

CAUSE NO. D-1-GN-21-004488

JERRY LYNN PHILLIPS,	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	
VS.	§	
	§	
ORI WHITE, individually	§	
and as head of District Attorney	§	
of 83 <sup>rd</sup> Judicial District of Texas;	§	OF TRAVIS COUNTY, TEXAS
BREWSTER COUNTY, Texas;	§	
JEFF DAVIS, Texas; PECOS	§	
COUNTY, Texas; and PRESIDIO,	§	
COUNTY, Texas	§	
<i>Defendants</i>	§	53rd JUDICIAL DISTRICT

**PLAINTIFFS' RESPONSE TO DEFENDANTS' BREWSTER, PRESIDIO, AND JEFF DAVIS COUNTIES' MOTION TO TRANSFER VENUE AND/OR PLAINTIFFS' MOTION TO MAINTAIN OR TRANSFER VENUE IN, OR TO, TRAVIS COUNTY UNDER TEXAS RULES OF CIVIL PROCEDURE 257-259**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Jerry Phillips (“Mr. Phillips” or “Movant”), files this response to Defendants Brewster, Presidio, and Jeff Davis Counties’ (“Defendant Counties”) Motions to Transfer Venue, filed on October 6, 2021, and moves the Court to deny Defendant Counties’ motions to transfer venue and retain Mr. Phillips’ case on the Court’s docket in Travis County, Texas; or to transfer Mr. Phillips’ case to Travis County by maintaining current venue. Defendant Pecos County has yet to file an answer.

In the Alternative, Mr. Phillips requests that this Court allow discovery on the transfer of venue based on local prejudice issue, and to hold an evidentiary hearing prior to issuing a ruling regarding appropriate venue. In support of this request, Mr. Phillips shows this Court the following:

## I. INTRODUCTION

Plaintiff Jerry Phillips filed his original petition on August 26<sup>th</sup>, 2021. Defendants Brewster, Presidio, and Jeff Davis Counties have the same legal counsel and have filed identical motions to transfer venue on October 6, 2021, seeking to have venue transferred to each of their counties under Section 15.015 of the Texas Civil Practice & Remedies Code. This rule states that venue is mandatory in a county if an action against that county is brought. Pecos County has not filed a motion to transfer.

Brewster, Presidio, and Jeff Davis Counties, by their shared counsel, have also filed identical Original Answers, Special Exceptions, and Affirmative Defenses on October 8, 2021. Pecos County has not filed its answer, although it has been duly served along with the other counties.

Mr. Phillip's present "Response to Defendants Brewster, Presidio, and Jeff Davis Counties' Motion to Transfer Venue and/or Plaintiff's Motion to Maintain or Transfer Venue in, or to, Travis County under Texas Rules of Civil Procedure 257-259" follows.

**II. VENUE IS PROPER UNDER THE GENERAL AND PERMISSIVE  
RULE, AND THE MANDATORY VENUE PROVISIONS ARE  
INAPPLICABLE TO THIS SPECIFIC CASE**

Mr. Phillips can establish proper venue under the general rule, permissive rule, and can show that the mandatory-venue provisions are simply inappropriate for current case due to the very unique circumstances of this lawsuit which would be comical if the implications were not so grave. The behavior observed by some of these affiants of county officials who form a "combination" against Plaintiff's ability to receive a fair and impartial trial cannot be normalized. Their activities are beyond the pale. Undersigned has never seen such irregularities and improprieties. Allowing the termination of a prosecutor who was trying to address these behaviors pursuant to his fiduciary obligations and the law simply cannot be allowed, and would set very dangerous precedence at a crucial time in Texas. There is simply no room in the post-pandemic world of the criminal justice system and local governance for allowing these kinds of activities, and good prosecutors must have the space to legally challenge and change these behaviors in others. Prosecutors must not fear termination for asking questions about bad and illegal practices of County Officials in positions of public trust. Complete transparency is required in this case, and simply would not be possible if Venue is moved from Travis County to one of the Defendant Counties.

## Mandatory Venue Inappropriate

When there are two counties of mandatory venue and both mandatory provisions are under CPRC chapter 15, the plaintiff generally has the right to choose between the two provisions. *See in re Fisher*, 433 S.W.3d 523, 533 (Tex.2014; *Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex.App.—Beaumont 1998, pet. Denied.).

In present case, there are four counties who are being sued, along with the district attorney and the 83<sup>rd</sup> district attorney's office which serves all four counties. While there is another district attorney's office that serves part of Pecos County, Texas, Plaintiff Jerry Phillips is currently employed as an assistant district attorney in this office, the 112<sup>th</sup> District Attorney's Office. None of these counties are able to serve as appropriate venue choices, whether the multiple counties would be mandatory or not. Mr. Phillips has provided an affidavit addressing the unique circumstances of his case, which involves actions from very powerful individuals who exert a tremendous influence in all four counties. *See Plaintiff's Affidavit, attached as "Exhibit A."* Defendant White has multiple political allies, friends, acquaintances, former clients, life-long friends and political donation contributors from many years of political activity. *Id.* Each county has a fiscal benefit in this specific case which would prevent justice for Mr. Phillips, Defendant White has created an alliance with people in positions of power in each of the Defendant Counties that would cause witnesses in these counties to fear retaliation should they testify truthfully in



the matter in any of the counties, there is an alliance between Defendant White, Presidio County Attorney Rod Ponton, (the same person in both of those capacities as well as being sworn in as an Assistant District Attorney in the 83<sup>rd</sup> District), Brewster County Attorney Steve Houston, Pecos County Attorney Frank Lacy (who also works part-time as an Assistant District Attorney for Ori White in the 83<sup>rd</sup> District), Brewster County Sheriff Ronny Dodson, and Tim Crowley who is an attorney sworn in as an Assistant District Attorney in the 83<sup>rd</sup> District), a large land owner, and is an influential business owner in Presidio, Texas. *Id.* Mr. Crowley has been and may still be a Presidio County Assistant Attorney. A fair and impartial trial in any of these counties would be impossible.

Furthermore, the judge serving the 394<sup>th</sup> District which covers Brewster, Jeff Davis, and Presidio Counties is a potential witness because he received a letter about Mr. Phillips' concerns regarding illegal activity which expressed Mr. Phillips further intent to take more action for investigating and filing criminal charges. As a witness, the judge, Roy Ferguson, could not preside over the lawsuit. Further, Judge Ferguson may have represented Tim Crowley in a private capacity as his divorce lawyer, which would require recusal. The Defendant Counties are in a very remote region, which would make finding an appointed visiting judge cumbersome, as Undersigned has personally experienced in the local district court, and would likely require virtual hearings, which can be had in Travis County just as easily as any other county in this

region. Some of the individuals who are parties to this lawsuit, or act on behalf of the parties in this lawsuit in an official capacity, have attempted to have people fired, removed from office, or indicted. *See Exhibit A, B, and C supra, Generally.*

The attached affidavits by the former District Attorney of the 83d, Sandy Wilson, echo these concerns regarding the venues as being inappropriate venues for this case. *See Affidavit of Sandra Wilson, Attached as "Exhibit B."* Leticia Carrillo, a former criminal investigator under Ori White, had the same concerns. *See Affidavit of Leticia Carrillo, Attached as "Exhibit C."* All three affiants share a concern about the murky boundaries and powerful influence of the Defendants and men acting on behalf of the Defendants in official capacities.

Justice of the Peace David BeeBe of Presidio county echoes the concerns in his own affidavit. *See Hon. David Beebe's Affidavit, Attached as "Exhibit D."* Hon. Beebe stated that a fair and impartial trial cannot be had in any of the four Defendant Counties because "the defendants have multiple complex conflicts of interest with various elected officials, law enforcement, County Clerks, and other court system employees who may be tasked to conduct such a case in any of these small counties. *See Exhibit D.* Hon. Beebe is further concerned that Mr. Phillips is relatively unknown person within these counties and certain counties (including his own) are parties to the lawsuit and this may contribute to potential jury bias, impeding justice. *Id.* The Presidio County

Treasurer Francis Garcia agreed with these concerns. *See Francis Garcia's Affidavit, Attached as "Exhibit E."*

Many others echo these concerns. Mr. Razo, a sitting member of the Presidio City Counsel stated that these counties are small leaving more of a chance of there being favoritism towards a friend or known associate. *See John Razo's Unsworn Declaration, Attached as "Exhibit F."* These concerns are echoed by Ms. Calvert, the Presidio County Deputy Treasurer. *See Cheryl Calvert's Affidavit, Attached as "Exhibit G."*

Mr. Gerfers, the Board Chairman of the Presidio County Underground Water Conservation District stated that it is in his sincere view that the population of his county (Presidio) is so small that it would be impossible for anyone to participate in Mr. Phillip's trial who does not know the defendants or is in some way beholden to, or influenced by, the defendants. *See Affidavit of C. Arthur Gerfers, III, Attached as Exhibit H.* Mr. Gerfers stated that it was a "simple case of arithmetic...the defendants are too well known and too powerful in our entire region for Mr. Phillips to receive a fair and impartial trial. *Id.* Mr. Gerfers has raised his own concerns about Mr. Ponton's office conflicts and motives in his various official roles in Mr. Gerfers' recent newspaper column in the Avalanche Journal. *See "A Groundwater Mystery" by Trey Gerfers, Attached as "Exhibit H1".*

Many community members agree. Ms. Bent stated that a fair and impartial trial would be difficult to have in Presidio because of prejudice and mediocre court performance. *See Melissa Bent's Affidavit, Attached as "Exhibit I."* Many other community members echoed these concerns, *See Affidavits or Unsworn Declarations of Hillary Scruggs Beebe, Mary K. Farley, Arian Velazquez-Orneles, Neil Chavigny, and Mary Baxter, Attached as "Exhibits J, K, L, M and N."* Each affidavit and unsworn declaration intend to indicate to the Court that this lawsuit should stay in Travis County.

Under the general venue rule, the county of choice, Travis County, complies with the general venue rule because a substantial part of the events or omissions committed by Defendant Counties form the foundation of Mr. Phillips' Whistleblower Lawsuit against Ori White and the 83th District Attorney's Office, which allows for permissive venue in Travis County. Venue is not more convenient in a closer county in this post-pandemic age, where virtual hearings can avoid hardships on the Plaintiff or Defendants and a balance of interest weights in favor of maintaining Plaintiff's lawsuit. Plaintiff requires a safe harbor, which is exactly why the Whistleblower Lawsuit provides for permissive venue in Travis County. Undersigned was unable to obtain many affidavits from Brewster County witnesses attesting to the venue because people specifically expressed fear of retaliation by loss of employment or other official forms of retaliation. The same can be said of individuals living in Jeff Davis and Pecos counties.

**III. IF MANDATORY VENUE IS APPROPRIATE IN DEFENDANT  
COUNTIES, TRANSFERRING VENUE TO, OR MAINTAINING  
VENUE IN, TRAVIS COUNTY IS APPROPRIATE AND  
AUTHORIZED UNDER TEXAS RULES OF CIVIL PROCEDURE  
257-259**

Mr. Phillips requests that this Court maintain venue in Travis County, because if the Defendant Counties' lawsuit were moved to Defendant Counties, even by granting severance motion allowing Defendants White and the 83<sup>rd</sup> District Attorney's Office to stay in Travis County, local prejudice would require that the case be transferred back to Travis County. Maintaining venue in Travis County would avoid the need to transfer Mr. Phillips's lawsuit against Defendant Counties back to Travis County pursuant to Rule 257. *See Tex. R. Civ. P. 257(a)*. Maintaining venue in Travis County produces judicial economy.

Local prejudice exists in the Defendant Counties, so that Mr. Phillips would be unable to obtain a fair and impartial jury trial, and in fact this factor was considered in Mr. Phillips' decision to file lawsuit in Travis County for all Defendants under the permissive statute of 554.007 of the Texas Government Code, instead of bringing lawsuit against the Defendant Counties the normal mandatory venue of the Texas Civil Practice & Remedies code, or filing multiple separate lawsuits in the Defendant Counties.

The Court should maintain this case in Travis County because the prejudice in Defendant Counties is so great that Mr. Phillips cannot obtain a fair and impartial trial. *See Tex. R. Civ. P. 257(a); see Dorchester Gas Producing Co. v.*

*Harlow Corp.*, 743 S.W. 2d 243, 253 & n. 6 (Tex. App.—Amarillo 1987, no writ). A trial in these counties would deprive Mr. Phillips of his due-process rights to a fair trial under both United states Constitution amendment 114 and Texas Constitution article 1, section 19. Hon. Beebe stated that the other people involved in this lawsuit are better known than Mr. Phillips, resulting in an unfair or biased trial.

The Court should avoid transfer this case from the mandatory venue of the Defendant Counties by maintaining this case in Travis County because there is a combination against Mr. Phillips instigated by influential persons in the Defendant Counties that will prevent a fair and impartial trial. *See Tex. R. Civ. P. 257(b)*. Most of the affidavits and unsworn declarations raise a grave concern about certain powerful individuals in this area who are a powerful combination against Mr. Phillips, and who others have observed acting in irresponsible and unethical manners. Observation of the local media supports that concern and helps clarify the problem that currently exists in this area regarding the abuse of power and responsibilities of public office.

In the Texas Monthly article entitled “A Battle for the Soul of Marfa”, it is reported that the powerful landowner and hotelier named Tim Crowley has served or does serve as a pro bono Presidio County assistant attorney. *See Article Attached as “Exhibit O.”* The article indicated that some people raised questions as to how Mr. Crowley received late night drinking permits, which resulted in some concerns of retaliation. *Id.* In the Big Bend Sentinel, it was reported that Mr. Ponton and

a private lawyer, Tim Crowley, were appointed as “*pro bono*” assistant attorneys under Mr. White, and witnesses observed both men being sworn in for these positions. *See Big Bend Sentinel Article “Ori White Sworn in as District Attorney, January 6, 2021, “Attached as Exhibit P.”* It appears that Mr. Ponton serves as the Presidio County Attorney, Presidio City Attorney, Alpine City Attorney, and is the Pecos City Attorney, and he may also be the City Attorney for other small towns such as Balmorhea and Toyah (unclear), and he is also apparently a *pro bono* assistant district attorney for the 83<sup>rd</sup> District. Mr. Crowley was apparently a *pro bono* assistant county attorney in Presidio, and is now a *pro bono* attorney for the 83<sup>rd</sup> District Attorney under Ori White.

