



EL PASO BAR JOURNAL

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An Update of Events and Information

EIGHTH COURT OF APPEALS CENTENNIAL EDITION

June 2011

A History of The Texas Appellate System and Attempted Reforms

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Senior Lawyer Interview

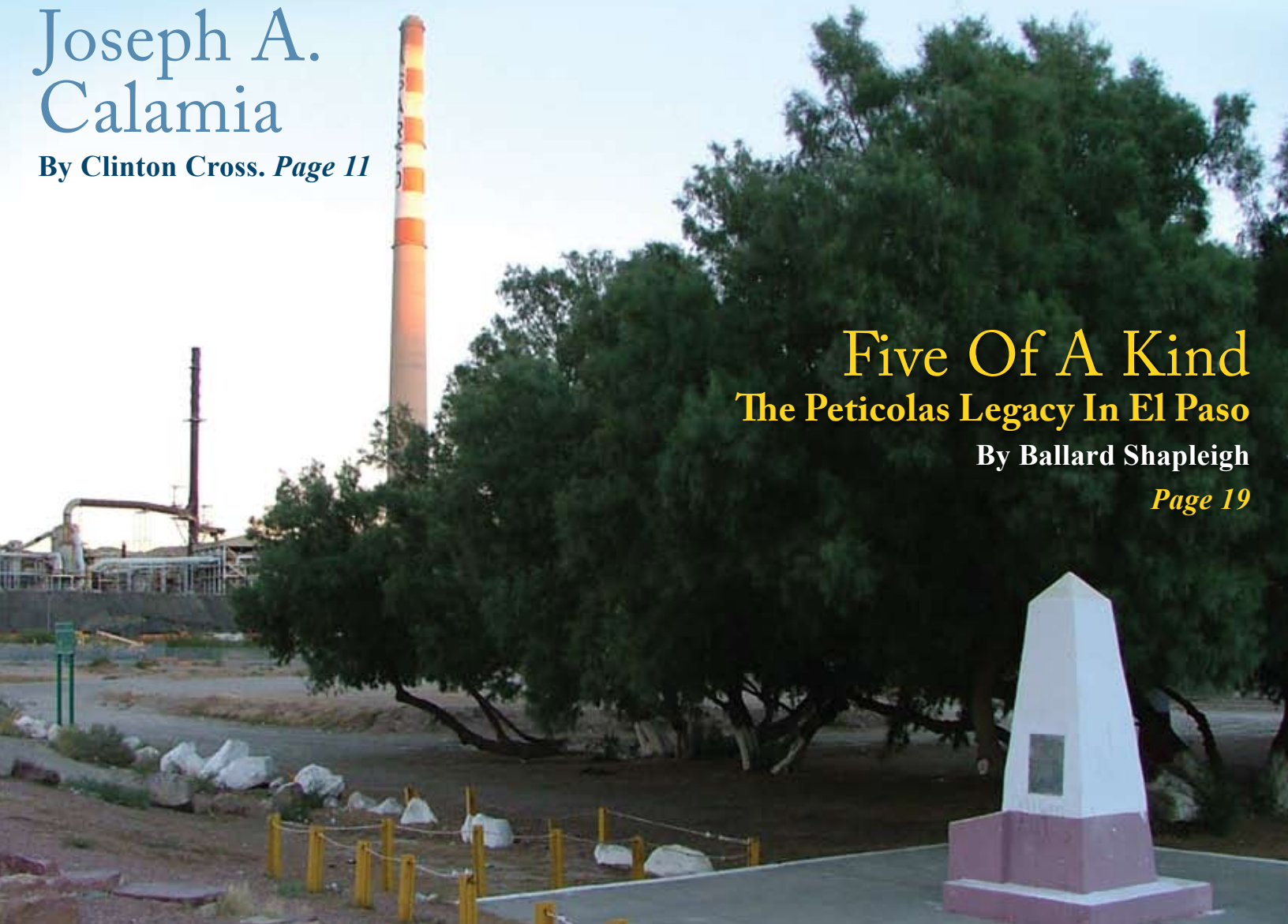
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THE PRESIDENT’S PAGE



The Year of the Storyteller

The answer is always in the entire story, not a piece of it.

Jim Harrison

What a wonderful year 2010-2011 has been for the El Paso Bar Association! We have worked, listened, learned, and celebrated together as storytellers this year. The successes of the EPBA this year should be gleaned from the entire year, and not just a piece of it.

The year started last June with the Board of Directors working on a Strategic Plan - a road map for the organization and its leadership to use while navigating professional and volunteer service. The Strategic Planning committee, chaired by Myer Lipson, developed the Strategic Plan for implementation by the EPBA Board of Directors. The Strategic Plan is a great accomplishment and will help the EPBA remain relevant to the legal community and its members.

The EPBA monthly luncheons were filled with great presentations, great speakers, and great CLE. From the presentations on our Constitution, pro bono service, veterans, 50 year lawyers, the effective use of stories in trial, immigration, the State Bar President-Elect candidates, and mental-health issues, to professionalism and our Law Day Awards - each EPBA monthly meeting has been a celebration of our great profession.

In October, the EPBA developed and implemented the Second Annual Access to Justice Fair. Under co-chairs Laura Enriquez and Jaime Sanchez, with great help from Beto Mesta, Graciela Martinez, and the wonderful staff of Texas Rio Grande Legal Aid, the EPBA provided information and legal services to more than 400 people in our community who could not afford to pay for legal services. Thirty-seven attorneys volunteered their time and professional expertise to this very successful event.

The EPBA continued its pro bono efforts in November through the work of El Paso Lawyers for Patriots, which is an extension of the State Bar initiative Texas Lawyers for Texas Veterans. Having received a sizeable grant from the Texas Access to Justice Foundation, EPLP put together a program of great speakers, dignitaries, twenty veterans' agencies, and thirty-six local attorneys to provide information and legal consultations to over seventy veterans and their families. Don Williams and his amazing EPLP committee, with great help from the staff of Texas Rio Grande Legal Aid, certainly made an impact on the veteran population in El Paso. EPLP quickly began working on obtaining additional grants and instituting additional programs and legal clinics.

The Joint Bar Association Holiday Party in December was a great success thanks to the hard work of Judge Maria Salas-Mendoza, Yvonne Acosta, and Kamie Smith. Those who attended the celebration had the great opportunity to enjoy their fellow colleagues' company as well as the opportunity to bid on fabulous silent auction items. Proceeds of the silent auction benefitted the El Paso Bar Foundation.

In February, the El Paso Bar Association's quest to provide pertinent, current and relevant continuing legal education took our attorneys to Ruidoso, New Mexico. The CLE Committee, co-chaired by Judge Linda Chew and Paco Dominguez, developed and implemented the 15th Annual Civil Trial Seminar full of CLE for those licensed in Texas as well as New Mexico. Attorneys from El Paso, West Texas, and New Mexico all benefitted from this great program.

The Law Day celebration brought something new to the EPBA as well as the El Paso community. The Storytellers event featured three singers/songwriters, Don Schlitz, Scotty Emerick, and Allen Shamblin, who not only performed their very famous music, but also shared the stories behind the music. El Paso lawyers, judges, and members of the public enjoyed an unforgettable evening of music, stories, and fun. Proceeds from the event benefitted the El Paso Bar Foundation.

In late May, El Paso Lawyers for Patriots with the El Paso Family Bar Association and Army OneSource presented a two-day seminar entitled “Legal Issues Affecting Veterans, Retirees, Active Duty Military and Their Families.” This seminar provided high caliber CLE and training to local attorneys regarding the special legal issues often encountered by those who have served or continue to serve our country in the military. Don Williams and the amazing EPLP committee presented a quality program and once again showed what great passion and determination can do to address legal issues of those in need.

continued on page 4

Cover: A current view of the area around Boundary Marker One where Madero's Camp was located from the U. S. side looking back across the Rio Grande at the soon-to-be demolished ASARCO smokestack. smokestack.river

And finally, on June 11, the Eight Court of Appeals will hold a Centennial Celebration at the Currey Adkins Conference Center. Keynote speaker Dr. Allison Brownwell Tirres will present "Lawyers and Legal Borderlands." Please make plans to attend this great event!

At the June 14 monthly meeting, which is also the

official 100th Anniversary of the Eighth Court of Appeals, the story of the 2010-2011 year in the El Paso Bar Association will come to an end. Celebrate the success of the year in its entirety with great hope and anticipation for continued success in the years to come. Thank you to the 2010-2011 EPBA Board of Directors, Nancy Gallego, and the lawyers and judges of El Paso

– you are the true storytellers of our great profession. May we all continue to keep the story of our wonderful profession relevant, vibrant, and honorable!

Chantel Crews

Chantel Crews, PRESIDENT

EL PASO BAR ASSOCIATION June Bar Luncheon

Tuesday, June 14, 2011

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

We will have the swearing in of the 2011-2012 Officers and Directors

Bruce Koehler, President
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Yvonne Acosta
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Director - 1 year term
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Approved for ½ hour of Participatory Ethics

Please make your reservations by Monday, June 13, 2011 at noon
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

2011-2012 Dues Statements

The 2011-2012 Dues Statements for the El Paso Bar Association have been mailed out, please fill out and return to the El Paso Bar Association Office.



Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office. An article in the Bar Journal is not, and should never be construed to be, an endorsement of a person for political office.

CALENDAR OF EVENTS

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 September, 2011, please have the information to the Bar Association office by Monday, August 1, 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.

JUNE, 2011

Tuesday, June 7

EPBA BOD Meeting

Saturday, June 11

8th Court of Appeals Celebration

Tuesday, June 14

EPBA Monthly Luncheon

Swearing In of New Officers/Directors

Thursday, June 16

EPBA Monthly Luncheon

Sunday, June 19

Father's Day

Monday, June 20

EPBA Office Closed Juneteenth Day

JULY, 2011

Monday, July 4

EPBA Office Closed, Independence Day

AUGUST, 2011

Friday, August 12

Lawyers for the Art CLE

Saturday, August 13

Plaza Classic Film Festival

EPBA sponsors "Young Abe Lincoln"

Notice: Plaza Classic Film Festival

The El Paso Bar Association is happy to announce that we will be a sponsor of the Plaza Classic Film Festival to be held on August 4-14, 2011. We will be sponsoring "Young Abe Lincoln" to be shown on Saturday, August 13, 2011 with a discussion to follow.

We will be sponsoring a CLE program with the El Paso Museum of Art on Friday, August 12, 2011 from 2-5 p.m. (please see back cover of June Journal for complete information on the CLE)



Law Professor Featured Speaker at Court of Appeals Celebration

DePaul University law professor Allison Brownell Tirres will be the featured speaker at the June 11th event celebrating the 100th anniversary of the creation of the El Paso Court of Appeals.

Professor Tirres received her bachelor's degree magna cum laude from Princeton University

in 1996 and then studied at the Universidad Nacional Autonoma de Mexico in Mexico City. In 2001, she received a master's degree in history from Harvard University. In 2004, she was awarded a doctor of jurisprudence degree, also from Harvard University, where she was editor and treasurer of the

Harvard Law Review. In 2008, she obtained a doctorate in history from Harvard. She is currently working on a book on the legal history of the U.S.-Mexico border.

At DePaul University Professor Tirres teaches Property, Legal History, and Immigration Law and Policy.

