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# EL PASO BAR JOURNAL

*April / May 2015*

## The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Legal Traditions

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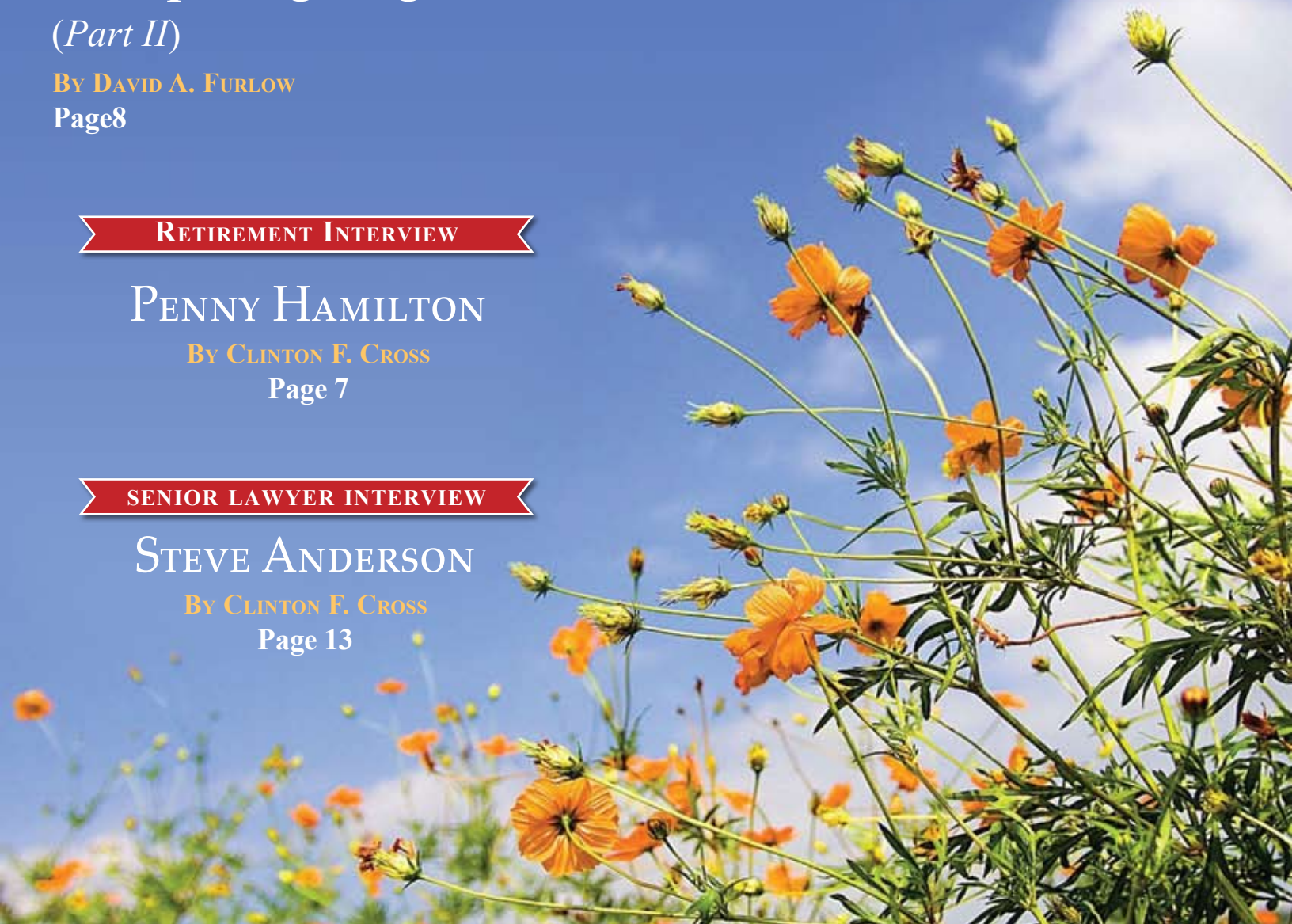
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### SENIOR LAWYER INTERVIEW

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## PRESIDENT'S PAGE



In keeping with my bar theme, “Hire an El Paso lawyer; we have the best and the brightest,” I would like to pay tribute to two excellent lawyers who have had the greatest impact on my career. Both are shining examples of the excellence of the members of our Bar.

Keith Myers was one of my first and biggest influences as a young lawyer practicing in the area of medical malpractice defense. Keith has been practicing personal injury and medical malpractice defense for over 38 years. He is board certified in both personal injury and civil trial law and has been honored with almost every award in our profession. He is a very quiet man, a humble man whose daily practice exemplifies professionalism

Keith was a mentor from the first time I met him even though he was not a lawyer in my firm at the time. I was second chair in a trial where Keith represented a co-defendant doctor. Although his client was the target defendant, he had no one assisting him at trial. When the trial began, I was amazed by his advocacy skills. His *voir dire* was excellent. He had handwritten direct and cross-examinations for all of the witnesses, and he executed his trial strategy with precision.

Fifteen years later, I moved to become a part of his firm. I was extremely intimidated to have been given an office next to Keith. I felt that I should tip-toe and be very quiet around such a law giant. I know I am privileged to be in the same firm with Keith and to call him my law partner. I will be telling stories about him 30 years from now. Thank you Keith for making a huge impact in my career.

The second lawyer I want to highlight is my husband Humberto Enriquez who practices in the area of personal injury for the plaintiff. As a woman working on the defense side, I have always recognized the challenge it would be to become a successful trial lawyer. I understood that I would have to work extra hard and would have to learn to overcome my nerves at trial. Fortunately, I was dating a seasoned trial lawyer who could offer some advice. One day I asked Humberto, “How do you try all those cases without ever getting nervous? How do you do it?” He understood that I needed a pep talk to boost my confidence. His response: Do you want to know how I try cases without ever getting nervous? I imagine myself wearing these Big Pants. In the Big Pants, I can do anything. The Big Pants are powerful. Just imagine yourself with the Big Pants. Women can wear them too.

It is funny that Humberto does not even remember giving me this advice. I am sure it was just something that he made up. However, it helped me, and I believe it was some of the best advice that I ever received. Thank you Humberto for your unconditional support.

I came across both of these giants without looking. I remain equally confident that young lawyers can find mentors and inspiration by simply paying attention to the lawyers they try cases with or against. Importantly, if you want the best, hire an El Paso lawyer.

**LAURA ENRIQUEZ,  
 President**

## EL PASO BAR ASSOCIATION

**April Bar Luncheon**

Wednesday, April 15, 2015\*

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

**Guest Speaker will be  
City Manager Tommy Gonzalez**

**Door prizes will be given out**

Please make your reservations  
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**Please make sure you RSVP.**

**\*Please note that we have changed the April  
Luncheon to Wednesday for this month only!!**

## EL PASO BAR ASSOCIATION

**May Bar Luncheon**

Tuesday, May 12, 2015

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

*Guest Speakers to be announced*

**Door prizes will be given out**

Please make your reservation by Monday, May 11,  
2015 at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)  
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**Please make sure you RSVP.**

## CALENDAR OF EVENTS

### APRIL 2015

**Friday, April 3**

Good Friday – EPBA Office Closed

**Sunday, April 5**

Easter Sunday

**Tuesday, April 7**

EPBA BOD Meeting

**Wednesday, April 15**

EPBA Monthly Luncheon  
Guest Speaker: Tommy Gonzalez  
City Manager

**Thursday, April 16**

EPPA Monthly Luncheon

**Saturday, May 2**

Law Day Dinner  
El Paso Country Club

**Tuesday, May 5**

EPBA BOD Meeting

**Tuesday, May 12**

EPBA Monthly Luncheon

### MAY, 2015

**Thursday, May 21**

EPPA Monthly Luncheon

**Monday, May 25**

Memorial Day – EPBA Office  
Closed

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# Magna Carta and the Surprising Survival of Jury Trial

## Part II

BY JOSHUA TATE

Although it is the original 1215 Magna Carta whose 800th anniversary is being celebrated this year, the definitive version of the Great Charter was the reissue by King Henry III in 1225. A few provisions of the 1225 Magna Carta continue to be the law of England to this day, including Clause 29, which deals with justice and due process. As translated from the Latin by Richard Thomson in 1829, Clause 29 reads, “No Free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land. To none will we sell, to none will we deny, to none will we delay right or justice.” With some differences, this language also appears in Clauses 39 and 40 of the original 1215 Magna Carta. It is one of the most famous quotations in legal history.