Mr. Phillips, Ms. Wilson, and Ms. Carrillo have all raised concerns that these men have powerful alliances with the Brewster County Sheriff. Because Mr. Crowley has also been mentioned, it is a concern that a very powerful group of Caucasian men (aka the proverbial “the good ole’ boy network”) can legitimately prevent a fair and unbiased trial for Mr. Phillips. If the local judge also served as a private attorney for Mr. Crowley in a divorce lawsuit, justice would be impossible to obtain in the district court where this case would be heard if transferred to Defendant Counties’ venue of choice. Many of the local population are impoverished, trusting, and easily manipulated. For instance, there is actually a newspaper article where Mr. White and Mr. Ponton are receiving gratitude from a Presidio County Police Chief, who may have been entitled to more money than he received from them in the forfeiture issue which appeared suspected in Mr. Phillips

original petition. *See Big Bend Article "District Attorney gives \$43,000 in seized funds to Presidio Police Department, Attached as "Exhibit Q."*

Mr. Ponton can be observed commenting on present case on September 24, 2021, apparently in his capacity as the Presidio County Attorney, on Marfa Public Radio that the "factual allegations in the suit are either wrong or baseless," and that he understands that "the rest of the allegations are bullsh\_t [sic], and most of the facts are wrong." *See Marfa Public Radio Article, entitled "Former West Texas Prosecutor Claims he was fired for Reporting Improper, Possibly Illegal Acts. Attached as "Exhibit R"*

Immediately after this lawsuit was served to defendants, Mr. Ponton apparently submitted a picture of himself and Tim Crowley being sworn in as assistant 83<sup>rd</sup> District Attorney's to a reporter at the Big Bend Sentinel, when she reported on present lawsuit. *See Big Bend Sentinel Article "Former Assistant Alleges Discrimination, Cronyism, and Retaliatory Termination in Suit filed Against DA Ori White and 4 Local Counties" attached as "Exhibit S."* The fact that Mr. Ponton is "taking the lead" of handling publicity related to present lawsuit, although he is not an actual party to the lawsuit and is only peripherally related to it, lends credence to Plaintiff's and other people's concerns that Defendant White is beholden and subjugated to Mr. Ponton, rather than being able to police the legality of Mr. Ponton's actions as County Attorney. Mr. Phillips beliefs that he was terminated for looking into the legality of Mr. Ponton's actions



and another rother county attorney is fortified by observations of Mr. Ponton's behavior since the filing of this lawsuit.

Based on the affidavits, unsworn declarations, and news articles, the Court should transfer or maintain this case in Travis County because an impartial trial simply cannot be had in Defendant Counties. *See Tex. R. Civ. P. 257(c)*; *see In re E. Tex. Med. Ctr. Athens*, 154 S.W. 3d 933, 935 (Tex. App. – Tyler 2005, orig, proceeding). A trial in the Defendant Counties will deprive Mr. Phillips of his due-process rights to a fair trial under both the United States and Texas State constitutions.

The Movant must file Movant's own affidavit and the affidavits of at least three credible residents of the county where the suit is pending to support the grounds for change of venue because of local prejudice. *Tex. R. Civ. P. 257*; *In re East Tex. Med. Ctr. Athens*, 154 S.W.3d 933, 935 (Tex.App.—Tyler 2005, orig. proceeding); *Acker v. Denton Publ'g*, 937 S.W. 2d 111, 118 (Tex.App.—Fort Worth 1996, no writ.)

Movant has filed affidavits or unsworn declarations from himself, three Brewster County Residents, and eleven Presidio County residents. Many of the affiants hold offices of public trust. The final third affidavit is from Former Police Chief of Alpine Robert Martin, a Brewster County resident. *See Affidavit of Robert Martin, Attached as "Exhibit T."* This affidavit further raises concerns about the combination of influential persons who would prevent Mr. Phillips from receiving a fair trial if venue is moved from Travis County and contains the combination of

the usual characters mentioned in other affidavits. Undersigned has requested affidavits from others, who have indicated that they fear retaliation. Undersigned would be willing to subpoena these individuals if necessary in an evidentiary trial regarding this issue. In the meantime, Movant would like to avoid potentially jeopardizing others unless this Court requires more affidavits or further testimony on the record regarding the venue issue. There is abundant evidence to indicate that Travis County will provide a safe harbor for Mr. Phillips and witnesses, so that the trial can be fair and impartial, and potential jurors will not have to be concerned about retaliation or unconscious biases.

#### IV. CONCLUSION

Plaintiff Mr. Phillips moves the Court to deny Defendant Counties' motions to transfer venue and retain Mr. Phillips' case on the Court's docket in Travis County, Texas; or to preemptively transfer "transfer" Defendant Counties' lawsuit to Travis County by maintaining the current venue. Defendant Pecos County has yet to file an answer.

In the Alternative, Mr. Phillips requests that this Court allow discovery on the transfer of venue based on all venue issues, but especially the local prejudice issue, and to hold an evidentiary hearing prior to issuing a ruling regarding maintaining Venue in Travis County.

Respectfully submitted,

/s/ Jodi Cole

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Texas Bar No. 24045602  
ATTORNEY FOR MR. JERRY PHILLIPS

**CERTIFICATE OF SERVICE**

On this the 13<sup>th</sup> of October, I electronically filed the foregoing with the Clerk of the Court using the e-file Texas and a true and correct copy of the foregoing was served upon the following parties via electronic means as listed on the Court's ECF Noticing System:

Mr. Eric M. Brittain  
Windle, Hood, Norton, Brittain & Jay, LLP  
Chase Tower, Suite 1350  
201 East Main Drive  
El Paso, Texas 79901  
[brittain@windlehood.com](mailto:brittain@windlehood.com)  
Attorney for Defendants Presidio, Jeff Davis, and Brewster Counties

Mr. Randall Rouse  
Lynch, Chappell & Alsup, P.C.  
300 North Marienfeld, Suite 700  
Midland, Texas 79701  
[rrouse@lcalawfirm.com](mailto:rrouse@lcalawfirm.com)  
Attorney for Defendant Ori White and The 83<sup>rd</sup> Judicial District Attorney's Office

/s/ Jodi Cole

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JODI COLE

**AFFIDAVIT**

THE STATE OF TEXAS

§

COUNTY OF SUTTON

§

§

BEFORE ME, on this day personally appeared Jerry Phillips, who, being by me duly sworn did depose and state:

1. My name is Jerry Phillips, and I live in Sutton, County Texas.
2. I am a credible person.
3. I am the Petitioner in the suit now pending against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties, now pending in Travis County, Texas.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a. That there would exist in any county that is within the 83<sup>rd</sup> or 394<sup>th</sup> Judicial Districts of Texas, specifically those seeking a venue transfer, so great a prejudice against me that I would not be able to obtain a fair and impartial trial;
  - b. That there is a combination against me in Brewster, Jeff Davis, Pecos, and Presidio Counties, instigated by influential persons in the county and neighboring counties, by reason of which I would not be able to expect a fair and impartial trial;
  - c. That an impartial trial cannot be had in any of the following counties: Brewster, Jeff Davis, Pecos, or Presidio County, Texas;
  - d. A fair and impartial trial cannot be had by me in any of those counties because the 83<sup>rd</sup> District Attorney has multiple political allies, friends, acquaintances, former clients, life-long friends and political donation contributors from his many years of political activity, and those persons would not be impartial as potential jurors, or would work to prejudice any persons selected for jury duty. Ori White has held other political offices in Pecos County, Texas, including 112<sup>th</sup> District Attorney and Pecos County Attorney. His personal and political influence is so far-reaching that a fair trial cannot be held in any county within the 83<sup>rd</sup> judicial district.
  - e. That because each of the counties seeking to transfer venue is a party to the suit, any elected official in such county would have an interest in working to defeat justice for the fiscal benefit of that county.
  - f. That Ori White has created an alliance with people in positions of power in each of those counties that any witness presented by me would fear retaliation should they testify truthfully in the matter in that county.

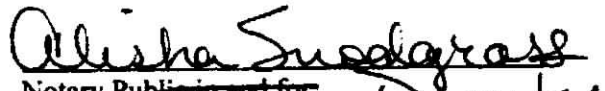


- i. Specifically involved in that alliance are Ori White, Presidio County Attorney Rod Ponton, Alpine City Attorney Rod Ponton (the same person in both of those capacities as well as being sworn in as an Assistant District Attorney in the 83<sup>rd</sup> District), Brewster County Attorney Steve Houston, Pecos County Attorney Frank Lacy (Who also works part-time as an Assistant District Attorney for Ori White in the 83<sup>rd</sup> District), Brewster County Sheriff Ronny Dodson, and Tim Crowley who is an attorney, (sworn in as an Assistant District Attorney in the 83<sup>rd</sup> District), a large land owner and influential business owner in Presidio County, Texas.
  - ii. Rod Ponton has tried to retaliate against political opponents using his title when he was first sworn in as an Assistant Attorney of the 83<sup>rd</sup> District under Ori White, by attempting to indict someone because her sister was sitting on the Alpine City Council when they fired him.
  - iii. My lawyer, Jodi Cole, has relayed to me that in retaliation for filing this Whistleblower lawsuit on my behalf, Rod Ponton has attempted to get her fired as the Alpine Municipal Judge, in his role as the Alpine City Prosecutor. Ponton's efforts have failed, but he is brazen enough to retaliate in such an obvious manner to a judge who he practices before as the city prosecutor, I am certain that less empowered and more vulnerable people in this region would be too fearful to testify truthfully, or to sit as jurors on a case involving the above combination of influential individuals.
  - iv. Normal local people would fear retaliation because the people involved as defendants in my case are so powerful, and some of the defendants' employees have abused their positions of responsibility by harming or attempting to harm others improperly for personal gain.
- g. That Judge Roy Ferguson, District Judge of the 394<sup>th</sup> District which covers Brewster, Jeff Davis, and Presidio Counties is a potential witness in the matter which is the subject of this suit. Specifically, I drafted a personal letter expressing my concern about illegal and improper conduct by county attorneys in the district, and expressing my intention to pursue an investigation and possible criminal charges. That letter was inadvertently sent to Judge Ferguson via email attachment with another legal filing. Judge Ferguson forwarded that letter to Ori White who then improperly fired me. As a witness, Judge Ferguson could not preside over the suit.
6. I believe that my case should stay in Travis County for a fair and impartial trial. I am capable of making this affidavit. I am over 18 years of age and of sound mind. The facts stated in this affidavit are within my personal knowledge and are true and correct.

  
 \_\_\_\_\_  
 Jerry E. Phillips, Affiant

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 13<sup>th</sup> day, of October, 2021.



  
 \_\_\_\_\_  
 Notary Public in and for  
 the State of Texas  
 My Commission Expires: \_\_\_\_\_  
 Deputy

## UNSWORN DECLARATION

THE STATE OF TEXAS       §  
  §  
COUNTY OF BREWSTER     §

1. My name is Sandra Wilson, and I live in Marathon, Brewster County Texas.
2. I am a credible person. My date of birth is April 23, 1955.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, Texas against Ori White, 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos counties.
4. I am also aware that some of the defendant counties wish to transfer this case to their own county.
5. I can attest to the following:
  - a. That there would exist in the county seeking a venue transfer, Brewster County, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b. That there is a combination against Mr. Phillips in Brewster County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c. That an impartial trial cannot be had in Brewster County, Texas; and/or
  - d. A fair and impartial trial cannot be had by Mr. Phillips in Brewster County because Brewster and Presidio County Attorneys have conspired together to get an indictment on the grandson of the Brewster County Attorney dismissed in Brewster County, Texas. Both attorneys have enlisted the assistance of the Brewster County Sheriff and Mr. Ori White to assist in this conspiracy after the case was referred to the Texas Attorney General's Office in 2019. In addition, the Brewster County Sheriff utilized information improperly given to him by the Brewster County Attorney against the Sheriff's opponent, which I feel greatly influenced the outcome of the Brewster County Sheriff's election in 2020. The Brewster County Sheriff has a great deal of influence on citizens in Brewster County and I have been told by numerous individuals that they are afraid of how much power the Sheriff exerts in the county and are not willing to speak out

EXHIBIT

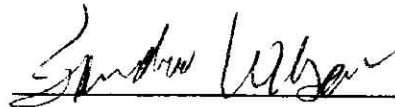
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against him for fear of retaliation. In addition, The Presidio County Attorney actively campaigned for Mr. White for the office of 83<sup>rd</sup> District Attorney, traveled to Austin and paid and filed the filing fee for Mr. White. Mr. White rewarded the Presidio County Attorney by swearing him and a wealthy attorney in as assistant district attorneys in Presidio County. The wealthy attorney has tremendous influence on the citizens of Presidio County. Those are just two instances where the elected officials in Brewster and Presidio County conspire against others for their own personal agendas and I doubt you could get a truly impartial jury in either county.

6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Marathon, Brewster County, State of Texas, on October 7, 2021.

A handwritten signature in black ink, appearing to read "Sandra Wilson", written over a horizontal line.

