

HOUSTON LAW REVIEW

TRIBUTE

TO JUSTICE RAUL A. GONZALEZ ON HIS RETIREMENT FROM THE SUPREME COURT OF TEXAS

Justice Nathan L. Hecht

Mr. Chief Justice and May It Please the Court:

Governor Bush, Family and Friends of Justice Raul Gonzalez and of Justice Alberto Gonzales, and Distinguished Guests:

Raul Gonzalez came to the Supreme Court fourteen years ago, and by the time I arrived four years later, he was already a legend, his place in Texas history secure. First elected a District Judge in Cameron County in 1978 as a Democrat, he was appointed three years later by Republican Governor William P. Clements to the Court of Appeals for the Thirteenth District of Texas at Corpus Christi. After three years on that court, he was appointed again, in 1984, this time by Democratic Governor Mark White, to the Supreme Court of Texas. Perhaps the most important thing that Governor Clements and Governor White ever agreed on was Raul's solid qualifications for high judicial office. But appealing to two very different chief executives, hard as it was, was not Raul's greatest accomplishment. In 1986, after a five-man primary race, a runoff, and a contested general election against a candidate who two years before had come close to defeating John Hill for Chief Justice, Raul Gonzalez became the first Hispanic elected to statewide office in Texas, ever. For that achievement alone, fought hard for and won fairly,

pioneering the way for others to follow, Raul Gonzalez will long be remembered.

Judicial service has not been merely an honor for Justice Gonzalez; it has been hard work, about which he had plenty of first-hand experience as a migrant laborer in the fields of South Texas growing up in Weslaco and later picking apricots and packing tomatoes to pay for college tuition at the University of Texas. He has brought to the bench the industrious spirit cultivated in his youth. The *South Western Reports* contain 456 opinions authored by Justice Gonzalez, many of which are known to virtually every Texas lawyer: like the third *Edgewood* case,¹ which helped bring about sweeping changes in the way Texas finances its public schools; *du Pont v. Robinson*,² which required trial courts to determine the reliability of expert testimony before admitting it in evidence;³ *Elbaor v. Smith*,⁴ which prohibits most so-called Mary Carter agreements,⁵ in which a party settles but stays in the litigation and retains a financial interest in the outcome;⁶ and perhaps Justice Gonzalez's most oft-cited opinion, *Cavnar v. Quality Control Parking, Inc.*,⁷ which allowed for prejudgment interest on many claims.⁸

But Justice Gonzalez is at least as well known for his dissents. He was not always quite so—well, disagreeable. On the court of appeals, he wrote twelve majority opinions⁹ before his first

* Justice, Supreme Court of Texas. This speech was given in the House of Representatives Chamber of the Texas Capitol on January 14, 1999.

1. *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 488 (Tex. 1992).

2. *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

3. *See id.* at 556.

4. 845 S.W.2d 240 (Tex. 1992).

5. *See id.* at 250 (declaring such agreements as "violative of sound public policy").

6. *See id.* at 247.

7. 696 S.W.2d 549 (Tex. 1985).

8. *See id.* at 554.

9. *See Richardson v. State*, 628 S.W.2d 234 (Tex. App.—Corpus Christi 1982, no pet.); *Conley v. Pampa*, 627 S.W.2d 512 (Tex. App.—Corpus Christi 1982, no writ); *Ruiz v. State*, 627 S.W.2d 507 (Tex. App.—Corpus Christi 1982, no pet.); *Erickson v. Deayala*, 627 S.W.2d 475 (Tex. App.—Corpus Christi 1981, no writ); *Alcorta v. State*, 626 S.W.2d 838 (Tex. App.—Corpus Christi 1981, no pet.); *Humphrey v. State*, 626 S.W.2d 816 (Tex. App.—Corpus Christi 1981, no pet.); *Lorig v. City of Mission*, 626 S.W.2d 183 (Tex. App.—Corpus Christi 1981), *rev'd and remanded*, 629 S.W.2d 699 (Tex. 1982); *Gomez v. State*, 626 S.W.2d 113 (Tex. App.—Corpus Christi 1981, pet. refd); *Seekins v. State*, 626 S.W.2d 97 (Tex. App.—Corpus Christi 1981, no writ); *Medina v. State*, 626 S.W.2d 83 (Tex. App.—Corpus Christi 1981, pet. refd); *Bailey v. Gulfway Nat'l Bank*, 626 S.W.2d 70 (Tex. App.—Corpus Christi 1981, writ ref'd n.r.e.); *Lindeburg v. Gulfway Nat'l Bank*, 624 S.W.2d 278 (Tex. App.—Corpus Christi 1981, writ ref'd n.r.e.).

