

The Honorable Emilio M. Garza

By
Susan B. Biggs

Brilliant, open-minded, conservative, and fair. These are words used by attorneys when describing Judge Emilio M. Garza of the Court of Appeals for the Fifth Circuit. Other descriptions, such as modest and hard-working, are best illustrated by a story told by former law clerk Cynthia Orr. When she first starting clerking for Judge Garza, she figured federal judges really didn't work very hard. During her first weekend in the job, she came in on Saturday to work on an order and parked in the judge's space. When he showed up shortly thereafter and mentioned that someone was in his spot, she was mortified, but he appeared to think nothing of it. After she recovered from her fear and embarrassment, she found him a delight to work for. His best advice to her — to make sure she gave to her clients a modicum of justice — emphasizes his priorities on the bench.

Judge Garza is a graduate of the University of Notre Dame, where he earned bachelor's and master's degrees in government and international studies. After completing his master's, he served in the U.S. Marine Corps, where he held the rank of captain. He earned his law degree from the University of Texas School of Law and practiced with the firm of Clemens, Spencer, Welmaker & Finck for 11 years, five of them as partner. In 1987, he was appointed to the 225th Judicial District Bench of Bexar County, Texas, and, in 1988, he was appointed as U.S. district judge for the Western District of Texas. In June 1991, he was appointed U.S. circuit judge, Court of Appeals for the Fifth Circuit, where he currently serves with distinction. His office is in San Antonio, Texas, home of the FBA's '98 national convention.

Perhaps because of his personal experience with the crowded docket in the Western District of Texas, Judge Garza has helped by trying cases when his appellate docket is under control. He has recently tried cases in Corpus Christi, McAllen, Brownsville, and Laredo, and has a June docket pending in Pecos. He notes that with 400 to 600 criminal filings every year, it is almost impossible to handle the docket in the border divisions.

Judge Garza's biggest complaint about practicing attorneys is directed at those who attempt to take advantage of situations outside the rules of procedure or bounds of ethics. He states, "of all the professions, be-

ing an attorney should be a profession of responsibility that is above petty power plays or the goal being simply to win the case. Although attorneys have a duty to represent their clients zealously, the profession should not condone a win-at-all-costs syndrome, whether the goal is power, publicity, prestige, or money. The profession is still that — a profession. Attorneys should be driven both by representation of their clients and representation of the law in its highest-form."

His biggest pleasure is seeing an attorney who, within the bounds of the rules of procedure and ethics, represents his client to the utmost. He delights in observing representation of not only the client, but the profession, in a way that is admirable. An example from his own experience on the bench took place in the courtroom of the Del Rio Division of the Western District of Texas during a criminal drug trial. An attorney that he had never seen before, from the tiny community of Langtry — of Judge Roy Bean's "Law West of the Pecos" fame — approached him afterwards and told him, "Judge, I just want to thank you for giving my client a fair shake. Around here, criminal attorneys fight an uphill battle just to represent their clients." Judge Garza interpreted the attorney's remark as a criticism of the whole judicial system, and it impressed upon him that lawyers expect the same standard from judges that judges expect from attorneys. "All they want is to see the law applied to both sides."

The fact that Judge Garza is a man of solid values is evidenced by his description of his "proudest accomplishment," which he said was not so much anything about law, but about caring for his mother during the last years of her life. A strong woman who endured many hardships without complaint, Judge Garza's mother was born near Mexico City and raised in the state of Coahuila, Mexico. He describes her as "a 19th century woman caught in the 20th century." Her grandfather had come from Germany, where he was an engineer at Krupp Factory, helped Guenther build his second flour mill in San Antonio, and then left for Mexico after he and Guenther flipped a coin to see who would stay. Judge Garza's great grandfather lost the flip and headed to Mexico, where he started a flour mill that is still running today, although it was burnt during the Mexican revolution and the family had to flee to Texas. Although Mrs. Garza was as gritty as her grandfather, she suffered a stroke in 1989, and Judge Garza took pleasure in being with her, getting to know her better, and helping her out during the remaining 10 years of her life. He admires her toughness, describing how she never allowed him or anyone else to help her to walk unless she actually fell backwards!



One of the most memorable cases Judge Garza has presided over was a criminal case in El Paso involving 100 tons of marijuana, which the defendants flew into the United States from Mexico and then into Canada. Some 100 Canadian mounted policemen testified, and each would come into the courtroom, bow to the court, say "Yes, my lord," and then bow again. This is the manner in which they would give answers to the judge, despite telling them that they were not in a Canadian court and such ceremony was not necessary. Another memorable case involved an adult-oriented business case with a notorious witness. One late afternoon — approximately 5:30 — Judge Garza noted that the courtroom was full. Of course, this was highly unusual for that time of day, but Judge Garza soon learned why the spectator benches were full. One of the parties called a Miss ___ to the bench, and everyone in the

courtroom became very attentive as an exotic dancer entered. When Judge Garza learned that she was prepared to testify that, in her opinion, exotic dancing was an expression of her First Amendment rights, he disappointed everyone by allowing the opinion by stipulation and dismissing the witness.

Several of Judge Garza's appellate decisions have reached the Supreme Court and have been granted certiorari. Notable among those opinions is a recent one interpreting the federal bribery statute.¹

Not long ago Judge Garza was on the "short list" for nomination to the Supreme Court. Those who knew him were excited, yet concerned about what he or any nominee might face in getting confirmed. To his credit, Judge Garza said he would still go through with the confirmation process, in spite of seeing Justice Thomas gruelingly interrogated, because he believes it is his duty to go forward with the process set out by law.

Judge Garza has been an active member of the FBA since the early 1990s and he has been a guest speaker at the San Antonio Chapter's luncheons. In his opinion, FBA members are the backbone of attorneys that practice in the federal courts and they provide a consistency to the bar and an educational element that benefits the federal court system. He is especially appreciative of the involvement of the assistant U. S. attorneys and the Title VII and civil rights practitioners that are active in the San

Antonio Chapter.

Susan B. Biggs is a government attorney and serves the FBA as vice president for the Fifth Circuit.

Endnote

¹*United States v. Marmolejo*, 89 F.3d 1185 (5th Cir. 1996), *aff'd*, ___ U.S. ___, *Salinas v. United States*, 118 S.Ct. 469 (1997).