It is interesting to compare Clause 29 of the 1225 Magna Carta with the Fifth Amendment to the U.S. Constitution. Both provisions begin by stating, in the negative, what cannot be done to a person (or “free-man” in Magna Carta) unless due process is followed. In Magna Carta, due process is defined as “the legal judgment of his peers” or “the laws of the land.” Here, then, one can see the origin of the connection between jury trial and the concept of due process in the Anglo-American legal system. This leads to the question of why the English barons who forced the king to agree to Magna Carta considered jury trial to be an important safeguard to protect the rule of law. This article, the second in a three-part series, explores the origins of trial by jury in England.

Although civil jury trial first emerged in the context of land litigation, other civil cases were also important in shaping the institution. One of the most valuable property rights in the medieval common law was an “advowson,” or the right to nominate a priest to the bishop as a candidate to become the parson of a vacant church. Advowsons were property rights in medieval England, and they were quite valuable. The concept originated in the early Middle Ages, when lay lords arranged for churches to be built on their manors. A lord who built a church expected that he would be

able to choose the priest. However, this was unacceptable to the pope and the bishops, who wanted the bishops to have a say. A compromise emerged by which the lay patron would present a candidate who could be accepted or rejected by the bishop. The right of presentation was called an “advowson” from the Latin word *advocatio*.

A medieval church came with certain land, and the parson also had the right to tithes from the parishioners. An ambitious young man who became the parson of this church could use its revenue to fund his education at a university such as Oxford or Cambridge, or to support a lifestyle at the king’s court. He could pay a so-called “vicar” to perform the actual sacraments. The value of the advowson to the patron, however, was more subtle. In medieval England, most people other than priests were illiterate. If I were an illiterate but powerful English lord, I would like to have priests available to help me with tasks that require reading and writing, such as keeping accounts and engaging in correspondence with other lords and with royal and church officials. If I control the right of presentation to this church, young men who are interested in becoming the parson will offer their services to me in the hope that I might reward them later on with this valuable living.

Because advowsons were a valuable source of patronage, they were often the subject of disputes. A common type of dispute arose when a patron decided to donate his advowson to a monastery to say prayers for his soul. Perhaps, as an old man, I might no longer need the power that comes from owning the advowson of this church, and so I give it to a monastery. However, after my death, my son will want the power back. He could challenge my gift, perhaps arguing that I lacked mental capacity, or that the charter was forged, or (as was frequently claimed) that I changed my mind afterward and presented another parson to the church.

If such a dispute arose, who would decide it? The position of King Henry II, stated clearly in his Constitutions of Clarendon of 1164, was that “[w]hen disputes arise concerning advowsons and presentations to churches, whether between laymen, between laymen and clerks, or between clerks, they must be heard

and decided in the lord king’s court.” Henry II did not want the bishops to have the power to decide these disputes.

Nevertheless, the bishops were ready and willing to decide these cases. English bishops were powerful lords, and could become even more powerful if they were asked to resolve important disputes. The bishops had many literate priests who could gather evidence and conduct investigations to resolve any disputes. Moreover, the bishops could make use of a learned body of canon law that answered many of the questions that might arise. The royal courts lacked a sophisticated body of law to resolve patronage disputes, and also lacked a bureaucracy to enforce and apply that law. Moreover, despite King Henry’s command, the bishops could not be stopped from deciding advowson disputes if both parties preferred the judgment of the bishop to that of the king.

In short, Henry II had a dilemma. He wanted patronage disputes to be decided in his own courts. Unlike the church, however, the royal government did not have and could not afford a large bureaucracy of literate clerks. In addition, patronage disputes often implicated powerful barons on both sides whom the king would not wish to offend. How would King Henry resolve this problem? The answer is by the institution of jury trial. Henry II created a series of royal writs, commands to the sheriff to summon jurors to answer certain questions. In this case, the question was who presented the last parson to this church, which is vacant and of which the plaintiff claims the advowson. The writ presenting this particular question was called the *assize of darrein presentment*, after the French term for “last presentation.”

Advowson disputes were not the only cases that Henry brought into his courts to be decided by jury trial. Most significantly, he claimed jurisdiction over disputes pertaining to the *seisin* of land. In those cases, he was not challenging the jurisdiction of church courts, but rather taking jurisdiction away from the lay lords. Henry had to be careful in all these cases not to take actions that would turn his subjects against him. The brilliance of the jury system was that it deflected the blame for the outcome in individual cases away from the king and toward the random jurors selected to decide each case. It was also cheap, because the jurors

served without pay and the loser in each case paid a fine to the king.

Jury trial was a very popular innovation, and the king's courts were able to lure plaintiffs from the church courts and manorial courts into the royal courts. However, King John came close to undermining the great achievement of his father. Unlike his brother Richard, John spent a great deal of time in England, particularly after he lost his possessions in France. He decided to personally preside over some of the cases in the royal courts. This was disconcerting for the royal judges, who were used to deciding cases without the king's involvement. A good

example of John's interference may be seen in a lawsuit over the church of Wimpole from 1207, which is recorded as having been dismissed because "dominus rex non vult quod loquela illa procedat (the lord king doesn't want the lawsuit to proceed)." One can imagine the clerk who wrote that in the plea roll rolling his eyes at the king's interference.

Despite his desire to intervene personally in individual disputes, King John was constrained by pressure from his barons, and ultimately by Magna Carta, not to abandon the jury and other traditional common-law institutions. The vast majority of royal cases under King John

continued to be decided by the regular process of pleading and jury trial, demonstrating the resilience of the institution even under an ineffective ruler. The final article in this series will explain why trial by jury was extended to criminal cases after 1215.

**JOSHUA C. TATE** is an Associate Professor of Law at Southern Methodist University Dedman School of Law. He is a graduate of Pomona College, the University of Cambridge, and Yale University. He is Honorary Secretary and Treasurer of the Seldon Society in America.

## Texas Legislature Poised to Change the Way Texas Handles Truancy

BY DEBORAH FOWLER, EXECUTIVE DIRECTOR, TEXAS APPLESEED

In his interview with Texas Appleseed board member Clinton Cross, Steve Anderson discusses his tenure as a municipal judge and justice of the peace, citing juvenile cases, particularly truancy cases, as the biggest challenge he faced during his tenure on both courts. Many parents and community members do not realize that children and teens charged with class C misdemeanors are processed in these criminal courts, rather than our civil juvenile system. In Texas, truancy – or "failure to attend school," the Class C offense – is prosecuted in staggering numbers. In 2013, 115,000 of these cases were filed against students statewide – more than twice the number of truancy cases prosecuted in juvenile courts in all other states combined.

