

Summer 2016

# From Michigan's Stawberry Fields to South Texas's Rio Grande Valley: The Saga of a Legal Career and the Texas Civil Rights Project

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Available at: <https://academicworks.cuny.edu/clr/vol19/iss2/4>

# FROM MICHIGAN’S STRAWBERRY FIELDS TO SOUTH TEXAS’S RIO GRANDE VALLEY: THE SAGA OF A LEGAL CAREER AND THE TEXAS CIVIL RIGHTS PROJECT

*James C. Harrington*<sup>†</sup>

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#### I. INTRODUCTION, OVERVIEW, AND DEDICATION

Having authored more than a few law review articles over the years, it is a pleasure and an honor to write one of a different genre, namely, about my good fortune to have done community civil rights work in south Texas and then eventually found and direct the Texas Civil Rights Project, which celebrated its twenty-fifth anniversary on September 23, 2015.

My intent is not to present a biographical piece, though biographical it must be in some measure, but to recount a history of trying to do civil rights work, rooted in the community and people's aspirations and goals, in Texas, a state often inimical to the progress of human rights. This history recounts victories and losses, funny moments and sad times, and the stories of courageous people who stepped forward to be part of litigation as a way of improving their lives and the lives of others, now and in the future. In the process, the article will obviously assess some trends in Texas civil rights work throughout my forty-three years as a lawyer, which has become more painstaking, owing to ever more conservative state and federal judiciaries.

The article also will review how the Texas Civil Rights Project (TCRP) came into being as a result of philosophical differences in direction with the American Civil Liberties Union (ACLU). The strategic split from the ACLU and formation of the Project had everything to do with the profound issue of the extent to which

civil rights lawyers take direction and guidance from the community or whether we litigate in our own vacuum with our own priorities. Michelle Alexander recently raised this problematic afresh in *The New Jim Crow*.<sup>1</sup>

My deeper desire, though, is that some law student or newly-minted attorney might read this and find inspiration to follow her or his heart into this awesome work with the assurance that, with dedicated labor and almost blind faith, ¡*Sí, se puede!* (“Yes, it can be done!”), as the farm worker movement expresses it so well. That, too, was TCRP’s motto. To that end, I am grateful to the editors for this opportunity.

One note should be made from the outset. Given that many events and cases overlap, the chronology is not always perfectly sequential so that the narrative might read better. I relay only my personal memory and perspective of events, but I must acknowledge and thank all those with whom I had the privilege of working—brave clients, dedicated staff, committed community activists, *pro bono* attorneys, and family—without whom nothing I relate could have happened. To them all, I dedicate this recollection of a history in which I was fortunate to be but a player.

## II. THE START: WORKING WITH MIGRANT LABORERS IN MICHIGAN

My legal career began on a lark as a high school sophomore in 1961. I was in the seminary at the time, and the curriculum required students to start a five-year language track that year. Our options were German or Spanish. Of the two, I preferred German. But a group of us upstarts thought, if we petitioned for French, the authorities would respect our request. Rather naïve thinking for seminarians at the Pontifical College Josephinum, where I spent high school and college.<sup>2</sup> The authorities reacted by arbitrarily assigning us French-seekers to either German or Spanish. I drew the latter, and it changed the course of my life.

Our professor, Fr. Paul “Pablo” Sicilia, pushed us hard to learn the language and immersed us in various Spanish-speaking cul-

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<sup>1</sup> See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 225 (2012) (“With all deliberate speed, civil rights organizations became ‘professionalized’ and increasingly disconnected from the communities they claimed to represent.”).

<sup>2</sup> See generally *Our History*, PONTIFICAL COLL. JOSEPHINUM, <http://www.pcj.edu/about-josephinum/our-history>, [<https://perma.cc/QW6D-U5MM>] (“Until 1970, the Pontifical College Josephinum comprised a minor and major seminary, with the minor seminary consisting of four years of high school and two years of college, and the major seminary comprising two years of philosophy and four years for theology.”).

tures. He was particularly fond of Mexico where he studied and did summer missionary work in the indigenous mountain communities. So, in college, when a summer job opened up with the Diocese of Lansing among migrant workers in southwestern Michigan, I jumped at it. I could both do ministry and use my Spanish, which needed all the practice I could give it. I ended up working there for seven summers. At the time, some 70,000 farm workers would migrate to Michigan during the summer, mostly from south Texas's Rio Grande Valley, to harvest strawberries, blueberries, raspberries, and other hand-picked crops. From there, they went north to pick tree fruit.<sup>3</sup>

The migrant camps were appalling, dirty (muddy when it rained), and cramped. Families lived in converted barns and single-room shacks, sometimes as many as twenty cabins on a farm. Wages from bending over all day in the fields were barely life-sustaining. Young children picked crops, too, and earned even less.<sup>4</sup> Harvesting began in the chilly pre-dawn dew and continued into the hot sun-baking afternoon.

Activists, do-gooders, and sympathetic government officials abounded, however. I worked for five years with the church and then two years with United Migrants for Opportunity, Inc. (UMOI), a "Great Society" poverty program that rankled local political and business leaders for its "meddling."<sup>5</sup> We all joined together to fashion summer programs for young migrant children, provide Saturday evening entertainment for teens, arrange college scholarships for young adults, enforce minimum wage laws, set up health clinics, help distribute food commodities and vouchers, and attend to people's spiritual needs.

Young UMOI lawyers took on minimum wage issues and freedom of access to the migrant camps which farmers were increasingly blocking to keep out "troublemakers." One of the nuns in our program was a plaintiff in a federal suit against grower Joe Hassle, who did not want her distributing health clinic flyers in his camps. (Hassle settled mid-trial when he found out that the judge went to Mass every day at noon.)

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<sup>3</sup> See REFUGIO I. ROCHIN ET AL., JULIAN SAMORA RESEARCH INST., MIGRANT AND SEASONAL WORKERS IN MICHIGAN'S AGRICULTURE: A STUDY OF THEIR CONTRIBUTION, CHARACTERISTICS, NEEDS, AND SERVICES 3-11 (1989) (providing yearly estimates for migrant workers in Michigan ranging from 40,000 to 80,000 between 1965 and 1989).

<sup>4</sup> *Id.* at 14 ("[During the 1970s and 1980s] [a]pproximately 20,000 children of migrant farm workers come to Michigan annually . . .").

<sup>5</sup> CULTURE WARS: AN ENCYCLOPEDIA OF ISSUES, VIEWPOINTS, AND VOICES 278 (Roger Chapman & James Ciment eds., 2015).

It was the era of César Chávez's vigorous national grape boycott activity for the United Farm Workers (UFW), and the spirit of La Causa began to blow through Michigan's sympathetic communities. We even marched on the capitol in Lansing, taking over the rotunda and raucously demanding higher wages and stricter enforcement of field and labor camp health regulations. Governor William Milliken was caught trying to sneak out of the building through a side stairwell and had then to address the demonstrators and promise reform, which ultimately was weak and slow in coming.

I left the seminary after college and began graduate studies in philosophy. Church structures and hierarchy were not conducive to the kind of social justice life toward which I was moving. I wrapped up a master's degree in Spanish Existentialism at the University of Detroit and enlisted in the University of New Mexico's PhD program. By then, I had decided I would go work in the Valley with the farm laborers. I wanted to be part of the UFW movement, but all the activists were going to California. So, I decided to move to south Texas as a professor, another ultimately naïve idea.

One early Saturday morning, I still vividly remember, I suddenly sat up in bed and decided to go to law school. Probably by then, my subconscious had put two and two together that being a lawyer made much more sense than pursuing philosophy. Besides, the sole philosophy professorship in the Valley was already occupied. So, I stayed in Motown another three years, studying law at the University of Detroit, and married. During the next two summers, I joined UMOI since the new bishop did not approve of the activist direction in which I was moving the church's migrant program.

I visited labor camps as a UMOI paralegal, rather than wearing the church hat, although they conveniently overlapped in the workers' minds. As a student with a third-year bar card, I handled a case for a family that traveled to Michigan after being promised employment by a farmer when they arrived 1,500 miles and three days later to find that he had hired someone else. The local judge poured us out, siding with the grower, one of the biggest in the county.

### III. MOVING TO SOUTH TEXAS

Once law school was over in May 1973, I headed to Texas to take the bar, along with my now former wife, Rebecca Flores, who was from San Antonio and had secured her MSW from the Univer-

sity of Michigan. Appropriately enough, we had met at the UFW boycott office in Detroit while students. She eventually became an indefatigable UFW organizer and leader.

I was lucky to find a job with the South Texas Project (STP) ahead of time, when one of its two lawyers left. He had just done so when my letter arrived, forwarded by the local UFW, asking if the union had any job openings. The union did not; but STP, which shared space in the union building, did; another quirk of fate.

The South Texas Project was a creation of the ACLU, designed to fight the geographic exclusion of Valley *colonias* from local water districts and to support UFW organizing in the Valley.<sup>6</sup> Like many southwestern states, Texas has water districts; they are municipalities with elected local governance that allocates potable water within the district.

*Colonias* are extremely poor rural Hispanic communities, unregulated “subdivisions.” In 1973, most lacked infrastructure like paved roads, street lighting, school bus routes, trash pickup, mail service, and so on.<sup>7</sup> There were about 200 of them throughout the Valley, mostly comprised of farm laborer families, recent immigrants, and other low-income folks. They were places of grueling poverty and prone to flooding. Being excluded from water districts and potable water meant that misery and disease abounded—diseases not found in other areas of the state. It was Texas’s version of the “third world.”

The Anglo growers governed the districts through trickery, such as burying English-only election and meeting notices on the courthouse bulletin board. Legal posting in those days was typically by thumbtacking paper announcements on a corkboard.

Under the adroit leadership of David Hall, the South Texas Project was helping shepherd four monumental pieces of federal litigation.<sup>8</sup> Two, co-counseled by the Mexican American Legal Defense and Education Fund, involved *colonia* exclusion from water districts.<sup>9</sup> The third dealt with the Texas Rangers’ brutal suppres-

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<sup>6</sup> See generally AM. CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION RECORDS: SUBGROUP 2, ORGANIZATIONAL MATTERS SERIES, <http://findings.princeton.edu/collections/MC001.02.01> [https://perma.cc/46MY-XG5G].

<sup>7</sup> FED. RESERVE BANK OF DALLAS, TEXAS COLONIAS: A THUMBNAIL SKETCH OF THE CONDITIONS, ISSUES, CHALLENGES AND OPPORTUNITIES 3 (1996), <https://www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf> [https://perma.cc/LU9R-SAA8].

<sup>8</sup> Until 1976, three-judge district court panels heard suits involving the constitutionality of federal or state laws, with direct appeal therefrom to the U.S. Supreme Court.

