

An Interview with Former Justice Raul A. Gonzalez

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TS: We are here with former Justice Raul Gonzalez, who retired from the Texas Supreme Court in December 1998. He is Of Counsel to Locke, Liddell & Sapp L.L.P. in Austin.

RG: Judge, I have heard that your parents were migrant farm workers. Could you tell us a little about your childhood in that regard and how you think your upbringing might have influenced your decisions or your outlook as a judge?

Judge: I grew up in Weslaco, Texas. My Mom and my Dad settled there. Both my Mom and Dad were born in Mexico. As children, we worked out in the fields along with our parents, and my grandfather, and my aunts and uncles, and nieces and nephews harvesting crops. We harvested everything that they grew in the Valley: tomatoes, onions, cabbage, and cotton.

RG: How old were you when you first went out working in the fields?

Judge: We started very young, side by side with our parents there before we could be of any good. Growing up, I have fond memories of being seven or eight or ten years old, being out in the fields when they were out in the fields. I continued to work, particularly during the summers, picking cotton or crops when school was not in session. We would get up at 5:30 in the morning, and a truck would pick us up and take us out to the fields. Sometimes, we couldn't start harvesting because the dew in the fields made it too wet, so we'd have to wait until it was dry enough for the crops not to spoil or get fungus.

Well before I graduated from high school, when I was probably about 12, 13, or 14 years old, my Mom planted in all our heads that if we were ever going to break that cycle of poverty, it was going to be through education. So she really encouraged us to do as best as we could in school.

I remember several years as we were getting older, my Mom and Dad would hire a lady to come in and clean the house and cook for us, and they would leave us behind and go to Arkansas with a crew of people from Mexico—at that time, they were called *braceros*—who had temporary permits to work for several months to harvest crops. They did not want us to miss so much school, so we stayed behind for two months or so. We would make our own lunch and walk to school and back, and the lady would come in and clean once in a while.

When I graduated from high school, jobs were scarce in the Valley. You know how things are. If you've got an aunt, an uncle, a brother, or somebody in authority who has access to jobs, those people on the inside give favoritism to the people they know. That's very natural. My Dad was not an insider, so I could not get a job in either a cotton gin or a packing shed in the Valley, but I knew I wanted to go to college. My Mom arranged for me to go to California with a family from Weslaco. My job was to harvest tomatoes and after the crop came in and to make boxes for tomatoes that were going to be shipped. The tomato crop was late that year, and there we were in California with a lot of down time, so the crew leader arranged for me to go to a labor camp and pick apricots. I was probably the youngest

fellow in the labor camp with a bunch of transients. I've got big hands and a big drive to succeed. So I became the champion apricot picker of the camp. We were paid piecemeal, the more you pick, the more you earn. So I became the champion apricot picker. I stayed there for about three weeks picking apricots, and then the tomato crop came in and I went into the packing shed to make boxes. I stayed there until it was time for me to come and enroll at the University of Texas in Austin.

TS: It sounds like your experiences growing up really instilled a solid work ethic in you, both from your experiences harvesting crops and from what your parents wanted for you.

Judge: Yes, a very strong work ethic and sense of responsibility. In California, when I was working at the packing shed, my home was the attic of the packing shed and I slept on a cardboard box. The railroad tracks were right by it, and it was very hard to sleep, but after a while you tune out the noise. So, I think the valuable lessons that were taught me were, the hard work ethic, responsibility, and a fierce drive to do whatever it takes to succeed.

RG: You recently had an elementary school named after you. Was that in Weslaco?

Judge: Yes. I've got a picture here on my wall from when I happened to be at the White House a couple of months before the school was dedicated. I went to Washington to lobby for Justice Priscilla Owen. On that trip, we got to visit the Oval Office and take a photograph with the President. The President sent the picture and a congratulatory letter to the elementary school, which now hang in that elementary school named in my honor.

RG: When the teachers tell the students at that school about the person the school was named after, what kind of things do you hope they would say about you?

Judge: Hopefully, the kids would believe in themselves and learn that through hard work and education, they too can succeed. It doesn't matter whether they come from humble beginnings or they are born poor. They can achieve positions of power and prestige by getting an education, playing by the rules, and working hard.

RG: You are known for having written quite a few concurrences and dissents. What do you think accounts for your strong independent streak?

Judge: Well, I guess part of it is just having strong opinions or being opinionated. If I can't convince my colleagues that I'm right, I will respectfully tell them why I think they are wrong. And, I am so gratified that some of my dissents and concurrences have now become the majority opinion. Some of the positions that I took early on became the law of Texas.

