EL PASO BAR ASSOCIATION
Founded in 1897

EL PASO BAR JOURNAL

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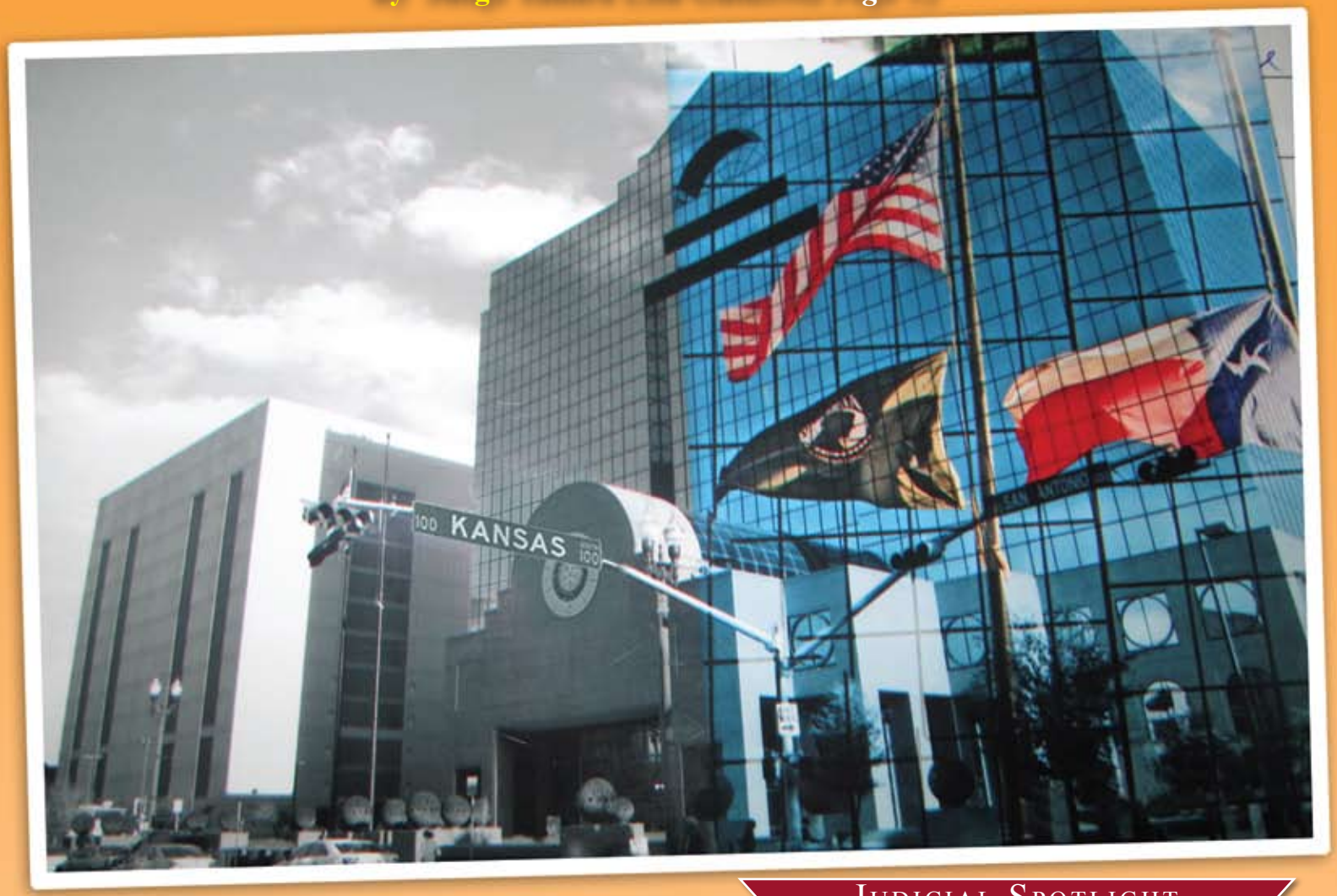
An Update of Events and Information

April/May 2013

The 65th District Court's New Crossover Court

By Judge Yahara Lisa Gutierrez *Page 12*



JUDICIAL SPOTLIGHT

Practicing Family Law in El Paso, Texas

By Claudio Flores *Page 13*

Judge Laura Strathmann

By Clinton F. Cross *Page 16*

President's Page

This Bar's For You!

Since our last issue, we've experienced more loss in our community. I know that the hardships we all experience through illness and death of our loved ones (who are not lawyers) are equally, if not harder, to bear and I don't suggest otherwise. As a community, the untimely loss of a young lawyer like Scott Steinberger left many of us in shock and without understanding. To lose Judge Paxson three days later just deepened the sense of loss and sadness.

This column is neither the adequate nor best space to recall the memories, to make sense of why we lose our colleagues before we are ready, but I can say without hesitation that life is short. We do not know when will be the last or next time we'll see each other. If you've been missing someone or are wondering if something is going on with a colleague or co-worker, pick up the phone and check in (text or email won't work here). Go to lunch with that person. Let's take the time to connect and be good to one another.

I want to thank Judge Linda Chew and the CLE committee for another great Civil Practice seminar. To the sponsors, speakers and attendees, thank you. Look out for next year's seminar under the directorship of Dan Hernandez. Cancun anyone?

Our law day activities are underway. Our photo nomination to the State Bar by Janeal Snell is this Journal's cover. We await to see if any of our nominees are statewide winners. The chess tournament will be held on April 20th, 9:00 a.m. at St. Clement's. We need players!! The students can't wait to beat a lawyer so join us.

On April 27th, we will present a program with the sheriff and police departments, lawyers and judges loosely titled: Open Courts: Journey 2 Justice. This Law Day event is designed for area students in grades 7-12 and is intended to provide an overview of what lawyers do and what happens when a person is arrested and charged with an offense. The goal is to not only demonstrate what happens in court, but also to provide students with a positive and educational experience. Be on the lookout for more details.

Finally, the Law Day banquet will be on May 4th at Ardovino's Crossing. Felipa Solis will emcee and Judge Royal Furgeson is our honored keynote speaker. Hope to see you there...if not before.

Judge Maria Salas-Mendoza,
President

Cover photo: Photo of the El Paso County Detention Facility and the El Paso County Courthouse, entitled 'United: Two different buildings with the same purpose,' by Janeal Snell, El Dorado High School senior, nominated by the El Paso Bar Association to the State Bar of Texas for its annual Law Day contests.

El Paso Bar Association
April Bar Luncheon
Tuesday, April 9, 2013

El Paso Club • 201 E. Main, 18th Floor, Chase Bank - $20 per person, 12:00 Noon

Guest Speakers will be
the Candidates for Mayor of El Paso
Door prizes will be given out

Please make your reservations by Monday, April 8, 2013 at 1:00 p.m.
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

El Paso Bar Association
May Bar Luncheon
Tuesday, May 14, 2013

El Paso Club • 201 E. Main, 18th Floor, Chase Bank - $20 per person, 12:00 Noon

Guest Speakers will be Attorneys from Juarez
who will speak on the Mexican Legal System
Door prizes will be given out

Please make your reservations by Monday, May 13, 2013 at 1:00 p.m.
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

BE OUR COVER:

The El Paso Bar Journal is accepting submissions of photos or other art by its members to serve as the cover of the Bar Journal. This is an exciting opportunity for El Paso lawyers to exhibit their artwork and is designed to inspire and expose the talents of El Paso Bar members. To have your art considered, please send your submission to Nancy Gallego, 500 E. San Antonio, L 112, El Paso, Texas 79901 or e-mail it to her at ngallego.epba@sbcglobal.net, no later than the 10th day of the month preceding publication.

CALENDAR OF EVENTS

PLEASE NOTE: Please check the Journal 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 Journal for your upcoming event or function for the month of June 2013, please have the information to the Bar Association office by Friday, May 10, 2013. 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 journal 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.

