

Transcript of Judge deAnda Remarks (Remarks given as the 2004 George I. Sanchez Lecture, Institute for Higher Education Law & Governance, University of Houston Law Center, November, 2004)

Thank you very much. I want to thank Professor Olivas for his introduction, his comments, and his speech, which was a great honor for me. And I feel indebted to all of you here this evening.

I thank you again -- and for all the comments that I heard and I only wish that some of the old lawyers that you talked about during the course of the day were here this evening with us -- Gus [Garcia], Carlos [Cadena], Johnny [Herrera]-- these men who fought together in this case and for civil rights in general.

And I'm especially indebted -- indebted to John Herrera as has been said because I told him when I got my license in December of 1950, I came back home to Houston and started looking for a job and after talking to about half the Bar and still looking for a job, I got to wondering if, you know, I should change suits, shoes, or something.

But I hit John's office and he called me. So, the benefit I got from all of that is I didn't -- did not know a single lawyer when I came -- when I started out and when I finished, I had an acquaintance with at least one partner in every law firm in Houston because I called them because I saw the other guys who were out there scrambling for themselves. So, it wasn't a futile exercise and -- and I'm especially indebted to John Herrera.

It's nice to see Mike and John [Herrera (John's sons)] here this evening on this occasion. John and I became very close friends, and our relationship has lasted through many years and when I first moved to Corpus Christi, we still saw each other frequently off and on.

And when I joined Johnny, the first day at work, he assigned a case to me which -- well, it was Emilio Sanchez versus The State of Texas. It wasn't the Hernandez case, but it was one like it. And he asked me if I would research the case. It was out of Fort Bend County. And so, the significance of the case is -- and what I'd like to do this evening is maybe is go back to the beginnings and tell you -- I know you've heard all about -- about Pete Hernandez' case today and discussed it forwards, backwards, sideways, inside and out.

So, but I do want to tell you how -- how this happened, how it started, and quite frankly, we've heard a lot of things here, but the person that was responsible ultimately for the Pete Hernandez case and getting to the Supreme Court was John Herrera. He's the one that really saw the significance through the Sanchez case and he asked me -- the Sanchez case was based out of Fort Bend County, out of Richmond.

At that time, we took -- we traveled to the countryside about 20 minutes to get to Richmond out of Houston and he had noticed -- John tried a few cases in Fort Bend County and noticed he'd never seen a Hispanic on the jury in any case he'd ever tried. And he said, "You know, it's" -- he said, "I want you to look into the records over there and see why I've never seen a Chicano on the jury while he's all over town."

And I said, "Well, I don't know why you haven't seen anybody." I went over and I started checking the records

and sure enough, there -- there were not any -- any Hispanic names on the venire lists on -- on the actual juries to try the lawsuits, on the grand jury panels, nor the grand jury commissioners. And I came back real excited and said, "Johnny, I think we got -- we got -- we got grounds for filing a motion here and see if we can't get this indictment knocked out or -- and do some work -- some good work for the folks."

So, John's next assignment to me was to go ahead and prepare some appropriate motions and challenge what happened in Fort Bend County and in the Sanchez -- Emilio Sanchez' case as a vehicle to put these matters to the Court.

And as a consequence, we filed a motion to quash the indictment in Sanchez and I explained to him after doing an awful lot of research that if we were going to do it, that I thought we had because of the rulings of the Court of Appeals of Texas at the time that we were going to have to establish a theory of identifiable minority and based on that the Mexicanos were being discriminated against because of the Court of Criminal Appeals' cases which turned on the issue -- there weren't that many. There were two or three or four that said, Well, Mexicans are Caucasians and there were Caucasians on the jury. So, what are you fussing about?

And to put an end to it, that was the position of the Court of Criminal Appeals took for many years in trying the validity of the equal protection of the Fourteenth Amendment and essentially just said it did not apply to Hispanics regardless because they were Caucasians. They were Caucasians.

And so that was -- that was the end of that. And so we resumed the matter and we developed, I think in a very fine fashion, in Fort Bend County that the Hispanics were a minority and it was a recognized minority.