<sup>9</sup> See *Fonseca v. Hidalgo Cty. Water Improvement Dist. No. 2*, 496 F.2d 109

sion of the 1966-1967 UFW labor strikes in Starr County,<sup>10</sup> and the fourth, the gross underrepresentation of Hispanics on Hidalgo County grand juries (virtually all-Anglo in a county that was 80% Mexican American).<sup>11</sup> Eventually, the water district cases were lost, thanks to an intervening U.S. Supreme Court decision, addressing similar issues in a California water district case.<sup>12</sup> Then-Chief Justice William Rehnquist authored the opinion finding no violation of the Fourteenth Amendment.<sup>13</sup>

The Texas Rangers<sup>14</sup> and the grand jury discrimination<sup>15</sup> cases, however, both succeeded in the Supreme Court, and were enormous victories for justice in south Texas. As a result of the *Medrano* decision, the Texas legislature, led by their Mexican American colleagues and the traditional liberal bloc, reined in the Rangers and put them under the thumb of the Department of Public Safety, the state police. They became professionalized and lost their tough “one riot, one Ranger” motif, which they had aptly earned over the years by terrorizing the Mexican American community at whim.<sup>16</sup>

Even the water district cases were not a total wash. It was losing the battle, but winning the war because in 1975, Congresswoman Barbara Jordan of Houston helped bring Texas under the Voting Rights Act (VRA). The VRA banned municipalities from excluding geographic areas from their jurisdiction if doing so would diminish their minority representation.<sup>17</sup> The law also required bilingual access, such as providing ballots and election notices in Spanish.<sup>18</sup>

Less than two years after my arrival in “El Valle de Lágrimas”

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(1974); *Jiménez v. Hidalgo Cty. Water Improvement Dist. No. 2*, 496 F.2d 113 (1974); see also Wendy Jepson, *Claiming Space, Claiming Water: Contested Legal Geographies of Water in South Texas*, 102 ANNALS ASS'N AM. GEOGRAPHERS 614, 614-31 (2012).

<sup>10</sup> See generally *Allee v. Medrano*, 416 U.S. 802 (1974).

<sup>11</sup> *Castañeda v. Partida*, 430 U.S. 482, 486 (1977).

<sup>12</sup> See generally *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973).

<sup>13</sup> *Id.* at 725.

<sup>14</sup> *Allee*, 416 U.S. at 802.

<sup>15</sup> *Partida*, 430 U.S. at 482.

<sup>16</sup> See *The Texas Rangers Killed Hundreds Of Hispanic Americans During The Mexican Revolution*, TEX. STANDARD (Jan. 22, 2016), <http://www.texasstandard.org/stories/texas-exhibit-refuses-to-forget-one-of-the-worst-periods-of-state-sanctioned-violence/> [<https://perma.cc/QB29-69W3>]; John Morán González et al., *The Project, REFUSING TO FORGET*, <https://refusingtoforget.org/the-project/> [<https://perma.cc/464U-4QMG>]; *Texas Rangers*, TEX. STATE HISTORICAL ASS'N, <https://tshaonline.org/handbook/online/articles/met04> [<https://perma.cc/Y6GH-K57V>].

<sup>17</sup> 52 U.S.C. § 10101 *et seq.*

<sup>18</sup> Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400 (amending the 1965 Act to address the voting rights of language access minorities).

(the “Valley of Tears,” as people there often called it), David Hall became Executive Director of the federally-funded Texas Rural Legal Aid (now known as Texas RioGrande Legal Aid, with the same TRLA acronym as before).

Prior to his departure, I had been handling STP “service” cases, such as minimum wage litigation, for the National Farm Workers Service Center, Inc., the UFW’s nonprofit alter ego at the time, and taking on criminal appointments. Here, I learned more about the rules of evidence than even my clinical days in law school had prepared me for. It also helped supplement my salary since we were beginning to have a family and STP only paid \$6,667/year (the three of us on staff divided the \$20,000 allocated for salaries). The United Methodist Church covered our health care, fortunately.

A. *Making Local Grand Juries More Representative of the Community*

By the time David won *Castañeda v. Partida*, the habeas corpus appeal challenging the underrepresentation of Hispanics on grand juries, he was at the TRLA helm. The task of retrying the case, which was burglary with intent to commit rape, fell to me. Oscar McInnis, the District Attorney at the time with a strong racist streak (and years later indicted for soliciting the murder of his girlfriend’s ex-husband—McInnis was also married at the time<sup>19</sup>), boasted that a grand jury’s composition had no bearing on a person’s guilt, vowed that Rodrigo Partida would be convicted again, and re-indicted him. The pressure was on, and all eyes were watching.

We won a not guilty verdict in short order; and David sent over a bottle of fancy champagne, which did not take long to consume, given the pressure of the trial. The *Partida* case set me on the tack of mounting grand jury challenges in federal court as 42 U.S.C. § 1983 civil actions. I was making similar challenges in the criminal cases to which I was appointed until the judges wised up and removed me from the appointed counsel list; they wanted pleas, not fair trials, and were blunt about it.<sup>20</sup>

For the federal challenges, I represented community groups,

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<sup>19</sup> Robert Draper, *The Sheriff Who Went to Pot*, TEX. MONTHLY (Dec. 1994), <http://www.texasmonthly.com/articles/the-sheriff-who-went-to-pot/> [<https://perma.cc/GFC4-X64X>].

<sup>20</sup> I also used criminal appointments for other challenges to the system, such as protecting privacy rights of probationers. See generally *Basaldúa v. Texas*, 558 S.W.2d 2 (Tex. Crim. App. 1977) (en banc).

which argued their members were denied the right to be considered and chosen for service. I expanded the challenge beyond Mexican Americans generally, to include women, Mexican-American women (the “double whammy” effect), young people (those younger than twenty-seven years old), and poor people (who comprised more than 50% of the Valley). We also took on Willacy County besides Hidalgo County. The district judge dismissed our cases for lack of justiciability, but we prevailed in the United States Court of Appeals for the Fifth Circuit in 1980 with a rather strong opinion.<sup>21</sup>

The Texas method of selecting grand jurors, the “key man system,” was inherently fraught with the potential of discrimination. As the statute worked, the judge would select five people as grand jury commissioners, who, in turn, compiled a list of twenty potential grand jurors, from which list the judge would select twelve grand jurors. That meant grand juries often reflected the judge’s own social class and typically were predominantly Anglo businessmen or, sometimes, their wives.

Not surprising, the grand juries tended to be preoccupied with property crimes, and not as much interested in crimes of personal violence, especially against women. After the Fifth Circuit decision and grand juries became more representative of the community, there was a remarkable turnaround, with more attention paid to personal violence.

The legislature eventually changed the statute because of the litigation, allowing judges to select grand jurors randomly from the general jury wheel. Even though it is a safer mechanism for preventing a grand jury challenge that might overturn a conviction or drawing federal litigation, judges still use the old method, often accompanied by instructions about the need for community cross-section representation. A “buddy system” was built into the old method: a judge “honors” five friends as grand jury commissioners, takes them to lunch when they come to the courthouse to do their job, etc. Good politics for an elected judge.

*B. Transitioning from a Special Project into a Community Civil Rights Organization*

This was the beginning of re-purposing the South Texas Project (STP) toward general civil rights litigation, while still supporting UFW organizing. We won support from the bishop of the

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<sup>21</sup> See generally *Ciudadanos Unidos de San Juan v. Hidalgo Cty. Grand Jury Comm’rs*, 622 F.2d 807 (5th Cir. 1980), *cert. denied*, 450 U.S. 964 (1981).

Brownsville diocese, John J. Fitzpatrick. He wanted to help fund us, but he could not support us through the ACLU because of its stand on reproductive issues.

So, we formed a nonprofit, *Oficina Legal del Pueblo Unido, Inc. (OLPU)*, that could receive the money.<sup>22</sup> Bishop Fitzpatrick was instrumental in our receiving funding from the Catholic Campaign for Human Development's national Thanksgiving collection for three years that we stretched into four. We were able to raise salaries and expand staff a bit so that we were two attorneys and a support person. Setting up OLPU as a local Texas operation opened the door for attracting funding from other sources and foundations that preferred to support grassroots organizations rather than the national ACLU. It also provided the vehicle for recruiting activist-type law interns from universities around the country. Northeastern University School of Law was particularly receptive.

Supporting community organizing efforts became a STP priority, a philosophy I carried for the rest of my career and into the TCRP. It was important because legal support gave those organizations greater clout. It also helped assure that whatever change was won would continue since those groups would not allow any regression and would build on the progress made.

I learned early on that, if someone wants to do community work, you have to be part of the community. You have to make friends, go to quinceañeras and weddings, celebrate birthdays, do house visits, attend funerals, be on the picket line and be present at demonstrations, and even help clean the union hall. Poor people, because of their bad experiences with attorneys, generally distrust them; respect has to be won. Being a part of the community not only creates trust and builds solidarity, but it is how an attorney learns the issues of importance to people.

One example of working with the community was the agreements we negotiated with Valley television and radio stations to include more Spanish-language programming and greater publicity for community groups. In those days, when their licenses came up for renewal every three years, radio and television outlets had to prove to the Federal Communications Commission (FCC) that they were serving the community. This gave us a certain amount of power because we could actually tie up the license renewal with denial petitions. That kind of leverage is no longer possible unfor-

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<sup>22</sup> *Our History*, TEX. CIVIL RIGHTS PROJECT, <http://www.texascivilrightsproject.org/81/our-history/> [<https://perma.cc/F5H9-C8KC>].

tunately because of FCC regulatory changes, but we did make strides in those days with such agreements.

C. *Farm Worker Organizing: Dealing with Strikes Everywhere*

In May 1975, the UFW began an organizing campaign in Starr County again, focusing on the melon harvest. Toward the end of the month, on May 26, a wildcat strike erupted at the international bridge in Hidalgo where many farm workers crossed each day from Mexico to work in the fields.<sup>23</sup> Some strikers fanned out to nearby fields, whereupon a grower, C.L. Miller, shot at them and wounded ten of the laborers.<sup>24</sup>

All hell broke loose. My wife Rebecca was up in Starr County with the UFW organizers when I got a call in the early morning about the chaos at the bridge. I had to grab our son Elías, a baby at the time, and go pacify the situation. I recall that the next day, the *McAllen Monitor* ran a front page photo of me holding him while trying to calm the workers and focus the organizing in a concrete direction.<sup>25</sup>

Wildcat strikes exploded across the Valley. Othal Brand, who had huge fields everywhere, was a natural target. Like other growers, he responded by filing lawsuits left and right. At one point, Brand became so irate at the union pickets that he drove from his office to a strike site and pulled a gun on them, an event broadcast on CBS news.<sup>26</sup>

The local judges, in a political dance trying to resolve the growers' suits and the union's countersuits, called a secret evening meeting at the courthouse for the attorneys. I, of course, alerted the press. The end result was dismissal of all suits, each side promising to obey the law.<sup>27</sup>

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<sup>23</sup> See James C. Harrington, *From La Casita to Lupe*, TEX. OBSERVER, Dec. 3, 2004, at 42.

