

DISTRICT OF NEW MEXICO 1990-2010

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Although it is known as the land of enchantment, New Mexico might be labeled the land of innovation when it comes to the Federal District Court. Changes have been abundant over the last twenty years. Not only has the district witnessed an increase in its number of active judicial positions, but it has also undertaken several complex and celebrated building projects while always staying on the cutting edge of technology. The district court judges and staff have juggled all these changes while managing to cope with a dramatic increase in the court's workload.

Certainly this fluid management of the court's business would not have been possible without the appointment of additional judges. Since 1992, New Mexico has seen the creation of three new district court judgeships. These new seats were filled by C. LeRoy Hansen in 1992, who subsequently took senior status in 2003; M. Christina Armijo in 2001; and Robert C. Brack in 2003. Five district court seats were vacated when Judges Santiago E. Campos, Juan G. Burciaga, John E. Conway, James A. Parker, and C. LeRoy Hansen took senior status. These seats were filled, respectively, by now Chief Judge Martha Vázquez in 1993, Bruce D. Black in 1995, William P. Johnson in 2001, Judith C. Herrera in 2004, and James O. Browning in 2003.

All of these new appointments represent great change; however, the greatest physical changes over the past two decades have been the construction of two new courthouses in Albuquerque and Las Cruces. Incorporating elements of the vibrant New Mexican landscape, the Albuquerque building has been lauded on many occasions for its unique design. It sits on the site

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of the former McClellan Park in downtown Albuquerque, and relies on the craftsmanship of local artists and sculptors to create a space that provides both a physical anchor to the community and a tribute to the many cultures that have contributed to New Mexico's development. Planning for the building began in 1993 amid much controversy over its location. It was opened in November 1998 and formally dedicated as the Pete V. Domenici United States Courthouse on January 15, 1999. With courtrooms named for the rivers of New Mexico and the incorporation of August Leimbach's Madonna of the Trail monument on the grounds, the building has served the public since.

In addition to the new Albuquerque building, plans for a new courthouse in Las Cruces have been well underway for some time. Now, after more than fifteen years of effort, the new building opens for business in early 2010. Originally designed by nationally renowned architect Antoine Predock, the Las Cruces courthouse will have eight courtrooms and nine chambers and will also serve as home to the court clerk, the United States Marshal, and the probation and pretrial divisions. At approximately 250,000 square feet and costing an estimated \$91 million, it is the largest office building in Las Cruces.

Within the walls of the district's courthouses, substantial improvements have also been afoot. In 1992, the district adopted the Civil Justice Reform Act (CJRA), which set goals for the expeditious disposition of civil cases, created the Pro Bono Civil Panel, and resulted in the formation of the Federal Bar Association for the District of New Mexico. The adoption of the CJRA led to the district's first attempts to automate its filing system, with electronic filing beginning in 1997 and batch scanning of court documents commencing in 2000. Technological innovation did not stop with the filing system; the courtrooms themselves have also been updated

with state-of-the-art technology, including Elmo visual presenters (for displaying exhibits to jurors), computer capability for judges and staff, and real-time court reporting.

These increases in efficiency were born of necessity. The district's workload has increased tremendously, especially criminal filings. The district has consistently ranked at or near the top of the greatest number of cases per judge. To deal with this pressure, in 1996 magistrate judges were included for the first time in the random assignment of civil cases and now take on every other civil case on the docket. Any party may elect not to consent to the magistrate judge, and in that event the case will be assigned to a district judge. In addition, two resident Tenth Circuit judges carry a small district court docket, and the district often plays host to visiting judges.

While all this change has certainly enabled the District of New Mexico to better serve the public, the court also experienced the loss of four of its most distinguished judges during this period: Howard C. Bratton, Edwin Leard Mechem, Santiago E. Campos, and Juan G. Burciaga.

Howard C. Bratton¹

In 1964, President Lyndon Johnson appointed Howard C. Bratton United States District Judge for the District of New Mexico only a few weeks after his nomination. Judge Bratton's quick ascension to the bench came as a result of his unique qualifications for the position, both professional and hereditary.

