



EL PASO BAR JOURNAL

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An Update of Events and Information

February / March 2011

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1996 – 1997 – 1998 – 1999
2000 – 2001 – 2006-2010
Star of Achievement 2000 - 2008 - 2010
State Bar of Texas
Best Overall Newsletter – 2003, 2007, 2010
Publication Achievement Award
2003 – 2005 – 2006 – 2007 – 2008 - 2010
NABE – LexisNexis Community
& Educational Outreach Award 2007 - 2010

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THE PRESIDENT’S PAGE



The Year of the Storyteller

*If you are really interested in the stories, ask for details.
That makes it more interesting for the storyteller.*

JOCHEN TENTER

We are seven months into The Year of the Storyteller for the El Paso Bar Association, and we have already had a very full year of great events and programs. In the next two months, we have some exciting events where you will be able to ask for the details behind the stories, whether the stories be in the form of legal education or great entertainment.

The 15th Annual Civil Trial Seminar will take place on Friday, February 18 and Saturday, February 19 in Ruidoso, New Mexico. This seminar, put together by the CLE Committee and headed by co-chairs Judge Linda Chew and Paco Dominguez, brings quality CLE credit for both Texas and New Mexico (approval pending) a little closer to home. The speakers include some of the best attorneys and judges from El Paso as well as New Mexico. The seminar will take place in the beautiful Inn of the Mountain Gods where the EPBA has negotiated an amazing room rate for CLE participants. That is the long President’s Day weekend, so plan to bring your family and friends and enjoy some skiing, hiking, beautiful mountain vistas, and crisp winter weather. Registration materials can be found on the EPBA website (www.elpasobar.com) or by contacting the Executive Director Nancy Gallego.

In the next few months, you will also be hearing about the Law Day fundraiser scheduled for Saturday, May 7 at the Scottish Rite Temple Theater. This event, which will benefit the El Paso Bar Foundation, will be the culmination of The Year of the Storyteller and will truly be an experience unlike any other. Three famous and successful singer/songwriters are set to come to El Paso to perform their very famous songs and share the stories behind their music. After you hear these stories, you will not be able to listen to the music in quite the same way again. The singer/songwriters scheduled to appear at this event are the following:

Scotty Emerick – “Beer for My Horses” (Willie Nelson/Tobey Keith), “I Love This Bar”, “As Good as I Once Was”, “How Do You Like Me Now?” (Tobey Keith). Emerick has travelled with Tobey Keith to Afghanistan numerous times to play for our troops.

Don Schlitz – Academy of Country Music’s 2010 Poet’s Award recipient for lifetime achievement. Schlitz wrote “The Gambler” and “The Greatest” (Kenny Rogers), “I Feel Lucky” (Mary Chapin Carpenter), “Rockin’ to the Rhythm of the Rain” (The Judds), and “Forever and Ever Amen” and “When You Say Nothing at All” (Randy Travis).

Allen Shamblin – “He Walked on Water” (Randy Travis), “Life’s a Dance” (John Michael Montgomery), “Don’t Laugh at Me” (Mark Wills), “I Can’t Make You Love Me” (Bonnie Raitt), and the 2010 CMA Song of the Year “The House that Built Me” (Miranda Lambert).

The evening will be a casual gathering (come in your jeans and boots if you want), and a great way to support the El Paso Bar Foundation. This will be a community event with the proceeds to benefit the El Paso Bar Foundation, so please feel free to bring your clients and friends. Mark your calendars now!

Until the next Bar Journal, may the details of your personal and professional lives be as interesting as the stories you tell!

Chantel Crews

Chantel Crews, PRESIDENT

EL PASO BAR ASSOCIATION

February Bar Luncheon

Tuesday, February 8, 2011

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

*Guest Speaker: Kristin Connor, an Equal Justice Works Fellow at Diocesan Migrant & Refugee Services**Effective Representation of Undocumented Immigrant Youth***Approved for 1/2 hour of Participatory Ethics**

Do you represent undocumented immigrant children? Would you like to help an abandoned, abused, or neglected undocumented child obtain a legal immigration status? Learn more about Special Immigrant Juvenile Status, which provides a pathway to citizenship for such children, at the next El Paso Bar luncheon on Tuesday, February 8, at noon at the El Paso Club (6th floor).

Kristin Connor, an Equal Justice Works Fellow at Diocesan Migrant & Refugee Services, will speak on recent amendments to the SIJS statute, various avenues to receive the necessary family court findings, and the ethical considerations that arise during the representation of SIJS clients. The presentation is particularly relevant to attorneys practicing immigration and family law, but all attorneys can help these vulnerable children by identifying those to refer for SIJS services or taking an SIJS case pro bono.

**Please make your reservations by Monday, February 7, 2011 at noon
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net**

EL PASO BAR ASSOCIATION

March Bar Luncheon

Tuesday, March 8, 2011

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

**Please make your reservations by Monday, March 7, 2011 at noon
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net**

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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 April/May, 2011, please have the information to the Bar Association office by Friday, March 11, 2011. 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.

FEBRUARY, 2011

Tuesday, February 1
EPBA Board Meeting

Tuesday, February 8
EPBA Monthly Luncheon

Thursday, February 17
EPPA Monthly Luncheon

Friday, February 18
15th Annual Civil Trial Seminar
Inn of the Mountain God

Saturday, February 19
15th Annual Civil Trial Seminar
Inn of the Mountain Gods

Monday, February 21

President's Day
EPBA Office Closed

MARCH 2011

Tuesday, March 1
EPBA Board Meeting

Tuesday, March 8
EPBA Monthly Luncheon

Thursday, March 17
EPPA Monthly Luncheon

Save the Date

*El Paso Bar Association
Law Day Fundraiser
for
El Paso Bar Foundation*

Evening of Singer/Songwriters

*Saturday, May 7, 2011
* Scottish Rite Temple Theater*

Complete details in the next issue of the Journal

Save the Date

APRIL 7TH
SANTA TERESA COUNTRY CLUB

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EL PASO'S FINEST BUILDERS CREATE UNIQUE,
ONE OF A KIND PLAYHOUSES
FOR AUCTION TO BENEFIT
CASA OF EL PASO.

The Story of Abigail Cassia Yhisreal

■ BY STEPHANIE TOWNSEND ALLALA

Abigail Howard grew up without knowing her father, while she and two younger brothers were shuffled from one place to another by a mentally ill mother. They spent the nights in shelters or on the streets, with the children attending one school after another. Before Abigail was rescued from that unstable life at age 14 by an El Paso court, her mother had even joined a notorious religious sect and changed her and her children's last names to Yhisreal.

The Texas Department of Protective and Regulatory Services ("CPS") first came into contact with the family in June, 1996. The state alleged that the mother had physically abused the children. Abigail was removed from her care, and placed in a foster home.

Three months later, her mother left El Paso. Authorities in Florida found her and her son living on the streets. She had been living in a shelter, but abandoned it because she claimed the shelter was violating her and her son's rights. Contacted by authorities, she "de-compensated." She was then involuntarily placed in the psychiatric unit of a local hospital.

Her three children were eventually all placed in foster care in El Paso. Abigail was a somewhat rebellious teenager. Her life in foster care was troubled. Several placements failed.

In 1998 the District Court terminated the children's parental rights. The younger brothers were adopted, but Abigail, perhaps too old, was never adopted.

In June, 2000, Abigail "aged out" of the system. At her Emancipation Hearing the judge, the lawyers, caseworkers, and others involved in her life wished her well.

Her lawyer, André Poissant, commented, "Abigail's grown up in this court. She became a woman in this court...She belongs to everyone, and I'm going to miss her."

Her caseworker said they had clashed on occasion; but then recalled, "I was at the graduation...I was there."

Judge Macias reviewed many aspects of the case, and she said:

"When I talk about you, Abigail, I talk about



caption

you like I talk about my own daughter... When I look at Mr. Poissant, I think of your car and how he helped you look for it and buy it... And I remember Ms. Rivas and how she took you in... Ms. Riddick, you've been a blessing... Your therapist, Ms. James, has been right there... I've seen Mr. Cross here... I would say that he has built a very strong connection to you.

"We are immensely proud of you."

Then Abigail spoke:

"You all witnessed everything that's gone around in my life: my care, my first job, graduation... I was really scared I wasn't going to graduate... but you all had faith in me, and that gave me - well, I have faith in myself, but you all have more faith in me than I had in myself... Why do you want to help me? I'm just one child. There are so many. It surprises me, but... I'm thankful.

"André has been here since the beginning... Natasha, thank you for taking me in... if it hadn't been for you, I don't know how things would have turned out... Clinton, I remember when my mom was here, and she gave you a hard time. But... you weren't going to let her

push you around.