MY DEMONS WERE REAL

Get a copy signed by the author:

Saturday, June 18, 2011, 2:00 p.m. Barnes & Noble

705 Sunland Park Drive, El Paso, TX 79912

For more information, call 915-581-5353

About the Book

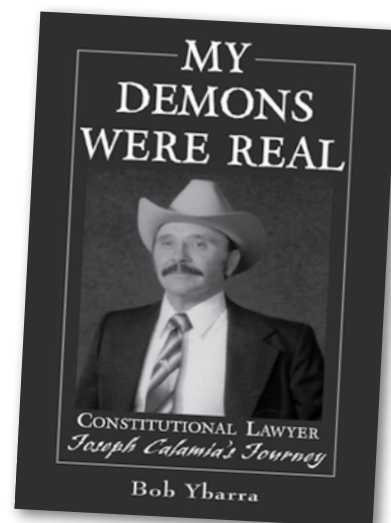
Joseph Albert Calamia began his career as a criminal defense attorney in El Paso, Texas, in 1949. He was a crusader for justice, considered by many to be akin to Don Quixote, tilting at windmills. But he disagreed, "The big difference is that my demons were real." His

demons were the institutionalized practices that favored expediency over the rights of individuals; he spent his lifetime fighting to ensure peoples' rights were not trampled by law makers and enforcers.

Over the course of his long career, Calamia successfully challenged a host of attacks against civil liberties, including

police undercover tactics and the constitutionality of searches and seizures in drug, immigration, and other cases.

Published as part of the Hispanic Civil Rights Series, this enlightening book documents the efforts of a man who devoted his life to protecting the Constitution and the Bill of Rights.



THE LAW WEST OF THE PECOS

BY JACQUELINE SHI

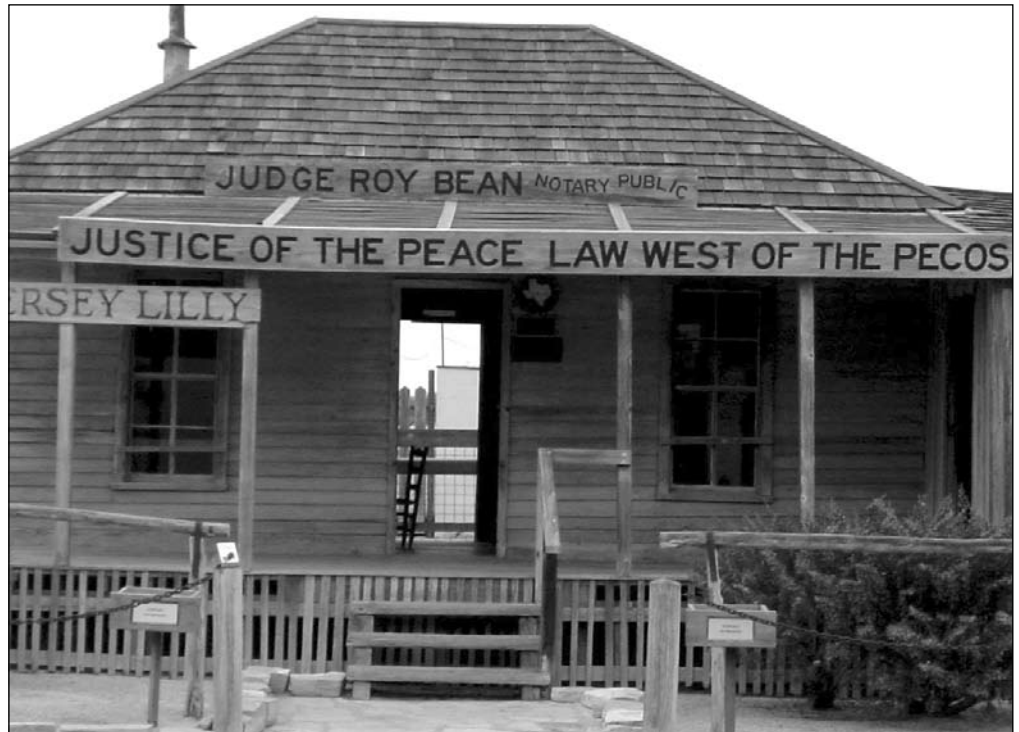
Law Clerk for Chief Justice David Chew

The City of El Paso v. Irene Granados (No. 08-08-00316-CV, Feb. 23, 2011, 2011 WL 648215)

Irene Granados worked as an assistant route foreman for the City's Waste Management Department from June 2000 until February 9, 2005. On her last day of work, she received a "Notice of Separation" from her employer.

Granados filed an appeal with the Civil Service Commission, and the commission upheld the City's decision in a final decision issued on October 13, 2005. On November 4, 2005, Granados filed a discrimination charge with the Civil Rights Division of the Texas Workforce Commission, charging the City with sex discrimination and retaliation. The Texas Workforce Commission then issued its "Notice of Right to file Suit," and Granados filed her original petition on February 2, 2007. She alleged in her petition that the City discriminated against her based on sex by using her sex as a motivating factor in the City's decision to terminate her employment. She alleged she was subjected to an abusive and hostile work environment, and was terminated in retaliation for having complained of discrimination to her employer. The City answered with a general denial and plea to the jurisdiction. In its plea, the City alleged the trial court lacked subject matter jurisdiction over the case because Granados failed to timely exhaust her administrative remedies because she did not file an administrative discrimination charge within 180 days of her termination.

The City then filed a motion for summary judgment, including a plea to the jurisdiction, in which it argued Granados's discrimination and retaliation claims were time barred because of her failure to file her claim within 180 days after the alleged unlawful employment practice to later maintain suit under the Texas Commission on Human Rights Act. The City argued the time limit started to run on February 9, 2009, the day she received the Notice of Separation. As a result, her November 4, 2005 complaint with the TCHR was untimely. Granados responded by arguing that the 180-day time limitation did not begin to run until October 13, 2005, when the Civil Service Commission sustained the City's decision to terminate her employment, and the City's adverse employment was thus finalized.



The trial court held two hearings on the issue. At the close of the second hearing, the court ruled in Granados's favor and denied the City's motion. The City filed a notice of interlocutory appeal with the Court of Appeals of the Eighth District of Texas, in which it raised two issues: (1) the trial court erred by denying its plea to the jurisdiction because Granados's failure to timely file an administrative complaint deprived the trial court of subject matter jurisdiction; and (2) the Civil Service Commission proceedings did not modify the 180-day jurisdictional time limit for filing an administrative complaint.

The Court of Appeals began its analysis by addressing the plea to the jurisdiction issue, as it related to the City's two issues. In Texas, a complaint of unlawful employment discrimination must be filed with the EEOC of the Texas Commission on Human Rights within 180 days after the alleged unlawful employment action occurs. This limitations period is mandatory and jurisdictional, and failure to timely file an administrative complaint deprives Texas trial courts of subject matter jurisdiction over a subsequent claim against the employer. The Court's reading of the Texas

Labor Code indicated the limitations period began when the employee was informed of the allegedly discriminatory employment decision. Moreover, the date the allegedly discriminatory decision went into effect, or the date on which the effect of such decision was realized by the employee, did not modify the commencement of the 180-day period.

In the instant case, there was no dispute between the parties that Granados received notice of the City's decision to terminate her employment on February 9, 2005. The fact the Civil Service Commission appeals process may have reversed the City's allegedly discrimination act did not modify the date on which the act itself took place. The Court thus concluded the 180-day time period began on February 9, 2005, and Granados' administrative claim was not timely filed. Absent a timely filed administrative claim, the trial court lacked subject matter jurisdiction over the case. Accordingly, the Court sustained both of the City's issues, as they pertained to the City's plea to jurisdiction, and reversed the trial court's order, granted the plea to the jurisdiction, and rendered judgment that the case be dismissed.

A History of The Texas Appellate System and Attempted Reforms

■ BY JUDGE WILLIAM E. MOODY

The only connection with the judicial branch of government for most people is with the trial courts: municipal, justice of the peace, county, and district. Traffic tickets, divorces and jury duty are the only glimpse most citizens have of the judicial system. Most cases are resolved at the trial court level. Few cases reach the Texas Courts of Appeal, the Court of Criminal Appeals, or the Texas Supreme Court. Even though all cases are entitled to one appeal, the process can be expensive and complex. Different procedural rules apply that must be strictly followed or else an appeal can be summarily dismissed.

It has been noted by numerous legal scholars that Texas has one of the most fragmented and complex court systems of all of the fifty states. Texas is one of only two states with two separate high courts of appeal, the Supreme Court for civil cases and the Court of Criminal Appeals for criminal cases.

The history of Texas' court structure began with the founding of the Republic of Texas and its initial Constitution. The Constitution vested judicial power in a supreme court presided over by a chief justice and district judges that rode circuit over large territorial districts. They were elected by the Congress of the Republic, not by popular election or by presidential appointment, and served four-year terms. Judges were prohibited from hearing appeals of cases they presided over at the trial level. A similar system existed in Tennessee and other southern states at the time. President Andrew Jackson, a close friend of Sam Houston, had served on the Supreme Court of Tennessee in a similarly structured appellate court system.

When Texas became a state in 1845, a new constitution was drafted. There were 61 delegates appointed to the 1845 constitutional convention. Its most prominent member, Sam Houston, never attended. Thomas Rusk, a leader in Texas' bid for independence, was unanimously elected as President of the convention. He had previously served as Chief Justice of the Supreme Court from 1838 to 1840 and been elected President of the

Alman Collection, El Paso Public Library



The El Paso County Courthouse circa 1911 - the courtroom dedicated for the use of the 41st District Court was divided in half to house the Eighth Court of Civil Appeals after the creation of that court in the Spring of 1911.

Republic. He served with Sam Houston as one of Texas' first U.S. Senators. He made all of the committee appointments and selected the respective chairmen. He felt one of the most important matters at the convention was how the judiciary would be selected. He adamantly opposed judges being elected by popular vote. The judiciary committee and the convention followed his lead on this issue. The committee on the judiciary was one of the largest committees with fifteen members all of whom were attorneys. John Hemphill was appointed Chairman of the Judiciary committee. Hemphill was appointed as Texas' first Chief Justice of the Texas Supreme Court. He later succeeded Sam Houston in the U.S. Senate, where he served until 1861. The committee proposed reduction of the Supreme Court to a Chief Justice and two Associate Justices,

and it proposed abolition of the practice of trying cases by members of the supreme Court. Emulating the federal system, Texas adopted these proposals, where the Chief Executive, the governor, appointed the justices with the advice and consent of two-thirds of the Senate. Terms were limited to six years.

The turbulent 1860s produced three constitutions: The 1861 Confederate Secession, the 1866 Readmission, and the 1869 Reconstruction. There were no significant changes in these constitutions from the 1845 constitution in regards to the judicial section with one exception. Texas vacillated on whether or not to elect or appoint judges. In 1850 the Texas Constitution was amended to require all Texas judges to be elected by popular vote. The 1861 Constitution returned to gubernatorial appointment and Senate confirmation. The

1866 Constitution went back to elected judges. The 1869 Constitution returned again to appointed judges by the governor.

After the bitter taste of Reconstruction and the removal of federal troops from Texas, the constitution of 1876 was drafted. The population in Texas had grown dramatically from approximately 200,000 in 1850 to nearly 1,200,000 by 1875. Texas was still a very rural and sparsely settled state with no cities yet over 25,000 people. The 1876 Constitution was drafted by 75 men, 41 of whom were farmers. These men greatly distrusted government and drafted a constitution that deliberately limited and fragmented governmental power. They believed that the government that governed least governed best.

Growth of the railroads and the beginning of commercial litigation created rapid increases in civil cases. The Supreme Court was increased from three to five by a constitutional amendment in 1873. As the only appellate court in Texas, it was overwhelmed by its rapidly increasing docket. At the time it was believed that a small court promoted collegiality among appellate judges, and that a smaller court would be more likely to issue consistent opinions. The major problem with the small three-person and hopefully cohesive court was that it could not hear as large a volume of cases. It could not adequately review the numerous trial court rulings. This led to different legal results from the trial courts dealing with similar facts in different parts of the state.