Judge Bratton was born in 1922 in Clovis, New Mexico, where his father, Sam, was a state district court judge. Shortly after Howard's birth, Sam Bratton was elected Justice of the New Mexico Supreme Court, but in 1924 he resigned from the court and was elected to the United States Senate. Thus, the family split its time between Washington, D.C., and Albuquerque. In

¹ By Frances Bratton.

1933, Senator Bratton was appointed to the Tenth Circuit Court of Appeals by President Franklin Roosevelt, and the Brattons established their permanent home in Albuquerque.

Always ahead of the curve, young Howard attended the New Mexico Military Institute and graduated at the age of fifteen, after having skipped three grades. In 1941, at the tender age of 19, he graduated from the University of New Mexico and enrolled in Yale Law School. Although he was legally blind in one eye, he used his father's connections to enlist in the United States Army in February 1942, leaving Yale and serving in France and Germany. By late 1945, he had risen to the rank of captain. Of all his accomplishments, his family reports that his military service was the one of which he was proudest.

Following the War, Howard completed his legal studies at Yale and was admitted to the New Mexico Bar in 1948. He practiced for a brief time in Albuquerque and moved to Roswell in 1952, where he practiced oil and gas law at the firm that became known as Hinkle, Bondurant, Bratton & Christy. During his years as a practicing attorney, he served as chairman of the New Mexico Junior Bar Association, chairman of the Chavez County Bar Association, and chairman of the Public Lands Committees of both the New Mexico Oil and Gas Association and the Interstate Oil Compact Commission. In addition, he served as a member of the New Mexico Commission on Higher Education and of the Board of Regents of the University of New Mexico, where he also served a term as president.

Upon his appointment to the district court in 1964, the Bratton family returned to Albuquerque. Assuming office just one month after his forty-second birthday, he served as an active judge until February 1987 and as chief judge from 1978 to 1987, when he took senior status. During that time, he served as a member of the United States Judicial Conference, working on three of its committees: the Committee on Financial Disclosure, the Ad Hoc Committee on

International Judicial Relations, and the Committee on Operation of the Jury System, chairing its Subcommittee on Pattern Jury Instructions. He also served as a member of the Federal Judicial Center Board and was elected the first president of the Tenth Circuit Trial Judges Association, which later became part of the Federal Judges' Association.

While he was renowned across the state for his knowledge of the law, judicial demeanor, and sense of humor, Judge Bratton was also a first-rate administrator. When he came on the bench, his colleague H. Vearle Payne had been serving for only one year, and the two preceding judges had died within four months of each other. Judge Bratton's father, a senior circuit judge who also filled in for several years as a district court trial judge, also died during this period, which left the district without any sitting judges. Judges Payne and Bratton worked hard during their early years to clear up the backlog of cases that had accrued. One of Judge Bratton's law clerks recalls the late hours spent working on the Fourth of July, Christmas Eve, and New Year's Eve.

Throughout his tenure, Judge Bratton always sought new ways to increase efficiency. He was responsible for such innovations as delegating discovery in civil cases to the district's then sole magistrate judge and allowing the clerk of the court to grant temporary jury service deferrals. The delegation to magistrates at that time, of work that is now routine for them, led to higher total and improved termination rates for the district's civil cases, and attracted the attention of the Federal Judicial Center, which recommended that other districts adopt the same procedures.

Judge Bratton also expected the utmost in professionalism at all times, and attorneys appearing before him recall his "black book" of lawyers who had committed minor infractions, such as being late to court. However, the stern side of Judge Bratton gave way to his humanity, especially during sentencing, which weighed on him more heavily than any other aspect of his position.

In his service to the district court, Judge Bratton heard a full range of cases, from labor disputes, to bankruptcy, to environmental matters. One of his most interesting early cases involved a demonstration organized by the Alianza Federal de Mercedes, a group of Hispanic Americans who claimed that Carson National Forest was a land grant that belonged to them.² After generating much publicity about the issue, in the fall of 1966 the group's leader, Reies Tijerina, and some 300 Alianza members attempted to enter the park to assert their alleged land rights. They overpowered forest rangers and confiscated their government-issued trucks.

The ensuing publicity reached national levels, and the defendants moved that the case be heard in New York, Chicago, or San Francisco. While the court concluded that the pre-trial publicity could hinder a fair trial, it decided to move the case to Las Cruces. Throughout the week, tensions ran high, but Judge Bratton presided with composure, authority, and evenhandedness, ensuring no disruptions, even when the defendants were convicted.