TS: Tell us about your time at UT.

Judge: That was a very interesting time. That was the turbulent 60s, before you guys were born. I was a very idealistic member of the Texas Young Democrats. I remember having a righteous indignation of all the injustices against the poor and blacks and picketing and marching on the Drag, because the theatres and barber shops were not open to blacks. I remember being a part of that civil rights struggle and effort to try to call attention to those injustices. And, I remember during my years at UT going to Crystal City to be part of a big rally when farm workers organized a boycott against a Del Monte plant. One year that I was a member of the Young Democrats, there

was a young law student who was the president of the Young Democrats, and that was Justice Bill Kilgarlin. He was a law student, a very articulate spokesman for social justice, and he was the president of the Young Democrats when I was just a member. Little did I know that both of us would sit on the Supreme Court at the same time many years later.

RG: During your tenure on the Supreme Court, there were times when the bar perceived that there might have been a high degree of acrimony among the justices. Were those perceptions accurate from your viewpoint?

Judge: It was not so much acrimony, but it was just people with strong opinions. When I came on the Court, the members were all Democrats and by and large, were of a different philosophy than me. They were more progressive or liberal than I am. And there were some who didn't know what to make of me, like "Who is this guy, and where did he come from?" I was very honored to be there. I never dreamed I would be a justice of the Texas Supreme Court. I saw it as a calling or vocation and I was going to do the best I could and speak my mind.

There were times where some of the justices would make snide remarks about the positions I was taking or the dissents that I would write, but by and large it was cordial. I can only remember one incident that I thought was beyond the pale. I remember being on the campaign trail when the Court was about to issue an opinion on a case I had strong views about. I asked my colleagues on the Court for the courtesy of holding that case for a week, to allow me to write a dissent, and they wouldn't do that. They issued their opinion. But, that was the only incident where I was not given the professional courtesy that is due a Supreme Court justice.

RG: You were on the Court during the mid-80s when there was some negative publicity because of a *60 Minutes* report. Tell us what it was like to be on the Court with all of the negative publicity swirling around at that time.

Judge: There were tense times. From day one, I did not like what our system had become—highly politicized, money driven, having to raise money from special interests and law firms that may have cases before our Court. I always thought that that had an appearance of impropriety, that it was damaging to the judiciary and damaging to our credibility, so I always spoke up for reform and change. During that era, Mike Wallace was in town and he asked to interview several of the justices, and some agreed. I refused, and that is one of the best decisions I ever made. The public doesn't remember what you said, just that you were part of the question, "Is justice for sale?" If you give an interview, they take it that you were part of the problem. I didn't see myself as part of the problem, so I thank God that I didn't grant the interview.

As much that has been made about that, the justices on the Court, whatever our differences, made decisions based on what their perception of the law and the record. They just had a different view of the law and the world and their role, which happened to be different from mine in some respects. I can tell you unequivocally there was no hint of any improper behavior with regards to the voting on the merits of a case as a result of contributions or political support.

TS: What do you think about the recent movement toward the appointment of judges in Texas, at least for the appellate judiciary?

Judge: I support a constitutional amendment that would allow Texas to have merit selection of judges, where we would take the money out of the system like they do in many other states. The people would still vote for judges, but they would vote “retain” or “oust.” There is no perfect system. Every system has its flaws, but I want us to find a way that we can take the highly politicized nature of elections and the money that is involved out of the system. I think it would serve us well.

TS: A lot of us remember the 1994 primary. Would it be fair to say that was the most memorable of your contested races?

Judge: They were all memorable, but that hit a new low in judicial politics—the money that was spent, the nature of the campaign. I think it was a new low in Texas for judicial elections and I’m not proud of it, but I’m happy I survived.

TS: What was interesting to me was that it was so sharply contested at the primary stage. Do you have any reflections on why that would have been?

Judge: I think that election had a big impact, a lot beyond me. Those people thought that I was not a good justice, or that I wasn’t fair, or that I had blind spots, or that they wouldn’t get a fair hearing. If they were ever going to have the pendulum swing the other way, they needed to beat me in the Democratic primary if they were going to continue to field candidates for the Supreme Court. When they did not defeat me in the primary, history has shown that that segment of the bar or the population no longer fielded candidates in the next election cycle, and even today. I think it had a dramatic impact on the complexion and mix of Supreme Court races and how they are staffed today, or who decides to run, and so forth. Had they been successful in defeating me, I think it would have been a different story, it would

be a different reality today. But politics is strange the way the pendulum swings back and forth. Some day, in our lifetime, the pendulum will swing back. That’s just the way politics is.