The delegates to the 1875 constitutional convention attempted to resolve the problems created by the overcrowded dockets of the courts, both trial and appellate. The convention's judiciary committee had 15 members with Judge John H. Reagan as chairman. There were ten lawyers and judges on the committee and a handful of other delegates that showed an interest in the judicial section. They were prominent men in Texas and had diverse plans on how the judiciary should be structured. Governor Richard Coke wanted a unified judiciary with a single well-paid Supreme Court. Justice Oran Roberts, known as the "father of the Texas Bar" wanted to return to the 1845 constitutional plan. A.W. Terrell, a well respected lawyer from Austin like Governor Coke, favored a single supreme court. The drafters of what became Article V of our Texas Constitution were prominent lawyers whose expertise was in the civil practice of law. They were not concerned about criminal matters. They preferred to let local criminal justice run its course with local judges and

juries.

Texas lawyers wrote numerous letters to both Regan and Roberts complaining of the overcrowding of the civil dockets. Judicial selection and pay were hotly debated. R.J. Walker presented a novel solution to some of the problems by suggesting the creation of two courts of last resort. His plan envisioned two high courts, both with civil and criminal jurisdiction. The first he called the Supreme Court. It would hear the insignificant and frivolous cases as a court of dispatch. The second court, called the Court of Appeals, would hear the major cases and ones that would create legal precedent. The Supreme Court would transfer the major and significant precedent setting cases to the Court of Appeals.

The judiciary article was not completed until the last week of the convention. The Walker plan was modified and the new constitution created the Supreme Court that would have civil jurisdiction only and the Court of Appeals that would hear criminal cases, probate cases and county court appeals. No intermediate courts of appeal were created and the two high courts would have three justices each. They were to be elected by popular vote for six-year terms.

The solution failed to solve the problem of the overcrowding of civil cases at the Texas Supreme Court. By 1879 the backlog was as great as it was in 1875. The legislature experimented by creating a commission of arbitrators that heard cases upon the agreement of the parties in civil cases. The commission did not file opinions, but the two high courts, by certifying the decisions, made the decisions binding. This stop-gap measure was used until 1891, when the legislature proposed a major reform of the Judicial Article by constitutional amendment.

The Texas legislature in 1891 was influenced by reforms in Ohio and by creation of the U.S. Courts of Appeal. Ohio created the first state intermediate appellate system in 1883. Intermediate appellate courts offered some advantages: they created the best method to reduce appellate backlogs, dramatically decreased appeals to the Supreme Court, made appeal possible in more cases, reduced the costs to litigants, and reduced travel time and expenses for local litigants. The intermediate appellate courts were geographically based. Following the Ohio example, the U.S. Congress created the U.S. Circuit Courts of Appeal. The Texas legislature followed these models by proposing a constitutional amendment creating intermediate courts of appeals. The

legislature also proposed a constitutional amendment creating a Texas Supreme Court solely responsible for civil cases. It proposed abolishing the Court of Appeals and renaming it the Court of Criminal Appeals, giving it solely criminal jurisdiction.

It was argued during the 1891 debate over the proposed constitutional amendments that an intermediate court of appeals would destroy the common law system of the state. It was also contended that less influential clients would be denied a justifiable appeal to the Texas Supreme Court for lack of financial resources. Opponents argued that this new system, if adopted, would give an unfair advantage to the richest litigants: the railroads, powerful trusts and corporations. It was further argued that the different Courts of Civil Appeal would issue contradictory opinions and thereby create uncertainty in the civil law. The State Bar and most local Bar Associations supported the changes. The voters ultimately approved these proposed constitutional reforms, thereby creating the basic structure of the appellate system we use today.

The first three Courts of Civil Appeal were established in a special session of legislature in 1892, for Galveston, Fort Worth and Austin. All appellate courts had three justices each. In 1893, two new courts of appeal were established in San Antonio and Dallas. The sixth court of appeals was founded in Texarkana in 1907, followed by the Amarillo and El Paso courts in 1911. Courts of Appeal were created for Beaumont in 1915, Waco in 1923 and Eastland in 1925. The Galveston Court of Appeals was transferred to Houston in 1957. The Tyler Court was established in 1963 along with a court in Corpus Christi. Finally, in 1967 a second Court of Appeals was created in Houston.

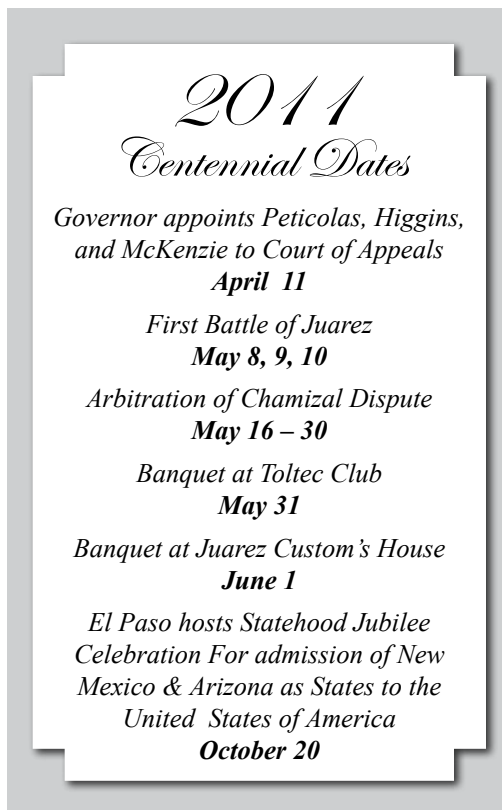
The format of the Texas Supreme Court, the Court of Criminal Appeals and the Courts of Appeal has remained the basic framework of appellate jurisdiction in Texas for 120 years. The intermediate Courts of Appeals were initially called the Courts of Civil Appeal because their sole jurisdiction was of civil cases. The judicial system created in 1891 has been called "one of the most complex, decentralized, and dispersed systems of courts and judicial administration in the country." Its effectiveness regarding the administration of justice has been questioned by legal scholars, legislators, the press and the public for many years. Since 1891, Texas has become the second most populous state with a highly urban and business-oriented economy. The farmers'

Constitution of 1876, while workable and practical for a rural economy, became ill suited for handling the complex legal problems of the dynamic 20th and 21st century Texas. The Texas Constitution has been amended over 450 times and is one of the longest in the U.S.

Judicial reform attempts have been numerous but actual change has rarely been accomplished. One area where limited change has occurred is in increasing the number of justices on the appellate courts. Since the earliest days of the republic the optimal number of judges on an appellate court was thought to be three. The three justices heard each case *en banc*. With the increases in the appellate docket it became apparent that it was cheaper and more efficient to increase the membership of the existing courts than creating multiple appellate courts within the same geographical area. Texas' creation of two supreme courts and two courts of appeal based in Houston created several problems. In 1945 the Texas Supreme Court's membership was increased from three to nine members. The Court of Criminal Appeals had commissioners appointed by the Court who served with the elected judges. The commissioners eventually became elected members of the court. By 1977 the Court of Criminal Appeals had nine judges. The Courts of Civil Appeals, later the Courts of Appeal, also increased their numbers from between three and thirteen, depending on the judicial district.

Numerous unsuccessful reforms have been attempted by various groups. In 1942, the Texas Judicial Council embarked on a five-year study of the judicial system and in February 1946, issued a proposed amendment to Art. V of the Texas Constitution. Suggestions and criticisms were received from legal organizations across the state. In its final form the amendment proposed that the Texas Supreme Court be the judicial, executive and administrative head of the judicial branch of government. A nominating commission would submit names to the governor for all appellate and district court judges. The governor would select one who would stand for election after serving a six-year term. The legislature never adopted this amendment.

In 1953, the State Bar Constitutional Revision Committee approved a referendum for a vote by Texas attorneys that again vested ultimate judicial power in a single Supreme Court. The plan also included merit selection for appellate judges and direct election of trial judges. The referendum was voted down by the State Bar in 1955. The 55th Legislature in 1957 created a Constitutional Revision



Commission and a Citizens Advisory Group and ordered them to report their findings to the next session of the Legislature in 1959. Their report did not recommend any revision of the Judiciary Article.

On the national level, the American Bar Association created the model judicial article for the states in 1962. Several states adopted the plan that placed judicial power in a supreme court, created a judicial nominating commission that submitted names to the governor for all judicial appointments, judicial terms of ten years with the voters exercising control over the judiciary through retention/rejection elections. Texas never considered the plan. Texas did create the State Judicial Qualifications Commission in 1965. While other states moved forward by simplifying and unifying their courts during the 1960s and early 1970s, Texas retained its fragmented and uncoordinated system.

In 1971, Texas Supreme Court Chief Justice, Robert W. Calvert, appointed a special task force to draft a new judiciary article to the Texas Constitution. The new judicial article reduced Article V from thirty-three sections to nine and reduced the words from 5,000 to 1,000. The ultimate plan created a single supreme court that would administer the judicial system through presiding judges and court administrators appointed by the chief justice. All judges would be elected for six-year terms

in nonpartisan races. Appointment to vacancies would be submitted to the governor by a special judicial nominating commission composed of judges, lawyers and non attorneys appointed by the Governor, Lieutenant Governor and Speaker of the House of Representatives. The provision was hotly debated during the 1973 legislative session and adopted by the Senate but it was rejected by the House.

The Legislature in 1974 met as a Constitutional Convention for the first time since 1876 and drafted a proposed new constitution. It had some controversial provisions such as annual sessions and a right to work provision along with changes in education and taxation. Also included was a new judiciary article similar to the 1972 Calvert plan. Numerous town hall meetings across the state were held along with extensive radio and television debates. Chief Justice Joe Greenhill flew around the state campaigning for passage of the new constitution. Labor unions opposed its passage because of the right to work provision. Big business interests also opposed the new constitution and persuaded Governor Dolph Briscoe to oppose its passage. All sections of the new constitution were defeated, including the judiciary article. The judiciary and education articles gained the most support from voters but were also defeated by over a two to one margin.

The last major jurisdictional revision to the Texas Constitution occurred in 1979 when the Courts of Civil Appeal became the Courts of Appeal and assumed intermediate jurisdiction over all criminal, except death penalty cases, as well as civil cases. This change was advocated because of the dramatic increase in criminal cases and the huge backlog at the Court of Criminal Appeals. Chief Justice Greenhill maneuvered this amendment through the Legislature and it was ultimately approved by the voters. He obtained bipartisan support for the amendment, along with the crucial support of Governor Bill Clements. An attempt to unify the Supreme Court and the Court of Criminal Appeals was dropped due to opposition from the Court of Criminal Appeals. Chief Justice Greenhill refused to debate at forums regarding the amendment, but did obtain important newspaper endorsements across the state. In November 1980, the amendment passed by a large margin.

From 1991 to 1993, the Citizens Commission on the Texas Judicial System, along with Chief Justice Tom Philips, attempted to obtain passage of an amendment to unify the Texas Supreme Court and the Court of Criminal Appeals. They

were not successful.

Until 1978, all Texas Courts of Appeal sat *en banc* on every case because all had only three justices. As the Courts of Appeal expanded with more justices on most of the fourteen Courts of Appeal, the cases were no longer heard *en banc*. Panel rotations were effectuated in all the Courts of Appeal with more than three justices. Personnel staffing and salaries for the Courts of Appeal is not equal from court to court. This is based on legislative action and budgeting. Not until 1980 did all justices have their own law clerk. The number of support staff has increased dramatically since the 1970s. Permanent staff attorneys are assigned to each appellate court and their numbers and role in drafting opinions has increased significantly over the years. Deputy clerks, secretaries and accountants have also been added. In 1997, the Judicial Committee on Information Technology was created and with the assistance of the Office of Court Administration, plans and implementation of computers and computer planning has been rapidly advanced. Tracking, reporting, performance measure and clearance rates were mandated by the Legislature in 1998.