"Most of all, I thank you, Judge, just for... seeing over this whole thing...."

"I'm finished, but I'm about to start something... new and you all aren't going to be there... That's scary, but I'm confident that I'll be able to make it, because I have a foundation."

And then Abigail gave the judge a picture, with a note. It said:

"Here's a picture to always remember me by. Although I'm sure that won't be hard. Through these four years I've felt myself change sometimes for the better, sometimes not. But through all these changes you, and everyone else, have remained in my corner cheering me on. You don't know how much that means to me. Thank you, Abigail."

Since her Emancipation Hearing in 2000, Abigail has accomplished a great deal.

She went to Howard University, graduating in the summer of 2003 with a 3.24 GPA. She served four years in the United States Air Force as a Logistics Readiness Manager. She went back to school and earned her B.S. in Economics, again graduating with excellent grades. More recently, she worked as a Child Support Investigator with the Arkansas Department of Finance and Administration—Office of Child Support Enforcement.

Today she is a claims adjuster for an insurance company. Still, she is her own harshest critic. In a recent conversation with one of her former lawyers, she expressed an abiding call to service. "I would like to be doing more for other people," she said.

Abigail's inspirational story of achievement in spite of overwhelming odds is a clarion call to all attorneys—every interaction with a client is a chance to change a life. So many children like Abigail fall into a miserable cycle of poverty and abuse. It is impossible to point to one person or event that made the difference for her. The judge and the lawyers working on Abigail's case each contributed more than the usual share of caring and time to give her hope. In the final analysis, Abigail's success is all her own.

New Strategies Proposed to Help Texas Legal System Expedite Transition of Foster Children to Safe, Permanent Homes

■ COURTESY OF THE TEXAS APPLESEED STAFF

A new Texas Appleseed study, commissioned by the Supreme Court of Texas Permanent Judicial Commission for Children, Youth & Families (Children's Commission), is recommending ways that the courts and legal system can restore a "new sense of urgency" to the challenge of transitioning thousands of foster children into safe, permanent homes.

In light of the severe budget crisis facing the State of Texas, many of the recommendations included in the report are aimed at improving the system without costing additional state dollars.

Texas Supreme Court Justice Eva Guzman described the research as "extensive" and said, "The Children's Commission is already spearheading an effort to develop a pilot recommended by the study. The pilot would help determine if changes in the scope, frequency and nature of case review hearings will help expedite the placement of more foster children in the safe, permanent homes these children want and deserve."

Texas Appleseed Executive Director Rebecca Lightsey said the study reflects detailed analysis of data for all 21,000 Texas children in long-term foster care in FY 2008, as well as findings from the 150 field interviews conducted by more than 60 pro bono attorneys and others under the direction of lead partner Fulbright & Jaworski L.L.P. This research documented a system with multiple problems.

"Too often, these children are forgotten once they enter the state's Permanent Managing Conservatorship (PMC). Their placement review hearings are little more than status reports, for which some stakeholders are often ill-prepared. The sense of urgency to find these children safe, permanent homes is lost," Lightsey said.

Marcy Greer, partner at Fulbright & Jaworski L.L.P., said, "Texas has good statutes on the books, and many well-intentioned people working in the child welfare system. But

Improving the Lives of Children in Long-Term Foster Care:

The Role of Texas' Courts & Legal System



our judicial system must do a better job at holding all stakeholders accountable for doing everything possible to find permanent placements for these children and to better prepare them for life after foster care. It is unacceptable that there are so many children in PMC without an advocate. Many cannot even identify the attorney assigned to protect their interests."

The Texas Appleseed report describes a system in which too many children get "stuck" – bounced from placement to placement, caseworker to caseworker, with many children having little or no opportunity to express their desires to the judge in the case review hearings. Research showed that over 30 percent of children in PMC remain in foster care for three or more years -- averaging more than 10 different placements and four or more caseworkers before leaving the foster care system.

In Texas, African American children are at least twice as likely to be removed from their home and placed in foster care as white children, but they are less likely to leave foster care before aging out at 18, according to the study.

"If more is not done to find these children a permanent home or better prepare them to live independently after they leave the system, then – as study after study shows – children aging out of foster care will continue to be at increased risk for poverty, unemployment, poor education, early pregnancy, substance abuse, and future incarceration. The costs to the state in lost earnings and in social service support are great, but the loss of quality of life for these youth cannot be measured," Lightsey said.

"The Texas statute now requires children to attend their placement review hearings, but few do – and foster parents and others told us that they are not receiving notice of these hearings," Lightsey said. "Foster youth should not only be permitted but also encouraged to play a much greater role in their own cases. Their input and involvement is essential."

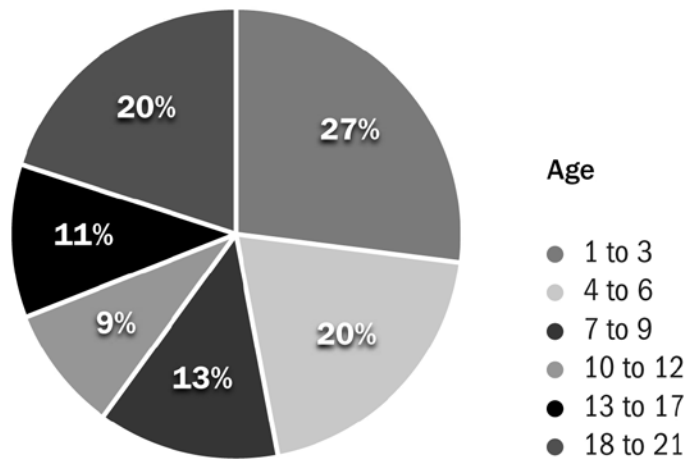
The study also documented a lack of clear roles for legal participants in the PMC process, a void in the courtroom of individuals who really know the child, and a lack of communication and coordination among stakeholders involved in a child's placement review hearings.

Fortunately, Texas has a strong statutory framework, the judicial leadership, and an interdisciplinary team of experts willing to work together to bring about dramatic positive change in the State's foster care system, Lightsey said. Texas Appleseed is also recommending that:

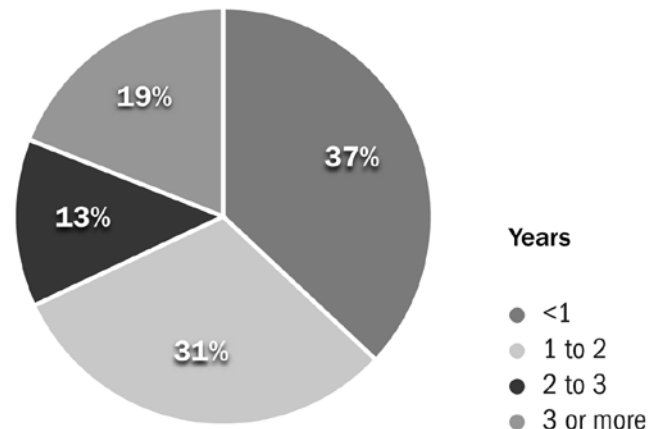
Judges ensure that foster children are heard in court or in chambers when their placements are reviewed;

The same judge remain responsible for the child's case for the duration the child is in long-term foster care (PMC);

PERCENTAGE OF CHILDREN EXITING PMC IN FY 2008,
BY AGE AT END OF YEAR



PERCENTAGE OF CHILDREN EXITING PMC IN FY 2008,
BY LENGTH OF TIME TO EXIT



Every child in PMC have a court-appointed advocate; and

Docketing and notice of hearings be improved to ensure maximum participation of all parties who can help expedite the child's placement in a permanent home and ensure that the child's best interests are served while in foster care.

This extensive study of the court's role in the PMC process had the full cooperation of the Texas Department of Family Protective Services (DFPS) and reflects the input of the state's leading foster care experts including judges, state agency officials, and child welfare leaders. Casey Family Programs, a nationally recognized leader in child welfare issues,

developed a Promising Court Practices guide for inclusion in the Texas Applesseed report.

This project was funded by The RGK Foundation, the Rees-Jones Foundation, The Meadows Foundation, and the Texas Bar Foundation, with general support from the Harold Simmons Foundation and the Rockwell Fund.

