

## Kenedy Court Case

*By Bill Hobby*

The macabre, fascinating, story of Sarita Kenedy East, Brother Leo, and the Roman Catholic Church keeps on keeping on. The latest chapter is unfolding in federal court in Corpus Christi. The Kenedy Memorial Foundation, controlled by the Roman Catholic church, is suing the State of Texas.

At stake are about 35,000 acres of mud flats in Laguna Madre, the bay that lies behind Padre Island in South Texas. The case will also establish who owns hundreds of square miles of similar land that contains millions of dollars worth of oil and gas.

The legal theories of the suit pit the legacy of the Roman and Spanish law of the boundaries of the sea against modern statistical concepts of such ideas as "mean higher high tide." Values and uses formed when the sea and its shore were regarded as available for common use are competing against the values arising from the knowledge that every inch of land or seabed in the area is potentially a source of great mineral wealth, even in these times of depressed oil and gas prices.

The area in dispute is a high spot in the Laguna Madre, which stretches from Corpus Christi to the southern tip of Texas.

The disputed land, 10 by 15 miles of sand and salt, is sometimes covered by water. For centuries no one cared who owned it. It was unclaimed by the original grantees of the Spanish Crown and Mexican Republic and the great Anglo ranch families that later owned the Spanish and Mexican grants along its shore.

But when oil was discovered in the 1930s, the landowners began to care. They were the heirs of Captain Mifflin Kenedy, the partner of Captain Richard King, the founder of the King Ranch.

The Humble Oil and Refining Company (now called Exxon), held mineral leases on the Kenedy ranches. The first round of courthouse warfare over who owned the flats began in the late 1940's between Humble and Sun Oil Company, who held oil leases on the area from the state. It resulted in a victory for Sun and the state's Permanent School Fund, which receives the income from state lands.

Several years later the Texas Supreme Court decided a case involving land in another part of Laguna Madre that led some lawyers to believe that a different result might be reached in the Sun v. Humble case, if it could be tried again. Among these were lawyers for the Kenedys, at least one of whom had filed a friend of the court brief in the Supreme Court case.

Years passed. Sarita Kenedy East, Mifflin Kenedy's last grandchild, died. The death of the devout old woman set off a long and byzantine legal battle among the Roman Catholic diocese of Corpus Christi; Brother Leo, a Trappist monk; J. Peter Grace, his wealthy New York benefactor; and relatives of Mrs. East.

The foundation, now controlled by Bishop Rene Gracida, sued the bank that had been Mrs. East's executor and the bank's officers and attorneys who had served on the foundation board. Incredibly, the suit was joined by the State of Texas. Jim Mattox, then Texas Attorney General, charged that, among other things, the defendants had failed to claim the mud flats owned by the State. It apparently never occurred to the Attorney General or his staff that in doing this he was attacking his own client, the State of Texas, and the income of the fund used for public education.

When this ludicrous situation was discovered by other state officials the state withdrew from the suit. The private parties settled. But the foundation still asked the Legislature for permission to sue the state to claim the Laguna Madre flats.

The Legislature wisely refused permission three times. In so doing it protected the taxpayers from claims of hundreds of millions of dollars.

The foundation obviously believed it needed legislative permission to sue, but when permission was not granted the church-controlled foundation sued anyway. The suit is in the federal court in Corpus Christi--the same court that decided 40 years ago that some of the same land belongs to Texas.

It's hard to tell who the good guys are. Certainly not the State of Texas, whose Attorney General actually sued people because they did not sue the State. Certainly not the Kenedy Foundation nor Bishop Gracida, who first admitted, then denied, the sovereignty of the State. All that is at stake is hundreds of millions of taxpayers' dollars.

*Written March 1992.*