Each Court of Appeals was originally created as an autonomous entity within their geographical boundaries. It was soon apparent that the number of cases filed varied between each of the Courts of Appeal. To equalize the docket, transfers were made by the Texas Supreme Court on a yearly basis. Retired judges have been assigned to Courts of Appeals to assist in reducing backlogs. Today sitting District Judges are assigned on a limited basis to sit on the Courts of Appeal.

Backlogs have continued to plague the appellate courts since Reconstruction. For many years civil cases backlogged the appellate docket. With the explosion of criminal prosecutions in the 1970s, the appellate courts have struggled to maintain a consistency in the law and a meaningful and timely appellate process. Reforms aimed at streamlining the process through constitutional amendments

have been mostly unsuccessful.

How to select appellate justices in a less volatile political atmosphere has also proved elusive. It has now been thirty-seven years since Texas made a serious attempt to redraft its archaic constitution. The last generation of Texans found the process highly divisive and frustrating. While the old document serves us poorly, it is unlikely to be redrafted anytime soon. Additional amendments to an already bulky document are probable, but Texas voters are not likely in the near future to change the basic structure of their judicial system.

THE EIGHTH COURT OF APPEALS

The Legislature created the Eighth Court of Appeals in the 1911 session. The first three justices, W.M. Peticolas, James F. McKenzie, and E.F. Higgins were sworn in on June 14, 1911. They first met in El Paso on October 2. The Eighth Court originally served twenty counties. Over the years, counties have been added and deleted. The most recent geographic change occurred in 2003 when four counties were removed, including Midland and Ector Counties. The number of justices was also reduced at the time from four to three. The district now covers 41,334 square miles, larger than sixteen states, and has a population of 903,639.

The Eighth Court of Appeals has a long and illustrious history and has been served by thirty-two distinguished justices. W.M. Peticolas, the first Chief Justice, was only 39 when he took the bench. He served a mere two years but then practiced law in El Paso until his death in 1941. Justice McKenzie also served a short three-year term before returning to the practice of law. In contrast, Justice Higgins served on the Eighth Court until 1940, 29 and a half years, the longest of any justice to date. There have been thirteen Chief Justices of the Eighth Court of Appeals: W.M. Peticolas of El Paso, James R. Harper of El Paso, William H. Pelphrey of El Paso, Joseph M. Nelson of El Paso, Perry R. Price of El Paso, Robert W. Hamilton of Midland, Jim Langdon of

McCamey, Alan R. Fraser of Alpine, Max Ramsey of Andrews, Stephen F. Presler of McCamey Max Osborne of Midland, Richard Barrajas of El Paso and David W. Chew of El Paso.

Justice Place One has been held by: Justice McKenzie of Pecos County, Joseph McGill of El Paso, Holvey Williams of El Paso, William G. Abbott of El Paso, William E. Clayton of El Paso, William E. Ward of El Paso, Albert Armendariz, Sr., of El Paso (the first Hispanic on the Court), Jerry Woodard of El Paso, and Susan Larsen of El Paso (the first woman on the Court).

Justice Place Two has been held by: Justice Higgins of Brewster County, C.R. Sutton of Fort Stockton, Alan R. Fraire of Alpine, Stephen F. Presler of McCamey, Max N. Osborn of Midland, Larry L. Fuller of Monahans, Richard Barrajas of Fort Stockton, Paul McCullum of Odessa, and Ann McClure of El Paso.

Justice Place Three was held by: Charles R. Schulte of El Paso, Ward L. Kohler of El Paso, David W. Chew of El Paso, Ken Carr of El Paso, and Guadalupe River of El Paso (the first Hispanic female).

A geographical balance was attempted during the years between 1911 and 1994. One justice would be from El Paso, one justice would be from the northern counties served by the Texas and Pacific Railroad and the other from the southern counties served by the Southern Pacific Railroad. Later when there were four justices, initial attempts were to have two justices from El Paso, one from Midland/Odessa and one from the rural counties. The Places on the Court are confusing because on January 1, 2004, the Court was reduced from four to three justices. Susan Larsen's retirement would have technically ended Place One, but with only three justices Place Three would actually be abolished. In addition, the Secretary of State now designates the Chief Justice for Place One and the Senior Judge as Place Two and the Junior Judge as Place Three. After 1994 the succession from Place to Place is no longer possible.

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SENIOR LAWYER INTERVIEW

JOSEPH A. CALAMIA

A Champion of Early Civil Rights

■ BY CLINTON F. CROSS

The *El Paso Bar Bulletin*, as it was then known, published its first Senior Lawyer interview in September 2004. The attorney interviewed was Joe Calamia, one of El Paso's best criminal defense lawyers. A book about Joe Calamia's life funded by the El Paso Bar Foundation was recently released for sale. Thus, this interview is re-published in its entirety.

CROSS: *Joe, let's begin with your legal education. Where did you go to law school?*

CALAMIA: I went to Austin High School, and graduated in 1939. I then started college the same year but after two years I left college to volunteer and serve during World War II as an aviation machinist Second Class in the U.S. Navy. I participated in the Aleutian Island campaign against the Japanese for two years. Upon returning to the U.S., I came back to college, married, had a son and graduated from Texas Western College of Mines where I majored in history and government. From there, I went on to Southern Methodist University and earned my J.D. degree in two years. I graduated in 1949. While still in law school, I passed the Texas Bar exam. Much later, while in El Paso, I divorced and married my second wife. She gave me two children.

CROSS: *Would you briefly summarize your career?*

CALAMIA: Immediately after law school, I returned to El Paso to practice law. I handled criminal, juvenile, immigration, accident, divorce and court martial cases. After awhile, though, I began to focus on criminal law.

CROSS: *Can you tell us about a few of your cases?*

CALAMIA: There are three major cases of special interest that I would like to briefly discuss: the Jencks, Nagell and Bullock cases. Since the El Paso Bar Association is going to



Joseph A. Calamia

present a luncheon program on the Jencks case in October, I will limit my remarks to Nagell and Bullock cases.

I am proud of my work in the criminal law field. I tried over one hundred murder cases. I'd like to talk about the Nagell case, though. I think it illustrates an important asset for a trial lawyer: tenacity.

I was appointed to represent U.S. Army Captain Richard Nagell in the late 1960's. Nagell, a distinguished military veteran, was charged with the intent to hold up the State National Bank in El Paso, Texas. He didn't get any money but he did get caught. I raised the defense of insanity. Doctors testified for both the prosecution and the defense regarding the defendant's mental condition. In Nagell's first jury trial, the defendant was convicted and an appeal followed. The conviction was appealed

on newly discovered evidence. The case was reversed and remanded for a new trial. *Nagell v. United States*, 354 F.2d 441 (1966). Upon retrial, Nagell was again convicted. I again appealed. This time the 5th Circuit reversed and rendered and Nagell was discharged. *Nagell v. United States*, 392 F. 2d 934 (5th Cir. 1968). The court held, inter alia, that the government had overwhelmingly failed to meet its burden of proving the defendant's sanity beyond a reasonable doubt.

Finally, I'm proud of my work on behalf of disadvantaged political candidates. As we all know, wealth can be a barrier to participation in politics. In the 1970's I represented William Pate, who wanted to run for office but could not afford the filing fee. The case ultimately reached the United States Supreme Court, and was heard with another case with similar facts. In his opening statement, the State's attorney rose to argue on "behalf of the sovereign State of Texas...." Immediately one of the justices asked him what he was doing in the United States Supreme Court if he was representing the "sovereign" State of Texas. During oral arguments, one of the justices asked me, "You have not provided this Court with one case to support your position that the right to seek elective office is covered by the Fourteenth Amendment." I replied, "Well, that's true your Honor, but two hundred years of error does not make the rule a correct one."

The court held for the petitioners, stating that high filing fees for public office in Texas were not rationally related to the State's interest in allowing only serious candidates on the ballot as some serious candidates could not pay the fees while some frivolous candidates could. The Court also held that the State could not finance the cost of holding the elections from the fees when the voters were thereby deprived of their opportunity to vote for candidates of their preference. *Bullock v. Carter*, 405 U.S. 134 (1972).

ADVANCE SHEET, circa 1677

BY CHARLES GAUNCE

Legal Reference Librarian The University of Texas at El Paso

Anniversaries are great. There are at least 365 of them every year. Some are more noteworthy than others – such as the 100th anniversary of the creation of the Court of Appeals, and some are less so, such as the 2nd anniversary of me getting a cell phone. An anniversary of any importance is a time to celebrate the continuing success of an event, a time to reflect on the people that made the event a success, and a time to remember the adjustments that were necessary over time to assure the continuation of the importance of the event. Any husband who has had occasion to forget the celebration of his wedding will usually need little prodding to remember the event forever after, at least as long as he remains married to the object of his affection. And this leads me to our case. It comes to us from Volume 2 of Lord Naughtingham's Chancery Cases (April, 1677):

Cressey & Croke: the plaintiff alleges that he was a suitor to Elizabeth S. whom he since married, and being told in the time of his wooing that the defendant governed her, gave

him a bond of 500 [Pounds], against which he now prayed for relief, for that the bond was in trust for Elizabeth S. and entered into without any consideration. [The] defendant said the plaintiff's wife was worth 5000 [Pounds] to him, denied the trust and demurred whether the consideration was material.

- Resolved: 1. Had the defendant been the plaintiff, no relief lies.
- 2. Nor for the plaintiff against his own act.

Marriage bonds have largely fallen into disuse. They were once used as a substitute for marriage banns (also largely disused today). A marriage bann was publishing an intent to wed for at least three weeks in the parish church, during which time anyone having knowledge of the legal disability of one of the parties to the impending marriage could state why the marriage should not occur. Today, this is covered by the official in charge stating something along the lines of, "...Let him speak now or forever hold his peace." A marriage bond was used if the marriage was to occur prior to the time limit

for a proper publication of a marriage bann, and would secure the payment of costs necessary as a result of an improper marriage.

It seems as though one Cressey (plaintiff) had married Elizabeth and had posted the required marriage bond with Croke (defendant). While we are not let in on Cressey's thoughts about the matter, it seems as though Cressey now wanted to claim that the bond was paid to Croke as a trust for Elizabeth and that the payment was without consideration. Croke asserted as a defense, in part, that Elizabeth was 50 times more valuable to him than the trifling sum Cressey had paid. Lord Naughtingham determined that if Croke had asserted in the first instance that he should get a larger sum, he would not be entitled to receive it after the fact, and that Cressey paid the money and had his wife (in hand paid, as it were), so he's stuck with his bargain.

So my question is: How did Elizabeth feel about all of this? Her husband is going to Court to get back money he put down so he could marry her, and her former guardian is claiming that he did not get enough for her. I'm sure the annual celebration of her wedding thereafter was a memorable occasion for all.

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At the outset of the Mexican Revolution and just prior to the creation of the Eighth Court of Civil Appeals, the 1910 El Paso city directory contained 103 entries on two pages constituting the entire El Paso Bar with names like William Henry Burges, Richard Fenner Burges, Zach Lamar Cobb, John L. Dyer, Albert B. Fall, Thomas A. Falvey, William H. Fryer, Abe Goldstein, Dan M. Jackson, Tom C. Lea, Gunther R. Lessing, Bates McFarland, Millard Patterson, M. W. Stanton, Alfred S. Thurmond and A. M. Walthall.

- Editor's Note

HOW CIVILIZATION CAME TO EL PASO

¡Viva Los Licenciados!