NEW MEXICO APPEALS

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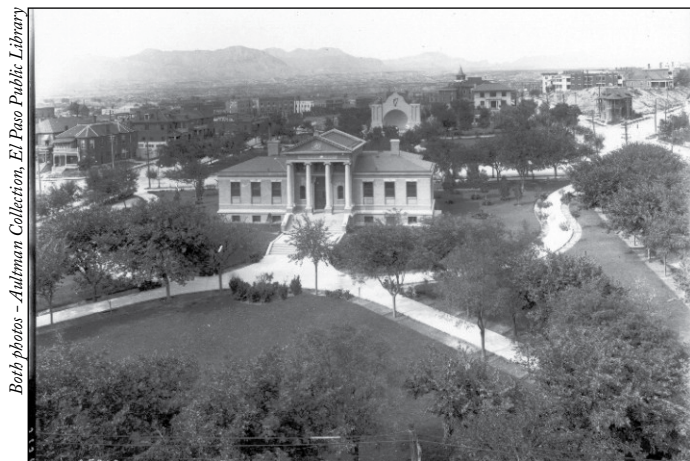
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HOW CIVILIZATION CAME TO EL PASO



Both photos - Aultman Collection, El Paso Public Library

The venue for Teddy Roosevelt's "baby" speech on March 15, 1911 with 5000 estimated in attendance-(L) Looking west at Carnegie Library, with Cleveland Square Park and Bandstand in background; (R) looking north from W. Franklin Ave, a Cleveland Square Park celebration with festooned Bandstand at left.

¡Viva Los Licenciados!

El Paso Lawyers in the Sagebrush and Chaparral Days of the Mexican Revolution

Part III

■ BY BALLARD COLDWELL SHAPLEIGH

On March 15, 1911, with the Battle of Juárez still two-and-a-half months away, former president Teddy Roosevelt visited El Paso and Juárez for two-and-a-half hours. Roosevelt, who became the first president to travel abroad while in office when he went to Panama in 1906, spoke twice in El Paso: first at the Toltec Club, one block east of the courthouse and later at Cleveland Square adjoining the El Paso Public Library. In the first speech, the *Morning Times* reported, Roosevelt "broadly hinted that Mexico can never have permanent order and prosperity until it has prosperity based on justice and independence."

Between speeches, Roosevelt toured Juárez on his first-ever trip to Mexico, motoring down San Antonio in front of the courthouse to El Paso Street, and then south to the bridge and onto Juárez Avenue. The ex-president, who had nominated Pat Garrett as Collector of Customs for the El Paso district in 1901, was allowed to cross the border in both directions without inspection.

The *Herald* reported that "it was Col. Roosevelt's special request that he be taken to Juárez ...as he had never been in Mexico and was anxious to get a glimpse of the country while on the border. ...Col. Roosevelt was especially interested in the preparations that had been made for the expected attack [on Cd. Juárez.] He had

those that accompanied him explain the entire plan of attack, ...and other preparations for war." Coincidentally, a one-day trip to Juárez was also the only official presidential trip abroad made by Roosevelt's successor, William Howard Taft, when he came to meet Porfirio Díaz in October 1909.

With the violence ongoing in Juárez today and increasing - through January 25th, 175 of a projected 5000 killings for 2011 have occurred, with 3111 homicides in 2010, up from 2658 the year before and 1607 the year before that - Roosevelt's short visit one hundred years ago is notable for the speech he gave at a Chamber of Commerce breakfast in the new Toltec Club. Before he spoke, the *Morning Times* reported that Judge James M. Goggin, who had recently left the 41st District Court, introduced Roosevelt to a small reception upon his arrival, accompanied by the 23rd Infantry band playing "Hail to the Chief."

Roosevelt, who had arrived by train at 7:10 a.m., took his place at a table with Mayor Martinez of Cd. Juárez and Mr. A. Barela, the Mexican Collector of Customs. According to the El Paso press and the *New York Times*, Roosevelt first remarked that he had been in El Paso "twenty-five years earlier when El Paso was one of the most wide open towns I ever saw," and then said:

Permanently the welfare of one community will depend upon the welfare of other communities, and so it is among the groups of States. When you make one community prosperous you benefit the communities with which it does business. It is exactly the same among communities as it is among individuals. So it is among nations.

It is a help to the United States to have every other country in the western hemisphere a prosperous country. You here who do business along the border know. I don't have to tell you this - you know it yourselves far better than I do that it is an interruption to your business, a check to your prosperity, to have turmoil and trouble in the adjacent republic. You know that a disaster to them reflects itself upon us, upon you along the border.

I am particularly pleased to see here the Mayor and Collector of Customs of the Mexican city which is your immediate neighbor. I am sure I utter the sentiment of every American when I say that all of the United States wishes to see in Mexico is prosperity - that we wish to see it have the prosperity that means material well-



Aultman Collection, El Paso Public Library



Courtesy, El Paso Historical Society

Teddy Roosevelt (above left) delivered a second speech at Cleveland Square after a visit to Juárez to see “the preparations for the expected attack;” (above right) Juárez in ruins after Battle on May 8-10, 1911.

being, industrial success, coupled with order, justice, and independence. Our interests, the interests of the American Republic of the United States on this continent, are bound up with the welfare of all other nations on the continent.

We wish well to Canada, we wish well to Mexico, we wish well to every other country in the western hemisphere, and we ask them to do nothing for us except to do justice to themselves by securing their prosperity, securing their independence through the practice of the great fundamental principles of civilization – order and justice.

When Roosevelt departed El Paso to dedicate a dam in Arizona, the *Morning Times* editorialized that “while Texans cannot agree with him in many of his political ideas, they have never failed to admire him for his fearless candor.” The *Times* editors also pointed out that while Roosevelt supported statehood for New Mexico (which would not come about until Jan. 6, 1912), he neglected to remind listeners at his next stop in Las Cruces that he once tried to combine Arizona and New Mexico and bring them into the union as one state.

Three days after Roosevelt’s visit, the Civil War-era cannon known as the “Blue Whistler,” for the distinctive sound it made when fired, was stolen. Given the fervor of the times, it had been chained to the ground in City Hall Square directly across the street from the county courthouse on San Antonio as a precaution. By April, the cannon was being used in an attack on Ojinaga, Mexico. There is some evidence that it may have been used later in May at the Battle of Juárez.

Juárez was filled with tension in those days and, according to an item in the *Herald* on Feb. 4, the hotels and rooming houses in El Paso were “filled with the families of Juárez’ most exclusive social circles.” One Juárez official said:

It is very natural that we should want to place our mothers, wives and children out of harm’s way. It is no indication to any lack of confidence in the loyalty or courage of our soldier’s and guards. But it is simply a question of getting the helpless non-combatants out of the way of danger – of putting beyond the reach of danger our loved ones. It is not cowardice that makes a man nervous, uneasy and unable to give all of his mind and energies to a fight, when he feels that his wife and children are in danger and he cannot reach their side.

Many thought the theft of the cannon to be a prank, but police investigated. The cannon’s whereabouts, smuggled into Mexico via Ft. Hancock, were a matter of endless speculation, a conspiracy with many suspects, but there were no arrests and no prosecutions.

On August 18, 1911, Pascual Orozco returned the cannon to its original location in City Hall square in a formal ceremony with speeches by city attorney W.M. Coldwell, who addressed the crowd in Spanish, and Dr. I. J. Bush, the alleged mastermind of the theft on behalf of the revolutionary junta. As city attorney, Coldwell earned a salary of \$1500 a year.

After the Battle of Juárez and Navarro’s surrender, people continued to die. It was

reported that on Friday, May 12, while the Chamizal court was arriving, Daniel Orozco, the 21-year-old brother of Captain José Orozco and a cousin of Pascual Orozco, had killed himself with a bullet through the heart after the accidental discharge of the pistol he had been cleaning.

Thus, violence and fighting was still on everyone’s mind when the Chamizal arbitration hearings began with pomp and circumstance on Tuesday, May 16, 1911, three days after General Navarro appeared in the chinaware department at the Popular Dry Goods Store. It had been only six days since his surrender at the Battle of Juárez.

The *Morning Times* reported that the Chamizal “court opened with all the ceremonial dignity of the Hague tribunal. Members and attachés of the court wearing silk hats and frock coats swarmed into the court room [in the Federal Building] at 2 o’clock p.m., and took seats inside the bar railing.” The arbitrator, or “umpire” as the newspaper referred to him, Judge Eugene LeFleur from Canada, having heard arguments the day before, ruled that Mexico was the plaintiff and should therefore make the opening argument.

To the umpire’s left sat the Mexican commissioner, Mr. Beltrán y Puga. To his right sat the American, whose name was easy to remember. Just outside the door of the Federal Building, catty-cornered on Oregon Street, the newest and largest building in town was being completed. The American commissioner’s name was emblazoned over the entrance: Anson Mills.

The Chamizal umpire heard closing arguments on Monday and Tuesday, May 29 and 30, two days before Wednesday’s Toltec

banquet honoring Madero. The *Herald* reported that “Mexico’s side of the Chamizal case was completed by Seymour Thurmond Monday, and the final presentation of the United States case will be made by R.F. Burges on Tuesday. He expects to complete his argument Tuesday, so that the commission may immediately retire to consider the case.”

