



HONORING THE PAST – EMBRACING THE FUTURE

Top row, from left to right: Adelfa Callejo – First female Hispanic practitioner in Dallas; Alberto Gonzales – First Hispanic US Attorney General (2005-2007); Gustavo C. Garcia – Together with Carlos Cadena, first Hispanic Attorney to argue before U.S. Supreme Court in the landmark case Hernández v. Texas (1954); Richard Peña – First Hispanic to serve as State Bar President of Texas (1998-1999); Justice Eva Guzman – First Hispanic Woman on Texas Supreme Court (2009-present); Bottom row, from left to right: Justice Raul A. Gonzalez, Jr., – First Hispanic appointed or elected to statewide office in Texas; first Hispanic on Texas Supreme Court (1984-1998); SBOT President J. Chrys Dougherty with founding members/leaders of the Concerns of the Spanish Speaking Community Section: James W. Ray, Jr., J. Manuel Banales, Hon. Reynaldo G. Garza and Frank Herrera (1980); Linda Reyna Yañez – Appointed by Gov. Ann Richards in 1993, the first Hispanic woman to serve on an appeals court in the history of the State of Texas and the first woman to serve on the 13th Court of Appeals; Carlos Cadena – Together with Gustavo C. Garcia, the first Hispanic attorney to argue before U.S. Supreme Court in the landmark case Hernández v. Texas (1954).

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Message from the Chair

As the newly elected Chair of the Hispanic Issues Section, I recently attended the State Bar of Texas Orientation Meeting for all new section chairs and treasurers. As I introduced myself to my colleagues, one of them remarked: “I didn’t know that Hispanics had issues”. At that moment, I knew that our work was cut out for us.



Justice Gina Benavides

Diversity and representation is critical at the State Bar of Texas. It is even more important now, in light of the actions to eliminate the minority-director position. Four minority-director positions were created by statute to ensure diversity on the SBOT Board of Directors. I was honored to serve in that position from 2000 to 2003. My role was not to represent a specific geographical area of the state, but rather all minority lawyers in the State of Texas. Unfortunately, the statute was changed last session and now merely requires four ‘at-large’ directors. Without our continued participation, minority representation will decline on the SBOT Board, which may result in disenfranchisement of our Hispanic community. We have and will continue to stress to the Board the importance of having a diverse State Bar Board.

Another role that the Hispanic Issues Section plays in our profession is our review of proposed and enacted laws and regulations, as well as judicial decisions that

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affect our community. With heavy national attention in the areas of immigration, voter suppression, and discrimination, our role in these efforts has never been more important. Additionally, we have aided our local community leaders by providing resources for dealing with the crisis of unaccompanied minors and the separation of families along our border. We will continue providing training for those who wish to help and assist those who need our assistance.

As the incoming year will be a legislative year at our state Capitol, we will be monitoring all bills which would have an impact on our community. We are also partnering with MABA-TX to co-host a CLE and Legislative Day on March 6, in Austin, to provide an opportunity to meet with our state leaders about many important issues facing our communities.

We will also continue to increase our membership by providing networking and social events throughout the Texas. Events are planned in Austin, Corpus Christi, Lubbock, and Tyler. Please visit our website and Facebook page for more details.

Join us, become a member, and be involved with our community! Hope to see you at one of our many upcoming socials or CLEs.

Justice Gina Benavides

Chair, Hispanic Issues Section

HIS at Annual Meeting

ELECTIONS AND NEW OFFICERS



HIS held its annual meeting on **June 21, 2018**, as part of the State Bar of Texas annual meeting held in Houston, Texas. The agenda included the election of officers for the 2017-2018 bar year, and appointment of new Council members. Your **2018-2019** officers are:



Justice Gina Benavides, Chair

Valerie Carrillo, Chair-elect

Larry Banda, Vice Chair

Judge Victor Villarreal, Secretary

Jaime Vasquez, Treasurer

Betty Balli Torres, Immediate Past Chair

Congratulations to the new officers!

HIS ANNUAL RECEPTION AND AWARDS

After its annual meeting, HIS held a reception at which it honored members of the Hispanic legal community through a number of achievement awards. The recipients honored at the reception are the following individuals and entities that represent the best of our profession.

Bar/Organization of the Year:

Mexican American Bar Association of Houston (MABAH)

Legislator of the Year:

Senator Judith Zaffirini (Laredo)



Betty Torres, Senator Zaffirini, Trey Apffel

HIS Award Recipients

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Reynaldo Garza Lifetime Achievement Award, given to an attorney or judge who has demonstrated a long commitment and made great achievement in addressing concerns and issues affecting the Hispanic community and the Hispanic Bar in Texas and has worked toward advancing diversity and access to justice in the practice of law:

Esther Chavez, Deputy Chief, Office of the Attorney General.