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

■ BY BALLARD COLDWELL SHAPLEIGH

Inside the Bob Bullock Texas State History Museum in Austin, high up on the granite wall enclosing the Grand Lobby, in a space easily legible from all areas of the rotunda floor and obviously reserved to honor the giants of the epic saga of Texas, there are several eclectic descriptions of the Lone Star State permanently engraved. Four men are quoted – only four.

There is a quotation by Sam Houston dating back to 1833. There are also words uttered by José Antonio Navarro in 1842 and by Larry McMurtry in 1968. The fourth quotation is from an artist whose father was an El Paso lawyer during the Mexican Revolution, and reads: “It’s richness, it’s space wide and deep, infinitely colored. - Tom Lea, 1952.”

The richness of West Texas one hundred years ago was on display at the Toltec building one Wednesday evening, May 31, 1911. That night, however, while the citizens of El Paso feted Francisco I. Madero for his victory over Porfirio Díaz in the Battle of Juárez, Gen. Victoriano Huerta was bidding farewell to the dictator in Veracruz. Huerta was an old Díaz friend and assumed the presidency of Mexico after Madero’s assassination in 1913.

The small group assembled dockside for the *bon voyage* heard Huerta tell Díaz that he could always count on the army because, “it is the only portion of the country that did not go against you.” Díaz promised that he would return from exile and die in Mexico, but Díaz never returned to Mexico. In fact, he is one of three Mexican presidents known to be buried on alien soil.

Díaz died as an exile four years later, on July 2, 1915. He is buried in Paris, France. According to the *New York Times*, Díaz lived there “in the greatest simplicity, occupying a modest apartment, in striking contrast to the great houses and retinue of servants maintained by some of his friends who left Mexico with him.” His immediate successor, Francisco León de la Barra, died in Biarritz, France in 1939 and lies buried either in that city or in Paris as well.

Victoriano Huerta, the third Mexican president buried on foreign soil and the one



Gravesite of Mexican President Victoriano Huerta at Evergreen Alameda Cemetery, with a Texas Historical Commission marker.

who conspired to assassinate Madero, died not far from the El Paso county courthouse at 415 W. Yandell in apartments demolished by the construction of I-10. He is buried in El Paso’s Evergreen Alameda Cemetery.

At the Toltec Club banquet that Wednesday night at the end of May 1911, Francisco I. Madero, Díaz’ principal nemesis, and Gen. Juan J. Navarro, Díaz’ defeated field commander, sat “side-by-side in the brilliantly lighted banquet hall” as the *Herald* described the occasion. It might have been the most unusual form of dispute resolution ever attempted in Texas, except that Madero and Navarro did not actually sit side-by-side at the banquet table.

El Paso Mayor Charles E. Kelly, a pharmacist, sat between them “while 150 El Paso business and professional men shouted their praises, toasted them and drank their health.” The members of the all-male club were told to show up in formal evening dress and to not be disappointed if their guests, just in from the battlefield three weeks earlier, did not appear to be properly attired due to the summertime heat.

The majority of the men in the ballroom were

occupied in commerce and industry. However, it is clear that a special few within the Toltec Club membership – namely, the lawyers – were the individuals actually in charge of this event, the largest held in the then seven-month-old clubhouse. Mayor Kelly acted as toastmaster, but apparently said little beyond introducing the speakers. His comments did not find their way into the newspapers, as did the remarks of the other speakers.

According to the 1910 census, El Paso counted a population of more than 39,000, but did not register among the 100 largest urban areas of the country. San Antonio was the largest Texas city, ranked 54th in the country, with a population of over 96,000, a figure El Paso did not reach until the 1940s.

The first city directory, which appeared in 1885, listed seventeen lawyers as constituting the entire El Paso bar, with names like Blacker, Hague, Clardy and Stanton, although a Chamber of Commerce yearbook published later put that number at twelve. Twenty-five years later, at the outbreak of the Mexican Revolution, 103 attorneys and 18 law firms civilized the area.

The new Toltec Club, built at a cost of approximately \$100,000, excluding the \$80,000 price of the land, still sits on the triangle where San Antonio and Magoffin Avenues come together and houses the law offices of Sib Abraham. Club officers dedicated the building on October 14, 1910.

Women did not get the right to vote in the U.S. through the 19th Amendment until 1920 – in Mexico, not until 1953. Thus, except for a brief appearance in the gallery by Madero’s wife and her escorts, which included the wives of attorneys W.H. Burges and W.W. Turney, men and only men attended the Madero banquet.

The newspapers reported that those in attendance included investor, farmer and county surveyor John W. Eubank; produce wholesaler William S. Crombie; downtown merchant W. G. Walz; merchant Fred W. Norton; banker James G. McNary; hardware and machinery

wholesalers, Adolf Krakauer and Edward Moye; the owner of the Popular Dry Goods store, Adolph Schwartz; realtors, James Marr and W. H. Austin (another former mayor and Marr's partner in real estate); merchant and property owner, Zach White; physician Dr. J.A. Samaniego and banker, Edgar Kayser.

The attorneys included Joseph U. Sweeney, a former county judge and mayor; Dan M. Jackson, future judge of the 34th District Court; Gunther R. Lessing, a 1908 Yale Law graduate, future Disney lawyer and Jackson's brother-in-law; John Dyer, a future president of the State Bar (for whom Dyer Street is named); James M. Goggin, a former county judge and judge of the 41st District Court and member of Kemp Smith; Maury Kemp and Thomas J. Beall, also members of the Kemp Smith firm; Judge A.M. Walthall; Peyton F. Edwards; Claude B Hudspeth, the state senator for whom the "down district" county was named in 1917 upon breaking away from El Paso; and Waters Davis, a son of E.J. Davis, who was governor of Texas from 1870 to 1874.

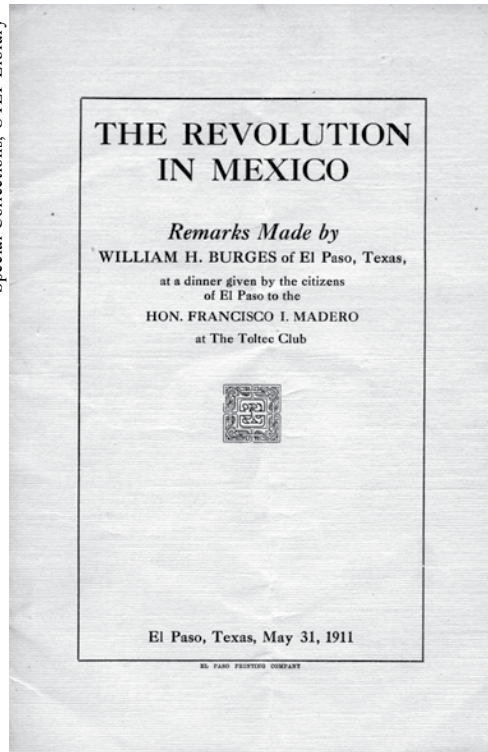
Francisco Madero was the guest-of-honor. He was described as a 38-year-old, 5-ft. 2-in. vegetarian teetotaler and spiritualist with a brown beard, a piping, high-pitched voice and a nervous tic who spoke fluent English. Like his father, he was a Mason, and (to his everlasting credit) he had attended the University of California at Berkeley.

Hearst correspondent Alfred Henry Lewis profiled Madero in the May 27 edition of the *Herald* and wrote, "A Mexican Jefferson! That is Madero." Lewis wrote that, "one's first impression of Madero is that – in the phrase of steamboatmen – he is over-engined for his beam."

Lewis described Madero's manner as nervous, his figure slight, his air hurried. He had a "quick moving brain," and "the body which supports it is small, and while well-formed, and in even poise and balance, seems but an insufficient foundation for a mind which works like a Corliss engine." "In the Mexican world, as in every world," Lewis further said, "men do nine-tenths of their thinking with the eye. This makes the mastery, the supremacy, of Madero the more mysterious."

Except for perfunctory introductions and the addresses by Madero and businessman Felix Martinez, a native of Las Vegas, NM, the El Paso attorneys made all of the speeches. County Judge A.S.J. Eylar, an attorney and the prime mover and shaker for the construction of the colonnaded Greek-revival courthouse in 1917, gave the opening address. Madero

Special Collections, UTEP Library



Front Cover of the published speech Burges delivered May 31, 2011.

had not been assigned a regular place on the program of speeches, so he spoke at the urging of the audience.

Felix Martinez followed. Martinez referred to Madero as a Napoleon and presented him with a painting depicting Madero with his adversary, Gen. Navarro.

Finally, William Henry Burges, Jr. rose to deliver the keynote speech. His words carried weight. W.H. Burges, Jr., and his brothers Richard Fenner and Alfred Rust Burges, did not simply come to town, hang out their shingles and build careers from scratch.

The Burges brothers were well-connected. W.H. Burges, Jr. (for whom Burges High School is named) graduated from the University of Texas law department in 1889. His father, W.H. Burges, Sr., had been a lawyer and a state senator from Seguin in the 17th, 20th and 21st legislatures.

Burges, Sr. was also the law partner of two-term Governor John Ireland, a Confederate officer and receiver and a delegate to the Texas secessionist convention who, as the Seguin district judge in 1866, was much criticized for biased rulings, overtly favoring Confederate litigants, both civil and criminal. John L. Haynes, a contemporary, wrote to another governor, E. M. Pease, summarizing the outcomes in several cases over which Ireland presided and remarked:

These are not solitary instances of the unrighteousness of one Judge, but they are samples of what is going on in the State in every District. No Union man or Negro has any chance of justice either in civil or criminal cases when any rebel is interested and I repeat that these courts are well organized rebel vigilance committees. They are even worse, for they act under the semblance of law. It would be a thousand times better for the Union men and negroes to be turned over at once to mob law, for then every one out of the State would recognize the lawlessness of the proceeding, and better still, the victims of this judicial tyranny could in the latter event resist the violence of a mob without fear of falling into the hands of a greater monster in the shape of Judge Ireland.

In 1909 and '10, the year before he spoke at the Madero banquet, Burges, Jr. had been president of the Texas Bar Association. The following year he became a member of the Executive Committee of the American Bar Association, from 1912 to 1915. A few months before Madero's banquet, in January 1911, Burges was appointed to a three-year term as regent of the University of Texas. Later, he became an active member of the Philosophical Society of Texas for the Collection and Diffusion of Knowledge after its revival in 1935. Just weeks before Madero's banquet, a conference of bankers invited Burges to address them in St. Louis.

At the banquet for Madero, the *El Paso Morning Times* said that Burges "was the best." First, he poked fun at the American political process, and at Democrats in particular, referring obliquely to the voter fraud involved in "the big swindle" election of 1883. That election was held to determine the county seat, which was moved from Ysleta to El Paso after El Paso voted between three and four times its population.

Burges then lectured Madero with a speech later published under the title *The Revolution in Mexico, Remarks Made by William H. Burges of El Paso, Texas at the dinner given by the citizens of El Paso to the Hon. Francisco I. Madero at the Toltec Club*. He told Madero that Porfirio Díaz was moved by his brain and heart to take Mexico "into his hand, an iron hand, if you please, the hand of a weak and struggling people, unaccustomed to the powers and

responsibilities of self-government.” Halfway through the speech, someone cried out, “Shut up,” to which Burges replied:

No, I am not going to shut up. You have been demanding free speech and I am giving you your first lesson in it.

You tell us you overthrew him because he was not in sympathy with modern Mexico. We admit it, but we tell you that he made modern Mexico.