In answering a question by LeFleur, Burges argued that the U.S. did not want a compromise decision as to ownership, as the entire 630-acre tract belonged either to the U.S. or to Mexico. The newspaper reported that he was confident of winning the decision.

In summing up Mexico’s case, Thurmond contended, according to the newspapers, that the Treaty of 1884 could not have been retroactive as that would have been unconstitutional as far as the U.S. was concerned. He argued, and it was reported, that the Treaties of 1848 and 1853 fixed an “invariable boundary,” and thus the land in dispute belonged to Mexico. He further contended that the burden of proof was on the U.S. to show that gradual erosion caused the change in the channel from 1852 to its present location, and not the avulsion brought on by floods. Though Mexico “appeared equally sanguine of victory,” as a clearly biased El Paso press reported, her representatives were said to be not “so very confident that their cause will stand the test of a close legal analysis.”

The situation was further complicated by large American holdings in the *Chamizal* known as the “Cotton Estate,” represented by prominent Boston attorney Walter Grant, whom the local press sometimes identified as an attorney for the government. The personalities made the Chamizal proceedings interesting.

While William Cullen Dennis, the Indiana-born Harvard-educated lead counsel or “agent” for the U.S., was described in an obituary as a “rare combination of hard-headed lawyer and ardent advocate of the peaceful settlement of international disputes,” his appraisals of the other Chamizal participants were harsh and sometimes scathingly contemptuous. He referred

to one as a “joke...who talked for two days without saying anything beyond the merest platitudes.”

In a confidential report to Secretary of State Knox, Dennis described the presiding commissioner, Eugene LeFleur, as “a very charming man: he is a thoroughly intelligent man, with a very keen, analytical mind. He is a man of wide culture and general information, and I have no doubt a very learned man in municipal law.” But, he said, LeFleur was ignorant when it came to the rules of international law.

He also wrote that, “Mr. LaFleur is an advocate, not a judge.” LaFleur was so intellectually impatient, Dennis reported, that he kept interrupting counsel to the extent that they could not adequately present their arguments. Dennis concluded that LaFleur was impatient because he was eager to leave El Paso for his summer cottage in Maine.

Dennis pointed out that the counsel chosen by Mexico, W.J. White of Montreal, was a personal friend of LaFleur. Dennis noted that White and LaFleur had offices in the same building in Montreal, and that White received a fee of \$15,000 from Mexico to serve as counsel in the El Paso hearings. He said that White “knew very little and cared nothing about the Chamizal case.”

He described Judge Casaus, the Mexican agent, as urbane and cultured. His argument, Dennis wrote, was “excessively theoretical and ‘Latin American.’ It was polished and learned, at times clever, and was admirably delivered but legally unfounded.” Dennis wrote that Casaus could speak and understand English perfectly, but insisted on speaking Spanish “to assert the theoretical equality of the Spanish language before the Court.”

On Wednesday night, the same night as the Madero banquet, Burges entertained the judges, agents, attorneys, clerks and secretaries connected with the court with a dinner at his residence. Commissioner Puga returned the favor with a dinner at the Toltec Club on Thursday, and Anson Mills hosted a dinner at the Country Club on Friday.

Two weeks earlier, at the beginning of the Chamizal hearings on Tuesday, May 16, the *Morning Times* was also



All photos - Altman Collection, El Paso Public Library

From Myrtle Ave. southeast to City Hall and City Hall Square, with County Courthouse in background.



From the Toltec Bldg. at intersection of E. San Antonio and Magoffin Aves. looking west; Courthouse at left and City Hall dome at right.



City Hall Square (lower right) at the intersection of E. San Antonio, Myrtle, and Stanton, with “Trust Bldg.” (now Gateway Hotel) at left.



Scene purporting to depict a cannon being brought into the U.S.; the “Blue Whistler” was brought across the Santa Fe bridge on Friday afternoon, Aug. 18, 1911 by automobile.

looking for historical perspective on the revolutionary activity in Mexico. There was no UTEP or a College of Mines, so the newspaper turned to sixty-seven year old Judge Peyton F. Edwards for a statement. He compared the Mexican Revolution to the Texas War of Independence - and Francisco Madero to Sam Houston.

Edwards was born in Nacogdoches in 1844, where he became a district judge. He was educated at the University of Virginia. (*See*, Clinton Cross, "Who is Peyton Edwards?," *El Paso Bar Journal*, April 2008) He had served in the Confederate Army during the Civil War, and in the Texas Senate from 1876 to 1879. Edwards came to El Paso in 1886, bringing with him an original of the Treaty of Velasco dated May 14, 1836. The Treaty had been entrusted to his father as the executor of the estate of Thomas J. Rusk. Rusk had commanded the Texas army from May 4 to October 31, 1836 during Sam Houston's absence.

Judge Edwards practiced law in El Paso for twenty-five years. His son Peyton James Edwards, who obtained his legal education from the University of Texas, was the sheriff of El Paso County at the time of the Battle of Juárez. They died in El Paso within five years of each other, the father in 1918 and the son in 1923. Judge Edwards, the father, offered this perspective to the *Times*:

Seventy-six years ago, officers of the Texas army attempted just what General Orozco attempted in Juárez on Saturday [e.g. the arrest of Francisco I. Madero on May 13]. But the little row in Juárez did not compare to the dissension and trouble our fathers had to contend with just after the battle of San Jacinto. The men and officers of the army wanted Santa Ana executed and General Houston would not permit it so a major was sent to arrest the president and his cabinet. But the arrests were never made. At that time there were three or four ambitious men who wanted General Rusk's position as commander of the army and one of them, Mr. Lamar, challenged Rusk to fight a duel and I have in my possession Rusk's reply to that challenge. General Rusk, who was a modest man and without ambition, in his reply to the challenge wrote to Lamar: 'You and I have known each other from boyhood and you know that I am not afraid to fight you or any man. But just at this time Texas needs every man she has and I refuse to fight you until after this campaign is over.' But Lamar withdrew his challenge before receiving Rusk's reply - if he ever received it.

Yet out of this turmoil Houston and his men created a republic and established a strong stable government. Why should not Madero and his men do the same in Mexico?

Orozco did no more than a Texas officer attempted to do. The cruel slaughter of their comrades at Goliad and the Alamo had enraged the Texas soldiers against Santa Ana and they demanded his life. But Houston, like Madero, refused to turn a helpless man over to the furious people.

At first I did not believe this Mexican revolution would amount to anything more than a short-lived guerilla warfare. But men who are able under the severest strain of excitement to show the coolness and moderation displayed by Mr. Madero and his cabinet last Saturday [referring to Orozco's hunt for Navarro and arresting Madero under the pretext of his troops not being paid or fed] are capable of self-government. General Díaz may not know it but his government went to pieces when Juárez surrendered, and the revolution is triumphant."

Judge Edwards, though no petty fogger of the law, was a prophet of doom. On Wednesday evening, May 31, 1911, two weeks after he gave his statement to the *Times*, Porfirio Díaz sailed into exile from Veracruz aboard the *Ypiranga* at the age of 80 (vainly assuring those assembled on shore that, "I shall die in Mexico") at the very moment that members of the Toltec Club in El Paso held a formal banquet to honor his enemy Francisco I. Madero and the *insurrecto* victory.

The "Civilization" series is written in appreciation of the 114th anniversary of the El Paso Bar Association with assistance and encouragement from historians Pat Worthington, Claudia Rivers, Richard Bussell, historian/angling consultant J. Sam Moore, Jr. and the poet Edgar Rincón Luna. Due to space limitations, the resources which have been consulted will be listed in the last part. This presentation includes the creative work of others. This property is being used by permission or under a claim of "fair use" pursuant to 17 U.S.C. §107, and was created pursuant to fair use guidelines and further use is prohibited.

Francisco "Paco" X. Dominguez: *An Example of the Law Profession at its Best!*

■ BY JUDGE OSCAR GUILLERMO GABALDÓN, JR., CWLS

Since early in his childhood, El Paso Bar Association board of directors member, Francisco "Paco" X. Dominguez, exhibited a keen interest in the world around him. Born in the bustling northern Mexican city of Ciudad Juárez, Chihuahua, Dominguez immigrated to the United States at the young age of six, and his family went to live in the Lomaland/San José area in El Paso's Lower Valley. His avid fascination with trying out

new experiences led Dominguez to join the school band (played trombone), football, theater and an array of other interests at Socorro High School, home of the tenacious Bulldogs. After graduating from high school in 1985, Dominguez furthered his education at Oberlin College in Ohio, where he majored in History and Latin American Studies. Thereafter, Dominguez attended Chicago-Kent College of Law.

