



EL PASO  
BAR JOURNAL

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An Update of Events and Information

April/May 2016

# Resilience: Gateway to the Art of Better Living

BY OSCAR G. GABALDÓN, JR., CWLS

*PAGE 18*

## JUDGE JAMIE C. BOYD A LIFE IN THE ARENA

BY SHELBY McCUE

*PAGE 6*

## The Grand Jury in Historical Perspective

### *Part I*

BY JOSHUA TATE

*PAGE 13*



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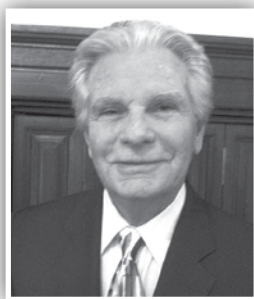
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## PRESIDENT'S PAGE



### Attorneys are Professionals

Lawyers should always adhere to the highest principles of professionalism. We are in a profession with a career that hopefully will span 30 or 40 years. As a professional, we have an obligation to give back to our own profession by helping our fellow lawyers and enhancing our profession.

During this bar year, among other legal and social events, I am forming new committees which I believe will foster professionalism among the El Paso area legal community. These committees will allow El Paso lawyers the opportunity to give back to our profession. I want to highlight two. In order to be successful, we need your help.

**Lawyers in Distress.** This new committee is multi-faceted, dealing with many issues confronting the lives of lawyers. The mission and goal of this committee is to enhance the lives of the lawyers and their families in this community. During my work with the El Paso Bar Association over the last number of years, I have received a number of calls from lawyers and/or their families asking for help. These lawyers and their families were facing very difficult issues, and reluctantly, reached out to the El Paso Bar Association for its assistance. Unfortunately, the El Paso Bar Association was not equipped to provide any assistance.

El Paso possesses an inordinate number of solo practitioners and small firms. The percentage of solo practitioners and small firms in El Paso greatly exceeds the percentages of other like size communities. El Paso has a significant number of solo practitioners in various practice areas, such as Family Law, Immigration, Criminal Defense, Plaintiff Personal Injury, and the general Plaintiff's Bar. What do these solo's and their families do with their pending cases, files, and clients, if the attorney dies, or has a serious medical problem that prevents that attorney from continuing their practice for a long period of time or indefinitely? What happens to the file, the pending case, or the client? What can we do for the attorney and the attorney's practice if the attorney suffers a mental health problem? Can the Bar help a financially stricken family when the attorney breadwinner is suddenly stricken with a medical problem preventing the attorney from working, or the attorney suddenly dies? Sadly, I have even been contacted by a family, without sufficient resources to pay for funeral expenses for their attorney family member.

The charge to this committee is to help Lawyers in Distress. This necessarily involves creating protocols, systems, and processes designed to help our fellow lawyers and families work through these challenges. Lawyers, who are aware of these problems, have experienced these issues, or even want to get involved are more than welcome. Retired attorneys who wish to give back to our profession are a valuable resource. We are asking for your help. If you are interested in serving our profession in this committee, please contact our co-chairs, the Honorable Laura Strathmann and Paula Thomas, or Nancy Gallego at our El Paso Bar Association office.

**Bi-National Committee.** Mexico is slowly converting to an oral trial system. Chihuahua state courts converted recently to a largely oral trial system in civil and family law litigation. The Mexican federal courts still rely largely on written procedures in Administration, Commercial and Amparo litigation. Federal courts in other various parts of Mexico are just recently instituting oral trials. Lawyers and judges from El Paso have participated in seminars helping Mexican judges and lawyers understand the concepts of oral trials.

We are a border community, and by necessity, El Paso and Juarez lawyers must frequently

work with each other on various cases. The Bi-National Committee's mission is to enhance the legal community on both sides of the border, share ideas, provide legal seminars, and joint social programs. Lawyers from Juarez including Rene Alva, Alejandro Sotelo, Rafael Serna, and

Roberto Renteria, members of ANADE and professors from UACJ Law School have all agreed to participate in this committee. If you are interested in participating in this committee, please contact co-chairs Dan Hernandez or William Maynard, or members of the committee,

to included David Mirazo or Alex Soto. This committee will lead to a better understanding of the border legal community, and enhance our border legal profession.

MYER LIPSON  
President

## EL PASO BAR ASSOCIATION

### April Bar Luncheon

Tuesday, April 12, 2016

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

*Guest Speaker will be David Furlow*

*Executive Editor of the Texas  
Supreme Court Historical Society*

**Door prizes will be given out**

Please make your reservations by Monday,  
April 11, 2016 at 1:00 p.m. at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)  
or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)

## EL PASO BAR ASSOCIATION

### May Bar Luncheon

Tuesday, May 10, 2016

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

*Guest Speaker will be Professor*

*Joshua Tate of SMU*

**Door prizes will be given out**

Please make your reservations by  
Monday, May 9, 2016 at 1:00 p.m. at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)  
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## CALENDAR OF EVENTS

APRIL 2016

**Tuesday, April 5***EPBA BOD Meeting***Tuesday, April 12***EPBA Monthly Luncheon**David Furlow***Wednesday, April 13***EPALP Monthly Meeting***Thursday, April 21***EPPA Monthly Luncheon***Saturday, April 30***Law Day Dinner and Awards Presentation*

MAY 2016

**Tuesday, May 3***EPBA BOD Meeting***Tuesday, May 10***EPBA Monthly Luncheon**Joshua Tate***Wednesday, May 11***EPALP Monthly Meeting***Thursday, May 19***EPPA Monthly Luncheon***Monday, May 30***EPBA Office Closed – Memorial Day*

**Saturday, April 30, 2016**  
 Butterfield Trail Golf Club  
 1858 Cottonwoods

**Individual Entry Fee: \$95.00 4 Player Teams: \$380.00**

**Fee includes:** Green fee, Cart fee, Range balls, Refreshments (Water and Beer), Continental Breakfast and Lunch, Goodie bag

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Hole-in-one Contest - \$10,000 Prize! Door & Raffle Prizes!

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**Register and pay online at:** <http://www.butterfieldtrailgolf.com/>  
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# JUDGE JAMIE C. BOYD

## A Life in the Arena

BY SHELBY McCUE

*"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena....."*  
Theodore Roosevelt

Johnny Cash enjoyed the Juarez evening and would fondly remember the sound of big guitars, and the smell of tequila, and the swirl of pretty *señoritas* moving in sonorous circles to the sounds and rhythms of mariachis, but now it was time to fly home to Tennessee. In his guitar case was a pistol and the amphetamines needed to help him cope with his ascending fame as a country music star.

On a late Sunday night Assistant United States Attorney Jamie Boyd received the call from the Customs agent on location at the El Paso airport that Johnny Cash was in their custody and under arrest for the possession of illegal drugs and a pistol. So began one of the more colorful cases that Jamie Boyd would touch in a long career.

At the time of the Cash arrest, Jamie Boyd was a United States Attorney sworn into the Federal Bar by Judge R.E. Thomason. Judge Thomason, one of the most highly respected lawyers and politician to ever live in El Paso, would have a profound impact on Jamie Boyd. Jamie Boyd will say of Judge Thomason: "He was a fine man and gentleman; he was my mentor and my friend. He practiced law to the highest standards of decorum and civility, and it was from him that I learned that each individual regardless of the circumstances of his life must be treated with respect."

The case would mark the intersection of two other well-known El Paso lawyers. The United States Magistrate presiding on the Cash case was Judge Colbert Coldwell and the attorney for the defense of Johnny Cash was the ever flamboyant and colorful Woodrow Bean. After much deliberation, a plea was worked out and Johnny Cash would escape the "burning ring of fire" and continued with his music career



*Judge R.E. Thomason administers oath of office of Assistant Office of United States Attorney to Jamie Boyd*

ending of course with his induction into the Country Music Hall of Fame.

Jamie Boyd has deep roots in Texas and its history. The Boyd family arrived in Texas in the 1840's by covered wagon and would survive a harsh land and Comanche depredation. An ancestor was famed Texas Ranger Frank Hamer. His parents were dry cotton farmers in Stonewall County, Texas. In 1937, the depression and drought were so severe that the family was forced from the land and moved to Colorado City, Texas.

After graduation from high school in 1945, he joined the United States Air Force and like many men of his generation, would bear witness to the horrors of war and saw firsthand the devastation and destruction wrought. In December 1946, he arrived in Yokohama, Japan. The city still smoldered and lay in utter destruction. Moving among the burned out and lifeless ruins were Japanese civilians, many of them aged or very young and the stench and

the decay are remembered clearly but not spoken of much.

His account becomes more poignant because he was assigned to observe ground testing of atomic weaponry, and saw for himself the dangers posed to humanity by nuclear war. In a secret military program code named "Operation Sandstone," he boarded a C-54 airplane with several Congressional observers and together they experienced the blinding light, concussion, fury, and violence of an atomic blast. The memory would shape his life.

