

CONTINUED FROM PAGE 1

group. Many readers will, we're sure, notice that our list is 10 white men; but we tried, through interviews and research, simply to pick 10 who made the biggest difference.



**Joseph D. Jamail: The swaggering symbol of the big, bad personal injury bar sparked a national debate over money and influence in judicial politics.**

Nine years have passed since Jamail won a \$10.53 billion judgment against Texaco for interfering with Pennzoil's attempts to merge with Getty Oil, but the echoes from that verdict remain strong today.

Jamail became more than fabulously wealthy once the case settled in 1987 (he pocketed an estimated \$345 million fee from Pennzoil). He became a symbol of everything critics in and outside Texas saw as a judicial cancer — a crude, bullying lawyer with an outsized ego and the ability, with hundreds of millions of dollars in the bank, to do whatever he wanted. National publications used the Pennzoil victory as a touchstone for their mocking "Texas Justice" attacks, especially after Texaco sought bankruptcy protection after the Texas Supreme Court upheld the judgment. "60 Minutes" found Jamail an irresistible target, focusing on his gigantic courtroom victories and largesse to the campaign coffers of Supreme Court justices.

With more money than God, as the saying goes, Jamail used the victory as a springboard into more commercial litiga-

tion, moving, in his view, to an even higher plane of litigator. The results were often spectacular and controversial. In 1992 he won a \$550 million verdict in Galveston against now-defunct Miniscribe Corp. of Denver in a securities fraud action. The verdict included an astounding \$530 million in punitive damages, more even than Jamail had asked for. Jury-tampering allegations surfaced but were never proven, and the parties settled for an undisclosed sum.

And Texaco? The oil company proved things are never quite as cataclysmic as they seem. After the bankruptcy filing in 1987, Texaco's stock fell 28 percent to \$27 a share. Two years later, with the Pennzoil settlement completed, Texaco's stock hit \$60, then an all-time high.



**W. Frank Newton: In the past 10 years, \$43 million in IOLTA funds have been distributed to legal services programs. He's the reason why.**

Frank Newton did not create the Interest on Lawyers' Trust Accounts program single-handedly, but he has been the most important force in its development from a voluntary program in 1985 to a mandatory safety net for legal ser-

vices groups. IOLTA money flowed to Texas programs trying to cope with stagnant and then shrinking federal dollars. As a result, thousands of low-income Texans have received legal help they otherwise wouldn't have.

Newton, dean of the Texas Tech University School of Law, has been legal services' most effective voice. Legislators, judges and Bar leaders respect him, and he's the rare advocate whose words can change minds on pro bono policy and legal services funding. He won approval for a survey to help determine where legal services money is most needed and was instrumental in leading the Bar to adopt its pro bono policy — a voluntary policy, but a start nonetheless.

Newton also has been trying, in his quiet way, to deal with the "Rambo" litigation trend, first by spearheading the Texas Lawyer's Creed and now as a key member of the Texas Center for Legal Ethics and Professionalism. Practitioners of ambush litigation may scoff at the creed, a voluntary "be nice" code for lawyers. But if more lawyers took it to heart, the legal environment would be a much better place.



**Laurence B. Vineyard Jr.: In ruining his career and damaging his firm, the fallen dealmaker personified the sav-  
inos-and-loan fiasco**

# Ten Who Made A Difference

CONTINUED FROM PAGE 40

Kauffman eventually lost that case, too, as the Supreme Court reversed. But, as in *Edgewood*, even in losing there was a measure of gain. Pressure from the suit resulted in an additional \$350,000 for border universities.



**William Wayne Justice:** He defined the activist federal judge and sent a generation of reluctant Texas lawmakers scurrying to meet — and fund — his mandates.

*Texas Monthly* labeled Justice “The Real Governor of Texas” back in 1978, and the description still resonates with Texans. Justice’s control of the state prison system through the lengthy *Ruiz* litigation remained an issue through the 1994 elections, even though a settlement had been reached and a weary crop of elected officials were glad to put the issue to rest, if only to say he no longer strictly controlled prison policy. The perception that Justice had ruined a brutal but effective system largely faded over the years, but the *Ruiz* litigation’s effects extended to other state reform efforts.