Of all the cases Judge Bratton heard during his time on the bench, arguably the most important arose from a lawsuit referred to by many New Mexicans as the Great El Paso Water Grab.³ The city of El Paso, Texas, had filed applications with New Mexico's State Engineer requesting permission to divert groundwater from wells drilled into New Mexican aquifers across the state line to El Paso. The applications were denied on the ground that the New Mexico Constitution and a New Mexico statute prohibited export of the state's groundwater. Judge Bratton's ultimate decision in this case came only after many hearings and upheld the denial of El Paso's applications by the State Engineer. Most important, the case continues to govern the statutes, regulations, administration, and planning regarding water policy in New Mexico.

² See *United States v. Tijerina*, 407 F.2d 349 (10th Cir.).

³ *City of El Paso v. Reynolds*, 563 F.Supp. 379 (D.N.M. 1983).

During his years on the bench, Judge Bratton was recognized repeatedly for his exemplary service, garnering many awards and honors, including nearly perfect scores in the Albuquerque Bar Association's annual polling of lawyers on judges' knowledge of the Rules of Evidence and the law, expeditious handling of cases, demeanor, fairness, and courtesy. In 1971, the University of New Mexico conferred upon him an honorary Doctorate of Laws, and the University of New Mexico Law School honored him with its Distinguished Service Award in 2000.⁴ Judge Bratton continued to work as a senior judge until 2000, even through the debilitating effects of chemotherapy. His illness caused him to resign in March 2000, and he died at the age of 80 in May 2002.

Edwin Leard Mechem⁵

In 1970, President Richard Nixon appointed Edwin Leard Mechem as a United States District Judge for the District of New Mexico, a position in which he actively worked until his death in 2002. Judge Mechem was born in Alamogordo, New Mexico in 1912, the year New Mexico was admitted to the Union—a fitting coincidence given his lifelong passion for New Mexico. His thirty-two years as a federal judge represent only part of his exceptional career as a public servant devoted to his home state. Before embarking on a political career, he served for four years with the Federal Bureau of Investigation. Then, in 1947, he was elected to the New Mexico House of Representatives, and he later served as Governor of New Mexico for an impressive four terms.⁶ In 1963, he returned to the legislative branch representing New Mexico

⁴ The University of New Mexico Law School is named Bratton Hall in honor of Circuit Judge Sam Bratton, who was instrumental in its founding.

⁵ By Honorable James A. Parker, U.S. District Judge for the District of New Mexico.

⁶ His service as governor began in 1950, when he became the first Republican governor in New Mexico in more than twenty years. He was elected again in 1952, was asked to run again, and was elected as governor in 1956 and 1960.

in the United States Senate. Throughout his career, he had a remarkable gift for remembering the names of the many people he met during his campaigns and the details of their conversations.

Known as Mr. Republican, Big Ed, and Honest Ed, Judge Mechem projected a majestic presence that belied his humble, unpretentious nature.⁷ He was considered by all to be a judge of great integrity, although he was rather taciturn in public settings. This unusual combination of traits is perfectly illustrated in an old story about Judge Mechem as governor. At the end of a legislative session, an aggressive lobbyist accosted Judge Mechem, and the following conversation ensued:

"Are you going back to Las Cruces for the weekend, Governor?"

"Yep."

"Well, I'd like to give you a little bottle to take with you.'"

"Nope."

"Look, Governor, there is nothing wrong with this; it's just a token of friendship."

"Nope."

"Governor, please don't think I'm trying to influence your vote on anything, this is just a gesture of good will."

"Nope.”,

After several more entreaties, the conversation skidded to a halt, and that was that.

Judge Mechem's integrity and quick wit are reflected in another anecdote from his days as Governor. In 1957, Mechem was sworn in for his third term as Governor in the same ceremony with Fred M. Standley, a colorful member of the Santa Fe Bar, being sworn in as Attorney

⁷ It was this presence that once prompted a defendant to address him not as “Your Honor,” but instead as “Your Majesty.”