After discharge from the service in 1949 and after various jobs in the oil fields of Texas, Judge Boyd closed this chapter of his life with a degree from Hardin-Simmons and a law degree from the University Of Texas. Jamie Boyd then began his life in the pursuit of justice.

When you talk to Jamie Boyd, what you quickly learn is that he has lived a life embedded in relationships, loyalties and friendships creating in his demeanor a gracious humility and wonderful sense of humor.

Jamie became an Assistant United States Attorney and then after that United States Attorney for the Western District of Texas. One of his associates was Harry Lee Hudspeth. Jamie was his best man at his wedding.

During this period, Judge Boyd became very active in the politics of the Democratic Party and formed the relationships that would sustain him throughout his career.

On November 22, 1963 Judge Boyd was traveling in a car heading to Austin, Texas for a reception to hear the President of the United States. John F. Kennedy would be traveling that evening from El Paso for engagements in Dallas and Austin. Riding in the car with Jamie were two close friends: one was a childhood friend and law school classmate Udell Moore and the other was Henry Pena. Both of these men would figure prominently in El Paso's future and provide a sure vision of sustainable leadership for our city. The conversation was animated and hopeful and these young lawyers

much anticipated the coming election and their active involvement in Texas Democratic politics. While stopping for gas, they heard the horrific news that the President was dead. Numb with grief, the car turned back towards El Paso.

Most of us born before 1958 remember where we were and what we were doing when we learned of JFK's death, but Jamie Boyd's memory of this American tragedy is colored with a somber and more intimate sadness of what might have been and how the river of history might have found a different and more joyful channel. He has, in his collection of treasures and remembrances, a ticket for admittance to a dinner in Austin for J. F. Kennedy on November 22, 1963.

When he looks back on his life in the courtroom, Jamie Boyd tells the stories of those who rose to engage in the pursuit of justice. The legal lights and colorful characters encountered create a tapestry of Texas legal history.

There was a rape trial against Percy Foreman. Percy had been hired and brought in from Houston to represent the accused. The trial was a difficult one and Jamie Boyd and Percy Foreman circled each other and each argued valiantly but in the end Percy convinced the jury to find the defendant not guilty. What was most remarkable about the trial was the collegiality and courtesy that transpired between the two lawyers. Jamie for instance arranged for Percy Foreman to use his gym during the trial to help with Percy's chronic back pain.

Jamie also tells the story of trying a case with Warren Burnett in San Antonio. While the jury is out Warren and the presiding trial judge had the following exchange:

Warren Burnett: "Judge, Mr Boyd and I, while the jury is deliberating, would like to retire to a location where we might enjoy some refreshment and would ask the courts leave to do so."

Judge: "That will be fine gentlemen, but do not return to my court caroling!"

And so the two battle horses who were engaged in the arena provided an example of civility that many in our profession feel may be lost forever.

Jamie Boyd was honored to have tried



*Jamie Boyd's photograph as displayed in the waiting room of the El Paso District Attorney's Office*

cases with and against Percy Foreman, Warren Burnett, Ray Caballero, Joe Calamia, Sib Abraham, Wellington Chew, and many others. Jamie considered himself to be a friend of Lee Chagra and they tried many cases against each other. He was deeply saddened when Lee was murdered at his office on Mesa Street. Jamie appeared many times in the courtrooms of Judges Ernest Guinn, R.E. Thomason, John Wood, William Sessions, Edward Marquez, William Ward, and Edward Berliner to name just a few.

Boyd credits Travis Johnson as being most helpful to his career and especially in filling the vacancy of then El Paso District Attorney Bart Boling. With Mr. Johnson's assistance, Jamie Boyd was named El Paso District Attorney by then Governor Preston Smith and stood for re-election to that office in 1970. His time in office is evidenced by his picture on the wall in the courthouse with the others so honored.

Jamie Boyd, the United States Attorney for the Western District of Texas, figured prominently in the unfolding tragedy of the murder of federal judge John Wood that for many in El Paso has yet to heal. For two years after the attempted assassination of his assistant James Kerr and the murder of Judge Wood, Judge Boyd and his wife Suzy would live under the protection of U.S. Marshals. It was a

horrible time for both but the marriage of Jamie and Suzy was the rock that would provide shelter. Jamie ended his federal service as a United States Magistrate and for a few short years works in San Antonio as an assistant district attorney.

*Harrelson admitted to the jury that he spent time with Joe Chagra during the summer of 1980. In fact, he recalled Joe gave him some cocaine, and offered him \$40,000 to kill US Attorney Jamie Boyd. "Joe hated Jamie Boyd with a passion," Harrelson said. "He was always after me to kill Boyd." DIRTY DEALING by Gary Cartwright, page 340, Cinco Puntos Press, El Paso, Tx. 1998 (1984.)*

When you look back on the case of the murder of a Federal Judge and the maelstrom of deceit, conspiracy and violence Judge Boyd might ask himself: did my conduct measure up to the standards of my profession and did I honor our code of professional responsibility? And in the conduct of my career was I honorable and honest and was I civil and respectful to my fellow lawyers and judges? Clearly the answer to both questions should be an unequivocal 'yes.'

Some years after the case, the phone rang in the home of Jamie Boyd and Suzy picked up the phone. On the other end was famed attorney Allen Dershowitz who wished to speak to Judge Boyd about an issue on appeal for Charles Harrelson. At the end of the conversation, he would comment to Suzy that Judge Boyd was a model for the legal profession to which all in our profession should aspire.

Judge Jamie Boyd and Suzy live a quiet life now but he can know and remember that his life in the arena was distinguished by professionalism and unflinching strength and honesty.

When Judge R.E. Thomason retired, he gave Jamie Boyd the gavel he used as a federal judge. The gavel is perhaps the best testament to Jamie Boyd's career. It rests quietly now on Jamie's desk in his study.

**SHELBY L. MCCUE**, a native El Pasoan, retired from Exxon Mobil Corporation in 2013. He is currently *Of Counsel* to Ortega, McGlashan, Hicks, & Perez. His wife Deborah is Judge Boyd's niece

# Advance Sheet, circa 1483 A.D.

BY CHARLES GAUNCE

## JUSTICES IN EXCHEQUER CHAMBER RIGHTS OF THOSE WHO TAKE SANCTUARY

Trinity Term, in the twenty second year of  
Edward IV

“In the Exchequer Chamber it is also said by all the justices that if a man fled to sanctuary, and any person other than the coroner demanded of him why he fled to sanctuary, he need make no other answer to this person except that he has committed a felony, (without showing the special nature of the felony), and that he has therefore fled to sanctuary in order to save his life. Further there is no need for him to send for the coroner, and although people of the neighbourhood may ask him whether he wishes to have a coroner, he need make no answer to them; but if he wishes he can refuse to allow them to have the coroner, seeing that no one has the right to interfere with him except the coroner who in such a case is his judge, and when the coroner comes he must confess the felony in full to the coroner so that he can give his judgment etc. and if he does not wish

to confess to him then it is lawful for anyone to take him out of the sanctuary. And it was said that he shall have forty days after the admission of the felony to the coroner, and this is, I believe, if he wishes to pray for this in order to arrange for his departure. And *Britton* agreed with this.

*Quaere* whether he shall have his judgment now after the admission of the felony or after the forty days. And according to *Britton* it seems that it shall be now after the admission of the felony and that the forty days are only a convenient respite of the execution of the judgment.

Of course, upon reading the quoted passage, I deemed it necessary to look up the definition of sanctuary in everyone's preferred scholarly source: Wikipedia. There I found the following – “A sacred place, such as a church, in which fugitives formerly were immune to arrest (recognized by English law from the fourth to the seventeenth century). While the practice of churches offering sanctuary is still observed in the modern era, it no longer has any legal effect and is respected solely for the sake of tradition.” Clearly the current understanding of taking

refuge in sanctuary was something far different than the English jurists understood it.

While the modern practice of sanctuary may be to respect the tradition until such time as the apprehending authorities simply take charge and enter the sanctuary premises to nab the offending scofflaw, usually to the critical glare of the press, (and at this point I should probably point out that not even in England did a wildlife refuge come close to being a criminal sanctuary), the ancient practice was more in tune with a limited right against self-incrimination.

The felon could claim sanctuary but did not need to tell anyone what he had done. If the coroner appeared before the felon, then the felon had to fully admit the felony and the coroner would pass judgment. If the felon refused to admit the felony, then there was no right to sanctuary and he could simply be removed by anyone and subsequently tried upon the evidence. It thus appears that the benefit of sanctuary was not to prevent a person from being tried while in the sanctuary, but to gain forty days within which to get his affairs in order before the judgment (usually death) was executed.