Sandra Wilson



AFFIDAVIT



THE STATE OF TEXAS

§  
§  
§

COUNTY OF BREWSTER

BEFORE ME, on this day personally appeared Leticia Carrillo who, being by me duly sworn did depose and state:

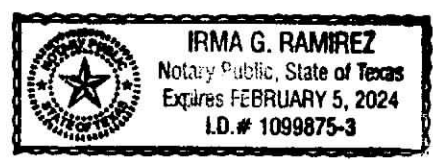
1. My name is Leticia Carrillo and I live in Brewster County, Texas.
2. My date of birth 08/16/1977
3. I believe from personal experience that there would exist in the county seeking a venue transfer, Brewster Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
4. From my own personal observations and experiences, there is a combination against Mr. Phillips in Brewster County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
5. When I started working under Ori White at the DA's office, we were all sworn in January 4, 2021.
6. Being sworn in was me, Marisol Skelton, Jerry Phillips and also Rod Ponton and Tim Crowley by Judge Cinderella Guevara.
7. Rod Ponton and Tim Crowley were sworn in as Assistant DA's under Ori White, none of us expected them to be there or knew that they were working in any way with the 83<sup>rd</sup> DA office.
8. In fact, later, Frank Lacy, who was also sworn in as ADA, and is the Pecos County Attorney, said he was not aware that he would be Rod Ponton's coworker. Mr. Lacy appeared not to be pleased.
9. No one seemed to be pleased that Rod Ponton was working under Ori White, or understand how he was employed as an ADA. In fact, I heard Ori White deny that Mr. Ponton was working out of our office. But I observed Mr. Ponton being sworn in. It appeared that Mr. Ponton forced his way into our office and inserted himself. None of us really understood what was going on.
10. After Mr. Ponton was sworn in, I have observed Rod Ponton attempt to indict an individual because of his own personal grievances.
11. After Jerry Phillips saw that Mr. Ponton was attempting to start the indictment process, he and/or Ori White stopped the process. Mr. Phillips said that we did into need to get involved in local politics.
12. Because Mr. Phillips' case involves powerful individuals who have lived in this area their entire lives, and have held these positions of power, a fair and impartial trial would be impossible in my opinion.
13. Ori White was born and raised in Presidio County, and Rod Ponton has been in Presidio for most of his life, this area does not have a large population. They have both worked as lawyers and held various political positions in most or all of the defendant counties in Mr. Phillips' case.
14. From my observations, it appeared that Ori White was attempting to placate Mr. Ponton whenever possible. I just did not understand it, and we were all confused as to what Mr. Ponton was or wasn't in our office.
15. I definitely do not feel that Brewster County, where I live, would provide a fair and impartial jury, or Presidio.
16. I believe that Mr. Phillips' case should stay in Travis County for a fair and impartial trial. I am capable of making this affidavit. I am over 18 years of age and of sound mind. The facts stated in this affidavit are within my personal knowledge and are true and correct.



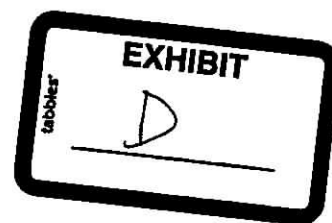
Leticia Carrillo  
Leticia Carrillo, Affiant

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on 13<sup>th</sup>, of  
October, 2021.

Irma G. Ramirez  
Notary Public in and for  
the State of Texas  
My Commission Expires: 02/05/2024



UNSWORN DECLARATION




THE STATE OF TEXAS

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COUNTY OF PRESIDIO

1. My name is DAVID W. BEEBE, and I live in PRESIDIO, County Texas. I am the JUSTICE OF THE PEACE elected to office in 2014 and serving PCT 1 since 2015.
2. I am a credible person. My date of birth is JULY 3rd, 1971. I reside in Marfa, Texas.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a. That there would exist in the county seeking a venue transfer- PECOS, BREWSTER, PRESIDIO and/or JEFF DAVIS Counties Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b. That there is a combination against Mr. Phillips in PECOS, BREWSTER, PRESIDIO and/or JEFF DAVIS County, instigated by influential persons in the counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c. That an impartial trial cannot be had in PECOS, BREWSTER, PRESIDIO or JEFF DAVIS County, Texas; and/or
  - d. A fair and impartial trial cannot be had by Mr. Phillips in PECOS, BREWSTER, PRESIDIO or JEFF DAVIS, County because the Defendants in said case have multiple complex conflicts of interests with various elected officials, law enforcement, County Clerks, and other court system employees who may be tasked to conduct such a case in any of these small counties. Additionally, Mr. Phillips is a relatively unknown person within these Counties and the certain Counties, (including mine in which I serve) are party to the lawsuit. This may contribute to potential Jury bias, impeding Justice.
6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in PRESIDIO County, State of Texas, on the 12th of October, 2021

  
 \_\_\_\_\_  
 JUDGE DAVID W. BEEBE  
 JUSTICE OF THE PEACE, PCT 1  
 PRESIDIO COUNTY, TEXAS

UNSWORN DECLARATION

THE STATE OF TEXAS §
COUNTY OF Presidio §

- 1. My name is Frances Garcia, and I live in Presidio, County Texas.
2. I am a credible person. My date of birth is 9/29/1961.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83rd District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following: because I am the Presidio Co. Treasurer
a. That there would exist in the county seeking a venue transfer, Presidio, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
b. That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
c. That an impartial trial cannot be had in Presidio County, Texas; and/or
d. A fair and impartial trial cannot be had by Mr. Phillips in \_\_\_\_\_, County because

6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 18th of October, 2021

Handwritten signature of Frances Garcia
(name)

UNSWORN DECLARATION

THE STATE OF TEXAS

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COUNTY OF Presidio

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1. My name is John A. Razo, and I live in Presidio, County Texas.
2. I am a credible person. My date of birth is July 20, 1983.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney’s Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a. I attest That there would exist in the county seeking a venue transfer, Presidio County, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b. I attest That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c. I attest That an impartial trial cannot be had in Presidio County, Texas; and/or
  - d. I attest A fair and impartial trial cannot be had by Mr. Phillips in Presidio, County because These counties are small leaving more of a chance of their being favoritism towards a friend or know associate. As a City Council Member for the City of Presidio think that a fair trail is essential.
6. I believe that Mr. Phillips’ lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 12th of October 2021

John A. Razo  
(name)



UNSWORN DECLARATION

THE STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

1. My name is Cheryl Calvert, and I live in Presidio, County Texas.
2. I am a credible person. My date of birth date is 11/19/1952.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following: Because I am Presidio County Deputy Treasurer.
  - a. X That there would exist in the county seeking a venue transfer, Presidio, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b. X That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c. \_\_\_\_\_ That an impartial trial cannot be had in \_\_\_\_\_ County, Texas; and/or
  - d. \_\_\_\_\_ A fair and impartial trial cannot be had by Mr. Phillips in \_\_\_\_\_, County because  
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\_\_\_\_\_
6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 13<sup>th</sup> of October, 2021

Cheryl Calvert  
(name)








**AFFIDAVIT**

THE STATE OF TEXAS  
COUNTY OF PRESIDIO

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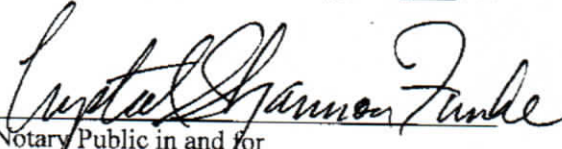
BEFORE ME, on this day personally appeared C. Arthur Gerfers, III, who, being by me duly sworn did depose and state:

1. My name is C. Arthur Gerfers, III, and I live in Presidio County Texas.
2. I am a credible person.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a.  That there would exist in the county seeking a venue transfer so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b.  That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c.  That an impartial trial cannot be had in Presidio County, Texas; and/or
  - d.  As Board Chairman of the Presidio County Underground Water Conservation District, it is my sincere view that the population of our county is so small that it would be impossible for anyone to participate in Mr. Phillips' trial that does not know the defendants or is in some way beholden to or influenced by the defendants. It's a simple case of arithmetic. The defendants are too well known and too powerful in our entire region for Mr. Phillips to receive a fair and impartial trial.
6. I believe that Mr. Phillips' case should stay in Travis County for a fair and impartial trial. I am capable of making this affidavit. I am over 18 years of age and of sound mind. The facts stated in this affidavit are within my personal knowledge and are true and correct.

  
C. Arthur Gerfers, III Affiant

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on 12<sup>th</sup> of October, 2021.



  
Notary Public in and for  
the State of Texas  
My Commission Expires: 01-29-2023

*Our Water Matters*

## **A Groundwater Mystery**

by Trey Gerfers

[trey.pcuwcd@gmail.com](mailto:trey.pcuwcd@gmail.com)



Every year counties and cities around Texas hold workshops in July and August to prepare for the creation of their annual budgets, which are required by law to be passed by the end of September. In my capacity as board chairman of the Presidio County Underground Water Conservation District (PCUWCD), I attended a workshop on July 29<sup>th</sup> to answer any questions about our budget request. In what I had expected to be a straightforward meeting, I found myself engulfed in a bizarre groundwater mystery.

When I joined the meeting on Zoom, Rod Ponton was addressing the Commissioners in his role as City Attorney for Presidio. Mr. Ponton also serves as the Presidio County Attorney. He spoke at length about a clinic that he said the hospital district wanted to open in the City of Presidio and urged the Commissioners to include \$100,000 for the clinic in next year's budget.

Judge Guevara asked Mr. Ponton if he could present a business plan or a budget for the new clinic. Mr. Ponton replied that he could not, but that the Commissioners should go ahead and allocate the money anyway. He then interjected – acting now in his capacity as Presidio County Attorney – that he had found two Attorney General opinions stating that it was illegal for the County to fund the groundwater district. He went on to say that this would save the County a good amount of money.

After an awkward pause, Commissioner Buddy Knight asked how much money the district was getting, to which I replied, “a whopping \$47,000, sir.” I then asked Mr. Ponton why, in his capacity as County Attorney, he hadn't provided the groundwater district with these legal opinions ahead of the budget workshop. He said that he had meant to but that he hadn't had a chance. When Abbie Perrault of the *Big Bend Sentinel* asked him later about how he had found the Attorney General opinions, Mr. Ponton stated that “someone” in the county had given them to him. But he couldn't recall who that person was.

When attempting to discern exactly who Mr. Ponton is working for, confusion can quickly set in. The man receives 5 or 6 paychecks from the public purse, including an annual salary of \$64,230.40 as Presidio County Attorney, and he also operates his own law practice. At the budget workshop, he was asking for money from one of his clients, Presidio County, on behalf of another of his clients, the City of Presidio, and then turned around and told his client, Presidio County, to defund the groundwater district, which serves the exact same constituents that he is supposedly serving in his capacity as County Attorney.

The question we should be asking is this: Why is the County Attorney suddenly demanding the defunding of the groundwater district? But first, a little history:

The PCUWCD was created in 1993 by House Bill 2817. This law, which is also called “enabling legislation,” states that the PCUWCD “may not levy or collect taxes on property in the district at

a rate greater than five cents on the \$100 assessed valuation.” Voters eventually received the opportunity to approve the creation of the PCUWCD in 1999. But the ballot measure made no mention of taxing authority, meaning that the groundwater district was created without a funding source. In the ensuing decades, the PCUWCD has always been funded by the County.

Since I became chairman in 2018, the District has received grants totaling upwards of \$80,000 with the option to access hundreds of thousands more in our capacity as a data provider to the National Ground-Water Monitoring Network of the United States Geological Survey. We are likely the only County entity with the potential to bring in more grant money than we spend in County funding. Even so, Presidio County Underground Water Conservation District remains one of the most poorly funded groundwater districts in the state, giving it little to work with to conserve groundwater and protect private property rights.

And yet even this modest level of funding is intolerable to the County Attorney. The result is a taxing election that the District will be forced to hold in November 2022.

Groundwater districts with taxing authority are always better funded than non-taxing districts. But the County Attorney’s ultimatum could not come at a worse time for Presidio County. In a time of deep uncertainty, with a global pandemic, the return of inflation, a record number of valuation disputes at the County Appraisal District, and property taxes more onerous than ever, the idea of asking the voters to increase their taxes would seem to most people like a death wish.

So the question becomes: Is someone trying to eliminate the groundwater district?

Before the voters decide between taxing themselves even more or watching their groundwater district disappear, they need to know why Mr. Ponton is suddenly forcing this tax election in the first place. Is somebody pulling his strings? Is there some kind of deal in the works that needs the groundwater district out of the way? The most obvious way to get to the bottom of this is for Mr. Ponton to simply disclose the name of the person that provided him with the legal opinions in support of defunding of the groundwater district. It should be clear from emails and other records.

Anyone with information that could shed light on this mystery is encouraged to contact me at the email address above. Stay tuned to future issues of *Our Water Matters* to see how this story unfolds...

Trey Gerfers is a San Antonio native and serves as Board Chairman of the Presidio County Underground Water Conservation District. He earns his living as a translator of technical documents from German to English for the German and Swiss pharmaceutical and medical-science industries. Trey has lived in Marfa since 2013.



