



# EL PASO BAR JOURNAL

A Bi-monthly Update of Events and Information

www.elpasobar.com

110th Anniversary

January/February 2008

## MAJESTIC RIVER MUDDY PAST

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West of the  
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& Chaparral*

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## THE PRESIDENT'S PAGE

# Depression, Addiction Help is available

**M**artha Dickie wrote in the February, 2006 Texas Bar Journal that anywhere from 10,000 to 15,000 lawyers in Texas suffer from impairments that affect their law practices and their clients. Studies show that lawyers have a greater incidence of addictions and mood disorders than the general population. Last year three El Paso attorneys committed suicide. Who will be the next El Paso lawyer to lose his license, or take his or her own life?



What is an impairment?

Addiction and depression are impairments. Addiction is sometimes difficult to recognize as a harmful activity. It often "sneaks up on us." Similarly, the depressed person feels hopeless, and so fails to address the problem.

What can be done?

We must first recognize the problem. In our professional life, we identify problems and confront them. We live and work in a highly competitive profession where "strength" is rewarded and "weakness" is condemned. As a result, we hate to admit we ourselves have a problem. Sometimes "intervention" by others is necessary before recognition of the problem is achieved.

Like addiction, depression can be a chemical problem. It can also be exacerbated by a "situational" problem.

If the "situation" is work related, it may be that we are not being true to our own values. For instance, litigation is about "winning" and making money, but it's also about helping people and upholding the integrity of the profession. Perhaps helping others should be the primary goal, rather than feeding an ego that can never be fully satisfied.

Our State Bar has a Texas Lawyers Assistance Program, with full time staff to assist the impaired lawyer. A lawyer who thinks he or she may have a problem should call the Texas State Bar at (800) 343-8527.

Finally, as pointed out by Judge Oscar Gabaldon's article in this issue of the Journal, if you have an addiction or depression problem, you must persevere. When faced with impairment, recognize it, confront it, and never, ever, give up!

**JUDGE ROBERT ANCHONDO**

**PRESIDENT**

*A website for anyone interested in addiction issues is "Join Together.org." Join Together is a program of the Boston University School of Public Health. Since 1991 it has been the nations leading provider of information, strategic planning assistance, and leadership development for community-based efforts to advance effective alcohol and drug policy, prevention, and treatment.*

EL PASO BAR ASSOCIATION  
**January Bar Luncheon**

Tuesday, January 8, 2008

El Paso Club, 201 E. Main, 18th Floor,  
 Chase Bank - \$14 per person 12:00 Noon

*Guest Speaker will be*

***Dr. Diana Natalicio, President of UTEP***

who will speak on the “State of the Campus” and the Border Law Studies

Please make your reservations by Monday, January 7, 2008 at noon by calling Nancy at 532-7052 or via email at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)

EL PASO BAR ASSOCIATION  
**February Bar Luncheon**

Tuesday, February 12, 2008

El Paso Club, 201 E. Main, 18th Floor,  
 Chase Bank – \$14.00 per person

***Candidates Forum***

Please make your reservations by Monday, February 11, 2008 as noon by calling Nancy at 532-7052 or via email at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)



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# CALENDAR OF EVENTS



## Notice:

The El Paso Bar Journal is being published as follows – January & February 2008 are combined in this issue. March, April, May and June will be monthly issues. Contact the Bar Office if you have any questions regarding this schedule.

## JANUARY 2008

**Tuesday, January 1**

EPBA Office Closed –  
New Year's Day

**Wednesday, January 2**

EPBA Board Meeting

**Friday, January 4**

Coffee & Donuts in Bar Office

**Friday, January 4**

MABA General Meeting

**Tuesday, January 8**

EPBA Monthly Luncheon

**Friday, January, 18**

Coffee & Donuts in Bar Office

**Monday, January 21**

EPBA Office Closed – MLK Day

## FEBRUARY 2008

**Friday, February 1**

Coffee & Donuts in Bar Office

**Tuesday, February 5**

EPBA Board Meeting

**Tuesday, February 12**

EPBA Monthly Luncheon

**Friday, February 15**

12th Annual Civil Trial Seminar

**Saturday, February 16**

12th Annual Civil Trial Seminar

**Monday, February 18**

EPBA Office Closed –  
President's Day

## PLEASE NOTE:

*Please check the Bulletin for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Bulletin for your upcoming event or function for the month of March, 2008, please have the information to the Bar Association office by Monday, February 10, 2008. In order to publish your information we must have it in writing. WE WILL MAKE NO EXCEPTIONS. We also reserve the right to make any editorial changes as we deem necessary. Please note that there is no charge for this service: (915) 532-7052; (915) 532-7067-fax; nancy@elpasobar.com - email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this bulletin together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.*

**Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of directors.**

**The El Paso Bar Association does not endorse candidates for political office.**

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1882

*El Paso Street in Postcards*

1888

### EL PASO'S LEGAL HISTORY REVEALED

# How Civilization Capered In and About El Paso

*100 Años de Poca Soledad y Menos Abogados in the Sage Brush and Chaparral Days*

■ BY BALLARD COLDWELL SHAPLEIGH

Civilization, as the old saying goes, begins with soap. It is the lamb's skin in which barbarism masquerades, said Thomas Bailey Aldrich. It is 1890, nine years since the railroad opened El Paso to the world and brought the world to El Paso. The population is now over 10,000 and it is the age of the gunfighters, a wild bunch not fully eradicated for another fifteen or so years. C.L. Sonnichsen writes:

The entire Southwest is booming. The ranges of New Mexico and Arizona have been stocked with Texas cattle; miners are swarming over the mountains; speculators move in and out of Mexico; and El Paso is their good-time town. Whenever anybody has a dollar in his pocket, says Owen White, "he heads hell-bent to El Paso to get rid of it....The presence of Juarez across the river is a determining factor in the situation. A sport who gets in trouble on our side takes a few quick steps and is safe on the other, and it works the same way in Mexico. The availability of this escape hatch...[attracts] to the border an extraordinary group of gunfighters and fast-draw artists, some on one side of the law and some on the other, who [give us] the title of Six-Shooter capital of the Southwest."

One hundred years later the "escape hatch" still attracts murderers and other miscreants who end up on death row like Eddyville KY escapees James Blanton and Derek Quintero (featured

on MSNBC's "Lockup - Kentucky State") and a couple from Ohio named Day. Luck, circumstances and cross-border relationships in any era dictate the degree to which the gateway to Mexico poses an indomitable impediment or a mere nuisance and inconvenience for law enforcement, as more fully described in *Blanton v. State*, 1996 W.L. 219609 (Tenn. Crim. App. 1996) and *Day v. State*, 763 S.W.2d 535 (Tex. App. - El Paso 1988, no pet.). But the manner in which American law enforcement grapples with the "escape hatch" by simply snatching wanted fugitives in Ciudad Juarez finally compels Chief Justice Max Osborn to write:

This is the fourth individual to appear before this Court in three months challenging seizure by F.B.I. agents in Mexico without judicial or diplomatic sanction. We do not construe these cases and others cited in *Day* and [Blanton and Quintero] as affirmative, prospective sanctions for the F.B.I. or any other state or federal law enforcement agency, either directly or through surrogates, to establish a regular policy and practice of engaging in such activity of illegally seizing United States citizens in a foreign country. ...[Another] occurrence will in all probability necessitate consideration of whether we are not, in fact, seeing the results of an organized, coordinated program of international kidnapping which has become a policy of at least this regional branch of the F.B.I.

More recently, in a November 2007 article in *Rolling Stone* magazine about the failure of the U.S. War on Drugs, El Paso and Juarez are described as each having one population by night (700,000 in El Paso and 1.4 million in Juarez) and another by day, where every twelve hours there is a population shift between the two cities and 100,000 people pass back and forth "squeezing from end to end like the contents of a water balloon". Among them are "the spotters and lingerers who just stand there, watching for when the coast is clear so they can make their drug runs into Texas" through one of the handful of bridges on the Mexican border that have become the main front in the war on drugs.

But in 1890, as Sonnichsen noted, the world of the gunmen and gamblers was largely self-contained. Unlike the drug dealers of today and the Blantons and the Quinteros of the late twentieth century, they mostly killed each other and broke up no Sunday school picnics. As a result many survivors from those times insisted that El Paso was a more secure and orderly place in the days of John Wesley Hardin than it was in later, more modern times.

Fifty years earlier, in 1840, traders like the teen-aged Colbert Coldwell (usually identified as "Thomas Caldwell" in first person accounts like the diary of Susan Shelby Magoffin) were doing brisk business into the heart of northern Mexico. But to obtain a law license, Coldwell would eventually have to return to Arkansas before arriving back in El Paso on Christmas Eve in 1873 to be U.S. Collector of Customs and to start a law partnership with Allen Blacker and Albert

Jennings Fountain, the controversial larger-than-life character and state senator from El Paso who had been recently acquitted of public corruption charges in Austin, and later disappeared in 1896 with his 8-year-old son in the Tularosa Basin and is presumed murdered.

In the sage brush and chaparral days before specialization and board certification, yellow pages and travelling billboards called Sun Metro buses -- and the acquisition of a prized New Mexico law license -- the Mesilla News prominently featured solicitations by attorneys which ran the entire length of the front page in the left-hand column. Early issues of the weekly newspaper published in 1874 show the same ten or so names. Charles H. Howard, a former district attorney and future district judge, and principal figure in the Salt War who was indicted for murdering mysterious Italian Luis Cardis in 1877 only to be later murdered himself, advertises as "Attorney at Law-El Paso, Texas", with offices in "San Elizario, the County seat of El Paso County." His ad says he "will practice in the courts of the 25th Judicial District of the State of Texas and in the Supreme and Federal Courts at Austin, Texas." He "will also practice in Dona Ana and Grant County, New Mexico" and promises "prompt attention given to all business entrusted to me."