General. The two men were not fond of each other. As they were descending the platform, Standley looked at the Governor and said, "If you give me half a chance, I'll keep you out of jail." Without missing a beat, Mechem said, "If you give me half a chance, I'll put you in."

As a judge, he handed down many memorable decisions, including finding that Sandia Corporation, the predecessor to Sandia National Laboratories, engaged in age discrimination; that the State of New Mexico and Albuquerque Public Schools failed to provide free and appropriate public education for the handicapped; that Socorro County Jail had been indifferent to the needs of a prisoner who died in custody; and that the Albuquerque Police Department had illegally treated a female officer differently than her male counterparts. He was also known for his expertise in Indian law, ruling, among other things, that state game and fish laws are not valid on Indian lands, that only Indians could sell their wares under the portal of the Santa Fe Palace of the Governors, and that a dispute over obtaining electricity at the Taos Pueblo should be handled internally by tribal leaders. When asked about his renown, he simply replied, "The only thing I do is read the law as it says it's supposed to be and apply it."⁸

One notable Native American case involved sex discrimination by a pueblo.⁹ Although especially troubled by the case, Judge Mechem felt compelled to defer to tribal sovereignty. The case was a class action against the Santa Clara Pueblo and its governor under the Indian Civil Rights Act (ICRA) equal protection clause. The plaintiffs claimed that the pueblo ordinance, which denied pueblo membership to the children of women (but not men) who marry nonmembers of the pueblo, violated that clause. Judge Mechem first decided that he had jurisdiction to decide

⁸ District of New Mexico Side Bar 11 (Feb. 2003) (quoting a 1995 Albuquerque Journal article).

⁹ *Santa Clara Pueblo v. Martinez*, 402 F. supp. 5 (D.N.M. 1975), reversed by 540 F.2d 1039 (10th Cir. 1976). The Circuit Court opinion was eventually reversed by the Supreme Court. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

the case on the merits. Then, noting that the equal protection guarantee of the Indian Civil Rights Act was not identical to the federal constitutional guarantees of equal protection, he held in favor of the pueblo on the merits. His decision was driven by his notions of tribal sovereignty:

If those words have any meaning at all, they must mean that a tribe can make and enforce its decisions without regard to whether an external authority considers those decisions wise. To abrogate tribal decisions, particularly in the delicate area of membership, for whatever 'good' reasons, is to destroy cultural identity under the guise of saving it. Congress has not indicated that they intended the Indian Civil Rights Act to be interpreted in such a manner.¹⁰

The Tenth Circuit agreed on the jurisdictional issue and held that ICRA had abrogated the pueblo's immunity from suit; however, it reversed on the merits. Subsequently, the United States Supreme Court held that the pueblo had sovereign immunity from suit under ICRA but that the governor could be sued for injunctive relief. The Supreme Court then reversed the judgment, finding that Congress did not intend to provide a private right of action and that tribal courts were more competent to evaluate tribal laws than federal courts. During an interview, Judge Mechem recalled being disturbed by the case, but in his view the sovereignty of the pueblo was unavoidable.¹¹

Judge Mechem came to the bench after being seasoned in a world of legislators, governors, and United States Senators. This unique political background came to the fore in a 1980 case when Congressman John Anderson tried to register as an Independent presidential candidate after dropping out of the Republican primary.¹² Judge Mechem initially declared that no one should have "two bites at the apple," but he eventually granted Congressman Anderson's motion for summary judgment and enjoined the Secretary of State from refusing to accept Anderson's

¹⁰ *Santa Clara Pueblo*, 402 F.Supp. at 18-19.

¹¹ Transcript of Oral History, Judge Edwin L. Mechem, interviewed by Maureen Sanders & G. Emlen Hall, August 27, 1997, at 20-23.

¹² *Anderson v. Hooper*, 498 F.Supp. 905 (D.N.M. 1980). Mr. Anderson's Republican opponents were Ronald Reagan and George H.W. Bush.

declaration of candidacy and nominating petitions based on deadline requirements. To support his ruling, Judge Mechem determined that the Secretary of State had failed to show a compelling interest to justify the different deadline requirements, which discriminated against independent presidential candidates as distinguished from partisan candidates. Thus, the rules violated the First and Fourteenth Amendments of the United States Constitution.