CHARLES GAUNCE is the Legal Reference Librarian at the University of Texas at El Paso

## El Paso Paralegal Association

### 2016 Board Of Directors

The following list shows the El Paso Paralegal Association's 2016 Board of Directors elected on January 21, 2016 and appointments.

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**Appointment:**

*Student Liaison*

*State Bar of Texas Paralegal Division Liaison*

#### Director

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*Marina Hammond*

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*Yvette Duran*

*Estela Lopez*

*Amanda Smith*

*Laura Aguilar*

*Mariann Porter*

*Mario Hinojos*

*Olga Burkett*

## 2016 GENERAL MEMBERSHIP MEETINGS

All the meetings will be held at  
**El Paso Club, 201 E. Main Street, El Paso,**  
unless another location is specified or to be announced

**April 20, 2016** Time: 12:00 p.m.

Speaker: Shannon Rhoads

Topic: Evictions

**May 19, 2016** Time: 12:00 p.m.

Speaker: TBA, visit El Paso Paralegal Association Website  
for information on speaker and topic: [www.elppa.org](http://www.elppa.org)

**June 16, 2016** Time: 12:00 p.m.

Speaker: TBA, visit El Paso Paralegal Association Website  
for information on speaker and topic: [www.elppa.org](http://www.elppa.org)

**July 21, 2016** Time: 12:00 p.m.

Speaker: Kim Novell

Topic: Legal Research



## HOW CIVILIZATION CAME TO EL PASO

## “The First Thing We Do, Let’s...”

*The Assassination of Young Lawyers Oppenheimer and Lyons in 1929*  
*Part II*

BY BALLARD COLDWELL SHAPLEIGH

**A** trial involves the investigation of something doubtful. The facts of this case, however, did not appear to be in doubt to anyone except perhaps the killer José M. Marin according to newspaper coverage around the country.

In Pennsylvania on Saturday, June 1, 1929, the *Pittsburgh Press* ran an account by UP on its front page under the headline of “Blames Deaths on Big Swindle – Texan Kills Two Lawyers When Accounting is Refused.” Judging from this report of the facts, Marin believed he had a valid defense or could inject reasonable doubt in the minds of the jury:

Charging that they had swindled him out of \$250,000 and continuously harassed him during the last four years, Jose M. Marin, 67, wealthy Spanish mine owner, told police tonight that he had shot and killed two prominent West Texas attorneys. ...The double slaying took place in El Paso’s largest office building as 1,000 occupants were going to lunch. Attracted by the shots they milled to the fifth floor, making it difficult for police to reach the dead men. ...Marin said he shot only after Oppenheimer reached into his desk for a pistol. The pistol was found in the drawer.

The *San Antonio Light* carried news of the Oppenheimer and Lyons assassinations on its front page, along with a report that Charles Lindbergh was reported to be honeymooning on the east coast. Two years earlier, on May 20, 1927, at 7:52 a.m. Lindbergh departed in the Spirit of St. Louis from Roosevelt Field near New York City which, some in the Bar may be interested in knowing, was named for Theodore Roosevelt’s son Quentin killed in air combat in World War I. Lindbergh landed at Le

Bourget Field, near Paris, on May 21 at 10:21 P.M. Paris time (5:21 P.M. New York time) to a hero’s welcome.

Other heroes notwithstanding, it was a bad time for lawyers. The newspaper also ran another story under the headline, “Lawyer Flogged and is Left for Dead at Chicago.” It related how a 52-year-old Chicago lawyer named Oliver Olson was taken for a ride and beaten so badly that a leg and six ribs were broken. He was then “dumped out for dead in a ditch,” and only the fact that he ‘played dead,’ he told the newspaper, saved his life. Olson was lured from his Wheaton, Ill., home on the pretext that a friend needed him at the Villa Park police station. When his assailants reached a quiet spot in the road, they stopped the car on the pretext of tire trouble. He was struck from behind and then beaten by both men, one of whom kept saying “kill him.”

The San Antonio account of events in this city appeared under an AP byline with the headline, “Two El Paso Lawyers Slain by Spaniard.” It stated that “two of El Paso’s most prominent lawyers, H.D. Oppenheimer and Frank Lyons were shot to death in their office here, and Jose Marin, a Spaniard who had disagreed with the lawyers over litigation in which they had represented him, walked across the hall and told a clerk in an open office to call the sheriff.” For San Antonio readers, Marin’s version of the facts did not come into view until the next day when the newspaper reported “the trouble between the men had been of long standing,” growing out of litigation in which Lyons and Oppenheimer represented Marin.

The *Light* also reported that Marin had told police that he fired in self-defense, adding the claim that Oppenheimer drew a gun on him. According to the UP, Marin had been charged in El Paso courts in 1925 with having issued a challenge to Oppenheimer for a duel, and the charge was dismissed. The newspaper also reported that the El Paso Police Department found a statement on Marin which was addressed to an El Paso newspaper. The statement charged

Courtesy: National Archives and Records

Form 1 REGISTRATION CARD		No. 37
1	Name in full (Last, first, middle initial) <i>Herbert D. Oppenheimer</i>	Age, in yrs. <i>22</i>
2	Home address (Street, city, county, state) <i>2890 Grand El Paso Texas</i>	
3	Date of birth (Month, day, year) <i>June 2 1894</i>	
4	Are you (1) a natural born citizen, (2) a naturalized citizen, (3) an alien, (4) or have you declared your intention (specify which)? <i>Natural Born</i>	
5	Where were you born? (Country, State, County) <i>St Joseph Mo</i>	
6	If not a citizen, of what country are you a citizen or subject?	
7	What is your present trade, occupation, or office? <i>Attorney at Law</i>	
8	By whom employed? <i>El Paso Tex</i>	
9	Have you a father, mother, wife, child under 12, or a sister or brother under 12, wholly dependent on you for support (specify which)? <i>no</i>	
10	Married or single (which)? Rate (specify which) <i>single American</i>	
11	What military service have you had? Rank <i>Pirate</i> Branch <i>Sold</i>	
12	Do you claim exemption from draft (specify grounds) <i>no</i>	

I affirm that I have verified above answers and that they are true.

3833 *ll* *Herbert D. Oppenheimer* 1820

*Herbert Oppenheimer's World War I draft registration card*

that Oppenheimer had tried to have Marin deported in 1925. The paper described Marin as a Spaniard who had resided in El Paso and Mexico for the last 16 years.

Shakespeare’s menacing line about killing all lawyers<sup>1</sup> could not have been on the minds of Herbert D. Oppenheimer and Francis J. Lyons when they finished their legal studies. As soon as they graduated from the University of Texas in 1916, and began their legal careers, Oppenheimer and Lyons turned their attention to opportunities in Mexico. In fact, Jeanne Oppenheimer Moye still remembers today how her father, to further a legal career that lasted only thirteen years, had once considered moving to Mexico to work.

Her father’s career, however, and that of Frank Lyons began just as the United States was entering World War I, partly in response to the publication of the Zimmerman Telegram in April 1917 inviting Mexico to join the war as a