Thomas B. Catron, a close friend and patron of A.B. Fall who gave his name to Catron County, NM is named, lists his office in Santa Fe and claims "prompt attention given to the collection and payment of debts." D.B. Rhea, with an office in the Maxwell & Dalley Building in Las Cruces, restricts his practice to the "Supreme and Territorial courts of New Mexico." "Juo. D. Bail." of Mesilla "will practice in all the Courts of the Territory." Jacinto Armijo of Las Cruces, whose donation of land in Las Cruces to be used as the new county seat ended that distinction for Mesilla, "will practice in the Justice and Probate Courts of the county, make collections, etc." E.N. Ronquillo of Mesilla ran an identical ad. Coldwell, Blacker and Fountain ambitiously advertise that they "will practice in the Supreme Court, District and Federal Courts of Texas and the Federal and Territorial Courts of New Mexico, with "special attention given to Land Business in all its branches." James P. Hague, on the other hand, was careful to set no such limits and advertised "special attention given to all business entrusted to my care." Melton A. Jones simply announces he is an "attorney at law, El Paso, Texas" as does Sam Duncan.

The Coldwell, Blacker & Fountain firm, as well as the then-solo J. P. Hague, listed their El Paso offices in the "Overland Building", now 300 El Paso on the southeast corner of El Paso and



*J. P. Hague*

Overland streets. The law partnership ended when Fountain moved back to Mesilla, the domicile of his wife's family. Coldwell went into practice with his son N.C. Coldwell; Allen Blacker became a district judge. Some years later, in a letter dated June 17, 1879 to Tularosa rancher and Las Cruces businessman George Maxwell, Coldwell asks, "How is Newcomb, Bail, Jones & Fountain, and my professional brethren getting along?", referring to Judge Simon Bolivar Newcomb, the above-mentioned Bail, W. T. Jones of Las Cruces and Albert Jennings Fountain. After receiving Maxwell's reply, Coldwell writes back on July 14, 1879, that "Newcomb deserves success and is a good man. I told him when he was handed (sic) so sorrowfully down in Texas that it was a good thing for his future", speaking to Newcomb's removal from the district court bench in April, 1874 on the petition of W.W. Mills, Howard and Cardis. (See, Moody article, El Paso Bar Journal, November 2007) Then Coldwell curiously adds, "As to Fountain he never did me an injury but it was because perhaps he never had an opportunity."

Youngest son, W.M. Coldwell, would also be admitted to practice at the winter term of the 25th District Court Jan. 11, 1875, with Judge Charles H. Howard presiding. In the after-dinner address at the first bar banquet on Jan. 13, 1902, W.M. Coldwell described his nostalgia for the period this way:

Death and the sheriff have been busy among my contemporaries, and I stand solitary and alone, in all the magnitude of isolation, in the solitude they have made. What are the horrors of the Red Days of Terror in comparison with those I have witnessed and survived: -When Billy the Kid was abroad in the land; when, if you stepped out in the gloaming to chat with your washerwoman's daughter solely as to the possibilities of her mother surrendering last week's washing without cash payment -- you

had to beat a band of rustlers and a pistol ball or two in a mad dash to your room, only to find a man to whom you owed a small poker balance in possession, awaiting your return; when drinks sold three for a dollar, and board, without lodging was \$60 a month, payable (by lawyers) in advance; when any stagecoach might bring an officer with an extradition warrant for the city-looking stranger -- the only man in town who wore a waistcoat, and who was anxious to learn poker, and who stood treats to the crowd a dozen times a night down at Ben Dowell's; when, after you had spent valueless time and invaluable sotol in making the opposition attorney too happy to think of such a little matter as filing an answer, you were apt to be informed by the sheriff on default day that he had a note from the judge at the other end of the district that the stage company would not take state warrants for stage fair, and to adjourn court for the term.

The uncharitable have said that our tribulations were the just and natural consequences of our characters and conduct; that in those days few mothers had marriage certificates, and fewer men had names that would be recognized back where they came from; that there was not a horse that had not changed owners without such formalities as bills of sale and the payment of a consideration; that if Kipling had been in El Paso thirty years ago he would not have sung anything about Suez, the Ten Commandments, and thirst, but would have plagiarized Saulsbury, who a generation even before my time, summed up the situation, substantially as follows:

"Where the Rio Grande ripples, when there's water in its bed;

Where no whiskey is ever drunken, -- all prefer mescal instead;

Where no lie is ever uttered, -- being nothing one can trade;

Where no marriage vows are broken, since the same are never made."

But such men are malicious slanderers who will speak evil of anyone -- even of a lawyer.

Finding no office with his father and brother, W.M. Coldwell first labored in the "Custom Service of the United States as a Mounted Inspector" serving in El Paso for the first two years and then, in 1878, in Silver City, New Mexico. He was probably hired by his father, the U.S. Collector of Customs, a post later held by Pat Garrett in 1900. In an affidavit he executed for the Chamizal arbitration hearings in 1911, he also referred to this first job as being an "officer in the United States Revenue Service". Then, as now, the border offered up controversy and conflict as shown in his description of a meeting between Coldwell's

father as Collector of Customs and his father's Mexican counterpart:

In 1874 or 1875 I was present at an interview between my father and Mr. Jesus Escobar y Armendariz, then Mexican Collector of Customs at Paso del Norte now Ciudad Juarez, which meeting took place at my father's office on this side of the river. Mr. Escobar asked my father for permission to station a Mexican Custom House officer on the road leading from El Paso to Juarez about 200 or 300 yards north of the river. My father replied in substance that he had no authority to grant any such permission, and even if he had and granted the permission it would not be safe for a Mexican Customs officer to attempt to exercise any authority on this side of the river. Mr. Escobar y Armendariz withdrew and there the matter ended.

After his service as a mounted inspector, W.M. Coldwell became an associate in the law office of James Price Hague, who had come to El Paso as the Republican appointee for District Attorney in 1871. J. P. Hague had studied law as an apprentice in the Jefferson, Texas, law office of state senator and U.S. Representative David B. Culberson (for whom Culberson County is named, as opposed to his son David A. Culberson, a governor and U.S. Senator). Hague also later formed the El Paso Real Estate and Immigration Co. with developers James Magoffin and Simeon Hart. Hague had acquired a large amount of land in and around El Paso during the early 1870s and deeded land, some say 10 acres and others say 20 or 30, in the heart of the future city to the railroad for a right of way and depot. Hague was also a member of the group of investors that bought the two-year-old El Paso International Times in 1881 and changed its name to the El Paso Times. Because of this gift, he would later give the principal speech at the ceremonies which officially welcomed the first railroad, Southern Pacific, on May 26, 1881.

As Mark Twain said, civilization is a limitless multiplication of unnecessary necessities and very soon after El Paso welcomed the railroads, the other amenities of civilization arrived: water mains and hydrants in 1882, electricity in 1883, and gas in 1884.

Upon the departure of Colbert and Nathaniel C. Coldwell from El Paso in 1877, Hague acquired much of their clientele. He traveled widely and young W. M. Coldwell held down the office. In 1879, W.M. Coldwell also became El Paso County Attorney. In his oath he swore

that he had "not fought in or acted as a second in a duel with deadly weapons or paid anything for the vote of his election to office" as required by the law of those turbulent times in Texas. He also occupied the office of City Attorney on four separate occasions. At the 1902 bar banquet, he described the practice of that period as follows:

We did not have to keep up with the reports in those halcyon days; and the consultation of authorities was pleasantly brief. The first volume of Blackstone, Tidd's Practice, Cruises' Digest, and a backless copy of Oldham & White's Texas Statutes, constituted the joint and several, individual and collective library of the El Paso Bar.

The year before I was admitted, all the criminal cases were continued by operation of law. The deputy clerk had lost Oldham & White; his brother-in-law was under indictment, and the state's only witness was a hopeless consumptive. The deputy was discharged, but as there were no fees attached to the office he did not object. The witness died and the indictment was dismissed. ...

I have said little about the practice of law in those ante-diluvium days – the essay on the snakes in Ireland was necessarily brief – for there was very little litigation in a country where land had no value, men no credit, and it was a breach of manners to mention the criminal code. It is true we had most of the paraphernalia of justice – judges, sheriffs, lawyers and juries; nothing was lacking except the clients, and if a few were found it was a practical impossibility to get the judge, sheriffs, juries and attorneys all sober at the same time so as to constitute that majestic and collective whole denominated a court. If it were ever done, the litigants cast one startled look at the assemblage and compromised their cases. There is an uncorroborated tradition to the effect that one or two of us had pay clients, but no lawyer was so verdant as to try a case as long as his employer was able to continue paying "refreshers." When a client went into bankruptcy it was a waste of time to do so.

In 1876, five years before the arrival of the railroads, the population of El Paso within the limits of the town was estimated by newspaperman Simeon H. Newman as somewhere between fifty and a hundred souls. He remarked that half the houses were unoccupied. Life at the Pass was alternately dull and dangerous, with the Apaches mainly providing what excitement there was. Despair over the lack of law and order caused Gregorio N. Garcia of San Elizario, who had served in the 11th Legislature and was County Judge



from 1877 to 1878 and later served as a county commissioner when the county seat was removed from Ysleta to El Paso in 1883, to write to an adjutant general with the U.S. Army on Feb. 6, 1877 that the Indians had carried off all his stock and ask for more protection.