Throughout these cases and many others, Judge Mechem always retained his sense of humor, as demonstrated by his tongue-in-cheek commentary and unique chuckle that was a ringer for Santa's "ho, ho, ho." To remind himself that he needed to be patient while listening to the sometimes droning arguments of lawyers, he kept on his bench, immediately in front of his chair, a photograph of a road sign in a remote area of southwestern New Mexico that read, "Gut Ache Mesa."

Although he took senior status in 1982 at the age of seventy, he continued to maintain an active caseload until his death. When colleagues asked him why he returned to court daily, he announced that he could either "come to court and issue orders or stay home and take them!" Failing health eventually prevented him from coming to court regularly, but that only meant his clerk would make trips to his home to deliver case files for him to review and to collect drafts. His kitchen table was piled high with briefs up to the day he died.

Santiago E. Campos¹³

In 1978, President Jimmy Carter appointed Santiago E. "Jimmy" Campos to the United States District Court for the District of New Mexico. Judge Campos was born in Santa Rosa, New Mexico, in 1926, and became the first person of Hispanic heritage to serve on the federal bench. After serving in the United States Navy from 1944 to 1946, he earned his law degree from the

¹³ By Honorable James A. Parker, United States District Judge for the District of New Mexico.

University of New Mexico in 1953, graduating first in his class. He began his legal career as a member of the Office of the Attorney General for the State of New Mexico, after which he practiced law with a firm in Santa Fe.

As a young Assistant Attorney General, Santiago Campos was assigned to represent the New Mexico State Racing Commission which had just authorized Sunday horse racing. A suit seeking to enjoin such "Sunday sinning" was filed by an evangelical minister from Eastern New Mexico. Campos moved to dismiss the petition for injunctive relief on grounds there was no irreparable injury. After opposing counsel argued at length about the degradation Sunday racing would inflict on the morals of the citizenry, Campos argued eloquently that certainly Christianity and virtually all other religions granted forgiveness of sins, so how could any damage caused be considered irreparable?

Judge Campos was elected district judge of the First Judicial District of New Mexico in Santa Fe in 1971, and held that position until his appointment to the federal bench in 1978. He served as chief judge from 1987 to 1989, at which time he assumed senior status.

Although he was famous throughout the district for his wry sense of humor, Judge Campos may have been best known for his unrelenting pursuit of professionalism. He demanded the very best in advocacy from attorneys appearing before him and thought nothing of questioning witnesses himself in order to ensure that justice was done in all of his cases. He also demanded the best from himself, as evidenced by his finely honed golf skills, even though his passion for golf was nearly derailed when he shattered a stained-glass church window at an early age. The district used to hold annual judicial retreats somewhere near a golf course. At his first retreat in Ruidoso, Judge Campos drew Magistrate Judge Rick Puglisi to be in his foursome. Campos was a scratch golfer and Puglisi was a novice. After two holes Campos looked at Puglisi and asked,

"Have you ever thought about lessons?" Judge Puglisi did not play golf again for several years. Judge Campos became the premier golfer among the New Mexico federal judges.

Judge Campos was also a linguist and a teacher of both Spanish and English. Not only did he always have the perfect word or turn of phrase at the ready, but he also entertained with his full repertoire of Spanish dichos. At his investiture ceremony, he delivered part of his speech in Spanish, making it a prideful occasion for many New Mexico Hispanics. However, his Spanish wasn't limited to simple speeches and sayings; he had a range of nicknames on hand for just about everyone, including Judge James A. Parker, whom he called either *tocayo* (namesake) or *flaco* (skinny). And his nicknames were not limited to Spanish words: He once referred to then-Chief Judge John E. Conway as "Iron Pants" after he told then-Senior Judge Campos that he would have to vacate his chambers in favor of an active judge sooner than anticipated. He distinguished "billable hours" from "billable hours," which might properly be recovered in cases involving fee shifting. Judge Campos might make a remark in what appeared to be all seriousness, with only the emerging smile and twinkle in his eye to reveal otherwise.