And I recall we had one grand jury commissioner on the stand. John was a real fine cross-examiner and this particular fellow was a barber and had been on the grand jury commission and had been very emphatic about how very well he considered everybody and tried to pick the best people for the grand jury and -- and said he had Mexican friends, et cetera, ate at Mexican restaurants and so forth. And -- and finally -- and John says, "Well, how long have you been a foreman?"

Well, the guy says, "20 years."

I don't recall. It was a long time, he said. Then John said, "Have you ever cut a Mexican's head -- haircut -- haircut? Have you ever given a Mexican a haircut?"

He said, "Not, on your life."

So, it went that way. But the bottom line was the judge would -- I think the judge either helped him find jurors or precedents that existed at the time, denied our motion to try the lawsuit.

Mr. Sanchez got ten years in the penitentiary in a murder case. And we appealed to the Court of Criminal Appeals, and the Court of Criminal Appeals handed down one paragraph. It went to something else and denied our claim. We had talked about appealing further. We just didn't have the funds to do it.

Furthermore, Mr. Sanchez was somewhat reluctant to be a guinea pig because he didn't think that ten years was too bad of a deal. All things considered, he was quite a character. He had 18 children in the courtroom. It was helpful getting ten years instead of more.

But be that as it may, we decided not to appeal on the decision of the Court of Criminal Appeals and -- and -- and that case went by the

courts. Within six or seven months, John got the Hernandez case out of Jackson County.

And then -- incidentally, before I get to the Hernandez case -- before it comes by, I'm trying to show you that Mexicans were an identifiable group in Fort Bend County, which the District Attorney denied.

You may recall the Garcia case, some of you may remember Sgt. Macario Garcia. He won the Congressional Medal of Honor in World War Two in Europe, a very brave man, for extraordinary acts of heroism, and he lived at that time, I think in Fort Bend County. Came back from serving in the war and went to a restaurant over there in Sugar Land, as I remember, or Richmond -- I don't know the name of the place -- and they wouldn't -- they wouldn't serve him because he was -- he was a Hispanic even though he was wearing his Congressional Medal at the time. And somebody said, "You're going to have to leave."

And as he did, he tipped a glass of water over on the table and there were two deputy sheriffs sitting in the restaurant at the time, and they took him outside and just beat the hell out of him and filed on him for assaulting an officer.

And the case drew considerable publicity throughout the nation. In fact, Walter Winchell, I remember, referred to Sugar Land as the dirtiest little town in Texas. And so that wasn't a very fond memory. I think some of you remember better.

I think the case was dismissed, if I recall correctly. I know that Jimmy Allred who was a former Federal judge represented Sgt. Garcia on the case and I know that he probably never suffered any consequences regarding the beating.

But the reason I mention the story because I think it kind of sets the more or less the tone of what was happening here in -- in those days. Things were not good at all and that area between Fort Bend County, Wharton County, Jackson County, really, has a very poor area -- very poor track record as it relates to -- to Hispanics in that area.

I remember Wharton had a theater where the Mexicans had to sit in the balcony. There was always something. It was always some problem that occurs.

So, the Hernandez case came along -- and the Pete Hernandez case along. John decided -- he said, "This time, Jimmy, we're really going to get after it. You know, we've done the work. All we have to do is change the names. We've got the bill ready to move forward," which we did.

In the meantime, he also asked his good friend, Gus Garcia -- I didn't know Gus at the time -- this is how I met Gus -- to come into the case and help me. And because we knew it was going to be -- it was going to be a long haul. And at that time, Gus and Carlos were partners in San Antonio and so Gus came -- he also -- came into the case and I and Gus and John tried the case and there were two instances that I thought were very significant. One of which, as Michael [Olivas] already mentioned to you, one about the door, the restroom door.

There were several restaurants that had "No Mexicans Allowed" signs on their windows and so forth but the sheriff went around when there was -- everybody got wind of the case, why, they went around and took all the signs down. And so, but later on, the guy 'fessed up and admitted -- he had went around to get the signs taken down in the case.