Despite Garcia's plea, by 1880 not much had changed. "In 1880," C.L. Sonnichsen writes, "El Paso was not much more than a village. In 1885, it was beginning to be a big town." So what transformed El Paso from village to big town? As will be discussed in the next and last part, "Con dinero baila el perro."

This "Civilization" series is written in appreciation of the request of El Paso Bar President, the Hon. Robert Anchondo, to commemorate the 110th anniversary of the Bar Association with much assistance and encouragement from Clinton Cross for which the author is extremely grateful. The author is also indebted to David J. Ferrell for assistance with graphics. Besides family papers and diaries, the following resources have been used: *Pass of the North-Four Centuries on the Rio Grande* by C.L. Sonnichsen; *The Legal Heritage of El Paso* by J. Morgan Broadus; *The Life and Death of Colonel Albert Jennings Fountain* by A.M. Gibson; *Mesilla News*, Vol. 1, Ira Bond publisher (1874); William Vincent Bryars, *Lone Star Edition of the World's Best Orations* (Ferd. P.Kaiser Publishing Co., Chicago, Ill. 1923). This presentation includes the creative work of others. This property is being used by permission or under a claim of "fair use" pursuant to 17 U.S.C. §107, and was created pursuant to fair use guidelines and further use is prohibited.

## EL PASO'S LEGAL HISTORY REVEALED

# The Real Law West of the Pecos: Judge Thomas A. Falvey

Picture courtesy of Kemp, Smith law firm

BY THE HONORABLE BILL MOODY

*I have chosen for this issue to write about Judge T.A. Falvey, the first Judge of the 34th District Court of El Paso. I shall continue to write occasional articles on former El Paso Judges. In the last two articles you were introduced to Judge Gaylord Clarke and Simon Bolivar Newcomb. In the next issue the sixth District Judge in El Paso and probably the most controversial, Charles W. Howard, will be the focus of the article regarding the "Salt War of 1877." I have decided to wait to complete the series, "So You Want to be a Judge?" until the Election issue of March/April 2008.*

It should be of some comfort to all the attorneys running for office that El Paso politics has gotten much tamer and gentler in the 21<sup>st</sup> Century. A little over 100 years ago a State Senator was shot, a State Representative murdered, a District Attorney killed while attempting to help American prisoners escape from a Juarez jail; plus, a District Judge murdered while attempting to arrest a local lawyer for attempted murder, and a former District Judge and Sheriff were executed by a mob in San Elizario.

Judge T.A. Falvey was the "True Law West of the Pecos." It was his court that tried all felony cases, handled all divorces, and settled every land dispute, despite reports to the contrary concerning Judge Roy Bean. Bean was a Justice of the Peace in the remote village of Langtry. Roy Bean had better press agents and may have been more colorful than T.A. Falvey, but Falvey was a solid, courageous, even tempered, and respected jurist who kept after the lawless element day in and day out. Judge Falvey brought a dignity and respect for the Courts in a very turbulent and troublesome time. He was fair but firm and all El Pasoans considered him a man of honor and justice.

T.A. Falvey was born in far East Texas, Jasper County, on January 30, 1853. He moved to Orange County and studied law, and there began his legal practice. Later, he moved to



*Clerk's office in courthouse, c. 1889. Judge Falvey seated, holding hat.*

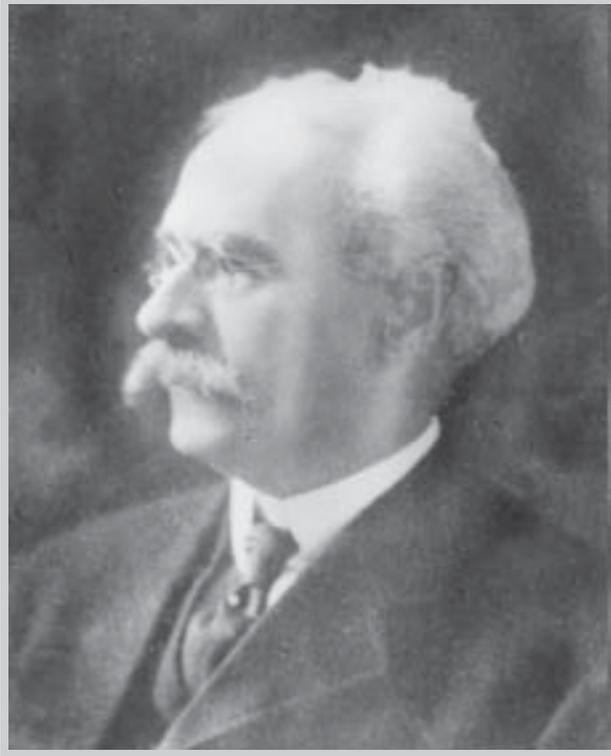
San Saba County and built a solid reputation as a fine young attorney. While in San Saba he met his future wife, who was from Tennessee, but was there visiting relatives. Falvey traveled west and in San Angelo displayed fearlessness, a characteristic that would follow him throughout his career. He was hired to defend a cattle thief, a routine job for West Texas attorneys. In this case; however, a mob surrounded the jail and demanded that the Sheriff turn over Falvey's client for a quick lynching. Upon hearing of his clients plight Falvey, without hesitation strapped on his six shooter and rushed to the jail and told the mob that if they intended to lynch his client they would have to kill him first. The mob must have recognized Falvey's determination and decided less blood would be spilled (theirs and Falvey's) if they tried his client and then legally hung him, so the mob dispersed.

Falvey arrived in El Paso in 1877, and had just set up his practice when the "Salt War"

broke out resulting in dozens of murders, rapes and general looting. The U.S. Army was called in to restore order, as a breakdown of civil law occurred. Once order was restored, those accused of the riotous acts were indicted, and those that did not flee to Mexico were brought to trial. The District Attorney alone prosecuted all felony cases, but the increase in prosecutions in 1878 necessitated District Attorney, James A. Zabriski, to ask for the appointment of the first Assistant District Attorney in El Paso County history. T.A. Falvey took the job and began prosecuting with a sense of urgency. When the District Attorney suddenly resigned, T.A. Falvey was appointed as the new District Attorney. The Salt War had eliminated many of the El Paso lawyer politicians, and the field was open for 27 year old T.A. Falvey to become El Paso's District Judge in 1880. He succeeded Alan Blacker who had seen enough bloodshed in his four years on the bench to last him a lifetime.

Judge Falvey took on the largest district court jurisdictional area in the entire U.S. The 20<sup>th</sup> District Court covered from El Paso to the Pecos River plus Tom Green County, which extended to San Angelo. This vast area encompassed 44,117 square miles (over 28,000,000 acres), an area larger than all but 16 of the then 38 states. Before the Railroad arrived, Judge Falvey, District Attorney John M. Dean, and the El Paso Bar, a group of approximately a dozen attorneys, traveled by stage and horseback over the huge circuit. Court had to meet twice per year in each of the four counties: El Paso, Presidio, Pecos and Tom Green. Traveling between Ysleta, Fort Davis, Ft. Stockton, and San Angelo kept Judge Falvey away from his home in Ysleta for long periods of time. In his absence he had the Chief of the Tigua Indian tribe protect his wife. This terrified Mrs. Falvey's mother and family, as they viewed all Indians as savages. This amused both Judge and Mrs. Falvey, as they maintained very cordial relationships with the large number of Tiguas living in El Paso's lower valley.

Judge Falvey served as District Judge at one of the most dynamic and significant times in El Paso's history. On May 12, 1881, the Southern Pacific Railroad reached El Paso and on May 26, the official celebration was held with Judge Falvey as a prominent member and speaker at the dedication ceremonies. The Southern Pacific's arrival was closely followed by the Santa Fe Railroad in June 1881, the Texas and Pacific in June 1882, and the Mexican Central later in 1882. El Paso became a major rail hub connecting east and west and north and south. With the railroad came a population boom that created progress, prosperity and problems. El Paso grew from a population of a mere 750 people before the arrival of the railroad, to 10,388 by 1890. Many of the newcomers were gamblers, prostitutes, and con men, a group generously called, the "sporting crowd." The "sporting crowd" did not create a jury pool sympathetic to law and order. Their saving grace was that they showed little interest in jury service and Judge Falvey was able to fill his juries with people milling around the Courthouse on jury days. Jurors were tough on property crimes -- theft, especially of horses and cattle, and burglary -- but when high profile murders were tried, the "sporting crowd" enjoyed sitting on the juries, and they rarely convicted defendants charged



T.A. Falvey, c. 1910

with violent crimes.

Judge Falvey's impartiality was severely tested in an early case as a Judge. In the State v. James Brister, Brister, an enlisted soldier at Ft. Davis was charged with the rape of another enlisted man's wife. Citizens in Ft. Davis were outraged and to assure a less passionate jury, Judge Falvey, withstood the heat of local pressure and changed the venue to El Paso County. All first degree felonies were capital crimes in the 1880's and the State, by calling for a special venire of sixty jurors, instituted the process that would lead to a legal hanging. At his trial, Brister's defense was that a relationship existed between himself and the victim. He said the night of the rape they had argued but resolved their problems. When the victim's husband unexpectedly walked in on them she claimed rape, which he denied. The jury disagreed, and the defendant was sentenced to death.