Judge of the Year:

Justice Luz Elena Chapa, Justice, 4th Court of Appeals

James W. Wray, Jr. Founders Award, given to recognize exceptional achievements on behalf of the Hispanic legal community:

*Angelica Hernandez, Partner,
Linebarger Goggan Blair and Sampson, Houston*



Justice Benavides, Esther Chavez, Angelica Hernandez, Jana Ortega, Betty Torres

HIS Chair/President's Award:

Arturo A. Aviles



Betty Torres, Arturo Aviles, Justice Benavides, Trey Apffel

**Congratulations to all of our
Awardees!**

LEGISLATIVE PREVIEW

by Gloria Leal, Attorney at Law & Legislative Consultant

Crowded Race for House Speaker

The most important order of business for the 86th Legislature when it convenes the second Tuesday in January will be election of a Speaker for the Texas House of Representatives. Speaker Joe Straus, a San Antonio Republican, announced he would not seek re-election, setting off a scramble for the coveted seat. There are announced and unannounced candidates jockeying for the position, but no one has a majority support. Straus clashed frequently with Lt. Gov. Dan Patrick, who presides over the Senate, and aggressively pushed a more conservative agenda. Speaker Straus served as a strong moderating force in the House forging bi-partisan alliances to pursue a pro-business, fiscal responsible agenda and to thwart the contentious issues pursued by the Senate. With the exit of the Speaker, conservatives are forecasting a more favorable future for social issues including limiting transgender-friendly bathrooms, same-sex marriage, abortions and other faith-based policies. The power of the Speaker is immeasurable. The Speaker is responsible for naming committee chairs and members utilizing a combination of factors including seniority and loyalty. In collaboration with the Speaker, Committee Chairs determine which bills will get a hearing and proceed to the House floor for a vote. The Speaker also sets the tone for the House in terms of procedure and substantive issues to consider, as well as timing. These are non-issues in the Senate where Republicans hold a majority and by Democrats are sidelined due to elimination of the 2/3rds rule in 2015.

HOT ISSUES

Local Mandates and Private Property Rights, Hurricane Harvey Lead Interim Committee Charges

A year ago Hurricane Harvey hit our great state and total damages are estimated at \$125 billion, making it one of the costliest natural disasters in United States history. In Texas, the Legislature is undertaking a comprehension look at the impact of Hurricane Harvey including response, relief and recovery efforts and environmental impact and clean-up. Various House and Senate committees are reviewing the role of state, regional and local entities as well as impact and cost

to businesses, courts, housing, medical and nursing facilities and infrastructure. Short-term as well as long-term solutions are being recommended during the next session.



Flood response and mitigation measures have received unprecedented attention. Also on the agenda are review of insurance costs and coverage issues. TWIA has proposed a rate increase for coastal areas impacted by Harvey and coastal legislators are expected to push back on the proposal. Proposed changes in the definition of “rain driven damage” in the homeowners property insurance policy is generating attention from insurers and the plaintiff’s bar

Efforts to protect the rights of private property owners and limit local ordinance-making will reoccur this next session. Emboldened by last session’s opposition to Austin imposed ride-share permitting rules and the Texas Supreme Court’s invalidation of a Laredo plastic bag ban, property rights advocates are expected to challenge ordinances regulating the scope of short-term rentals and similar measures. A move to invalidate Austin’s adoption of a mandatory sick-leave policy applicable to private city contractors is also anticipated.

Redistricting – Legislature to Tackle Lines for One District

Earlier this year, the U.S. Supreme Court overruled a San Antonio appellate court and upheld all aspects of a Texas redistricting plan adopted in 2013. The appellate court had found the maps were discriminatory against Latino voters but in a 5-4 split, all Republican appointees voted to allow the Texas legislature’s maps to proceed with the exception of a single state House of Representatives district which they found was unconstitutionally drawn. The High Court agreed with the San Antonio panel’s finding of racial gerrymandering in House District 90, a Ft. Worth district currently held by Democrat State Rep. Ramon Romero Jr. If no redistricting

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bill is introduced in the first 45 days of the 2019 legislative session, “or if it otherwise is made apparent that no redistricting legislation will be considered,” the court said it will redraw the district to make sure there’s a fix in place before the 2020 elections.

