dissenting); *State v. Hilliard*, 318 S.E.2d 35 (W. Va. 1983) (McHugh, J., dissenting); *Mason County Bd. of Educ. v. State Superintendent of Sch.*, 295 S.E.2d 719 (W. Va. 1982) (McHugh, J., dissenting in part); *Smith v. West Virginia State Bd. of Educ.*, 295 S.E.2d 680 (W. Va. 1982) (McHugh, J., dissenting in part); *Smith v. Mun. Mut. Ins. Co.*, 289 S.E.2d 669 (W. Va. 1982) (McHugh, J., dissenting); *Cincinnati Milacron Co. v. Hardesty*, 290 S.E.2d 902 (W. Va. 1982) (McHugh, J., dissenting); *Higgins v. Board of Ed., Randolph County*, 286 S.E.2d 682 (W. Va. 1981) (McHugh, J., dissenting); *State v. Stotler*, 282 S.E.2d 255 (W. Va. 1981) (McHugh, J., dissenting).

<sup>3</sup> During Justice McHugh's early years on the West Virginia Supreme Court of Appeals he occasionally placed his name on opinions that did not create new syllabus points. We include those opinions in the material and cite to the appropriate cases upon which Justice McHugh relied.

<sup>4</sup> The state constitution provides in relevant part that "it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case in which an opinion is written . . . which shall be prefixed to the published report of the case." W. VA. CONST. art. VIII, § 4. Many of the syllabus points cited in this work could fit under several legal headings. However, we reproduced each syllabus point just once.

“Chief” Justice McHugh.

## II. EVIDENCE

### A. *Evidence of Flight by Defendant*

In *State v. Payne*,<sup>5</sup> Justice McHugh confronted the issue of introducing evidence that a criminal defendant fled the scene of the crime. Justice McHugh wrote:

In certain circumstances evidence of the flight of the defendant will be admissible in a criminal trial as evidence of the defendant’s guilty conscience or knowledge. Prior to admitting such evidence, however, the trial judge, upon request by either the State or the defendant, should hold an in camera hearing to determine whether the probative value of such evidence outweighs its possible prejudicial effect.<sup>6</sup>

### B. *Incriminating Evidence Not Associated with Defendant*

Justice McHugh held in *State v. Rector*:<sup>7</sup>

It is reversible error for a trial judge to admit into evidence in a criminal trial of a defendant charged with a marihuana violation[,] drug paraphernalia and marihuana belonging to a state witness when such drug paraphernalia and marihuana have not been associated with the defendant and have no probative value relating to the guilt of the defendant.<sup>8</sup>

### C. *Testimony of Accomplice*

Justice McHugh addressed the issue of permitting an accomplice to testify against a defendant in *State v. Caudill*.<sup>9</sup> The court held that

[i]n a criminal trial an accomplice may testify as a witness on behalf of the State to having entered a plea of guilty to the crime charged against a defendant where such testimony is not for the purpose of proving the guilt of the defendant and is relevant to the issue of the witness-accomplice’s credibility. The failure by a trial

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<sup>5</sup> 280 S.E.2d 72 (W. Va. 1981).

<sup>6</sup> *Id.* at Syl. Pt. 6.

<sup>7</sup> 280 S.E.2d 597 (W. Va. 1981).

<sup>8</sup> *Id.* at Syl. Pt. 3 (alteration in original).

<sup>9</sup> 289 S.E.2d 748 (W. Va. 1982).