While the case was on appeal, Brister repeatedly attempted to escape and the law at the time permitted dismissal of one's appeal if the defendant attempted to or escaped while his case was on appeal. Pursuant to Brister's escape attempts his appeal was dismissed and the mandate for his execution was handed down. Judge Falvey pronounced the death sentence on May 9, 1883, and set the execution for July 5 of the same year. The gallows

were built on an empty lot 200 yards from the railway depot in Ysleta. This would mark the first legal execution in the history of El Paso County. Brister gave lengthy interviews to the local press maintaining his innocence until the end. On the gallows before the large crowd that included Judge Falvey, Brister said, "I am not afraid to die, but the crime has no existence, Judge Falvey gave me every chance he could to clear myself and I thank him... I die innocent." The El Paso hangman apparently had little experience in executions and when the trap was sprung, the knot slipped and neither broke Brister's neck nor strangled him. Instead he swung back and forth calling out to the executioners that something was wrong. For minutes the sickening sight continued until the Sheriff asked Judge Falvey what to do. The Judge, pursuant to the sentence, reluctantly ordered Brister to be hauled up thru the trap, the rope prepared properly and to re-execute the prisoner. This time it took

four minutes for Brister to stop struggling. The lengthy execution process had taken almost forty minutes and caused the El Paso Lone Star newspaper to criticize hanging as a cruel and unusual form of execution and suggested some modern way to make executions quick but not gory. As recent U.S. Supreme Court actions indicate, we continue to struggle with this issue almost 125 years later.

Although El Paso County had been in existence for over 30 years, no permanent Courthouse had ever been constructed. The first Courthouse was built during Judge Falvey's tenure. A magnificent but controversial second courthouse was erected in 1886 while Judge Falvey presided over the 34<sup>th</sup>. The first El Paso County Courthouse was built in 1882 in Ysleta. It was a sandstone two-story building with offices, courtrooms, and jury rooms at a cost of \$14,000. The 1883 Legislature created the new 34<sup>th</sup> District Court that consisted of El Paso, Pecos, and Presidio Counties, (all the area west of the Pecos River) and removed Tom Green County. With rail access to Ft. Davis and Ft. Stockton, Judge Falvey's time spent away from El Paso was reduced dramatically. In December 1883, an election was held to determine whether the County Seat would remain in Ysleta or move to El Paso. El Paso had only 300 registered voters and Ysleta and San Elizario had nearly 500. The vote was 2,252 for El Paso and 476 for Ysleta. Obviously many people from Juarez

voted for El Paso, when all you had to do to vote was swear that you intended to become a U.S. citizen. The Falveys moved from Ysleta to El Paso when a new courthouse was built on the site of today's courthouse, 500 E. San Antonio Street. The magnificent renaissance style building was one of the largest and most impressive courthouses in Texas when completed in 1886. Controversy swirled around the construction and Judge Falvey's hand picked Grand Jury issued a stinging report regarding corruption by the architect, contractors, and local politicians. Bribery was eventually established and indictments were returned. Judge Falvey later tried these high profile corruption cases.

Judge Falvey also tried the murder case of the first El Paso police officer killed in the line of duty. On the night of July 6, 1883, Deputy City Marshall Thomas Mode, was looking for young cowboy Howard H. Doughty. During a drunken spree with friends, including a newspaper reporter, Doughty had been disturbing the peace in saloons and other establishments along notorious El Paso Street. Looking for more entertainment, he ended up at Big Alice Abbott's parlor of prostitution. Refusing to be arrested, Doughty shot and killed Officer Mode. Falvey moved the trial on a change of venue to Presidio County, where Doughty was found guilty of murder in the second degree and sentenced to five years in prison. That conviction was eventually reversed and remanded for a new trial, and in 1885 Doughty was found not guilty. Falvey tried dozens of murder cases, all but one ending in a not guilty verdict. Self defense, he deserved killing, or he was asking for it, made El Paso well-known as a place where grudges could be settled with few consequences.

Judge Falvey also tried the most significant land dispute in El Paso with most of downtown El Paso on the table. He tried election contests, divorces, all criminal felony cases and every significant civil dispute for the twelve years between 1880 and 1892. Today we think trying one or two cases per week as a heavy workload. Judge Falvey routinely tried two and even three jury trials in one day.

He was extremely active in local, state and national politics. For many years he was also the Chairman of El Paso County's Democratic Party Convention. He was a delegate on a number of occasions to the Democratic State and National Conventions. He was highly respected by the legal community and the citizens of El Paso County. He was a great mentor to young lawyers. Everyone spoke of

*One day while holding court, his bailiff reported that a friend of his was being threatened by three dangerous gunfighters only a few blocks from the Courthouse. The Judge immediately adjourned court, strapped on his pistol and ran to the scene. Not waiting for police or sheriff's deputies, he confronted the three men and told them to leave El Paso immediately or face a posse that was about five minutes behind him. Even though he was outnumbered three to one the Judge must have been convincing because the gunmen left immediately. Judge Falvey gave a new meaning to the concept of judicial activism.*

him as calm and dignified, a perfect gentleman. Loyal to his friends, respectful to his foes, he placed a high value on honor.

Judge Falvey gave a new meaning to the concept of judicial activism. One day while holding court, his bailiff reported that a friend of his was being threatened by three dangerous gunfighters only a few blocks from the Courthouse. The Judge immediately adjourned court, strapped on his pistol and ran to the scene. Not waiting for police or sheriff's deputies, he confronted the three men and told them to leave El Paso immediately or face a posse that was about five minutes behind him. Even though he was outnumbered three to one the Judge must have been convincing because the gunmen left immediately.

Judge Falvey voluntarily resigned his office in June 1892 and never ran nor held any other public office. He joined the law firm of Hague, Falvey and Davis. James P. Hague, like Falvey, had been District Attorney and was one of the most gifted public speakers in West Texas. After Hague's death in 1893, Davis and Falvey remained law partners until 1914 when Falvey began practicing alone. Judge Falvey had a very successful law practice in both the Civil and Criminal areas for almost thirty years. He and his wife had three children. Their oldest daughter, Mabel, lived with the Judge and his wife. She was one of the first school teachers at El Paso High School, which opened in 1902. A second daughter married an El Paso physician, Dr. Frank Lynch, and their youngest child, Walter L. Falvey, was an officer in the U.S. Army.

Even after leaving the bench Judge Falvey's courage could be counted on. In 1894, Manning Clemments arrived in El Paso just before his famous cousin John Wesley Hardin -- one of the most notorious gunfighter in the West -- and

brother-in-law to "Killing" Jim Miller, a known gun for hire. Clemments had a reputation as a gunfighter and at 25 had already carved several notches on his gun. The gambling and saloon crowd had been able to elect "Poker" Bob Campbell mayor. When Clemments applied for a job as a policeman Campbell thought he was a good prospect. Clemments was always ready for a fight and did a fair job as a street officer. A vacancy occurred for Police Captain and Clemments applied for the job. Local citizens were appalled. They signed a petition urging Mayor Campbell not to promote a man of Clemments' reputation to such a high office. The Mayor showed Clemments the petition and Clemments swore he would get every one of those honorable townsmen to remove their signatures. Everyone did except for T.A. Falvey, who alone refused to remove his name no matter what the result, and Clemments did not get the appointment. As tough as Judge Falvey was, he was a great favorite with El Paso children. Everyday they would follow him on his walks through town and he would tell them stories and buy them candy or ice cream.

Falvey was still actively trying cases when he died in 1919 after surgery at Hotel Dieu Hospital. The city was shocked and saddened that one of its great pillars had passed away. On the day of his funeral all courts at the El Paso County Courthouse were closed in his memory, in spite of the fact that he had been retired as a judge for over 27 years. Few local officials' deaths have resulted in the closing of the Courthouse for an entire day. T.A. Falvey was not merely respected; he was beloved by the local legal community and all El Pasoans. Men of such stature rarely pass by, but when they do, a community cannot fail to take notice.

## SENIOR LAWYER INTERVIEW

■ BY CLINTON CROSS

## PHIL BARGMAN



*Many years ago, in 1973, I ran for the Board of Directors of the El Paso Legal Assistance Society (EPLAS). In those days, the practicing attorneys in El Paso County elected lawyers to fill the vacant positions on the EPLAS Board (a process similar to an “El Paso Bar Association poll”). Phil Bargman defeated me.*

**P**rior to this interview, I pledged to myself to dig up all the dirt on Phil Bargman I could, and pass it on to you. Read on, my friends. This is my moment.

**CROSS:** I understand you come from an old El Paso family. Any truth to that?

**BARGMAN:** Well, my grandfather owned a clothing manufacturing company here in the early nineteen hundreds, and we have a picture of a shooting taking place outside his business. But times were changing. Someone arrived at the scene on a bicycle, rather than a horse. (For more information, see related story in this issue of the Journal. Ed.)

**CROSS:** So your roots are in the Wild West?

**BARGMAN:** Somewhat. But my grandfather, also named Philip Bargman, came from Russia. He settled first in Trinidad, Colorado. He thereafter moved to El Paso. In 1903 he opened the Bargman Shirt and Overall Company at 215 East Overland Street. I suspect this was the beginning of the clothing industry in El Paso.

My father was Saul Bargman, one of his two sons. When my grandfather died, his sons were too young to run the business, so it was sold.

My father served in the U.S. Army prior to and during World War II, achieving the rank of Colonel. He served as Deputy Finance Officer at Fort Bliss and served in Panama as Finance Officer for the entire Caribbean Air Command.