dissent,¹⁰ and only about one-sixth of his opinions on that court were dissents. By the time he left, however, he had gotten the hang of dissenting, and on this court his first five opinions were dissents.¹¹ About one-third of his opinions on this court have been dissenting. The aggravating thing is, many times his views were vindicated. He argued that the trial of punitive damages should be bifurcated from other issues.¹² Six years later the court agreed.¹³ He criticized the court for refusing to admit that when two trains run together, any fool would anticipate ensuing litigation.¹⁴ Four years later, the court took a reality check and conceded Justice Gonzalez's point.¹⁵ He argued that corporate CEOs should not be deposed if the information can be obtained by less intrusive means.¹⁶ A year later the court adopted this view.¹⁷ Here's one that will interest you, Governor: dissenting from the court's refusal to hear a case, Justice Gonzalez wrote that in a softball game, a runner headed for home should not be sued for colliding with the catcher who was blocking the plate.¹⁸ Justice Gonzalez's view did not capture the court's attention, but it sure captured the attention of sportscasters across the State. And now it is back to roost: just yesterday, we listened to argument for most of an hour about whether the liability standard Justice Gonzalez proposed was right in the case of the base runner who didn't slide.¹⁹

Part of the explanation for Justice Gonzalez's prolific writing is that he is seldom reluctant to speak his mind. Sometimes, he

10. See *Spencer v. State*, 628 S.W.2d 220, 225 (Tex. App.—Corpus Christi 1982, pet. ref'd) (Gonzalez, J., dissenting).

11. See *Beaumont Enter. & Journal v. Smith*, 687 S.W.2d 729, 730 (Tex. 1985) (Gonzalez, J., dissenting); *Rogers v. Walmart Stores, Inc.*, 686 S.W.2d 599, 601 (Tex. 1985) (Gonzalez, J., dissenting); *Ex Parte Griffin*, 682 S.W.2d 261, 263 (Tex. 1984) (Gonzalez, J., dissenting); *Kennedy v. Hyde*, 682 S.W.2d 525, 530 (Tex. 1984) (Gonzalez, J., dissenting); *Nelson v. Krusen*, 678 S.W.2d 918, 935 (Tex. 1984) (Gonzalez, J., concurring and dissenting).

12. See *Lunsford v. Morris*, 746 S.W.2d 471, 474-75 (Tex. 1988) (Gonzalez, J., dissenting).

13. See *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10, 30 (Tex. 1994).

14. See *Flores v. Fourth Court of Appeals*, 777 S.W.2d 38, 42-44 (Tex. 1989) (Gonzalez, J., dissenting) (arguing that investigative documents prepared after a person is injured should be held as made "in anticipation of litigation" and, thus, privileged, and that the court's two-prong analysis was impractical).

15. See *National Tank Co. v. Brotherton*, 851 S.W.2d 193, 203-05 (Tex. 1993) (modifying the *Flores* two-prong analysis test to provide a more workable solution).

16. See *Monsanto Co. v. May*, 889 S.W.2d 274, 277 (Tex. 1994) (Gonzalez, J., dissenting) (dissenting from the denial of a motion for leave to file a petition for writ of mandamus).

17. See *Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995).

18. See *Davis v. Greer*, 940 S.W.2d 582, 582-83 (Tex. 1996) (Gonzalez, J., dissenting) (dissenting from the denial of an application for a writ of error).

19. *Phi Delta Theta v. Moore*, No. 98-0601 (Tex., argued Nov. 13, 1998).

should have been a little more reluctant. Like the time he and his wife, Dora, were talking about what each would do if the other died. Dora volunteered that Raul was so special to her, she could not imagine that her grief at his loss would ever subside enough for her to live with anyone else. When she asked what he would do if she predeceased him, he innocently replied that he thought he would waste little time finding *numero dos*. Wrong answer. On rehearing, he has reconsidered his position. But with Raul, you need not wonder long what he is thinking; he will tell you, and tell you straight. Like Saint Bartholomew, Raul is completely without guile. He is as quick to make amends as he is to speak out.