Because these cases are prosecuted in criminal courts in Texas, they can leave children with a criminal record that may haunt them when they later apply for jobs, college or the military. And since Class C misdemeanors carry up to a \$500 fine, prosecution can also exacerbate financial difficulty for families that are already struggling. In the report we released in March, *Class, Not Court: Reconsidering Texas' Criminalization of Truancy*, our analysis of Texas Education Agency data showed that approximately 80 percent of truancy cases filed were filed against students and parents who were economically disadvantaged. In some places in Texas, parents and 17-year-old students have been jailed when they've failed to pay a fine or complete the terms of a court

order.

Texas Appleseed has been part of a broad continuum of stakeholders from both sides of the aisle calling for changes to the way juveniles are prosecuted in truancy cases. While there are undisputedly good judges, like Judge Anderson, who are trying to make lemonade out of the lemons the law hands them, the common-sense approach Judge Anderson took to helping students in need is unfortunately not the norm. In the Legislative Budget Board's (LBB) Government Effectiveness and Efficiency Review published in January, the LBB's analysis of these truancy cases showed that fines are the most common response. Texas Appleseed's research confirmed these findings, with TEA data showing that fines are imposed in about 60 percent of cases filed.

Yet, research shows fines and court referrals to be the least effective response when a child is missing school. Judge Anderson gets to the heart of the need for change, calling on judges to "explore a holistic approach to addressing juvenile misconduct." Appleseed's research – and the research of experts in juvenile justice and truancy – supports that this is the best way to successfully intervene when a youth is beginning to veer off the path. Truancy programs that work evaluate the barriers to the child's school attendance and target those barriers to get the student back in school. A fine does nothing to address the underlying problems, which can include a range of issues rooted in socioeconomic status, disabling

health problems, or the failure to identify or appropriately address a special education need.

This session, the Texas legislature is considering more than 20 bills that would reform the way truancy is handled in Texas, taking the focus off of courts and fines and instead setting out that "holistic approach" that Judge Anderson used. Several bills focus on diverting cases that can be diverted away from court, reserving court resources for youth who do not respond to school or community-based intervention, and making these cases civil rather than criminal. If students end up in court, changes wrought by these bills would give judges more effective tools and avoid the lasting stigma that a criminal record can leave.

Over the years, I spent many hours interviewing young people in state and local juvenile lockups as part of our advocacy for juvenile justice reform. Their conduct had escalated well beyond skipping school. I always asked the same question at the end of my interview: what would have made a difference for you? And the answer was always the same: just one adult that cared. Judge Anderson's students were lucky they found that one adult. Let's hope the Texas legislature provides more tools to help other students find one too.

**DEBORAH FOWLER** is Executive Director of Texas Appleseed, a non-profit organization that is committed to improving the system of justice for all Texans

## RETIREMENT INTERVIEW

## PENNY HAMILTON

BY CLINTON F. CROSS

**P**enny Hamilton earned a reputation as one of the district attorney office's most effective prosecutors. She was passionate about her work, skillful, and got convictions in most of the cases she tried.

**CROSS: Please tell me a little bit about your childhood.**

**HAMILTON:** My father was in the United States Army; mother was a civil servant. When I was growing up, we moved a lot. We lived in Maine, Okinawa, Michigan, and Arizona. I had one half-brother and a brother and a sister.

I dropped out of Andress and Irvin High Schools. I never graduated.

**CROSS: So what did you do?**

**HAMILTON:** For eight or nine months, I worked at the Clock Restaurant as a car hop. I got my GED in 1970. At that time, I also had my first child, Shane Hamilton.

Later that year I moved to Lake Tahoe, California, where I worked at a doctor's office as a receptionist. I also worked grave-yard shift in a casino.

I moved back to El Paso in 1972 and got a job in the laboratory at Hotel Dieu. I worked at several hospitals during my career in the health care field, finally concluding that career at Thomason General Hospital.

**CROSS: When did you go back to school?**

**HAMILTON:** While working at Thomason, I started taking classes at El Paso Community College. I then transferred to UTEP. I obtained a degree in psychology in 1991.

**CROSS: What about law school?**

**HAMILTON:** I had always wanted to be a lawyer, but with a GED I had no real hopes of ever attaining my dreams. But after I graduated from UTEP, I realized I could go to law school. And I did.

**CROSS: Where did you go to school?**

**HAMILTON:** I decided to go to Lewis and Clark Law School in Portland, Oregon. It was close to my sister. In addition, the school had an excellent reputation for teaching environmental law and I thought that might be my alternative



Penny Hamilton

to criminal prosecution if my dream of being a criminal prosecutor did not work out.

**CROSS: Did you finally "find yourself"?**

**HAMILTON:** By this time I was almost 40 and unlike when I first went back to school I knew what I wanted. I had a goal, a plan and an alternative plan if I had to pursue it. When I was in law school, my father got cancer and died before I began my second year of studies. Between my second and third year, I interned with District Attorney Jaime Esparza. When I graduated in 1995, Jaime hired me as an Assistant District Attorney. I was assigned to work in Judge Javier Alvarez' and Judge Julie Gonzalez' courts. After a year handling misdemeanor cases, I transferred to the Rape and Child Abuse Unit. I felt that because of my life experiences and my medical background I would be well qualified to prosecute these kinds of cases. In that unit I found my calling in life.

**CROSS: Can you briefly summarize your career in the Rape and Child Abuse Unit?**

**HAMILTON:** I tried over 100 child abuse cases during my time in the Rape and Child Abuse Unit. I tried cases in every district court in the El Paso County Courthouse. I also tried

cases against many fine lawyers, such as Sib Abraham, Jim Darnell, Joe Spencer, Dolph Quijano and Mathew DeKoatz. I won most of my cases.

**CROSS: Any one case that you remember vividly?**

**HAMILTON:** I will never forget my first capital murder case involving the death of a three-month-old child. Her name was Cassandra. I learned a lot in that one trial that helped me throughout my career. I could say more about this case and others, but the stories would not be entertaining. In fact, the events were heartbreaking.

**CROSS: Did this practice leave you with post-traumatic stress syndrome?**

**HAMILTON:** I sometimes dream about my cases; I see children in stores and on the streets who remind me of other children who were victims in some of my cases.

**CROSS: What does the future hold for you?**

**HAMILTON:** I retired January 30, 2015, after 20 years of service as an assistant district attorney. I am now focused on my husband of almost 40 years, Frank Hamilton, and my three dogs.

**CROSS: Your children?**

**HAMILTON:** My son Shane David Hamilton provides IT services for Western Beverage Company in El Paso. My 19 year old granddaughter Brynn Hamilton lives in Fort Worth where she attends school and works parttime.

**CROSS: Anything else?**

**HAMILTON:** I could not have asked for a more satisfying career. I have met many wonderful lawyers and practiced in front of many learned judges.

I am proud of the work that I was able to do for this community.

**CLINTON F. CROSS** is an Assistant El Paso County Attorney assigned to the Criminal Unit.



# The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Legal Traditions

## Part II

Republished with permission from the Summer, 2014 issue of the Journal of the Texas Supreme Court Historical Society.