**CROSS:** So, don’t women count? What about your mother? (I know I shouldn’t have asked the question that way, but revenge is sweet).

**BARGMAN:** My father married Claire Picard, who was born in Chihuahua, Mexico. Her father was Henry Picard, who moved to Chihuahua from France

and opened the largest department store in that city. Henry was also appointed the French Consul in

Chihuahua and served many years in that capacity. Claire’s mother, Julia, was from Switzerland.

By the way, my grandparents knew Pancho Villa and his wife Luz Corral and some of his other “wives.” Villa never bothered my grandparents. I also knew Luz Villa from the time I was a small child, and I later introduced her to my children.

**CROSS:** Where did you get your “out of the home” education?

**BARGMAN:** My father was in the military, so I moved all over the country and I attended many schools including several in Texas: El Paso, Brownwood, Houston, and Peacock Military Academy in San Antonio. I also attended schools in Coffeyville, Kansas and Lincoln, Nebraska. I graduated from Balboa High School in the Panama Canal Zone.

I spent two summers while at Stanford in Chihuahua. During one of those summers I made friends with a young man my age whose father commanded the Mexican Cavalry Regiment stationed in Chihuahua. He invited me to go horseback riding. His father soon advised us that we had to train with the soldiers if we wanted to ride horses. His officers were graduates of the Mexican Military Academy, and some were Olympic competitors.

I learned a lot that summer training with the Mexican cavalry: how to ride horses, how to jump horses, and even how to march—a lot of things. It was a memorable summer.

I graduated from Stanford University in 1950, with a degree in Economics. At that time, I also received a commission as a Second Lieutenant in the US Army, but thereafter transferred to the US Air Force Reserve. I then enrolled at the University of Texas School of Law, graduating in 1953.

**CROSS:** Then what?

**BARGMAN:** Well, I returned to El Paso. In 1955, after two years active duty in the Air Force, I began the practice of law as a sole practitioner, specializing in real estate, probate, contracts, and commercial law.

I was at that time one of the few lawyers in town who could speak Spanish. As a result, judges frequently asked me to perform the role of interpreter.

**CROSS:** Sounds boring. I'll bet you never handled an interesting case.

**BARGMAN:** Wrong. I could tell you about lot of interesting stories, but you don't have the space to print them all. So I'll tell you about one of my more interesting cases.

In 1959 I was working diligently on some transactional matters when a woman came into my office seeking representation for her two sons, ages ten and twelve. Her sons were being held at the El Paso Juvenile Detention Center, and prosecutors had recommended that the youngsters be sent to the Texas State Juvenile Facility.

I wanted to find a better alternative. I remembered a movie with Spencer Tracy about Boys Town. From seeing the movie, I thought Boys Town would be better than the State Facility. I reviewed the idea with my client, and she liked it. I thereafter asked the judge if he would consider placement at Boys Town, if at the upcoming hearing it appeared the children required incarceration. He said he would do so.

I then talked to the Catholic priest, who said he'd try to get the boys admitted. He called a few days later, advising me that Boys Town could not accept the youngsters. They had, he said, a waiting list "a mile long." He reported he would try to make arrangements at another facility.

Two days before the court hearing, I received a frantic call from the Catholic priest. The priest had received a call from the Bishop, who told him that the Pope had called him on behalf of the two boys. The Pope wanted to know why the assignment to Boys Town had not been made as the boy's lawyer had requested.

It turned out the mother of the two juveniles was a distant relative of the Pope. She had called him to ask for his help. The priest was panicky, and wanted a delay in the court hearing so he could work things out. The judge agreed.

A few days later, Boys Town accepted the two youngsters. Needless to say, my client was pleased. So was the priest.

*When I started the practice of law, lawyers tried to prevent problems and if they occurred they tried to resolve them as soon as possible with the least expense to all parties. Today, in my opinion, too many lawyers approach the practice as a business, rather than a profession. Perhaps we can change that culture. We must. The "rule of law" is at stake!*

**CROSS:** I admit that was a pretty good story. I bet you can't even come close to another tale like that one.

**BARGMAN:** A few years later, in 1966, I was officing with R.P. Langford and Francis S. Ainsa, when Bishop Metzger called them for representation regarding a matter involving Daniel Thistle, a Catholic Priest who lived in the Diocese. The Bishop wanted the priest removed from the Diocese, and from the parish house. The priest refused to relinquish his position as priest, or move out of the house.

Langford and Ainsa filed a forcible detainer action, requiring the priest to vacate the premises. Langford and Ainsa did not want to participate in trial of the case, and at that point asked me to take over.

We had a hard time serving Father Thistle. Every time the process server went to the house, he would sneak out the back door or otherwise avoid service of process. The constable knew the priest, and knew the priest loved baseball games. He suggested service at a baseball game.

Father Thistle was served at a baseball game. Father Thistle then posted bond and filed suit in the District Court requesting that we, the Sheriff and the constable be enjoined from evicting him. The judge granted a temporary injunction pending a hearing. At the next hearing, the court dissolved the injunction and allowed us to proceed with our suit in justice court for possession of the property.

Father Thistle immediately appealed the District Court's opinion to the Court of Civil Appeals. The court granted us an expedited hearing and heard the case within a few days of the notice of appeal. We won in the Court of Appeals, and the case was remanded for trial in the justice court.

Back in justice court, Father Thistle demanded a jury trial. The trial lasted approximately two days. The jury refused to evict the priest, explaining that they felt the matter should be resolved within the Church

and not in a court of law.

This time we perfected a de novo appeal to the County Court at Law. After a bench trial before the judge, we again prevailed. The Court ordered Father Thistle to vacate the premises, and he did so.

In a very short period of time, we tried this case in justice court, the District Court, the Court of Appeals, again in the Justice Court, and finally in a County Court at Law where the matter was finally decided in our favor.

Thereafter, I received a very nice letter of appreciation for my work from Bishop Metzger, which I still have and treasure.

**CROSS:** Besides practicing law, did you ever do anything constructive for the community?

**BARGMAN:** I served on the EPLAS Board of Directors for more than one term until 1981. I received the Meritorious Service Medal for outstanding service in the United States Air Force in 1982. I retired as a full Colonel from the Air Force Reserve in 1982. I also served as Board Member and Chairman of District 17, Committee on Admissions, State Bar of Texas for 25 years from 1957 to 1982. I have been a Rotarian for many years. I have been a Master Mason for more than fifty years. I was honored by the State Bar of Texas and the El Paso Bar Association as a "50 year" lawyer, which means I'm still kicking.

**CROSS:** How has the practice of law changed since you started?

**BARGMAN:** When I started the practice of law, lawyers tried to prevent problems and if they occurred they tried to resolve them as soon as possible with the least expense to all parties. Today, in my opinion, too many lawyers approach the practice as a business, rather than a profession. Perhaps we can change that culture. We must. The "rule of law" is at stake!

# PERSEVERANCE: The Ultimate Key To Success

■ BY JUDGE OSCAR G. GABALDÓN, JR.

**T**he making of America has largely been a matter of perseverance...the perseverance of men and women that long for a better tomorrow for themselves, their children, and their descendants. We need not look far to find examples of people whose perseverance has paid off a hundredfold. The entertainment business gives us a wealth of examples regarding the benefits of perseverance. For example, in 1933 the MGM testing director wrote a memo about Fred Astaire's first screen test. In his memo, the director wrote that Fred Astaire could not act, was slightly bald, and could only dance a little. However, Fred Astaire did not permit this to stop him from trying to make it in show biz. As many know, he is now considered a legend and one of the greatest dancers in the film industry<sup>1</sup>. Other examples abound. After losing his older brother in WWII, Dick Clark became an introvert. He began to listen to radio to help him better handle the loss of his brother. His desire to host his own radio show eventually led him to start American Bandstand<sup>2</sup>. Yet another example brings us to the man who has received the most academy awards than any other individual. Having been fired from his newspaper job for lacking ideas, and having gone bankrupt several times, Walt Disney went on to bring the world a land of dreams and fantasy we now simply call Disneyland<sup>3</sup>.

In the business world, we find an example of perseverance in a rather mediocre marketer of restaurant equipment. His name is Ray Kroc, who sold his first hamburger when he was 52 years old. His hamburger stands eventually turned into the world's largest food chain known as McDonald's<sup>4</sup>.

In the political sphere, we also find towering figures of astounding perseverance. The value of perseverance has been illustrated most convincingly in the life story of this man: At the age of 22 he failed in business. At 23, he ran for the legislature and was defeated. At 24, he again failed in business. Elected to the legislature at the age of 25, the next year he experienced a tremendous loss with the death of his sweetheart. At the age of 27, this man suffered a nervous



breakdown. At 29, he was defeated for Speaker. At 31, he was defeated for Elector. At 34, he was defeated for Congress. At 37, he was elected to Congress, but was again defeated for Congress when he was 39. At 46, he was defeated for the Senate. When he was 47, he was defeated for Vice President. When he was 49, he was again defeated for the Senate. At the age of 51, he was elected President of the United States. This man of exemplary perseverance is none other than Abraham Lincoln.<sup>5</sup>

In other facets of human existence, such as in our attempts to grow spiritually, to achieve certain educational objectives, to successfully engage in problem solving a major dilemma, to help alleviate the plight of the needy, to get a promotion we have longed for, to successfully raise a family, and to accomplish certain lofty goals, we can find men and women that serve as examples to us of the power of perseverance. We not only find models of perseverance in people of the stature of Martin Luther King, Jr., Indira Gandhi, Benjamin

Franklin, Justice Sandra O'Connor, Pope John Paul II, Harriet Tubman, and the like, we also sometimes find them in a parent, a cousin, a teacher, a co-worker, a mentor, a person with a terminal illness, and even in a stranger or a little child.