April, 2013

Tuesday, April 2
EPBA BOD Meeting
Tuesday, April 9
EPBA Monthly Luncheon
Saturday, April 13
TransPecos Bar Association Meeting
Sunday, April 14
TransPecos Bar Association Meeting
Thursday, April 18
EPPA Monthly Luncheon
Saturday, April 20
Law Day Chess Tournament

May, 2013

Saturday, May 4
Law Day Dinner
Tuesday, May 7
EPBA BOD Meeting
Tuesday, May 12
EPBA Monthly Luncheon
Thursday, May 16
EPPA Monthly Luncheon
Saturday, May 18
EPBA/EPLP Legal Clinic
Monday, May 27
EPBA Office Closed
Memorial Day

17th Annual Civil Trial Practice Seminar

We want to thank all of our Sponsors

- Ruhmann Law Firm
- Law Firm of Daniela Labinoti, P.C.
- Blanco, Ordonez, Mata & Wallace, P.C.
- Husbey, Inc.
- Court Call, LLC
- Rimkus Consulting Group
- Altep, Inc.
- George Andritsos
- Judge Maria Salas-Mendoza
- The Las Vegas Office of Michael Pariente, Esq.
- Shannon Rose Court Reporting
- Antcliff Mediation

Mark your calendars for the
18th Annual Civil Trial Practice Seminar
in Las Vegas on President's Day Weekend.

Forms Promulgated by the Supreme Court of Texas

For Use in Divorce Cases
The Supreme Court of Texas has adopted forms for use in *pro se* divorce cases. The Family Law Section and other sections of the State Bar of Texas oppose adoption of these forms. Sen. José Rodríguez has introduced *S.B. 1261 t*o address some of the concerns raised by adoption of these forms.
For more information, contact your Bar leaders.

EPBA/County Holidays

The El Paso Bar Association and the El Paso County Courthouse will be closed on the following dates:

Monday, May 27, 2013 – *Memorial Day*

Avoiding a Permanent "Waive": Preservation of Error

Part IV

By Chief Justice Ann McClure
8th Court of Appeals

Chief Justice Ann McClure
8th Court of Appeals

V. PRESERVING ERROR POST-TRIAL

A. Motion for Directed Verdict, JNOV, or to Disregard Jury Findings

A motion for directed verdict, judgment *non obstante veredicto,* or to disregard jury findings will preserve for appeal a contention that the evidence is legally insufficient to support the verdict of the jury. Tex.R.Civ.P. 301; *Aero Energy Corp. v. Circle C Drilling Co.,* 699 S.W.2d 821, 822 (Tex. 1985). These motions will not preserve a factual sufficiency point, which must be preserved in a motion for new trial. Tex.R.Civ.P. 324(b)(2)-(3).

B. Motions to Modify, Correct or Reform the Judgment

One method of complaining of error in rendition of judgment is to file a motion to modify the judgment. This method would be appropriate when the relief you want is a modified or new judgment, as opposed to a new trial. Preserving error by motion to modify judgment was approved by the San Antonio Court of Appeals in *Bulgerin v. Bulgerin,* 724 S.W.2d 943 (Tex.App.--San Antonio 1987, no writ). The appellee urged by cross-point that she was entitled to prejudgment interest. She had prepared a judgment including prejudgment interest, which the trial court denied by deleting the provision from the order. The appellee then filed a motion to modify the judgment, specifically including a request for prejudgment interest. Her motion was denied. The appellate court held that the right to recover was waived if not asserted in the trial court, but the filing of the motion to modify was sufficient to preserve error for review. If the trial court signs a modified judgment within its plenary power, the appellate timetable is restarted. *Check v. Mitchell,* 758 S.W.2d 755, 756 (Tex. 1988); *Pursley v. Ussery,* 982 S.W.2d 596, 598 (Tex.App.--San Antonio 1998, pet. denied).

C. Motion for New Trial

PRESERVATION OF ERROR

Texas Rule of Civil Procedure 325 (a) provides that a motion for new trial is not required in either a jury or nonjury case except as provided in subsection (b). Tex.R.Civ.P. 325 (a). Subsection (b) provides that a motion is required for:

- a complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default;
- a complaint of factual insufficiency of the evidence to support a jury finding;
- a complaint that a jury finding is against the over-whelming weight of the evidence;
- a complaint of inadequacy or excessiveness of the damages found by the jury; or
- a complaint of incurable jury argument if not otherwise ruled on by the trial court.

2. ERRORS MADE IN RENDERING JUDGMENT

An appellant should be especially careful about errors occurring for the first time in the rendition of judgment. Tex.R.App.P. 33.1 The Texas Rules of Appellate Procedure require that complaints on appeal must have been presented to the trial court. Tex.R.App.P. 33.1 The trial court may err in rendering judgment and the motion for new trial may be used to raise such error. However, as explained above, a motion to modify judgment may be the more appropriate vehicle.

3. TIMETABLE FOR FILING: Tex.R.Civ.P. 329(b)

The motion for new trial shall be filed within 30 days after judgment is signed by the court. If the motion is not determined by written order, it shall be deemed overruled by operation of law 75 days after judgment is entered. *Balazik v. Balazik,* 632 S.W.2d 939 (Tex.App.--Fort Worth 1982, no writ). Mere reference in an order that a hearing was held on the motion for new trial without specifically granting the motion will not suffice. The overruling by operation of law of a motion for new trial preserves error unless the taking of evidence was necessary to present the complaint in the trial court. Tex.R.App.P. 33.1(b). The automatic overruling of a motion for new trial on which there has been no trial court hearing is constitutional. *Texaco, Inc. v. Pennzoil Company,* 729 S.W.2d 768 (Tex.App.--Houston [1st Dist.] 1987, writ ref'd n.r.e.).

a. Plenary Power of Trial Court

The trial court has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within 30 days after judgment is signed, regardless of whether an appeal has been perfected. This power is extended when a motion for new trial is filed, such that the court may alter its original judgment at any point until 30 days after all motions have been overruled, either by written order or operation of law, whichever occurs first. After such time, the order may not be set aside except by bill of review. The filing of a request for findings of fact and conclusions of law will not extend the trial court's plenary power. *Pursley v. Ussery,* 982 S.W.2d 596, 599 (Tex.App.--San Antonio 1998, pet. denied). The court may, however, correct a clerical error in the judgment by a *nunc pro tunc* order entered under Tex.R.Civ.P. 316 and 317. The *nunc pro tunc* order will extend the appellate timetable provided it does not appear that the second order was signed solely to provide the extension. *Mackie v. McKenzie,* 890 S.W.2d 807 (Tex. 1994).

The Texas Rules of Civil Procedure provide that a motion to correct, reform or modify a judgment has the same effect upon the court's plenary power and the appellate timetable as a motion for new trial. Tex.R.Civ.P. 329b(g) That rule seems simple enough, yet two decisions involve the construction of the rule, and they come to different conclusions.

In *First Freeport National Bank v. Brazoswood National Bank,* 712 S.W.2d 168 (Tex.App.--Houston [14th Dist.] 1986, no writ), the appellant filed a motion for a modified judgment after rendition of the trial court's judgment. The appellate court concluded that the motion was really a motion for judgment n.o.v. and that

such a motion is not one which will extend the appellate timetable pursuant to Rule 329 b(g). It dismissed the appeal for want of jurisdiction.

In *Brazos Electric Power Co-Op v. Callejo, 734* S.W.2d 126 (Tex.App.--Dallas 1987, no writ), the appellant filed a motion to modify judgment n.o.v. The appellee, relying on *First Freeport,* claimed that the motion did not operate to extend the appellate timetable. The Dallas court expressly declined to follow the Houston case and concluded that any post-judgment motion is effective in extending the time to perfect the appeal.

The Dallas court raised another issue in *A.G. Solar & Co., Inc. v. Nordyke*, 744 S.W.2d 647 (Tex.App.--Dallas 1988, no writ). Here a motion for new trial was filed as to the first judgment of the court. That motion was overruled by operation of law. Afterwards, but while still having plenary power, the trial court entered a reformed judgment dated June 30. The cost bond was filed on September 22. Was it timely filed? The appellant argued that it was, because a motion for new trial had been filed. But the court held that the second judgment was a separate and new judgment. Since no motion for new trial was filed with regard to the second judgment, the cost bond was required to be filed 30 days later, i.e., by July 30. The filing on September 22 was untimely and the appeal was dismissed.