The Mexico in which order is preserved, the laws enforced, property held inviolate and life secure, is the gift of General Díaz to you and to the world, and you as Mexicans should be proud to know that he carries with him in his exile the respect and the admiration of all men who know that the only liberty worth having is liberty regulated by law; and, Mr. Madero, I beg leave to say to you that success in your high undertaking can only be had by making your own the great truth he taught both by precept and example, that government’s first duty is to govern; the peace, prosperity and progress go hand in hand in the modern world, and if you come back to us “El Presidente” in fact, as we hope you will and at no distant day, and you bring with you the record of juster laws, better administered; of more schools and better schools; of more factories and better factories; more railroads and better railroads, and railroads that run and are not mere streaks of rust across the face of the desert, you will, in fact, have earned the right to the proud title of the Liberator...

Judging by the oratory, the banquet-goers probably thought that the revolution was pretty much over, not that it had just begun. The *El Paso Morning Times* account of the event was headlined, “Francisco Madero, next President of the United States of Mexico feted last night.”

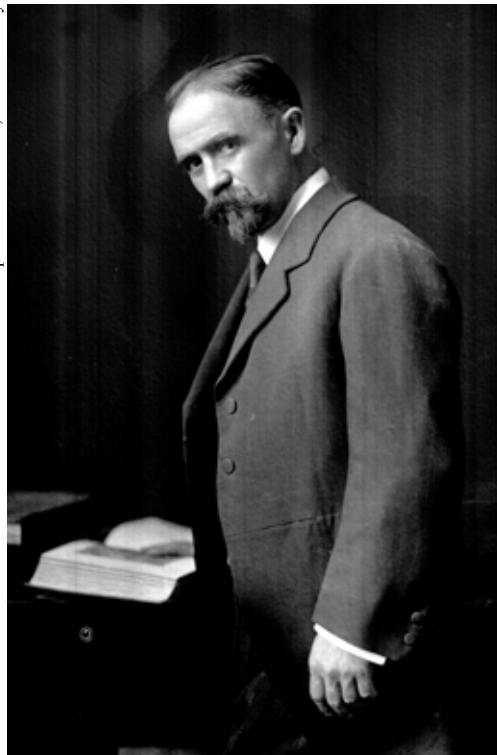
The following morning a *Herald* reporter found Navarro and Madero together in the lobby of the Sheldon Hotel and reported on the chance encounter as follows:

Juan N. Navarro, former commander of the federals in Ciudad Juarez, and

Courtesy of the El Paso Public Library



Special Collections, UTEP Library



William H. Burges, Jr. in his official Toltec Club photo taken in 1902, (L), and Francisco I. Madero (R). Both portraits were taken in the studio of noted El Paso photographer Frederick J. Feldman.

Francisco I. Madero, Jr., ex-provisional president who took Ciudad Juárez away from Navarro’s troops, sat together this morning in the hotel lobby, and chatted about it all. The crush about the two celebrities became so great that each sought refuge in flight.

The federal general with his tufts of white hair, appeared in public today for the first time since his dramatic escape from Juarez, where a mob howled for his life. All enmities seem to have been removed, for Madero’s officers raise their hats as they pass the aged soldier. Affairs in Mexico have come out too well to allow any ill feeling, it would appear. Navarro is quite the same, rugged as ever, coldly polite and formal.

Pancho Villa and Pascual Orozco had planned to cut off Navarro’s head. Orozco in particular, it was reported, desired to convene a court martial and execute Navarro by sundown on that same day. He proposed using as witnesses the federal soldiers who carried out Navarro’s orders at Cerro Prieto. But Orozco and Villa were foiled by Madero, who allowed his captive to sneak away and get across the

river to El Paso.

A few days after the Battle of Juárez, the *Herald* reported that “the more intelligent rebels” wished for Navarro to remain alive because in that way he would suffer more. “A dead man does not suffer,” they argued, “and to treat considerately such a man is to increase his punishment.”

On June 2, 1911, when the Madero party departed by rail for Mexico City (via Eagle Pass) from El Paso’s Union Station, the *Herald* reported that among those that had “come to bid farewell to the little man of destinies was Gen. Juan J. Navarro, former federal commander at Ciudad Juárez, conquered by Madero’s army. Navarro beamed as he hugged Madero, and all enmities between federal and *insurrecto* were forgotten.” By June 21, the headline in the *Herald*, written in script over an eagle that filled the center of the page, wishfully read “Peace and Prosperity in Mexico.”

The Toltec Club banquet, though the largest and most important, was only one of several parties, luncheons and celebrations marking Madero’s victory held at the end of May, 1911. Members of the El Paso bar figured prominently in all of them except one: a private luncheon held on Tuesday, May 30, 1911, in the residence of Frank Wells Brown at 1520 N. Campbell.

Brown was an El Paso Commercial

Corporation (real estate) officer, a *Herald* co-owner and an old Madero friend, the two “having lived at the same hotel in Mexico City some years ago,” as a news item in the *Herald* put it. The Brown residence, now owned by lawyer John M. Dickey and until recently used as his law office, is listed in the National Register of Historic Places.

On Tuesday evening, a dinner was held at the Sheldon Hotel to honor the officers of the Fourth Cavalry and the 23rd Infantry. Francisco Madero and his entourage were the guests of honor. The toastmaster was attorney John Dyer. One of the main speakers was Captain T.J. Beall, a founder of the Kemp Smith firm.

After the Toltec banquet on Wednesday night, Francisco Madero returned the favor the following night, Thursday, June 1, 1911. He hosted a “grand ball” at the Customs House in Cd. Juárez. Between 400 and 500 guests attended. Madero made use of the same venue and decorations that were used for the banquet and summit between Presidents William H. Taft and Porfirio Díaz barely two years earlier. Gunther Lessing described the preparations for Madero’s ball this way:

Eusebio [Calzado] and I made all the arrangements and we had to put in new flooring and decorations in the large hall of the Customs House, called the Aduana, in Juárez. We rented all sorts of electric fans as it was quite hot, and bought up practically all of the champagne and wines available in El Paso. ...An interesting circumstance with respect to this ball, is the fact that we used decorations which were stored in Juarez and had been used at the time President Taft came to the border for the purpose of meeting President Porfirio Díaz a number of years before. These decorations were quite lavish and there were quite a number of American and Mexican flags in storage. We used all of them.

The *Herald* reported that while the hall was lavishly decorated, it was “more brilliant and entrancing than the occasion of the Díaz-Taft banquet because of the hundreds of beautiful, graceful women who attended.” (Of the 160 guests invited to the Díaz-Taft banquet in October 1909, none were women.) According to the *Herald*, there were “as many American guests as Mexican” at Madero’s ball. The *Morning Times* reported that a third of the

Aultman Collection, El Paso Public Library



Brown luncheon for the Madero Family: (seated L-R) woman believed to be a Madero sibling, Francisco I. Madero, Jr., woman believed to be a Madero sibling, Francisco I. Madero, Sr., unidentified man, man and woman believed to be F. Wells Brown and Mrs. F. Wells Brown, Guseppe Garibaldi, Mrs. Sara Pérez de Madero (wife of Francisco Madero, Jr.), unidentified man, Gustavo Madero, Raúl Madero (standing), and Roque González Garza.

guests were from El Paso.

After arriving at 9:00 p.m., to the strains of the Mexican National Anthem played by two separate orchestras, Francisco Madero and his wife Sarah stood in a reception line while 25-year-old Gunther Lessing presented the American guests to Mr. Madero and Mrs. Frank Wells Brown performed the same function for Mrs. Madero. Lessing said that “this ball was quite a success, and the most notable circumstance is the fact that it was the Americans who got soused at the ball because of the free liquor while I don’t believe I saw a single drunken Mexican at this function.” The next morning, Lessing joined Madero and his family for the train trip to Mexico City via Eagle Pass. Lessing’s status as a passenger was not mentioned by the El Paso press.

In the first week of July, a month after Francisco I. Madero departed for Mexico City, compensatory claims for property loss and personal injury sustained during the Battle of Juárez began to be filed. The *Herald* described the legal process this way:

The method of filing the claims is to have a lawyer fill out the proper blanks submitting the claims to the state department at Washington. These claims are then turned over to the American minister in Mexico City, who in turn refers them to the Mexican foreign office. The claims are then investigated by the Mexican government and a report made to the American department of state.



The Brown residence at 1520 N. Campbell where the luncheon was held is owned today by attorney John Dickey.

The *Herald* reported that the number of claims for property loss and personal injury were expected to exceed that of the Douglas, AZ claim list, which totaled more than a quarter million dollars. On July 2, 1911, the *Times* ran an article headlined, “Damage Claims Will Reach \$500,000,” a sum based on a survey of the lawyers in town. Both newspapers noted that no claims had been filed for the six people who had been killed, and many claims for loss of property had been presented directly to Francisco I. Madero.

The *Times* reported that Loomis and Knollenberg filed a claim for \$25,000 on behalf of Wong Gong, the “Chinese merchant on South Oregon street and who was sitting in front of his

store cogitating upon the scarcity of opium and the general cussedness of customs inspectors when a bullet from the battle in Juarez bored a hole in his face." The *Herald* described the case as that of "the Chinese green grocer who was shot in the jaw" in front of his shop on lower Oregon street "calmly smoking a long stemmed pipe when a bullet smacked him in the face. "He has been unable to eat rice or chop suey and believes that such a permanent disability is worth at least \$25,000 to him," the newspaper noted.

Railroad employees, in particular, suffered much grief. The *Times* reported that the law firm of "Caldwell (sic) and Sweeney have filed claims totaling \$32,800." Among their petitions were two in the amount of \$10,000 each for a conductor named Webster and an engineer named Cobler of the Northwestern railroad who said they had been required "to bring a train load of federal troops to Juarez and were exposed to fire when they ditched the train. "The officers in charge of the federal troops ordered the railroaders to leave the country and fired on them as they tried to get away," it was alleged. A claim was filed for barkeep Harry N. Shipley, also known as the "Big Kid," who asked for \$2000 because his saloon in Juárez had been looted and wrecked. Coldwell and Sweeney also filed a claim in the amount of \$800 on behalf of Edgar Reid due to the confiscation of a shipment of Irish potatoes by *insurrectos*. Part of this claim was paid by Francisco I. Madero.

The law firm of Gillette & Hudspeth filed claims totaling \$10,300. Lee Hudspeth, brother of state senator, Alpine rancher and attorney C. B. Hudspeth, sought \$2,800 for horses taken by *insurrectos* from his ranch near Douglas, AZ. An engineer for the Mexican Northwestern also filed a claim for \$5000, saying he "was assaulted and maltreated because his engine, on a dark night, ran into and killed a number of horses *insurrectos* had tethered on the railroad track. Fred Tufano, a barber in the Roberts-Banner building, filed a claim through Hudspeth & Gillette for \$2500 damages because "he was thrown in the Juarez jail without cause and left there over night."

Eventually, wrongful death and survivorship claims on behalf of William Griffiths and his wife in Cleveland, OH and Walter Chandler and his parents in Duncan, AZ, both in the amount of \$50,000 each, were filed with the Department of State through Coldwell & Sweeney. Both were killed on the U.S. end of the Santa Fe Bridge on Monday evening, May 8, 1911, "by bullets fired by Mexican soldiers during the

battle of Juarez." Chandler was originally listed as a "cattleman from Duncan, Arizona, shot through the heart," and "Griffiths could not be identified at the time, but was later identified by his wife who lives in Cleveland, a photograph being the means of identification."

However, young lawyers like Tom C. Lea, Jr., Dan M. Jackson and Gunther R. Lessing did not seem to attract this kind of business, nor benefit from it. Tom Lea, Jr. was elected mayor of El Paso, serving from April 1915 to April 1917. He famously defended former Mexican President Victoriano Huerta on federal charges of neutrality law violations.