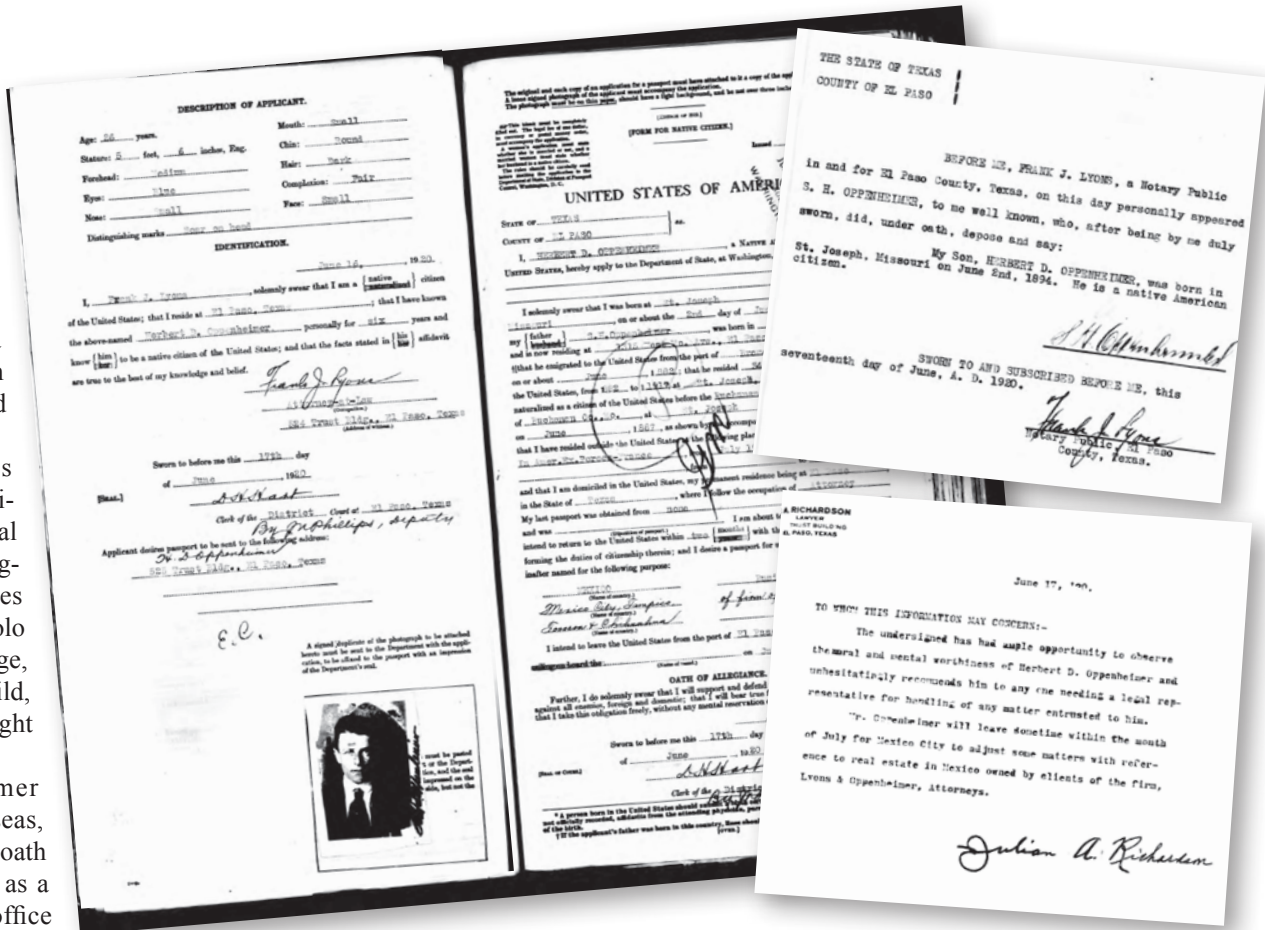
1. 2 Henry VI, Part II, act IV, Scene 2.

German ally against the United States. Thus, although Oppenheimer and Lyons are listed as a firm in the El Paso City Directory in 1917, their plan to embark on an enduring partnership founded on a friendship formed in law school was placed on hold.

Frank Lyons was disqualified from military service for physical reasons. His draft registration card describes a single attorney in solo practice, 25 years of age, tall and of medium build, with blue eyes and light hair.

When Oppenheimer was dispatched overseas, Lyons swore another oath and reported for duty as a prosecutor with the office of Leigh Clark, District Attorney. Oppenheimer's draft registration card describes a 23-year-old with a slender build, blue eyes and brown hair. He reported for duty and was shipped to Europe to serve with the American Expeditionary Forces commanded by General John J. Pershing, a familiar name in El Paso.

In this 2016 presidential-election year, when the place of birth is a matter of controversy, it arouses curiosity to see that Oppenheimer's draft card 100 years ago required him to identify



*Oppenheimer's 1920 passport application included a letter of recommendation from attorney Julian A. Richardson*

the source of his citizenship. His draft registration card required him to check one of four boxes: natural born citizen, naturalized citizen, alien or whether he had declared his intention. He specified "natural born." On a later passport application, his father S.H. Oppenheimer again identified his son as a natural born citizen from St. Joseph, Missouri, but the father identified himself as a "naturalized citizen," originally from Germany.

While in England, France and Germany, Op-

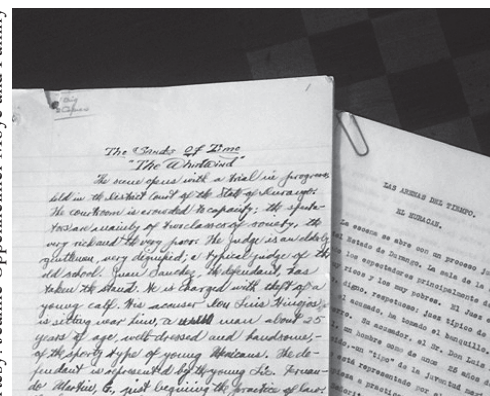
penheimer sharpened his writing skills by sending many letters home, all censored. He vividly described what he saw and experienced, but could not disclose a word about his duties. One of his first letters to his parents after arriving in England, he wrote, "owing to censorship prevailing, nothing can be written concerning the precautions taken to avoid being torpedoed, and in fact nothing about the voyage." And after resuming the practice of law, he continued to write, drafting colorful, engaging screenplays and other stories in English and Spanish. And when he returned from military service in May, 1919, one wonders if he was inclined to defend his clients with the same kind passion heard from El Paso defense lawyers who later served in Vietnam, and who argue that they did not go to war for their country only to see the government unjustly deprive their clients of their liberty.

By June 1920, both lawyers applied for passports stating that their purpose was to conduct business for clients in various Mexican cities. Oppenheimer's application specified Mexico City, Tampico, Torreon and Chihuahua, and that he would be departing the United States from either El Paso or Laredo. The



*Oppenheimer's chevrons and dog tags from World War I*

Courtesy: Jeanne Oppenheimer Moye and Family



*Oppenheimer's manuscripts for "The Sands of Time" screenplay in English and Spanish*

Courtesy: National Archives and Records

applications contain reciprocal acknowledgments that each lawyer had known the other for six years, and Oppenheimer's father was required to swear, before Lyons as notary, that his son was born in St. Joseph, Missouri.

Oppenheimer's passport application, dated June 17, 1920, also contains his physical description: 26 years old, 5 ft. 6 inches tall with blue eyes, dark hair, fair complexion, medium forehead, small nose and mouth and face, round chin and a distinguishing mark consisting of a scar on his head. Julian A. Richardson, a lawyer also officing in the Trust Building (now the Gateway Hotel building), wrote a letter of recommendation, stating that he had had ample opportunity to observe Oppenheimer's moral and mental worthiness and "unhesitatingly recommends him to anyone needing a legal representative for handling of any matter entrusted to him. Mr. Oppenheimer will leave sometime within the month of July for Mexico City to adjust some matters with reference to real estate in Mexico owned by clients of the firm, Lyons & Oppenheimer, Attorneys."

Lyons' application stated he needed a passport because he was "an attorney for clients with interests in Mexico." He is described as being 28 years old, 5 ft. 10 inches tall with blue eyes and a mole on his right cheek. He indicates that he intended to leave the United States from the port of El Paso or Laredo on board the Mexican National Railways.

Lyons' application also contains a character reference from District Attorney Leigh Clark. Clark had known Lyons all of his life, and knew him to be a "reliable and thoroughgoing American citizen," who had recently resigned as an assistant district attorney. In fact, the letter of recommendation displays Lyons' name in the letterhead.

As Oppenheimer and Lyons prepared to practice international law as young lawyers, the

54-year-old José Marin was moving to El Paso again. There is evidence that Marin had traveled to and from El Paso since 1903. His immigration documents contain this physical description: 5'6 1/2" in height, brown hair, brown eyes, and born in Santo Domingo Logrono, Spain in 1864. Marin listed either printer or miner as his occupation. The 1920 U.S. Federal Census describes him as a single man who entered the country in 1913, 55 years-old and residing as a boarder in the household of Josefina M. Duran, a widow age 45. His occupation is listed as silver mine operator.

Unlike his victims, Marin brought no character references with him. He was later described by one of the state's punishment witnesses as being "a man of very black history, a felon and not a good deed in his life."

By May 1929, Marin had lived in El Paso for about ten years. Although it was reported that at one time he was the owner of the largest Spanish language printing plant in El Paso, publishing *El Correo del Bravo*, Marin appears to have acquired whatever interest he claimed in the cursed San Joaquin mine the old fashioned way — as a kept man, a gigolo.

Though not a lawyer, he said he was the legal adviser to the same woman with whom he was listed as residing in the 1920 census as a boarder with Mrs. Josefa Macey de Durán, a wealthy widow from Chihuahua who lived on Montana Avenue and died in El Paso in 1923. In her will, Marin claimed, she left all of her property, including the mine, ranch holdings in Mexico and some property in El Paso, to him. Macey de Durán's relatives, it was reported, contested the will.