The subject was revisited by the Supreme Court in *L.M. Healthcare, Inc. v. Childs,* 920 S.W.2d 286 (Tex. 1996). Judgment was rendered against the plaintiff on January 28, 1994; and on February 7, 1994, the plaintiff filed a motion for new trial. At a March 3rd hearing, the trial court signed a judgment on the January 28th pronouncement and an order denying the motion for new trial. On April 4th, the plaintiff filed a motion to modify judgment, requesting that the court include in its judgment a recitation that the dismissal was without prejudice to the plaintiff refiling its suit. Hearing on this motion was held on May 11th and on May 17th, the trial court granted the relief requested and signed a modified judgment. The defendant alleged that the trial court signed the modified judgment after the expiration of its plenary power. The court of appeals concluded that a motion to modify judgment, although filed timely, cannot extend plenary power if it is filed after the trial court overrules a motion for new trial. As a result, the appellate court held that the trial court lacked jurisdiction to modify the judgment. The Supreme Court disagreed. The rules provide that a motion to modify judgment shall be filed within the same time constraints as a motion for new trial, which must be filed no later than the 30th day after judgment is signed. Tex.R.Civ.P. 329b(b) and (g). "That the trial court overruled Longmeadow's motion for new trial does not shorten the trial court's plenary power to resolve a motion to modify judgment." *L.M. Healthcare, Inc. v. Childs,* 920 S.W.2d 286, 287 (Tex. 1996). The court concluded that the rules provide that a timely filed motion to modify judgment extends plenary power separate and apart from a motion for new trial.

b. Amended or Supplemental Motions

An amended motion for new trial may be filed without leave of court, provided it is filed within the 30-day period and before the original motion is overruled. The Dallas Court of Appeals has considered the distinction between an amended motion and a supplemental motion. In *Sifuentes v. Texas Employers' Insurance Association,* 754 S.W.2d 784 (Tex.App.--Dallas 1988, no writ), the appellant filed a motion for new trial on May 29, 1987, and a "Plaintiff's Second Motion for New Trial" on June 4, 1987. While the initial motion complained of factual insufficiency of the evidence, the second did not. Claiming waiver, TEIA urged that the second motion was in fact an amended motion that superseded the original motion, so that there was no "live" motion for new trial raising factual insufficiency of the evidence as required by the rules. The court of appeals disagreed, noting that the title of the motion gave no indication that it should be considered an amended motion. Instead, the language indicated that the second motion had been filed shortly after the trial court had conducted a hearing and orally overruled the first motion. No written order was signed. Because there was no written order overruling the original motion for new trial, the court chose to treat the second motion as a supplemental motion. The factual insufficiency points were accordingly preserved. Although this case involves a complaint of factual sufficiency in an appeal from a jury trial, the construction of an amended versus a supplemental motion for new trial may be equally applied in nonjury appeals.

c. <u>Citation by Publication</u>

Where the respondent has been served by publication, the time for filing a motion for new trial is extended by Rule 329 of the Texas Rules of Civil Procedure. The court may grant a new trial upon petition showing good cause and supported by affidavit, filed within two years after the judgment was signed. The appellate timetable is computed as if the judgment were signed 30 days before the date the motion was filed.

4. GROUNDS FOR NEW TRIAL

Motions for new trial may be granted by the trial court so long as it comes within the umbrella of "good cause." Tex.R.Civ.P. 320. While certain matters have been raised in this state in virtual perpetuity, the laundry list is by no means exclusive.

a. Errors In the Charge

Included here would be language of the special issues selected, the refusal to submit certain issues, and errors in definitions or instructions. Remember that to preserve error for appeal, you must make specific objections to the charge as prepared, either in writing, or by dictating them to the court reporter. Tex.R.Civ.P. 272, 274. Issues, definitions or instructions which are requested to be submitted but refused must be reduced to writing and must be endorsed by the judge 'Refused.' Tex.R.Civ.P. 276.

b. Jury Misconduct

(1) REQUIREMENTS

The movant for new trial must prove that misconduct occurred, that the misconduct was material, and based on the record as a whole, the misconduct probably resulted in harm to the movant. *Redinger v. Living, Inc.,* 689 S.W.2d 415, 419 (Tex. 1985); *Perry v. Safeco Ins. Co.,* 821 S.W.2d 279, 280 (Tex.App.--Houston [1st Dist.] 1991, writ denied); *Snyder v. Byrne,* 770 S.W.2d 65, 68 (Tex.App.--Corpus Christi 1989, no writ). Additionally, Rule 327 requires the motion in this instance be accompanied by affidavit. It requires an evidentiary hearing demonstrating that the misconduct was material and that from a review of the evidence both on the hearing of the motion and the trial of the case and from the record as a whole that injury probably resulted to the complaining party. *Rodarte v. Cox,* 828 S.W.2d 65 (Tex.App.--Tyler 1991. writ denied); *Terminix v. Lucci,* 670 S.W.2d 657 (Tex.App.--San Antonio 1984, writ ref'd n.r.e.); *Gulf Coast Sailboats, Inc. v. McGuire,* 616 S.W.2d 385 (Tex.Civ.App.--Houston [14th Dist.] 1981, writ ref d n.r.e.).

The Texas Rules of Evidence likewise deal with juror misconduct. Rule 606 (b) of the rule states:

(b) Inquiry Into Validity of Verdict.

Upon an inquiry into the validity of a verdict or indictment a juror may not testify as to any matter or statement occurring during the jury's deliberations, or to the effect of anything on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict or indictment. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be

precluded from testifying be admitted for any of these purposes. However, a juror may testify: (1) whether any outside influence was improperly brought to bear upon any juror; or (2) to rebut a claim that the juror was not qualified to serve.

Jury misconduct includes outside influence on jurors and incorrect answers by jurors during voir dire examination. Tex.R.Civ.P. 327. To preserve error regarding jury misconduct, the complaining party must present evidence proving the misconduct at a hearing on a motion for new trial. *See id.;* Tex.R.Civ.P. 324(b)(1). Although this evidence may generally include testimony from any person with knowledge of the misconduct, jurors may not testify about their deliberations or their mental processes during deliberations, but only about any outside influence that was improperly brought to bear on any juror. Tex.R.Civ.P. 327; Tex.R.Evid. 606(b); *Weaver v. Westchester Fire Ins. Co.,* 739 S.W.2d 23, 24 (Tex. 1987). As was noted in *Wooten v. Southern Pacific Trans. Co.*. 928 S.W.2d 76 (Tex.App.--Houston [14th Dist.] 1995, no writ), this approach represents a departure from prior law:

Under former Rule 327(b), effective until April 1, 1984, a juror was permitted to testify as to matters and statements, or 'overt acts,' which occurred during deliberations. Under the former rule, only the actual mental processes of the jurors were excluded from consideration. Now, however, under the new rule a party can only inquire into whether an 'outside influence' affected the deliberations, and all testimony, affidavits, and evidence are limited to this issue. *Robinson Elec. Supply v. Cadillac Cable Corp.,* 706 S.W.2d 130, 132 (Tex.App.--Houston [14th Dist.] 1986, writ ref d n.r.e.).

Where juror misconduct is attributable to a juror who voted favorably for the complaining party, there is no harmful error.

(2) OUTSIDE INFLUENCE

All testimony in a motion for new trial hearing founded upon juror misconduct is excluded unless it can be shown that outside influence was brought to bear. *Texaco, Inc. v. Penzoil Co.,* 729 S.W.2d 768 (Tex.App.--Houston [1st Dist.] 1987, writ ref'd n.r.e.). Thus, the juror may not testify as to the effect of anything or anyone upon his or her mental processes unless "outside influence" is shown. Where a juror on a panel was a registered nurse who informed the other jurors during deliberation that certain medications the plaintiff was taking at the time of her injury could have made her dizzy and cause her to fall, no outside influence was demonstrated. The comments of the nurse were "inside" influence. *Baker v. Wal-Mart Stores,* 727 S.W.2d 53 (Tex. App.--Beaumont 1987, no writ). Likewise, in *Kendall v. Whataburger, Inc.,* 759 S.W.2d 751 (Tex.App.--Houston [1st Dist.] 1988, no writ), comments by one of the jurors who happened to be a paralegal did not amount to juror misconduct. In this instance, the paralegal had told the jurors that the plaintiff would recover damages even though the jury answered "no" to the negligence and proximate cause issues. Outside influence must not only arise from information and expertise not in evidence, but it must also emanate from outside the jury and its deliberations. Thus, jury misconduct may only be proved by evidence of overt acts which are open to the knowledge of all the jury, and not alone within the personal conscience of one. *Compton v. Henrie,* 364 S.W.2d 179 (Tex. 1963). The mental processes of a juror are indicated when jurors use such words as "I thought", "I understood", "I wanted", "I felt", "I was concerned", "The impression I got", or "I considered". *In re Marriage of Yarbrough,* 719 S.W.2d 412 (Tex.App.--Amarillo 1986, no writ).