<sup>24</sup> *Farmer 'Opens Season' on Union Sympathizers*, SPARTANBURG HERALD (May 27, 1975), <https://news.google.com/newspapers?nid=1876&dat=19750527&id=fZQeAAAAIBAJ&sjid=HcwEAAAAIBAJ&pg=4785,4946279&hl=en> [<https://perma.cc/MU3C-RVGJ>].

<sup>25</sup> See UFW Texas Records, Part 1, Box 9, Folders 3-17 (Texas strike, 1975), Archives of Labor and Urban Affairs, Wayne State University, <https://reuther.wayne.edu/files/LR002511.pdf> [<https://perma.cc/5KCT-57LE>].

<sup>26</sup> See generally *Texan Takes Law into Own Hands*, BAKERSFIELD CALIFORNIAN, May 30, 1975, at 28; Susan Duffy, *The Last Patron: McAllen's Mayor Is Used to Getting His Own Way*, TEX. MONTHLY, July 1981, at 84, 86.

<sup>27</sup> The lawsuits always named me as a defendant, apparently to create a conflict so I couldn't represent the union. It never worked. I was able to have a judge dismiss me or get a waiver from the other defendants, for ethical purposes.

Responding to the strikes and the workers' anger at the shootings was something else, though. I spent a good deal of time trying to calm and redirect the situation by helping organize targeted protests and a ten-mile march from the Hidalgo bridge to McAllen's plaza for a rally.

As the summer wore on, the UFW<sup>28</sup> moved its organizing efforts to the Big Bend area, where Brand also had fields. He filed suit, claiming the union was violating the state's right-to-work law.<sup>29</sup> While generally a regressive statute, a couple provisions favor workers. One is that a judge could order an election to determine if the workers actually belonged to the union. We petitioned for an election. The local judge recused himself, and a retired judge was assigned to the case. To Brand's horror, the judge ordered an election, whereupon he immediately dismissed the suit rather than risk the outcome. (The judges in south Texas, where Brand lived and was politically strong, never would honor an election request.)

The other right-to-work provision we used for the workers' benefit was its anti-retaliation section: no employment reprisals for non-membership or membership in a union. We represented María Vásquez, who lost her job with a local packing shed for being an UFW member. We won a jury trial, and the Texas Supreme Court unanimously upheld the verdict and ordered her re-hired.<sup>30</sup> It was great fun using the right-to-work law to vindicate a union member, hardly the purpose for which the statute was designed. Delicious irony, as they say.

After the summer strikes ended, a disaffected group split off from the UFW and formed its union. It was a difficult situation since I had worked closely with the folks who went off on their own. The UFW responded by sending us Fred Ross, whom Saul Alinsky schooled and was largely responsible for helping César Chávez get the farm worker movement off the ground.

Ross trained UFW members in the art of house meetings and organizing UFW *colonia* committees. The committees held annual Valley-wide conventions, beginning in 1976, which I had a hand in coordinating. They adopted legislative and organizing priorities and turned themselves into a political force such that the governor,

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<sup>28</sup> STP's files, legal and non-legal, for 1973-1983 and other years are archived at the Walter P. Reuther Library at Wayne State University as part of the United Farm Workers collection. *See generally* UFW Texas Records, United Farm Workers Collection, Walter P. Reuther Library, Box 54, <https://reuther.wayne.edu/node/3042>.

<sup>29</sup> TEX. REV. CIV. STAT. ANN. art. 5154g (recodified as TEX. LAB. CODE §§ 101.051-.053).

<sup>30</sup> *Vásquez v. Bannworths, Inc.*, 707 S.W.2d 886 (Tex. 1986).

lieutenant governor, and all stripes of politicians attended at times. César would come for the conventions.

The 1981 convention led to a week-long march for higher wages. Hundreds of people walked from both ends of the Valley, from Brownsville and Rio Grande City, culminating midway at the Virgen de San Juan Shrine. César marched as well, alternating between groups. Part of planning the event fell on my shoulders, a blend of community lawyering and organizing.<sup>31</sup>

The major joint organizing and litigation efforts—a highlight of my career—that went on from 1978 to 1988 involved three pivotal lawsuit victories (removing the exclusion of farm laborers from the laws regarding worker compensation,<sup>32</sup> securing unemployment benefits,<sup>33</sup> and safeguarding the right to know about the use of dangerous workplace chemicals<sup>34</sup>) and securing a health department regulation requiring toilets and hand-washing facilities in the fields. The last piece that fell into place was legislation banning the use of the backbreaking short-handled hoe (“el cortito”),<sup>35</sup> a remnant from the era of slave labor.

This ten-year struggle alone would be worthy of a lengthier article. Suffice it to say that, besides the litigation, it involved intense community and political organizing, spearheaded by Rebecca, a great expense of personal time and work by activists and farm workers, and some courageous and adept maneuvering by political leaders and a Travis County judge.

We brought the lawsuits under the Texas Equal Rights Amendment (ERA), arguing that the statutory exclusions of farm workers as a group discriminated against an ethnically-identifiable group. Judge Harley Clark, who presided over all three lawsuits, accepted

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<sup>31</sup> I ended up working eighteen years with César Chávez, representing the UFW in Texas and even César, himself, at times. He was a brilliant strategist on using law and litigation hand-in-hand with organizing.

<sup>32</sup> See *Delgado v. Texas*, No. 356,714 (203d Dist. Ct. Travis Cty. 1984); *Puga v. Donna Fruit Co.*, 634 S.W.2d 677 (Tex. 1982). The legislature amended the statute in 1984 to include farm and ranch laborers.

<sup>33</sup> See *Camarena v. Tex. Emp. Comm’n*, 754 S.W.2d 149 (Tex. 1988). The legislature amended the statute in 1985 to include agricultural laborers.

<sup>34</sup> *López v. Tex. Dep’t of Health*, No. 408,281 (199th Dist. Ct. Travis Cty. 1987). The legislature passed a statute in 1986 to create a specific right-to-know law for agricultural laborers.

<sup>35</sup> Joshua Barnes, “*Voices of the UFW in Texas*”: *A Documentary on the United Farm Worker Movement in Texas*, SAMPSONIA WAY (Apr. 3, 2014), <http://www.sampsoniaway.org/interviews/2014/04/03/%E2%80%9Cvoices-of-the-ufw-in-texas%E2%80%9D-a-documentary-on-the-united-farm-worker-movement-in-texas/> [https://perma.cc/5S25-G63H].

the argument and made extensive findings of fact and conclusions of law in that regard.

The innovative use of the state ERA was essential because federal courts had held that such worker compensation exclusions did not violate Fourteenth Amendment equal protection. The Texas ERA, adopted in 1972, was an astonishing addition to the state Bill of Rights, prohibiting discrimination on the basis of race, ethnicity, sex, religion, and national origin.<sup>36</sup>

Agricultural laborers had been excluded from workers' compensation in Texas since 1914 and from unemployment benefits since 1936. Not only did bringing farm laborers under workers' compensation help cover the costs of medical attention, but it also lessened the drain on public health entities. Likewise, extending employment benefits to agricultural workers added about \$17 million a year to the south Texas economy when the law first became effective.

Then-Governor Mark White rose to the occasion.<sup>37</sup> When the Speaker of the House blocked last minute passage of a workers' compensation law to address our litigation at the end of the 1982 session, Governor White called a special session the next day, the result of which was the creation of the Governor, Lieutenant Governor, and Speaker's Joint Committee on Farm Worker Insurance, on which I served.<sup>38</sup> We held hearings around the state, and agricultural laborers came under the law in the 1984 session. Governor White signed the law in front of farm workers at the Shrine in San Juan where the march for higher wages had culminated three years earlier.<sup>39</sup>

#### D. *McAllen's Infamous Mayor*

Othal Brand became Mayor of McAllen in 1977<sup>40</sup> and proved himself a nemesis in that position as well. He tried to sell the city hospital to the Hospital Corporation of America. Along with TRLA, we filed suit, convincing the judge that the city charter prohibited such a sale. Brand then tried to amend the charter. Dr. Ramiro

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<sup>36</sup> TEX. CONST. art. I, § 3a.

<sup>37</sup> See Dave Denison, *A Victory for Farmworkers*, TEX. OBSERVER, May 17, 1985, at 6; Geoffrey Ripps, *The Battle for Farmworker Compensation*, TEX. OBSERVER, Jan. 13, 1984, at 7.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *City of McAllen History of Election of Mayors & City Officials*, CITY OF McALLEN, <https://www.mcallen.net/docs/default-source/city-secretary/reports/history-of-mcallen-mayors-city-commissioners.pdf?sfvrsn=10> [https://perma.cc/597H-K8WU].

Casso, a well-respected community physician and long-time activist, headed the opposition and Brand's effort bit the dust in a Saturday referendum.

The Sunday edition of the *McAllen Monitor*, the local newspaper so friendly to the mayor that it was dubbed "Brandspeak," reported falsely that some of us had essentially stormed City Hall after the election victory the night before, jumping on furniture and behaving badly. We filed a libel suit Monday morning, and the *Monitor* eventually settled for \$10,000 for the five people it wrongly accused.

At one city council meeting, Brand became so angry at residents from Colonia Balboa complaining about the lack of city services that he rammed through an ordinance that they could no longer speak at a council meeting without permission. We filed suit and set the ordinance aside.

While mayor, Brand had a group of UFW protesters, mostly women, arrested for trespassing on his property. He fenced them in at the entranceway to his field so they could not leave. I followed them to the county jail and complained vociferously when I found out the jailors had strip-searched them. Someone then swore out a warrant for me.

A few days later, after I left the courtroom on another farm worker case, I was arrested and taken down a side stairwell. The arrest did not go unnoticed. A group of people, instigated by Rebecca who was there, followed the deputies, chanting "Free Jimmy Chuck," a nickname one of my brothers had given me. The deputies had to drive around the county to three different justices of the peace before they found one willing to arraign me. District Attorney McInnis dropped the charges, after I offered not to sue. It was great theater.

A justice of the peace jury in Mission eventually acquitted the protesters of trespassing. We failed in our effort afterward to have Brand criminally charged with false imprisonment. This was one of a number of jury trials for UFW picketers. We always won; they were fun.

#### *E. The McAllen Police and the C-Shift Animals*

Another major litigation effort involved the McAllen police, who had a habit of brutalizing young men, typically at the police station. We ended up trying seven suits over a five-year period, one

of which was a class action.<sup>41</sup> We won the individual cases, and then proceeded with the class action. After opening statements to the jury, the defendants settled the class action for \$125,000 and institution of a citizen review board.