According to statements in the district attorney's file, Marin pursued the widow relentlessly with the objective of obtaining all of her property. To accomplish his objective, he used morphine on the widow as his instrument of choice. The statement, typewritten in Spanish, reads in pertinent part as follows:

*Naturalmente como el único objeto de Marin era apoderarse de los bienes de la señora, el mejor medio que este usó fué acostumbrarla a la morfina. Cuando ella sintió la necesidad de la morfina él la encerró en una casa y no permitió que nadie la visitara, ni sus hermanos ni familiares; sólomente tenía a un chino cuidándola quien le proporcionaba la morfina.*

According to this witness, Marin was held in very low esteem by the Spanish colony in the area. The reason given was that during the time of the Villista Revolution, when Spaniards were expelled from Chihuahua and other places, Marin collaborated with a Villista Chief named Trinidad Rodríguez and dedicated himself to denouncing and exposing Spaniards, with the result that he was the only individual of that nationality that remained in Chihuahua.

In the vernacular of prosecutors and criminal defense attorneys practicing today in the El Paso County Courthouse, Marin had "priors." The State's punishment case against Marin was fortified by plenty of evidence of other crimes, wrongs and bad acts.

The district attorney's office had information that Marin was found guilty of a 1903 shooting in Sostenes, Chihuahua. Marin shot his business partner, José Lago, leaving him seriously wounded. Marin and Lago were alleged to be drunk and eating breakfast at the train station when they quarreled. Marin threw a cup of hot coffee in Lago's face and shot him twice. Lago lost an arm, and after a trial Marin spent a short time in jail.

As the newspapers reported, Oppenheimer filed a complaint in Justice of the Peace court in 1925 charging that Marin had issued a challenge to a duel after Marin appeared in his office and invited him to fight it out with pistols. Dueling, defined in article 1259 of the 1925 Texas Penal Code as fighting a duel with deadly weapons or sending or accepting a challenge to fight a duel either within Texas or outside of it, was a felony offense in with punishment ranging from not less than two or more than five years confinement in the penitentiary.

This charge was apparently dismissed. Shortly after this incident, Lyons filed a complaint in County Court-at-Law charging Marin with unlawfully carrying a pistol. Article 483 of the 1925 Penal Code read:

Courtesy: National Archives and Records

The image shows two documents related to José Marin's immigration. On the left is a 'Border Crossing Card' with a photograph of a man with a mustache. The card contains handwritten information: Name: *Marin Jose W.*, Age: *58*, Occupation: *Printer*, Complexion: *DK*, Hair: *Brn*, Eyes: *Brn*, Height: *5-6 1/2*, Marks: *None*, and Head Tax: *Paid 12/13/13.* On the right is an 'ALIEN'S IDENTIFICATION CARD' with handwritten information: Residence: *6 Boulevard El Paso Tex.*, Business address: *220 S. Mesquite*, City: *El Paso Texas*, and Date: *Aug 8th 1922*.

*Marin's Border Crossing Card, one of several and the only one found containing his photograph.*

Whoever shall carry on or about his person, saddle, or in his saddle bags any pistol, dirk, dagger, slung-shot, sword cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense, shall be punished by fine not less than \$100.00 nor more than \$500.00, or by confinement in jail for not less than one month or more than one year.

Peace officers, like police and constables, and those carrying arms on their own property or place of business or while traveling were exempted. None of the exemptions applied to Marin, but no trial occurred in this case either.

The gun was taken away from Marin in the Trust Building (now the Gateway Hotel). The weapon was placed in the care of Assistant County Attorney R.B. Redic who still retained possession of the firearm in May 1929.

In April 1928, more than a year before committing the murders, Marin filed suit against Lyons and Oppenheimer for \$100,000 in damages under cause number 29972 in the 65<sup>th</sup> District Court, with Judge Ballard Coldwell presiding. The suit was filed by attorney J.W. Morrow for the firm of Fryer & Cunningham. Marin alleged that defendants conspired with H.C. Barru of Mexico City and others to defraud him of 2599 shares of stock in the *Com-*

*pañía Minera de San Joaquín*. He alleged that they had wrongfully filed suit against him in the Second Civil Court of Letters in Chihuahua after which he was divested of all of his assets comprising the San Joaquín mining interest.

A few months later, in August 1928, Marin also accused Lyons and Oppenheimer of burglarizing his home and "taking possession of two hundred books and very important documents belonging to me." Marin said that he complained to the District Attorney's office about his damages regarding the San Joaquín mine, but nothing had been done.

According to newspaper accounts, Attorney W. W. Bridgers, who had been an assistant district attorney at that time, recalled that Marin had made an appointment with Bridgers eight months prior to the murders, in October 1928, bringing with him many documents and papers in Spanish with no English translation. Bridgers told Marin no action could be taken, but that he could take the matter before the grand jury if he desired. Marin left and never came back.

In the days following the murder of Lyons and Oppenheimer, the accused could not resist talking to the press. He began constructing his defense immediately. In a statement to journalists on Friday, shortly after his arrest, he claimed that Oppenheimer had reached for a pistol in his office drawer and that the shooting followed.

By Tuesday, June 4, the District Attorney's office was making plans to put the 64-year-old

defendant on trial at the earliest opportunity. Marin's case would be presented to the grand jury on the following Thursday, and another murder case would be moved to make room for Marin's trial. Marin did not yet have an attorney, and none had been appointed for him.

By Wednesday, June 5, Marin was giving interviews to the press from his jail cell, and a full five days after committing his crimes, he had not yet retained defense counsel, remaining as talkative as ever. He commented to newspapermen from the county jail that, "I have never asked anyone for a penny in my life, but I have many friends in the El Paso Spanish colony, and I feel that I could get aid if I asked them."

The newspapers reported that he was waiting for the return of W.H. Fryer from New York. Fryer's firm had filed suit against the lawyers on Marin's behalf in 1928. Marin also told reporters that if Fryer did not defend him, the Spanish government might employ counsel for him.

Marin told reporters that he spent most of his time in jail writing letters about his crime, using paper sacks for writing paper. He revealed that one of his letters contained his defense to the murders, entitled "Who is responsible for this tragedy?" but refused to talk about the contents of the letter, telling reporters that the letter was for Judge Howe. Another letter was addressed to the Spanish embassy. The district attorney's office announced that prosecutors would move to continue another murder trial scheduled for June 24 in order to put Marin on trial, and that the State would seek the death penalty.

Marin continued to deny that there had been any eyewitnesses to the slayings. He told reporters again that, "I admit I shot Mr. Lyons and Mr. Oppenheimer. There is no need of lying. I could have gotten away, but instead I went across the hall and telephoned the police myself. Do you think a man who would do that would not see a woman if she had been in the office?"

At his arraignment for the murder of Lyons on Monday, June 10, Marin still did not have an attorney. He pleaded "not guilty," and when the murder indictment was read to him describing how he killed Lyons, he blurted out, "It's not true. I'm not guilty. I want to be tried in another county. The judges and the attorneys of El Paso were all friendly to Mr. Lyons and Mr. Oppenheimer and I cannot get justice here," he told Judge W. D. Howe of the 34<sup>th</sup> District Court.

Marin added that he did not include Judge Howe in this appraisal. Judge Howe replied,

Courtesy: Jeanne Oppenheimer Moye and Family

THE STATE OF TEXAS,  
COUNTY OF EL PASO.

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS,  
SIXTY-FIFTH JUDICIAL DISTRICT.

TO THE HONORABLE BALLARD COLDWELL, JUDGE OF SAID COURT:

Now comes J. M. MARIN, a resident of El Paso County, Texas, hereinafter styled plaintiff, and complaining of FRANCIS J. LYONS and HERBERT D. OPPENHEIMER, also residents of El Paso County, Texas, hereinafter styled defendants, for cause of action states:

- I -

That on or about the 1st day of May, 1925, the plaintiff was the owner of certain shares of stock in a corporation, organized and existing under and by virtue of the laws of Mexico, and known as *Compañía Minera de San Joaquín, S.A.*, said J. M. Marin owning twenty-five hundred and ninety-nine (2599) shares of said

No. 29972  
IN THE 65TH DISTRICT COURT  
OF EL PASO COUNTY, TEXAS.

J. M. MARIN,

- vs -

FRANCIS J. LYONS and  
HERBERT D. OPPENHEIMER.

PLAINTIFF'S  
ORIGINAL PETITION.

FILED THIS 17<sup>th</sup> DAY OF  
April A.D. 1928  
W. W. BRIDGERS  
CLERK DISTRICT COURT, EL PASO, TEXAS

DEPUTY

Fryer & Cunningham  
749 ONE FIRST NATIONAL BANK BLDG.  
EL PASO, TEXAS

Marin's 1928 lawsuit against Lyons and Oppenheimer was signed by attorney J.W. Morrow of the Fryer & Cunningham firm on the 7th floor of the First National Bank Bldg. The original petition consisted of three pages and sought damages of \$100,000.

“That’s all right, go right ahead.” Howe set the case for trial on June 24, less than a month after the crime, before a venire panel of 500 people.