One court has even determined that outside influence requires a showing that the source of the information must be one who is outside the jury, i.e. a non-juror, who introduces the information to affect the verdict. In *Baley v. W/W Interests, Inc.,* 754 S.W.2d 313 (Tex. App.--Houston [14th Dist.] 1988, writ denied), a civil action was brought against the owner of a nightclub arising out of the murder of a patron. The appellants complained that two of the jurors went to the scene of the murder and related to the other jurors the personal experience and special knowledge which was obtained from the visit. They also complained of jurors discussing a newspaper article which was not in evidence and which was brought into the jury room. The court concluded that the post-trial testimony of the jurors was inadmissible because outside influence was not demonstrated:

> 'Outside influence' is not defined by the rules, but the term has been construed by the courts. An 'outside influence' must emanate from outside the jury and its deliberations. . . . It does not include all information not in evidence unknown to the jurors prior to trial, acquired by a juror and communicated to one or more other jurors between the time the jurors received their instructions from the court and the rendition of the verdict. . . . Information gathered by a juror and introduced to other jurors by that juror -- even if it were introduced specifically to prejudice the vote -- does not constitute outside influence.

Similarly, in *Wooten v. Southern Pacific Trans. Co.,* 928 S.W.2d 76 (Tex.App.--Houston [14th Dist.] 1995, no writ), the Wootens complained that the trial court erred in denying their motion for new trial because a juror, James Brau, told the other jurors during deliberations that, based on his past experiences and observations, he thought the intersection in which the accident occurred was safe. They also contended that, during trial, Brau told a non-juror that he felt the tracks were safe. These actions were alleged to be harmful because Brau acted, in effect, as a secret witness influencing the jury regarding the crossing's safety. The Wootens argued for a departure from *Baley*, suggesting that the term "outside influence" should be construed to mean any influence emanating from outside the evidence, and not be limited to situations when a non-juror influences the jury. The appellate court was not persuaded, noting that in amending Rule 327(b) to its current version, the Texas Supreme Court expressly deleted a proposal that would have also allowed testimony on whether "extraneous prejudicial information was improperly brought to the jury's attention." *See* former Tex.R.Civ.Evid. 606(b) (1982 liaison committee proposal); *Robinson,* 706 S.W.2d at 132-33. It thus concluded that, to constitute outside influence, information must come from outside the jury, i.e., from a non-juror who introduces information to affect the verdict, and not from within the jury's deliberations or as part of the jury's mental process. The comments Brau made to other jurors regarding the intersection relate to the jury's mental processes and deliberations; although these comments violated the trial court's instructions and were clearly improper, they emanated from inside the jury, and did not constitute an outside influence. As to Brau's communications with the non-juror, the relevant evidence indicated only that Brau expressed his opinion to the non-juror, and not that the non-juror conveyed any information or opinions to Brau or any other juror. Therefore, this communication did not amount to an outside influence either.

(3) "DURING THE COURSE OF DELIBERATIONS"

Both the rules of procedure and the rules of evidence speak in terms of conduct occurring during the course of the jury's deliberations. In *Baley, supra* at 313, the appellants contended that the testimony of the jurors was admissible because the alleged misconduct had not occurred during the course of deliberations. Instead, they argued, it occurred (1) before the charge was read and before the formal deliberations had begun and (2) on lunch and coffee breaks which are not a

part of the "deliberations." The court of appeals determined that this was not a valid distinction. Any conversation concerning the case which occurs among jurors is part of the deliberations, regardless of the time and place where it occurs.

(4) MISCONSTRUCTION OF CHARGE

A juror is not guilty of misconduct and the verdict need not be set aside when one or more jurors simply misconstrue a portion of the court's charge and state the erroneous interpretation to the other members of the jury. *Compton v. Henrie,* 364 S.W.2d 179 (Tex. 1963).

(5) CONCEALMENT OF INFORMATION

The issue of juror misconduct also arises where it becomes evident that a juror concealed vital information during *voir dire*. However, it must be demonstrated that the juror concealed the information and that his concealment resulted in probable injury. *Wooten v. Southern Pacific Trans. Co.,* 928 S.W.2d 76 (Tex.App.--Houston [14th Dist.] 1995, no writ); *T.A.B. v. W.L.B.,* 598 S.W.2d 936 (Tex.Civ.App.--El Paso 1980, writ ref'd n.r.e.). Before there can be concealment through erroneous or false answers given on *voir dire*, the questions asked must have called for disclosure and must have been direct and specific. *Texaco, Inc. v. Penzoil Co.,* 729 S.W.2d 768 (Tex.App.--Houston [1st Dist.] 1987, writ ref'd n.r.e.).

(6) INFORMATION OVERHEARD

In some instances, juror misconduct may occur during the course of the trial and in the courtroom itself. In those circumstances, an objection is required. In *Rodarte v. Cox,* 828 S.W.2d 65 (Tex.App.--Tyler 1991, writ denied), Rodarte's status as an illegal alien became an issue in a termination case. The attorney ad litem expressed concern to the judge in a conference before the bench, and sought to introduce testimony which had previously been subject to an order *in limine.* The jury was in the box when the bench conference was held and a few of the jurors overheard the discussion. Misconduct was alleged on appeal. The appellate court determined there had been no error because no objection had been timely lodged. The purported misconduct had occurred at the bench in the full presence of counsel, who had even warned the ad litem to keep his voice down. A timely objection, had it been made, could have resulted in an instruction which would have cured the error. *See also, Texas & N.O.R. Co. v. Foster,* 266 S.W.2d 206 (Tex.Civ.App.--Beaumont 1954, writ ref'd n.r.e.) (failure to object to side bar comments overheard by the jury waives complaints of juror misconduct).

(7) STANDARD OF REVIEW

Whether jury misconduct has occurred is a question of fact to be determined by the trial court; absent an abuse of discretion, an appellate court will not overturn the court's ruling. Tex.R.Civ.P. 327; *Ortiz v. Ford Motor Credit Co.,* 859 S.W.2d 73 (Tex.App.--Corpus Christi 1993, writ denied); *Texas Gen. Indem. Co. v. Watson,* 656 S.W.2d 612, 615 (Tex.App.--Fort Worth 1983, writ ref'd n.r.e.); *McAllen Coca Cola Bottling Co., Inc. v. Alvarez,* 581 S.W.2d 201, 204 (Tex.Civ.App.--Corpus Christi 1979, no writ).

c. Newly Discovered Evidence

Generally speaking, a new trial based upon newly discovered evidence in a civil proceeding will not be granted unless:

- admissible competent evidence is introduced showing the existence of the newly discovered evidence relied upon;
- the party seeking the new trial demonstrates that there was no knowledge of the evidence prior to trial;
- that due diligence had been used to procure the evidence prior to trial;
- that the evidence is not cumulative to that already given and does not tend to impeach the testimony of the adversary; and
- that the evidence would probably produce a different result if a new trial were granted.

Keever v. Finlan, 988 S.W.2d 300, 315 (Tex. App. -- Dallas 1999, pet. dismissed); *Wilkins v. Royal Indemnity Company,* 592 S.W.2d 64 (Tex. App.--Tyler 1979, no writ).

Whether to grant a motion for new trial on the basis of newly discovered evidence lies within the sound discretion of the trial court. *Keever,* 988 S.W.2d at 315. The trial court must consider the weight and the importance of the new evidence and its bearing in connection with other evidence elicited at trial. *Id.* "The inquiry [is] not whether, upon the evidence in the record, it apparently might have been proper to grant the application in the particular case, but whether the refusal of it has involved the violation of a clear legal right or a manifest abuse of judicial discretion." *Id., citing Jackson v. Van Winkle,* 660 S.W.2d 807, 809 (Tex. 1983).