BY DAVID A. FURLOW

### I. Prologue: Judge Hemphill's Mediation at the Council House

On March 19, 1840, John Hemphill, the recently-elected district court judge of Texas's Fourth Judicial District, adjourned his morning docket early at the Council House, a Spanish-style courthouse next to City Jail on the east side of San Antonio's Main Plaza. He cleared the courtroom for a peace conference between Mukwahruh, a/k/a "Spirit-Talker," a chief of the Penateka Comanche tribe, and San Antonio's civil and military authorities under President Mirabeau Buonaparte Lamar's Republic of Texas.<sup>1</sup> A wiry, blue-eyed, Scots Irish Presbyterian from South Carolina's Back Country, Judge Hemphill had been in Texas two years, mostly in Washington-on-the-Brazos.<sup>2</sup> The lives of fifteen white and Hispanic captives, and the hope of a lasting peace between the Comanches and Texans, depended on Judge Hemphill's skill as a make-peace in his new Council House courtroom.<sup>3</sup>

"The Court House and Jail were of stone, one story, flat roofed, and paved with dirt," wrote Mary Maverick, the wife of San Antonio Mayor Sam Maverick.<sup>4</sup>

Chief Mukwahruh sought peace because "[t]he white man comes and cuts down the trees, building houses and fences, and the buffalos ... leave and never come back, and the Indians are left to starve ... [but i]f the white men could draw a line defining their claims and keep on their side of it the red men would not molest them."<sup>5</sup>

The chief led thirty-five Penateka warriors into the Council House. Bedecked with beads, feathers, and red ribbons, they smacked of pagan pride to the Texans. Another thirty-two Comanche elders, women, and children

Public domain image from Wikipedia.



*The Plaza and the Council House (right) in San Antonio at the time of the Council House Fight, March 1840.*

waited outside, sold furs and traded horses with locals. Comanche boys shot arrows at coins local Texans affixed to trees. Prospects for a negotiated peace treaty seemed high.<sup>6</sup>

Colonel Henry Wax Karnes, a Tennessee-born hero of the Texas Revolution and San Antonio's military commander, joined Judge Hemphill in the Council House. Despite an unhealed 1838 Comanche arrow wound to his hip, Colonel Karnes had agreed to a summit meeting during a parley with Comanche chiefs three months earlier, where Colonel Karnes warned that he would not discuss peace unless the Comanches returned all captive Texans.<sup>7</sup>

Secretary of War Albert Sidney Johnston notified Colonel Karnes that "the government [of Texas] assumes the right with regard to all Indian tribes ... to dictate the conditions of such residence [in Texas because] ... our citizens have the right to occupy vacant lands ... and they must not be interfered with by the Comanche."<sup>8</sup> In his inaugural address, President

Lamar promised to prosecute an "exterminating war upon their warriors, which will admit of no compromise, and have no termination except in their total extinction, or total expulsion."<sup>9</sup>

Mukwahruh brought a Tejano boy and a white girl, Matilda Lockhart, whom "they reluctantly gave up," to trade with the Texans as his ancestors had traded captives when Spain and Mexico owned San Antonio. Matilda was a fifteen-year-old captured, along with Matilda's seven-year-old sister, in an 1838 home invasion that included the murder of two other Lockhart children.

Matilda privately told Mary Maverick that she was "utterly degraded, [so she] could not hold up her head again—that she would be glad to get back home again, where she would hide away and never be seen." She had been gang-raped, repeatedly, an experience common to every woman who fell into Comanche hands.<sup>10</sup> And Matilda also bore scars from Comanche women who treated her as a slave:



Her head, arms, and face were full of bruises, and her nose [was] actually burnt off to the bone— all the fleshy end gone, and a great scab formed on the end of the bone.... She told a piteous tale of how dreadfully the Indians had beaten her, and how they would wake her from her sleep by sticking a chunk of fire to her flesh, especially to her nose ... and how they would shout and laugh like fiends when she cried. Her body had many scars from fire.... Ah, it was sickening to behold, and made one's blood boil for vengeance.<sup>11</sup>

Matilda, who had learned the Comanche language, reported that her captors held another fifteen prisoners they planned to ransom one by one to secure the highest price.<sup>12</sup>

Mary Maverick shared Matilda's information with the Texans before the parley began. It was obvious that Mukwahruh had no idea how Texans would react to Matilda Lockhart's scarred body, noseless face, and tale of abuse. The Chief viewed himself as a warrior entitled to ransom hostages, and, like the Texans, thought nothing of treating a slave roughly.<sup>13</sup> But this time the slave was white, and the Texans viewed him as a vicious, pitiless, pagan savage.<sup>14</sup>

Chief Mukwahruh began negotiations by suggesting that he "should be paid a great price for Matilda Lockhart, and a Mexican they had just given up, and that traders be sent with paint, powder, flannel, blankets, and such other articles as they could name, to ransom the captives."<sup>15</sup>

Colonel William G. Cooke, Acting Secretary of War, ordered Lieutenant Colonel William Fisher's Texas infantry to seize the chiefs as hostages. "Where are the prisoners you promised to bring in to this talk?" the Texans demanded.

"We have brought in the only one we had," Mukwahruh replied. He probably told the truth, for the Comanches were a confederacy of independent war-bands. "How do you like that answer?" Mukwahruh made the mistake of asking.<sup>16</sup>

Emotions flared among the Texans. Peace commissioner Lieutenant Colonel William Fisher replied,

I do not like your answer. I told you not to come here again without bringing in your prisoners. You have come against my orders. Your women and children may depart in peace... When those [Texas] prisoners are

returned, your chiefs here present may likewise go free. Until then we hold you as hostages.<sup>17</sup>

At Fisher's signal, a squad of Texas soldiers burst in, disregarding the chiefs' status as ambassadors.<sup>18</sup> Judge Hemphill did not prevent Colonel Cooke, Colonel Fisher, or the others from taking the Comanche chiefs hostage.

So the Comanches tried to fight their way out. Mukwahruh bolted for the door, unsheathed his knife, and stabbed a soldier; others shot arrows. In a chaos of rifle, musket, and pistol blasts, flying arrows, tomahawks, stray bullets, and billowing gray smoke, Texans opened fire, killed Mukwahruh, dropped warriors, and even shot fellow Texans. Colonel Hugh McLeod's after-action report stated that,

John Hemphill ... assailed in the council house by a chief and slightly wounded, felt reluctantly compelled (as he remarked to the writer afterwards) to disembowel his assailant with his bowie knife, but declared that he did so under a sense of duty, while he had no personal acquaintance with nor personal ill-will towards his antagonist.<sup>19</sup>

Comanches in the courtyard attacked, while soldiers fired back. Street battles erupted as soldiers and citizens of San Antonio hunted down Comanches trying to swim the river or hide in houses. A massacre ensued. When the smoke cleared, thirty Comanche warriors, three women, and two children lay dead in San Antonio. Thirty-two remained behind to be imprisoned in the city jail. Six Texans, including two judges and one Tejano, were dead, and another ten were wounded.<sup>20</sup>

The Comanches soon struck back to redeem their lost pride, avenge dead relatives, and punish a breach of customary ambassadorial immunity.<sup>21</sup> Griefmaddened Comanches tortured and roasted Matilda Lockhart's young sister and all but two of the remaining hostages. The Council House Fight and violation of Comanche expectations about diplomatic immunity ended any hope for peace for a generation.<sup>22</sup> On August 1, 1840, another Comanche leader, Buffalo Hump, led a large tribal coalition army (400 warriors and 600 camp followers) south to attack Victoria, murder 20 settlers, and burn coastal Linnville before running into a Ranger ambush at the Battle of Plum Creek.<sup>23</sup> And that was only the beginning of Indian wars that lasted until the



Photograph by David A. Fulrow.