With a law degree and law license in hand, Dominguez had the distinction of working in the Criminal Division of the New York Legal Aid Society. Dominguez reminisces that "At the time, becoming a criminal defense lawyer was my dream job. However, after approximately 1,200 lawyers went on strike, then-Mayor Rudy Giuliani threatened to cut the public defender contract, so I headed back home. I became a reluctant farm worker and low-wage worker

attorney with Texas Rural Legal Aid (now Texas Rio Grande Legal Aid). After a month or so I fell in love with the work and have never looked back. I love representing working people.”

A recipient of numerous accolades, Dominguez especially cherishes being named the 2000-2001 Outstanding Ex for Socorro High School, and being awarded the 2010 Professionalism Award by the El Paso Bar Association and the 2007 Border Hero Award from Las Americas Immigrant Advocacy Center. His strong commitment to the El Paso community will undoubtedly gain for him many more recognitions in the future.

Dominguez firmly believes that he has a “responsibility to be involved” with organizations that affect his work and his clients. Hence, he considers organizations, like the El Paso Bar Association, to be very important institutions because they are focused on providing consistent quality services aimed at the betterment of others. Dominguez expresses his steadfast belief in the importance of being actively involved

with the El Paso Bar Association by asserting that “Staying involved insures that I stay informed about the different issues that affect my profession. Also, given that I practice in a very specialized area of law (employment and civil rights), it’s important that I maintain a relationship with lawyers that practice in other areas of law. Finally, I deal with many lawyers from other jurisdictions and I am frequently reminded that the unique level of professionalism and collegiality that we enjoy in El Paso is not accidental – it exists because of hard work and effort.” Asked what advice he could give to potential bar association members, Dominguez readily replied by saying “We belong to a demanding and honorable profession. We all have something to contribute, and there is a lot that we can gain, personally and professionally, by getting involved.” Undoubtedly, Dominguez exemplifies the spirit of American author Edward Everett Hale’s words: “I am only one, but I am one. I cannot do everything, but I can do something. And I will not let what I cannot do interfere with what I can do.”



*Lynn Coyle and Paco Dominguez,
wife and husband and law partners*

ADVANCE SHEET, circa 1214

■ BY CHARLES GAUNCE

Legal Reference Librarian The University of Texas at El Paso

Quaint: –adjective

1. having an old-fashioned attractiveness or charm; oddly picturesque: a quaint old house.
 2. strange, peculiar, or unusual in an interesting, pleasing, or amusing way: a quaint sense of humor.
 3. skillfully or cleverly made.
 4. Obsolete. wise; skilled.
- from dictionary.reference.com*

Used in a sentence: Looking up the meaning of words in a dictionary is quaint as it is usually much simpler to Google it on the internet.

I am often compelled to wonder what procedures we use today will be looked upon by future generations as being quaint observances of a long-past and oh-so-ignorant society.

Our case for consideration comes to us from Pleas before the Justices of the Bench and Pleas before the King during the Reign of John. Specifically, we are looking at the pleas of Trinity Term, A.D. 1214.

“William Trenchebof was said to have handed to Inger of Faldingthorpe the knife wherewith [Inger] slew Wido Foliot. He is suspected thereof [by jurors]. Let him purge himself by the water that he was not consenting [to the death]. He has failed and is hanged.”

If we accept the proposition that a trial is a search for “The Truth,” then it necessarily follows that determining the truth is central to the justice system. But how to do so? Our system currently relies on the finder of fact (usually the jury) to determine “The Truth” on the basis of evidence and vote on the outcome. Clearly, elections have consequences, but can we say that they are always correct? Or are we stuck with a system that provides a result only?

In his trial for providing the knife that was used to slay Wido Foliot, William Trenchebot was able to convince the jurors that he may not

have consented to the killing. But in the system of justice then prevailing, reasonable doubt was not the touchstone of justice. Since the jurors suspected William of some complicity, the Court subjected William to another authority and forced him to retrieve a stone from a caldron of boiling water. After three days, William’s arm was examined and found to be festering from the burn. Aha, “The Truth” has been discovered. William is clearly guilty, as an innocent man would not suffer from such burns. Being guilty, William was hanged for his crime.

While I have no clear insight as to what “The Truth” is, I suspect that submitting the determination to people whose insight is no clearer than mine is often no different than determining “The Truth” on the basis of mythology and an incomplete understanding of medicine. While Old English truth searching left a lot to be desired, will our methods fare the test of the centuries any better? Or will they be viewed as quaint?

|| EPYLA STAR OF THE MONTH ||

ALDO LÓPEZ

■ BY PATSY LÓPEZ

The El Paso Young Lawyer's Association (EPYLA) is pleased to introduce the Bar to its most active and reliable member, Aldo López, an associate with James & Haugland, P.C.

Aldo was raised on a farm in the El Paso lower valley by his parents, Dr. Hector López, a long time family practitioner, and Leticia Urteaga. The products of a very close knit family, Aldo, his two brothers, and sister spend much of their time at large family gatherings at their grandparent's home in Ysleta.

Aldo credits his strong family support system in helping him achieve his goals, particularly his mother who always keeps him focused and his 87 year old grandfather who balances him out by reminding him that all of the hard work should be balanced with a little fun. Some healthy sibling competitiveness from his brothers, who are physicians, and his sister, who will be receiving her J.D. in May also keep Aldo working hard and on his toes!

Although Aldo always thought that he would grow up to be a doctor like his father, he found that the law is where his heart was after a chance encounter with the 8th District Court of Appeals. As a sophomore in college, Aldo was given an opportunity by Chief Justice Barajas and then Justice Chew to work on a historical analysis of the 8th Court of Appeals. He spent a summer examining old case files for significant legal decisions of the Court and cases with historical significance to the El Paso area. He enjoyed the work so much that he decided to switch his focus to law.

Aldo went on to attend St. Mary's Law School from 2004 to 2007, and credits his uncle, Arturo Urteaga, a city prosecutor in Odessa, for helping guide him through the law school experience. Upon graduation Aldo returned to the 8th District Court of Appeals as a law clerk/research attorney in Chief Justice Chew's chambers before joining James & Haugland, P.C. in October 2009.

Aldo has been a member of EPYLA since he came back home in 2007 and served as board member from 2008-2009. He has not



Aldo López

only helped organize the EPYLA Basketball League for the past three seasons, but has also played in the league on a team which has been league champion for two of those three seasons!

This year Aldo has served on the Christmas of Hope committee and serves on a joint EPYLA-MABA committee. Aldo will modestly say that he tries to make myself available to the bar association; however, we can tell you that Aldo can always be counted on to attend meetings, support EPYLA functions, volunteer whenever he is needed and to follow through with any projects he takes up. Aldo is truly an outstanding member that EPYLA is proud to profile for the Bar.

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SENIOR LAWYER INTERVIEW

HECTOR ZAVALETA

■ BY CLINTON F. CROSS

Hector's maternal grandfather kept accounting records for Don Luis Terrazas, a Mexican politician and businessman. When asked by American meat packer Swift if he could provide his company with a hundred thousand head of cattle, Terrazas said, "in what color?" Asked at a social function if he was from Chihuahua, he responded "No soy de Chihuahua; Chihuahua es mio."

In keeping with the tradition of his ancestor, most campaign seasons find Hector serving as a treasurer for a local candidate. His participation in El Paso's political process is legendary, and his service in handling funds for political candidate after political candidate is a testament to his reputation for honesty and integrity.

CROSS: *I want to know about your ancestors and your parents. Tell me a little bit about them.*

ZAVALETA: My father, of Basque ancestry, was born in Roma, Texas. The family then relocated to Brownsville, Texas. My mother was born in a Chihuahua Hacienda, owned by Don Luis Terrazas, who before the Mexican Revolution owned almost if not all of the State of Chihuahua. My maternal grandfather kept accounting records for Don Luis Terrazas' massive land and agricultural holdings.

CROSS: *And your parents?*

ZAVALETA: My father at a young age was in route to California and decided to settle in El Paso. As a mechanic, he provided services to truck traffic at the El Paso City Market, then located two (2) blocks from our County Courthouse.

My mother was born in Chihuahua, Mexico in 1899. Her family escaped the dangers of the Mexican Revolution of 1910 by moving to Ciudad Juarez and finally settling in El Paso.

My parents married and purchased a very modest home and garage on Overland St. where my dad became well known in the automotive repair business.

CROSS: *Where did you go to school?*



Hector Zavaleta

I encourage all lawyers, especially those young ones to participate in law related organizations and to volunteer their time to community and charitable organizations.

An old lawyer once told me that he could not see himself waking up in the morning not being a lawyer. I share the feeling.

ZAVALETA: I attended grade school at St. Mary's, a school carried on by the Sisters of Loretto and then graduated from Cathedral High School in 1961.