Courts may be more inclined to accept the theory of newly discovered evidence in cases involving child custody because of the welfare and well-being of the children in issue. *See Gaines v. Baldwin,* 629 S.W.2d 81 (Tex.App.--Dallas 1981, no writ)(evidence presented must demonstrate that the original custody order would have a serious adverse effect on the welfare of the child and that presentment of that evidence would probably alter the outcome); *C. v. C.,* 534 S.W.2d 359 (Tex.Civ.App.--Dallas 1976, no writ)(in an extreme case where the evidence is sufficiently strong, failure to grant the motion for new trial may well be an abuse of discretion).

d. Default Judgments

New trials are routinely granted and default judgments set aside upon demonstration that the failure of the respondent to appear before judgment was not intentional or the result of conscious indifference but was due instead to mistake or accident. The motion for new trial must also raise a meritorious defense and there must be no delay or injury to the opposing party. *Craddock v. Sunshine Bus Lines, Inc.,* 134 Tex. 388, 133 S.W.2d 124 (1939). Although in *Craddock* the default judgment was taken because the defendant failed to answer, the same requirements apply to a post-answer default judgment. *Cliff v. Huggins,* 724 S.W.2d 778, 779 (Tex. 1987), *Grissom v. Watson,* 704 S.W.2d 325, 326 (Tex. 1986). Where there is defective service of process, however, there is no requirement that a litigant establish a meritorious defense. Such a requirement violates due process rights under the Fourteenth Amendment to the federal constitution. *Peralta v. Heights Medical Center, Inc.,* 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988); *Lopez v. Lopez,* 757 S.W.2d 751 (Tex. 1988).

e. Mistakes Made at Trial

This area includes the improper admission or rejection of certain evidentiary materials. If it can be demonstrated that a correct ruling would have probably altered the outcome of the trial, a new trial may be granted.

f. No Reporter's Record Available

Under the former rules of appellate procedure, an inability to obtain the statement of facts would automatically entitle the complaining party to a new trial provided the appellant made a timely request and provided the appellant was not at fault for the loss or destruction of the court reporter's notes. Former Tex.R.App.P. 50(e); *Goodman v. Goodman,* 611 S.W.2d 738 (Tex. Civ.App.--San Antonio 1981, no writ). *See also, Labiche* v. *Krawiec*, 692 S.W.2d 167 (Tex.App.--Dallas 1985, no writ) (holding that findings of fact and conclusions of law made by the trial court would not substitute for the statement of facts where the court reporter's equipment had malfunctioned and the statement of facts could not be prepared).

Under the new Texas Rules of Appellate Procedure, if part of the reporter's record is missing, without appellant's fault, then a new trial will be ordered, but only if a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed. Tex.R.App.P. 34.6(f), The same is true if the trial was electronically recorded and a significant portion of the recording has been lost or destroyed.

To be continued . . .

ANN CRAWFORD MCCLURE
is Chief Justice of the 8th Court of Appeals.

SPOTLIGHT ON AN ATTORNEY

Heather Ronconi

By Clinton F. Cross

CROSS: Tell me something about your childhood.

RONCONI: I was born in Sacramento, California. My mother and father were both teachers. My parents divorced when I was six; my mother got custody. After the divorce, we moved to Mexico City where she met my future step-father. Between the age of six and eleven, I lived in Bellingham, Washington; Battleground, Washington; and Los Angeles, California. We moved to San Antonio when I was in middle school.

CROSS: How did you do in school?

RONCONI: I graduated from Winston Churchill High School in San Antonio with very good grades. I was a National Merit Scholar which led to a full academic scholarship to Washington University in St. Louis, Missouri. I majored in French and Russian.

CROSS: After you graduated, what did you do?

RONCONI: I moved to Washington, D.C. where I worked for a lobbyist for the Texas Municipal League.

CROSS: When did you go to law school?

RONCONI: I moved back to San Antonio after about a year and entered St. Mary's Law School. I graduated in 1992.

CROSS: First job?

RONCONI: I clerked for a McAllen law firm while in law school, and then went to work for them after graduation. I was not happy so moved to El Paso.

CROSS: How did you get started here?

RONCONI: I opened up an office here in 1993. I was lucky enough to be able to establish my own practice. At first, I specialized in medical malpractice cases. In 2004 or 2005, I became a certified specialist in personal injury trial law. With the advent of tort reform legislation, I re-directed my practice to family law. I was certified as a specialist in Family Law shortly thereafter.

CROSS: In your opinion, what are the most important qualities for success as a family law practitioner?

RONCONI: I believe that a lawyer should empathize with their clients. I also think you have to listen to the client, opposing counsel, and the court. If one does not listen, it is unlikely that one can help the parties reach a reasonable resolution to their problems.

CROSS: I have frequently been told that family lawyers are often guilty of exploiting their client's anger by pandering to their emotions and litigating more than necessary when perhaps they should be trying to "pour oil over troubled waters." Any truth to that allegation?

RONCONI: With few exceptions, my colleagues try to reach agreements at every stage of a family law dispute. I am a fan of settlement conferences and mediation.

CROSS: How do you handle clients who want to hurt their former lovers when there are children and others involved who might suffer greater harm when they have to endure protracted and bitter litigation?

RONCONI: As attorneys, we are also counselors and as such we do advise our clients about what we think is their best interest and in the best interest of their children. Sometimes they hear us, but they do not listen. At that point, we must decide whether or not to keep the client or let them hire someone else. I do not think divorce litigation should go on forever, even if it is profitable for the attorney.

Heather Ronconi

CROSS: Isn't the practice family law emotionally draining?

RONCONI: Absolutely on a minute by minute basis. I have had clients call me at all hours of the day and night and even on Christmas day. It is important for family lawyers to establish boundaries with their clients at the very beginning of their relationship.

CROSS: When I represented Child Protective Services, I saw a lot of families who were involved in drugs. Is that a problem you have experienced in your practice?

RONCONI: I see substance abuse issues, but I think mental health issues are a bigger problem. I see a lot of untreated depression. I see people who are very desperate, some hopeless, usually at the beginning of the litigation. I see it a lot with women who are abused. I sometimes try to give them hope and I try to empower them.

CROSS: Anything else you would like to say?

RONCONI: I think family law practice is a lot more complex than most people realize. A good family lawyer must be able to relate to their clients, understand human nature, and communicate effectively. But a good family lawyer must also be a skilled technician, understand some international law, some federal law, aspects of the mental health and safety code, some bankruptcy law, retirement law (such as ERISA), certainly Texas property law,

The 65th District Court's New Crossover Court

By Judge Yahara Lisa Gutierrez

Joshua is 13 years old, his parents' parental rights have been terminated, and he lives apart from his two sisters. One of them is in another foster home and the other one lives with her biological father, who is not Joshua's father. Joshua is very angry at being taken away from the mother he adores, even though she has been neglectful and abusive to him and his sisters. Joshua's anger manifests itself by assaulting his foster mother whenever she tries to direct him. Joshua now has juvenile criminal charges against him and he is detained at the El Paso Juvenile Justice Center.

Judge Yahara Lisa Gutierrez

What are Joshua's options now? Will his foster family be willing to take him back? Will he be put in another foster home, given his assaultive history? Will he remain detained? Will he be sent out of town to a Residential Treatment Facility?

Joshua is a crossover youth. A crossover youth or dually involved youth is a child who is involved in both the child welfare and juvenile justice systems. There has been much research establishing that maltreatment as a child is a risk factor for delinquency. Studies have shown that a child who experiences violence and maltreatment is more likely to be an offender and end up in the juvenile justice system.

There are currently 500 children in foster care in El Paso County. Twelve of these children in foster care are today on probation in the juvenile justice system.

In 2010, a Crossover Court was established in the 65th District Court to consolidate decision making in one court, rather than remaining disbursed in two or three different courts each of whom in the past acted independently and without knowledge of what the other courts were doing. The Crossover Court handles both the delinquency and child welfare case of a child in foster care.

In a case such as Joshua's or any other child involved in both systems, a team will be formed. A Child Protective Services (CPS) caseworker, who is responsible for handling all crossover cases, will be one member of the team. Likewise, a juvenile probation officer and tracker will be assigned to handle his juvenile case. The caseworker and the probation officer will be in constant communication with each other and they will make home visits together.

Joshua will be also appointed a crossover court lawyer in his delinquency case. He will already have an attorney *ad litem* representing him in the CPS part of his case. This *ad litem* will represent his wishes. The court will also appoint a Guardian *ad litem* to represent Joshua's best interest. This will be a Court Appointed Special Advocate (CASA). In 2012, CASA received a $17,000.00 grant from Texas CASA, insuring that each child in the crossover court will have a guardian ad litem who has been trained to represent children in these kinds of cases.