Judge Campos decided a number of significant cases with opinions that reinforced his reputation as a master wordsmith. For example, in *Tayyari v. New Mexico State University*,¹⁴ Judge Campos granted an injunction against New Mexico State University, prohibiting it from enforcing a resolution designed to rid the campus of Iranian students during the hostage crisis. The Regents of the University had voted to deny enrollment to students “whose home government holds, or permits the holding of U.S. citizens hostage unless the American hostages are returned unharmed.”¹⁵ The Judge ruled that the resolution violated the Iranian students' equal protection

¹⁴ 495 F.Supp. 1365 (D.N.M. 1980).

¹⁵ *Id.* at 1368.

rights under the United States Constitution and impermissibly interfered with federal immigration policy.¹⁶ Stating the problem elegantly and directly, he wrote, "This crisis tests our country's patience. It also tests our country's commitment to its fundamental principles of liberty expressed in the Constitution."¹⁷ Judge Campos concluded with a quote from "[o]ne of America's great radicals," Benjamin Franklin: "God grant that not only the love of liberty, but a thorough knowledge of the rights of man may pervade all the nations of the earth so that a philosopher may set his foot anywhere on its surface and say, 'this is my country'."¹⁸ In a final note, Judge Campos declared that Ben Franklin's "ideal is as civilized and as civilizing today as when [he] articulated it about two hundred years ago."¹⁹

In perhaps his most noteworthy case, Judge Campos presided over a fourteen-week jury trial involving a breach of contract case between Robert McKinney, former owner of The New Mexican, and Gannett Company, a newspaper, radio, and television conglomerate that had purchased The New Mexican from McKinney.²⁰ Judge Campos stated that, instead of honoring its contractual commitments, Gannett had escalated its breaches of the contract to "the highest level of dishonor,"²¹ and described Gannett's executives as "hard chargers" who exhibited "perfidy" towards McKinney's contractual rights with attitudes that were "jaded" and "insensitive."²² Judge Campos's orders were affirmed by the United States Court of Appeals for

¹⁶ *Id.* at 1372-74, 1376-77.

¹⁷ *Id.* at 1376.

¹⁸ *Id.* at 1380.

¹⁹ *Id.*

²⁰ *McKinney v. Gannett Co.*, 660 F. Supp. 984 (D.N.M. 1981).

²¹ *Id.* at 1002.

²² *McKinney v. Gannett Co.*, 660 F.Supp. 1037, 1042 (D.N.M. 1983).

at the Tenth Circuit,²³ and the case was featured in a part of the 1996 book entitled *The Chain Gang: One Newspaper Versus the Gannett Empire*.²⁴

Toward the end of his judicial career, Judge Campos took up painting, became a serious artist, and began showing up at his chambers wearing a black beret to look the part. On one occasion, he brought in his painting of a landscape featuring two pine trees standing together in a hilly field, which was the product of an "artistic shootout." As the story goes, he had been introduced to a Montana art dealer, who in turn had introduced him to a young Mexican artist from Oaxaca. Striking up a conversation with the artist, Judge Campos asked if he was familiar with the ranchera entitled *Los Dos Arbolitos*. The artist, with the Judge joining in, broke out in song, reciting the sad tale of a man who sees two trees grow up together on his ranch while he remains without a *campañera*. Inspired by the sad story, the Judge challenged the young Mexican artist and the Montana art dealer, who also was a painter, to paint their own depictions of the song. All three artists then gathered at the Campos home over his famous "sunshine" drinks (orange juice, tequila, and lime) and his special omelets. The assembled jury, most of whom were family and friends of the Judge, agreed that his painting was the best.

Judge Campos came from an old New Mexico family whose history, like his own, was intertwined with both the creation of the American system of jurisprudence and the establishment of the magnificent Santa Fe federal courthouse. The first Clerk of the New Mexico Territorial Court was James Giddings, the great grandfather of Judge Campos. In the late 1970s when Campos was a state judge in Santa Fe, he began to envision restoring the Santa Fe courthouse to one where trials could again be held. (Tenth Circuit Judge Oliver Seth had the only judicial

²³ See *McKinney v. Gannett Co.*, 817 F.2d 659 (10th Cir. 1987).

²⁴ Richard McCord, *The Chain Gang: One Newspaper Versus the Gannett Empire* (1996).

chambers in the building at the time.) Before he could undertake to implement the transfer to state jurisdiction he was appointed to the United State District Court and immediately declared he would restore the custom of holding federal trials in Santa Fe.