Justice’s influence extended far beyond *Ruiz*. His rulings, viewed as meddling and tyrannical by state officials and bureaucrats, were often the strong medicine that was required in the areas of immigration, housing desegregation and bilingual education. Before it was turned over to U.S. District Judge Barefoot

and riddled with infections and diseases from unsanitary conditions.



**Patrick E. Higginbotham:** The most influential conservative on the 5th Circuit.

No judge typifies the changing face of the 5th U.S. Circuit Court of Appeals more than Higginbotham, a 1982 Reagan appointee who came to the appellate court after seven years as a Northern District U.S. district judge. And no case of the past decade better showed his influence than the 5th Circuit’s 1993 opinion rejecting *LULAC v. Clements*, the Voting Rights Act challenge to the state’s at-large system of electing judges.

When a 5th Circuit panel in January 1993 found that at-large elections in eight counties violated the act, Higginbotham dissented to the tune of 141 pages and brazenly attached an order he said should be the majority opinion. He also called for, and got, an en banc hearing. When the full court issued its opinion in the *LULAC* case seven months later, Higginbotham was the majority author, and his previous dissent had become the law.

Higginbotham is keenly aware of the historic role the 5th Circuit played in the nation’s civil rights struggles. In his *LULAC* opinion, Higginbotham acknowledged the “steady march of civil rights” that has come to the New Orleans home of the circuit. But, he said, the “relatively clear lines of legality and morality have become more difficult to locate . . .” What

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ton. The DA's office in the 1992 elections charged after a judge it considered "soft," Norman Lanford, and helped engineer his defeat. Former assistant Catherine Herasimchuk is Gov. George W. Bush's criminal justice adviser.



**John Johnson and Stephen D. Susman: The past, present and future of firm management and big-ticket litigation.**

Johnson, the founder and visionary behind the firm that was known finally as Johnson & Wortley, shook up a sleepy Dallas legal market by raiding other firms and made his mark as a rainmaker more aggressive than his market — indeed, than many markets



# Ten Who Made A Difference

cial, in part because the Houston litigation boutique doesn't fit into any nearly drawn categories. Susman takes both plaintiffs' and defense work, and the firm makes its huge profits, he says, by "working smart" — setting fees on the work to be done, not mindlessly throwing bodies at a case to pile up billable hours. This new leverage has not won widespread favor in Texas, but it will — the environment of the business of law will demand it.

Susman is a key player in the Supreme Court's efforts to rewrite the rules of litigation. His subcommittee is in charge of discovery rules, the most important element in the equation. Susman typically has been willing to try radical approaches to age-old problems. The final product this time, whenever it's ready, will bear his stamp.

answer lies with this former justice. Kilgarkin ran as a populist and his opinions helped reshape Texas law. But his missteps led to the implosion of his alliance and opened the door for the GOP offensive.

Kilgarkin was only one of three Supreme Court justices caught in the ethical storm surrounding the court in the mid-1980s, and his transgressions were the least serious. He was publicly admonished for a trip his briefing attorneys took to Las Vegas with a plaintiffs' lawyer and for soliciting funds from lawyers to bring a slander suit against a former court briefing attorney who had accused justices of wrongdoing. By contrast, then-Justice C.L. Ray was hit with a public reprimand, one step short of removal proceedings, for a litany of sins, among them improperly ordering cases transferred among lower courts, accepting thousands of dollars in free plane rides and engaging in ex parte communications. Ted Z. Robertson, although not sanctioned, was the subject of allegations by former court briefing attorneys that he switched his vote in a case to benefit South Texas rancher Clinton Manges, a \$100,000 contributor to Robertson's court campaign.