In 1929, the Texas Penal Code recognized two types of homicide: murder, including by way of a duel, and homicide by negligence. Manslaughter, defined as voluntary homicide under the immediate influence of sudden passion arising from an adequate cause but neither excused nor justified by law, was repealed in 1927.

The murder statute, Texas Penal Code article 1256, stated that “whoever shall voluntarily kill any person within this State shall be guilty of murder. Murder shall be distinguished from every other species of homicide by the absence of circumstances which reduce the offense to negligent homicide or which excuse or justify the killing.”

As the statute implies, the old Penal Code devoted a chapter each to “justifiable homicide” and “excusable homicide.” Excusable homicide happened by accident

Justifiable homicide occurred in cases of self-defense or defense of property, but subject to certain rules. The jury was instructed that it had to appear by the acts and words of the per-

son killed (e.g., Oppenheimer or Lyons) that it was the intent of that person to commit murder, maiming or some other felony. The killing must have taken place while the person killed was in the act of committing one of these offenses, or after some act done by him showing evidently an intent to commit such offense, and it must take place before the offense committed by the party killed is actually completed, except in the case of rape the ravisher could be killed at any time before he had escaped from the presence of his victim.

Homicide was also justifiable as a defense against milder attacks if, in the protection of a person against any other unlawful and violent attack, all other means had been resorted to for the prevention of the injury and the killing took place while the person killed was in the very act of making the unlawful, violent attack.

The lesser offense, homicide by negligence, was punishable by between one and three years imprisonment and a \$1000 to \$3000 fine. But to bring the offenses against Oppenheimer and Lyons within the definition of negligent homicide, there must have been no apparent intention to kill and the homicide must have been the consequence of the act done. The Code

furnished the example of discharging a firearm on or near a public highway.

The punishment for murder was death, or confinement in the penitentiary for life or for any term of years not less than two. And, as is true today, each side was permitted to offer all relevant facts surrounding the killing and the previous relationship existing between the accused and the deceased. A jury instruction on “malice aforethought” was also mandatory, meaning that unless the jury found that the defendant acted with malice aforethought, the jury could not assess punishment at longer than five years in prison.

Clarence Darrow told the New York Times in 1939 that there is no such thing as justice – in or out of court. However, as another philosopher of the times put it, there is justice but we do not always see it. Discreet, smiling, it is there, at one side, a little behind injustice which makes a big noise. Whether the families of Oppenheimer and Lyons received justice will be examined in the next and last part.

**BALLARD C. SHAPLEIGH** is an Assistant District Attorney

## The Grand Jury in Historical Perspective *Part I*

BY JOSHUA TATE

On June 18, 2015, Texas Governor Greg Abbott signed into law House Bill 2150, which made significant changes to the grand jury system in our state. Before the new law, judges appointed grand jury commissioners, who then selected individuals to serve on grand juries, in what was referred to as the “pick-a-pal” method of grand jury selection. From now on, grand jurors will be selected randomly. The reform is intended to address various criticisms of the prior system, which was said to produce a grand jury pool lacking in diversity and created possible conflicts of interest.

Texas is not the only state in which the institution of the grand jury has been criticized recently. In 2014, a grand jury in St. Louis County, Missouri decided not to indict police officer Darren Wilson for killing Michael Brown, an unarmed teenager, in the city of

Ferguson. Many observers questioned the objectivity and fairness of the process, and the related protests were covered by the international press. Last year, in a somewhat similar case, a grand jury in Cuyahoga County, Ohio decided not to bring criminal charges against Timothy Loehmann, another police officer, for killing an unarmed 12-year-old boy, Tamir Rice. This grand jury decision also led to protests that made international news.

The modern institution of the grand jury is clearly controversial. It is therefore worth asking why this institution came into being in the first place, and whether it continues to serve its original purpose. If the institution no longer serves its original purpose, or if that purpose has become obsolete, a stronger case could be made that it ought to be changed or even eliminated to address modern concerns.

This year marks the 850th anniversary of

the grand jury, which was created in 1166 by King Henry II in the Assize of Clarendon. The original task of the grand jury was to gather information from local communities in England about suspected criminals in an age before professional police. Over the centuries, it has come to play a very different role in our legal system. The second part of this article will discuss the history of the grand jury from the 12th century to the present day.

*To be continued*

**JOSHUA TATE** is an Associate Professor, SMU Dedman School of Law

Joshua Tate will be the featured guest speaker at the Bar Association Luncheon on Tuesday, May 10th, 2016

# My Story...everyone has one

## PART II

BY CLINTON F. CROSS

In part one of this article, I summarized some of my childhood and early adulthood experiences. At the conclusion of part one, I reported I was working in Arlington, Virginia, for Retail Credit Corporation and preparing to return to UCLA School of Law. In August 1963 I got a letter from the law school notifying me that I was not being invited back to continue my legal education because my academic performance failed to meet minimum academic standards.

I had grown up admiring my father and my grandfather, but my relationship with my father was shattered when my parents divorced. My "Plan A" was to follow my grandfather's example and become a lawyer. When UCLA did not allow me to continue my studies, life suddenly got difficult because I did not have a "Plan B." I didn't know what to do, but I had to do something.

For the moment, until I developed a "Plan B," I decided to become a door-to-door Fuller Brush salesman. For the next nine months, I got up every day and walked door to door twelve hours a day selling Fuller Brush products, sometimes for not much money. I sold toothbrushes for eighteen cents a toothbrush.

I was selling Fuller Brush products the day President Kennedy was shot. That night some of my clients in Virginia held parties celebrating his death. Later I watched his funeral procession as it marched across Memorial Bridge on the way to the National Cemetery.

Life also got difficult because after I decided to go back to law school and try again, I found out that hardly a law school from sea to shining sea would consider my application for admission.

In the summer of '64, I got a better job working at the Capitol. I sat behind a desk and ran a Robo typewriter. I'd type a salutation and an address on a letter and push a button. The typewriter did the rest of the typing. The recipient thought he or she was getting a personal letter from a Congressperson. I got to sit down but, like the typewriter, I became a robot.

I experienced poverty and lived a life of quiet desperation, a life that the privileged will never know unless they lose all their money and also experience it.

I finally got a break. The University of Texas School of Law admitted me. I got a second

chance.

This time I did a little better. After the first year, I qualified for admission to Phi Delta Phi, an honorary scholastic fraternity.

After I graduated and passed the Texas Bar exam, I took a job in Austin, Texas with the Travis County Legal Aid and Defender Society.

At that time federally funded legal aid was more controversial than Obamacare is today.

There were many levels to the national debate about legal services for the poor. For instance, should the government provide poor people with access to civil legal services? If so, how much access? For what kinds of cases? How should the services be delivered?

Federally funded legal aid for the poor in civil cases was an offshoot of the War on Poverty and it was initially funded through the Office of Economic Opportunity ("OEO"). The federal government opted for a staff attorney delivery model rather than a *judicare* model. Although the initial decision was made to utilize a staff attorney model, the debate over *judicare* raged on for years thereafter. Another issue was what kind of legal services should be delivered, service cases for as many poor people as possible or a mixture of service cases and federal and appellate litigation designed to address some of the root causes of poverty.

When I went to work for the Travis County Legal Aid and Defender Society, I stepped into the middle of the debate. The Travis County Bar Association supported the provision of traditional services and avoided federal litigation and appellate practice. The OEO encouraged "impact litigation" aimed at providing poor people more legal rights and greater legal access. The OEO put the Travis County program on "month-to-month" funding because, among other things, it failed to bring any cases in federal court or appeal any state court decisions.

Dean Page Keeton of the University of Texas School of Law hired Barbara Kazen (Federal Judge Abraham Kazen's sister) to run the law school legal aid clinic. She supported the use of some funds for "impact litigation." Barbara opened an office in northeast Austin and applied for the OEO funds.

I was assigned to the office at 1619 E. First Street, in the middle of the low-income Hispanic community. After being on the job for about

six months, the program's director L. Hamilton Lowe fired me and the senior attorney (who had been on the job for five years) stating "a new broom sweeps clean." Shortly thereafter Hamilton Lowe also resigned.

One night I went to Scholz Garten for a few beers. There I met Sam Houston Clinton.

Before moving to Austin, Clinton practiced in Dallas where he is perhaps best remembered for representing Jack Ruby. Thereafter he served for about 20 years as a justice on the Court of Criminal Appeals. Anyway, Clinton wanted to know if I'd be willing to work for a new legal aid program in El Paso. When I said yes, he wrote the director of the program a letter and recommended my employment. I was subsequently hired.

I was told to focus on family and consumer law litigation.

As a lawyer for El Paso Legal Assistance Society in the early 1970's, I had a window into marketplace abuse in south El Paso. In the course of my practice, I became vice president of the Texas Consumer Association. There I met Joe K. Longley, Loyd Doggett, Phil Maxwell, Jim Boyle and many others who at the time were seeking legal reforms to adjust the balance of power between sellers and buyers in the legal system.