And -- but the other -- the -- two things that happened -- one

you've heard about from Michael

-- and the way that came out was sort of strange because I don't know which -- we were out there kind of investigating and talking around the courthouse and somebody had to use the -- or wanted to use the restroom and -- but it was kind of -- but for some reason or another that day, the talk turned to some worker there asking him where the restroom was and he -- he said -- he told us in Spanish, "Well, go downstairs." He said, "There's some restrooms down there. You can use those."

And so, we went down to the basement of the courthouse and that's where we found, much to Gus' delight, the sign that everyone refers to and which the Supreme Court referred to as well because it was taken aback because it had it right in the courthouse. It was really horrible for the State to discover because it was -- it was devastating.

And -- but apart from that, when we had -- we were examining one of the -- we had a witness, a man named Rosas, who testified that -- I have to show again discrimination, well, against Hispanics and also the -- as an identifiable group -- and he testified in this -- at this hearing that he had told us about this school that had since -- had recently been closed but it was an elementary school exclusively for Mexican children. And there was -- there was a nice brick school that the Anglo children went to where everything was nice and then there was this building, this wooden building, that the -- that they used for Grades 1 through 4 for Mexican children and then when they had a -- according to our witness, there was just one teacher for all lower grades in this school and they didn't even have any inside plumbing. It had an outside -- it had an outhouse. So that was -- that was a pretty terrible thing to see, anyway.

And Mr. Rosas apparently had -- had a young son who was six years old and he was going to enroll in the white school and so that he could do that, he forbid this young man to speak Spanish. He spoke only English to him, and he couldn't speak Spanish. But when he went over to the school, they said, "That's immaterial and irrelevant. And you're going to -- you're going to the Mexican school because you're Mexican, and you'll have to learn Spanish."

You know, so -- so Mr. Rosas took his child to Victoria, which is about 25 miles away, and enrolled in the Catholic school; and that's where the young man then went to school. And since this happened to this -- to the young man's siblings, a sister and a brother, in turn, they all went to school in Victoria because they did not want to go to the -- to the Mexican school.

Just as a coincidence, I was trying to find out a few days ago before I came up here whatever happened to Pete Hernandez because I had been asked that question in Austin one evening; and I was embarrassed because I didn't want know what happened to him. And that's what -- that's what happens to you because you -- because your case becomes famous -- the case becomes famous but you don't.

So, I called over -- I called over there. I called the District Attorney's office. I talked -- Michael Solar suggested. I said, "Who the heck do I call?"

He says, "Call the D.A. You know, the guy was in jail."

So, I called over there and I found this young lady, very helpful, and she said -- she said, "Well, I don't know. The only person

I can think of that might help you is Mr. Rosas."

And I said, "Rosas?"

And she said, "Yes." She said, "Yes, he's here in the city

housing."

So, I called Mr. Rosas and asked him and he told me that Pete Hernandez was dead and had been dead for several years and had never gotten married, was a single man. He was crippled. He was miserably crippled. He walked with a very pronounced limp, just generally in bad health. Anyway, he told me that Pete Hernandez had died, and there were no other relatives except possibly a brother who was somewhere -- who was no longer there.

So, anyway, I give you that information. If anybody has anything different, I'd appreciate hearing from you.

But -- and then it turned out that the man I was talking to was the boy who did not go to the Mexican school. He went to Victoria. That was -- that was his father that testified for us in the case -- in the case proper.

So, these little things happen some time when you're -- you're investigating and I thought it was quite a coincidence and made a very interesting story and, in fact, he asked -- I asked him for permission to tell you this story and he said, "Sure. You go right ahead and tell them." So, I'm -- I'm telling you the story.

The bottom line is that we had -- we went ahead and tried the case of Pete Hernandez and, of course, he was convicted and got a life sentence and he got -- and as they say on the radio, you know the rest of the story. But the bottom line is that -- that he is no longer with us and that's the way the case came out.

In the course of my -- in the course of my research -- and what's really inspired me in the Hernandez case was another Sanchez case I read about-- The State versus another Sanchez.