While Ray and Robertson sheltered themselves like cloistered nuns, Kilgarkin moved out front, defending not only his own actions, but the court as a whole. He vigorously and often eloquently defended the court's pro-plaintiff tilt. But



**Albert H. Kauffman: He took the Edgewood school finance suit, the biggest public policy case of the past decade, from start to heart-breaking finish.**

The Edgewood school finance case ended Jan. 30 when the Supreme Court upheld the Legislature's fourth attempt at devising a scheme to shift funds from rich school districts to poor ones. On March 13, the original trial judge in the case convened lawyers for a final hearing — part clean-up, part catharsis. Kauffman, a lawyer with the Mexican American Legal Defense and Educational Fund in San Antonio, was there the whole way, sometimes winning — twice the Supreme Court had rejected the state's method of allocating school funds — but ultimately losing as the court, with new conservative justices, accepted the Legislature's solution to the problem.

Kauffman has been the archetype civil rights lawyer, as important a figure in the legal arena as Willie Velasquez, the late voting rights leader from San Anto-

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*\*Not a Susman Godfrey employee*

**TEN WHO MADE A DIFFERENCE; A Supplement to Texas Lawyer; Tenth Anniversary Edition - Correction Appended**

Texas Lawyer  
April 3, 1995 Monday

**Correction Appended**

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# TEXAS LAWYER

Section: Pg. 8; Vol. 11

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Byline: Robert Elder Jr.

## Body

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### A Supplement to Texas Lawyer

#### Tenth Anniversary Edition

Who defines a decade? After looking at the past one, we decided it wasn't just who won the biggest cases or played a role in the biggest scandals although, as you'll see, those things certainly count. We tried to pick the individuals whose actions had the greatest impact on the Texas legal profession from 1985 to 1995 in as wide a range of activities as possible.

The candidates did not have to be lawyers, either. On a long list of 30 candidates, two were non-lawyers. A survey of our readers might produce a much different list, but we didn't do this by focus group. Many readers will, we're sure, notice that our list is 10 white men; but we tried, through interviews and research, simply to pick 10 who made the biggest difference.

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With more money than God, as the saying goes, Jamail used the victory as a springboard into more commercial litigation, moving, in his view, to an even higher plane of litigator. The results were often spectacular and controversial. In 1992 he won a \$550 million verdict in Galveston against now-defunct Miniscribe Corp. of Denver in a securities fraud action. The verdict included an astounding \$530 million in punitive damages, more even than jamail had asked for. Jury-tampering allegations surfaced but were never proven, and the parties settled for an undisclosed sum.

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Newton also has been trying, in his quiet way, to deal with the Rambo litigation trend, first by spearheading the Texas Lawyer's Creed and now as a key member of the Texas Center for Legal Ethics and Professionalism. Practitioners of ambush litigation may scoff at the creed, a voluntary he nice code for lawyers. But if more lawyers took it to heart, the legal environment would be a much better place.

Texas was the savings-and-loan candy store in the 1980s, and no Texas lawyer paid a higher price for his sins than Larry Vineyard. No firm paid more for its representation of thrifts than his former firm, Dallas' Jenkens & Gilchrist.

In 1971 Vineyard was at the start of a brilliant career, poised to attend Southern Methodist University School of Law on a full scholarship. Twelve years later he left a partnership in Jenkens & Gilchrist to form his own boutique and continue building his burgeoning real estate and banking empire. By 1987 he was a felon convicted of bank fraud and conspiracy; he was sentenced to a five-year prison term.

Today, three years after being released from prison, he is an electrician, a trade he learned at the federal penitentiary in Big Spring.

Vineyard's activities while at Jenkens provided plenty of ammunition for federal thrift regulators, but he was far from the only ex- or current Jenkens lawyer to give the feds an opening to attack the firm. Jenkens struggled with a web of malpractice suits and federal investigations. Once the Federal Deposit Insurance Corp. was one of Jenkens' largest clients; by the end of the '80s, the FDIC was pursuing the firm for its role in the Vernon Savings and Loan collapse, one of the nation's worst S&L disasters.