He was also the father of the celebrated artist by the same name, who was later quoted by George W. Bush on Bush's way to the presidency. Bush concluded his nomination acceptance speech at the 2000 Republican National Convention in Philadelphia by managing this almost-complete quotation of the artist and writer, Tom Lea, III:

"My friend, the artist Tom Lea of El Paso, captured the way I feel about our great land. He and his wife, he said, "live on the east side of the mountain ... It is the sunrise side, not the sunset side. It is the side to see the day that is coming ... not the side to see the day that is gone. Americans live on the sunrise side of a mountain. The night is passing. And we are ready for the day to come. Thank you. And God bless you.

The artist's father, Tom Lea, Jr., was first and foremost a lawyer. He lived in the center of town, on Franklin, Stanton, Kansas and Rio Grande streets. And, like most members of the judiciary, he applied a few personal "rules" when he was judge of the corporation, or "police," court from 1907 to 1911 which heard petty offenses and misdemeanors.

On April 15, 1911, when Lea, Jr. surrendered the bench, the 33-year-old "recorder" penned the following note on the court's docket to his successor, Adrian Pool:

Adiós libro viejo. Ud. tiene muchas historias de pena y dificultades. Tom Lea, 4-15-11. Good morning, Mr. Pool.

One of Lea, Jr.'s more charitable rules

was to never fine a man over 60 years of age when arraigned on a charge of being drunk. According to the *Herald*, Judge Adrian Pool was sitting for the first time as judge of the court after Lea stepped down, and had disposed of several cases where the defendants pleaded guilty to being drunk and assessed fines of \$1 each. He was about to do away with Lea's precedent in the case of Juan Ramirez, 72 years of age, when Pete Candelaria, the clerk of the court, called his attention to Lea's rule. Judge Pool dismissed the case.

Judging by contemporaneous press accounts, the consumption of alcohol played a role in many of these stories of pain and difficulty. In discussing Lea Jr.'s term as judge, the always Lea-friendly *Herald* described his tenure and judicial proclivities as follows:

Tom Lea will be missed from the police court, for although a young man, he evidenced a peculiar fitness for this position where a man must have a good understanding of the human nature and the law of the land must not always fall too heavily on the unfortunate ones who are arraigned, even when they are guilty, for in many instances heavy fines work hardships.

When Lea first took office he set a rule that a man who assaulted a woman, no matter what her character or color, he should be fined not less than \$25, and to that rule he stuck to the last. He was lenient with the hard working man, down on his luck, but severe with the professional vagrant. With children he was ever kind and considerate, treated them always as children, and though his reprimands were sometimes severe, they were never harsh. On the last day of his work in the police court Lea was gentle, kind and lenient. Jesus Garcia, charged with driving a hack without a license, was dismissed with the advice that he should secure a license. Luis Viena and Gregorio Socio, the former 11 and the latter 13 years of age, were arraigned on the charges of taking scrap iron from the foundry. They were cautioned that it was wrong to steal, and were dismissed. Gilberto Martinez, charged with being drunk and disturbing the peace was dismissed. ...

The *Morning Times* was less sanguine, running a news brief only to say that, "Judge Tom Lea presided for the last time as corporation

Judge yesterday afternoon at police court. At both the morning and the afternoon sessions he was inclined to be rather lenient with the prisoners, most of whom were charged with being drunk and disturbing the peace. The usual fine of \$7 was cut in some instances to that of only \$1."

Lea Jr.'s rules may have contributed to Lea's re-election loss to Adrian Pool in the municipal elections a week earlier as much as the activities of Mayor Kelly's "ring". Lea tallied one more vote for another term as recorder than did one of the candidates for mayor, C.H. "Give-a-Dam" Jones, "the well-known local philosopher, carpenter, politician and single-minded debater." Give-a-Dam Jones received one vote for mayor; Lea received two votes for "muni" judge. The sting of defeat was removed when Lea was elected mayor in 1915.

When reflecting on the trials and tribulations of El Paso lawyers during the Mexican Revolution, one might pause to consider this brief digresser about the path to immortality in Texas and its many perils. One day, Tom Lea the artist, who never received a legal education like his father or like another famous El Paso artist named James Magee [a/k/a, Annabel Livermore], recently called "America's greatest living unknown artist" and a graduate of the University of Pennsylvania Law School, was visiting the Kern Place home of Gertrude A. "Sugar" Goodman, a well-known civic volunteer and longtime Lea family friend. Lea, III was accompanied by his wife Sarah.

He was sitting in one of Sugar's needlepoint armchairs. As they chatted in the living room, Goodman's dog, a poodle named Napoleon, pranced up to Lea and raised his leg mistaking

the artist's trousers for a fire hydrant.

"He marched right up to Tom like he had it in his mind all along that he was going to wet Tom's pant leg," Sugar says, with a nervous laugh. "I was horrified. But Tom was a man's man – a gentleman. He laughed. He took it in stride. He and Sarah were good sports. We joked about it for a long time afterwards."

Napoleon's untimely need to micturate happened on the sunset side of the mountain, the side to see the day that is gone and not the side to see the day that is coming. As Tom Lea, III said, and as Francisco Madero probably agreed, "the best day is the day coming, with the work to do, with the eyes wide open, with the heart grateful." That is probably the way most El Paso lawyers always see it, both at the present time and one hundred years ago during the sage brush and chaparral days of the Mexican Revolution. **Ω**

The "Civilization" series is written in appreciation of the 114th anniversary of the El Paso Bar Association and the agenda of Bar President Chantel Crews, with assistance and encouragement from historians Pat Worthington, Claudia Rivers, Laura Hollingsed, Richard Bussell, David Dorado Romo, the poet Edgar Rincón Luna, and philosopher, historian and fly fisherman J. Sam Moore, Jr. The following resources have been consulted: Letter from John L. Haynes to Elisha M. Pease dated November 28, 1866 (FP, A.1, P.1, Austin History Center); C.L. Sonnichsen, *Pass of the North-Four Centuries on the Rio Grande*; J. Morgan Broadus, *The Legal Heritage of El Paso* (El Paso: Texas Western Press, 1963); Octavio Paz, *The Labyrinth of Solitude* (Grove Press: 1961); Anita Brenner and George R. Leighton, *The Wind That Swept Mexico: The history of the Mexican Revolution 1910-1942* (Austin: University of Texas Press, 1971); J.F. Hulse, *Texas Lawyer: The Life of William H. Burges* (El Paso: Mangan Books, 1982); Friedrich Katz, *The Life and Times of Pancho Villa* (Stanford: Stanford University Press, 1998); W. H. Timmons, *El Paso: A Borderland History* (El Paso: Texas Western Press, 2004); David Dorado Romo, *Ringside Seat to a Revolution: An Underground Cultural History of El Paso and Juárez: 1893-1923* (El Paso: Cinco Puntos Press, 2005); Charles H. Harris and Louis R. Sadler, *The Secret War in El Paso: Mexican Revolutionary Intrigue, 1906-1920* (Albuquerque: UNM Press, 2009); John F. Chalkley, *Zach Lamar Cobb: El Paso Collector of Customs and Intelligence During the Mexican Revolution 1913-1918* (El Paso: Texas Western Press, 1998); Gunther Lessing, *My Adventures During the Madero-Villa Mexican Revolution*, (unpublished manuscript

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HOW CIVILIZATION CAME TO EL PASO

Five Of A Kind

The Peticolas Legacy In El Paso

■ BY BALLARD COLDWELL SHAPLEIGH

"Names are not always what they seem. The common Welsh name Bzjxxllwcp is pronounced Jackson." – Mark Twain

The name of a man, said Marshall McLuhan, is a numbing blow from which he never recovers.

And every generation, said Lewis Mumford, revolts against its fathers and makes friends with its grandfathers. Not so with a family of lawyers from El Paso named Peticolas.

For example, one may compare the Peticolas family of El Paso with the Baker family of Houston, another Texas clan with five consecutive generations of lawyers. Not wishing to deceive, confuse or take any chances, the Bakers simply put roman numerals at the end of their names. James A. Baker, III is not the same person as James A. Baker, IV. The former prefers to be called "Jim" and the latter goes by "Jamie." Like the old saying goes, where the Bakers are concerned it is better to see the face than hear the name.

In 1859, A. B. Peticolas began practicing law in Victoria, Texas. This marks the commencement of a distinction very possibly unmatched by any other family in Texas, namely an unbroken line of five consecutive generations of Peticolas men who practiced law in this state. With the exception of the first and fifth generation, all lived and maintained their practices exclusively in El Paso. The family now headed by former Secretary of State and Bush family confidant, James A. Baker III of the Baker Botts firm in Houston, also claims five lineal descendants from the Baker family who are or have been attorneys with the firm. But not all five generations of lawyers in the Baker family lived and practiced in Texas. The Peticolas lawyers have and continue to do so to this day.

This story begins with the notable Alfred Brown Peticolas. Alfred Brown Peticolas was an attorney, diarist, artist, and Civil War veteran who left his mark on Texas. He was born on May 27, 1838, in Richmond, Virginia. He came to Victoria, Texas, in 1859 and set up a law partnership with Samuel White. In September, 1861, he joined the Confederate Army. He participated in the New Mexico Campaign and Louisiana Campaign



Warner Marion Peticolas

before illness led to his reassignment as a clerk at the quartermaster headquarters. After the war, he returned to his law practice in Victoria. In 1869, A. B. Peticolas married Marion Goodwin and they had three sons, including future El Paso lawyer and Court of Appeals justice Warner Marion. In addition to his law practice, Peticolas also served as editor of the *Victoria Advocate* from 1881-1888. He had several other hobbies, including drawing, traveling to Europe, playing chess, and building fine furniture. He died in Victoria in 1915.

A.B. Peticolas left a rich legacy for historians. He was a diligent diarist, even keeping a journal while serving with the Texas Mounted Volunteers (part of Sibley's Brigade) during the Civil War. Part of this journal was destroyed during the war. But the remaining volumes are an invaluable resource. The sections relating to the New Mexico campaign have been compiled into a book entitled *Rebels on the Rio Grande* by Don Albers. Peticolas also left other significant writings, documents, and sketches. He wrote a law book, *The Index Digest of Civil and Criminal Law of Texas*, which became a standard text for the Texas Bar Association.

As an amateur artist, Peticolas sketched many of the buildings in Victoria in the 1800s. These sketches are sometimes the only visual record that remains of these buildings. Peticolas' works are as dispersed as his travels. Many of his personal papers can be found in the Victoria Regional History Center Archives. An extensive collection of his drawings is housed at the Witte Museum in San Antonio, TX. Other papers, writings and sketches are held by the Arizona Historical Society and New Mexico State University.

The second in this line of lawyers is Alfred's son, Warner Marion Peticolas, who was the first Chief Justice of the Eighth Court of Civil Appeals sitting in El Paso. W.M. Peticolas came to El Paso from Victoria in 1898. He served as counsel to the El Paso and Southwestern Railway and became chief justice of the El Paso appellate court in 1911. Upon taking office, he became the youngest intermediate appellate court chief justice in the history of Texas. He was also a charter member of the El Paso Bar Association. By 1900 he was a member of the Texas Bar Association. Prior to becoming chief justice, he practiced law in partnership with Leigh Clark, a future city attorney and long-time district attorney, and J.H. Darwood. He died in El Paso in 1941.