Texas historic sign marking the Battle of Plum Creek battlefield stretching east of Lockhart.

1870s. The Council House Fight led to decades of warfare that might—just might—have been avoided.

## II. Conflicting Cultural Traditions Contended in the Lone Star Republic Empowering the Texas Supreme Court to Reshape American Law

**The Council House Fight exemplifies how conflicts among legal cultures can shape history.** In Part I of this article, in the Fall 2013 issue of the Journal, we considered how Spaniards introduced Castilian law into Texas and how that law evolved into a flexible system of local frontier justice. The courthouse next to San Fernando Cathedral embodied those Spanish, Mexican, and Tejano traditions until the Republic's leaders secularized it as a courthouse.

**Comanche chiefs and their warriors viewed Texans as lawless violators of sacred customary law.** In the absence of common or codified law, the Comanches relied on custom. When tribal chiefs met in a peace parley, Comanche custom dictated that their lives and freedom were sacred. Comanche customary law held diplomats inviolable. Otherwise, diplomacy was impossible.

Because Texans tried to take Comanche chiefs prisoner during a peace parley and then killed them and their women and children, Comanches came to see Texans as treacherous murderers with no respect for the

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law embodied in custom immemorial. The shock to Comanche norms was as profound as the American public's surprise at the Iranian government's violation of the American embassy and seizure of diplomats as hostages in Tehran in 1979 and 1980.

**Texans viewed Comanche chiefs as pirates outside the law of nations.** Judge Hemphill and Colonel Karnes viewed the Comanche chiefs not as honorable ambassadors of sovereign nations but as perfidious, pagan pirates of the plains and organized criminals not entitled to immunity under the law of any civilized nation. Matilda Lockhart's scarred appearance and pitiful tale reinforced their beliefs that the Comanches were pitiless, lawless murderers, torturers, kidnappers, child-rapists, and arsonists.

U.S. Army General Thomas Jesup used a similar false-parley tactic in the 1836–37 Seminole War to capture Seminole Indian resistance leaders in Florida, including Osceola and Micanopy, whom Jesup induced to negotiate under a flag of truce.<sup>24</sup> Judge Hemphill must have learned of the feigned-truce tactic, which was the subject of great controversy in Eastern newspapers, where it was often called dishonorable. In accord with Judge Hemphill's Back Country Scots Irish cultural tradition of venerating military service, he joined the U.S. Army and took a steamboat to the front lines at St. Augustine, Florida in 1836 to serve as a lieutenant in the war before falling victim to malaria.<sup>25</sup>

When Judge Hemphill participated in the parley at the Council House, he showed no sympathy for the Comanche chiefs who appeared before him as tribal ambassadors. They were foreigners to him and to all he held dear in his Scots Irish culture. In *Herbert v. Moore*, the Hemphill Court—writing through Associate Judge William J. Early—asked whether Indian tribes were independent nations or, instead, wards of the state “wholooked to the government for protection, and relied on its kindness and power.”

Shall we apply post liminy to Pirates on land, or Indian robbers? .... And how do these Indian tribes, the Wacoos and Comanches, live ...? To avenge their imaginary wrongs, they have uniformly had recourse to rapine and bloodshed. Shall we then dignify them with the proud title of nationality?<sup>26</sup>

The Court answered no. Citing Chief Justice John Marshall's decision in *Cherokee Nation v. Georgia*,<sup>27</sup> the Hemphill Court's *Herbert* opinion held that Indian tribes

remained in a state of “pupilage,” subordinate to the needs and interests of the state in which they resided.

**President Mirabeau B. Lamar's “extinction or expulsion” Indian policy reflected his continuation of the elite Virginia Tidewater legal tradition.** The Texas empresario, Stephen F. Austin, and the Republic's second president, Mirabeau B. Lamar, strove to create a southwestern version of Virginia, an imperial slavocracy destined to expand to the Pacific Ocean. Both exemplified the cavalier, aristocratic culture of the Tidewater Chesapeake.

Austin was born in Virginia, while Lamar grew up amidst privilege on a Tidewater Georgia plantation. Both breathed the heady air of a legal tradition of hegemonic freedom that secured liberty for a tiny, white, male planter-elite whose members subordinated indentured servants and exploited an even larger number of African and African-American slaves.

The Indian policy President Lamar announced at his 1838 Inaugural tracked the same policy of extermination or expulsion Virginia's planters pursued after the Great Massacre of 1622. Virginia Company officials condemned the Powhatan Indians to death by ordering Governor Sir Francis Wyatt to begin “surprising them in their habitations, demolishing their Temples, destroying their Canoes, plucking up their [fish-]weares, carrying away their Corne, and depriving them of whatsoever may yeeld them succor or relief.” Virginia Company officer Edward Waterhouse suggested that settlers use “horses, and Bloodhounds to draw after them, and Mastives to seize” Indians.<sup>28</sup>

President Lamar revived Virginia's mid-seventeenth century Indian extermination-or-expulsion policy in mid-nineteenth century Texas. By treating Comanche chiefs as pirates or mob-bosses rather than as ambassadors of a warring nation in conflict with the Republic of Texas, President Lamar made diplomacy between Texans and Comanches very difficult. President Lamar's Indian policy made the Council House Fight and decades of Indian warfare almost inevitable.

**The Council House Fight reflects the continuation of the Castilian/Tejano legal culture.** The first part of this article, published last autumn, described the introduction of Castilian law into Spanish Texas, as well as the evolution of an informal, rough and ready Tejano legal tradition in places such as San

Antonio de Bexar. Lorenzo de Zavala, Juan Seguin, Angel and José Navarro, and Silvestre and Fernando de Leon exemplify the Castilian legal tradition that resulted in the use of San Antonio's Council House as a courtroom of the Republic.<sup>29</sup>

Lorenzo de Zavala, a life-long constitutionalist and the Republic's first Vice President, preserved the Castilian/Tejano tradition and incorporated it into Texas law. Born in the village of Tecoh in the Yucatan Peninsula, de Zavala received a traditional Catholic education at the Tridentine Seminary of San Ildefonso in Mérida in 1807. He began as a reform-minded journalist, newspaper editor, and Secretary of the City Council of Mérida from 1812 until 1814. After being imprisoned by Spanish authorities in Veracruz in 1814, he became a prison physician in 1817, learned English, and traveled to Madrid in 1821 as a deputy to the Spanish Cortes.<sup>30</sup>

De Zavala drafted and signed the federalist Mexican Constitution of 1824, represented Yucatán in Constituent Congresses and the Mexican Senate, and served as Governor. When he learned of General Santa Ana's seizure of power while serving as a Mexican diplomat in Paris, he denounced the tyrant, resigned his post, and returned to participate in the Texas Revolution.

Meanwhile, in San Antonio, Juan Seguin, Chief of the Department of Bexar, "urged every municipality in Texas to appoint delegates to a convention . . . to consider the impending dangers and to devise means to avert them."<sup>31</sup>

When it became clear that federalism's prospects were dim in Mexico, the publication of the "Opinions of Lorenzo de Zavala" and the

petitions of men like Juan Seguin helped Texas newspapers launch the Texas independence movement. De Zavala represented Harrisburg in the Consultation of 1835 and played an even more prominent role in the independence-minded Convention of 1836.