And I tell you, this is relevant because I think it's interesting because I think it shows you -- I think it shows the significance of not having jurors -- of not getting a fair deal on your jury.

Somewhere between Alpine, Texas and El Paso in West Texas and that -- that was a murder case in which Mr. Sanchez was an 18-year-old boy who had been in -- this happened in 1944. He had been inducted -- well, he'd been called by his Board, been drafted into the Army. It turned out he had an I.Q. of about a 7-year-old and apart from that, he was blind. He couldn't see the fingers of his hand if it was put 18 inches away from him. That's what the doctor testified to at the trial. He was the defendant in the case.

And what happened to him is his father -- his father worked for a farmer there and they'd worked on a Saturday night for about 12 hours or so. And after he'd left to work, instead of going home, went into town and threw a good one on and he was supposed to work on Sunday irrigating. And his employer was looking for him on Sunday, as was his wife; and she sent their son, the defendant, to find Daddy.

In the meantime, the employer found Daddy first and was trying to get him to come to work and the man wouldn't do it. So, by the time the son got there, the employer decided to take matters into his own hands; and he just beat the guy -- beat him up pretty good.

And -- and son came running over to intervene and drew out a knife, a pocketknife. The employer said that they both hit each other and they kind of fussed about it. And the employer finally told the son, "Well, you take him on home and" -- he said, "I'll -- we'll take care of this later on."

Now, as the boy was getting ready to walk away with his dad, a

car drove up. The deceased comes out of the car, running over to the employer, and says, "You got any problems with these Mexicans?" He says, "I can help you out."

The guy says, "No, everything's fine. You just" -- and he's going, "I'm taking him home."

Whereupon, the deceased turns around and just clobbers -- the big guy clobbers the heck out of the father, knocks him down, and when the boy tries to intervene, knocks the boy down, where he just jumps up, gets his knife, and unfortunately, with just one stroke of the knife, he got the jugular vein and the deceased died, became the deceased.

Well, there was a motion filed to transfer the case and also a motion to quash the grand jury because they never had any Mexicans on the juries, all of which were denied and the jury gave this poor boy 35 years in the penitentiary. He had never in his life been in jail or in trouble and those facts had gotten him 35 years.

Well, those were -- those were the kind of things that were happening in those days, and that's why we thought it appropriate to do what we did in the Hernandez case. And fortunately, the case turned out well for us.

We -- Gus Garcia -- I'd like to mention -- and Carlos Cadena, they both made arguments to the case. I helped with the briefs. I had done the work before. Carlos wrote some tremendous briefs for the case. It was just marvelous.

And the -- and the case -- as you know, John was the first one to Washington. There was some other lawyers that we mentioned that were helpful in the matter but primarily these were the lawyers that worked hard on the case but what -- I had to stay back, No. 1, because they didn't have any money there, No. 2 because I had to send money. As money that came into the office from various plaintiffs, clients to get -- keep these guys out of trouble and really we were short on funds.

But I was getting reports from Gus and from John primarily about the case and I heard, as Michael told you, it was one of the rare instances where the Court allows additional time to a person to present their case.

While a Supreme Court -- when they tell you to sit down or when the light comes on, you sit down. You can be in mid-sentence or mid-word, but you're through unless they tell you for some reason they'll let you finish whatever you're saying but -- but anyway, the Court, of course, wrote this very wonderful opinion that -- that saved the people an awful lot of time.

Pete never did have to go to the penitentiary, by the way, because -- I think I may have heard something differently, Michael -- but my understanding was that he -- that they didn't want him in there because he was -- he was crippled and I know he spent all the time during the appeal he was in county jail there in Jackson -- Jackson County. But it may be that -- I know he remained because the authorities at the penitentiary didn't want him.

But, anyway, that's why and so that's more or less the -- the history of the case -- the lawyers involved are very interesting.

I know that Doug and Michael and Mike and Mickey mind me telling the story because John told me a thousand times. You know, John Herrera took the Bar either six or seven times. How many times was it?