**UNSWORN DECLARATION**

THE STATE OF TEXAS

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COUNTY OF Presidio, TX

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1. My name is Melissa Katherine Bent and I live in Presidio, County Texas.
2. I am a credible person. My date of birth is October 27, 1977.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a.  X. That there would exist in the county seeking a venue transfer, Presidio, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b.  X That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c.  X That an impartial trial cannot be had in Presidio County, Texas; and/or  
  
 X A fair and impartial trial cannot be had by Mr. Phillips in Presidio County because of the documented history of prejudice and mediocre performance by these courts.
6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 12 of October, 2021

Melissa Katherine Bent

(name)



**UNSWORN DECLARATION**

THE STATE OF TEXAS

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§

COUNTY OF Presidio

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1. My name is Hilary Scruggs Beebe, and I live in Marfa, Presidio County Texas.
2. I am a credible person. My date of birth is January 15, 1980.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a. HSB That there would exist in the county seeking a venue transfer, Presidio Co. Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b. HSB That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c. HSB That an impartial trial cannot be had in Presidio County, Texas; and/or surrounding areas
  - d. HSB A fair and impartial trial cannot be had by Mr. Phillips in Presidio County because Mr. Ponton has longstanding relationships with the authorities, as well as so many members of the general population, and impartial jurors/ will be difficult to find.
6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 12 of October, 2021

HS Beebe  
(name)



UNSWORN DECLARATION

THE STATE OF TEXAS

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COUNTY OF Presidio

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1. My name is Mary K Farley, and I live in Presidio, County Texas.
2. I am a credible person. My date of birth is 07/24/1960.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83rd District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a.  That there would exist in the county seeking a venue transfer, Presidio, Brewster, Jeff Davis and Pecos, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b.  That there is a combination against Mr. Phillips in Presidio/Brewster/Jeff Davis/Pecos County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c.  That an impartial trial cannot be had in Presidio or Brewster County, Texas; and/or Jeff Davis or Pecos County
  - d.  A fair and impartial trial cannot be had by Mr. Phillips in Presidio or Brewster, County because interference on a large scale by the presiding officials in each county, the counties of Presidio, Pecos, Brewster and Jeff Davis. For a fair and impartial hearing, the venue for the case should remain in Travis County far away from the potential improprieties threatening the integrity of the Mr. Phillips WhistleblowerLawsuit.
6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 12th of October, 2021

Mary K Farley.  
(name)



**UNSWORN DECLARATION**

THE STATE OF TEXAS

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COUNTY OF PRESIDIO

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1. My name is Arian Velazquez-Ornelas, and I live in Presidio, Presidio County Texas.
2. I am a credible person. My date of birth is 10/13/1980.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a.        That there would exist in the county seeking a venue transfer, Presidio, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b.        That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c.        That an impartial trial cannot be had in Presidio County, Texas; and/or
  - d.        A fair and impartial trial cannot be had by Mr. Phillips in Presidio, County because he and other defendants are too well known in this tri-county area, especially Presidio.
6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. I am the President of the Presidio Convention and Tourism Bureau and know some of the defendants in this case. They are well known in Presidio County and the tri-county area. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on this 13<sup>th</sup> of October, 2021



A handwritten signature in black ink, appearing to read "Arian Velazquez-Ornelas".

Arian Velazquez-Ornelas  
(name)

UNSWORN DECLARATION

THE STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

1. My name is NEIL W. CHAVIGNY, and I live in PRESDIO County Texas.
2. I am a credible person. My date of birth is JAN 2, 1950
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:
  - a.        That there would exist in the county seeking a venue transfer, PRESDIO Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;
  - b.        That there is a combination against Mr. Phillips in PRESDIO County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;
  - c.        That an impartial trial cannot be had in PRESDIO County, Texas; and/or
  - d.        A fair and impartial trial cannot be had by Mr. Phillips in PRESDIO County because  
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6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in PRESDIO County, State of Texas, on 12 of October, 2021

Neil W. Chavigny  
(name)





UNSWORN DECLARATION

THE STATE OF TEXAS

COUNTY OF Presidio

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1. My name is MARY K BAYTER, and I live in Presidio, County Texas.
2. I am a credible person. My date of birth is 27 APRIL 1963.
3. I am aware that a Whistleblower lawsuit has been filed by Jerry Phillips in Travis County, against Ori White, the 83<sup>rd</sup> District Attorney's Office, and Brewster, Presidio, Jeff Davis, and Pecos Counties.
4. I am also aware that some of the defendant counties wish to transfer venue to their own county.
5. I can attest to the following:

a. That there would exist in the county seeking a venue transfer, Presidio, Texas, so great a prejudice against Mr. Phillips that he would not be able to obtain a fair and impartial trial;

b. That there is a combination against Mr. Phillips in Presidio County, instigated by influential persons in the county and neighboring counties, by reason of which Mr. Phillips would not be able to expect a fair and impartial trial;

c. That an impartial trial cannot be had in Presidio County, Texas; and/or

d. A fair and impartial trial cannot be had by Mr. Phillips in Presidio County because

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6. I believe that Mr. Phillips' lawsuit should stay in Travis County for a fair and impartial trial. I am capable of making this unsworn declaration, and I am over 18 years of age and of sound mind. The facts stated in this unsworn declaration are within my personal knowledge and are true and correct.

Executed in Presidio County, State of Texas, on 12 of October, 2021

Mary K Bayter

(name)



THE CULTURE

# A Battle for the Soul of Marfa

What happens when a wealthy patron wears out his welcome?



By Mimi Swartz

February 2020

25



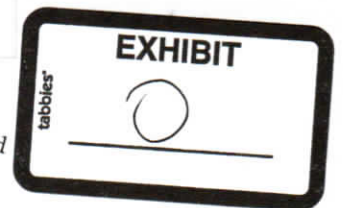
The water tower in Marfa on December 14, 2019.

Photograph by Nick Simonite

*This article is part of our February 2020 “Small Towns, Big Money” package. [Read more here.](#)*

*This story has been edited, since we first published it last month, to correct and clarify issues of accuracy and context raised by several of the Marfans about whom we wrote. Details of the changes are at the end of the story.*

**T**here is little about Tim Crowley that doesn’t provoke a strong reaction. At 65, he is a tall, forceful, and fastidiously dressed man, even when he’s in jeans and a T-shirt. He brushes his silver hair carefully away from his high, unlined forehead, and he has a thin upper lip



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that can flatten into an expression of deep distaste when necessary. He flashes extremely white teeth and emits a deep—occasionally mirthless—belly laugh. Overall, Crowley has the cultivated manner and authoritative ease of an eighteenth-century British lord, which suits someone who is a successful trial lawyer, a global entrepreneur, and the biggest man in a small West Texas town of around 1,700 people.

That the town, Marfa, happens to be the unlikeliest of global art capitals and hipster hangouts is due in large part to the persistence and generosity of, well, Tim Crowley. Since arriving in the nineties he has been buying promising if decrepit buildings and turning them into showpieces. “When I first moved here there was one hill you could get cell service on,” he tells me, a bit nostalgically. Crowley turned an old feed store into the Crowley Theater, which hosts, free of charge, everything from local kids in cowboy costumes riding stick horses to the tune of “Texas, Our Texas” to live performances by John Waters or Sissy Spacek. “I couldn’t do this in Houston,” Crowley says.

All this good work has made Crowley something of an unofficial spokesperson for Marfa, which, let’s face it, does require some explaining. It is an indisputably poor town in the middle of the desert that, thanks to a few twists of fate, has received breathless tributes from the likes of the *New York Times*, *Vanity Fair*, *Vogue*, *Dwell*, NPR, and *60 Minutes*. To the outside world, Marfa was once so esoteric as to be almost incomprehensible. Now Europeans buy T-shirts by the dozens depicting the town’s iconic water tower. Marfa has grown famous, and yet, as Crowley sees it, no one here lives in a bubble of wealth or privilege. “Some of my best friends are welders,” he says.

He hunches forward, as if he is imparting a secret. “There’ve been a lot of bad articles that got it wrong. Marfa: The New Santa Fe. The white versus the brown. The cultural conflicts. People have gone with the stereotypes,” he says somewhat wearily. But here’s the truth, according to Crowley: “What distinguishes Marfa is the quality. The historical standard set by Donald Judd”—the famous minimalist who in the seventies abandoned fame and fortune in Manhattan for the solitude of Marfa. “We have real artists. We don’t have the kind of galleries you see in Fredericksburg.”

Crowley and I are having breakfast in the spare if stylish dining room of the [Hotel Saint George](#), which Crowley opened in 2016. We might as well be in Williamsburg, Brooklyn, what with the obligatory dark-wood-and-exposed-brick decor. The most Texan touch comes from the servers, who are mainly young and Latino and who repeatedly fill his water glass, asking over and over and over if he needs more of . . . anything. He is oblivious in the way of people accustomed to being fussed over. (“I think we’re the largest employers of Marfa High School kids,” Crowley says, noting that the locals he employs are often “surprised to learn there are different types of wine than white and red.”)

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Intentionally or not, the blocky, fervently modern Saint George evokes Judd's minimalism. The artist created his most powerful works in Marfa, many of which are famously on display in a venue at the edge of town. Dozens upon dozens of big boxes—giant concrete ones outdoors, refrigerator-size aluminum ones indoors—the same, only different, depending on the light of day and time of year, stand in formation on the grounds of an old military installation, attracting thousands of visitors a year. This work survives thanks to the support of the Chinati Foundation. Crowley, naturally, served on the Chinati board from 2001 to 2008 and as its president for four years.

Crowley's influence also extends to the Marfa Book Company, located inside the Saint George. He owns it with a partner, a poet named Tim Johnson. Along with myriad art books and art supplies, it features the kind of event programming (run by Johnson) that would be the envy of Manhattan's 92nd Street Y. Ben Lerner, darling of critics and author of the lavishly praised *The Topeka School*, gave a reading here, as did the Zimbabwean-born novelist Noviolet Bulawayo, whose novel *We Need New Names* was a literary sensation.

The farmers' market every Saturday parks itself rent-free on Crowley's land next door to the Saint George. For a few hours a day, any adult in town can swim free of charge in the hotel's sprawling pool. (Kids get the privilege on Tuesdays.) Crowley happily paid for new carpet in the Catholic church. He has also served, unpaid, as an assistant county attorney.

"Do you know how lucky a town of this size is to have this rebirth?" Crowley asks me, his voice low, taking me into his confidence. "It's every small town's dream that you could have this. I just don't know how much more you could want."

Well, if you ask quietly—very quietly—around Marfa, some folks will tell you exactly what more they want. They want their town back from Tim Crowley. They won't tell you this in public or on the record, because they are afraid of Crowley. He is a rich, big-city litigator in a small town full of residents who were once unfamiliar with the type. "He will make your life miserable" is a refrain among those who either have had firsthand experience with his ire or have gone to great lengths to avoid it.

How much of Crowley's power stems from perception and how much from reality is debatable, but currently, tensions between him and his adopted hometown seem to be approaching a breaking point. Any therapist will tell you that dependence breeds resentment, as does the control that so often accompanies patronage. The current Exhibit A in Marfa is a battle over plans for a Coachella-like music festival on a private ranch outside town. On a micro level it's a local squabble between some very rich folks and the less rich but righteous creative class they have supported for decades. But on a macro level this is a pitched battle for the soul of Marfa—whether it will be able to resist full-on commercialization of its renown or whether it will grow into

something more mundane, more remunerative.

Smack in the middle, girded for battle, is Tim Crowley. “A lot of what’s happening right now involves people trying to pick fights based upon various interpretations of class warfare,” he explains. And he’s right about that. The irony is that it’s his carefully crafted version of Marfa that is now threatened by the very forces he helped create.



ay at the Crowley Theater, a converted feed store.

Photograph by Nick

**If there is** a stranger, more conflicted place in all of Texas than Marfa, it has yet to make itself known. Just sixty miles from the Mexican border town of Ojinaga and three hours by car from El Paso or Midland, Marfa’s isolated location in the high Chihuahuan Desert of West Texas is, for a certain type of person, entrancing. The sky by day is limitless, at night a feast of stars. The sun’s movement across the land makes for a parade of shadows and hues unlike in any other place on the planet. It’s country as inhospitable as it is

spectacular, for eons a place that attracted folks as irascible as the porcupines that nestle in the rocks around these parts. “You can’t get your nails done here,” Crowley proudly claims. “There are no dry cleaners here. You get used to buying what you need at the Dollar General.”

Well, at least that used to be true. Cruise around Marfa today and you will find not only salons but world-class art on display by Judd and his pals John Chamberlain, Dan Flavin, and Robert Irwin—among others. Old buildings restored in a way that only impeccable taste and lots of money allow. A restaurant that serves nilgai, a large Asian antelope imported by Texas ranchers for hunting and prepared, in this instance, with “wild mushrooms, wine, venison kidneys, paprika and grilled bread.” A wellness studio offering “an anchoring, sacred space.” Tiny, expertly curated shops like Communitie that sell felted cashmere stoles in stunning earth tones for \$395 and updated cowboy bandannas made of Japanese selvage cotton for \$95. The headquarters of the newspaper, the ***Big Bend Sentinel***, includes a gift shop that sells covetable if pricey straw backpacks from Mexico, as well as a coffee shop and bar that doubles as a spacious, sunlit event venue.

The people responsible for and also torn about this part of Marfa may not be particularly prosperous, but they are well educated and worldly. They are transplants who love not just the beauty and the isolation of the place but the freedom to create without the hypercompetitiveness of the big cities most of them have abandoned. Here they find a relatively status-free safe space where they can work on something intellectually or artistically challenging and also be part of a community. They join the volunteer fire department or teach art at the local elementary. They can be connected to the outside world via the internet but also play horseshoes with the few surviving blue-haired heiresses to some of Texas’s oldest ranches. Solitude and intimacy in equal parts.

This crowd lives alongside the Marfa that is 70 percent Latino and struggles to make do with ineffectual local government, a substandard school system, a dearth of adequate health care, and soaring housing prices. Marfa’s annual per capita income is \$19,064. Almost 20 percent of the population lives in poverty.

Finally, there is the Marfa of the super-rich, including young, flashy descendants of ranch families who also have homes in Manhattan or Los Angeles or both. In recent years they’ve been joined in Marfa by CEOs and lawyer types who have bought impressive spreads outside town. They fly in on private aircraft to the town’s tiny municipal airport. Like Crowley, they are the kinds of people who see Marfa as a canvas for their own needs and ambitions, whether they be social, artistic, commercial, or some combination of the three. They are people well accustomed to getting their way.

**Crowley is proud** of his many good works in Marfa, but he is most proud of the Crowley Theater, with its Alamo-like roofline and a facade from which

layers of paint—white, gray, yellow—have been left to fade proudly in the sun. “I built all this,” Crowley says, stepping out of the glare of the day into the dim light inside.

The theater’s interior reflects that perfect Marfa combo of high and low: state-of-the-art tech with \$4 wooden seats from eBay that look like they came out of a high school auditorium circa 1935. There is, also, a grand piano that Crowley selected with help from one of the directors of the Baryshnikov Arts Center, in Manhattan. “I hate doing fund-raising, so I pay for most of it myself,” Crowley says.