Success in one's pursuits and dreams is many times a certainty if one is a faithful disciple of perseverance. Continuing to do something in spite of the adversities and trying challenges one encounters is at the heart of perseverance. In the article "How to Develop Perseverance?" C.D. Mohatta maintains that one must believe that success is possible, lest one diminishes the motivation to continue. If we do not believe and are, therefore, not motivated to continue, we may not succeed and that, in turn, feeds our belief that success was never a realistic expectation. The regrettable thing about this is that this cycle can then become a habit...a bad habit. However, if we believe that we will succeed, it is less likely that we will give up trying. "We may encounter great difficulties or even defeats, but because we believe, we'll ultimately succeed. Even with failures we just change our tactics or adjust our goals a little and continue to try. Because we keep trying and adjusting we greatly improve our chances of success. This is the essence of self-fulfilling prophesy."<sup>6</sup>

How do we foster perseverance? This is an important question for ultimately, while we might possess a formidable array of qualities that can help us succeed, unless perseverance is part of the equation, we risk not succeeding. For starters, we must be mindful of our human propensity to give up early on. When beginning some undertaking, Mohatta advises that you "...make a promise to yourself that you will try for a specific period of time and won't quit before that time is up. Make the interval of time short if you need to, but no matter what, keep your promise and do not quit before the allotted time. When the deadline arrives, you can then decide if your strategy is working and you should continue in the same manner, or if you need to make adjustments in your strategy. Allow yourself to abandon one strategy in favor of another after you've given it a fair trial, but never quit on your goals. Only change your strategies."<sup>7</sup>

"Few things are impossible to diligence and skill. Great works are performed not by strength, but perseverance."<sup>8</sup> Notwithstanding, let us be mindful that perseverance must be balanced with the proper motivation in order for the perseverance to be noble and virtuous. That is, if a man perseveres in his determination to bring about adversity or injury to others, how can such perseverance rise to the level of being noble and virtuous? That is, a person's motive for persevering in doing or pursuing something is a critical component in the composition of that person's character and sense

of integrity. For example, if a person of significant perseverance seeks public office, but his or her primary motive for doing that is the desire of possessing real or perceived power, or status and prestige, or simply the desire to be given special recognition or deference, where is the nobility or virtue in such perseverance? Such perseverance is tainted with parsimonious or self-centered motivation. If, however, the person's motivation for becoming a public servant is the desire to engage in uplifting and enhancing the condition and betterment of others through the use of servant leadership, then that person's perseverance takes on a sense of nobility and dignity. The perseverance becomes an exulted and illustrious undertaking. The perseverance is virtuous.

While sometimes the journey of perseverance entails obstacles, they are obstacles that we can usually overcome. Our ability to withstand the storm of those obstacles is directly connected to our ability to succeed. Booker T. Washington, the prominent educator, captured this sentiment all too well when he stated: "Success is measured not so much by the position that one has reached in life as by the obstacles that one has overcome while trying to succeed."<sup>9</sup> At the core of this process towards success, perseverance stands triumphant. Whether people are average or above average in their abilities, perseverance can serve as an equalizer. "People of mediocre ability sometimes achieve outstanding success because they don't know when to quit. Most men succeed because they are determined to."<sup>10</sup> Regardless of a person's aptitude or ability, it is perseverance that ultimately helps the person cross the finish line. Perseverance provides us the comfort of guaranteed success. Great Britain's celebrated prime minister of the WWII era confirms this with confidence and assurance: "Sure I am of this, that you have only to endure to conquer. You have only to persevere to save yourselves."<sup>11</sup> To succeed or not succeed will, therefore, depend on whether one perseveres or does not persevere. That is the bottom line

1 Dooley, Ken (Ed.). "Failures...but Not Quite." Good Stuff. Progressive Business Publications, 2001.

2 Ibid.

3 Ibid.

4 Ibid.

5 Bits & Pieces, Vol. M, No. 9, The Economic Press, Inc., 1995.

6 C.D. Mohatta, "How to Develop Perseverance?" [www.isnare.com](http://www.isnare.com)

7 Ibid.

8 Quote from Samuel Johnson (1707-1784).

9 Quote from Booker T. Washington (1856-1915).

10 Quote from George Allen.

11 Quote from Winston Churchill (1874-1965).



**Name:**

Thomas A. Spieczny

**Court:**

County Court at Law No. Seven

**Years on the Bench:**

2+

**Education:**

Princeton, 1968; Vanderbilt Law School, 1971

**Docket type:**

Civil & Criminal  
Misdemeanor

**Court Coordinator:**

Annette Bixler

**Pet Peeve:**

Arrogant people

**Favorite place to go on vacation:**

Italy

**Last book I read:**

"The Kite Runner"

**Last movie I saw:**

"American Gangster"

**If I wasn't a judge, I would be a:**

Baseball scout

# Hasta La VISTA, Baby

BY DAVID J. FERRELL

djff@elpasolaw.com

Many lawyers are wondering if they should upgrade to Microsoft VISTA and corporate America is going through the same quandary. I have personally upgraded my "VISTA Ready" tablet PC to VISTA Ultimate and I have purchased a new Quad server with VISTA Home Premium pre-installed. VISTA has many great features but I wish I had kept XP on my tablet. There will be compatibility problems with some of your software and hardware, some can be fixed some cannot, but who has the time, money and energy to go down that road.

I just purchased two Dell Vostro 1000 notebook computers and I was "allowed" to have Windows XP installed as the operating system, that was my choice. However, many new computers have VISTA installed and you have no choice as to VISTA, but you must choose the version of VISTA. I would suggest that you NEVER purchase a computer with VISTA Home Basic, at least get Home Premium, the additional dollars are worth it. Any version of VISTA requires a lot of computing horsepower (hardware). VISTA comes in 32 or 64 bit versions, if you decide to upgrade make sure you know the difference.

If history repeats itself, unless something drastic happens, some day most of us will have to have VISTA on our computers. Microsoft could stop supporting Windows XP and tech support could go down that not unfamiliar retirement path. So, what is Windows Computing America doing? I don't believe there will be a huge shift to Apple, Unix and/or Linux but I know there is no stampede to VISTA. This is because VISTA is essentially an incremental upgrade in user interface, with high power security features, and enhanced network performance. Most of us, who are using Windows XP, have already addressed these items with third-party vendors and homemade solutions. Few law firms can justify the upgrades in hardware, server infrastructure, and application software that VISTA requires. And the greatest drawback is RETRAINING THE STAFF who has still not mastered Windows XP but has become comfortable with it. In other words is our staff "VISTA Ready"?



*If history repeats itself, unless something drastic happens, some day most of us will have to have VISTA on our computers. Microsoft could stop supporting Windows XP and tech support could go down that not unfamiliar retirement path. So, what is Windows Computing America doing?*

Microsoft's new measures against unlicensed software represent a further deterrent to a VISTA upgrade. This affects legitimate customers, not just those using the product illegally. Activation is mandatory for all copies of VISTA, even those under volume licensing agreements. Machines can either activate directly to Microsoft or go through a locally installed Key Management Service. The KMS means that users don't need to juggle individual activation keys for each workstation or risk exposing a volume key, but it adds infrastructure complexity.

One thing I've learned (sometimes the hard

way) is that if it isn't broke, don't fix it. Most of my computers and all of my staff computers do not have VISTA installed. Microsoft needs to make some major revisions before I upgrade to VISTA on all my computers, but then Microsoft will have to revise the revisions, etc., etc., etc.

VISTA is an "OPERATING SYSTEM" it should be the solution not the problem. Sometimes bells and whistles eclipse the basic function(s) of a program making the program less useable for those who do not want the stress of unnecessary and expensive "add ons".

## EL PASO'S LEGAL HISTORY REVEALED

# The River Wild

BY JAMES M. SPEER, JR

jmspeer@huntel.com

The City of El Paso exists because of the Rio Grande ("big" or "wide", not "grand" or "long", river). From its source in the mountains of western Colorado (at more than 12,000 feet in elevation) to the Gulf of Mexico, the river's length is about 1,885 miles. About 1,240 miles of the river is the border between the United States and the Republic of Mexico. This article is intended to present initial remarks about the legal history of the river in the El Paso area.