In a fitting tribute to his dedication in reviving the historic federal courthouse in Santa Fe, on September 15, 2007, the District of New Mexico held a ceremony dedicating the courthouse as the "Santiago E. Campos United States Courthouse." When Judge Campos died in January 2001 at the age of 74, the district lost one of its finest.

Juan G. Burciaga²⁵

Juan G. Burciaga was born in Roswell, New Mexico, in 1929. The son of a Mexican immigrant, Burciaga was appointed as a United States District Judge for the District of New Mexico by President Jimmy Carter in 1979. He served as chief judge from 1990 to 1994, and was one of only a handful of Hispanics to reach the federal bench in his day. Before entering law school at the University of New Mexico, Burciaga attended the United States Military Academy and served as a fighter pilot in the United States Air Force for eight years. After law school, he served as a law clerk to Judge H. Vearle Payne before entering private practice.

Judge Burciaga demanded a great deal from lawyers that appeared before him—he was direct, and some feared him, but he treated all those who appeared before him equally, regardless of whether he was personally acquainted with them, and he had a strong sense for decorum and just results. On the other hand, everyone who knew him closely remembers an endearing innocence about his character and an ever-present sparkle in his eye. Colleagues recall the story of his arrival at the University of Colorado as a freshman college student. It was his first trip out of Roswell, and he promptly booked into a motel and began attending classes. After a few days,

²⁵ By Honorable John E. Conway, United States District Judge for the District of New Mexico.

he remarked that he might have to drop out, as he was running out of money for room and board. His acquaintance asked him which dorm he was staying in. His reply: "What's a dorm?" It never occurred to him that a college might provide what he called "three hots and a cot!"

Judge Burciaga had a sharp intellect. A member of the Mensa Society, he was an avid reader who enjoyed history and sociology, in addition to a good mystery. He was also a master of words, a skill that is reflected in his impassioned judicial opinions, which are also replete with evidence of his intellect, sharp wit, and strength of character and conviction.

His skills did not stop at words; Judge Burciaga was also an excellent chef. As a widowed father of five, including two sets of twins, he developed his culinary skills of necessity, taking particular pride in his homemade green chile. Dinner with the Judge was always a special occasion, offering wonderful food, music, and conversation, more often than not topped off with a good cigar under the stars.

Of the many matters over which Judge Burciaga presided, perhaps the most memorable is the landmark case of *Oklahoma v. NCAA*. In this case, the University of Oklahoma and the University of Georgia joined forces to bring suit as private plaintiffs against the National Collegiate Athletic Association (NCAA).²⁶ The plaintiffs alleged that the controls the NCAA exercised over the televising of college football games violated the Sherman Antitrust Act, and Burciaga agreed, ruling that the NCAA had acted like a "classic cartel."²⁷ He held that the NCAA had violated antitrust laws by its televised football regulations and contracts with broadcasters and that the regulatory scheme constituted illegal price fixing and illegal monopolization of the broadcasting market.

²⁶ *Bd. Of Regents v. NCAA*, 546 F. supp. 1276 (W.D. Okla. 1982).

²⁷ *Id.* at 1295.

Both the Tenth Circuit Court of Appeals²⁸ and the United States Supreme Court²⁹ affirmed. The Supreme Court held that the NCAA's conduct violated the Sherman Act, that the regulatory scheme was a horizontal restraint of trade (it decreased output and raised prices), and that televised football was a separate market that the NCAA solely controlled and over which it had a monopoly. However, the Court also held that the NCAA's rules were not illegal *per se* because other sports fostered competition. Thus, as a result of Judge Burciaga's groundbreaking ruling, the NCAA's thirty-year monopoly over viewing rights to college football was nullified, and NCAA institutions became free to negotiate television rights to their own football games for the first time in history.

Judge Burciaga pushed the legal envelope again in a case that has become known in New Mexico as the Duran Consent Decree.³⁰ In the *Duran* case, prison inmates filed an action against the state prison system seeking an injunction halting staff layoffs and requiring that staff vacancies in prison hospitals be filled.³¹ The case is credited as being the most enduring legacy of--and perhaps one of the few positive effects arising from--the infamous 1980 riot at the New Mexico State Penitentiary.³² Judge Burciaga held that the prison system must not reduce the authorized compliment of security staff at any of the New Mexico penitentiaries or other correctional facilities unless the minimal staffing levels necessary to provide a constitutional level of safety and security for prisoners had been met.³³ The Tenth Circuit affirmed.³⁴

²⁸ *Bd. of Regents v. NCAA*, 707 F.2d 1147 (10th Cir. 1983).