The most astounding aspect of the litigation was learning during one of the trials, on a throwaway question to a police sergeant witness, that he had collected videotapes of beatings at the station—seventy-six altogether. Not only that, but the sergeant would check them out to officers to show at parties. He testified that Mayor Brand knew about the tapes and had ordered them destroyed. The sergeant had refused to comply because of a federal court evidentiary order.<sup>42</sup>

Most of the beatings occurred during the night “C” shift, and the officers dubbed themselves the “C-Shift Animals” and printed t-shirts with that moniker.<sup>43</sup> The videotapes rocked the community. Some were quite graphic and were broadcast around the country, Mexico, and Europe.<sup>44</sup> They also became an issue in the mayoral election.

As the McAllen police cases wound down, Brand, who had been mayor during the litigation, announced for re-election in 1981. Dr. Casso threw his hat into the ring. It was a bitter campaign. Brand, as he was wont to do, sued *The Nation* over an unflattering article about him and the election.<sup>45</sup> Brand was reelected and sued Casso for accusing him during the campaign of having presided over the police brutality and ruling McAllen with an iron fist like an “ayatollah.”<sup>46</sup> I represented *The Nation* and had the case summarily dismissed on free press grounds. David Casso, who had interned with TCRP as a law clerk, represented his father all the

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<sup>41</sup> *Cano v. Colbath*, No. CA 76-B-52 (S.D. Tex. 1976). By chance, I had secured the order preserving the tapes in the first case I filed because the two brothers I was representing said that, while the police were beating them, one officer had shouted to another to turn off the video system. The defense lawyers lied throughout the years of litigation, claiming that the system did not record but only monitored the room. When the sergeant told the truth, they feigned ignorance.

<sup>42</sup> *Robles v. City of McAllen*, No. CA B-81-58 (S.D. Tex. Brownsville Div. 1981).

<sup>43</sup> See Dan Balz, *Brutality Charges, Bitterness Haunt McAllen, Tex.*, WASH. POST (June 2, 1981), <https://www.washingtonpost.com/archive/politics/1981/06/02/brutality-charges-bitterness-haunt-mcallen-tex/ddf97d23-83c9-4ca8-a6fa-296caadff557/> [<https://perma.cc/K565-ZVDC>].

<sup>44</sup> Guadalupe Cano—one of the plaintiffs who was beaten—and I appeared on *The Phil Donahue Show* to talk about the McAllen police brutality, along with some of the videotapes. (Being on *Donahue* finally legitimized what my mother thought was the hopelessly quixotic life path of her eldest son.)

<sup>45</sup> See generally *Casso v. Brand*, 776 S.W.2d 551 (Tex. 1989).

<sup>46</sup> *Id.*

way to the Texas Supreme Court and won a precedent-setting victory.<sup>47</sup>

Quite unbelievably, then-Governor Bill Clements nominated Brand in 1981 to head up the Texas prison system. That created a political uproar, with adverse editorials and lampooning cartoons across the state. The senate eventually killed the nomination. I testified, showing videos of beatings that occurred during Brand's tenure as mayor.

#### IV. RELOCATING TO AUSTIN IN 1983 AS LEGAL DIRECTOR FOR THE TEXAS CIVIL LIBERTIES UNION

When we moved to the Valley, I had every intention of living there permanently; but, toward the decade mark, the thought of relocating would whirl around in my mind from time to time. Part of the reason was expanding the work I was doing on a larger scale. Another part was wanting a better education for my three kids than the Valley offered. The teachers were all great, but education resources were scarce thanks to Texas's grossly disparate school funding scheme.

There was also the fact that, because I had such a high media profile, I could not go anywhere without people discussing their legal problems, most of which, while pressing, were outside the gamut (and expertise) of my work. I vividly remember one late night in particular: I was buying groceries on the way home, and a man talked to me for a half-hour about his family troubles. It was frustrating because I could do nothing to alleviate his worries.

The store episode happened about the time the Legal Director position for the Texas Civil Liberties Union (TCLU), the state ACLU affiliate, opened up. I had turned it down a couple of years earlier when approached, but it was vacant again. After some reflection and family discussion, I accepted the position, at \$28,000/year; and it was off to Austin.

##### A. *Spotlighting Some Litigation Successes*

Although I did the traditional ACLU-type cases, such as vindicating the right of access to courts (law library and/or legal assistants) for McLennan County jail prisoners,<sup>48</sup> one of the litigation directions on which I tried to focus at TCLU was expanding litigation under the Texas Bill of Rights, rather than using federal

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<sup>47</sup> *Id.*

<sup>48</sup> *See generally* *Morrow v. Harwell*, 768 F.2d 619 (5th Cir. 1985).

courts. At the time, the Texas courts were beginning to show an interest in the concept that the state constitution might offer greater protection of civil rights and liberty than the federal constitution. This was also a developing national movement of sorts.

### 1. Privacy: A Fundamental State Constitutional Right

One especially sweet victory was convincing the Texas Supreme Court that privacy was a fundamental right under the state Bill of Rights, even though it is not under the federal Constitution. The high court, on a 9-0 vote, banned the mandatory polygraph testing of state employees under the precept that it violated the right to privacy, protected as a penumbra fundamental right under the Texas Constitution.<sup>49</sup> I count this case as one of best legal victories for which a lawyer could ever wish.

I ended up speaking and writing extensively on state constitutional law<sup>50</sup> and began a twenty-seven-year career as an adjunct professor at the University of Texas Law School, teaching on this topic (although, as Texas courts became more conservative and less receptive to staking out rights under the state constitution,<sup>51</sup> it eventually turned into a general civil rights litigation course). I also taught at St. Mary's University School of Law for nine years. I always tried to keep the TCLU litigation as community-based as possible, representing the state employees union in the polygraph case, for example.<sup>52</sup>

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<sup>49</sup> *Tex. State Emps.' Union v. Tex. Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203 (Tex. 1987); James C. Harrington, *Privacy and the Texas Constitution*, 13 VT. L. REV. 155 (1988). The subtext of the TSEU polygraph case had a lot to do with employees suspected of union organizing in state mental disability facilities. We also limited pre-employment polygraphing of Houston police, firefighters, and airport security and secured a class action injunction and back pay for the individual plaintiffs in another case, *Woodland v. City of Houston*, 918 F. Supp. 1047 (S.D. Tex. 1996).

<sup>50</sup> See, e.g., JAMES C. HARRINGTON, *THE TEXAS BILL OF RIGHTS: A COMMENTARY AND LITIGATION MANUAL* (Butterworth Legal Pub., 1987) (2d ed., 1993); James C. Harrington, *Framing a Texas Bill of Rights Argument*, 24 ST. MARY'S L.J. 399 (1993); James C. Harrington, *Free Speech, Press, and Assembly Liberties Under the Texas Bill of Rights*, 68 TEX. L. REV. 1435 (1990).

<sup>51</sup> One way the courts undermined this effort was to hold that there were no damages available under the Texas Bill of Rights because the legislature had not enacted any "enabling" statute like 42 U.S.C. § 1983, completely misreading (or ignoring) the logic of *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). See, e.g., *City of Beaumont v. Bouillon*, 896 S.W.2d 143 (Tex. 1995); *Albertson's, Inc. v. Ortiz*, 856 S.W.2d 836 (Tex. App. Austin 1993) (denying writ).

<sup>52</sup> See *Woodland v. City of Houston*, 918 F. Supp. 1047 (S.D. Tex. 1996).

## 2. Free Assembly: The State Constitution and Private Property

A similar effort under the state Bill of Rights extended state constitutional free speech and free assembly rights to an expansive private Austin shopping mall for a local organizing peace group, even though there was no such First Amendment protection.<sup>53</sup>

## 3. Expanding Voting Rights under the Texas ERA

Another community-oriented case was on behalf of African Americans and Mexican Americans in the Del Valle school district near Austin. Along with the Mexican American Legal Defense and Education Fund (MALDEF), in 1989, we filed a voting redistricting case under the Texas Equal Rights Amendment.<sup>54</sup> Similar to the farm worker statutory exclusion cases, this case was another rather creative and unique use of the ERA. We won and created single-member districts that made the school board as diverse as the community.<sup>55</sup>

Two years later at TCRP, we joined with MALDEF in similar Texas ERA efforts with regard to congressional and state redistricting litigation after the 1990 census, with favorable results.<sup>56</sup>

## 4. Disability Rights: A Life Lost—Wrongly Confined for Fifty-One Years

A case of great importance to the mental health community involved Opal Petty, whom the state wrongly confined for fifty-one years (thirty-four years in the Austin state hospital for mentally ill persons, and then seventeen years in San Angelo state school for

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<sup>53</sup> *Nuclear Freeze Campaign v. Barton Creek Shopping Mall*, No. 349,268 (126th Dist. Ct. Travis Cty. July 13, 1983) (granting injunction). *But see* *Oficina Legal Del Pueblo Unido, Inc. v. Simon Prop. Grp. TX, L.P.*, No. 03-00-00288-CV, 2001 WL 838370 (Tex. App. Austin July 26, 2001) (dodging the issue in a suit I brought after being arrested for holding a press conference with three plaintiffs in front of one of the mall stores we sued for discrimination).

<sup>54</sup> *See generally* *Del Valle Indep. Sch. Dist. v. Lopez*, 863 S.W.2d 507 (Tex. App. Austin 1993) (denying writ).

<sup>55</sup> *Id.*

<sup>56</sup> *See generally* *Richards v. Quiróz*, 848 S.W.2d 819 (1993) (denying writ); *Terrazas v. Ramírez*, 829 S.W.2d 712 (Tex. 1991); *Mena v. Richards*, No. C-454-91-F (332d Dist. Ct. Hidalgo Cty. 1991); *Quiróz v. Richards*, No. C-4395-91-F (332d Dist. Ct. Hidalgo Cty. 1991). *See Texas Redistricting*, TEX. LEGISLATIVE COUNCIL, [http://www.tlc.state.tx.us/redist/history/chron\\_1990s.html](http://www.tlc.state.tx.us/redist/history/chron_1990s.html) [<https://perma.cc/D9AC-GDJC>]; *see also* James C. Harrington & Judith Sanders-Castro, *Legislative Redistricting in 1991-1992: The Texas Bill of Rights v. the Voting Rights Act*, 26 ST. MARY'S L.J. 33 (1994).

individuals with developmental disabilities). Her stay in the hospital was amid appalling conditions of the time.

Her father, a fundamentalist church deacon in rural Texas, had committed Opal in 1934 at age sixteen for acting out as a teenager, when praying over her had failed. The hospital never conducted a periodic evaluation concerning the need for her continued confinement or contacted her family. After nearly four decades, the hospital, realizing she was not mentally ill, transferred her to San Angelo.

By a surprising intersection of coincidence, her grandniece by marriage, also living in San Angelo, learned of Opal and began to search for her, only to find her literally in the neighborhood, and secured her release. Opal went to live with the family and prospered after being freed but never overcame the effects of a half-century of institutionalization.

Co-counseling with Advocacy, Inc. (a federally-funded disability rights organization), we divided the state court lawsuit into two: a damages action jury trial and a class action for injunctive relief under federal and state law.<sup>57</sup>

We won the jury trial and sustained it on appeal, although the damages under state law were shockingly parsimonious, given that the state had taken Opal's life away from her.<sup>58</sup> She did have a loving family for her remaining days. Her grandniece, for example, took Opal on a train ride to Disneyland after the jury verdict.