After Cathedral, I enlisted in the United States Marine Corps and served four years, reaching the rank of Corporal E-4. I was recommended to enroll in the Officer's Candidate School program but declined.

I graduated from UTEP and St. Mary's School of Law. At UTEP, I worked in the School of Business and was encouraged to pursue the study of law by Professor L. Phillips Blanchard, himself a lawyer who attended Vanderbilt Law School and taught Business Law for numerous years at UTEP.

CROSS: *What was your first legal job?*

ZAVALETA: Throughout law school, I worked for Bexar County District Attorney Ted Butler and his First Assistant Charles Butts. I then clerked for State District Court Judge John Benavides and was then assigned as Bailiff for the Bexar County Grand Jury.

To let you know how old I am, while in the San Antonio D.A.'s office, I was the one and only person typing all the indictments returned by the Bexar County Grand Juries. No computers in those days.

CROSS: *After that what did you do?*

ZAVALETA: After my licensure, I taught Business Law at UTEP from 1972-1977 as

an Associate Professor. Many of my students now are practicing law all around me and I am proud of them.

I then joined Woodrow W. Bean II and formed the law firm of Bean, Zavaleta & Rosado practicing from 1973-1977. From 1979 to 1991 I practiced in the law firm of Ainsa, Skipworth, Zavaleta & Butterworth located at the old State National Bank and then the Cortez Building. After the firm dissolved, I bought a building at 615 E. Schuster where I am located at present.

Judge Enrique H. Pena invited me to join him as Mediator/Arbitrator at Texas Arbitration/Mediation Services (TAMS) and it is there where I have conducted hundreds of mediations and several arbitrations.

CROSS: *I know you have been involved in a lot of community activities.*

ZVALETA: I feel strongly that a lawyer must dedicate both time and effort to community causes. I have therefore served numerous legal and charitable organizations. Some are worthy of mention. I served as Director for the Lighthouse for the Blind; the El Paso Legal

Assistance Society; and the El Paso Art Museum Advisory Board and Foundation. I was a board member of the El Paso Public Service Board and served as Vice-Chair from 1991-1993.

I served as Municipal Judge, City of El Paso, from 1977 to 1981.

CROSS: *Haven't you also been involved in quite a few bar activities?*

ZVALETA: I was president, vice-president, and secretary-treasurer of the El Paso Young Lawyers Association. I was member of the State Bar of Texas Grievance Committee from 1977 to 1980; served as Director of the El Paso Mexican-American Bar Association from 1983-1985; and as Director of the El Paso Bar Association from 1983 to 1985. I assumed the presidency of the El Paso Mexican-American Bar Association from 1985 to 1987, and the presidency of the El Paso Bar Association from 1994-1995. I have served on the Boards of the State Bar of Texas, the State Bar Foundation, the College of the State Bar of Texas, and the Commission for Lawyer Discipline.

CROSS: *Have we covered it all?*

ZVALETA: For the past two (2) years, I have acted as Truancy Judge in a Pilot Program developed at Santa Teresa Middle School to assist students not attending classes or with excessive lateness. Every student that has participated in this program has graduated with improve grades and with a renewed sense of confidence to complete high school. There are numerous others that I can mention but am embarrassed to throw confetti on myself.

I encourage all lawyers, especially those young ones to participate in law related organizations and to volunteer their time to community and charitable organizations.

An old lawyer once told me that he could not see himself waking up in the morning not being a lawyer. I share the feeling.

CROSS: *Your family?*

ZVALETA: I married Gloria Lozano my second year of law school. We have been married 40 1/2 years; have two children, and 5 grandchildren.

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The El Paso Criminal Defense Lawyers' "Bar Association"

■ BY JUDGE DAVID GUADARRAMA

In 1993, El Paso County was suffering from budget constraints much like those of today. In an effort to reduce its overall budget, the Commissioner's Court made cuts to all departments' travel and training funding. At the Public Defender's Office, this meant no County funded CLE training. At that time, we were an office of about eight lawyers, with budget shortfalls of our own. We wondered how we would pay for our CLE. Mateo DeKoatz suggested we launch our own seminar. This would allow us to pick up the needed CLE at a minimal price.

The first order of business was to determine where we would have the seminar. We wanted a location that would attract as many criminal law practitioners as possible. We chose the scenic town of Silver City, New Mexico. Specifically, we chose accommodations at the Bear Mountain Guest Ranch, which were just a few miles out of town. With this we unceremoniously launched the First Annual El Paso Criminal Law Seminar. There were about 30 lawyers in attendance and seven speakers. The cost for 7 hours of CLE was a mere \$35.00; avoiding the wrath of the State Bar--priceless. We knew our stay at the Bear Mountain Guest Ranch would be interesting-- having never been there before and having selected the host facilities based on price rather than amenities.

On a crisp mountain morning on October 16, 1993, we trotted out the Public Defender's very own Bruce Weathers to talk to us about Appeals and thus kicked off our first CLE seminar. Our speakers that year also included Jim Darnell, Joe Spencer, Judge Bill Moody, Judge Robert Dinsmoor, John Gates and Michael Gibson. At noon, we cleared some of the chairs from the lecture hall to bring in the lunch tables. It was then that we were introduced to our cloth napkins that would have our names pinned to them and were told these would be assigned to us for the duration of our stay. Surely, the proprietor was environmentally conscious. Apparently, the cloth napkins saved trees and the one wash at the end of our stay would save water. At the end of the day, we were able to cover our speakers' expenses and had a little seed money for the next seminar. At the close of



business on that first day, Mike Gibson was so moved by the proceedings that he volunteered to be on the team for all future seminars.

Shortly after completion of the second seminar in October, 1994, I was elected Judge of the 243rd Judicial District Court and left the Public Defender's Office for the bench. This engendered the formation of the El Paso Criminal Law Group consisting of Mateo DeKoatz, Julie González (now Judge González), Clara Hernández (now the El Paso County Public Defender), Mike Gibson and I. We operated as the EP Criminal Law Group for almost two years with an eye on forming a non-profit, which we did on October 2, 1996 and attaining 501(c)(3) status, which we accomplished on September 21, 1999. This allowed us to continue the work we had started at the Public Defender's Office without having to deal with the ever present procedural red tape. The Board of Directors at incorporation and continuing through today include the above-mentioned individuals. No one on the board receives any compensation but we are reimbursed for expenses we incur in attending the seminar.

After the 4th seminar, we began to see

further success. We decided we would donate some of the proceeds, those which exceeded our operating expenses, in the form of scholarships to local high school students wanting to go to college. Because of our experience in criminal defense, we had all seen the unfortunate pattern of representing multiple generations of the same family who were on their way to the penitentiary. Our plan was to target those students who had "at risk" backgrounds. We wanted to break the cycle. We believed we could give these students one year in college, expand their horizons and hope they would find a way to finish.

After a few years of using essays and life histories in deciding to whom to award scholarships, Mateo hatched the idea of an art contest with the theme of "Justice for All." Now every year we look forward to April when the artwork is submitted for judging. Since no one on the Board is an artist in residence, we each vote on which pieces we like best and we average the scores to determine the winners. Each year in April, we conduct an official award ceremony. In the past, we held the ceremony on the 3rd Floor of the County Courthouse. This year we hope to move the ceremony to the 2nd

floor landing in the Albert Armendariz, Sr. Federal Courthouse. As was the practice in the past, this year the artwork will be displayed at the courthouse for all to see for the two weeks prior to the ceremony. Some of the winning entries from previous years can be seen today adorning the walls of the El Paso County Public Defender's Office, County Court at Law No. 2 chambers, and the United States Magistrate Court chambers on the 4th Floor.

On the day of the Awards Ceremony, thanks to our partnership with Rocio Villalobos and the Ysleta School District's Fine Arts Department, we are able to sponsor some food, punch and music. The public is welcome and invited to share some time with our winning artists, their teachers and their families. Note that we would love to see more of our El Paso lawyers and friends attend the ceremony.

The scholarship funds, \$5000.00 each year, are divided among a first, second, and third place winner. In this same fashion, over the years, the Criminal Law Group has awarded over \$50,000.00 in scholarships. The success of the seminar and the scholarship program is solely due to the good nature of our patrons, and they have our sincere thanks. We are very proud of our community and criminal law practitioners. In November 2010, we concluded our 18th Annual El Paso Criminal Law Seminar. We have generally chosen local talent from the defense and prosecution to serve as our speakers. We have on occasion employed out-of-town talent to stay abreast of the current trends.