RG: You seem to have more overtly expressed your personal values in your earlier opinions than in your later opinions on the Supreme Court. Do you think that’s true, and if so, was there some evolution in your thinking of how to incorporate your personal values into your opinions and decisions?

Judge: In the early years, I was a lone voice. When nobody is joining you in your dissent, you’re more free to write whatever you think is appropriate. Later on, after the years went by, the makeup of the Court started to change. To attract votes for dissent or concurring opinions, you’re not a free agent; you’re not at liberty to speak as you would speak if you were writing for yourself. You do it in a manner that attracts other people to your point of view. I think that explains the early years when the dissents were just me by myself. As the years went by, I started to get two or three votes, so my language changed. You can’t deny who you are; I still spoke of values, but not so overtly, trying to attract other votes.

RG: Are there any of your dissents or your majority opinions while on the Court that are particularly memorable?

Judge: There are so many. We had a hotly contested redistricting case that was particularly difficult because it impacted the region where I’m from, the Valley. It was a five-to-four opinion based on how five justices felt the case should be decided, and I was one of the five. It happened to adversely impact the Valley, and that vote was considered by some as bold or courageous. I just see it as a tough vote, because justices do not have

constituencies. I didn't represent the Valley any more than Tom Phillips represents Houston or James Baker represented Dallas. We represent the people of Texas as a whole, so each of us put all those factors aside and make the best decision on the record and the law as we understand it and then move on.

RG: When I was clerking for you in '89-'90, I remember that you were mentioned as a possible U.S. Supreme Court nominee. If you had gotten the call from the President, given the grueling Senate approval process, would you have said yes?

Judge: That's an interesting question. I am honored to have been mentioned, but I am so pleased that did not receive a call. I think that Judge Bork did a great disservice to the judiciary by engaging the Senators in a public debate in the confirmation hearings because that set the standard where you could debate the nominees about views. I don't like what the confirmation hearings have become. In my view, they are political theatre. Nobody learns anything new at those hearings. The nominees are thoroughly researched long before the confirmation hearing and the Senators are given extensive briefing notebooks on each nominee. Different parties are posturing for the press to try to influence the different constituencies for or against the candidate. It has nothing to do with the qualifications, the merits, or lack of merits of a particular individual. I am delighted that that cup has passed from me. I've enjoyed my life, enjoyed my career. I am just flattered to have been mentioned and I am so relieved that I didn't have to make that decision.

RG: Is there any one judge or legal scholar who had a particularly strong influence on you when you were a justice on the Supreme Court?

Judge: I served a very short time with Justice Jack Pope, but I just admired his intellect and the manner with which he conducted himself during conference. I had the gift of being influenced a lot by Judge Reynaldo Garza, who was on the Fifth Circuit. I served in his court as an Assistant United States Attorney for three and a half years while he was a district judge, and I learned so much from him in terms of being down to earth and not taking myself too seriously. I learned from him that you can be a devout man of faith, be involved in the community, and still be a good judge. So, I've learned from people and I've been touched by their lives and their example of how to carry themselves with humility.

TS: It's never been a secret that you're a man of faith.¹ How would you describe the impact of your faith on your role as a judge and the decisions that you were put in a position to make?

Judge: Well, I think you are who you are. Whether you're an agnostic, or cultural Christian, or a devout Christian, or a Buddhist, or whether your religion is secular humanist, or whether you're an atheist, we are all shaped by our thought processes, and our perceptions are shaped by our world view. To deny that your faith or your lack of faith, or wherever you are in the continuum of faith has any influence, I think is a lie. I am more open about it, and hopefully it made me a better judge. Judges swear allegiance to the Constitution of the United States and of this state and to uphold the law. We all do the best we can in trying to make decisions based upon the law, but our perception how we view a case, how we view a decision, how we view a record, how we listen, what we see, how we prioritize and

¹ See generally Raul A. Gonzalez, *Climbing the Ladder of Success—My Spiritual Journey*, 27 TEX. TECH L. REV. 1139 (1996).

what we think is important are all shaded by whether you are an agnostic, an atheist, a secular humanist, a cultural Christian, or an evangelical Christian, or whether you're Jewish or Muslim. Your views are shaped by what's in your heart and mind, the filter that you view things through. I think it's a reality and I'm just more open about it than other judges who are not as comfortable in acknowledging this reality.