The crossover court allows all entities—the Court, CPS, the Juvenile Justice Center, CASA, the County Attorney and the defense attorneys--to work together toward a common goal. The Court, CPS, and Juvenile Justice Center, and the attorneys will collaborate to provide Joshua with the best possible range of services. Hopefully, Joshua will not be sent to an out of town residential treatment facility where he will be further isolated from the positive support networks that remain for him in El Paso.

In Joshua's case, the judge and Joshua's treatment team will meet regularly to develop a rehabilitation plan. Joshua will be also involved in developing and implementing plans that affect his future. Hopefully, Joshua will realize that others do care about him. Hopefully, he will also feel empowered and responsible helping implement plans for his future, maximizing his chances for future success. Of course, in the last analysis, the Court will be

responsible for approving Joshua's rehabilitation plan.

It is our responsibility to take care of these children and make sure that they are given every opportunity available to them. Through a "one child, one court" approach, we can strive to achieve the most positive outcomes for these children.

YAHARA LISA GUTIERREZ is Judge of the 65th District Court, presiding over family law, child abuse, and juvenile cases. She also supervises five associate courts.

Practicing Family Law in El Paso, Texas

By Claudio Flores

Family law...lawyers who don't practice it cringe at the thought of finding themselves ringside in the middle of a familial grudgematch.

It's what we do!

We as family lawyers walk into some of the most contentious (and often entertaining) duels, on a weekly, even daily, basis.

Imagine if you will...

Paula Thomas vs. Susan Urbieta.

A prize fight worthy of the MGM Grand, but with brains (and sometimes a few choice expletives!)...

Amy Nichols vs. Chris Bradley in an international melee with Iranian-American litigants and some modern courtroom technology...Skype!...

Larry Schwartz vs. an unruly litigant.

Maybe not MGM material, but good enough for the Octogon for sure (with actual blood!)...

A bruising battle between war-torn foot-soldiers Bill McGlashan and Felix Saldivar, the result of which is a toss-up for the betting-type...

The cerebral and wearisome discovery hearing with Jeff Minor and David McClure...(someone is making some money here). The only one I feel sorry for here is the judge!...

The jockeying-for-position campaign when

the *amicus* enters the fray (no specific names required here)...

Two cagey veterans, as in *Warren Pulner vs. Frank Hart*...(I haven't actually seen this one myself, but if anyone has, there is surely a story to tell)...

Former Asoociate Judge and newly occupied family lawyer Robbyn Bramblett, diggin' the proverbial grave for the unfortunate opposing litigant she doesn't have to be "fair" to anymore..

Greatly compelling legal arguments between Chino Labrado and Doris Sipes...a debate that legends are made of (most commonly in an atypical case placed on the jury docket by Ms. Sipes)...

The daily rocket-docket of Judge Antonio Rodriguez's child support court, where the state meets the locals in an awe-inspiring smorgasbord of folks we know should NOT be procreating...

The interstate jurisdiction case where you get to see our family judges, on the record on speakerphone, dissect the UCCJEA with precise accuracy, sometimes leaving Judge Bubba in Dixie perplexed, but when appropriate, ceding jurisdiction over coveted children to the court who rightly has charge over them...

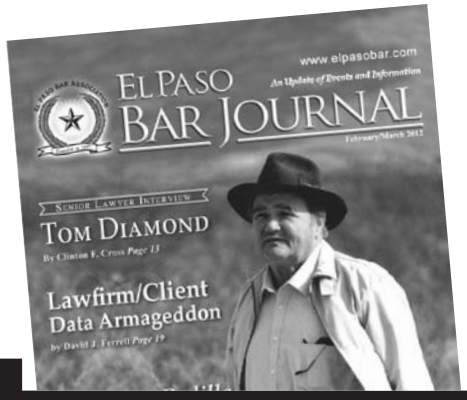
The ever-dramatic and theatrical Michael Alvarez from the County Attorneys' protective order unit, representing the sometimes not-so-abused victim.

For us as a bar, Family law is not for everyone, but it is trench warfare that all of us as lawyers can appreciate, in that we are all members of our own cherished families. As family lawyers, it is always about the fight, and it is the desire to prevail for our clients that inspires us.

So, El Paso family lawyers, you are AWESOME, and keep on fighting the good fight!

CLAUDIO FLORES is an El Paso attorney specializing in family law. He is at this time President of the El Paso Family Bar Association.

HELP!



The editors of the El Paso Bar Journal solicit your contributions dealing with substantive legal subjects or issues. We believe the interests of El Paso lawyers and law firms will be advanced by the publication of at least one or two articles in every Journal issue dealing with legal subjects and issues, such as the article by Janet Monteros published in the Journal's April/May, 2012 issue.

Good articles, of course, take time, thorough research and clear writing. In some instances, however, the research may be a product of your daily legal work-- researching an issue or writing a brief. We invite you to share your work with the legal community in El Paso and wherever the Internet may travel. If issues of confidentiality are involved, the work usually can be sanitized to comport with ethical requirements, while at the same time sharing your hopefully brilliant work with the larger broader community.

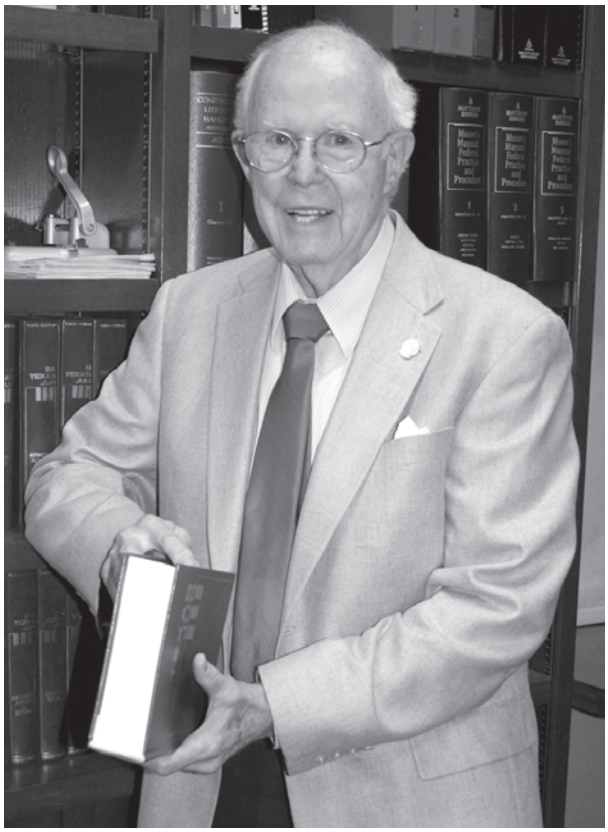
Articles should be submitted by e-mail to **Nancy Gallego, Executive Director of the El Paso Bar Association**, at ***nancy@elpasobar.com.*** They must be submitted at least one month prior to the proposed publication date, and they should not exceed 2,500 words unless the article is to be published in more than one issue.

Senior Lawyer Interview

Julian Horwitz

By Clinton F. Cross

I met with Julian in my office on March 21st and talked with him about his life. Many stories were told, but only a few can be captured in this Journal because there is not sufficient time or space to repeat most of them.



Julian Horwitz

CROSS: I'd like to know something about your parents and your childhood.

HORWITZ: My father was born in 1891 in Nashville, Tennessee. He was one of eight siblings, all of whom one by one and later their parents made their way West. Dad first passed through El Paso on the train in 1906, eventually settling here by 1915. He enlisted in the regular army in 1917, fought in France in 1918, and did not return to El Paso until 1920, after serving as part of the army of occupation in the Rhineland after the Armistice.

My mother was born in Galveston, Texas in 1896. She and her four siblings were orphaned in 1899 as a result of a kerosene stove explosion that killed her mother and eventually obliged her immigrant father to relinquish his custody to the Jewish Orphanage Home in New Orleans, Louisiana where she was raised until 1914, when she left to live with her older sister in New York City. Years later, through the grace of her mother's half-sister Sarah Borschow, she made her way to El Paso where she met my father and the rest is history.

My father and his brother Abe owned Lion Shoe Stores on South Mesa and Overland streets where my grandmother was often induced to pose as a shill to lure customers into the shop. Incidentally, when he was a teenager Albert Armendariz, Sr. worked in the South Mesa street store as a stock boy. Uncle Abe eventually became an owner of numerous small dry goods stores throughout the Southwest, but the stores later went out of business when Walmart moved into the region. Abe's will established a testamentary trust known as the Horwitz Endowment Fund which since 1982 has provided students from all walks of life with financial assistance at the University of Texas in El Paso.

