



Attorney Cecilia Montalvo

Atty. Cecilia Montalvo Joins Todd Law Firm

Cecilia Montalvo, who began working at The Law Firm of Alton C. Todd as a law clerk in July 2011, has realized her dream. She has passed the Texas Bar, and at 25, is a full-fledged attorney.

Cecilia began law school when she was 21, the youngest in her class. Her first legal job was at the personal injury firm of Abraham Watkins in Houston. She also interned at the Texas Supreme Court with Justice David Medina. Last year, she won a first place award in the prestigious American Society of Legal Writers' Scribes competition following top honors earned for a brief entered in the National Latina/o Law Student Association Moot Court Competition.

"Overall, it's just been such an amazing journey," Cecilia recalls. "I met Alton at a mediation a few years ago when I worked for Johnny Garza, the attorney who gave me my first legal job when I began law school. They had worked on a case together, each representing a different plaintiff. Little did I know that I would later work as a law clerk for Alton and eventually as an attorney. It's a blessing to be employed but to be able to learn so much at a law firm and then to get hired by that firm is a dream of almost every law student."

A graduate of South Texas Law School, Cecilia earned her Bachelor's degree in psychology and Spanish at Baylor University.

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Weak Safety Regulations Are Observed As Governor Extols Texas Business Boom

In the aftermath of the West fertilizer plant explosion of April 17 that killed 14, injured more than 200, and caused tens of millions of dollars in damage to the surrounding area, the failure of a company to safeguard the work environment is painfully clear. The fertilizer plant had, in 2006, received a \$2,300 civil administrative fine for not having a risk plan which complied with applicable federal standards. The Texas Commission on Environmental Quality also investigated a complaint about the lingering smell of ammonia around the plant the same year. In a prior EPA permit application, the company promised that "all storage tanks will be inspected once a day to insure there are no (anhydrous ammonia) leaks."

Just last year, West Fertilizer was fined \$5,250 by the Transportation Department's Pipeline and Hazardous Materials Safety Administration for storing anhydrous ammonia in tanks that lacked the proper warning labels.

Findings of investigative teams have discovered that in mandatory risk management documents filed by the company with the EPA, West Fertilizer misled authorities, claiming such an explosion was "not a possibility," that in the "worst-case scenario," only a harmless release of a vapor cloud would last "not more than 10 minutes." Unfortunately, the company had only \$1 million in liability coverage. Tyler lawyer Randy C. Roberts said he was not surprised that the plant carried such a small policy. "It's rare for Texas to require insurance for any kind of hazardous activity," he said. "We have very little oversight of hazardous activities and even less regulation."

As the devastated West community deals with the wreckage, which has been linked to the state's protection of big business, Governor Rick Perry continues an active marketing campaign, recently inviting big California employers to re-locate to Texas, home of lower corporate taxes and regulation. That speaking tour likely motivated a Sacramento Bee cartoon which provoked an irate and inane response from the governor.

The cartoon showed Perry bragging that "business is booming in Texas," followed by

a graphic drawing of an explosion with a huge "Boom!" Obviously missing the point of the satire, a strong statement depicting his peddling of a place where industries can thrive with few regulations, juxtaposed with the explosion of the fertilizer plant, the governor responded: "I won't stand for someone mocking the tragic deaths of my fellow Texans and our fellow Americans" and demanded "an immediate apology for your detestable attempt at satire."

As disturbing as is Perry's attempt to distract his "fellow Texans and fellow Americans" from the intended message, equally upsetting is his most recent trip to Chicago, trying to woo Illinois businesses into moving to Texas. Attracting undue attention at the BIO International Convention, our governor succeeded in grabbing the spotlight by trashing the host state's economy.

Hotel Negligence Subject Of Lawsuit

On January 25, Jeffrey N. Todd of the Law Firm of Alton C. Todd filed a lawsuit against a Galveston hotel alleging negligence in a 2007 injury. Shawna Martin of Oklahoma and her eight-year-old son were getting off an elevator at Comfort Inn & Suites, 6302 Seawall Blvd. when the boy was struck on his head, chest and leg by falling wall tile.

"As a result of this incident, (the boy) has sustained injuries...that are permanent, which have caused severe pain, disfigurement and impairment," the lawsuit states. Having allowed a loose tile to exist in an area where individuals walk, the hotel failed to protect the Martins, paying guests, from dangerous conditions on the premises, according to the suit.