Just last month, Jenkens agreed to pay \$1.2 million to settle a dispute with the Office of Thrift Supervision over the firm's representation of a Kansas S&L; the key figure was a Jenkens partner who left the firm in 1992.

As Harris County district attorney for the past 16 years, Holmes has presided over a sprawling, in-your-face prosecutorial unit that leads the way in a lot of dry statistical categories - incarceration rates, for example - and in an area harder to define - attitude. His record on prosecution of public officials is spotty, his pursuit of police brutality cases always suspect among minorities and civil rights activists. But those numbers:

Convicted felons per 100,000 adult population? Harris County: 1,222, according to a 1993 Criminal Justice Policy Council study. Next is Dallas, at a distant 985 felons.

Felony offenders sentenced to prison? Of the total number compiled by the seven largest counties, Harris County sends almost half to prison.

Minorities: Harris County has the highest percentage of African-American defendants convicted (55 percent) and sentenced to prison (62 percent) in the state.

Criminal justice analysts only half-jokingly blame Holmes for single-handedly overcrowding state prisons. His county sends the most felons to death row. While other counties use the newly strengthened sentencing laws in Texas as a reason to settle for life sentences rather than seek the death penalty, Holmes' appellate section plows ahead, trying and winning far more death penalty cases than any other county.

## TEN WHO MADE A DIFFERENCE; A Supplement to Texas Lawyer; Tenth Anniversary Edition - Correction Appended

Holmes' office has been a training ground for judges and policy-setters. Ted Poe is raising hell and headlines on a Harris County criminal district bench. Rusty Hardin was perhaps the state's premier prosecutor and the leader, with Holmes, of prosecutors' successful 1987 campaign for a limited state's right to appeal. Assistant DA Timothy Taft took on the Court of Criminal Appeals in 1992 over a double jeopardy ruling he labeled sloppy, dishonest and hypocritical; last year, he won an appellate seat in Houston. The DA's office in the 1992 elections charged after a judge it considered soft, Norman Lanford, and helped engineer his defeat. Former assistant Cathleen Herasimchuk is Gov. George W. Bush's criminal justice adviser.

Johnson, the founder and visionary behind the firm that was known finally as Johnson & Wortley, shook up a sleepy Dallas legal market by raiding other firms and made his mark as a rainmaker more aggressive than his market indeed, than many markets had ever seen. We just did what we thought was right to build an institution, Johnson said in 1983 when asked about his firm's reputation as a ruthless pursuer of legal talent and business. Today, Johnson's way of doing business is the norm, a fact of life that helped kill the firm he built it was no longer special. His death in 1993, combined with massive defections, finished off Johnson & Wortley this spring.

Susman Godfrey, by contrast, is special, in part because the Houston litigation boutique doesn't fit into any neatly drawn categories. Susman takes both plaintiffs' and defense work, and the firm makes its huge profits, he says, by working smart setting fees on the work to be done, not mindlessly throwing bodies at a case to pile up billable hours. This new leverage has not won widespread favor in Texas, but it will the environment of the business of law will demand it.

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Whether you're pleased or disgusted by the current makeup of the court, the answer lies with this former justice. Kilgarlin ran as a populist and his opinions helped reshape Texas law. But his missteps led to the implosion of his alliance and opened the door for the GOP offensive.

Kilgarlin was only one of three Supreme Court justices caught in the ethical storm surrounding the court in the mid-1980s, and his transgressions were the least serious. He was publicly admonished for a trip his briefing attorneys took to Las Vegas with a plaintiffs' lawyer and for soliciting funds from lawyers to bring a slander suit against a former court briefing attorney who had accused justices of wrongdoing. By contrast, then-Justice C.L. Ray was hit with a public reprimand, one step short of removal proceedings, for a litany of sins, among them improperly ordering cases transferred among lower courts, accepting thousands of dollars in free plane rides and engaging in ex parte communications. Ted Z. Robertson, although not sanctioned, was the subject of allegations by former court briefing attorneys that he switched his vote in a case to benefit South Texas rancher Clinton Manges, a \$100,000 contributor to Robertson's court campaign.