RG: I've heard several times and never asked you, but supposedly in the lobby area of the judges' office, in the 1980s, a clerk took down one of the justices' portraits and put up a velvet Elvis that was unnoticed for a few days at least. Reportedly, you are the one who discovered it while a group of elementary school children were on a tour of the Court. I'm wondering if that's a true story.

Judge: I'm not going to comment about that. (Laughs.)

RG: OK, so the story remains

Judge: The story of the velvet Elvis is correct, but whether or not it was discovered by me during a tour of school children, I think that's an urban legend.

RG: Speaking of humor at the Court, could you tell us the funniest thing that happened during oral argument and during conference?

Judge: It was not humorous at the time, but one incident involved a young lawyer presenting an oral argument. I was asking my usual questions, and she fainted during my questioning. Of course, we called EMS and they came over and checked her out, and then after a while, we resumed. She insisted on continuing with her argument. My colleagues chided me for being too hard on her and said that I had caused her to faint because I was a little

bit too rough in my questioning. That's an incident that sticks out in my mind.

There were many instances where we had good natured fun. I always took my shoes off at the office and at conferences. One day Justice Spears hid one of my shoes. He made me look for a while, then he gave me back my shoe. Another humorous thing happened at one of the campaign affairs. I had to leave very early to catch an airplane to go to a breakfast meeting in Houston. Well, it was dark when I left home, and I had put on one black shoe and one brown shoe. That was kind of embarrassing, and I didn't want to call attention to it. Hopefully, not too many people noticed, but nobody said a thing.

TS: In getting ready for today, I suddenly realized that you've been retired from the Court five years now.² After 20 years on the bench, how did you adjust back to the practice of law?

Judge: I'm having the time of my life. I got burned out by the private practice of law, and that's why I became a district judge back in 1978. But after 20 years in the judiciary, and my retirement having vested, it was time to move on. Now, the juices are flowing again. And I'm just having the time of my life. I'm enjoying private practice and the financial rewards. I'm enjoying the freedom of being selective on what I do. I'm serving as a consultant, serving as an appellate lawyer in some cases, serving as an arbitrator or mediator, and an expert witness. I'm having such a marvelous time. I'm very blessed to be at this law firm that allowed me to do what I do.

² See Nathan L. Hecht, *To Justice Raul A. Gonzalez on His Retirement From the Supreme Court of Texas*, 36 HOUS. L. REV. 391 (1999).

RG: Now that you've been back in private practice for a few years and you're an appellate practitioner, has your thinking about what a well crafted appellate decision should accomplish changed?

Judge: Well, Rob, you were there when I presented an argument to the Supreme Court. The decision is still pending, and I don't want to say anything that would color the justices one way or the other, although I don't think they would be influenced. But I'm just amazed at the level of diversity of thought on any given issue. When you have nine people, whether they happen to be Democrats or Republicans, there are all sorts of shades from conservative, to moderate, to progressive on any given case. I continue to be amazed at the process. I look at the justices and I look at myself and I look at my tenure in the court, and I think, "Was it obvious that I didn't get it?" And, I probably didn't. I wonder what the lawyers said after argument after I asked a stupid question. You know, "Why is he asking me a stupid question?" (Laughs)

TS: I'm going to interject and say to the extent your briefing attorneys helped you formulate questions, there were no stupid questions.

Judge: (Laughs.) When I went off the page, I'm sure there were a bunch of stupid questions.

It's interesting. I was not aware of the talk among lawyers about what they think certain questions meant, or what they think of a particular argument if its packaged in this way, or how it would be received by a majority of the Court. There is a lot of background preparation that goes on that the justices never see.

RG: There's a move afoot to try to force the justices to make their votes in conference a matter of public record. What do you think about that idea?

Judge: I think it's a mistake.

TS: You think it will influence votes?

Judge: I'm just concerned at what that would do to the process if the votes are going to be publicized. Everybody does what they think is right for the right reasons as they see it, but if they have to worry about how their votes are going to be spun, I just don't like the implications of that. I think it may have an impact on the justices making an honest decision based on the merits of a particular case. There is too much danger in playing to the crowd and worrying about elections and worrying about how it's going to be spun. There's enough of that going on without this added pressure.

RG: What advice would you give a young lawyer who is just starting out?