The exposure of marketplace dishonesty and abuse help promote passage of state and federal laws and regulations designed to deter or prevent recurrence of the wrongs committed—such as the Texas Deceptive Trade Practices Act, the Texas Proprietary School Act, the three day right to cancel a door to door sale, the Federal Odometer Act, and Federal Trade Commission Rule 433 that as a practical matter modified state legislation providing purchasers of negotiable notes the right to obtain judgments against buyers who had been defrauded.

I will not dwell on my work as a legal aid lawyer in El Paso because I have already written about it. For more information, see Clinton F. Cross, *Early History of Legal Aid in El Paso*, El Paso Bar Journal (October/November, 2014 at 7).

Of course in politics timing is almost everything. In Texas the consumer movement was fueled by the Sharpstown stock fraud scandal in 1971 and 1972 involving many state political

figures. The scandal resulted in widespread voter rejection of almost all statewide political leaders. Crawford Martin, a three term Attorney General, lost his re-election bid. The consumer movement was also fueled by the Watergate scandal in 1973 and 1974. The public demanded honest government and an honest marketplace.

John L. Hill became the Attorney General-elect. Hill supported consumer reforms, especially passage of a deceptive trade practices act with private remedies that held sellers to a strict standard of truthfulness in marketing their goods and services. He asked Joe K. Longley to serve as his first consumer division chief.

Shortly thereafter Longley phoned me and encouraged me to submit an application for employment with the office of the Texas Attorney General. I did so. On January 1, 1973, I was sworn in as an Assistant Texas Attorney General.

In January, 1973 the Texas Attorney General's office was located in Austin, Texas, and nowhere else. There was no money in the budget for regional offices, but General Hill began to work to establish regional offices throughout the state as soon as he assumed office. Hill sent former District Attorney and then Assistant Attorney General Bart Boling to El Paso to seek support for a local regional office. When he obtained free rental space, Hill transferred Bart Boling, and then assigned me, to the regional office. Bart was in the Law Enforcement Division. I was assigned to the Consumer Protection Division, responsible for public enforcement of the newly enacted Texas Deceptive Trade Practices-Consumer Protection Act.

As a legal aid lawyer representing the poor, I was considered to be anti-establishment—a member of the “army of the left.” As an Assistant Attorney General for the state of Texas, I was a member of the establishment.

The change of hats did not seem to matter to Judges Robert Galvan, Jack Fant or Charles Schulte, but for other judges it made all the difference in the world. In both roles I represented the same public interest and sought similar remedies, but wearing the legal aid uniform before judges who probably opposed federally funded legal aid, I had to fight hard to prevail in every case. Wearing the Attorney General's hat, the same judge who did not want to give my clients a fair hearing when I was a legal aid staff attorney sometimes just wanted to know where he (and it always was a “he”) needed to sign an order granting my request for a temporary restraining order.

In 1972 legal aid lawyers rarely participated in bar associations and establishment firms rare-

ly offered them jobs when they wanted to “move on.” Bill Goodman of TRLA and I were the very first former legal aid lawyers to be deputized as Assistant Texas Attorneys General.

Bart Boling was my mentor in the Attorney General's office. He gave me two pieces of good advice that I will always remember. First, don't party improperly in public if you aspire to public office. People almost never forget your mistakes and they love to tell others about them. Second, don't bad-mouth fellow attorneys behind their backs unless you are prepared for them to hear about it.

As an Assistant Attorney General, I remained committed to federally funded legal aid. At that time the El Paso Legal Assistance Board of Directors was elected by the county's practicing attorneys. I ran for the board and won. Shortly thereafter, a few weeks before his resignation, President Nixon signed the Legal Services Corporation Act. The Legal Services Corporation (“LSC”) replaced the OEO as the primary funding conduit for the federally funded legal services programs.

I resigned my position as an Assistant Texas Attorney General in September 1976. I was replaced by Richard Mesa, who later became a federal magistrate judge.

I then moved to Austin where I took a position as a field coordinator with the Carter/Mondale campaign. I was stationed in San Antonio, responsible for organizing the campaign in 13 Texas counties.

My mission was to be nice to all the warring party factions and try to get them to work together to elect a President. I was not welcomed by everyone. Some Hispanic leaders complained that Carter's staff should have hired a Hispanic. After all, San Antonio was the capitol of Hispanic Texas.

Joyce Peters, the Anglo Democratic Party Chairperson in San Antonio, was also not overjoyed to see my name in the newspaper. She notified me that “no one sat in her seat and no one would swing in her swing.”

Joyce was a mentor. Among other things, she taught me the number one rule in politics, “I get the credit, you get the blame.” I learned a lot about politics. Carter won the election.

By the way while working for Carter's election, I drove Carter around San Antonio a time or two. I told him I thought it strange that the OEO only funded legal aid projects in communities that had local bar support, denying poor people access to justice in other communities. I don't claim credit for what happened next—federal funding for legal services for the poor in all counties in the nation based on a funding for-

mula of two lawyers for 10,000 poor people—but in 1976 I sensitized the future President to the issue.

The day after the election, I was offered a special assignment working for the Texas Attorney General's office in San Antonio. I was told I could resign when I found a permanent job.

A few months later, I applied for the position as coordinator of a project recently funded by LSC. The mission was to provide support services for all the LSC funded programs in Texas and to represent legal services clients before state administrative agencies and in the Texas legislature.

I opened an office in Austin, called it Texas Legal Services Center (“TLSC”) and hired a small staff. With the help of mini-grants from the Legal Services Corporation, we began training legal aid lawyers in their areas of practice. A few years later, State Bar officials visited some of our training events and decided to implement mandatory Continuing Legal Education (“CLE”) training for private attorneys throughout the state.

In 1977 State Bar President Travis Shelton appointed me Chairman of the State Bar Committee on Legal Services for the Poor in Civil Matters. Cullen Smith (El Paso attorney Rischer Gilbert's father) and J. Chrys Doughtety continued my appointment. As chairman of this committee, I was able to advocate as a bar leader for access to justice for poor people in the civil justice system regardless of ability to pay.

After Carter was elected, federally funded legal aid programs were established in East and West Texas. Opposition to these programs from rural bar associations was intense. The Palo Pinto Bar Associations and a number of local bar associations alleged ethical violations by local legal aid lawyers. They submitted motions to the Texas Bar Association's resolutions committee condemning federally funded legal aid. Former Chief Justice Robert Calvert headed a committee to investigate the alleged ethical violations and found them without merit. The state bar's resolution's committee rejected the local bar's proposed resolutions.

In 1979 Ronald Reagan defeated President Carter and in 1980 became President of the United States. He recommended zero funding for the Legal Services Corporation.

Under Chrys Dougherty's leadership, the Texas State Bar forged a cooperative relationship with the legal services community. Signaling support for legal aid, the bar adopted the Frank J. Scurlock Award recognizing an individual who has made a significant contribution to legal services for the poor. This award is still

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given every year at the state bar convention.

As chairman of the bar's legal aid committee, I appointed a subcommittee chaired by Frank Newton (later chairman of the committee and president of the state bar) to implement an Interest of Lawyer's Trust Account ("IOLTA") program in Texas. A few years later he succeeded by persuading the Texas Supreme Court to adopt the concept.

From 1982 to 1985 I served on a State Bar of Texas task force implementation of a program within the State Bar of Texas known as "Texas Lawyers Care." My job was to obtain start-up financial support for the program from the eleven LSC funded legal aid programs in Texas. Kay Paine, the first director did an excellent job getting the program started. She later served as executive director of the Massachusetts's Bar Association.

With the adoption of "Texas Lawyers Care,"



*J. Chrys  
Dougherty*

the state bar fully embraced the value of providing equal justice under the law to all regardless of ability to pay.

As the doors of opportunity opened, former legal aid lawyers began to pursue public service in many different ways. Former

EPLAS attorney Hector Uribe returned to Brownsville and ran for the Texas Senate, getting elected. Former EPLAS attorney Federico Peña moved to Denver, was elected mayor, and then served under President Bill Clinton in his cabinet as head of the Department of Transportation and Department of the Energy.

Former TRLA attorney Jose Rodriguez serves as our State Senator. Many former EPLAS and TRLA lawyers preside over our courts in El Paso. Former legal aid volunteer and public interest lawyer Hillary Clinton is running for President of the United States.

Today Texas Lawyers Care remains a vital component of the state bar's activities, encouraging lawyers to provide *pro bono* legal services to the poor and recognizing them for their contributions when they do so.