The Texas Water Code provides that water transported through any navigable stream within Texas is the property of Texas. Water Code, §11.021(b). You may say that such law is irrelevant to El Paso, since no steamboats, motorboats, or canoes navigate the reach of the Rio Grande at El Paso. But you would be confusing "navigable in fact" with "navigable by statute". In Texas, by statute, a "navigable stream" is a stream which retains an average width of thirty feet. Natural Resources Code, §21.001(3). Therefore, the Rio Grande is legally a navigable stream. However, the Rio Grande (known in Mexico as the Rio Bravo, or wild river), prior to construction of Elephant Butte Dam, was normally dry every year after the late Spring flood flows from snowmelt in Colorado had subsided. The flood flow was typically so heavy it would build up when it reached the "narrows", near the present day Asarco plant and once below the mouth of the gorge, diffuse broadly and slow down, resulting in the riverbed's shifting, almost annually, ultimately causing Ysleta, Socorro, and San Elizario to be on the American side of the river instead of the Mexican side. The Treaty of Guadalupe Hidalgo, signed February 2, 1848, which officially ended the war between

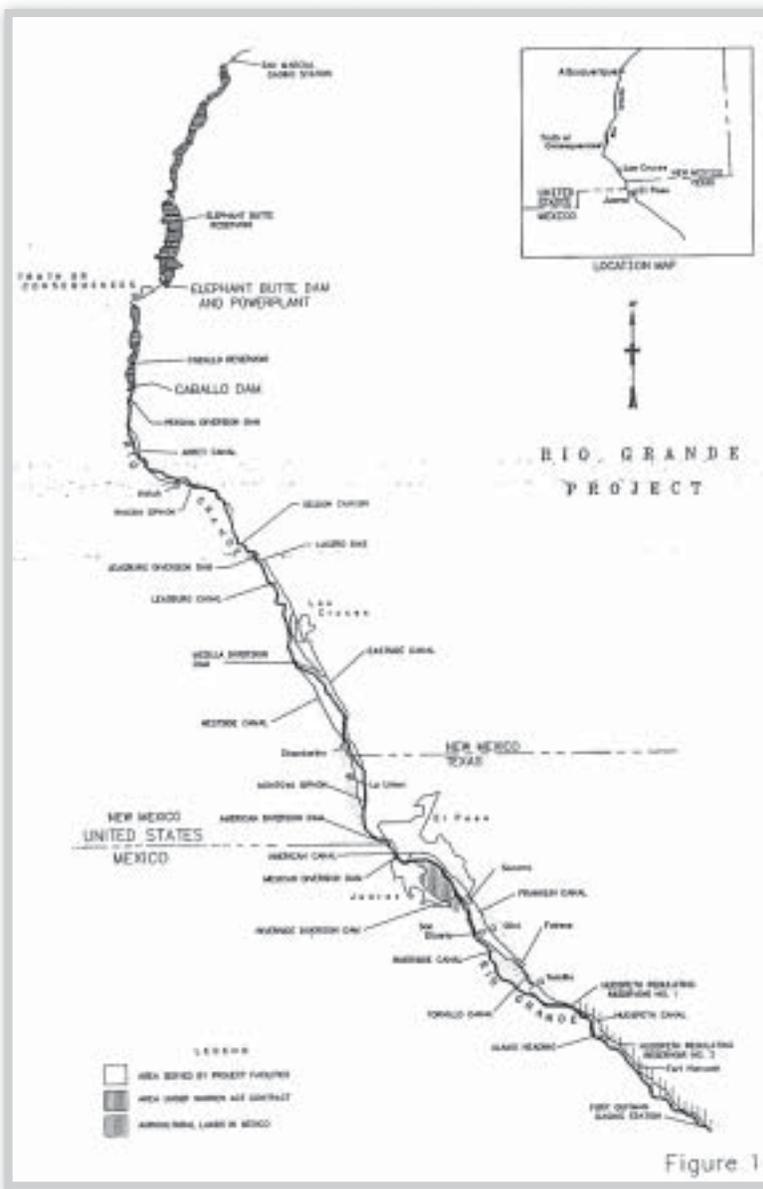


Figure 1

the United States and Mexico, provided that the new international boundary was to be "the Rio Grande...following the deepest channel...to the point where it strikes the southern boundary of New Mexico". When the river became an international boundary, El Paso del Norte became a border town. W.H. Timmons in *EL PASO A Borderlands History*.

Throughout recorded history there were many small dams constructed (and washed away) and large dams and plans for even larger dams. It was from the small dams that first the Indians and then the Spanish could direct water into acequias, or canals, for irrigation when there was water in the

river. In the authorizing legislation, the Rio Grande Reclamation Act of 1905, the stated goal was to store the Rio Grande flood waters and then supply New Mexico and Texas with the stored water for irrigation. House Report No. 3990 declares:

"A dam will be constructed at the mouth of a canyon in New Mexico which will store a very large amount of water, with the additional advantage that it will flood practically no land of any value. As an additional advantage it will be possible to irrigate 185,000 acres of land that is now of small or little value. As an additional advantage it will be possible to irrigate the land in Mexico formerly receiving water from the Rio Grande, and it will settle claims that have long been pending upon an equitable basis..."

and

"Your committee regard this bill as of very large importance and trust that it may speedily become a law. It will dispose of questions that have been embarrassing the Government for 20 years and satisfy the demands of the people both of Texas and New Mexico." See *Legal and Institutional Framework for Rio Grande Project Water Supply and Use...a legal hydrograph, Bureau of Reclamation, 1995*.

The plan was to capture the early snowmelt at Elephant Butte Dam in order to regulate the flow and release the stored water over a seven month period (instead of two and a half months), enabling crops such as cotton, corn, chile, and pecans to be grown. Project construction reached the point by 1917 that Project operations could commence. Ultimately, drains to return water salted up by surface application to the riverbed were constructed between 1928 and 1932.

Probably the best legal and historical account of the Rio Grande in the El Paso area appears in the landmark opinion of Federal District Judge Dooley, in 1955, in *El Paso County Water*

*Improvement District No. 1, et al., with the United States of America v. City of El Paso*, 133 F. Supp. 894, in which the following appears:

“The Rio Grande is not only a river of song and story, but also a symbol of the Spanish heritage in what is now the American Southwest. It is the second longest river in the United States and is the only river of this country having long segments first wholly within this nation and next forming an international boundary. The physical aspects of the river, as it stretches through hundreds of miles of arid territory, make an environment quite unlike the rivers of humid climes and verdant lands such as England or the eastern seaboard of this country, where the doctrine of riparian water rights is dominant. The full strength common law riparian rule in a nutshell is, ‘the river runs, let it run on and on’. The Rio Grande was not made for such a riparian law world. It has never been dependably navigable in fact on any general scale within the span of history, except to a limited extent in the lower reaches of the river. Obviously, by the order of nature, it was destined for use in irrigation of the valleys along its banks and it has been such a life line for hundreds of years. The Indians first and the Spaniards next began such use of the river. The acequias of the Spaniards go back to the 17th century. The community of Ysleta, a few miles south of El Paso, is among the oldest settlements of the kind.”

Burges, Scott, Raspberry & Hulse, Edwards, Belk, Hunter & Kerr, for the plaintiff District, Holvey Williams, for the United States, and Hardie, Grambling, Simms & Feuille, Hans Brockmoller, and Guinn & Guinn for the City of El Paso, were among the stellar El Paso attorneys in that case.

The Reclamation Act was approved June 17, 1902, and in 1905 Congress authorized the Rio Grande Project. In 1906, the Reclamation Service and the Department of the Interior filed a written claim with the Territory of New Mexico to appropriate 730,000 acre feet of water per year at the later site of the Elephant Butte Dam, damned to serve the Rio Grande Project. In 1906, by a treaty, or “Convention”, between the United States of Mexico, following “some desultory correspondence” over mutual grievances about the diversion and use of Rio Grande waters in the vicinity of El Paso and Juarez, the United States agreed to supply 60,000 acre feet of water annually (in years when there is no “extraordinary drought”) to the Acequia Madre in Juarez. The planning of the Rio Grande Project and the settlement of differences with Mexico went hand in hand.

In 1938, the states of Colorado, New Mexico,

*The Rio Grande is not only a river of song and story, but also a symbol of the Spanish heritage in what is now the American Southwest. It is the second longest river in the United States and is the only river of this country having long segments first wholly within this nation and next forming an international boundary.*

and Texas entered into the Rio Grande Compact, in which the United States joined. The Compact defines the obligation of Colorado to deliver water at the Colorado-New Mexico state line and the obligation of New Mexico to deliver water into the Elephant Butte Reservoir at San Marcial, New Mexico, (which is 125 miles above the point where the river leaves New Mexico and becomes the international boundary between the United States and Mexico). Largely because of the Compact, Judge Dooley held that the City of El Paso was not entitled to appropriate water already appropriated for use of the District. That holding was affirmed by the Fifth Circuit Court of Appeals in its 1957 Opinion at 243 F. 2d 927, although reformed as to a bridge contract issue. The Compact does not, on its face, allocate or apportion Project water among Project beneficiaries below San Marcial.

Both New Mexico and Texas require adjudications of water rights claims within the state. In New Mexico, an adjudication addresses both surface and ground water claims, and is done through an action in a state district court. In Las Cruces, there is presently pending a long running adjudication action in which the claims of thousands of claimants will be considered. Under the Texas Water Rights Adjudication Act, which combines an initial administrative action with a mandatory appeal to and a final judgment by a state district court, has proven to be much more expedient. Adjudications of all of the other stream systems in Texas having been earlier completed, adjudication of the reach of the Rio Grande from Ft. Quitman, Texas to the New Mexico line has finally been completed and a final judgment entered in Cause No. 2006-

3219 in the 327th District Court. The judgment affirmed the Final Determination by the TCEQ, which recognized only the following claims:

1. Ownership by the District and the United States of the right to divert and the District use 376,000 acre feet of water per year from the Rio Grande, to divert and use up to 234,022 acre feet per year of “effluent” and 1,899 acre feet per annum from tributary inflows, for municipal, industrial, mining, or recreational purposes and/or irrigation of a maximum of 69,010 acres of land within the District’s boundaries and/or to sell any of such water for use in El Paso and Hudspeth counties.

2. Ownership by Jobe Concrete, Inc. of the right to divert 178 acre feet of water per annum for industrial purposes from the flows of an unnamed tributary of the Rio Grande.