Immigration

The upcoming legislative session will once again feature heated debate and emotional fights over immigration-related legislation. Conservative Republican leaders support ending in-state college tuition for Texas students without legal immigration status and denying benefits and any state aid to immigrants or their children. Top Republican leadership is also supportive of legislative proposals to continue funding and use of state resources for law enforcement along the border. Other proposals would make it a crime to knowingly hire immigrants and impose other employment restrictions. Efforts to either tighten up S.B. 4, the anti-sanctuary legislation passed last session is being considered whereas, and opponents will file legislation to reverse the action.

Water

Developments in case law regarding groundwater ownership and regulation will serve as the basis for proposed legislation to clarify rights and responsibilities in the emergent area of water law. Climate change and drought conditions in the state have led to increasing competition for water resources. Both the House and Senate are evaluating the status of surface and groundwater policy in Texas, water ownership and transfer authority, aquifer-wide management and permitting practices.

State Bar of Texas 2019 Legislative Program

Earlier this summer, various sections of the State Bar submitted legislative proposals for consideration by the State Bar’s Board of Directors. Sections of the State Bar are not authorized to pursue legislative action unless approved by the Board. Submitted for consideration are proposed changes to the Texas General Arbitration Act that a claim sought to be arbitrated is subject to the same limitations of time for the commencement of actions as if the claims had been asserted in a court. Also submitted are proposals relating to the recovery of attorney fees and the discharge of mechanic’s and materialman’s liens in construction law contracts. The Family Law

Section has proposals relating to divorce agreements, protective orders, entry and property retrieval and several relating to the parent-child relationship. The LGBT Law Section is proposing a constitutional amendment to repeal the provision of the state constitution defining marriage, certain statutory changes addressing same sex marriages and removal of criminality provisions. The Poverty Law Section proposes to create an exemption regarding the appointment of certain pro bono volunteers. Also proposed is legislation relating to decedents’ estates, guardianship, trusts and powers of attorney and directives relating to anatomical gifts, and disposition of remains.

The final decision as to which proposed bills will be approved as part of the official State Bar package is still pending.

OTHER KEY INTERIM CHARGES**Business and Industry**

Review all existing law concerning consumer rights and protections, including but not limited to statutes that address deceptive practices, landlord/tenant agreements, and homeowner/contractor disputes. Determine whether the provisions offer adequate guidance and protections in disaster and recovery situations.

Criminal Jurisprudence

Study current practices for the enforcement of criminal laws against low-level possession of marijuana. Examine the use of alternative punishments and improvements to criminal enforcement mechanisms and community supervision. Examine instances of prosecutorial misconduct and ineffective assistance of defense counsel. Review systemic and structural issues affecting the resolution of criminal cases. Examine the legal framework surrounding sexual assault prosecutions, including statutory definitions, certain age-based offenses, and ongoing developments in evidence collection and processing.

Government Transparency and Operations

Review Texas’ open meeting laws and related government decision-making policies. Determine if the formal processes prevented the efficient delivery of assistance during Hurricane Harvey. Make recommendations on maintaining the current standards of accountability without limiting government-provided aid during disaster events. Evaluate whether, in light of

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recent Texas Supreme Court rulings, the provisions of the Public Information Act are adequate to support transparency and accountability in government, particularly as it relates to government contracting and procurement.

Homeland Security and Public Safety

Review and evaluate the impact of DPS operations near the Texas-Mexico border on organized crime.

House Committee on Human Services

Study the impact of Hurricane Harvey and the response to the storm on individuals living in long-term care facilities, assisted living facilities, state supported living centers, licensed community group homes, and children in the foster care system. Analyze the prevalence of children involved with Child Protective Services (CPS) who have a mental illness and/or a substance use disorder. In addition, analyze the prevalence of children involved with CPS due to their guardian's substance abuse or because of an untreated mental illness.

House Committee on Judiciary & Civil Jurisprudence

Study the effects of Hurricane Harvey on the courts and legal system. Examine whether existing statutes granting authority to the Texas Supreme Court and Texas Court of Criminal Appeals are adequate to address potential needs during emergencies. Study the effects of Harvey on civil legal aid programs in general, and specifically in regard to legal problems faced by those impacted.

Examine the increasing use of non-traditional methods of resolving legal disputes and interacting with the legal system, and the implications of this trend both for the parties involved and the legal system as a whole. Include an examination of the availability and use of self-help resources, recent efforts by the Legislature and courts to increase access to justice for unrepresented litigants, and the use of online dispute resolution.

Evaluate the statutes prescribing fees in civil and criminal matters, and examine opportunities to simplify and improve the fee structure. Identify fees that may be challenged on grounds similar to those raised in *Salinas v. Texas* (Tex. Court of Crim. Apps., March 8, 2017), and recommend any

necessary changes.