In 1835 and 1836, two representatives of San Antonio de Bexar—Francisco Ruiz and Antonio Navarro—went to the Convention Stephen F. Austin helped organize at Washington -on-the-Brazos on behalf of San Antonio de Bexar. De Zavala helped write the Texas Constitution of 1836. Soon after being appointed there as the Republic's first Vice President, de Zavala ensured that officials translated the Constitution and the Republic's statutes into Spanish for Tejano citizens.<sup>32</sup>

The 1836 Constitution that Lorenzo de Zavala helped write provided that, "All laws relating to land titles shall be translated, revised, and promulgated." The Republic's Congress mandated that the Commissioner of the Texas Land Office hire a translator who "shall understand the Castilian [sic] and English languages" with the ability to record "all the laws and public contracts relative to the titles of land which are written in the Castilian [sic] language. . . ." to preserve Tejano property rights.<sup>33</sup> The Castilian/Tejano legal tradition lived on in San Antonio, where it continued to influence Texas law, most notably in Chief Justice John Hemphill's Texas Supreme Court. The fact that the Council House Fight occurred in a San Antonio courtroom represents the physical manifestation of the Tejano legal tradition in the Republic.

Part 1 of this article also discussed how

Stephen F. Austin, Tidewater planters, and land-hungry First Colony settlers who followed him brought a second legal tradition to Texas. They introduced the cavalier, aristocratic culture of the Chesapeake with its hegemonic concept of freedom, protection of constitutional rights through written constitutions, and race-based chattel slavery.

In the third part of this article, scheduled for publication this autumn, we'll trace the arrival in Texas of a third legal tradition. Sam Houston exemplifies the introduction of Back Country Scots Irish norms of natural liberty, low taxes, limited government, and debtor-sympathetic legislation to Mexican Texas and the Republic from the 1820s through the 1840s.

Chief Justice John Hemphill, another immigrant Texan who shared much of Sam Houston's Back Country cultural background, braided together these three competing legal traditions—Castilian Spanish, Tidewater Virginian, and Back Country Scots Irish—weaving them into the fabric of a Texas jurisprudence that changed the world.

**DAVID A. FURLOW** is a historian, trial lawyer, and appellate specialist. After practicing nearly thirty years (twenty-four of them as an appellate advocate certified by the Texas Board of Legal Specialization), he serves as Executive Editor of the Texas Supreme Court Historical Society Journal and as First Vice President of the Writers' League of Texas while writing the first comprehensive biography of seventeenth-century founding father Isaac Allerton. David encourages anyone interested in submitting an article to the Journal to contact him via phone at 713.202.3931 or at [dafurlow@gmail.com](mailto:dafurlow@gmail.com).

## Endnotes

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Gammel Book Co. 1900), available at <http://books.google.com/books?id=8-n1RXaZr9YC&pg=PA188#v=onepage&q&f=false> (last visited May 21, 2014), quoted in *Quanah Parker*, at 85.

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10 See *Quanah Parker*, at 84. *Cf. id.*, at 17, 19, 37, 43, 44–45, 56, 104, 106, 120–21, 124, 156, 173, 184, 202, 211, 272.

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- 12** *Id.*
- 13** See Quanah Parker, at 36–52, 85.
- 14** See Quanah Parker, at 85.
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- 16** See “Hugh McLeod’s Report on the Council House Fight” (March 20, 1840), App. to the Journals to the House of Representatives, Fifth Congress, Archives and Info. Servs. Div., Tex. St. Lib’y and Arch. Comm’n, 1–2 [hereinafter McLeod Report], available at <https://www.tsl.texas.gov/exhibits/indian/war/mcleod-mar1840-1.html> (last viewed May 21, 2014), quoted in Quanah Parker, 85.
- 17** See Quanah Parker, at 86 (quoting William Preston Johnston, *Life of General Albert Sidney Johnston*, 117 (1879)).
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- 21** See Quanah Parker, at 86.
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## SPOTLIGHT ON AN EL PASO LAWYER

## STEVE ANDERSON

BY CLINTON F. CROSS

**I** met Steve Anderson many years ago at the Church of St. Clement. His public service career and his approach to private practices reflects his personal values.

**CROSS:** Tell me a little bit about your ancestors, your parents.

**ANDERSON:** My ancestors migrated from France to Louisiana. My mother and father and the rest of my family were born in Louisiana. My uncle was an attorney and he practiced in Louisiana.

My father Charles Anderson was also a lawyer. He practiced here.

**CROSS:** Siblings?

**ANDERSON:** My brother Greg is an El Paso attorney. He practices plaintiff's law and criminal defense law. My sister Kathleen is an attorney in Bastrop, Texas. She does family law and criminal defense law

**CROSS:** Where did you go to school?

**ANDERSON:** I attended Coronado High School, the University of Texas at Austin, and Texas Tech School of Law. I graduated from Texas Tech with a Doctor of Jurisprudence degree in 1982.

**CROSS:** After you got out of school, what did you do?

**ANDERSON:** After I graduated from Texas Tech, I worked for almost three years with Cox and Smith, a San Antonio law firm. I then went to Georgetown Law School, obtaining my masters in taxation in 1986.

**CROSS:** Then back to work?

**ANDERSON:** After I graduated from Georgetown, I returned to El Paso and worked for Scott, Hulse, Marshall, Feuille, Finger, and Thurmond. At Scott Hulse I had a tax and business practice. I received a lot of great training with that firm when I was there.

**CROSS:** But you did not stay?

**ANDERSON:** In 1992 I left Scott Hulse and formed a firm with my brother and two close friends, John Bright and Bill Crout. We have been together as Anderson, Anderson, Bright



Steve Anderson

and Crout for more than 20 years.

**CROSS:** Any public service?

**ANDERSON:** During this period of time, I was appointed a municipal judge and a justice of the peace. I served as a municipal judge from 1993 until 2001. I served as a justice of the peace from 2001 to 2008. I was thereafter elected to each one of these positions for one or more terms.

**CROSS:** As a result of your experiences as a practicing attorney and as a judge, any thoughts about those experiences?

**ANDERSON:** The majority of our citizens will in their lifetime interface with a municipal court or a justice of the peace court. Most will never interface with a higher court. I was troubled by the fact that both municipal court and Justice of the peace courts lacked adequate resources to address the problems I had to deal with.

**CROSS:** What do you mean? Can you illustrate?

**ANDERSON:** Municipal courts and justice of the peace courts have jurisdiction over juvenile class C misdemeanor and truancy

cases. The courts oversee thousands of these cases. The judicial options are limited and ineffective and in some cases unfair.

For instance, juveniles who are found guilty must pay a fine or perform community service. The juvenile is not usually working and he or she cannot pay the fine. As a result, the juvenile's parents must pay the fine. The juvenile frequently has only one parent, usually the mother, and that parent may not have adequate resources to pay the fine. Community service may be an alternative, but it is often very hard to find sufficient community service functions for the juvenile to perform.

I tried to address this problem by creating my own community service program picking up trash. I was fortunate to have several community volunteers and because I was still in private practice I had financial resources to fund the program.

I discovered that participation in my community service program changed many of the children, I believe as a result working together and side by side with me performing the community service.

Truancy cases present similar challenges. In truancy cases, the courts can fine both the parents and the child. The school districts aggressively pursue truancy cases because the State compensates the districts based on attendance. When a child fails to attend, the state reduces the district's financial compensation.

**CROSS:** So how can we best address the truancy problems? Once again, please illustrate.

**ANDERSON:** In one of my cases, a juvenile appeared before me for failure to attend class. His parents had divorced and the juvenile had become very rebellious. I was confronted with either fining the juvenile and his parents or making him perform community service. The fines did not compensate the school district and the family was already having serious financial difficulties.