CROSS: Where did you get your education?

HORWITZ: I graduated from El Paso High School in 1949, where I was student body President. I went to Stanford for one year where I was a scrub on the freshman football team. I then transferred to the University of Texas at Austin where I was cadet Colonel in the Air Force ROTC program.

CROSS: What did you do after you graduated?

HORWITZ: I served in the Air Force, stationed mainly as an intelligence officer at Wheelus Air Base outside Tripoli, Libya. After completion of my tour of duty, I attended graduate school at Georgetown University where I studied international relations. During this time, I worked part time for the State Department after the Hungarian revolution in the Department of Refugee Relief.

CROSS: Where did you go to law school?

HORWITZ: I went to the University of Texas School of Law, graduating in 1961.

CROSS: I assume that you then returned to El Paso to practice law.

HORWITZ: When I arrived District Attorney Edwin Berliner offered me a job, but as I had not yet received my bar results and he could not wait, I went into practice at the Caples building with Holvey Williams who few years before had prosecuted Clinton Jencks for falsely swearing to the United States government that he was not a Communist. The case, Jencks v. the United States of America, was eventually decided by the United State's Supreme Court, that reversed Jencks' conviction because during the trial in Judge R. E. Thomason's court the government refused to produce witness statements that had been requested by the defense attorneys. Holvey later served as an Associate Justice on the El Paso Court of Civil Appeals.

CROSS: Tell me a little bit about the practice of law in El Paso at that time.

HORWITZ: I quickly got to know almost all the lawyers who tried cases in this community. Judge Cunningham had docket call once a week and all the lawyers who had cases pending in the courthouse were expected to attend. There were very few District Courts--the 34th, the 41st, the 65th, and later the 120th.

There were only a few Jewish lawyers and no Black lawyers to my recollection. Judge George Rodriguez, Sr. was, I believe, the first Hispanic judge. You could count the number of women lawyers practicing in El Paso on one hand.

Also, to make copies of pleadings or correspondence we had to use carbon paper. Divorce decrees were usually no more than two pages. We usually shared a secretary with one or more other lawyers. Our secretaries had to work six and a half days a week; while a good share of lawyers went to Juarez on Fridays for

lunch and libations, their secretaries usually remained at their offices.

There was a culture of collegiality, but some of the older lawyers like Sam Dwyer would sometimes try to settle a case in a bar which would occasionally end up resolved on the sidewalk in a less than collegial manner.

Incidentally, when I entered the practice of law after I graduated from law school, I actually knew very little about the practice of law. My law school was of no help in that regard. There were no organized mentoring programs for young lawyers.

CROSS: Did you ever participate in any community or political activities?

HORWITZ: Along with Gerry Smith, Dick Marshall and lay people like Albert Schwartz and Murray Projector, we worked to pass an anti-discrimination public accommodation ordinance during Mayor Seitzinger's administration. Bert Williams and Ted Bender served on city council at the time and were instrumental in getting the ordinance passed. It was the first such ordinance inacted in the South since Reconstruction.

CROSS: Any interesting legal cases?

HORWITZ: Recently I drafted Sherman Helmsley's will. Helmsley acted as the protagonist in the television series "The Jeffersons." When Sherman died, his half-brother from Philadelphia challenged the will. Alex Neill represented Flora Bernal, Sherman's 'significant other,' and since I drafted Sherman's will, I ended up being a witness in that case. Alex did all the work, but as I emerged from the courtroom into the lap of the television and radio reporters I got all the publicity. Seems only just and fair!

CROSS: Family?

HORWITZ: My wife and I divorced in 1980. I have three children, Phillip, Russell, and Lawrence. Phillip graduated with honors from the University of Texas School of Law. He is currently Chief of Tax Policy Analysis in the Department of Revenue in the State of Colorado. Russell has an M.D. and Ph.D in Community Health from the University of Illinois, did a psychiatric residency at Massachusetts General Hospital in Boston, and is now a Fellow at Johns Hopkins Hospital in the field of child psychiatry. Lawrence is a computer graphics designer and programmer and President of Teacup Software, Inc., New York City.

CLINTON CROSS is an Assistant El Paso County Attorney responsible for prosecuting criminal Deceptive Business Practice cases

Women's History Month Conference to be held at UTEP

April 2-4, 2013 is the Third Annual Women's History Month Conference at The University of Texas at El Paso. This year's conference celebrates the accomplishments of women in the STEM fields and the arts. The conference features Sara Williams, who has trained the dive staff who train astronauts for space walks, United Way President Deborah Zuloaga, artist Jessica Pizana Roberts, and many breakout sessions. The El Paso Women's Bar Association will present a panel exploring issues of women in leadership with the closing event of the screening of "Miss Representation." This award-winning film presents provocative interviews with politicians, journalists, entertainers, activists and academics, like Condoleezza Rice, Nancy Pelosi, Katie Couric, Rachel Maddow, Margaret Cho, Rosario Dawson and Gloria Steinem build momentum as Miss Representation accumulates startling facts and statistics. For more information contact Professor Lee Ann Westman at 915-747-5028 or by email at LEWESTMAN@utep.edu.

Association News

El Paso Paralegal Association

■ The El Paso Paralegal Association will hold its April general meeting on Thursday, April 18, 2013 from 12:00 noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker: Heidi Beginski. Topic: New Supreme Court Rules for Dismissals and Expedited Actions. The cost for lunch, which is optional, is: $16.00 buffet or $10.50 salad bar. Please RSVP for the luncheon with Mariann Porter at 915-760-6880 or mporter@goldmanlawtx.com

■ Our May general meeting is on Thursday, May 16th

Classifieds

Central Office Space for Lease: Office Space available, receptionist, runner, conference rooms, parking, etc. No lease or deposit required Call Bob Earp or Larry Schwartz at 542-1533.

Judicial Spotlight

Judge Laura Strathmann

By Clinton F. Cross

CROSS: Tell me a little bit about your family?

STRATHMANN: My father and mother worked at Cummins Diesel Engine Company in Indiana and moved the family to El Paso when I was a few months old and my brother was eight years old. My Dad and his partner operated a Cummins Engine franchise with four locations, and my Dad developed the Cummins natural gas engine. My mother became involved in real estate, was a founding member of several El Paso professional organizations, and won many awards for excellence of achievement in both occupational and altruistic civic endeavors.

CROSS: Where did you go to school?

STRATHMANN: I graduated from Coronado High School, UTEP, St. Mary's (MBA majoring in Productions/Operations Management), and Texas Wesleyan Law School in Ft. Worth.

CROSS: After you graduated from law school, what did you do?

STRATHMANN: While in law school, I worked for GTE in Dallas. Following graduation, I returned to El Paso and opened my law firm, which evolved into a specialized, advanced family law practice.

CROSS: Recently, you were elected to the position of judge of the 388th District Court? Why did you decide to abandon the practice of law and seek a judicial position?

Judge Laura Strathmann

STRATHMANN: As a Judge, one's knowledge of family law must be thorough, and I felt prepared for the position of Judge should an opportunity occur. When Judge Patricia Macias announced she would not seek re-election, I thought I could accomplish more as a Judge to help the families of El Paso who needed to start a new direction of their lives.

CROSS: Some lawyers think the practice of family law is easy. Do you agree?

STRATHMANN: Family law is specialized, technical, and yet it also involves very emotional issues. Family lawyers compete with each other every day in an intensely charged emotional environment, but they don't have a shared community of interests with any particular collective "side" of the family bar because there is no "side" for them. They don't have the professional peer support that other lawyers have in their areas of practice; they are rugged individualists. It is hard work.

CROSS: Why is the practice of family law important?

STRATHMANN: I believe the practice of family law is perhaps the most important area of law in today's culture. We are dealing with issues that influence the future of our society, the children. More than half the families in today's society are living in homes with new family structures, changing dynamics, different parenting techniques, and establishing a new definition of "family." With the advent of new family structures, family law is constantly evolving, and the need to assist these families through the court system will remain pertinent.

CLINTON CROSS is an Assistant El Paso County Attorney responsible for prosecuting criminal Deceptive Business Practice cases

Law Day Chess Tournament

LAWYERS & PARALEGALS NEEDED

Lawyers and paralegals are invited to participate in the Annual Law Day Chess Tournament that will be held on **April 20, 2013** at St. Clements Church, 810 N. Campbell Street from 9:00 a.m. to 12:00 noon.