Study the increased use of specialty courts across the state. Examine the jurisdictional thresholds of the justice, county, and district courts, including how these limits and other factors impact the caseload of the courts. Study possible improvements in the efficient organization and operation of the court system.

House Committee on Natural Resources

Examine jurisdiction regarding Hurricane Harvey and flooding in general: the role of regional entities in developing projects to control flooding, both through new infrastructure and enhancing existing infrastructure; mitigation efforts that would reduce the impact of future flood events, and strategies to fund those efforts; and the response of public entities that own or operate dams to large-scale rain events, including how such entities make decisions regarding dam and reservoir operations during such events, coordinate with state and local emergency management officials, and communicate with the public.

House Select Committee on Opioids and Substance Abuse

Study the prevalence and impact of substance use and substance use disorders in Texas, including co-occurring mental illness.

Conclusion

As can be seen, the 86th Legislature will deal with new issues resulting from Hurricane Harvey, recurrent social issues and evolving issues in water law, property rights and immigration. New leadership at the state level and at the legislature will likely create a new dynamic in the legislative process.

Join your colleagues and make plans to attend the **Hispanic Issues Section** and the **Mexican American Bar Association of Texas** at their Biannual Joint CLE and **Legislative Day** to be held at the **Texas Law Center, March 6, 2019**.

For more information contact Gloria Leal at GLEalLaw@sbcglobal.net.

We look forward to seeing you!

CASE REVIEW

Evidence of Immigration and Ethnicity was Error warranting a New Trial

Mendez v Salinas

2018 WL 2979835, *1 (Tex. App.—Corpus Christi 2018, pet. granted, judgm't vacated w.r.m.)

This case involves a motor vehicle accident where Salinas driving a tractor-trailer changed lanes colliding with Mendez. Prior to trial, the court granted a Motion to Exclude Mendez's immigration status and instructed Salinas not to make no statement, offer no evidence or propose any testimony concerning Mendez's immigration standing.

During cross-examination of doctor's and life care's testimony, Salinas alluded to Mendez's immigration status by asking of series of questions such as if doctor knew if Mendez was going to stay in the United States or return to Mexico, if she was receiving treatment in the United State or Mexico and that her primary language was Spanish. Also, Salinas' was asked specifically if he was an American citizen.

Several discussions were held outside of the presence of the jury wherein Mendez's objected to the question and accused Salinas' of violating the Court's order. Salinas' counsel was warned not to violate the Court's Order and following precedent, immigration status is not admissible.

Jury found no liability on Salinas and the trial court rendered a take-nothing judgment in favor of Salinas. 13th Court of Appeals reversed and remanded finding that the trial should have granted a new trial because the evidence was **incurably prejudicial**.

Supreme Court had granted petition; however, the case was dismissed upon settlement.

*** We encourage the submission of items for future newsletters. Those may be sent to Dolores Alvarado Hibbs, Newsletter Editor, email: dhibbs1@austin.rr.com ***

Also, if you have thoughts or comments about the website or the activities of the Hispanic Issues Section, or have something you would like to see in a future newsletter, please contact us.

HIS Activities and Events

August 23, 2018, Mixer and Membership Drive, Austin

HIS and the Hispanic Bar Association of Austin (HBAA) held a mixer event in Austin on August 23. Great fun was had by all, visiting with old friends and making new ones. The event provided an opportunity for local attorneys to meet our Hispanic judges. We also increased our membership by telling lawyers all the great work we are doing. Thank you HBAA for coordinating such a wonderful networking event.



UPCOMING EVENTS

October 17-19, 2018 – Texas Minority Counsel Program.

The purpose of the Minority Counsel Program is to increase opportunities for minority and women attorneys who provide legal services to corporate and government clients, and to expose those organizations to the diversity in the minority and woman lawyer community.

October 26, 2018 – MABA Houston Scholarship Gala, Royal Sonesta, Houston, Texas

November 2, 2018 – Día De Los Muertos Celebration in Corpus Christi, Texas. Please keep an eye out for details on our Facebook Page and by email.

March Mixer-Lubbock and April Mixer – Tyler are being planned.



Hispanic Issues Section CLE and MABA-TX Legislative Day–MARCH 6, 2019

Our legislative liaison, Gloria Leal, is putting together a complete half day of CLE of hot topics for our members along with afternoon visits to the Capitol and an evening Happy Hour.

Please see the [HIS website](#) for more information on these and other events!

Also, please follow us on [Facebook](#).