While Ray and Robertson sheltered themselves like cloistered nuns, Kilgarlin moved out front, defending not only his own actions, but the court as a whole. He vigorously and often eloquently defended the court's pro-plaintiff tilt. But his message that the court in many cases was just bringing Texas law in line with other states was overshadowed by his equally spirited defense of his fund-raising tactics and the role of money in judicial politics. He became a magnet for the press and legislative feeding frenzy that followed, paying the price when Nathan Hecht defeated him in 1988. The irony is that the conservative Hecht has been almost as much of an activist judge as Kilgarlin.

The Edgewood school finance case ended Jan. 30 when the Supreme Court upheld the Legislature's fourth attempt at devising a scheme to shift funds from rich school districts to poor ones. On March 13, the original trial judge in the case convened lawyers for a final hearing part clean-up, part catharsis. Kauffman, a lawyer with the Mexican American Legal Defense and Educational Fund in San Antonio, was there the whole way, sometimes winning twice the Supreme Court had rejected the state's method of allocating school funds but ultimately losing as the court, with new conservative justices, accepted the Legislature's solution to the problem.

Kauffman has been the archetype civil rights lawyer, as important a figure in the legal arena as Willie Velasquez, the late voting rights leader from San Antonio, was in the political arena. The work Kauffman and MALDEF have done covers the spectrum of public policy issues, from landmark voting rights cases to immigration suits. His specialty over the past decade has been education. Besides the school finance suit, Kauffman won a district-court judgment finding discrimination in state higher education funding in South Texas.

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Justice's influence extended far beyond **Ruiz**. His rulings, viewed as meddling and tyrannical by state officials and bureaucrats, were often the strong medicine that was required in the areas of immigration, housing desegregation and bilingual education. Before it was turned over to U.S. District Judge Barefoot Sanders in the mid-1980s, Justice controlled the massive **Lelsz** suit challenging the state's care of its mentally retarded citizens. As with the prison case, filed in 1972 by David Ruiz as he served a 25-year sentence for armed robbery, the **Lelsz** case started with a cast far removed from power centers. The spark for the case was a handful of horribly mistreated residents of state facilities, one of whom, Jean Gibson, was a 17-year-old with Down's Syndrome confined to her bed in a straitjacket and left untreated. John Lelsz himself was blind, brain-damaged and riddled with infections and diseases from unsanitary conditions.

No judge typifies the changing face of the 5th U.S. Circuit Court of Appeals more than Higginbotham, a 1982 Reagan appointee who came to the appellate court after seven years as a Northern District U.S. district judge. And no case of the past decade better showed his influence than the 5th Circuit's 1993 opinion rejecting **LULAC v. Clements**, the Voting Rights Act challenge to the state's at-large system of electing judges.

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Unlike Edith Jones, a fellow Texan on the circuit, Higginbotham isn't a hard-core ideologue who often stakes out fringe positions; he's a true scholar who appears able to win colleagues' votes for his views. He's a prodigious writer off the court as well, spelling out his views in book reviews and law review articles. With the death in 1992 of Alvin Rubin, the forceful leader of the court's liberal wing, there's no one who can challenge Higginbotham on a scholarship level.

## Correction

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### Correction

Because of an error by senior reporter Robert Elder Jr., a profile of Albert H. Kauffman in *Ten Who Made A Difference*, on page 40 of the 10th Anniversary issue April 3, misstated the result of a suit challenging state funding of higher education in South Texas. The Legislature appropriated an additional \$350 million for border universities.