The tournament is open to students in grades kindergarten through eight. Registration for students will begin at 8:00 a.m. (Students can pre-register by e-mail to Augustine Valverde at avalver6@nmsu.edu). Participation is free. First and second place trophies are awarded to the winners in each grade level. Lawyers and paralegals will then compete against the winners from each grade level. Any child who beats an attorney or paralegal will be recognized and awarded an *"I Beat a Lawyer!"* medal.

This tournament means a lot to the children who compete for success. Lawyer and legal professional participation is necessary for the success of this event.

Pre-registration is appreciated, but not required. Please e-mail Augustine Valverde (avalver6@nmsu.edu) if you can join us. ***We are counting on you!***

The 65th Judicial District Court and its "Associate Family of Courts"

Judge Oscar G. Gabaldón, Jr., CWLS

"The law should, when practicable, encourage the resolution of family issues without resort to court interference." This wise proposition by the North Carolina Court of Appeals is engraved in the hearts of those lawyers that best grasp the importance of first seeking to resolve family law disputes peacefully, justly, and fairly before proceeding to what should be a last resort, namely, litigation in the courts. The legendary former United States president, Abraham Lincoln, staunchly advocated for the peaceful resolution of disputes. He said, "Discourage litigation. Persuade your neighbors to compromise whenever you can… As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."

Whenever reasonably feasible, it is in the spirit of fair and meaningful compromise and good will towards families, youth, and children that the 65th Judicial District Court and its six associate courts labor day in and day out to serve in the administration of justice. At the helm of the 65th Judicial District's "family of courts" is the presiding district judge, Honorable Yahara Lisa Gutierrez. Under her leadership, all the associate judges of the 65th Judicial District Court family are committed to providing excellent service in the administration of their courts. Excellent service is a non-negotiable expectation of the presiding judge and the associate courts.

Associate Judge Gary A. Aboud is primarily responsible for the handling of domestic relations cases, such as divorces and annulments. Associate Judge Jesús M. Rodríguez serves the 65th Judicial District Court and the 383th Judicial District Family Court handling domestic relations cases.

Associate Judge Michele Locke presides over the Protective Orders Court, a specialized court focused on matters related to domestic violence.

Associate Judges Richard Ainsa and María T. Leyva-Ligon oversee cases involving juvenile matters.

Judge Oscar G. Gabaldón, Jr.

Associate Judge Oscar G. Gabaldón, Jr. is primarily responsible for the handling of child abuse and neglect cases filed by the Texas Department of Family and Protective Services, Child Protective Services division, including adoptions involving foster children. He also presides over the Preservation Family Drug Court, which is designed to assist parents with substance abuse issues.

Family court judges tackle a multitude of issues on a daily basis, consistently trying to find the best possible legal solutions to the highly varied dilemmas that family law cases typically present. The judges care about quality in their decision making and their rulings. They care very much about the people coming to their court to seek relief and to find justice. Noticing trends developing in this area, Judge Aboud recently noted, "I am getting increasingly alarmed with the number of new divorces being filed in our courts. Most of the parties are youngsters so I have a suggestion to break the cycle of youngsters getting married and getting divorced. 'Don't get married to date, date to get married.' Marriages have been used as a dating tool. The institution of marriage is disposable for so many these days. Very sad."

These associate judges play a very critical and supportive role in assisting the 65th Judicial District Family Court, but the judges' work does not stop at the courthouse. These judges are civic-minded and volunteer their time in many sectors of the community.

Judge Gutierrez is well known for her ardent desire to lift people to their highest potential. She believes in holding people accountable for their choices, actions, and omissions, tempered with compassion. As the people's elected judge, Judge Gutierrez sets the tone and provides outstanding leadership and a centered vision to her associate courts. Just as she declared at the beginning of her tenure, "There's lots of work ahead for us all. With all of us working together, I know the sky is the limit."

The 65th Judicial District Court and its associate courts understand that they are the people's courts, and the judges are the people's servants in the administration of justice. The second president of the United States of America, John Adams, argued that the way to secure liberty was to place it in the people's hands, that is, to give them the power at all times to defend it in the legislature and in the courts of justice. In this spirit of democracy, the 65th Judicial District Court and its "family of courts" serve the people day in and day out.

OSCAR GABALDÓN is an Associate Judge of the 65th District Court responsible for overseeing the trial of Child Abuse and Neglect cases. He is certified by the National Association of Counsel for Children and the American Bar Association as a Child Welfare Law Specialist (CWLS). He was recently recognized for his work in eliminating racism, disproportionality and disparities in the Texas foster care system.

ADVANCE SHEET, *1858 A.D.*

By Charles Gaunce
The University of Texas at El Paso

Judicial divorce for women is really a very modern development in the law. Notwithstanding the right of divorce bestowed on Henry VIII, and the vast and confusing history those festivities resulted in, for both England and today's scholars, the divorce Henry managed to achieve only resulted because he was in a position to establish his own church to grant it. While divorce as an institution is only slightly younger to the human community than marriage, in England prior to Henry VIII, the issue of divorce was left to the ecclesiastical courts – meaning the Church. This continued to be the case, for the most part, until 1858. Divorces granted by the Church only allowed divorces in three circumstances: 1) the marriage was invalid because of impotence, insanity, or potential incest. If a woman managed to get a divorce in these circumstances, she was permitted to remarry (someone else) but the children of this second union were illegitimate. 2) If the wife could prove adultery, sodomy or physical violence, she could get a separation but she would not be permitted to marry someone else. 3) If a woman managed to get a separation and then sued the spouse for adultery, parliament eventually allowed for a proper divorce that spared the couple's children being branded illegitimate. This procedure was remarkably expensive, resulting in it being seldom used. The end result of this practice was that the most effective means of obtaining a divorce was through legislation. Consider that for a moment. How would your practice today be different if, to secure a divorce for your client, you were required to get a legislator to introduce a bill allowing the divorce?

Women were, for all practical purposes, property. A husband could beat his wife without fear of governmental intervention. If a woman was lucky enough to have servants, they might intervene on her behalf, but then they faced the very real possibility of what we today refer to as employer retaliation. If a woman left because she did not want to endure the abuse, she had no right to take her children with her. If a husband became dissatisfied with his wife, he could bar her from the family home, and she had no right of access to her children. Until the Victorian era, a woman's property became her husband's property upon her marriage, and if she held title to land in her own right, her husband had the right to receive the income from it. In short, the law removed itself from all marital relations.

In 1858, largely due to the efforts of a married woman in insufferable circumstances (Caroline Norton), together with the help of a sympathetic Minister of Parliament, Parliament transferred the jurisdiction of divorce actions from the Church of England to a new civil court which has permitted the flourishing legal practice of family law today, both in Great Britain and the United States (for the sad fact is that most of the American states had adopted the English model and divorces, if they were sought, were the province of the state legislatures). The various legislatures saw a beam of light and grasped it; in the late 1840's state legislatures overwhelmingly saw the advantage of transferring divorce related duties to the courts.

Part of the reason why our current law regarding marriage and divorce is in such a state of bewildering flux is that we have never really recognized the relative newness of the branch of legal practice called family law. Even in Merry Olde England prior to the Victorian Era, what little remedy anyone had in the field of matrimonial law, including the right to marry, depended on whether you were a Christian, and even then the issue of whether you were Anglican, Protestant, or Roman Catholic was an important consideration. If you were Jewish or Islam, forget any right of access to any form of family law justice. Outside the Church, people pretty much did what they wanted, accepted the fact that the local vicar would condemn them to Hell, and go about their lives anyway. Since the Church was in the business of solemnizing marriages, people outside the church just did what they wanted. There were more reasons for common law marriages than the fact that the traveling parson would not visit the village for several months. The fact that the government has stepped into the role of authorizing marriages has given social outcasts a claim to the honest performance of government services, whether the social outcasts occupy that peculiar status because of their failure to belong to the prevailing church, or some other socially objectionable reason.

In a treatise about English family law practice, Charles Donahue, Jr. concluded, "We could examine systematically the cases brought by female plaintiffs, but it would not produce enough enlightenment to justify the amount of space it would take," *Law, Marriage and Society in the Later Middle Ages*, p. 260 (Cambridge University Press, 2007).

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