Judge: I would advise that young lawyer to go to any government job that would get him or her into the courtroom often early in their career. Whether it's the county attorney's office, district attorney's office, or municipal court prosecutor. I learned a lot by having that type of experience, by learning to think on your feet, by learning that you have to prove the elements of a case, by learning how to cross-examine, not to ask questions if you don't know the answer in advance. All these things are honed early on, and whether you are going to be a litigator or not, that type of experience, will serve you well as you evaluate cases and you draft opinions as to the merits of a case. My advice to a young lawyer would be to go to a place, as I mentioned, that would give you the practical experience so you will learn the

things that you did not learn in moot court or in law school.

RG: You were on the Court when the practice changed from application for writ of error to the petition for review. Do you think that was a good change?

Judge: Yes, I think it's a good change. The reason it was changed was to give the justices an opportunity to read the 15-page petition without being filtered by staff. The thought was that a justice is more apt to read a short petition, rather than a 40 or 50 page brief. I think it was well thought out and it was a good innovation. Only time will tell whether or not it is serving the purpose. For the most part, I think that it is. Just like with everything else, there are going to be justices who will read petitions themselves and try to be ready and vote based on what they have read, not on what their staff has put in a memo, and there are some justices who will not. People are people. But, the flow of paper that a justice is supposed to be up to speed on is just enormous. There is so much reading you have to do to get ready for a conference, and when you couple the amount of reading with the election cycle, having to run and raise money, and be out raising money for campaigns, or being a liaison for the State Bar, court reporters, Unauthorized Practice of Law Committee, or the Pattern Jury Charge Committee, there are just so many hours in the day. I am for trying to streamline the process to allow the justices to simplify and give them an opportunity to read what they need to read themselves without having been filtered by staff, because there is so much to do.

TS: We have several new justices on the Court and there are some other changes coming up. Do you have any other advice for those folks as they try to make that transition?

Judge: It would be presumptuous of me to give any advice to incoming justices. The people on the Court got there because of proven merit, proven credentials, proven ability. Each one of them does things their own way. My advice to anybody is try to work on collegiality, mutual respect, and openness, so that the level of trust among themselves would continue to increase and be at a high level.

TS: We've now received word that Chief Justice Phillips will be stepping down in September. Is there anything you can tell us about his leadership over the years, as far as the impact he has had on the Court?

Judge: I think Tom has had an enormous impact on the Court. Not only is he incredibly well liked and a hard worker, but he has worked tirelessly to try to reform the system. He picked up the mantle of John Hill in trying to change the method in which the judges are selected in Texas and has been very, very vocal. I regret that he has not been successful in convincing the leaders of the Republican Party that this is a cause they ought to champion. He's tried to streamline and modernize the Court, and I thank him for hanging on. There are eight other people besides himself, people with strong opinions and strong personalities. His ideas with regards to streamlining or ways of doing things don't always carry the day, and I'm sure that's a source of frustration. I know I'd be frustrated if I didn't get my way, but he has hung on and he is so vital to the process. We've got so many new justices on the Court, we need an experienced hand that has institutional memory and that helps the system. He's been a great chief justice. I admire Tom for staying on as long as he has.

RG: There's a legal writing expert who has said something like, "You let me write the statement of facts, and I'll win every time," suggesting that the natural equities

of the case have an overriding influence on the outcome on appeal. Do you think that's true, and if so, to what extent do the natural equities of the case influence the decision?

Judge: The Supreme Court is not an equity court, as you know, it's a law court. But people are people, and you are going to make decisions that you think are right based on the law and your perceptions. Sure, equity is one of the many things put in the mix. Another way of saying what you just said about the statement of facts is "Let me frame the question, and I can guide you into the response that I want you to give." It serves you well to try to frame the question in such a way that captures the essence of what you are trying to get the Court to focus on, and then, of course, you draft your brief to respond to that question. You work so hard in trying to frame the question, but the Court has its own view of what the questions are in a particular case.

I think people are influenced by life experiences, education, and perceptions, so equity does play a role. I'm not saying it's a major role, but it's part of the mix of things. This is why they say bad facts makes bad law. We've heard that statement many times, but it's truest when equity has played the part in making law.

TS: Judge, thanks so much for your time. We really appreciate it.

RG: Yes, thank you.

Judge: I appreciate the opportunity to visit with both of you. Rob, it was good seeing you the other day in Court, and Todd, thank you for coming to my office.

"The strongest fact presentation is when the facts make the law look inevitable."

Prof. Timothy Terrell, June 3, 2004, Texas Center for the Judiciary,
2004 Appellate Writing Seminar