The class action settled with the state instituting annual reviews of everyone committed to the state hospital, including a review of people in situations like Opal's.<sup>59</sup> There were a few hundred of them still alive; many had died. A good number of those still alive were so institutionalized and without family that they could not or did not want to leave the facilities to which they had been assigned. So bittersweet was the litigation, even while successful.

When Opal died on March 10, 2005, a *New York Times* obituary memorialized her passing.<sup>60</sup>

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<sup>57</sup> Texas Dep't of Mental Health & Mental Retardation v. Petty, 848 S.W.2d 680 (Tex. 1992). We won on a 4-1-4 vote, although subsequent Supreme Court decisions rejected our theory of recovery under the Texas Tort Claims Act. We probably picked up the fifth vote because the facts were so appalling.

<sup>58</sup> *Id.*

<sup>59</sup> *See id.*

<sup>60</sup> Christopher Lehmann-Haupt, *Opal Petty, 86, Patient Held 51 Years Involuntarily in Texas, Dies*, N.Y. TIMES (Mar. 17, 2005), <http://www.nytimes.com/2005/03/17/us/opal-petty-86-patient-held-51-years-involuntarily-in-texas-dies.html>.

V. SEVERING TIES WITH THE ACLU AND FOUNDING THE TEXAS  
CIVIL RIGHTS PROJECT

The first five years as Legal Director with the TCLU flowed along quite placidly. There were four of us altogether: the Executive Director, his assistant, myself, and my assistant. However, the Executive Directors changed and made a series of poor financial decisions that depleted funds and moved TCLU to the red side of the ledger.

Philosophical differences were beginning to simmer as well. Although my litigation track record was quite good, some TCLU board members seemed displeased with my emphasis on drawing lawsuits from the community, rather than “pure” ACLU-type cases. They did not point to anything in particular, but the undercurrent was tangible.

It all came to a head in early 1990, when the Board fired the Executive Director and his assistant, leaving my assistant Fara Sloan and me to run the shop. I did an emergency mail appeal and raised close to \$45,000—one of TCLU’s most successful appeals.

That did not placate the board, though; and, rather than raise badly needed funds, board members began to come to the office and watch us for time-management purposes. Fara and I decided it was time to form a union, and we enlisted the Communication Workers of America as our representative.

The board went apoplectic, even though some of the members themselves belonged to teachers’ unions. Fara went off to have a baby, and the board fired me. To make matters more bizarre, the board announced to the media that, although my legal work was excellent, it was discharging me for forming a union—something quite against the law.

We ended up in late Saturday-night mediation. At that point, even though holding the cards, I decided it best to go my own way and shake the dust from my sandals. The idea was to set up a community-based civil rights project under the auspices of OLPU, the non-profit I helped found in 1978. I set up shop the next morning on September 23, 1990. It was an auspicious day, indeed—Fara’s baby arrived the same Sunday.

Part of the settlement with the ACLU, which had come to the rescue of the TCLU, involved my getting the law books and some office furniture, keeping the cases on which I was working, receiving some start-up funds, and taking over the South Texas Project. Through my then-wife’s help, we were fortunate to find rent-free office space in the Peace Building, a small two-story iconic struc-

ture in downtown Austin that once served as a small hotel and train stop.

When Fara returned to TCLU, she worked there alone, essentially transferring legal case files to me, since TCLU had barred me from the office, despite the mediation agreement. After two weeks, while by herself in the office, Fara received a fax from the board, firing her—showing a shocking lack of civility toward a dedicated employee who had worked there for years.

Fara came to work with me, living on unemployment benefits; and I supported my family with part-time teaching at University of Texas School of Law. We survived that way until January 1991, when the Texas Equal Access to Justice Foundation (TEAJF) threw us a lifeline.

TEAJF managed the state Supreme Court's IOLTA program, and added us to the list of nonprofit recipients of funding. We started off with an \$80,000 grant. As I learned a hundred times over, it was much easier to raise local funds for a Texas-based organization than for an ACLU affiliate.

I supplemented our budget with part-time work at Advocacy, Inc. for a couple of years, helping develop its regional legal program and creating community-based litigation campaigns under the Americans with Disabilities Act (ADA). Then, for three years, I served as part-time Director of the Americans with Disabilities National Backup Center, traveling around the country (twenty-two states and three territories), training lawyers on how to do ADA campaigns.

This dovetailed nicely with TCRP's work as we began to use the ADA for civil rights cases where we could, instead of the traditional 42 U.S.C. § 1983.<sup>61</sup> Because of the way it was written, the ADA often held out more promising relief for cases involving prisoner suicides, police misconduct toward people with mental disabilities, and bad medical care for prisoners.<sup>62</sup> The creative possibilities were myriad, and ADA litigation became a TCRP priority.

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<sup>61</sup> See generally James C. Harrington, *The ADA and Section 1983: Walking Hand-in-hand, Using the Americans with Disabilities Act to Re-Open the Civil Rights Door*, 19 REV. LITIG. 435 (2000).

<sup>62</sup> Over a period of time, I personally handled four county jail suicide cases in west Texas, three in Tom Green County alone—sad cases, all involving depressed young men. The first was under § 1983, when it was still a good tool, and settled. We barely settled the second, however, because, by then, the Fifth Circuit case law had made suicide cases more problematic. The last two cases, occurring after passage of the ADA, settled more quickly and with better results.

TCRP helped set the national trend, albeit it rocky in the beginning, toward making voting more accessible to blind citizens<sup>63</sup> and reconfiguring theaters with wheelchair seating in the middle of the theater, rather than on the floor in front of the screen. We also adapted the parole system to be more accommodating for people with mental disabilities, cutting the recidivism rate by two-thirds, and compelled the state lottery only to use retail outlets that were ADA-compliant.

Altogether, in twenty-five years, collaborating closely with ADAPT of Texas, VOLAR of El Paso, and other disability rights community groups, we handled more than 550 ADA cases and conducted more than fifty ADA-enforcement campaigns. We were no respecter of defendants, whether judges, large corporations, agencies, or hospitals.<sup>64</sup> Many cases resulted in major architectural and programmatic changes.

We stayed in the Peace Building until it was sold and then purchased a small house in east Austin, the African-American side of town. We eventually outgrew that location and found an old lube shop in the Mexican-American community that, thanks to an attorney donor, local folks had converted into an office building. We moved there in time for our fifteenth anniversary.<sup>65</sup> This was a great fundraising opportunity overall, and we had a donors' space at the entrance with a tile for each donor, sized according to the amount of donation. The attorney donor, Wayne Reaud, donated the building in honor of the legendary Michael Tigar, who had long been a strong TCRP supporter. Molly Ivins spoke at the dedication.

We went through a midnight fire in 2013 and spent seven months in exile, working out of the Austin TRLA office while ours was being rebuilt. We were fortunate to have purchased good insurance. Both the fire and the rebuilding offered excellent fun-

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<sup>63</sup> See generally *Lightbourn v. Cty. of El Paso*, 118 F.3d 421 (5th Cir. 1997); James C. Harrington, *Pencils Within Reach and a Walkman or Two: Making the Secret Ballot Available to Voters Who Are Blind or Have Other Disabilities*, 4 TEX. F. ON C.L. & C.R. 87 (1999).

<sup>64</sup> See, e.g., *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116 F.3d 1052 (5th Cir. 1997). This was one fun case, which impressed a federal judge, where we successfully sued the "national beer of Texas," the Shiner brewery for excluding blind tourists with guide dogs. Part of our argument involved proving that guide dogs were actually cleaner than humans.

<sup>65</sup> Barbara Belejack, *Keeping the Tradition Alive: The Texas Civil Rights Project Turns 15. An interview with TCRP Director James Harrington*, TEX. OBSERVER (Oct. 7, 2005), <http://www.texasobserver.org/2052-keeping-the-tradition-alive-the-texas-civil-rights-project-turns-15-an-interview-with-tcrp-director-james-harrington/> [<https://perma.cc/Y7M2-FNYC>].

draising opportunities. We did the donor tiles again, the new ones surrounding the original tiles charred by the fire. Fate struck again, though. Exactly two years later to the day of the fire, the building flooded during a torrential storm; we extracted 350 gallons of water.

Over the years, we were able to find capital funds from foundations to purchase and build out our offices in El Paso and south Texas. So, we owned three of our offices. The Houston NAACP let us use a small house it owned next to its office, rent-free. Not only was that a financial blessing, but it helped give us roots in the community.

## VI. THE WORK OF THE TEXAS CIVIL RIGHTS PROJECT

### A. *Quarter Century Overview*

On our twenty-fifth anniversary, we put together an information sheet for the public that summarizes the quarter-century of our work. It is included here as a good synopsis of TCRP's history, although some of the cases will be described in greater detail further on:

#### *25 Years Seeking Justice . . .*

*For twenty-five years, the Texas Civil Rights Project has been a tireless advocate for racial, social and economic justice in Texas, through our education and litigation programs in our six offices across the state: Austin, El Paso, South Texas, Houston, Odessa, and North Texas.*

*Some of the achievements we are most proud of:*

- *Handling more than 2600 cases for poor and low-income Texans, some of which included comprehensive settlements and important appellate victories*
- *Creating an extensive pro bono network with private attorneys to expand our civil rights work in Texas*
- *Developing a vigorous VAWA (Violence Against Women Act) program in our Austin, El Paso, and South Texas offices for abused immigrant women in rural Texas that includes our unique "Circuit Rider" component, as well as counseling and support services and a promotora program provided by a MSW staff supervisor and social work interns*
- *Publishing eighteen Human Rights reports on issues such as hate crimes, prison conditions, solitary confinement, and school funding equity*
- *Compiling five "self-help" legal manuals, on matters like Title IX, disability law, and veterans' rights*
- *Conducting community and lawyer trainings for more than 40,000 persons*

- *Working to establish special veterans courts in West Texas through our Odessa office*
- *Publishing more than 350 opinion editorials in Texas newspapers*
- *Giving more than 400 speeches and talks on civil rights to diverse groups (such as school conferences, police and law enforcement trainings, senior citizens' organizations, veterans groups, and attorney education programs)*
- *Being a vigorous and consistent advocate of human rights and civil liberty in the media*
- *Having an amazing, hard-working, and dedicated staff in our offices across the state*

*We have sued over every kind of misconduct in every part of Texas: city police, sheriff deputies, Department of Public Safety officers, and Border Patrol agents. Because of our work, jails in Hidalgo, El Paso, Henderson, Tom Green, Williamson, Travis, Bexar, Dallas, and Brown Counties do much more now in preventing inmate suicide, providing interpreters for deaf prisoners, protecting vulnerable inmates from sexual assault, administering HIV medications, and making them accessible for inmates with disabilities.*