Justice Gonzalez's writing is also a product of his courage. He came to the court in a troubled period. Many times, he could have ducked an issue or equivocated, but he didn't. I recall one night our discussing a very high-profile case in which his vote was crucial. He could have decided the matter either way, but the choice he made was one that would, and did, subject him to harsh and fearful criticism. The prospect of adverse personal consequences was unimportant to him. His sole concern was getting the law right and protecting the court's integrity. I will never forget that night.

Raul's courage has been at personal sacrifice. In 1994, he stood for re-election in what is undoubtedly the most brutal statewide judicial primary and runoff in Texas history. In tribute to his character, consistent through the years, thousands of people worked hard for his victory. This man of the Valley represents, in Governor Bush's words, "the best of Texas."²⁰

Two things sustain Raul Gonzalez. One is his faith in God. Twenty-five years ago he and Dora attended a Marriage Encounter weekend intended to help couples rekindle the flame of intimate relationship. He came away more in love with Dora than ever, but for the first time, in love with God. Since then his devotion to spiritual things has increased steadily. At one stop during his first statewide campaign, after telling the assembled crowd that he was a born-again Christian, one lady came up afterward and inquired whether he was a Baptist because, she said, Catholics don't talk like that. Raul is not a Baptist—he and Dora are very deeply devoted to the Catholic Church—but he has a distinct ecumenical streak: he has been on a mission trip to Panama under the auspices of the Baptist Convention, he has been on the Methodist national advisory board for Hispanic missions, and he has been on a mission trip to Korea with

20. Osler McCarthy, *Senior Judge Retiring from High Court*, AUSTIN AM.-STATESMAN, Oct. 1, 1998, at B1.

nondenominational Bill Gothard. Raul's faith infuses his work. He considers the court his ministry so much that I have nicknamed him "the padre." He is very sensitive to the people part of our work, and he is careful to notice the joys or stresses of those around him. He relates to people and is never so busy that he passes them by. He has always made himself available to counsel any member of the court's staff, and for most who have needed help, Justice Gonzalez's office was their first stop. He has been not only the court's Senior Justice, but our friend.

The other sustaining force for Raul is family. He comes from sturdy stock. His father, Raul, and mother, Paula, emphasized the importance of their children's education. Raul, his two sisters, Ana Delia and Maggie, and his two brothers, Rene and Herman, are all first-generation college graduates—and Rene is also a judge, in Anchorage, Alaska. Raul and his wife, Dora, were in the fourth grade together. She didn't like him much then, but after one dance in college, that was it. And despite his occasional ill-advised candor, to which I alluded earlier, they are very close. They have four grown children, Celeste, Jaime, Marco, and Sonia, and one granddaughter. Most of Raul's family is present today in his honor, along with Dora's brother Robert and his wife Maria Elena. Would you please stand and accept our thanks for coming.

Justice Gonzalez leaves more than twenty years of judicial service in the same way he came—on his own terms. The philosopher Hegel said that "nothing great in the World has been accomplished without passion."²¹ Raul is a passionate man, and he has accomplished great things—with no doubt much more to come.

Well, this is an emotional day, but as Justice Gonzalez wrote in *Holloway v. Fifth Court of Appeals*,²² "*¡ Ya basta!*"²³—enough is enough. I count among the best aspects of having served on this court my friendship with Raul Gonzalez. He has been an inspiration to me, and I have benefited from his example and counsel more than I can say.

Justice Gonzalez, on behalf of the people of Texas, I thank you for more than twenty years of public service in the cause of justice; on behalf of the Supreme Court, I thank you for your influence on this institution and on the law of Texas; and on behalf of your colleagues, I tell you that we love you and we will miss you. *Vaya con Dios, mi amigo.*

21. GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF HISTORY* 23 (J. Sibree trans., Willey Book Co. rev. ed. 1944) (1832) (emphasis omitted).

22. 767 S.W.2d 680 (Tex. 1989) (Gonzalez, J., dissenting).

23. *Id.* at 686 & n.1.