The lawsuit, filed in Galveston County District Court, seeks damages for the medical bills and mental anguish suffered by Shawna Martin. Neel Shah Hospitality Inc., which operated the hotel, is named as defendant.

Marc Wetzel Parent of the Year In Mountains and Basins Area



Marc Webster, TAGT Parent of the Gifted, with sons Shadix, left, and Haden

Marc Wetzel, brother-in-law of Alton C. Todd, loves his family and loves astronomy, and those combined passions contributed significantly to his 2012 award as Parent of the Gifted Award, representing the Mountains and Basins Area, Educations Regions 15, 18 and 19. The award, presented by the Texas Association for the Gifted and Talented (TAGT) is annually presented to one parent from each of five geographic areas in recognition of outstanding service, contribution and commitment to gifted education.

Marc is married to Jeff Davis County Attorney Teresa Todd, and they are the parents of two sons, Shadix and Haden.

When Marc was the age of his young sons, he first became interested in nature and, by high school, had become an amateur astronomer. In 1988, a student at the University of Texas at Arlington, he applied for a job at McDonald Observatory. He started working in the Visitor's Center in the summer of 1989, joined the public programs team, changed his major to communications and received his degree at Sul Ross State

University in Alpine. He and his family now live at the observatory, where Marc is the education coordinator of the Frank N. Bash Visitor Center. It is in that role that he trains summer college students working at the observatory and became affiliated with TAGT, an organization of educators and parents dedicated to meeting the unique needs of gifted and talented students. Marc, like other TAGT award recipients, consistently supports the education of gifted individuals, advocating on their behalf at local, regional and state levels, while encouraging shared leadership and participation among other parents, professionals and/or community leaders.

Rick Perry 'Indeed' Interested In Another Presidential Run

Governor Rick Perry last month posted a picture of himself on Twitter, embracing the prime minister of Namibia and former Pakistani Prime Minister. He attended an economic forum in Florida and issued a strong statement on the passing of Margaret Thatcher, saying that her death "marks the end of an era in which bold conservative values faced down tyranny and oppression."

Then, asked by CNN's Wolf Blitzer if he is open to the idea of running for president in 2016, Perry answered, "indeed." He said that the legislature will be leaving in about 55 days and then he would make his decision, but, currently, he is focused on his ability to deal with a disparate group while working on the budget.

As embarrassed Texans will remember, Perry's bid for the 2012 GOP nomination was derailed when he couldn't recall a key portion of his platform, namely, which federal agencies he would eliminate if elected president.

Atty. Cecilia Montalvo

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Her ability to speak Spanish fluently has facilitated translation of legal documents and communications with Spanish-speaking clients, and the Todd Law firm is proud to welcome her on board.

Hill Country Awaits Happy Campers

Three grandchildren of Alton and Nari Todd will be off to summer camp in the Hill Country on June 9.

Ten-year-old Avery and Presley Evans, daughters of Chris and Jennifer Todd Evans, will be returning to Camp Champions for their 4th year. Camp Champions, a coed summer camp for children 6-18, is located on the shores of Lake LBJ near Marble Falls, about an hour from Austin. The girls will be at camp for three weeks. Their mother is a champion of Camp Champions, having spent five summers there when she was young.

Also on June 9, Tyler Todd, 8-year-old son of Attorneys Jeff and Dana Todd, will be embarking on his first camp experience. He will attend Camp Longhorn, coed residential summer camp in scenic Burnet, TX, for two weeks. His aunt and uncle

Kamilah Todd and Seth Park went 8 and 10 years, respectively, in the summers of their youth, to Camp Longhorn.

Despite a tear or two at being separated from their parents for two or three weeks, homesickness passes. The Todd children and grandchildren who have been fortunate to enjoy the camp experience treasure lasting memories of busy schedules, fun activities and friendships fostered in the warm and welcoming environment of summer camp.

ALtruism

**Take the high road.
It's the path
less followed.**

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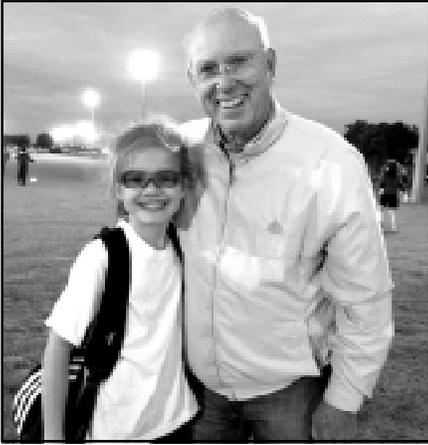
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Pride and Joy for Avery and Big Al

Grandpa Comes to Game; Avery Scores a Goal

On a cold, windy May 2, in her last soccer game of the spring season, 10-year-old Avery Evans scored a goal, her only one of the season. Big Al (her grandfather, Alton C. Todd) was there, probably providing her lucky charm.