²⁹ *NCAA v. Bd. of Regents*, 468 U.S. 85 (1984).

³⁰ The Duran Consent Decree was a negotiated instrument between the inmate population and the New Mexico Department of Corrections in which more than a dozen areas of improvement were identified, including correspondence, attorney visitation, food service, legal access, staffing, and training. In furtherance of the decree, a training academy was established and was the first of its kind to be accredited by the American Correctional Association.

³¹ *Duran v. Anaya*, 642 F. Supp. 510 (D.N.M. 1985); *Duran v. Carruthers*, 678 F Supp. 839 (D.N.M. 1988).

³² This riot is described in detail in *The Hoto Factory: A First Hand Account of the 1980 Riot at the Penitentiary of New Mexico*, G. Hulman and W.G. Stone (I Universe, Inc. 2005).

³³ *Anaya*, 642 F. Supp. At 525.

³⁴ *Duran v. Carruthers*, 885 F.2d 1485 (10th Cir. 1989); *Duran v. Carruthers*, 885 F.2d 1492 (10th Cir. 1989).

In addition to these two cases, Judge Burciaga authored a number of other important and lasting decisions. In one case, he firmly rejected the "Thornburgh Memorandum" issued by the then Attorney General of the United States that had taken the position federal prosecutors could ignore legal ethics rules in the investigation of criminal cases if the Justice Department approved.³⁵ In 1991, he published a lengthy opinion attacking the excesses of the war on drugs and upholding the religious freedom rights of an Anglo member of the Native American Church who had been arrested for possession of peyote.³⁶ In that opinion, which truly reflects his writer's voice, he stated,

To us in the Southwest, this freedom of religion has singular significance because it affects diverse cultures. It is as much of us as the rain on our hair, the wind on the grass, and the sun on our faces. It is so naturally a part of us that when the joy of this beautiful freedom sings in our souls, we find it hard to conceive that it could ever be imperiled.³⁷

Judge Burciaga (along with Circuit Judge Seth and Judge Mechem) also served on a three-judge panel to hear a challenge to a redistricting plan enacted by the New Mexico legislature after the court had ordered a plan consistent with one-person, one-vote.³⁸ Although the panel determined that the new plan complied with the requirement of population equality, it concluded that the plan was deficient for several counties because it minimized or cancelled out Indian or minority voting strength.³⁹ Finding the legislature insufficiently responsive to the principles of redistricting, the court imposed its own reapportionment plan and ordered federal monitoring for ten years.⁴⁰

³⁵ *Matter of Doe*, 801 F.Supp. 478 (D.N.M. 1992).

³⁶ *United States v. Boyll*, 774 F.Supp. 1333 (D.N.M. 1991).

³⁷ *Id.* at 1334.

³⁸ *Sanchez v. King*, Civ. No. 82-0067-M, slip op. at 2-3 (D.N.M. Aug. 8, 1984) (court's findings of fact and conclusions of law).

³⁹ *Id.* at 129.

⁴⁰ *Id.*; *Sanchez*, slip op. at 2 (D.N.M. Dec. 17, 1984) (judgment).

Up to the moment of his untimely death in 1994, Judge Burciaga remained immersed in the task of legal analysis, working on such controversial cases as those involving alleged sex abuse by Roman Catholic priests, the selection of a site for the new federal courthouse in Albuquerque, and a civil rights case in which Hispanic meat cutters successfully challenged working conditions at Kirtland Air Force Base.

Judge Burciaga once described serving as a federal judge as "a lonely role"--one requiring independence and a certain amount of isolation. However, despite the solitary nature of his task, he was well-loved and respected by his family, colleagues, and many friends. He is remembered for his enduring good humor, his never-ending quest for the highest level of professionalism, and his vision of justice. One of the court's most colorful characters, and one of its most passionate advocates, Judge Burciaga was a caring and accomplished jurist.