Doing things himself has been a hallmark of Crowley’s life from his earliest days. He grew up in Los Angeles, the oldest of ten kids in a Catholic family. The Crowleys moved to Houston when Tim was fourteen, and he left home at eighteen, eager to live by his own rules. He majored in theater tech at Texas Tech but later found the law to be satisfying, too, and far more financially rewarding. By the time Crowley was thirty he was working as both a successful commercial real estate developer and a plaintiff’s lawyer in College Station, a town he chose because he saw an opening there for an unknown lawyer to prove himself. Those were the days before tort reform. By 1988, Crowley had opened a Houston office and was making a bundle litigating class action suits involving everything from leaky chemical pipelines to faulty household smoke detectors. His background in both stagecraft and law had given him a knack for understanding how things worked, how they went wrong, and how they could be fixed. A dying West Texas town would have called to him like the sirens to Odysseus.

Crowley arrived in Marfa in 1997, the result of a somewhat impulsive move he made with Lynn Goode, his wife at the time. She was a well-respected art gallery owner in Houston with an eye for local talent who could go national: for example, the conceptual team known as the Art Guys. With wide hazel eyes lit perpetually with delight, tousled dark blond hair, and an infectious, eager laugh, Goode possessed a ready-for-anything charisma. Crowley met her while shopping for art for his law office. He proposed three weeks later, married Goode in 1990, and moved to Houston full-time the next year.

For several years, the marriage worked as the couple juggled two careers and looked after four boys from their previous marriages. Crowley’s ambitions kept them busy too: when he wasn’t trying class action suits, he was redoing his two homes and two law offices. Goode and Crowley also upgraded her gallery, with the exterior painted in a can’t-miss shade of mango.

Then, in 1996, Goode was diagnosed with multiple sclerosis. After she was required to wear leg braces and underwent several hospitalizations, the Crowleys took a long weekend of R&R at the Cibolo Creek Ranch, an old West Texas adobe ranching compound that had been converted into a luxury resort and opened in 1993. (It was one of the first places to demonstrate that the wilds of West Texas could attract the global elite; Mick Jagger once stayed there.)

The couple passed through Marfa on the same trip. Crowley had visited before but this time saw it with fresh eyes. Not many would have seen much promise in the place at the time. Originally a railroad water stop and then a teeming cattle town with its own opera house, it had also thrived during World War II when several thousand soldiers and pilots were trained there. But then the war ended, and a monstrous drought put the cattle business into a perilous decline. The filming of *Giant* in 1955 provided a thrilling but fleeting respite, with James Dean, Rock Hudson, and Elizabeth Taylor bunking at the Paisano Hotel.

Marfa seemed doomed to become just another Texas town gasping for breath—until 1973, when Donald Judd arrived. He was by then already world famous as a founder of minimalism, an iconoclast fiercely protective of his work and his privacy. Judd began buying up local real estate: two aircraft hangars, a bank, 40,000-odd acres of land, a Safeway, a hotel, a handful of commercial buildings, six homes, and the local hot springs. With the support of the New York City-based Dia Art Foundation, financed by de Menil family oil money from Houston, Judd also purchased most of a sprawling old military installation, Fort D. A. Russell, and reimagined it as a massive exhibition space under his sole control, far from the capriciousness of the New York art world.

That worked until the price of oil tanked in the eighties and Dia tried to reduce its obligations. Judd wasn't about to let his rich patrons off the hook. He threatened to sue and received a million-dollar payout. Flush with cash and freed from his benefactors, Judd established a new foundation named Chinati, after the nearby mountain range. That foundation paid for vast, permanent indoor/outdoor exhibitions by Judd and a select group of his (mostly macho white male) friends, including Carl Andre, John Chamberlain, Dan Flavin, Roni Horn, Ilya Kabakov, and other major artists of that period.





Donald Judd's 15 untitled works in concrete, 1980-1984, at Chinati.

Photograph by Nick Simonite

If some of the residents of Marfa didn't know what to make of the huge concrete boxes arranged just so on the fort's former parade ground or the bunker-like structure stocked with Chamberlain's smashed-up-car sculptures, no one complained either. Judd had given the local economy a boost. He hired local craftsmen to build the ten-foot wall around his home and studio. And as Chinati grew, it attracted talented young employees from all over the world. They mixed easily with local eccentrics like Tigie Lancaster, a daughter of Dallas society who wore a pith helmet when she rode her mule Doc into town.

All went reasonably well until Judd died unexpectedly at just 65 in 1994, when Chinati had only \$400 left in the bank. By the time the Crowleys took up permanent residence in 1997, Chinati was on life support. So was Marfa. Even the Dairy Queen was closed.

Knowledgeable about art and preternaturally social, the Crowleys were a welcome addition. "They were in their forties. They had money. She was adorable, vivacious and warm and a dingbat all at once," remembers one longtime Marfa resident. "People really loved Lynn, and they liked and respected Tim and felt maybe a little intimidated by him." The couple made friends quickly—hosting barbecues, playing Scrabble, encouraging friends from Houston to mix with the locals and maybe even buy a second home, a nice adobe bungalow you could decorate with a lot of ranch gear. Lynn

became a particular favorite of some of the old ranching widows, who let her in on local lore. (*You know that's not his real daddy, don't you?*) If Tim seemed the less glamorous member of the duo, he, too, spent time getting to know the ranchers and tradesmen, even hanging out with them at the 6 a.m. gatherings at Carmen's Café.

Tim had plans. "If I could just get the right fifty people to move here . . .," he said idly to a neighbor, who thought at the time that it was a pretty funny thing to say.

Almost immediately Crowley went on a buying spree, using a substantial stash from the sale of two homes and Goode's gallery in Houston. Along with a group of other investors, Crowley helped underwrite the Nature Conservancy's purchase of the 32,000-acre U-Up U-Down Ranch in the Davis Mountains. He bought a 3,800-acre parcel for himself and got a hefty tax deduction by agreeing to the conservancy's terms for land use.

## **Marfa seemed on track to achieve a rare balancing act. It was the place where high art met the best of small-town life.**

Leaving Houston behind, the Crowleys attempted, at first, to camp on their ranch. With typical enthusiasm, Tim took riding lessons and began stocking up on all the trappings of ranch life: horses, trailers, camping equipment, and, of course, a pickup. When it became clear that building a small cabin on the property would take longer than a year—there wasn't much of a construction business in Marfa, much less a Home Depot—the Crowleys spent \$50,000 on an adobe house in town. Soon enough, it became a larger, somewhat grander version of its old self.

In the meantime, Crowley also bought the old Brite Building, on the main drag of Highland Street. Today, it is a jewel of a property, whitewashed with its wrought-iron balconies lovingly restored, the gay hues returned to the Mexican tiles dotting the facade. Crowley's subsequent purchase of the Jim Tyler building made headlines in the *Big Bend Sentinel*. Soon after, more office buildings. The feed store near the railroad tracks. A few more houses. Even an old bus station. Everything was just so irresistibly cheap. Fixer-uppers—Victorians, adobes, whatever—ranged from \$20,000 to \$50,000.

What else did Marfa need? What about a bookstore/coffee shop/wine bar? That became Goode's domain and, soon enough, a cultural locus of town. The prestigious Santa Fe-based Lannan Foundation had coincidentally chosen Marfa as a site for its residency programs for artists and writers, so now anyone could stop into the Marfa Book Company for an espresso—espresso!

In Marfa!—and a reading by major authors such as Grace Paley and David Foster Wallace. Goode also launched a local reading program called “Ten by Ten,” in which locals were invited to share portions of their favorite books for ten minutes each. Goode’s MS went into remission. Just as Marfa was coming back to life, so was she.

In 2001 the couple opened the Goode-Crowley Theater in that refurbished feed store. The first event, a soft launch in late 2000, was a showing of *High Lonesome*—not the classic western filmed in Marfa in the fifties but a play by the same name written by a young Marfa woman. There was a pachanga party, with music and dancing, for the whole town afterward. In the hands of director Rob Weiner, a New Yorker who also worked at Chinati and had been Donald Judd’s assistant, the quality of the work presented at the theater became exceptional, whether it involved a premiere written by a Lannan fellow or a Wallace Shawn play performed by locals. Marfa seemed on track to achieve a rare balancing act. It was the place where high art met the best of small-town life.

Only a sourpuss would complain, really. And it was just little things. A local realtor seemed awfully beholden to Crowley, running hither and yon to find ever more folks willing to sell their properties to him. The same realtor also seemed very careful about who moved to town. One young couple with a certain set of credentials (or funds) might find a multitude of homes on the market, while another might have a tough time finding anything. Nobody could prove it, but some residents said they got the feeling that Crowley was looking over their shoulder. Crowley says he has never heard of any realtor doing such a thing.

Then he started playing in local politics, boosting an old friend for city attorney. To some, he was acting as if he owned the residents of Marfa along with all those buildings he’d bought.

**Tim Crowley remembers** those early days differently. “There was a simplicity to the place,” he told local historian Cecilia Thompson in 2010. In that interview, Crowley waxed philosophical, just as he would to reporters for years to come: “When I first got here there was no opposition,” he told her. No one questioned the actions of anyone else; it was live and let live for “a bunch of weirdos.” Then things changed, to Crowley’s way of thinking, with growing tensions between newcomers and newer-comers. “Everyone wanted Marfa to be frozen at the moment that they showed up.”

Not Crowley, though. With a partner, he bought another large plot of land closer to town and subdivided it into small ranches available for sale. The rancher who sold the land was furious about the future of his spread: “In no way, shape or fashion was it my desire to have the 11,000+/- acres mentioned be subdivided,” Mo Morrow wrote to the *Sentinel*. “I was led to believe the original buyer’s wish was to keep the property intact and in one contiguous tract and under one ownership.” Crowley denies that he gave any such assurance to Morrow.



Crowley saved a sizable plot for himself and set out, with architect Carlos Jiménez, imported from Houston, to build an eight-thousand-square-foot dream house in the desert. This was no adobe bungalow. It was a sprawling minimalist mansion with dark pecan floors and a pool area well suited to the French Riviera. Walls inside displayed the couple's impressive contemporary art collection. There was a table by George Nakashima and a light sculpture by Dan Flavin. Each window framed a particular—and spectacular—view of the desert. “Jiménez created courtyards in the front and rear of the house that are buffers between the elegance of the interior and the savagery of the setting” was the way the *New York Times* described the house in 2005.

By then Crowley had landed his board position at Chinati. Now he was rubbing shoulders with some of the most influential people in the art world: other board members and big Chinati contributors included the actor Tommy Lee Jones; collector Len Riggio, who was also the founder of Barnes & Noble; Gabriel Catone, an art consultant married to Oscar-winning producer Bruce Cohen; and Sir Nicholas Serota, the director of London's Tate Museum. Another member of the board was a young woman named Virginia Lebermann, the daughter of Austin philanthropist Lowell Lebermann, who was part of the oil-rich South Texas O'Connor family. It was Virginia who teamed up with the scion of another Texas ranching dynasty, Fairfax Dorn, to create yet another art venue in town, Ballroom Marfa.

## Prada Marfa was born for the Instagram era. It has garnered 572,080 likes since Beyoncé posted an image of herself there.

These two women would follow in Crowley's (and Judd's) footsteps, bringing the outside world to Marfa and, along with it, the kinds of changes that create gratitude and spark controversy. Not unlike Crowley, Dorn and Lebermann had landed in Marfa on something of a whim. After September 11, 2001, the good friends packed their bags in Manhattan and headed southwest, buying an old auto repair shop in town as an exhibition/performance/whatever space. Ballroom was in many ways the polar opposite of the solemn, reverent Chinati. One of the early shows was a performance piece in which an Austin music fan created a living room and played records for two weeks.

It was probably more fun than studying the play of light on concrete boxes. Dorn and Lebermann were buzzy people: young, rich, and glamorous native Texans. Within a few years, Dorn would be married to Marc Glimcher, the son of Pace Gallery founder Arne Glimcher, a major player in the international art world. Their wedding reception in 2015 would be held on the Dorn family ranch, just outside Marfa, amid a trio of tepees. Lebermann's

Marfa home would be featured in *Elle Decor*, and the article showcased, along with fine art and family antiques, some Texas tumbleweeds spray-painted red.

In 2005 Ballroom installed what remains, so far, its most transformative artwork. Located on the lonely road to Valentine was a “site-specific permanent land art project” by the Berlin artists Elmgreen and Dragset. Entitled “Prada Marfa,” it was, in fact, an \$80,000 facsimile of a store featuring the breathtakingly expensive luxury goods designed by Italian fashion legend Miuccia Prada. It was designed to slowly deteriorate—ostensibly a commentary on materialism. Maybe the timing was wrong, because many people didn’t get the joke: by 2005 thirteen-year-old mall rats in Wisconsin were coveting Prada shoes, and some locals were downright offended by the celebration of \$680 pumps in a place where most of the elementary school kids relied on government-funded lunch programs. Still, it worked. Prada Marfa was born for the Instagram era. It has garnered 572,080 likes since Beyoncé posted an image of herself there. Says one person closely connected with Chinati: “It became more of a landmark than anything of Judd’s.”

But Prada Marfa also raised some pointed and painful questions about what Marfa was becoming. Yes, it was still a small town with limited resources, but word was getting out that it was evolving into a younger, more daring Santa Fe. In a 2005 story called “The Great Marfa . . . Land Boom,” the *New York Times* noted that immigrants from Chicago, New York, and California as well as Texas (“Many were friends of a Houston couple—Tim Crowley, a plaintiff’s lawyer, and his wife, Lynn, a gallery owner”) were snapping up adobe houses that were now going for closer to \$100,000 than the \$25,000 of the late nineties.



Tourists take their picture in front of the Prada Marfa installation, in Valentine.

Photograph by Nick Simonite

Marfa got its own NPR affiliate around that time as well. The landlord? Tim Crowley, who joined the board of Marfa Public Radio in 2012, and remained its landlord for several more years. Carmen's Café closed, and folks started gathering at the high-toned restaurant Cochineal, where Crowley earned a reputation as a big tipper. His restorations attracted other renovators: Austin-based hip hotelier Liz Lambert redid the sixties-era Thunderbird Hotel. (She's no longer involved.) Art galleries—fine ones from the likes of Eugene Binder, who also had galleries in New York and Dallas—began to replace the mom-and-pop stores on Highland Street. (At one point, the Crowleys asked the owner of a gift shop to move out of one of their properties to what they regarded as a nicer spot, but one that at the time was considered to be on the wrong side of the railroad tracks.)