The annual seminar has become the local criminal law practitioners' seminar and has developed a following of loyal regulars. We express our gratitude to those loyal regulars, some of whom have never missed a seminar. Lately, the seminar's home has been the Inn of the Mountain Gods, which goes a long way to attract our brothers and sisters from various parts of New Mexico and Texas. It has become more than a convenient way for New Mexico and Texas lawyers to obtain needed CLE; it has become an event for fellowship. We encourage the defense and prosecution to attend and serve as speakers. Our 19th Annual El Paso Criminal Law Seminar is scheduled for November 4-5, 2011. We hope to see you all there. Ideas on seminar topics and speakers are welcomed and can be communicated to any of our Board members.



Legal Literati

This month the El Paso Bar Journal literary page presents a poem by Judge Oscar Gabaldon (first published in the El Paso Bar Bulletin in 2001)

THE PLIGHT OF THE JUDGE

A Solomon they say I'm suppose to be
No follies, no wavers expected of me

To listen and listen all day, if not two
And wait till the end when I'm told I must rule

Alone I am not in this noble pursuit
Fairplay and the laws to interpret I do

The laws are true friends, and justice the best
When seeking to right and put conflicts to rest

Belief in the truth, my guide, I can't lose
So long as commitment to this I do muse

My mind, and my heart and some sense I do use
For these are the greatest of gifts I can choose

To judge that before me, important it be
Some hearts melancholy, their spirits bereaved

My head held up high that I might yet see
Beyond the frontiers of people like me

In this rests my soul, my whole inner being
Find peace and consolement, which right will soon bring

The vision which guides me along in my task
Do I have compassion? Everyday do I ask

I only can try to be the best I can be
In helping a neighbor, a foe, in a court that is me

And come to my end so serene, so resolved
Because in His Mercy, my sins are absolved

The judge be now judged as the judge that I was
To bask in the reign or forever by actions my joy might I toss.

Attorneys, Are You Fair in Your Client Fee Arrangements?

■ BY JUDGE OSCAR GUILLERMO GABALDÓN, JR., CWLS

“I fully realize that no wealth or position can long endure, unless built upon truth and justice; therefore, I will engage in no transaction which does not benefit all whom it affects.” With these words, author Napoleon Hill presents the all encompassing reach of fair play in our dealings with others. That is, he recognizes “fairness” as a necessary ingredient in our personal and professional relationships.

When we proceed to relate to others in a manner that omits fairness as a central focus of how we relate, we risk giving birth to distrust, resentment, and other negative and possibly chaotic outcomes. Often, the whole idea of fairness surfaces in attorney-client relationships, particularly in regards to the issue of attorneys’ fees. The attorney-client fee arrangements automatically entail ethical considerations that are centered on an ideal of fairness. When the ethical aspects of attorney-client fee arrangements are ignored or given only peripheral or cursory attention, the potential for claims of conflicts of interests, client exploitation, or other such anomalies significantly grows.

Attorney fee situations must be addressed in a manner that is legal, ethical, and, of course, fair. Hence, we commonly, and rightfully, resort to written fee agreements. In his article *Attorneys’ Fees: How to Avoid a Conflict with Your Client* (2010), Mark A. Neubauer discusses three categories of retainers, namely, the classic retainer, the security retainer, and the advance payment or flat-fee retainer.¹ He explains these: “The classic retainer is earned in its entirety by the attorney upon payment and the client relinquishes all interest in its return. A security retainer is a payment for prospective services, where the client retains an interest in the funds until the services are actually rendered. The attorney holds the funds as an escrow holder for the client. Finally, an advance payment or flat-fee retainer involves fees paid as compensation for services to be rendered in the future.”

However, regardless of the category of the retainer or fee agreement, such agreements must be clear and unambiguous, adherent to sound and established contract rules, and yes,



The wise attorney knows that taking preventive measures by developing balanced, fair, and appropriate fee agreements with clients is golden. Often, due to haste, neglect, procrastination or some other reason, attorneys do not take the time to develop such agreements, and this places them at risk in the event a dispute or other conflict that may surface in relation to the legal representation.

fair. Since often times the attorney is in the much better position to steer fee negotiations, it is incumbent on the attorney to maintain unwavering integrity in fairly assessing the value of the legal services to be rendered. The attorney has an ethical obligation to become and stay informed about what reasonable fees may entail, taking into consideration factors such as the type of case, time considerations, professional experience, attorney reputation and ability, customary fees for similar cases, the complexities involved, and the level of legal intervention or expertise that may be required to effectuate good legal representation and the best possible legal outcomes.

The wise attorney knows that taking preventive measures by developing balanced, fair, and appropriate fee agreements with clients is golden. Often, due to haste, neglect, procrastination or some other reason, attorneys do not take the time to develop such agreements, and this places them at risk in the event that a dispute or other conflict may surface in relation to the legal representation. Therefore, it is

imperative that attorneys be vigilant of this, and that they timely craft fee agreements in a manner that lays out everything on the table with clarity, openness, and fairness. In line with the creation of these agreements, attorneys should consistently follow up with assuring the maintenance of accurate time sheets, as well as with presenting billing descriptions that provide the client with a good understanding of the professional services.

In determining whether attorneys’ fees are reasonable, attention should be paid to factors set forth in Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly; (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length

of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the service; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Some of the leading cases in relation to attorneys' fees in Texas include *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997), *DeBakey v. Staggs*, 605 S.W.2d 631 (Tex. Civ. App.—Houston [1st Dist.], writ ref'd n.r.e. per curiam, 612 2d 924 (Tex. 1981), and *Burnside Air Conditioning & Heating, Inc. v. T. S. Young Corp.*, 113 S.W.3d 889, 897-98 (Tex. App.—Dallas 2003, no pet.).

The Texas Disciplinary Rules of Professional Conduct may change in the near future. The Texas bar is in the process of voting in the referendum on the proposed Texas Disciplinary Rules of Professional Conduct (Article X). Section I, Rule 1.04 of the proposed rules addresses "Fees." According to the Bar proposal "a fee is clearly excessive when, after a review of the facts, a reasonable lawyer would be left with a firm belief or conviction that the fee is in excess of a reasonable fee."

It is incumbent on attorneys to be fully aware of the rules and proposed rules regarding fees and other disciplinary rules, as well as of other ethical canons, case law, and guidelines concerning fees. There are also other very helpful sources on the subject of attorneys' fees. For example, the book *Attorney Fee Awards* (2010), written by Leonard Bucklin, contains pertinent sections such as "Eight Factors of a Reasonable Fee," which addresses categories such as Legal Assistant hours, Lodestar Fee, Contingency Fee cases, and Time Records, among other fee-related areas.

At the core of any treatment of the subject on attorneys' fees is fairness. Fairness embraces more than just equity and distributive justice. Fairness may be challenging to quantify, yet it is an essential element of society and of other cultural systems, such as law and economics.

Most would agree that fairness involves three aspects or dimensions. First, there is procedural fairness, which relates to how decisions are made. This would include things like being given advanced notice, a meaningful opportunity to present a position, and being afforded meaningful reasons for the taking of certain decisions. Second, there is substantive fairness, which has to do with the fairness of the decision itself. This includes things like having decisions made that are not oppressive or unreasonable, assuring that decisions are legal or properly authorized, and that decisions do not require anyone to do anything illegal. Lastly, there is relational fairness, which deals with how people are treated during the decision making process. Relational fairness calls for people to relate in a manner that is respectful. It involves things such as active listening, respect for confidentiality, and being clear with others about expectations.²

While one often looks at fairness from a holistic point of view, that is, from an overall stance, fairness is also considered with regard to each piece (of the whole) that contributes to the overall assessment of someone or something being fair. For example, in order to be considered a fair individual many people will first assess that individual's integrity, character, perceptions, perseverance, motivations, speech, and other "pieces" as to who that person is and what that person does or fails to do. Depending on what is determined on those particular aspects of the individual, the person is then looked at as either being a fair person or not a fair person. In the same way, one looks at a scenario or a situation and evaluates it accordingly. One first considers individual aspects of the scenario or situation. For example if a judge sanctions an individual, the particulars of what led to the kind of sanction is looked at first to decide whether to label the judge's action as fair or unfair. Questions are asked. What was the nature of the offense? Were there exculpatory factors? What were the specific circumstances

surrounding the offense that led to the sanction? Thus, fairness in attorney-client negotiations, or in relation to anyone else for that matter, always involves the application of prudent analysis, a good dose of common sense, understanding, genuine empathy, and a sincere appreciation for truth and justice in order to achieve the best determinations of fairness.

For the most part, individuals want to be fair in their dealings with others. In their humanity, though, many sometimes falter and engage in unfair tactics and approaches. They will also sometimes engage in the act of rationalizing in order to justify their less than prudent or appropriate choices and behaviors. This is self-serving and shows a disregard for others. Greed, anger, selfishness, prejudice, self-pity, avarice, envy and other similar feelings often alienate us from doing what is fair. The more people engage in these behaviors, the closer the behaviors come to becoming habits---bad habits. Bad habits, in turn, lead to the development of negative character. Once caught in that cycle, it becomes very difficult to escape the clutches of that monster we call "unfairness."