Okay. He was very proud of that. Well, when he finally passed the Bar, he got this letter from the Bar examiners -- never done that before -- all signed by all the members of the Bar congratulating him on passing the Bar, and he very prominently displayed that in his office.

And, of course, everybody thought he was something exceptional that the Board members were writing him this letter. But the truth was -- and they were -- they were very proper and political. They said, "We respect you for your determination and tenacity."

So, he had this letter. John also had a -- for a number of years he was a -- he told me a story. He worked for the -- he worked for the Sanitation Department in the City of Houston, I mean, pick and shovel; and he had this big picture of -- of his crew of all these guys holding shovels and picks and -- and wearing these rubber boots, these high rubber boots. They'd just come out of the sewer system. And they took this picture. John had this picture with him in the middle just plastered all over the place.

So, he was really a man of the people. He thought he was a -- he'd been a cab driver for -- also in his time and he told me that the guys over at the -- at the Sanitation Department called him -- called him the ragpicker, rags, teasing him because he was going to law school and never could get out of law school and was working his way, they kind of ribbed him as Mexicans are prone to do.

Johnny--he was a criminal lawyer and he was a great, good trial lawyer, very effective in the courtroom because he knew people so well. He read people so well. I've never met a person that could tell you -- he read the body language. This guy knew more about body language than any person I've ever known. He was very effective in his criminal practice and was a very successful lawyer.

Gus, I did not know Gus until this case came up but after that, Gus and I became good friends and we had a -- as a matter of fact, I believe it's called the George Sanchez series.

Is that -- Dr. Sanchez was my witness in my first school desegregation case and I tried that in 1956 in Corpus Christi Independent School District case very similar to the situations that we've been talking about. In that -- in that case, the school district had a policy that all Hispanic children had to stay three years in the first grade so they could learn English.

And this applied even though there was a gentlemen and his wife who decided they didn't want their daughter to be subjected to this so they wouldn't let her speak English -- I mean, they wouldn't let her speak Spanish in the home and, of course, all the other Hispanic families made fun of them and laughed at them but they said well, we don't want our child to spend three years in the first grade. So, they were going to get -- and this child could not speak a word of Spanish when she went into school but -- but whenever she got to the school, why, in she went with -- with her fellow Mexicans.

And so, they would up in my office in Corpus Christi and Dr. Garcia and Victor Garcia and some other Mexicanos referred the case to me and the father sued them in Federal court in Corpus Christi and I had contacted Dr. Sanchez to be a witness in the case because he was the foremost expert in the world in educational matters and minority problems in education and he had a chair at the University of Texas. And he agreed to -- he didn't know me, but he said he knew about me and he said he would be glad to help me and he could. Again, I think he got a little nervous because I was still a fairly young lawyer and he -- he said, "Oh, why don't you get some a little older to help you in this case?"

So, I was a little indignant about it; but I said, "Fine. Who do you suggest it?"

He said, "Well, Gus Garcia."

I said, "Well, I know Gus, too." And I said, "Well, you give him a call; and we'll see."

So, anyway, he called Gus and Gus came -- Gus and I talked about it and he said, "Yeah, I'll second chair you on the case."

So, he came down and worked the case. Dr. Sanchez -- Dr. Sanchez made a remark. I wanted to tell you a little Dr. Sanchez story. Dr. Sanchez testified in that case as -- as my expert and the lawyer on the other side was a man named Davis, Constant Davis, who later became -- old Constant became Federal judge of Corpus Christi -- but at the time he and Allen Davis were partners. Allen was a very astute lawyer, a very capable lawyer and he had heard that Dr. Sanchez -- so he went out and he got a copy of every work that Dr. Sanchez had ever written. I mean, the stack -- a big, long stack of paper, books, and pamphlets, and whatever it was and I don't know when he had the time to write them all and he looked at -- I had put Dr. Sanchez on the stand. And Doctor -- and after I examined him and I turned him over to -- for cross-examination and so, I think Allen was trying to upset the doctor, but I don't know what he had in mind. He didn't know Dr. Sanchez. So, he said, "Dr. Sanchez" -- he said, "I want you to know that this is all your material you've ever written."