It was also during this time that Crowley provided Marfans with their much-beloved Shade Structure, an oversized patio under a tin roof held up by oil-field pipe. It became the equivalent of a Mexican *zócalo*—a gathering place for townspeople after softball games or readings or church, with Mediterranean and vegan selections provided by the local Food Shark truck.

Still, the oft-stated belief of wealthy Marfans that the town had no social classes became harder and harder to sustain. When, in 2005, the owner of the Marfa-based American Plume and Fancy Feather Company—Vegas showgirls were the major market for their boas—tried to build a subdivision

of affordable housing for people like its workers adjacent to Chinati, the arts community launched a NIMBY campaign in protest. “Chinati has always been protective of their view corridor, particularly with the concrete pieces in the field,” Crowley explains now. The development never happened.

The tensions were growing in Marfa between those who wanted the place to remain a must-see station on the international art circuit and those who wanted more affordable ranch houses and chain stores, which, after all, would create jobs and serve the wider population. The latter began referring to the former as “Chinatis.” And while one function of art is often to challenge the status quo, it could be said that some of the work being presented in town was pushing some Marfans well beyond their comfort zones. An invitation to the Chinati opening of the artist John Wesley was sent to everyone in the predominantly Catholic town; the show contained an image of a vagina. The Art Guys came to Marfa and installed a piece that portrayed them as Jesus and Mary. Wallace Shawn’s *A Thought in Three Parts* featured an onstage orgy.

One who took the brunt of the ensuing protests, even though she herself didn’t agree with the most provocative pieces, was Lynn Goode. Her husband was committed to Marfa, but he was also often out of town—traveling with Chinati board members, managing his law practice in Houston, pursuing a new venture manufacturing medical equipment in China and Japan.

Goode, meanwhile, was either alone battling rattlesnakes in her casbah or entertaining the cast of *There Will Be Blood* when they filmed just outside town. Friends noticed her jeans were sometimes replaced with ensembles Crowley bought for her. (Prada!) There was the issue of the land they had purchased as part of the sale of the U-Up U-Down ranch. She had wanted to keep it as a nest egg; Crowley sold it. Goode felt pressured by the Chinati types to donate to the foundation an old hospital she longed to turn into a group home. Eventually she relented, and the building was demolished and rebuilt as an installation by artist Robert Irwin.

As Crowley grew in stature and the couple’s social life became more dazzling—tacos with the head of the Tate!—Goode seemed to recede. Her MS symptoms returned. When her father died and her mother descended into dementia, she began spending more time back in Houston. The couple divorced in 2008. “Marfa ended up working for me and not for her” is the way Crowley puts it.

The Goode-Crowley Theater became the Crowley Theater, and Goode’s name disappeared from the list of contributors to Chinati. She was erased from Marfa.

**If there was** a period that could be labeled Peak Marfa, it would have been around 2012 and 2013. That was when national publicity reached its zenith, with glowing if slightly confounded stories about this art oasis in the desert, in Texas of all places. Morley Safer of *60 Minutes* did a feature called “Marfa,



Texas: The Capital of Quirkiness.” *Vanity Fair*’s story was called “Lone Star Bohemia.” *Vogue*: “From Marfa to the Moon: A Weekend in West Texas,” written by Ballroom cofounder Fairfax Dorn. And so on. By then hotelier Liz Lambert had opened El Cosmico, her new inn close to Chinati, where guests could choose to stay in an Airstream trailer or a tepee or a yurt. There was a “hammock grove,” and guests could reserve, for \$85, a soak in a wood-fired Dutch hot tub.

It was also around that time that Crowley appeared—at least in the perceptions of some Marfans—to tighten his grip on the place. Wealthy and powerful people can be unusually dominant in small towns, but Marfa had a substantial creative class—artists, writers, restaurateurs, boutique owners—that was a little harder to corral. Crowley had done a lot to make their small-town lives much richer than those of, say, a struggling painter in Presidio, but they began to believe that Crowley’s beneficence came with strings attached. People noticed that Crowley got grouchy when someone opened a business that competed with one of his own. As big-city trial lawyers often do, he contributed to the campaigns of local public officials, which to some Marfans suggested he had the city and county wired. They noted that he rarely seemed to run into much trouble having his projects approved. (Crowley denied that his contributions brought him any special influence.) He also served as an assistant district attorney for four years; that, too, made people think twice about crossing him. Everyone from regular patrons of the Crowley Theater to employees in his various businesses was in some way dependent on him. “People got attached to the money,” one local explains. Crowley had become a modern-day version of the Mexican *patrón*: someone who was paternalistically generous but seemed to expect fealty in return.

Crowley knows he draws his share of criticism—but also praise. “I don’t feel like I am without friends and love in Marfa,” he tells me. He’s proud that the local Chamber of Commerce named him citizen of the year in 2011. But, he adds, “there are all sorts of issues that come up when you employ a hundred people in a small town.” And then there’s the element of class disparity. “In Houston, I would be considered on the ultra-liberal side. But in Marfa, just being employed, you could be accused of being the next corporate raider.”

The environment became more fraught when word spread that Crowley and Jiménez planned to build a new hotel. It would replace the original Hotel Saint George (torn down in 1929), on land that more recently housed the Marfa Book Company and Marfa Public Radio. Surely it was time for another hotel—the old Paisano could use some competition—what with the rise in tourism and the growing number of destination weddings in town. But some Marfans weren’t so thrilled. Several locals wrote letters of complaint to the *Sentinel*. There was a debate at the city council. Who had okayed the contemporary design? Did it fit in with the historic structures on Highland Street? Should a hotel compete with the courthouse to be the tallest building in Marfa?

Outsiders had no such concerns when the Saint George opened in April 2016.

There were raves in everything from *Condé Nast Traveler* to *Forbes* to, yes, *Texas Monthly*. *PaperCity*, the statewide design and society publication, cooed, “Were he still living, Donald Judd would likely hang out at Marfa’s newly opened Hotel St. George . . . The 55-room hotel sets a new standard of style for this remote West Texas town of 2,000 that has attracted such high-profile and diverse visitors as Anna Wintour, David Byrne, Wallace Shawn, Natalie Portman and Karl Rove.”

Indeed, the semiotics of the Saint George checked all the boxes for the style-obsessed: challenging local artwork on the walls, a bar crafted of black marble rescued from an old building facade. There were Alvar Aalto tank chairs and Arne Jacobson floor lamps in the lobby, for those with the eye to recognize them. The svelte, contemporary guest rooms were stocked with Aesop bath products, more original art, and tiny packets of earplugs for those who couldn’t stand the sound of the trains barreling through late at night. (The instructions included a lyrical description of why you might not want to use them.)

The building’s exterior—it was a four-story box, its white walls liberated of all adornment save rectangular windows—didn’t sit well with everyone. Some detractors called it The Clinic. Crowley engendered more hard feelings when the beloved Shade Structure, which had been the site of so many casual town gatherings, had to be dismantled and moved because he needed the space for the hotel party rooms and swimming pool. (Crowley donated the metal components of the structure to the city so that it might be rebuilt elsewhere.) Sure, locals could use the pool during designated times, and the high school could use the hotel ballroom for its graduation party. But such giving followed by such taking fostered distrust.

The new mayor elected in 2017, a painter named Ann Marie Nafziger, ran afoul of Crowley when she began working on a parking ordinance that was unpopular with many downtown business owners.

Nafziger, whom Crowley labels “the darling of the newcomers,” suddenly found herself under siege from old-timer constituents alarmed by rumors that they might soon be forced to pay for metered parking downtown—which, worse, could lead to the issuance of parking tickets in a place that traditionally had no need for rules about where and how long one could park. Such overregulation, Crowley still says today, would be “like copying from a town in Connecticut.” Never mind that Nafziger’s plans were limited and aimed at curbing some of the tourist traffic. Crowley and his allies, it seemed, had painted her as representing Big Government, the biggest bugaboo in West Texas.

When the mayor came up for reelection earlier this year, Crowley campaigned enthusiastically for her opponent, who won. When Nafziger asked a friend to put up a yard sign in support of her, he demurred. He was a business partner of Tim Crowley.



The Hotel Saint George lobby.

Photograph by Nick Simonite

In early 2019, Marfa found itself beset by another controversy, one far more polarizing than a parking fight. Fairfax Dorn, one of the Ballroom Marfa founders, had agreed to let an Austin promotion company called C3 Presents, a subsidiary of Live Nation, host a music festival on her family ranch, the Gage, outside of town. The promoters were vague about how many people they expected: more than the 2,000 or so who attend the down-homey annual Trans-Pecos Festival of Music and Love held at El Cosmico but far less than the 70,000 wildlings who had showed up at Burning Man in the Nevada desert in 2018. Some full- and part-time Marfans were all in—Vance Knowles, who had been an assistant to Lyle Lovett, became a local lobbyist, and the point man was Charles Attal, a C3 cofounder who had been an early Ballroom board member and was a frequent visitor to town. In the evolution of cool places, a big outdoor concert could seem like a logical next step for Marfa.

But not everyone agreed, particularly members of Marfa's less moneyed creative class. Someone launched a website called "Marfa Says No." Someone made buttons with a slash through the C3 logo. There was eye-rolling over the buzzword salad C3 used to promote the event: "The festival will be curated to attract art and music appreciators and a sophisticated, culturally attune [*sic*] adult audience that is excited by cross-disciplinary collaboration and innovation." Social media erupted over what might happen if the concert were allowed to proceed: everything from pillaged grocery



store shelves to empty gas pumps to devastating fires ignited by cigarettes, deaths from drug overdoses, and the trampling of delicate grasslands. Marfa had no hospital, and an ambulance ride to the one in Alpine, just over 25 miles away, was not a satisfactory alternative, according to the concert's opponents. Marfa, they claimed, would be overwhelmed. The anti-C3 group wanted tourism, sure, but "sustainable" tourism. Not a bunch of drunk kids throwing up around Donald Judd's hallowed boxes. Concert opponents didn't want what they called "the Marfa brand" sullied (though one look at the myriad Marfanalia on offer at the Paisano gift shop suggested the brand was already in need of some Clorox).

Cracks in the social fabric became chasms. The late West Texas icon Lonn Taylor, who died last July, wrote in to the *Sentinel* in March and called C3's response to citizen's concerns "the most puerile collection of clichés and meaningless generalizations I have seen in many years." Virginia Lebermann, the cofounder of Ballroom, then sent him an email that was subsequently leaked all over town. "Without Fairfax and her family foundation we would never have been able to support the hundreds of artists, musicians and filmmakers that are a part of our history . . . Nor would we have been able to create the jobs that we have created . . .," she wrote, with a deft twist of the patron's knife. "So I ask, with all of your knowledge, wisdom and insight . . . how you would advise the ranching families of this great region who have for generations paid the property taxes, the inheritance taxes and all associated expenditures to keep your backyard and the countryside of Far West Texas pristine and unspoiled—what are your alternative solutions to leasing the land for a temporary installation of three days a year?"

Setting aside her tone, she had a point: Marfa's population had dropped from almost 3,000 in 1999 to 1,700 in 2017. Higher property taxes and more tourist dollars had taken up some of the slack in lost city revenue, but more economic development wouldn't hurt. Then again, no one has so far been able to explain just how much concert money would flow into city coffers and how much would go to the promoters and landowners. To concert opponents, the same rich folks who have underwritten Marfa's transformation into a creative paradise now seemed intent on selling out.

But if this was a clash over money, it was also a fight for something more intangible. As Crowley quite rightly says, "C3 is a metaphor for concerns people have aside from [the concert]. I think it's people's opinions about the direction of the town or how they perceive the image of the town." He decries anti-growth concert opponents as shortsighted. "Whether or not the town does well is irrelevant [to them]."

Crowley supports the concert. Dorn and Lebermann, he says, "are girls who could spend the rest of their lives on any beach in the world. They don't have to do anything, but they do." He says he admires the women's civic generosity. "And yet they are the subject of a lot of criticism."

So is Crowley. Rumors have flown that his closeness to the county attorney means the concert is a done deal. (It isn't, at press time.) Opponents of the concert have pointed out that Crowley, like other owners of restaurants and other businesses, stands to profit if thousands of people show up in town.

The fault line in Marfa split wider this year when news leaked that Crowley had been granted a permit to extend the late-night drinking hours to 2 a.m. seven days a week on vacant land he owned on the outskirts of town that could become another wedding venue or hotel. How had this happened, people wondered, when hotelier Lambert had earlier applied for a similar extension for El Cosmico and been denied? Back then, the community had firmly rejected the idea for fear of more drunk drivers on the road after midnight.

Instead of meeting in Marfa, where critics of the late-drinking permit could easily attend, the county commission chose to meet with Crowley sixty miles away in Presidio, where his permit was handily approved. Some in Marfa saw this move as an end-run around the process. David Beebe, a Marfa resident and justice of the peace in Presidio County, says Crowley “pretty much organized with the commissioner’s court and the commissioner to push through a liquor license.” Crowley calls that allegation “one hundred percent false.”

Meanwhile, the go-along-to-get-along owners of the *Sentinel* sold the paper this past spring to a young documentary filmmaker named Maisie Crow and her husband, Max Kabat. It wasn't long before one of Crowley's employees complained to the pair that the new coffee shop in the *Sentinel* building competed with the Saint George restaurant. The relationship deteriorated further when Crowley thought the paper's coverage of a local assault trial involving a friend of his (who was later found not guilty) was unfair. He warned Kabat about what he saw as a decline in the quality of journalism. “If you keep writing trash, we will not support you,” he remembers saying. Crowley also reminded Kabat that his hotel and other businesses accounted for 10 percent of the *Sentinel*'s circulation and that he was a major advertiser. Crowley at one point stopped distributing copies of the *Sentinel* free of charge to guests at the Saint George.