In our dealings with our clients, let us tenaciously strive to be fair. In that way, we will honor ourselves and our children. The American activist for children's rights, Marian Wright Edelman, once wisely suggested, "Live so that when your children think of fairness and integrity, they think of you." In so doing, the highest values of our community are passed on to another generation.

1. Mark A. Neibauer, an attorney in Los Angeles, California, and a former editor-in-chief of the professional publication *LITIGATION*, published his article on attorneys' fees in Volume 36, No. 4, of the Summer 2010 issue of *LITIGATION*.
2. The source for these three aspects of fairness comes from the publication *Understanding Fairness, a Handbook on Fairness for Manitoba Municipal Leaders*.



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Best One Button Desktop Scanner for Moderate Use

BY DAVID J. FERRELL
djf@elpasolaw.com

I have document scanners all over my office, HPs, Xerox and Fujitsus. My favorite is my Fujitsu ScanSnap S1500. This is an inexpensive desktop scanner that is in my office for my immediate use. My staff also has immediate use of scanners at their desks, and we use them!

The ScanSnap S1500 has been rated as "Best in Class Performance!" It has excellent speed and quality. This scanner is used for PC scans up to 20 pages per minute in color, grayscale, or black and white at 300 dpi resolution. You can stack up to 50 pages into the automatic document feeder (ADF) and press the "SCAN" button to scan both sides of each page in a single pass. There are two cameras in this scanner. A scanner is nothing more than a digital camera created for a particular use, that is, using computer technology to maximize document storage and indexing. The S1500 automatically recognizes the size of each document, detects and corrects for skew, and shows images in their proper orientation with blank pages being automatically removed.

This scanner is equipped with a multi-feed detection sensor that can be turned on to help you avoid losing images. It also has an interactive interface allowing you to easily and quickly bypass intentional double-feeds such as a taped-receipt on an expense report or even a sticky note.

The provided software presents "The Quick Menu" which allows you to quickly

transition between different scanning intentions. Just press the scan button and choose what you want ScanSnap to do, i.e.:

1. Scan to Folder: Store PDF scans to a folder. PDF files are the document files for all seasons!
2. Scan to Email: Eliminate faxing and share electronic documents over email.
3. Scan Business Card: Scan business cards and automatically extract contact information.
4. Scan to Print: Use ScanSnap with your printer to create copies.
5. Scan to Word (.doc): Scan directly to an editable Word file (scan that entire discovery, those interrogatories, request for production, admissions etc.).
6. Scan to Excel (.xls): Scan directly to an editable Excel file.
7. Scan to PowerPoint (.ppt): Scan directly to an editable PowerPoint file.
8. Scan to Picture Folder: Store JPEG scans to a folder.

By the way there is a Fujitsu ScanSnap M1500 for Mac users.

To see a flash video on the Scan Snap S1500 go to elpasolaw.com and click on the Desktop Scanner link on the left side of the home page or type the following URL into your browser address bar.

http://www.elpasolaw.com/desktop_scanner.htm



Name:

Richard Ainsa

Court:

Juvenile Court Referee #1, for the 65th District Court

Prior Judicial Experience:

12 years as a part or full time Municipal Court

Judge and 10 years as the Juvenile Referee.

Education:

Cathedral High School; UTEP - B.S. in Biological Sciences; University of Texas School of Law.

How do you view your court's role in society?

My ultimate goal is to get the juvenile and his or her family back on track with their lives. It is important to recognize that a majority of juvenile delinquency has its roots in a dysfunctional family. Therefore, it is important that we address juvenile behavior holistically; identifying and treating the family's problems, as well as addressing the juvenile's conduct and problems. Accountability is a major component of our treatment.

What do you think are most important characteristics for a judge to possess?

A judge must approach all cases with an open mind, no pre-conceived opinions, and must listen patiently to all the facts from all sides before making any decision. It is very easy to fall into the trap of prejudging a case simply because of a few heinous facts. So you must guard against this in order to be fair and impartial to all participants.

Do you feel you are making a difference as a juvenile court referee?

Of course, but I would tell you that "success" is sometimes difficult to observe and quantify. In my line of work, progress is usually slow and incremental. But, in the end, you do see that you have made a difference; you just have to be patient.

What do you like to do in your spare time?

I like to read, especially fiction and particularly books by Daniel Silva and Lee Child. When I'm not working or reading, I'm usually out in the yard gardening; it's the only place you find a lot of peace and quiet.

SAVE THE DATE
**15TH ANNUAL CIVIL
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February 18 & 19, 2011
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Please make a note that this is a long weekend
 so you can make plans to go skiing.

▶▶▶ ASSOCIATION NEWS

The El Paso Paralegal Association

♦The El Paso Paralegal Association will hold its February meeting on Thursday, February 17, 2011 from 12:00 noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker & Topic: TBA. The cost for lunch, which is optional, is: \$15.00 buffet or \$10.50 salad bar (price may increase). Please RSVP for the luncheon with Peggy Dieter at Kemp Smith: 546-5267.

♦The El Paso Paralegal Association will hold its March meeting on Thursday, March 17, 2011 from 12:00 noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker & Topic: TBA. The cost for lunch, which is optional, is: \$15.00 buffet or \$10.50 salad bar (price may increase). Please RSVP for the luncheon with Peggy Dieter at Kemp Smith: 546-5267.



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February 18 & 19, 2011

Inn of the Mountain Gods, Mescalero, New Mexico

Pending Approval by the State Bar of Texas
& State Bar of New Mexico

10.25 hours of MCLE/1.5 hours of Ethics

Bruce Koehler, Moderator

Judge Linda Chew & Francisco Dominguez, Course Directors

Join us for a Weekend of Fun & Education

SCHEDULE (Subject to change)

Friday, February 18, 2011

- 7:30 a.m. **Registration begins & Breakfast on your own**
- 9:55 - 10:00 a.m. **Welcome by Bruce Koehler**
- 10:00 - 11:00 a.m. **Deposition Strategies and Technique**
Jeff Ray, Ray, Valdez, McChristian & Jeans, P.C., El Paso and E. Link Beck, Beck & Hall, P.C., El Paso
- 11:00 - 11:45 a.m. **E-Discovery**
Carlos Rincon, Rincon Law Group, El Paso
- 11:45 a.m. **Lunch (to be provided)**
- 12:00 - 1:00 p.m. **Keynote Speaker**
- 1:15 - 1:45 p.m. **Daubert**
Joe Hood, Windle, Hood, Alley, Norton, Brittain & Jay, LLC El Paso
- 1:45 - 2:30 p.m. **Employment Law Issues for Lawyers**
Joleen Youngers, Santa Fe, New Mexico
- 2:30 - 3:00 p.m. **Unique Issues in Federal Court Practice**
The Honorable James Parker, United States District Judge
- 3:00 - 3:15 p.m. **Afternoon Break**
- 3:15 - 4:00 p.m. **Current Hot Topics in Immigration**
Iliana Holguin, Diocesan Migrant & Refugee Services, El Paso
- 4:00 - 5:15 p.m. **Texas/New Mexico Law: Differences Every Lawyer Should Know**
Professor Emeritus Ted Occhialino, University of New Mexico Law School, Bob Trenchard, New Mexico
- 5:30 - 6:30 p.m. **Sponsor Reception**

Saturday, February 19, 2011

- 7:30 - 8:30 a.m. **Breakfast**
- 8:30 - 9:00 a.m. **Jury Selection Tips and Techniques**
Bob Slabin, New Mexico
- 9:00 - 9:30 a.m. **Jury Charge/Preservation of Error**
Henry Paoli, Scott & Hulse, P.C., El Paso
- 9:30 - 10:30 a.m. **State Supreme Court Update**
Texas: Justice Guadalupe Rivera, 8th Court of Appeals, El Paso New Mexico: Judge Sara Singleton
- 10:30 - 10:45 a.m. **Morning Break**
- 10:45 - 11:15 a.m. **Collection of Judgments or Show me the Money**
Susan Forbes, Forbes & Forbes, El Paso
- 11:15 - 12:15 p.m. **Trial Technology Issues**
David Jeans, Ray, Valdez, McChristian & Jeans, P.C., El Paso and Roger Miller, Altep, Inc., El Paso
- 12:15 - 12:45 p.m. **Update/Status on the Rules of Disciplinary Conduct**
Steven C. James, El Paso

Door prizes will be given throughout the Seminar
Course Materials will be in the form of a flash drive
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500 E. San Antonio, L-112 **\$350 - Nonmembers**
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