*And our prison conditions work, which we do as a special project, addresses medical care, violence by guards, suicide, solitary confinement, and over-heated facilities. The Harris County Jail, one of the largest jails in the country with a large population of mentally ill inmates, is in our sights.*

*TCRP set the national model in ballot accessibility for blind voters and has led more than 50 regional compliance campaigns in Texas under the Americans with Disabilities Act (ADA). Thanks to the efforts of our staff, facilities, churches, and courthouses in Texas are much more accessible to elderly folks and people with disabilities. We are the state's preeminent litigator on behalf of the disability community.*

*Our Title IX educational and litigation programs on sexual harassment and equal sports opportunities helped make rural middle schools and high schools more hospitable for young women, and respectful of them, and opened up the prospect of athletic scholarships to college for them. Our volunteer Safe Schools education program works with community groups on anti-bullying programs for students.*

*Our "Equality under the Law" campaign addressed "benign" discrimination against African Americans and Hispanic Americans in banks, restaurants, motels, and other places of public accommodation in Central Texas. And we ended GLBT discrimination in El Paso restaurants and other locations in the state.*

*Our efforts to help South Asian, Muslim, and Arab citizens, permanent residents, and students who fell victim to post September 11 discrimination included a successful suit against a major airline and*

*enlisting Texas attorneys to represent, pro bono, individuals questioned by the FBI.*

*We worked with the Mexican American Legal Defense and Education Fund (MALDEF) to help create single-member school board districts in Del Valle ISD and assisted in redistricting the Texas Legislature and Congressional districts in the 1990s so as to protect the representational rights of minority citizens.*

*We assisted the NAACP in persuading the U.S. Department of Justice to audit the Austin Police Department and make more than 160 changes, including its use of force practices in the city's minority communities.*

*We joined with the American Jewish Congress in one of the first court cases in the country to challenge the constitutionality of government funding of a religiously-orientated job training program that used the Bible as a text and proselytized its trainees. And we continue our efforts to keep religion and state separate, challenging, for example, Williamson County's use of a religious test to hire an interim constable.*

*Our economic justice program in our South Texas and El Paso offices helps low-income workers organize against wage theft and other forms of exploitation.*

*So, too, we are an intrepid advocate of traditional civil liberties, such as free speech and assembly, privacy, due process, and equal protection under the United States and Texas Constitutions.*

*We ended the practice of the state health department surreptitiously collecting and storing blood samples of all newborn babies in the state without parental consent and then selling them to pharmaceutical companies and sending them to a military hospital. The nearly seven million samples collected were destroyed, and a new consent process was instituted by the legislature.*

*TCRP won an appeal and settlement on behalf of an east Texas lesbian high school student, outed to her mother by the school's coach, to prevent this from happening again to other students.*

*We have partnered with Texas RioGrande Legal Aid (TRLA) to challenge the state health department's recent regime of making it difficult, if not impossible, for undocumented parents to obtain the birth certificates of their children born in Texas, which keeps kids from school and exposes them to deportation risks.*

*Our Austin office is a stopping point for visitor teams from foreign countries, sponsored by the State Department, wanting to learn about nonprofit civil rights work in the United States.*

*And we survived an office fire, continuing our work unabated in temporary quarters at TRLA during rebuilding.*

*We have been able to expand our work exponentially through the many volunteer law school interns who join us in the summers and throughout the year and the many other volunteers who contribute their*

*time on other facets of our program. We are grateful to them and to our many pro bono attorney partners.*

*We owe great thanks and appreciation to our Board of Directors and all those people and organizations that have supported us over the years, confident that we would be good stewards of their financial support in helping make Texas a better society for all the people of the state.*

*On to the next 25 years . . .*

## *B. Highlighting Some TCRP Litigation*

### *1. Free Speech and Assembly and Community Demonstrations*

In May 2003, a group of activists, dubbed the “Crawford 5,” was arrested for failing to obtain a parade permit when caravaning through Crawford en route to demonstrate against the Iraq war outside the ranch of then-President George W. Bush.<sup>66</sup> They were held overnight in jail. A local Crawford jury gave them the largest fine allowable under law;<sup>67</sup> but, on appeal, a county judge ruled that their arrests violated the First Amendment and overturned the convictions. In May 2005, the group settled a federal class action against the City of Crawford, McLennan County, and the Department of Public Safety.<sup>68</sup> The successful resolution of the “Crawford 5” cases paved the way for anti-war activist Cindy Sheehan’s camp-in protest outside Bush’s ranch in August of that year.

In January 2005, TCRP teamed up with TRLA on behalf of five students and a teacher to sue the El Paso police and the Socorro school district for injuries during a “police riot” by more than 100 officers against some 1,000 Montwood High School students who had walked out of class to protest curriculum reorganization.<sup>69</sup> After lengthy discovery, the case went to mediation and settled, paying damages and attorneys’ fees and setting up a police training program and policies and procedures regarding the proper use of

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<sup>66</sup> *Anti-war Protestors Convicted for Demonstrating Near Bush’s Ranch*, REPORTERS COMM. FOR FREEDOM OF THE PRESS (Feb. 18, 2004), <http://www.rcfp.org/browse-media-law-resources/news/anti-war-protestors-convicted-demonstrating-near-bushs-ranch> [<https://perma.cc/8B3V-7ZGW>]. Following the incident, we informally dubbed the group the “Crawford 5.”

<sup>67</sup> The trial took place in the town’s auditorium because the regular courtroom was too small. The defendant protestors and supporters marched, chanting, from the Crawford “peace house” they had rented to the auditorium, where they had to pass through temporary metal detectors.

<sup>68</sup> *Jack v. Tex. Dep’t of Public Safety*, No. W-03-CA-190 (W.D. Tex. 2005).

<sup>69</sup> *López III v. City of El Paso*, No. EP-05-CA-009-FM (W.D. Tex. 2005).

force and police conduct at free speech and assembly activities.<sup>70</sup> TCRP's involvement in this high-profile case led El Paso community people to request that the Project establish an office there, which eventually happened.

In March 2006, more than 200 students in Round Rock, Texas walked out of class, joining a nationwide student protest against the Bush Administration's immigration policy. The City and District then began to prosecute the students for disrupting class or violating curfew, depending on their age. After defending students in a series of misdemeanor prosecutions that threatened to go on for years, we filed a federal class action on behalf of seventy students to block the prosecutions.<sup>71</sup> The defendants invoked *Younger* abstention.<sup>72</sup> However, after the federal judge indicated he might overrule abstention, City and school officials struck a settlement that included \$90,000 for the students' nominal damages and attorneys' fees, a fund to cover expunging the students' records, and dismissal of all criminal charges.<sup>73</sup>

Another case, which we co-counseled with a private law firm, involved members of the Occupy Wall Street Movement camping out in the plaza in front of Austin city hall in late 2011. The City tried to limit the activity by preemptively issuing oral and written criminal trespass notices, which were essentially administrative bans from city property, to individual protestors. We won, but the federal judge denied attorneys' fees. The Fifth Circuit later reversed on the issue of attorneys' fees.<sup>74</sup>

## 2. Police Misconduct: A Never-Ending Social Problem

As part of TCRP's efforts to tie its litigation to community organized efforts, we worked closely with the NAACP of Austin, a highly energetic advocacy group, which directed much effort to po-

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<sup>70</sup> A study, initiated by Socorro Independent School District to examine the January 29, 2003 events, concluded that students, teachers, and police (many in riot gear) were to blame for the peaceful protest turning violent. The study also found that, while most police officers acted professionally, some lacked training on how to handle public demonstrations. See *Montwood Report Finds Everybody a Little at Fault*, W. TEX. CITY. COURIER (Mar. 6, 2003), [http://www.wtxcc.com/flats\\_pdf/2003/03-06-03.pdf](http://www.wtxcc.com/flats_pdf/2003/03-06-03.pdf) [<https://perma.cc/96KU-2R6Q>].

<sup>71</sup> *Tellez v. City of Round Rock*, No. A-06-CA-1000-LY (W.D. Tex. 2006). TCRP had organized a cadre of *pro bono* criminal defense attorneys for the students, but the City was not capable of prosecuting more than one case at a time. There was also the issue of time to be consumed on appeals.

<sup>72</sup> See *Younger v. Harris*, 401 U.S. 37 (1971).

<sup>73</sup> *Tellez*, No. A-06-CA-1000-LY.

<sup>74</sup> *Sánchez v. City of Austin*, 774 F.3d 873 (5th Cir. 2014).

lice profiling and the excessive force that had resulted in a number of police-related deaths in the city's minority communities.<sup>75</sup>

On June 19, 2004 (Juneteenth), representing the NAACP, we filed an innovative Title VI administrative complaint with the U.S. Department of Justice (DOJ), which was supplemented at various junctures, asking that the government withhold federal funds from the City because of broad police misconduct.<sup>76</sup> The complaint pointed out that, between 1999 and 2003, eleven people died from encounters with the Austin Police Department (APD). Ten of the eleven people were either Hispanic or African American.

In response, DOJ undertook an investigation into the APD, which coincided with the arrival of a new police chief, who was committed to improving the situation. In December 2008, DOJ sent APD a fifty-page technical letter with 165 recommendations for improving APD policies.<sup>77</sup> They focused on use-of-force policy, complaint investigation processes, training, and procedures. APD concurred with 161 of the recommendations and crafted policies that complied with them.<sup>78</sup>

While overall police performance improved and the level of misconduct subsided, complaints to the City's police monitor continued to come disproportionately from minority persons. And an-

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<sup>75</sup> We also teamed up with the NAACP to challenge the state-sanctioned use of paperless ballots, namely direct recording electronic machines (DREs), because of their high potential for undetected error and manipulation. Although we won a plea to jurisdiction in the lower courts, the Texas Supreme Court ruled against us since plaintiffs could not show injury—an ironic holding since our argument was that DREs inherently concealed injury. See *Andrade v. NAACP of Austin*, 345 S.W.3d 1 (Tex. 2011).

<sup>76</sup> Complaint, *NAACP v. Austin Police Dep't* (Dep't of Justice Civil Rights Div. June 27, 2012), [http://texascivilrightsproject.org/docs/12/tcrp\\_titleVIcompt120625.pdf](http://texascivilrightsproject.org/docs/12/tcrp_titleVIcompt120625.pdf) [<https://perma.cc/8YBR-NU24>] (filed pursuant to the 1994 Violent Crime Control and Law Enforcement Act (42 U.S.C. § 14141), Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d), the 1968 Omnibus Crime Control and Safe Streets Act (42 U.S.C. § 3789d), and the Fourth and Fourteenth Amendments). For an analysis of TCRP's approach, see Alexandra Holmes, *Bridging the Information Gap: The Department of Justice's "Pattern or Practice" Suits and Community*, 92 TEX. L. REV. 1241 (2014).