Then Jenny Moore, the executive director of Chinati and someone whose history with Crowley was spotty at best, called in to the Marfa Public Radio show “West Texas Wonders” to raise questions about how after-hours drinking permits were granted. (Full disclosure: *Texas Monthly* has worked with Marfa Public Radio on an unrelated podcast.) The station followed up with a lengthy investigative segment. Crowley declined the station's request for comment. Around the same time, he informed Jennifer Lees, director of administration at Chinati, that the Crowley Theater would have no room for the illustrious Chinati Open House event in the coming year, as it had for decades prior. (Crowley denied that he was retaliating against Moore over her comments about late-night-drinking permits.) As for the radio station's director, Elise Pepple, she suddenly found herself barred from the gym that

Crowley owned. (Crowley declined to comment on the record about his reasoning.)

This did not earn Crowley any new fans. A recent Instagram post by a Marfa resident who goes by the handle *Buttermilk\_Brisket* stated, “We are at war, y’all. From Tim Crowley attacking @marfapublicradio to Lebermann’s response to Lonn Taylor. It’s a class war, y’all. ...Stay woke.”

Next up, *Sentinel* journalist Abbie Perrault broke the news in September that Crowley **owed the county** \$100,000 in unpaid hotel occupancy taxes for the Saint George. “We’ve never had a situation with this much missing for this long as far as I know,” a city council member told the paper. He described the late payments as “a material loss for the city” because they were preventing Marfa from earning interest on the money as it would have if the payments had been made on time. Crowley says he paid the debt in full as soon as he learned of it, and fired the third-party management company responsible for the oversight.

The battle over C3 rages on. In November, the county issued stricter guidelines for a mass-gathering permit that seemed to mollify some, if not all, of the protesters. The détente gave Marfa a breather, an opportunity to think about what it is and what it wants to be: just another struggling small town, an art-world oasis, or an Instagram version of its former self.

The answer depends on who’s talking, of course. Everyone clings to their own Marfa of memory. As one old-timer says, “It’s my hometown, but it certainly doesn’t feel like it anymore.”

Crowley believes that some of the agitators will eventually leave town. And at that point, he is confident, the storm will blow over. “Strife doesn’t define Marfa,” he says. “It has the best arts and culture of any small town in America. It will have that long after these folks move away.”

He says, “There’s just no reason to be tearing things apart, to be so confident that your vision of the town is the only vision of the town.”

*This article originally appeared in the February 2020 issue of Texas Monthly with the headline “A Battle for the Soul of Marfa.” **Subscribe today.***

This story has been edited, since we first published it last month, to correct and clarify issues of accuracy and context raised by several of the Marfans about whom we wrote.

- We quoted Tim Crowley, a lawyer who owns several prominent businesses in Marfa, as saying that the young workers he employs locally “aren’t going anywhere.” Crowley wishes to make clear that he did not mean to imply that his workers lack the aptitude to find jobs elsewhere, but rather that they wish to remain near family and friends.

- The mountains visible from Marfa are not the Chisos, as we reported, but rather the Chinatis.
- Crowley rented one of his properties to Marfa Public Radio, starting in 2005. He wishes to make clear that he was not on the organization's board at that time. He instead joined the board in 2012, and continued to serve as MPR's landlord for several years.
- Cochineal is not a Mexican restaurant, as we reported, but instead serves an eclectic menu that sometimes includes Mexican-inspired dishes.
- The business that the Crowleys asked to move out of one of their properties was not a restaurant, as we reported, but rather a gift shop.
- We quoted a letter to the Big Bend Sentinel from landowner Mo Morrow, who wrote that he was "led to believe" that a property he sold (to a partnership owned by Crowley and landowner Jeff Fort) would be left intact and not subdivided. Crowley denies that he gave any such assurance to Morrow.
- We reported that Crowley "contributed generously to the campaigns of local public officials, which to some Marfans suggested he had the city and county wired." Crowley disputes that characterization, saying that his contributions to city and county political campaigns typically ranged from \$100 to \$500, and gained him no special influence. Among other sources, David Beebe, a justice of the peace for Presidio County, described Crowley's contributions as generous by the small-town standards of Marfa, where the total cost of a campaign might run \$1,000 to \$3,000.
- We reported that some Marfans wondered, when Crowley began construction on his new Hotel Saint George, "Why had the early planning been kept under wraps?" Crowley denies any subterfuge and says he filed all required planning documents with the city government.
- Repurposed wood was not used in the dining room of the Hotel Saint George, as we reported, but instead in the hotel's event space.
- We reported that the Hotel Saint George has "scant" parking. Crowley disputes that description and says his hotel provides 85 parking spaces for guests in its 55 rooms and for other visitors.
- We described a friend of former Marfa mayor Ann Marie Nafziger, who was asked to display one of her campaign signs, but declined to do so, knowing that Crowley opposed Nafziger's re-election. That friend does not work for Crowley, as we reported, but rather is one of his business partners.
- Crowley says that when he applied to the Presidio County commissioner's court for permission to extend drinking hours until 2 a.m. at a property he owned just outside Marfa, it was the commission's choice (and not at his request) to hold the public hearing sixty miles away in the town of Presidio. However, when one commissioner proposed moving the hearing to Marfa, Crowley objected, saying that if it were held there, it would attract at least one local gadfly, and that he might withdraw his application.

- Crowley stopped distributing complimentary copies of the Big Bend Sentinel to his hotel guests, not in response to the paper’s coverage of the late-night drinking controversy, as we reported, but instead because of what Crowley described broadly as “trash” journalism. The owners of the paper say that Crowley specifically complained about their coverage of the criminal trial of one of his friends, who was later acquitted.
- Crowley’s denial of permission for use of his theater for the Chinati Foundation’s annual Open House event, which the theater had hosted for years, was not delivered to foundation director Jenny Moore, as we reported. Crowley instead communicated his decision to Jennifer Lees, the foundation’s director of administration. He denied that he was retaliating against Moore, who had publicly raised questions about his late-night drinking permit.
- We reported that Crowley owns “the only real gym” in Marfa. In fact, there were two other gyms in town.

I’m responsible for every story published in Texas Monthly, and I apologize to our readers for the many errors of fact and context that I failed to catch before publishing this one.

Dan Goodgame

Editor in Chief

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NEWS

# Ori White sworn in as district attorney

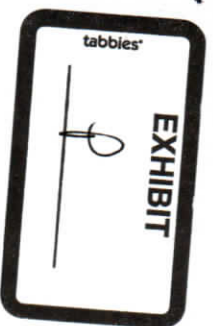


Photo courtesy of Rod Ponton // The Alpine office of the 83rd District Attorney was sworn into office on January 4, 2021 by Presidio County Judge Cinderela Guevara. Pictured from left are Assistant DA Tim Crowley, Marisol Skelton, DA Investigator Leti Carrillo, Presidio County Judge Cinderela Guevara, 83rd District Attorney Ori White, Assistant DA Rod Ponton, and First Assistant DA Jerry Phillips.





Photo courtesy of Rod Ponton // The Alpine office of the 83rd District Attorney was sworn into office on January 4, 2021 by Presidio County Judge Cinderela Guevara. Pictured from left are Assistant DA Tim Crowley, Marisol Skelton, DA Investigator Leti Carrillo, Presidio County Judge Cinderela Guevara, 83rd District Attorney Ori White, Assistant DA Rod Ponton, and First Assistant DA Jerry Phillips.

**BY BIG BEND SENTINEL**

JANUARY 6, 2021 4:51 PM

**f** TRI-COUNTY — Ori White was sworn in as the local district attorney at a

**🖨** masked ceremony in Presidio County Courthouse on Monday. Presidio County Judge Cinderela Guevara presided over the ceremony.

**✉** Joining the district attorney's office are Jerry Phillips as first assistant district attorney, Tim Crowley, Marisol Skelton and Rod Ponton as assistant district attorneys and Leti Carrillo as DA investigator.





White ran last March in the Republican primaries and defeated Republican DA incumbent Sandy Willson, who was elected to the office in 2016. With no Democratic challengers, that victory essentially guaranteed him a win in the general elections in November. In a roughly hour-long **interview** with The Big Bend Sentinel after his primary win, White outlined his priorities for office, including cracking down on methamphetamine and ensuring victims were involved in criminal proceedings.

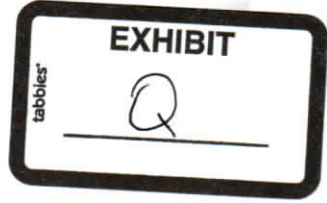
“I look forward to putting both feet into the 83rd DA’s office so I can give it my best,” White said in that phone interview from last year. “Really, in my view, I’m going to have the best job in the world.”

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NEWS

# District attorney gives \$34,000 in seized funds to Presidio Police Department





83rd District Attorney Ori White presents Presidio Police Chief Margarito Hernandez with a \$34,000 check from seized funds. The money will go toward a new vehicle and additional equipment.

**BY SACHI MCCLENDON**

APRIL 22, 2021 12:14 AM



**PRESIDIO** -- 83rd District Attorney Ori White visited the Presidio Police Department on Friday morning to hand off a \$34,000 check to Police Chief Margarito Hernandez. The money comes from a pool of \$69,000 White seized through a district case involving an individual who was arrested after trying to cross the border into Mexico with \$81,000 in undeclared cash.

Chief Hernandez said part of the money will go toward funding a new police vehicle and the rest will be used to purchase bulletproof vests and spike strips. The check amounts to roughly 10 percent of the department's operating expenses in 2020. "It's nothing to sneeze at," said Brad Newton, the interim city administrator. "We're very grateful."

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83rd District Attorney Ori White presents Presidio County Attorney Rod Ponton with a \$17,500 check.

The police department was not the only local agency to reap the benefits of

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83rd District Attorney Ori White presents Presidio County Attorney Rod Ponton with a \$17,500 check.

The police department was not the only local agency to reap the benefits of the seizure. White gave both his office and the Presidio County attorney's office -- which was also involved in the case -- \$17,500 in order to purchase equipment and to train personnel. "We bought about five new laptops," White said in an interview. "A lot of the equipment was worn out when I took office."

In Texas, law enforcement agencies can take control over money if they believe it was earned through illegal means, a process known as asset forfeiture. "In this case we were certain that there was money laundering going on," White said.



The arrest occurred in November of last year after a black Ford F-350 en route to Mexico neglected to stop at a border checkpoint, according to court documents. Once the truck was brought back to the checkpoint, Border Patrol agents conducted a search that turned up a pistol, a pill bottle with ecstasy and .8 kilograms of marijuana -- in addition to the \$81,000.

As part of the settlement, the defendant was allowed to keep \$12,000. White explained that by letting the defendant keep a portion of the seized funds, he was able to get some much needed cash for local agencies. "Presidio County only budgeted \$35,000 for my office this year," he said. "So we were trying to make some of that up."

White stressed that asset forfeiture is more than about just swelling the county's coffers though. "The only way we can ever impact the drug dealers, the upper echelons of the drug dealers, is by taking their money." White said. "They're all cartel people and to most of them, this is just petty cash."

At this time, the defendant faces no other charges.



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# Former West Texas Prosecutor Claims He Was Fired for Reporting Improper, Possibly Illegal Acts

Posted on September 24, 2021

Jerry Phillips, a former prosecutor for the district covering multiple Far West Texas counties, is accusing local prosecutors across the region of improper behavior in a lawsuit filed in Travis County.

## By Travis Bubenik

A Sonora-based attorney who previously worked for the 83rd District Attorney's Office in Far West Texas is suing his onetime boss and counties across the region, claiming he was fired as retaliation for raising concerns about cronyism and other "unethical and possibly illegal" acts by county-level prosecutors.

In a sweeping [lawsuit](#) filed late last month in Travis County district court, former assistant district attorney Jerry Phillips claims his attempts to report the allegedly improper behavior of local prosecutors were "consistently rebuffed" and ignored by current District Attorney Ori White. Phillips maintains his efforts eventually culminated with his firing.

White's office did not respond to a request for comment, nor did the Texas Attorney General's Office.

The [83rd District](#) covers a large swath of rural West Texas that includes Brewster, Jeff Davis, Pecos and Presidio counties.

White, a Republican, was elected to the position last November after ousting former DA Sandy Wilson in the GOP primary. In the general election, White had no Democratic challengers. He was sworn into the position alongside Phillips in January, [as the Big Bend Sentinel reported](#).

Phillips' lawsuit seeks his reinstatement in the 83rd District and up to \$1 million in damages. It also asks the judge overseeing the case to issue orders blocking county attorneys across the region from taking part in the allegedly improper behavior outlined in the suit.

"Our form of government requires our elected officials to act in accordance with the law and their clear duties of office," Phillips wrote in an emailed statement. "It is absolutely wrong to fire an employee who objects to problematic official conduct, and/or states an intent to expose such problematic official conduct."

The claims in the lawsuit — which targets White as an individual, his office, and all four county governments within the 83rd district — are sweeping and at times complex. The suit includes a few notable allegations:

Phillips claims Brewster County Attorney Steve Houston pressured White to help arrange a favorable plea deal for Houston's grandson, who was facing criminal charges at the time.

He also claims Presidio County Attorney Rod Ponton and White engaged in "political cronyism" in negotiating a deal over how to split tens of thousands of dollars in [seized currency](#) between their offices and the Presidio Police Department.

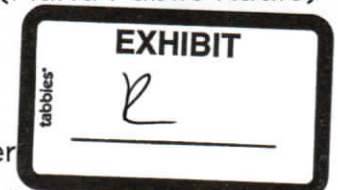
The lawsuit accuses White of firing a female employee in a discriminatory manner.

Phillips claims that county attorneys across the district have "habitually" engaged in a process of offering plea deals to misdemeanor criminal defendants who did not have lawyers before their first court appearances — a practice Phillips claims is "unethical and possibly illegal."