Correction-Date: April 10, 1995

Load-Date: April 18, 2011



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## MEMBERS OF THE FIRM

### MANAGING PARTNERS

**STEPHEN D. SUSMAN, P.C.**, born Houston, Texas, January 20, 1941; admitted to bar, 1965, Texas; 1999, District of Columbia; 2000, New York; 2002, Colorado. Preparatory education: Yale University (B.A., magna cum laude, 1962); legal education: University of Texas School of Law (LL.B., with highest honors, 1965). Phi Delta Phi; Order of the Coif; Chancellors, Grand Chancellor; Phi Kappa Phi; Friars Society; Editor-in-Chief, Texas Law Review, 1964-65; Law Clerk to The Honorable John R. Brown, United States Court of Appeals, Fifth Circuit, 1965-66; Law Clerk to Justice Hugo L. Black, United States Supreme Court, 1966-67; Visiting Professor of Law, University of Texas, 1975; Special Counsel to Attorney General of Texas, 1975; Editor: "ABA Civil Antitrust Jury Instructions" (1985); Board Certified, Civil Trial Law, Texas Board of Legal Specialization, 1978; University of Texas School of Law Outstanding Alumnus 2001; Distinguished Counselor Award from the Antitrust and Business Litigation Section of the State Bar of Texas (2005). Honored in the 2006 edition of *The Best Lawyers in America*, for being included in the distinguished group of attorneys who have made the list for 20 years or longer; Featured in the *The National Law Journal* as one of the nation's top 10 litigators; Recognized by *Who's Who Legal: The International Who's Who of Business Lawyers* as the 2006 Leading Commercial Litigator in the World; Recognized by *Texas Monthly Magazine* as a Texas Super Lawyer in 2003, 2004, and 2005. Listed in 2005 *Lawdragon 500 Leading Lawyers in America*. *Global Counsel 3000* identified Susman as a Leading Dispute Resolution practitioner in its 2003-2004 edition. Susman has been portrayed in John Jenkins' best seller, *The Litigators*. In 1995, *Texas Lawyer* named him among the ten "whose actions had the greatest impact on the Texas legal profession from 1985 to 1995." *Business Week* has called him "a lion of the Texas Bar"; *Town & Country*, "the Houston courtroom gladiator best known nationally"; the *Houston Business Journal*, "the reigning prince of Houston business litigators." Member: State Bar of Texas (Chairman, Section on Antitrust and Trade Regulation, 1976-77); District of Columbia Bar Association; New York Bar Association; Colorado Bar Association; American Bar Association, Section of Antitrust Law (member of Council, 1989-91), Section of Litigation (currently member of Trial Advisory Board and Federal Practice Task Force and formerly co-chair of Task Force on Training the Advocate, chairman of Task Force on Fast Track Litigation, and member of Committee to Improve Jury Comprehension), and Section of Intellectual Property; American Law Institute; ALI-ABA Advisory Group on Antitrust; Editorial Advisory Board, BNA Civil RICO Reporter and Inside Litigation; Advisory Board, University of Texas School of Law's Review of Litigation; Chairman of the Texas Supreme Court Advisory Committee's Discovery Subcommittee; Director of Texas Association of Civil Trial and Appellate Specialists; American Board of Trial Advocates; Director of the University of Houston Law Foundation; Charter Member of the Institute for Responsible Dispute Resolution; Texas Supreme Court's Task Force on Civil Litigation Improvements; National Council of Human Rights First; Board of Lawyers' Committee for Civil Rights under Law of Texas; MD Anderson University Cancer Foundation Board of Visitors; The University of Texas Health Science Center Development Board; American Intellectual Property Law Association; Federal Circuit Bar Association; Houston Intellectual Property Law Association; Texas State Bar of Intellectual Property; Eastern District of Texas Bar Association.  
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**H. LEE GODFREY, P.C.**, born Palestine, Texas, March 10, 1939; admitted to bar, 1969, Texas; 2001, District of Columbia; 2006, New York. Preparatory and legal education, University of Texas School of Law (B.A., 1966, J.D., with honors, 1969). Phi Delta Phi; Order of the Coif; Chancellors; Consul; Managing Editor, Texas Law Review, 1968-69; Texas Law Review Ex-Editors Association (President, 1976); Visiting Professor, Rice University, Commercial Law, 1980-82; Author, "Civil Voir Dire in Texas: Winning the Appeal