3. Ownership by the City of El Paso of the right to divert and use not to exceed 11,000 acre feet of water per year of the unappropriated storm, flood, and return waters of the Rio Grande for domestic and municipal purposes, in accordance with a contract dated August 10, 1949 between the City and the District, and the determination of the quantity of water available to the City each year shall be made by the United States, Secretary of the Interior.

4. Ownership by Indian Cliffs Ranch, Inc. of the right to impound without diversion 52 acre feet of water for recreational purposes on the San Felipe Arroyo.

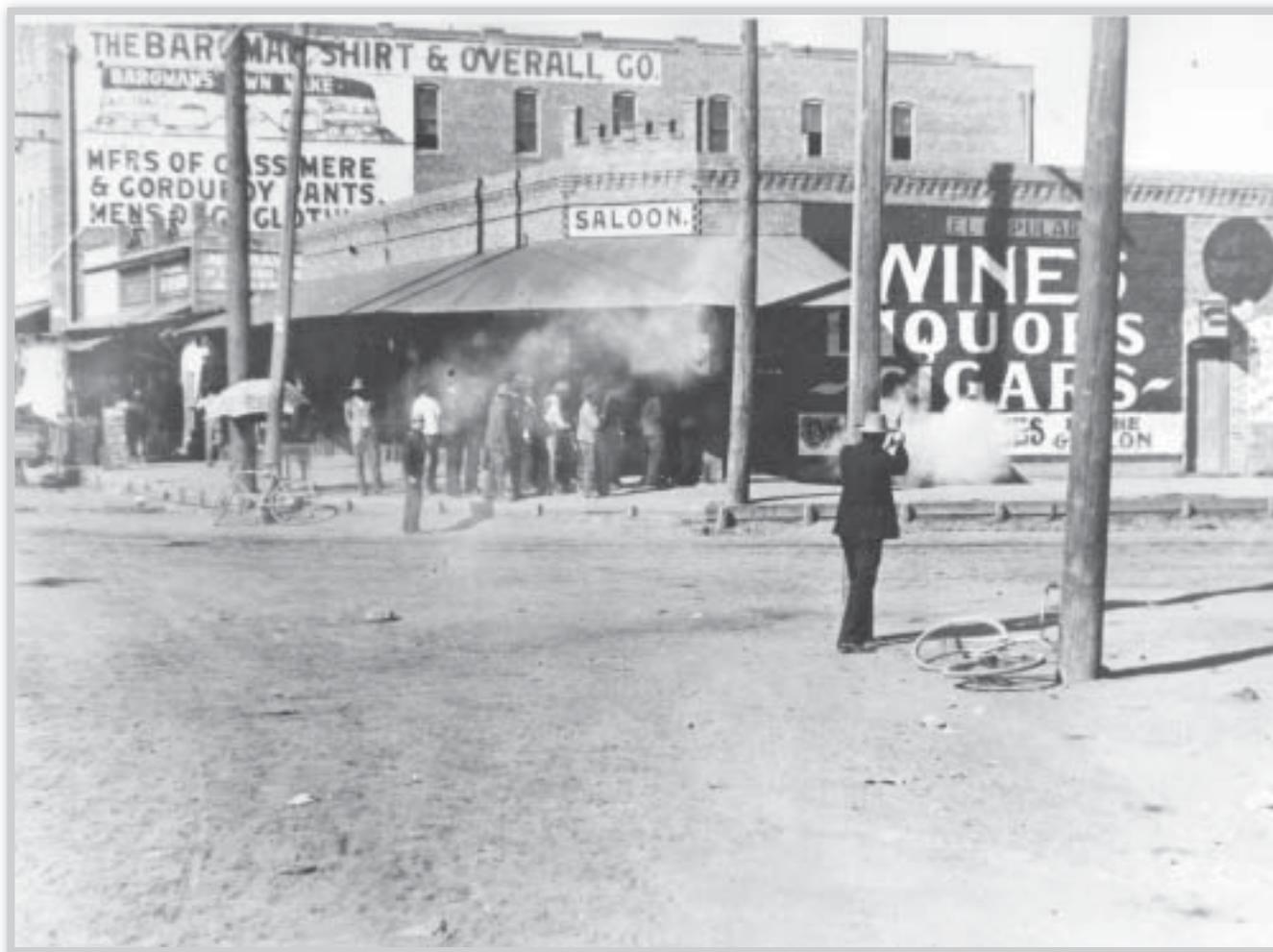
5. Ownership by the Hudspeth County Conservation and Reclamation District No. 1 and the United States of the right to divert from the Rio Grande not in excess of 27,000 acre feet per annum and to use a maximum of 151,892 acre feet of water available at the terminus of Project drains and canals under a “Warren Act Contract” (in other words, return flow out of the El Paso District).

The judgment does not address ground water, since to date the only regulation by Texas of ground water is by underground water districts.

Only the City of El Paso and the Lower Valley Water District, in El Paso County, have contracts with the District and the United States to acquire assignments of rights to receive and use Project water for municipal purposes, made pursuant to 43 USC §521, which is necessary in order to use Project water for any purpose other than that for which the Project was authorized, which is irrigation.

We will further address the original title suggested for this article, “Water Wars on the Rio Grande”, in a subsequent issue, although there are at least three pending major cases (which, of course, will inhibit comment!).

## EL PASO'S LEGAL HISTORY REVEALED



PICTURE COURTESY OF EL PASO PUBLIC LIBRARY

# A Shooting At Bargman's Clothing Company

■ BY CLINTON CROSS

In 1970 former El Paso Deputy District Clerk E.M. Montes recounted the shooting that took place in 1905 in front of the Bargman Shirt and Overall company to Wyndham K. White. This is what he said:

Felipe, who lived in a room in back of El Popular Bar, killed his wife.

Coming upon the scene on his grey horse, police officer George Herald attempted to arrest Felipe. The officer was shot in the leg;

however, it was not clear whether Felipe or someone else fired the shot.

When police officers Porra and Carbajal arrived on the scene, they began shooting at Felipe from a handball court on 7th street, near the Mesa street intersection. Thereafter, officers Waldrige and Alvarez arrived and joined the effort to bring down Felipe.

During the shootout, Felipe failed to hit any of the police officers. However, in the cross fire, he shot and killed a young African-American

boy who was going from a bar to his room across the street.

Officer Alvarez took a position on the top of a building. Seeing someone leave a room at the back of one of the bars in the neighborhood and, thinking it was Felipe, he fired at the person. Unfortunately, the person he shot at turned out to be an innocent woman bystander.

With only one bullet left in his gun, Felipe ended the carnage by shooting and killing himself.



ADDICTION  
*Illustration by Mary A. Cross*



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## ▶▶▶ ASSOCIATION NEWS

### ■ Immigration Section

■ **SAVE THE DATE:** Friday, January 25, 2008. All day Immigration Training Seminar by the El Paso Bar Association Immigration Section. For more information contact Danny Razo at 881-7177 or dannyrazo@gmail.com

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**Friday, February 15, 2008**

10:00 – 10:05 a.m. **Introduction** – The Honorable Robert Anchondo, President El Paso Bar Association

10:05 – 10:15 a.m. **Welcome** – The Honorable Oscar Goodman, Mayor of the City of Las Vegas

10:15 – 11:00 a.m. **Employment Law Issues** – Ann C. McGinley, Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas, Nevada

11:00 – 11:40 a.m. **Arbitration Agreements** – Milton Colia, Kemp Smith, LLP, El Paso, Texas

11:40 – 12:30 p.m. **Medical Malpractice Update** – Walter Boyaki, Miranda & Boyaki, El Paso, Texas

12:30 – 1:30 p.m. **Lunch on your own**

1:30 – 2:00 p.m. **Trial Technology** – David J. Ferrell, David J. Ferrell, PLLC, and Roger Miller, Keith & Miller Court Reporters /Altep, Inc.

2:00 – 2:30 p.m. **Using and Striking Expert Witnesses** – Joseph Hood, Jr. Windle, Hood, Alley, Norton, Brittain & Jay, LLP

2:30 – 3:10 p.m. **Jury Selection: A View from the Bench** – The Honorable James C. Mahan, United States District Judge, Las Vegas

3:10 – 3:20 p.m. **Afternoon Break**

3:20 – 3:50 p.m. **Cross-Border Issues** – Adriana Cruz, Reyes, Estrada & Fernandez, S.C., Cd. Juarez

3:50 – 4:40 p.m.

4:40 – 5:30 p.m.

**Saturday, February 16, 2008**

7:30 – 8:30 a.m.

8:30 – 9:05 a.m.

Law

9:05 – 9:45 a.m.

9:45 – 10:25 a.m.

10:25 – 10:40 a.m.

10:40 – 11:00 a.m.

11:00 – 11:45 a.m.

11:45 – 12:30 p.m.

12:30 – 1:00 p.m.

**New Causes of Action** – Professor Richard Alderman, University of Houston Law Center

**Legislative Update** – State Senator Eliot Shapleigh, El Paso

**Breakfast**

**Appellate Issues** – John P. Mobbs, Attorney at Law

**Consumer Law Update** – Steven C. James, Attorney at Law

**Immigration Law Issues** – Kathleen Walker, Kemp Smith, LLP & President, AILA

**Morning Break**

**A Portrait of the Next Generation Lawyer** – The Honorable Richard Barajas (ret)

**Texas Supreme Court Update** – David Jeans, Ray, Valdez, McChristian & Jeans, P.C.

**Investigation of Trucking Accidents** – Carl H. Green, Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.

**Ethics and the Trial Lawyer** – The Honorable Enrique Pena, (ret)

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