Ponton strongly disputed the lawsuit's claim, calling the filing a "wrongful firing lawsuit by a disgruntled employee."



The Presidio County Courthouse in downtown Marfa. The county is one of multiple defendants targeted in the lawsuit. (Marfa Public Radio)



“The factual allegations in the suit are either wrong or baseless,” he said in an email. “It is my understanding that Mr. Phillips was fired for refusing to follow a court order. The rest of the allegations are bullsh\*t [sic], and most of the facts are wrong.”

Ponton said the Texas Association of Counties would defend the four counties targeted in the lawsuit. A TAC spokesperson did not immediately respond to an inquiry about the case.



## About Travis Bubenik

All Things Considered Host and Big Bend Reporter

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## Former assistant alleges discrimination, cronyism and retaliatory termination in suit filed against DA Ori White and 4 local counties

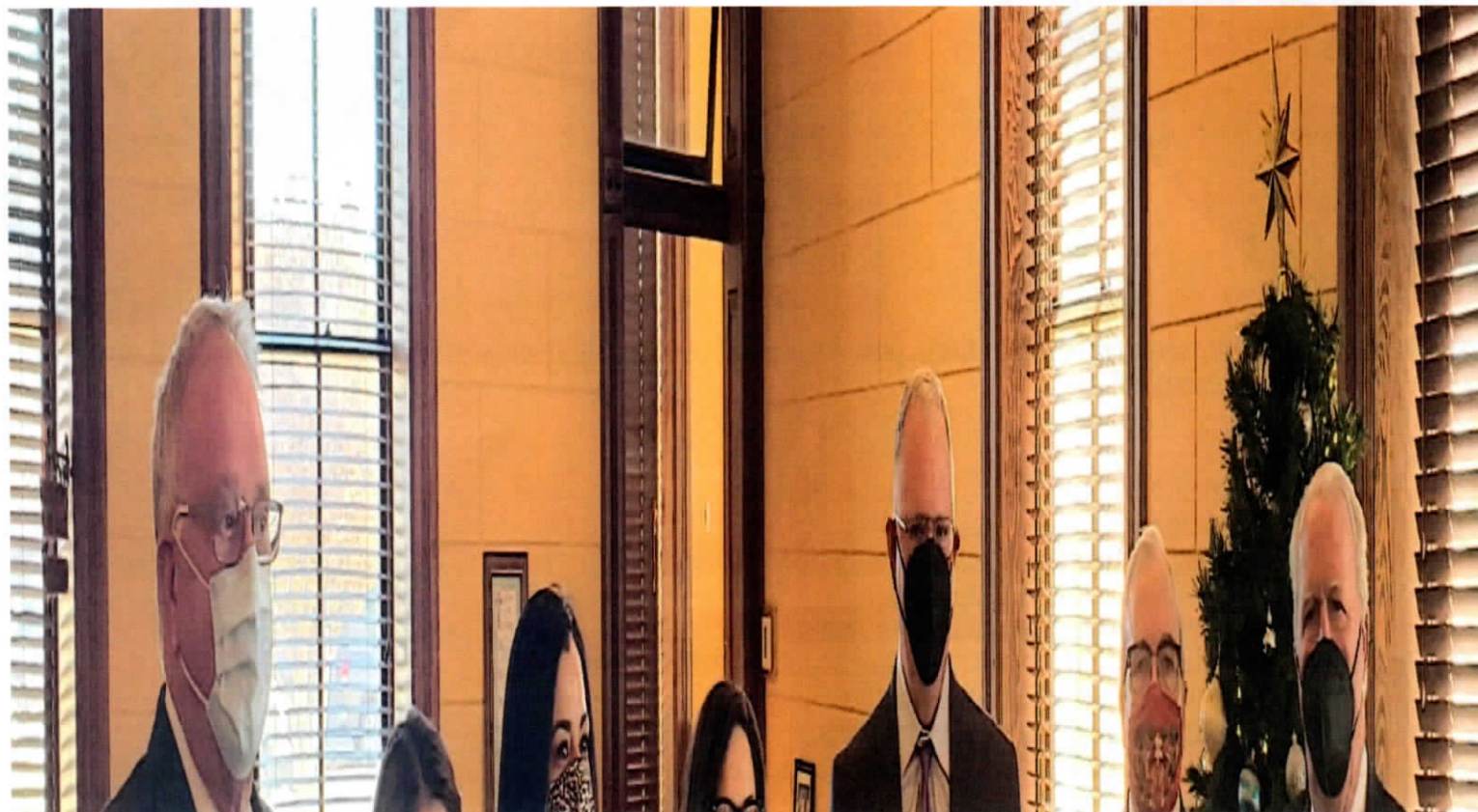
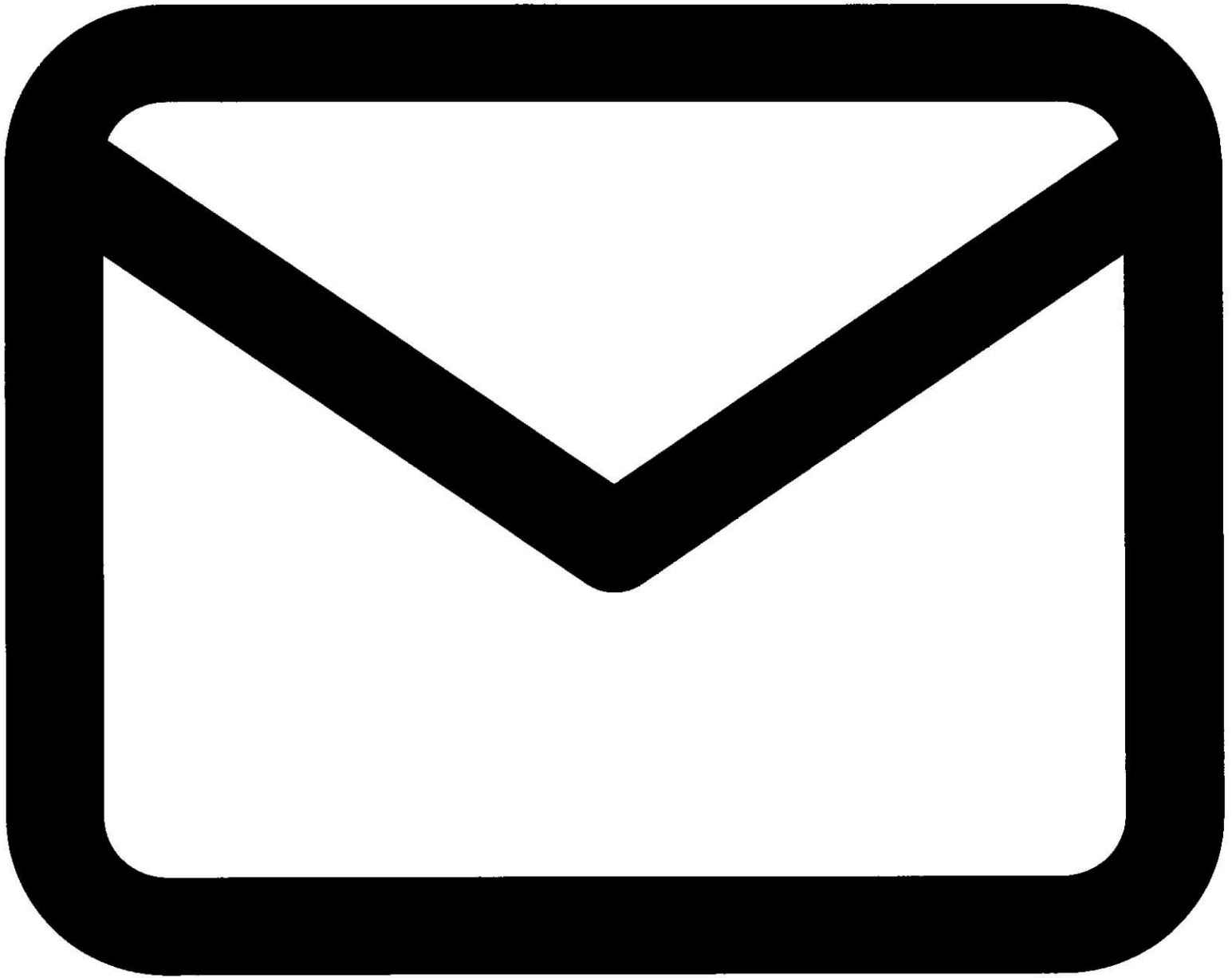






Photo courtesy of Rod Ponton // The Alpine office of the 83rd District Attorney was sworn into office on January 4, 2021 by Presidio County Judge Cinderela Guevara. Pictured from left are Assistant DA Tim Crowley, Marisol Skelton, DA Investigator Leti Carrillo, Presidio County Judge Cinderela Guevara, 83rd District Attorney Ori White, Assistant DA Rod Ponton, and First Assistant DA Jerry Phillips.  
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[Email this article \(mailto:?subject=Former assistant alleges discrimination, cronyism and retaliatory termination in suit filed against DA Ori White and 4 local counties&body=https://bigbendsentinel.com/2021/09/22/former-assistant-alleges-discrimination-cronyism-and-retaliatory-termination-in-suit-filed-against-da-ori-white-and-4-local-counties/\)](mailto:?subject=Former%20assistant%20alleges%20discrimination,%20cronyism%20and%20retaliatory%20termination%20in%20suit%20filed%20against%20DA%20Ori%20White%20and%204%20local%20counties&body=https://bigbendsentinel.com/2021/09/22/former-assistant-alleges-discrimination-cronyism-and-retaliatory-termination-in-suit-filed-against-da-ori-white-and-4-local-counties/)

**FAR WEST TEXAS —** Attorney Jerry Phillips has filed a lawsuit seeking damages, reinstatement and other injunctive relief against 83rd District Attorney Ori White individually and as head of the DA’s office, and against Presidio, Brewster, Jeff Davis and Pecos counties that are within the 83rd district.

The plaintiff, Phillips, is bringing the lawsuit under the Texas Whistleblower Act, claiming there were “adverse personnel actions” as a result of the plaintiff’s reporting of alleged illegal conduct.

Phillips is an attorney who lives in Sonora, and was announced as first assistant district attorney this January, when White was sworn into the top spot in the 83rd DA’s office.

In the suit, Phillips alleges that what began as a good working relationship in the DA's office quickly devolved, ultimately ending in what he believes was retaliatory termination in May for whistleblowing on activities in the office.

The filing is filled with detailed, explosive accusations of cronyism, discrimination and near brushes with improper influence in the DA's office under White, also bringing in allegations against Brewster County Attorney Steve Houston, Presidio County Attorney Rod Ponton and unnamed county attorneys within the district.

The filing was made in Travis County, and when it was announced in Presidio County Commissioners Court on Wednesday, Ponton informed the commissioners that White will be represented by the attorney general's office, and all four counties will be represented by the Texas Association of Counties. Phillips is represented by Alpine attorney Jodi Cole.

The plaintiff is seeking \$250,000 to \$1,000,000 in relief and demanded a jury trial in his filing.

*This suit was announced in Presidio County Commissioners Court on Wednesday as the newspaper was preparing to go to press. It is a developing story that The Big Bend Sentinel will continue to follow.*

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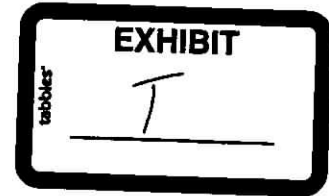
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## UNSWORN DECLARATION

THE STATE OF TEXAS  
COUNTY OF BREWSTER



1. My name is Robert Martin, and I live in Alpine, Brewster County Texas.
2. I am a credible person. My date of birth is March 6, 1959.
3. I am aware of a Whistleblower lawsuit that has been filed by Jerry Phillips in Travis County, Texas against Ori White, 83<sup>rd</sup> District Attorney's Office, Brewster, Presidio, Jeff Davis and Pecos counties.
4. I have also been made aware of some of the defendants in this case are wishing to transfer the case out of Travis County and move it to their own county.
5. I can attest to the following:

- a. The Presidio County Attorney, which is also the City of Alpine, City Attorney, the Brewster County Attorney have conspired and committed acts of unethical and illegal behavior.

The act was committed when the Brewster County Attorney released the Criminal Justice Information Report (CJIS) to the Alpine City Attorney and attempted to place the CJIS report on the City of Alpine agenda for a city council meeting, making the CJIS report viewable by the public which is a criminal offence.

- b. While I was Chief of Police for the City of Alpine, the Brewster County Attorney's Office grandson was arrested for committing a drive by shooting. I received a voice message from the Brewster County Attorney stating that the police department did not have a case. The Brewster County Attorney stated that if this was how the police department was going to conduct their business the Brewster County Attorney's office is not going to take anymore cases from the Alpine Police department. The Brewster County Attorneys grandson was convicted of the crime.
6. While I was the Alpine Chief of Police, I reported the unlawful acts along with other acts to District Attorney Sandy Wilson and all the evidence was turned over to the Texas Attorney General Office.
  7. I believe that Mr. Phillips lawsuit should stay in Travis County to receive a fair and impartial trial. The citizens of Brewster County and the City of Alpine are afraid of the county elected officials. I have had citizens tell me that the Brewster County Sheriff has



told people that they had better vote for him and that he, the Sheriff, can see who they voted for.

8. Some of the citizens of Brewster County are afraid of the Sheriff and feel bullied and will not take a stand and do what's right in fear of retaliation.
9. This trial should stay in Travis County so that the citizens can see that justice is being served. If the trial is moved back to Brewster, Presidio, Jeff Davis or Pecos County the trial stands to be tainted and not fair. The citizens and Mr. Phillips deserve a fair and impartial trial.
10. I am submitting this unsworn declaration and I am over the age of 18 years of age and of sound mind. The facts stated in this declaration are made with firsthand knowledge and are true and correct.

Executed in Alpine Texas, Brewster County, State of Texas, on October 13, 2021.

A handwritten signature in black ink, appearing to read "Robert Martin", is written over a solid horizontal line.

Robert Martin