Avery, twin sister of Presley, is the daughter of Chris and Jennifer Todd Evans.

Poetic Presley Performs to Win

“Who says it’s true—down is the only view? If you believe that, this poem will challenge you. Up is something new.”

A May poetry project in the 4th grade of Avery and Presley Evans at Windsong Intermediate School in Friendswood required pupils to select, memorize and recite a poem and create a poster. The use of costume and/or props was a bonus. Each class voted on a winner who would then do a second presentation, a performance that neither of the Evans twins particularly relished. Presley, who chose “In Reverse” by Marilyn Singer and used a ladder poster while standing on a step stool to recite the poem, ended up winning in her class and performed again before former proud teachers.

Ten-year-old Presley, daughter of Chris and Jennifer Todd Evans, is the granddaughter of Alton C. Todd.



Presley Evans with winning entry

Courts Restrict Remedies

Proposed Act to Amend Labor Code Will Restore Rights of Rape Victims

On March 8, Rep. Garnet Coleman, (D, District 147) introduced a bill to be entitled an Act, to amend Section 21.211 of the Labor Code. The amendment, designed to protect employees from unlawful employment practices, addresses an anomaly that has occurred in the state of Texas which, in effect, denies victims of sexual assault their rights and remedies in a court of law.

On May 1, Attorney Jeff Todd attended a hearing in Austin at which this change to the Labor Code, proposed by HB 3323, was presented to the Texas House of Representatives, Economic and Small Business Development Committee. Prior to the hearing, a review of the concerns that created the urgency of the amendment and relevant holdings was provided to representatives by Kyle C. Herbert, of Simon Herbert McClelland & Styles, Attorneys at Law in Houston.

The essential conflict deals with “CHRA” (Texas Commission on Human Rights Act) which creates a specific cause of action for sexual harassment (as well as other types of harassment) and discrimination in the work place. CHRA was passed by the Legislature, as pointed out by Herbert, “to create a right where none existed; the right to bring claims for simple harassment, not to limit the rights and remedies of those also victims of assault.” Sadly, that purpose has been circumvented by court interpretations in violation of legislative history which clarifies that tort claims were intended to be left unchanged by TCHRA.

Conversely, an alarming opposite of the CHRA intent, as noted in the precedents of *Waffle House, Inc. v. Williams* (2010) and *Jones v. Halliburton* (2011) has occurred. Under the cases cited, an SMU Law Review article points out that “the greater the misconduct on behalf of the perpetrator-the lesser the protection the law affords a victim of assault.” Attempts to insure greater workplace protection from sexual harassment have actually curtailed relief of the victims of assault. The bizarre result is that assault victims are denied common law redress for injury if they were also sexually harassed.

In *Waffle House*, the Texas Supreme Court, on June 11, 2010, overturned a lower court’s ruling affirming a judgment of \$425,000 in compensatory damages and \$425,000 in punitive damages, interests and costs to a woman who was sexually harassed on the job. Because she had sued for workplace sexual harassment under the

CHRA and also under common law for negligent supervision and retention, the high court agreed with *Waffle House* that Williams’ negligent claim should fail because the TCHRA is the exclusive remedy for workplace sexual harassment. (Nowhere does CHRA claim to be the sole remedy or that it preempts other causes of action.)

In *Jones*, in 2011, a federal judge in Houston expanded the holdings of *Waffle House* that **simple assault** by offensive touching, sexual in nature, is the same as sexual harassment and that sexual assault, **including rape**, is the same as sexual harassment. The victim of sexual brutality in the form of gang rape and corporate indifference on the part of her employer, Halliburton KBR, Jamie Leigh Jones was ordered to pay \$145,000 in court costs by Judge Keith Ellison of the U.S. District Court in Houston, much less than the \$2 million KBR’s attorneys had requested. The same court had earlier rejected her claims against her former employer for the military contractor Kellogg Brown & Root in Baghdad that she had been drugged and raped by an employee and several KBR firefighters.