And Dr. Sanchez says, "My, that is impressive. I didn't know."

He said, "I read every book that you have ever written and here they are and I'm going to ask you some questions about your statements you made in those books."

He said, "I'm so sorry." And Dr. Sanchez said, "Mr. Davis, I'm so sorry. I wish you had told me you were doing that because" -- he said, "There's nothing in those books that makes any sense." He said, "I have" -- "I wrote most of that stuff when I was young, and over the years I've changed my mind." He said, "I tell you that everything I say here today is contrary to something I wrote on the topic. I'll save you the trouble."

I thought the judge was going to fall out of his chair.

James Allred was the judge. He was a former governor of Texas and a wonderful man. And I'll tell you one more story about -- he was a Federal judge during the New Deal when Franklin Roosevelt was president and there was a senator from Texas, Patrick Daniel, who hated Roosevelt and was against everything Roosevelt did. So, Roosevelt hated him. And so, Roosevelt talked -- President Roosevelt talked to Judge Allred into running against Patrick Daniel and so, he had to resign his judgeship. And unfortunately, Patrick beat -- beat Judge Allred and so, Judge Allred was out of a job and wasn't a state senator. And then Roosevelt tried to reappoint him Federal judge. Well, of course, the senator blocked the appointment. And so, he didn't get back -- he did not get back on the bench until -- until Patrick Daniel was gone and Truman -- and Truman became -- after President Roosevelt died and President Truman reappointed Judge Allred to the bench. So, he got back on the bench.

That's just a really fast story about Judge Allred so you can tell what person he was by the history. Allred enjoyed the trial immensely. After the case was over, he remained on the case -- Dr. Sanchez called me and by this time, Dr. Sanchez had a little more confidence in me. And he congratulated me for a good job and I said -- he said, "I got to tell you this story, Jimmy." He said, "I got back to Austin." He said, "I -- my dean called me in." He said, "Yeah, I'm going to give you the blow-by-blow description."

He said -- he was outraged, a very conservative man and didn't like the idea of Dr. Sanchez testifying, especially for the plaintiffs

in a case of that type. And he -- he said, "Doctor -- Dr. Sanchez, I read this story" -- he said -- he said, "I want you to know I didn't like that story."

Dr. Sanchez's response was, "Well, I want you to know I didn't write that story."

He said, "Well, that's not what I'm getting at. That's what they quote you as saying." He said, "First of all, you went" -- he said, "You went to the courthouse" -- and he said, "without even consulting with us, you went to the court."

He said -- "Well, I hate to tell you this, but I got a subpoena from the Court" -- and he said, "if I didn't go there, I was in trouble. So, I went because of the subpoena. Is there something wrong with that?"

"Well, no, that's not wrong. Well, why did you testify and say this and this and this?"

"Well, I did say that because it's the truth."

And so he said the dean just glared at me and said that's all and walked out. The poor man was purple, he was so mad. He called me.

And Dr. Sanchez was really a great, great man. And I -- he helped me immensely in several cases that I had involving educational issues and I am forever in his debt and, of course, he's also passed away.

Gus was -- I'm sad to say, died last -- he's been gone a long time; I think four or five years ago, Carlos passed away so I stand here before you this evening. John died in 1988 -- 1988, he passed away.

I'll tell you one more John Herrera story. And his last wish was that he -- that the funeral entourage circle the courthouse three times, wasn't that it? That's right. And so, they wouldn't go for that. As I understand it, they did let the hearse. Because John said he wanted to make one last trip to the courthouse before they put him away. So, he made his last trip to the courthouse. So, that's a trial lawyer for you. (Inaudible) my wife, who always (inaudible) me about when I'm going to retire, I promise you I will not make that last trip.

And I thank all of you very much. I appreciate your attention.

(Transcribed from the videotape by Michelle Erickson and edited by Michael A. Olivas. The presentation was a dinner speech, and was edited in its conversational style.)