I chose to order participation in community service. The child appeared at my first community service function and he was very belligerent. However, when he saw me joining

the other juveniles to pick up trash, he was motivated and he began picking up trash. We talked.

Thereafter this juvenile attended every one of my community service functions. He was always on time. He worked hard, picking up more trash than most of the other kids. I realized that this child not only needed and wanted supervision but also a personal relationship with an authority figure—unfortunately, a personal relationship that he was not receiving at home or at school.

Years later I ran into his father on the street. He told me his son had eventually gotten his GED and was gainfully employed. I felt that I had personally played a part in helping this child find his way.

The fines would not have addressed the problem.

The community service approach did not work for every child. However, I have no doubt that it did make a difference for some children.

**CROSS:** *So what's the key?*

**ANDERSON:** I think personal relationships matter. If I may, I'd like to tell you one more story that I believe supports my position. One day I was picking up trash with my offenders when a car full of male juveniles slowly approached us. Two or three of the children in our group gathered around me. Others soon joined them and I found myself surrounded by a sizable group of children.

I wanted to know what was going on. I was informed that the car full of kids were members of a local gang. Then the car quickly turned around.

I marveled at how these children, all of whom had appeared before me in court, many of whom came from low income homes, many of whom suffered from problems at home, many of whom lacked self-respect and had feelings of poor self-esteem, were now trying to protect me. These children were proud because they had protected me.

I believe criminal justice programs and bar associations should encourage judges to explore a holistic approach to addressing juvenile misconduct. I also believe that the

government and/or private foundations should provide municipal and justice of the peace courts with sufficient monetary resources to fund community service projects such as the one I funded myself.

**CROSS:** *Tell my about your private practice.*

**ANDERSON:** I am a residential real estate law specialist. I work with home owners, banks, and title companies all day long. It is alarming to see the number of title problems that exist with respect to people's homes.

I get a great deal of satisfaction resolving complex title problems for families so they can confidently transfer their property to others. This can be particularly rewarding when the grantees are relatives or children. I get to be a part of helping my clients fulfill their dreams of owning a home and owning a piece of America.

**CLINTON F. CROSS** is an Assistant El Paso County Attorney assigned to the Criminal Unit.

## Job Position Available

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**The Technology and Enterprise Contracts Law Group seeks an attorney to independently provide comprehensive, timely and high quality legal services to all Prudential business and corporate units in connection with the acquisition and use of technology goods and services and technology and business process outsourcing transactions, and to provide counsel on technology and general contract legal issues, strategies and policies. The Technology and Enterprise Contracts Law Group is part of the Operations and Systems Law area.**

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- Supervising contract professionals negotiating technology agreements.

### Qualifications:

Ten or more years of technology law and outsourcing experience are required. Both Law firm and in-house experience is preferred. Candidate should understand the needs, demands and requirements of business and functional units and should possess a good working knowledge of the information technology business, services and products. This position requires a project-oriented, self-starter who possess strong analytical, negotiation, organizational, interpersonal and communications skills. Requires ability to negotiate and draft complex contracts for acquisition of technology and complex services, including the ability to construct business and financial terms of transactions in addition to legal terms. Requires ability to balance a large workload and to turn-around contracts and documents accurately and in a prompt and timely fashion.

Please submit resumes directly on our job site: [jobs.prudential.com](http://jobs.prudential.com) or follow the link below to submit an application:  
<http://jobs.prudential.com/location/Roseland-NJ/VicePresidentCorporateCounsel/TEC0002K>

## Association News

On January 15, 2015, El Paso Paralegal Association held its Annual Meeting of Members at the El Paso Club. The following members were elected as Directors and Officers for the 2015 year:

President - Priscilla Juarez;  
 President Elect - Olga Burkett;  
 Vice President of Membership - Marina Hammond;  
 Vice President of Advertising - Yolanda Garcia;  
 Vice President of Legal Education - Linda Gonzales  
 Vice President of Public Relations - Louise Elorreaga  
 Vice President of Publications - Heidi Beginski  
 Vice President of Programs - Yolanda Pearson  
 Secretary - Amanda Smith;  
 Treasurer - Laura Aguilar;  
 NALA Liaison - Mariann Porter.

The following members were appointed as Officers for State Bar Paralegal Division Liaison - Olga Burkett; Student Liaison - Deja Hayes and Job Bank Coordinator - Clara Buckland. The newly elected and appointed officers were sworn in by the El Paso Bar Association President, Laura Enriquez.

### Membership meetings

#### April 16, 2015

Time: 12:00 p.m.  
 Location: El Paso Club,  
 201 E. Main Street, El Paso,  
 Texas 79901  
 Speaker: TBA  
 Topic: TBA

#### May 21, 2015

Time: 12:00 p.m.  
 Location: El Paso Club,  
 201 E. Main Street, El Paso,  
 Texas 79901  
 Speaker: TBA  
 Topic: TBA

#### June 18, 2015

Time: 12:00 p.m.  
 Location: El Paso Club,  
 201 E. Main Street, El Paso,  
 Texas 79901  
 Speaker: TBA  
 Topic: TBA

### Upcoming Holidays

*Memorial Day –*  
 Monday, May 25, 2015

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## LAW DAY CHESS TOURNAMENT

As part of its Law Day activities, the El Paso Bar Association sponsors a chess tournament for elementary and middle school children. The tournament pits children in each grade level against each other, where first and second place winners are given trophies and then get to play a lawyer. If they defeat the lawyer, they receive a medal with chess symbols that state "I Beat a Lawyer."

The Law Day Chess Tournament will be held on May 2, 2015 from 9:00 a.m. to 1:00 p.m. The event will be a success if the El Paso Bar Association can field a 16-person chess team composed of lawyers and paralegals to play the children at the end of their tournament. The success of this event depends on your participation. We are looking for players who know the moves, not just aficionados of the game. All you have to do is show up around 10:00 a.m. on May 2.

**Any child in the appropriate grade level can participate.  
 There is no entry fee.**

# El Paso Bar Foundation Hosts Grant Program Meeting

BY: RODOLFO "RUDY" MATA

The El Paso Bar Foundation ("Foundation") is pleased to announce this year's grant recipients. The Foundation has awarded a total of \$8,000 to commendable local projects that further the Foundation's mission.

The Texas RioGrande Legal Aid, Inc., (TRLA) will receive \$2,000 for its project entitled, "Educating Low-Income Tenants on their Legal Rights." TRLA will use the award to update, redesign and expand the current content in its housing brochures to develop a booklet on the rights of low-income housing tenants. TRLA will distribute the booklets to the eight Justice Courts in El Paso County, four of which had newly elected Justices in 2014. TRLA has appeared before the Council of Justice Court Judges to raise awareness about issues affecting low-income tenants. At a recent meeting of the council, according to TRLA's grant application, the Justices agreed to distribute TRLA material and pro se documents in their waiting areas.

The Legal Charitable Foundation of El Paso was awarded \$1,500 for its project entitled, "Project FUTURE." Grant funds for Project FUTURE will be used to assist young adults in the Department of Family and Protective Services (DFPS) foster care system who reach 18 years of age without being adopted or returned to their parents. Project FUTURE will help these young people by providing meaningful work experiences and assisting them in developing a goal-oriented future that is productive to both the individual and community. Approximately 20 participants will be placed in part-time law related internships for 6 weeks, funded in part by the Foundation's grant. Project FUTURE also seeks to provide pro bono legal assistance with expunctions and sealing of juvenile records for qualified indigent participants.