When I ran TLSC I represented legal aid clients in the Texas legislature, which in many ways sits as a court to hear redress of grievances. Almost all interest groups are represented in the Texas legislature, public as well as private. Why shouldn't the poor also have advocates?

In the Texas legislature, I advocated among



*Left to right: Clinton Cross and Austin attorney Gaylord Armstrong working together to help establish Texas Lawyers Care*

other things for passage of legislation prohibiting the literal translation of the term "notary public" into Spanish. Senator Tati Santiesteban from El Paso sponsored the legislation. It was adopted. I worked with State Senator Bill Patman to limit high interest rates obtained by small loan companies in Texas. I worked with State Senator Ron Coleman to defeat attempted repeal of legislation mandating free breakfasts for children attending schools in low income school districts.

During this period of time (specifically from 1978 through 1981), Hillary Clinton served as chairperson of the board of directors of the Legal Services Corporation. Mario Lewis, originally from El Paso, served as general counsel for the corporation.

In 1982 TLSC had a fund balance of approximately \$100,000, but at the same time faced a concomitant funding cut. I attempted to adjust to the funding cut by reducing services and contracting for one year with another corporation to provide the services that had been



*Left to right, State Senator Bill Patman, former United States Senator Ralph Yarborough, and Clinton Cross at the State Capitol*



eliminated. My board of directors approved my plan but LSC did not. While the board continued to support me, LSC thereafter made my life difficult. In 1985 I resigned, pending the hiring of my replacement. After a careful search, the

board hired Randy Chapman to replace me as TLSC director.

Today Randy remains as TLSC's director. TLSC has with an annual budget of about four million dollars. Mario Lewis, living in Austin,

now serves on TLSC's board of directors.

*To be continued...*

**CLINTON F. CROSS** is a retired Assistant El Paso County Attorney.

## My Trip to Costa Rica

BY CLINTON F. CROSS

*The following story contains excerpts from a narrative I wrote a few months ago about my 1968 trip to Costa Rica. I present it here as an addendum to My Story because when I wrote My Story for the this journal I did not think I had space to include it and besides it was not a story related to my career. After preparing this issue for publication, it turned out we had space for more material so I decided to include it.*

**M**y roommate at the time was Phil Brigham, whose former wife Dolly had been born in Costa Rica to an Anglo-American father and a Talamancan Indian mother. When Dolly's father died, his Texas relatives brought Dolly to the United States. Dolly never saw or heard from her mother during her childhood.

After divorcing Phil, Dolly searched for her mother and with the help of the American Embassy and Costa Rican authorities found her. Her mother was living in a hut in the jungles near the Panamanian border. After renting a house in San Juan, Dolly wrote Phil and invited us to visit. Phil had only recently gotten out of a Mexican jail and did not have a job or a car. I decided we should go. I had the car, a 1962

Corvaire. We got passports, saved a little money, bought some canned food and an extra spare tire and headed south.

We passed through the Laredo checkpoint at two o'clock on a Saturday morning. By six o'clock, we were on the outskirts of Mexico City. By midnight, we arrived in Cuernavaca. After a few hours of sleep in the car, we hit the road again.

We arrived on the Guatemalan border on Monday around twelve noon. There Guatemalan soldiers told me to cut off my beard and told me I'd better get to Guatemalan City before dark or we might get shot. I soon learned that the country was being torn apart by revolution. I reluctantly spent some money that night on a motel in Guatemala City.

After entering Costa Rica and with night approaching I decided to take a nap and let Phil drive. I thought he was sober and maybe he was but in the dark of the night he ran into a cow, killing the cow and knocking out the front windshield. In this situation the car had one very good feature: the air-cooled engine was in the back. It stalled, but it still worked.

I felt bad about leaving the cow in the road but I knew its owner would blame Phil for hitting the

cow rather than himself for letting it run loose so I took over and drove the car down the road.

Unfortunately, the road was full of potholes and the potholes were hard to see in the dark. The Corvaire was not a Jeep and in my efforts to reach San Jose before sunrise I ran over many potholes. The car suffered severe damage to its undercarriage.

When we finally arrived in the capitol city the car had no front windshield, the shocks were gone, the wheels were out of alignment, and the seats were no longer firmly fastened to the sides of the car. I made repairs by peeling tin off the bottom of the car and replacing the floorboards with plywood. I obtained an oak limb and fastened it to the sides of the car and then used it to support the front seats that were no longer attached to the sides of the car.

We then went by train to Costa Rica's east coast and then into the jungle to visit Phil's former mother-in-law. She lived outside the Talamancan village near the Panamanian border in an Indian style hut with no doors and no running water. A stream near the hut served as a place to take a bath and also farther downstream a place to go to the bathroom.

*To be continued...*



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# RESILIENCE: Gateway to the Art of Better Living

BY OSCAR G. GABALDÓN, JR., CWLS

*"A good half of the art of living is resilience."*  
—ALAIN DE BOTTON

The alarm clock begins to whisper, and if we do not listen, the whisper gradually becomes a holler. Then, life happens. We stretch and lethargically seat up on our bed and begin to focus our vision as we look around the room before proceeding to start the newborn day. Already annoyed, we may take a shower and maybe even dose off a little as we stand under the shower head's warm water that gently caresses us with a lullaby. We dress up, brush and floss our teeth, have a cup of coffee, maybe some breakfast, or nothing at all, and dutifully leave our homes to welcome life in the humdrum of our daily routines. We drive down the freeway while our minds start to go into full gear with all sorts of thoughts, emotions, plans, and dreams.

What is in store for us on that day is revealed to us second by second, minute by minute. Some things that we may expect to happen never happen. Some things that we may not expect to happen do happen. The unpredictability of life is indeed a mystery. While it often comes with the greatest of discoveries and joys, it seems to never fail to also bring its share of tribulations. Such is life.

How we decide to respond to the manifold things handed to us by life, be they of major or minor consequence, life provides us with a gateway of opportunities --- opportunities that we can seize to help us flourish or opportunities that we can thwart and limit by choice. Life furnishes us with all sorts of possibilities, including chances to turn things around so that we may grow stronger and in more positive directions.

Mastering effective ways to overcome our feelings of loss, hopelessness, and disappointment is indubitably laudable. Such ability is an art that allows us to better resist and endure those events that may place a damper on our happiness, disturb our peace of mind, and tempt us to have a defeatist attitude. This ability is premised on mastering the art of resilience. Resilience is what often helps us to cope with those things that we have no control over in a world where the luxury



of certainty can be fleeting.

Resilience involves the artful orchestrating of our natural qualities, which includes our analytical reasoning skills, the controlled harnessing of our feelings and emotions, our imagination, and the application of pragmatic approaches. Jean Chatsky, the prominent American financial author, insightfully observes that "Resilience isn't a single skill. It's a variety of skills and coping mechanisms. To bounce back from bumps in the road as well as failures, you should focus on emphasizing the positive."

Resilience, therefore, is like a coiled spring that helps rebound us back to positive thinking and action. It saves us from the clutches of stress and despondency, and it propels us to consistently work with the present to encounter a better tomorrow. The past stays in the past, but the present is here in the now, and it is the present that we must concentrate on. When focusing on the present, resilient persons march onward with courage and strength in the belief that they have control as to how they choose to move forward in their lives' odyssey.

Since resilience has a direct bearing on the

manner in which we handle and cope with setbacks, hardships, adversities and everyday disappointments, it is essential that we invest time and effort towards developing the strength levels of our resilience. The weaker our resilience fiber becomes, the higher the risk of losing control; and, the higher will the likelihood be that we may trigger detrimental psychological outcomes that may adversely impact our overall well-being. The good news about resilience is that we can develop the necessary skills to improve our resilience to life's challenges. Resilience is not something that some people are necessarily born with. It can be learned. It can be developed. It can be attained.

Psychology expert, Kendra Cherry, wrote an article entitled "10 Ways to Become More Resilient." In the article, she shares the following techniques that help foster resilience: (1) find a sense of purpose in your life; (2) build positive beliefs in your abilities; (3) develop a strong social network; (4) embrace change; (5) be optimistic; (6) nurture yourself; (7) develop your problem-solving skills; (8) establish goals; (9) take steps to solve problems; and (10) keep working on your skills.<sup>1</sup> While these techniques may not be all inclusive, they are a strong start for anyone wanting to cultivate and amplify their resilience.

While resilience will not guarantee that we will always be able to obtain better results, it does provide us with a superior ability to more effectively handle what life may send our way. American attorney and best-selling author, Elizabeth Edwards, puts it this way: Resilience is accepting your new reality, even if it's less good than the one you had before.

1. Kendra Cherry (2015), 10 Ways to Become More Resilient, *About Health*, <http://psychology.about.com/od/crisiscounseling/tp/become-more-resilient.htm>

**OSCAR GABALDÓN** is an assistant City Attorney and former 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).

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