The third-generation lawyer is Warner's son, William Craig ("W.C." or "Bill") Peticolas, known personally by many in the Bar Association to this day. He attended the University of Texas School of Law and served as editor of the *Texas Law Review*. After graduating from law school in 1934, Bill Peticolas went into partnership in El Paso with his father W.M. Peticolas in a firm then known as Peticolas & Peticolas. Later, Bill Peticolas became a special prosecutor for the United States Department of Justice from 1940 to 1946 while continuing to practice law with his father. His son, Ed, says his father's work with the Department of Justice had something to do with World War II but he does not know the exact nature of his duties in this job. After W.M. Peticolas died in 1941, the firm became known as Andress, Lipscomb and Peticolas, which now included Ted Andress and Abner Lipscomb. Bradley Fisk joined some years later to form Andress, Lipscomb, Peticolas

and Fisk. Ted Andress, the partner and school board president for whom Andress High School is named, was later assassinated by a deranged medical doctor named Eidinoff in the baggage claim area at the El Paso International Airport. W.C. Peticolas participated in some of the litigation leading up to this murder. *See, Eidinoff vs. Andress*, 321 S.W.2d 368 (Tex. Civ. App. – El Paso 1959, writ ref'd n.r.e.). Eidinoff was found not guilty by reason of insanity in November, 1959 and later escaped from Rusk in 1968. *See, Ex Parte Eidinoff*, 408 S.W.2d 540 (Tex. Civ. App.-Tyler 1966, no writ); *Connolly vs. Eidinoff*, 442 S.W.2d 415 (Tex. Civ. App.-Tyler, 1969), writ ref'd, 446 S.W.2d 5 (Tex. 1969).

This incarnation of the firm would eventually include other well-known and distinguished El Paso lawyers like John B. “Jack” Luscombe, Jr., Grover L. Stephens, Sanford Cox, Harry Lee Hudspeth, Mark Howell, Wayne Windle, Colbert Nathaniel Coldwell, Ed Peticolas, Charles McNabb, Liz Rogers, Eliot Shapleigh, and J. Morgan Broaddus, II. While W.C. Peticolas exercised a profound influence over the lawyers he mentored and worked with in his firm – many have said that they tried to incorporate his methods, manner and practices into their own work – he was also known as “a lawyer’s lawyer” from whom other attorneys outside the firm often sought advice and counsel. He argued successfully before the Supreme Court of the United States while in private practice. In 1966, he was selected as a charter member in the Fellows of the Texas Bar Foundation as a “lawyer

who had demonstrated **outstanding professional ability and achievement.**” W. C. Peticolas also served as president of the El Paso Bar Association and was a charter member of the Texas Bar Foundation. He died in El Paso in 1995.

Fourth in the Peticolas line is W.C.’s son, Edward Kent (“E.K.” or Ed) Peticolas, who obtained his license in 1974 and joined his father’s firm which had become known as Peticolas, Luscombe, Stephens and Windle. For nearly 30 years, he was an AV-rated insurance defense trial lawyer and has a number of reported appellate decisions, some of which brought him clients many years after they had been decided. He was president of the Kiwanis Club of El Paso, Chairman of the MDA Telethon of El Paso, Instructor for the American Institute of Banking, and received an Honorary Foster Parent Award for work on the Board of Directors of Crossroads I & II. Upon his retirement in 2000, Ed had become one of the most respected trial lawyers in El Paso, following in the footsteps of his father and grandfather. He now makes his home with his wife in upstate New York.

And, lastly, fifth in succession is Ed’s son, Michael Peticolas, who presently lives and practices in Dallas. However, Michael was born and raised in El Paso. He earned his Bachelor’s Degree *cum laude* from the University of Texas at Dallas and, as an undergraduate, worked as an intern for United States Senator Kay Bailey Hutchison. Michael, like his father Ed before him, attended South Texas College of Law and

worked as a legislative aide for Texas Senator Rodney Ellis during law school. After graduation, he moved back to El Paso and practiced with his father at the firm, which by then had become known as Peticolas, Shapleigh, Brandys and Kern. In 2000, the State of Texas commissioned Michael as a Gubernatorial Advisor. That same year, Michael returned to Dallas, joining the law firm of Cooper & Scully, P.C. He later opened his own firm, Peticolas Law Firm PLLC, where he maintains a lucrative practice with some of his cases garnering state-wide and national attention. For example, he represented three individuals sued by wrongful death plaintiffs in connection with the collapse of the Texas Aggie Bonfire on November 18, 1999 where eleven Texas A&M students died and many others were injured. Michael also represented individuals with wrongful death claims against British Petroleum North America Inc. resulting from an explosion at the British Petroleum industrial plant in Texas City, Texas on March 23, 2005. The explosion caused the death of fifteen people and received media attention world-wide.

An old Hebrew proverb says “whoever teaches his son teaches not alone his son but also his son’s son, and so on to the end of generations.” And so it is with the Peticolas family.

The Peticolas family left a legacy only of eminence in El Paso and this community is greatly impoverished by their absence. The Peticolas family left a legacy of eminence in El Paso and this community is impoverished by their absence.

Power and Politics in Management Positions: *An Interview With Judge Oscar Gabaldon*

BY LISA TOMAKA

TOMAKA: *How would you define power in an executive or management position?*

GABALDON: I believe power in an executive or management position entails the ability to set a vision for a group, which the group will accept as a good and solid vision to strive for. Move-over, the power includes the ability to bring people together in a spirit of team, allowing every individual to feel that they are a valuable and contributing member of the team. Therefore, empowering other is in itself power, as well. Being a mentor, a coach, and a loyal source of support to others is also part of having power. Power involves being other-oriented, and giving credit where it is due. The more of these sorts of abilities, skills, and

talents one can implement in management and executive positions, the more power that person actually possesses.

TOMAKA: *Do you think having power impacts your ability to move the agency or entity towards its goals?*

GABALDON: I definitely, without a doubt, believe that an individual that exercises power in a prudent and reasonable manner, with zealous commitment to the goals of a given objective or organization, can move an agency or entity towards its goals, even if that goal is to move mountains.

TOMAKA: *What do you feel most influences the development of power in an executive*

position?

GABALDON: I feel what most influences the development of power in an executive position is for the individual to have passion to seek and develop the necessary knowledge and skill to enhance the organization’s successes, the passion to want to truly make a difference, the passion to pursue the betterment of the self and others, and a passionate commitment and determination to be proactive at all times within the parameters of integrity in all undertakings and dealings.

TOMAKA: *Do you feel power should be shared? Why or why not?*

GABALDON: I feel that power should be shared as much as it can reasonably and prudently be shared. Empowering others can result in an

array of options and possibilities that flow forth from others' input and contributions. Individuals allowed to share in power will feel valued more; in turn, this allowance of power sharing will be the source of pushing others to become more inspired and encouraged to put forth more effort, loyalty, and overall commitment. I do, however, believe there must ultimately be one individual at the apex of the power pyramid. That person

should be the one with the vision and directions setting for the rest.

TOMAKA: *How do you feel powerlessness impacts progress towards organization goals and objectives?*

GABALDON: I believe powerlessness impacts progress towards organization goals and objectives in a negative manner. The lack of

inspiration to move forward, to truly feel like part of a team, to want to collaborate, to feel valued and trusted, to feel a sense of belonging, and other such feelings and perceptions, can be a result of a perceived or real sense of powerlessness in persons. Powerlessness can cause a ripple effect, so that a feeling of further powerlessness spreads. This can ultimately bring an organization to its knees.

You Have A Spy in Your Pocket/Purse!

BY DAVID J. FERRELL
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Our internet connected electronic devices know where we live and where we go. They may know who our clients/associates are. They know our interests and intimate details about our lives. And, they share this information with countless others without permission. I am talking about our smartphones, iPads, Droid Tablets etc.

Early in April 2011, online music provider Pandora Radio received a federal grand jury subpoena. Prosecutors are investigating how Pandora's smartphone application (app) collects and uses data. The FEDS want to know if the app properly discloses that it gathers and distributes users' data. Several other app developers have received similar subpoenas.

On April 7, 2011, Mathew J. Schwartz of InformationWeek 1 headlined an article with "Pandora Transmits 'Mass Quantities' Of Personal Data. With a federal privacy investigation underway, a security researcher calls 'Orwellian' the amount of information the mobile app shares with ad serving firms."

Schwartz cited a Veracode blog when he said "Your personal information is being transmitted to advertising agencies in mass quantities" at least based on a teardown of online music provider Pandora's radiostreaming application for Android smartphones 2.

This application security company Veracode analyzed Pandora's app. It says the app collects the user's birthday, gender and ZIP code. It also allegedly collects GPS coordinates of the phone's whereabouts along with the phone's unique device ID. While names are not collected, the device ID ties the data together to easily reveal a user's (OUR) identity.

Why would an app collect this data?

Advertising Targeted on the MARKET!

Many app developers use advertising kits (ad kits) provided by advertising partners. These kits serve inapp ads. They can also collect data and send it back to the advertisers. To make matters worse, one app may use several ad kits. The Wall Street Journal studied more than one hundred apps. It found that some apps use as many as eight ad kits 3.

Why should you (your clients) worry?

We spend so much time protecting our (our clients') information (HIPPA etc) and it is disturbing when a company collects this private information without permission. It is also egregious when we are targeted by companies who collect our data for commercial use and we are not sure why or how. There are greater dangers than targeted advertising, however.

We are losing control of our information and our clients' information. We may not know it is being collected, and we cannot optout. We do not know how the companies are protecting that information. It also puts us and our clients at greater risk for identity theft. As we have seen many times in the past a security breach will expose confidential internet/digital information.

Of course, the data offers a lot of insight into our life. It reveals where we work and where we go. It can reveal our childrens' schools and our political views. It may expose trial strategy. In short, it provides a complete dossier on us. AND, that information can be a Gold Mine in litigation; how would you like to discover this information about your divorce client's opponent. You have already done this by discovering the wealth of information that these opponents voluntarily post on their Facebook pages.

What about the Disciplinary Rules (Texas Rule 1.05 & Model Rule 1.6) that require us to not disclose our Clients' information? That information may be right there on your smart phone beaming out to some predatory app producer who is now or may shortly be under

subpoena from the United States Attorney, who will now learn that your client(s) need some special attention ie. indictment etc. And don't forget the Texas State Bar is interested in OUR adherence to the Disciplinary Rules and our "ethical conduct".

What can we do?

It is safe to assume that apps on our internet connected phones/devices are surreptitiously collecting data. Figuring out what is collected and how it is used is not so easy. Likewise, preventing apps from collecting data may be impossible.

Apple's privacy policy states that it may collect a host of information to improve user experience. However, it bars app developers from collecting information without consent. Developers must also disclose how they use the data. Unfortunately, I cannot find how Apple enforces these rules. Besides, rumors are that developers can and have skirted them. Some apps collect data without consent. Many app developers do not have privacy policies regarding data collection.

Things are slightly different with Android apps. Developers must notify users what data an app will access. The app does this before users install it. However, too often we download and install a "FREE" app and disregard what the notifications disclose. There may be one or two lines of disclosure or disclosures may fill your smartphone's screen. You have to analyze what that stuff means and decide if you really need that app, because users cannot block apps from accessing data. Rather, we can simply choose NOT to install the app.

1. <http://www.informationweek.com/news/229401147>

2. <http://www.veracode.com/blog/2011/04/mobileappsinvadingyourprivacy/>

3. <http://online.wsj.com/article/SB10001424052748703806304576242923804770968.html>

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Sally Helppie is a graduate of the UCLA School of Law who focuses her practice on Entertainment Law and commercial litigation.

Through our efforts at the El Paso Museum of Art, in partnership with the Texas RioGrande Legal Aid., Inc., the Federal Bar Association-El Paso Chapter, the The El Paso Bar Association, and the El Paso Classic Film Festival, the El Paso Museum of Art is continuing its commitment to Lawyers for the Arts by offering a 2 to 3 hour CLE program to artists and lawyers.

Copyright Basics And Script Clearance: What to do before you shoot.

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*El Paso Museum of Art Energy Auditorium on
Friday, August 12 from 2-5 pm,*

Speaker: Sally C. Helppie, Esq.

*Complete details on the seminar program will be on our website,
www.elpasobar.com*