<sup>77</sup> Letter from Shanetta Y. Cutlar, Chief, Special Litig. Section, U.S. Dep't of Justice Civil Rights Div., to Marc A. Ott, City Manager, City of Austin, Texas, and Arturo Acevedo, Chief, Austin Police Dep't (Dec. 23, 2008), [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/AustinPD\\_taleter\\_12-23-08.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/AustinPD_taleter_12-23-08.pdf) [<https://perma.cc/8SRX-2Z5H>].

<sup>78</sup> Patrick George, *Justice Department Closes Investigation of Austin Police Department*, AUSTIN AM.-STATESMAN (May 29, 2011), <http://www.statesman.com/news/news/local/justice-department-closes-investigation-of-austi-1/nRbSH/> [<https://perma.cc/3SAA-8E4B>]; Jordan Smith, *DOJ Closes Police Inquiry: APD Needs to Close 'Gaps in Use-of-Force Reports'*, AUSTIN CHRON. (June 3, 2011), <http://www.austinchronicle.com/news/2011-06-03/doj-closes-police-inquiry/> [<https://perma.cc/9RLX-PP7X>].

other questionable police killing occurred. We asked DOJ in 2012 to reopen its APD file, but it declined. In the meanwhile, though, police halted the practice of requesting consent searches during vehicular stops, a source of strong complaints from the African-American community and NAACP because of the abuse to which the practice had led.

### 3. Access to Justice for Low-Income Texans: Suing the Texas Supreme Court

Despite its oil wealth reputation, Texas has a high level of individuals, families, and children living at or below the poverty line (about 18% of the population generally and 25% of children).<sup>79</sup> That, in turn, means a great need for legal services and a severe shortage of attorneys, whether of legal aid or *pro bono* vintage. Some studies suggest that 75% to 90% of poor or low-income Texans have a least one unmet legal problem each year.<sup>80</sup>

Because of that reality and the fact the State Bar was doing virtually nothing to ameliorate the crisis, we filed suit against the bar in 1991, representing three poor persons unable to secure legal assistance, demanding that it require all 67,000 Texas attorneys at the time to do a set amount of *pro bono* hours each year. The idea of mandatory *pro bono* generated the most hate mail for any case I have done, which is saying a lot. Attorneys screamed that mandatory *pro bono* violated the anti-slavery Thirteenth Amendment, a particularly offensive argument, given America's brutal history of slavery.

The trial judge held he had no jurisdiction since regulating the practice of law was exclusively a constitutional prerogative of the State Supreme Court. We won on the first appeal, only to have the high court reverse the case (5-4) on the exclusivity issue.<sup>81</sup> The court did write it would place the case on its "administrative docket" and consider the matter at a later date.<sup>82</sup>

After a year, I started writing the court about every December, asking whether it would address the issue. Never a response. Then, in 1999, I called the court; and the clerk said no administrative

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<sup>79</sup> CTR. FOR PUB. POL'Y PRIORITIES, KEY FACTS ABOUT POVERTY AND INCOME IN TEXAS, [http://forabettertexas.org/images/EO\\_2014\\_ACSPovertyIncome\\_Charts.pdf](http://forabettertexas.org/images/EO_2014_ACSPovertyIncome_Charts.pdf) [<https://perma.cc/4W5S-5HHQ>].

<sup>80</sup> See *Texas Commission to Expand Civil Legal Services*, TEX. COURT SYS., <http://www.txcourts.gov/organizations/policy-funding/texas-commission-to-expand-civil-legal-services.aspx> [<https://perma.cc/F86T-VLG8>].

<sup>81</sup> See generally *State Bar of Tex. v. Gomez*, 891 S.W.2d 243 (Tex. 1994).

<sup>82</sup> *Id.* at 274.

docket existed. At that point, I filed a federal suit against the court in the Brownsville division where the plaintiffs lived, arguing denial of due process.<sup>83</sup>

It did not take long for the federal judge in south Texas to transfer the case to Austin, whereupon a judge, *sua sponte*, dismissed the case for lack of justiciability.<sup>84</sup> But the suit and publicity grabbed the court's attention, and, to their credit, the justices scheduled a hearing.

The hearing in December 2008 was quite amazing. All kinds of legal aid providers showed up to discuss insufficient legal services for poor and low-income people. Instead of testifying, myself, I invited one of our VAWA staff persons to come to Austin and testify. She had been a former client under our Violence Against Women Act program. It was her first airplane ride. Her testimony was powerful, riveting, and moving. One could hear a pin drop as she described her former life in an abusive relationship and how she was now helping other women escape domestic violence against them and their children.

The ultimate result was the court creating the Texas Access to Justice Commission in 2010, charged with developing and implementing initiatives to expand access to, and enhance the quality of, justice in civil legal matters for low-income Texans. The Commission has risen to the task quite admirably.

The Texas Supreme Court has become a nationally-recognized leader in this arena, even persuading the state legislature to regularly appropriate legal services funds as part of the court's budget. The Texas Access to Justice Foundation (formerly, TEAJF), which allocates funding for the court and indefatigably identifies other income sources, also enjoys national prominence.

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<sup>83</sup> *Gómez v. Phillips*, No. B-199-B (S.D. Tex. 1999).

<sup>84</sup> *Gómez v. Phillips*, No. 1:00-cv-00007-SS (W.D. Tex. Jan. 20, 2000). In addition to the *pro bono* cases, I also sued the Texas State Supreme Court in 1995, representing three attorneys with disabilities, for lack of ADA compliance when the court building was refurbished. The case quickly settled after a front-page Sunday newspaper article in which the judge in charge of remodeling admitted they had not considered the ADA in the plans. The building was nicely retrofitted. Governor Greg Abbott himself, who uses a wheel chair, then beginning a stint as a Supreme Court justice, benefitted from the ADA, although later, as Attorney General, he was its fierce opponent. See Jonathan Tilove, *Job Put Me at Odds with Disabilities Law, Abbott Says*, AUSTIN AM.-STATESMAN (July 20, 2013), <http://www.mystatesman.com/news/news/state-regional-govt-politics/abbott-says-he-supports-disabilities-law-but-advoc/nYx7M/> [https://perma.cc/ESJ5-TJMT]. Abbott, when on the Supreme Court, called me about an inaccessible Houston hotel where he attended a reception. I contacted the hotel about retrofitting; but Abbott would not go public, even though it would have benefitted the disability community.

#### 4. Privacy: Secretly Taking and Storing Baby Blood Spots

Thanks to a tip from a newspaper reporter, we learned that, for seven years, the state health department had been surreptitiously collecting the blood spots of all babies born since 2002 and secretly storing them indefinitely at Texas A&M University, apparently for unspecified research purposes. There were 4.5-5.0 million samples as of that point. That led to a class action suit in which my four-month-old grandson was lead plaintiff, represented by his mother.<sup>85</sup>

Andrea Beleno did not object to the initial screening, required by state law, for medical disorders. What she found problematic was the indefinite retention of her son's genetic material and the unknown and undisclosed uses of his blood samples. She worried about future misuse of her son's genetic information, perhaps with employment ramifications. In fact, with proper disclosure and safeguards, she might have consented to limited scientific use. The secrecy of it all greatly disturbed her and heightened distrust of government activity.

After the federal judge refused to dismiss the case, the department settled in late 2009 and destroyed all 5.3 million samples at the time.<sup>86</sup> The legislature, in an alliance of conservatives and liberals, responded by passing laws that required affirmative consent to keep samples past the need for newborn screening and for purposes other than screening, with proper disclosure of intended use and privacy protections in place.<sup>87</sup>

Despite the settlement and new legislation, the battle continued. In 2010, we learned that between 2003 and 2007, approximately 800 newborn baby blood spots were sent to the U.S. military to create a "national mitochondrial DNA database" and others had been sold to pharmaceutical companies. The military database was never disclosed during the *Beleno* lawsuit. In fact, the department assured us that the blood samples were used only for medical research and not law enforcement purposes.

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<sup>85</sup> Trial Pleading, *Beleno v. Texas Dept. of State Health Servs.*, No. SA-09-CA-0188-FB (W.D. Tex., San Antonio Div. Sept. 29, 2009), 2009 WL 5072239.

<sup>86</sup> For a detailed description of the litigation and issues involved, see Allison M. Whelan, *That's My Baby: Why the State's Interest in Promoting Public Health Does Not Justify Residual Newborn Blood Spot Research Without Parental Consent*, 98 MINN. L. REV. 419 (2013); see also *Higgins v. Tex. Dep't of Health Serv.*, 801 F. Supp. 2d 541 (W.D. Tex. 2011); Dana Barnes, *Texas DNA Showdown*, MAYBORN (Mar. 3, 2016), <http://www.themayborn.com/article/texas-dna-showdown> [<https://perma.cc/8347-WYHZ>].

<sup>87</sup> See TEX. HEALTH & SAFETY CODE §§ 33.0111-12 (2016).

We filed a new class action lawsuit, claiming that health department deceptively and unlawfully sold, traded, bartered, and distributed blood spots to private research companies, government agencies, and other third parties, including the Armed Forces Institute of Pathology.<sup>88</sup> The case was ultimately dismissed for lack of standing after the department filed an affidavit that it had destroyed the blood spots of the two plaintiffs' children.<sup>89</sup>

#### 5. Immigrants: Denial of Birth Certificates to Citizen Children

In early 2015, we began to learn that the state health department had tightened regulations for parents seeking to obtain birth certificates for their American-born children. The rules were clearly aimed at making it nearly impossible for undocumented parents of Texas-born children to obtain their birth certificates. This affected the ability of the children to enter school, travel, obtain Medicaid, be baptized, and subjected them to deportation, in which case they would essentially become stateless.<sup>90</sup>

This apparently happened as a political response to the Obama administration's proposed Deferred Action for Parents of Americans program, shielding from deportation and giving work permits to as many as 5 million undocumented immigrants, who had citizen children.

We partnered with TRLA and filed suit in May 2015, which attracted extensive nationwide and international attention. We were unsuccessful in obtaining a preliminary injunction,<sup>91</sup> even though the judge indicated he was rather troubled with the state's position.<sup>92</sup> The case is set for trial in December 2016. We will be seeking interim relief on the theory that the state cannot deny birth certificates to the children and must devise some method to obtain them.

#### C. *Dancing on the Changing Legal Landscape*

The forty-two-year span during which I have practiced law has

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<sup>88</sup> *Higgins*, 801 F. Supp. 2d at 544.

<sup>89</sup> *Id.*

<sup>90</sup> Melissa del Bosque, *Children of Immigrants Denied Citizenship*, TEX. OBSERVER (July 13, 2015), <https://www.texasobserver.org/children-of-immigrants-denied-citizenship/> [<https://perma.cc/N43T-6P9Q>] (containing a copy of the federal complaint).

<sup>91</sup> *Serna v. Tex. Dep't of State Health Servs*, No. 1:15-CV-00446 (W.D. Tex. 2015).