The El Paso Child Guidance Center (Center) was awarded \$2,000 for its project entitled, "Protecting Client's Rights: A Therapist's Guide to Testifying in Court." Among other purposes, the Center provides for child and family oriented consultation, education, and information to other community agencies, professionals and the general public regarding children and their families experiencing emotional or behavioral disorder or disturbances in their development. A first-time Foundation



grant recipient, the Center will use the award to provide training to therapists on testifying in court. The objectives of the training include providing an understanding of rights and options when a therapist is subpoenaed; describing how therapists can prepare effectively for testifying; providing an understanding of the client/therapist privilege to protect client rights; and helping to understand the role of a testifying therapist.

The Center Against Family Violence (CAFV) will receive \$2,500 for its project entitled, "Legal Advocacy for Survivors of Domestic Violence and Sexual Assault." CAFV will use the grant to support its immigration advocacy and court accompaniment projects, which assist undocumented survivors of family violence through advocacy and self-petition guidance. According to the grant application, CAFV is the only agency located alongside the US/Mexico border that provides comprehensive residential and non-residential services to survivors of domestic violence and sexual assault, and is the only family violence center in Texas that is fully accredited by the Board of Immigration Appeals.

The Foundation will host a reception this May to honor the 2015 grant recipients, introduce new Fellows, and recognize Life Fellows. The reception date and location will be posted soon.

The Foundation, a charitable organization, provides grant funding to support, promote and encourage programs to enhance the administration of justice, ethics in the legal profession, legal assistance to the needy, public education on law-related issues, and legal research and scholarship. Although funds supporting the Foundation's grant program come primarily from membership dues paid by its Fellows, donations are welcomed. Toward this end, the Foundation encourages donations in memoriam revering the lives and careers of local attorneys and citizens whose estates, families and colleagues desire to honor their memories through the Foundation's good work. In addition, the Foundation is receptive to receiving gifts through donors' wills and living trusts.

Please contact El Paso Bar Foundation President Rodolfo "Rudy" Mata at [rmata@bomwlaw.com](mailto:rmata@bomwlaw.com) or at 915.845.5800 for more information regarding the Foundation's grant program, gifting opportunities and interest in becoming a Foundation Fellow.

**RODOLFO 'RUDY' MATA** is a shareholder in the law firm of Blanco Ordoñez Mata and Wallace, PC. He specializes in commercial transactions, corporate, and real estate law. He is President of the El Paso Bar Foundation.



# Making good on a pledge

## Texas Access to Justice Campaign

To the El Paso Bar

*I pledge allegiance to the Flag  
of the United States of America,  
and to the Republic for which it stands,  
one Nation under God, indivisible,  
with liberty and JUSTICE FOR ALL.*

With a hand over our heart, we have all made the pledge. For many of us, it's those final words—Justice For All—that echo loudest. Yet millions of Texans don't have access to this fundamental right so valued in America. Not because they don't believe in it or don't deserve it—but because they can't afford it.

The El Paso Bar was created to serve the legal community and public of El Paso County by promoting high standards of integrity, honor and courtesy within the legal profession, and fostering positive relations among the community, lawyers and the judiciary. That's a beautiful pledge to justice for all.

El Paso is earning a reputation for justice, thanks in large part to the strengths of members of the El Paso Bar Association and the community. El Paso was the first city in Texas with an official wage theft task force, which includes the El Paso Police Department, the El Paso Sheriff's Office, El Paso County and District Attorneys and the Labor Justice Committee. The Paso del Norte Civil Rights Project is also a member of the task force—and they are quick to thank the lawyers taking pro bono clients. Many lawyers in the community have been working with the nonprofit since they opened eight years ago. Jed Untereker is the Economic Justice Staff Attorney with the Paso del Norte Civil Rights Project, and he explains that wage theft cases have generated overwhelming support from the bar because the victims are hard-working yet vulnerable, and because it is bad for business.

“Wage theft victimizes individuals and puts families in crisis—and it is bad for El Paso. Fighting wage theft levels the playing field for business owners that play by the rules. Wage theft has collateral damage as well—unpaid wages lead to unpaid rent, and victims are forced to move. Landlords lose tenants, local stores lose customers, spouses give up their work, and the effects can be seen all the way through to local tax revenues that pay for schools and



city services.”

Janet, a recent client, was referred by someone at her church in El Paso. Janet was a home health care worker, a highly exploitable industry. She was offered a contract for an agreed upon salary, and yet her paychecks were significantly lower, and when she asked her employer they said that was all they could afford. Jane accepted it, but heard from a friend at church that the Texas Civil Rights Project (a project of Oficina Legal del Pueblo Unido) could help. Not only was Janet not getting her agreed upon salary, but she was not getting overtime owed. With legal help, Janet received what she earned for her hard work.

Because of contributions from donors like you, there was free justice for Janet. As the staff at the Civil Rights Project say, it is “Amazing how many times we get somebody paid just by sending a demand letter on our letterhead.”

Help hard workers like Janet, and make good on the promise of Justice in the pledge of allegiance: Contribute to the 2015 Access to Justice Campaign.

Last year, the Texas Access to Justice Commission raised \$1.16 million from just 7.5% of licensed Texas attorneys. But this year—our fourth year of this campaign—our goal is higher.

We want to double participation to 15% in 2015, and together we can get there.

Honor your pledge by making the suggested \$150 ATJ contribution now online at [www.texasatj.org](http://www.texasatj.org) or on your annual State Bar dues

statement. Or, join our Champions of Justice Society, created to recognize those who wish to show their strong support of access to justice at gifts of \$250 or more.

Funding gathered by the Texas Access to Justice Commission goes to organizations in your community, including legal aid offices and faith-based service providers that serve the civil legal needs of low-income Texans.

These funds help obtain Justice For All hard workers like Janet, women and children suffering from abuse, and families desperate to complete basic legal documents necessary for survival.

In West Texas, Texas Rural Legal Aid provides Justice For All Children:

When Maria's husband passed away, she was devastated. She did her best to keep life normal for her two children, but finances were difficult. One of their biggest bills was a \$300 per month payment to buy the property they were living on. Though Maria continued to make the payments, the seller refused to accept the money unless she signed a new contract. She agreed to do so and continued making payments and keeping her receipts. After several months, the seller again refused to take her payments and began telling neighbors that Maria was never going to get the title to the property. Not knowing what to do, she turned to Texas RioGrande Legal Aid (TRLA) for help.

TRLA discovered that Maria's husband had a contract with the seller to buy the land for less than the amount of money she had already paid. Not only had Maria finished paying for the property, she had overpaid and was entitled to the title. TRLA contacted the seller and let him know that, under the law, Maria was entitled to the property and damages. It didn't take long for the seller to contact Maria to settle the case and avoid going to court. She received the title to the property and continues to live there with her two children.

As you can see, your help—your donation that keeps these legal services offices open for business—makes a tremendous difference.

For more information about the ATJ Contribution Campaign or the Champion of Justice Society, visit [www.texasatj.org](http://www.texasatj.org) or contact Liza Levine, director of development at (512) 427-1892 or [liza.levine@texasbar.com](mailto:liza.levine@texasbar.com).

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## LAW DAY DINNER & AWARDS PRESENTATION



SATURDAY, MAY 2, 2015  
EL PASO COUNTRY CLUB

Cocktail Hour – 6:00 p.m.  
Dinner and Awards Presentation – 7:00 p.m.

**Cost is \$75 per person  
\$750 for Table of Ten**

*Contact Nancy at [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net) for any additional information*