CHARA’s policy, invoking a 300-day statute of limitations and a restrictive cap on damages as low as \$50,000, is an unnecessary and unwarranted limitation on the rights of rape victims. The Legislature has adopted laws allowing for two years for negligence claims and unwarranted limitation on the rights of victims. A woman assaulted at work will have no claim against her employer if she does not file a CHRA complaint within 300 days, and even then, her damages may be capped. Confounding the inequity is the fact that in some cases defendants even argue for extension of law to say that a rapist is immune from suit if he is an officer, principal or vice principal of a company which employed him.

In applying the rulings of the *Waffle House* and *Jones* precedents, rapists of victims at work enjoy blanket immunity, as do employers who hire them to supervise female employees. A customer at a restaurant has more rights and remedies than employees, even though CHRA was designed to afford employees protection from abusive employers..

It makes no sense that MORE alleged misconduct (a case presenting negligence and

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POLITICAL NEGLIGENCE PERPETUATES JUDICIAL VACANCIES

For the second time, Senate Republicans, on March 6, blocked the confirmation of Caitlin J. Halligan, Princeton and Georgetown Law School graduate and prominent New York lawyer, to become a federal appeals court judge in the District of Columbia. The 51-41 party line vote was reminiscent of the 54-45 Republican-led filibuster almost two and a half years ago.

As of late April, 86 judicial vacancies existed at the federal level, 62 of which have no nominee. At least 37 of those vacancies qualified as judicial emergencies. States in which there are more than 600 cases per judge or where a post has been vacant for more than 18 months include California, New York, Washington, Arizona, Florida and Texas. Partisan politics are blamed for the rising number of empty benches which have grown in this Congress, while in-state rivalries also contribute to empty court-houses, especially in Texas.

Five years after Judge Royal Furgeson Jr. took senior status from the federal bench in San Antonio, his seat has not been filled, and cases on a docket in the Western Judicial District that includes 800 miles of U.S.-Mexican border continue to accumulate, while candidates are left lingering. Based on a request from the White House, Texas Democrats offered candidates for consideration but they were not approved by a bipartisan panel created by senators.

Chief Justice John Roberts, in his end-of-the year report in December 2012, noted the partisan fight between the White House and the Senate, and warning that constitutional rights cannot be denied,

urged the legislative and executive branches “to act diligently in nominating and confirming highly qualified candidates.”

While there is enough blame leveled at both political parties for the excessive number of judicial vacancies, “neither side is willing to end a process that has degenerated into Beltway gridlock,” noted Laurel Bellows, president of the American Bar Association. The cost of this stalemate is being paid by judicial nominees left in limbo, businesses affected by the non-resolution of commercial disputes, defendants awaiting trial, and “ultimately, the public that expects courts to deliver on the promise of justice for all.”

The ABA leader, offering guidelines for progress in the judicial appointment process, has suggested, as a first step, scheduling by both parties “up-or-down floor votes” for the 13 nominees reported with little or no opposition by the Senate Judiciary Committee. Further, the 11 nominees pending on the floor at adjournment of the 112th Congress should be fast-tracked, and the Senate majority and minority leaders should prioritize filling judicial emergencies, reducing the period of time between nominations and votes. Finally, the White House should offer a nominee for every open seat on the bench.

More disclosure in the pre-nomination process has been proposed by Columbia Law School’s Michael Shenkman, a former Senate Judiciary staffer who later worked in the Obama administration. He has suggested that the White House publish the status of pre-nomination negotiations (although not the names of the potential

nominees) in an effort to bring greater clarity as to who is to blame for judicial vacancies.

A bipartisan bill, sponsored by Sen. Diane Feinstein, D-California, which would create 10 new judgeships including three in Texas, is pending in the Senate.

Analysis by the nonpartisan Congressional Research service shows that Obama’s nominees waited for confirmation to a district court seat more than four times as long as those nominated by President George W. Bush.

Since Obama took office, six judges for Texas have been confirmed, but five vacancies remain.

COURTS RESTRICT REMEDIES

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harassment claims) can lead to LESS in regard to potential recovery of damages. Essentially the courts have interpreted the human rights statute in a way that actually limits victims’ ability to file suit against a rapist in the workplace. That is why it is crucial that the House and Senate pass the act to amend Section 21.211 of the Labor Code to take effect September 1.

CLOSING STATEMENT

*We value your trust and your referral.
Thank you for the opportunity to represent
your interest and for recommending*

THE LAW FIRM OF ALTON C. TODD