<sup>92</sup> Andrea Grimes, *State: Birth Certificate Lawsuit a Ruse to Validate Foreign ID's*, TEX. OBSERVER (Oct. 2, 2015), <http://www.texasobserver.org/undocumented-texans-take-birth-certificate-suit-to-court/> [<https://perma.cc/ELM2-7MD8>].

seen the courts, and often juries, become ever more conservative. This is especially true of the Texas appellate courts and the U.S. Fifth Circuit, which once was a civil rights paragon.

This reality has led us to more creative legal strategies. One tactic, as already mentioned is moving from 42 U.S.C. § 1983 to ADA cases to accomplish the same goals, particularly on issues of prisoner medical care and suicide and police conduct toward people with disabilities.

Another approach has been to rely on mediation as much as possible; and, indeed, we have had great success at this, much more than I would have expected.

The third strategy has been to partner with *pro bono* attorneys from law firms. As one Texas Supreme Court justice candidly acknowledged to me, when judges see a law firm investing resources in a civil rights case, they pay attention. The subtext is something like, "If this firm has taken on the case, there must be something there or else the firm would not be doing it." It is now a TCRP litigation priority to engage law firms, especially for appeal. I have witnessed the good results of this approach time and again. It also frees up resources for other litigation and increases capacity.

Despite their differences with civil rights litigation, it has been heartening to observe the respect that judges have for us, even at times appointing us to a case or calling and asking that we pick up a case for a *pro se* litigant because there appears to be merit in it.

## VII. SOME OF THE PRACTICALITIES IN KEEPING TCRP HUMMING

### A. *TCRP Governance Structure: Trying to Keep a Community Balance*

Structuring TCRP governance so as to maintain community input but also to draw people who could bring their professional skills and help attract funding was always a challenge. We tried to accomplish this by each regional office having a Council of Advisors, which, in turn, would select a member to the State Board. The other five State Board members are elected at large. State Board members always have lunch with the staff before their meetings. We also established a state and regional Boards of Councilors, comprised of attorneys from firms, who would help us recruit *pro bono* lawyers and solicit contributions from firms. TCRP's Legal Director helps organize and work with the State Board of Councilors.

### B. *Public Education: Creating a Culture of Civil Rights*

Public education about civil rights issues was always important

to TCRP. There were issues we could not litigate either because there was no cause of action or because of their complexity and our lack of resources.

We made great use of press conferences, speaking invitations, and op-ed pieces. We also drew on our volunteers to prepare human rights reports. We tried to issue one every year or so. The reports dealt with issues such as the level of hate crimes, intra-district school funding equalization, Title IX, and ADA access in the courts, for example.<sup>93</sup>

Apart from the traditional website to convey information, we also developed use of social media and constructed an email-blast list of 10,000 persons to whom we send weekly or twice weekly copies of op-ed pieces or TCRP-related information.

#### C. *Expanding Capacity Through Volunteers*

Harnessing the energy and talent of volunteers has always been key to increasing TCRP's capacity exponentially. That involves *pro bono* attorneys, law student interns, high school and college students, MSW interns for our VAWA program, and paralegal interns. We average about fifteen to twenty law students at our offices each year. We also plugged into court-sponsored Community Service and Restitution programs. We recruited volunteers first from the Jesuit Volunteer Corps and then from the Lutheran Border Servant Corps for our El Paso office.

#### D. *Fundraising: Expanding and One Funding Source at a Time*

As discussed earlier, the Texas Access to Justice Foundation is a consistent funder, providing about 60% of TCRP's budget. The balance comes from an ever-changing kaleidoscope of the annual Bill of Rights dinner, two written fundraising letters annually (which follow a week after our newsletter), other foundations, court-awarded attorneys' fees, e-mail pitches, and big-donor solicitations.

We draw upon targeted funding sources for special programs (VAWA, economic justice along the border, prisoner rights, veterans, police and mental health encounters, and capital expansion). We also used events, such as the fire that struck our Austin office in October 2013 and acquiring our south Texas and west Texas buildings, as successful fundraising opportunities.

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<sup>93</sup> *TCRP Human Rights Reports*, TEX. CIVIL RIGHTS PROJECT, <http://www.texascivilrightsproject.org/tcrp-human-rights-reports/> [<https://perma.cc/SWGU-MAMW>] (providing links to the eighteen reports).

We produced TCRP t-shirts and other SWAG to raise funds and as incentives for donors.

### VIII. OTHER HUMAN RIGHTS WORK AND TEACHING

My view always has been that public education is an essential component of a civil rights attorney's work, even though it typically requires extra evening and weekend hours and adept balancing of private and family life.

To that end, it was important to write regular op-ed pieces for Texas newspapers and accept as many speaking engagements and CLE presentations as practical. For seven years, the late night oil burned on Sundays while I pounded out a bi-monthly column for the *Texas Lawyer*. Altogether, I wrote close to twenty law review articles (and co-authored a couple), a slew of "popular" pieces, and created a litigation manual on the Texas Bill of Rights,<sup>94</sup> which the courts turned into a historical treatise as they became more conservative.

In addition to law school teaching, I tagged on an evening civil liberties course at the University of Texas, and sometimes one on historic landmark trials, for thirteen years. Writing and teaching kept me up-to-date on the law and generated creative ideas for litigation. Teaching was also a vehicle to recruit interns and volunteers for TCRP; and it provided income, which let me keep my salary modest and help the TCRP budget. Teaching often provided health insurance, which saved TCRP that cost, which increased with my age.

My passion for human rights law led me to serve on delegations to Honduras and Nicaragua, Chile, Israel and the Palestinian Territories, and Guatemala. As a result of an interfaith trip to Turkey, I ended up writing a book on the political trials of Fethullah Gülen, a moderate Islamic leader of the Sufi tradition.<sup>95</sup> And then there were speeches about the book around Europe, Canada, Mexico, and the United States. That latter writing and speaking experience was fodder for co-authoring a book about a fictional meeting in medieval Venice of three premier Islamic, Christian, and Jewish mystics.<sup>96</sup>

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<sup>94</sup> HARRINGTON, *supra* note 50.

<sup>95</sup> JAMES C. HARRINGTON, *WRESTLING WITH FREE SPEECH, RELIGIOUS FREEDOM, AND DEMOCRACY IN TURKEY: THE POLITICAL TRIALS AND TIMES OF FETHULLAH GÜLEN* (2011).

<sup>96</sup> JAMES C. HARRINGTON & SIDNEY G. HALL III, *THREE MYSTICS WALK INTO A TAVERN: A ONCE AND FUTURE MEETING OF RUMI, MEISTER ECKHART, AND MOSES DE LEÓN IN MEDIEVAL VENICE* (2015).

## IX. FINAL THOUGHTS: WRAPPING IT UP

As I have reflected on how TCRP has changed over a quarter century, several thoughts come to mind. There is clearly a tension between remaining a community-based organization and evolving into an agency-like operation. I suspect a natural inevitability to this phenomenon. Being part of the community and its pains and aspirations is quite different than just helping people. It is the difference between solidarity and service, working *with* or working *for*.

Our staff spans nearly three generations; and there are marked generational differences, reflecting changing staff priorities—community organizing versus a “meaningful” job, but with limits on involving personal time. The cost of this dynamism may mean less agility in responding to community needs. Immediate exigencies may give way to planning long-term goals and increased structure.

As my own work became consumed with managing six offices and nearly forty staff, I realized the time was near to step back into the community and help with grassroots organizing. I am told, and believe, there is a “founder’s syndrome,” a reluctance to let go of one’s creation. But further reflection reminds me of something César Chávez frequently said, that, if the union did not survive him, he did not do a good job. I take César’s insight to heart. TCRP will be just fine.

The Project is on good footing, and the timing seems fortuitous. The staff is seasoned; operating systems have been honed; and we enjoy the respect of the community. The Project has grown from a staff of two in a small cramped second-floor office. We now own three buildings, mortgage free, and only have to pay utilities on our Houston facility provided by the NAACP.

My legal career has spanned nearly forty-three years, and age seventy is on the near horizon.

I feel drawn to work again more directly and personally with community people. Human rights are in my blood; and I will continue teaching, writing, doing public speaking, and organizing. I may even take on a case or two. This also will give me more time with my eight grandchildren.

As I have said far and wide, I am not riding off into the sunset, just changing horses.

Every day, I reflect on the good fortune that has smiled on my life. I am proud of my three children (whom, when younger, I readily conscripted, in trade for pizza, to fold fundraising mail outs and lick envelopes in TCRP’s beginning years).

Every day, I have the hope that perhaps I have helped make people's lives better, at least to some extent. They have certainly enhanced mine.

To be sure, there were painful, unsuccessful cases. One loss I still feel was the family of María Contreras, who left behind six children. She died, nine months pregnant, at the Nuevo Progreso bridge, while immigration officers forcefully grilled her as she returned from buying food across the border in Mexico. Another tragic loss involved Arturo Martínez, a high school student, killed by an Austin police officer. He and friends were drinking beer around a fire in a drainage ditch. The police surprised them, and he was shot in the back as he ran. The jurors said the boys should not have been out after curfew. Or Sofia King, killed by another Austin officer while she was experiencing a psychotic episode. She had a young daughter and son. Or unsuccessfully seeking to stop Gary Graham's execution after years in court.

These agonizing losses, and others, always cause me to reflect on the saying "every struggle for justice is lost, and lost, and lost, until it is finally won."

We even went through a devastating fire at our Austin office, but the community rallied around us and helped us rebuild. The local legal aid office took us in during our seven-month sojourn. I will always remember our building contractor who helped his paraplegic son, against the odds, travel to Norway and become a world champion weightlifter. So many inspiring people.

As one might expect, myriad humorous anecdotes arise when working closely with people, especially as part of community organizing, stories to be related over a beer or two, with a flavor of Irish embellishment, and sometimes melancholy.

I never saw my social justice work as a job. It is just what I did, and always wanted to do. Every morning I got up and felt very fortunate I was able to do what my heart led me to. Many people do not have that opportunity or good fortune. I have been grateful every day of my career for the honor of meeting and representing so many good and decent—and sometimes heroic—fellow travelers on the long, rocky road to a more just society, "angels," Tracy Chapman called them. It is a journey worth making, just as those who went before us opened up horizons to us and pushed history along, at even greater personal cost than what we face. We owe it to them.

In tribute to those with whom and for whom I have had the honor of working I conclude this article, as I did in many of my

talks, with a quote from Robert Kennedy's moving speech to university students in Capetown, South Africa, during the era of apartheid:

Few men are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who seek to change the world which yields most painfully to change . . . . [T]hose with the courage to enter the conflict will find themselves with companions in every corner of the world.<sup>97</sup>

My thanks to those many moral companions with whom I was fortunate to find myself.

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<sup>97</sup> Robert F. Kennedy, Day of Affirmation Address at the University of Capetown (June 6, 1966), <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/RFK-Speeches/Day-of-Affirmation-Address-as-delivered.aspx> [<https://perma.cc/2T99-XFEC>].

