



EL PASO BAR JOURNAL

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An Update of Events and Information

February/March 2016

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Oppenheimer and Lyons in 1929

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...everyone has one

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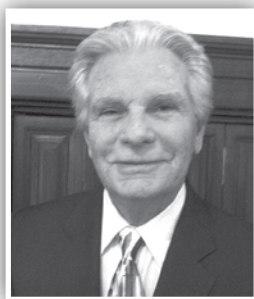
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The El Paso Bar Journal is a bi-monthly publication of the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to the attention of Nancy Gallego. All submissions must be received by the Bar office on or before the 10th day of the month preceding publication. Calendar listings, classified ads, display ads, and feature articles should not be considered an endorsement of any service, product, program, seminar or event. Please contact the Bar office for ad rates. 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.

PRESIDENT'S PAGE



Attorneys are Professionals

“My word is my bond.” I always believed in and followed this maxim. I believe in the first paragraph of the Texas Lawyer’s Creed which states “I am passionately proud of my profession. Therefore, ‘my word is my bond’.”

The hallmark of an enlightened and effective system of justice promulgated by lawyers is the adherence to standards of professional responsibility and civility. Professionalism includes civility, courtesy and honesty in interacting with our fellow attorneys, judges, and our clients. Unfortunately, I have noticed that civility among lawyers has deteriorated through the years of my practice. Our adversarial system, litigation techniques, the influx of many new lawyers to our profession, and the need to make a living all contribute to this regrettable change in our profession. Unfortunately, these factors frequently bring out the bad side “beast” in us. This lack of civility, courtesy, and honesty affects the public’s view and trust in our profession, and mistakenly causes politicians to believe that by merely changing our attorney’s oath to include “integrity and civility” this act alone will cause attorneys to become more civil.

Being civil does not mean being weak. Each lawyer has an ethical obligation to zealously represent his or her client. Zealous representation does not mean being uncivil, abrasive, rude, or dishonest. Zeal and vigor in the representation of clients are commendable. So are civility, courtesy, cooperation and honesty. The traits encompassing zeal and civility are not mutually exclusive. Lawyers can disagree without being disagreeable.

I have always thought of long range goals, rather than using trickery or dishonesty to achieve an advantage in a case, which ultimately damages my reputation for honesty, integrity, and competence. Once damaged, a reputation is almost impossible to restore. Further, such conduct demeans the profession. I ask, what do you want your career to look like after 25 years, 35 years, or 40 years in the profession? Do you want to be known as a person of integrity, a person who keeps his word, or a person who cannot be trusted by judges and fellow lawyers? We are in a career for “the long haul”; therefore, long range goals are paramount.

The hallmark of a successful, admired, professional attorney is to treat other attorneys, judges, and clients with integrity, courtesy, and honesty. When consistent with their clients’ interest, lawyers should cooperate with opposing counsel in an effort to avoid litigation and to resolve disputes. Lawyers should conduct themselves with dignity and refrain from engaging in acts of dishonesty, rudeness and disrespect. We must be mindful of the need to protect our proud profession in the eyes of the public, and strive to uphold the honor of our legal system. We all must practice our profession with integrity and courtesy, and if we do so, our clients and the public will understand that we are indeed in a high calling. As such, lawyers can uphold the honor and dignity of our profession.

MYER LIPSON
 President

EL PASO BAR ASSOCIATION
February Bar Luncheon

Tuesday, February 9, 2016

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

We will have a candidates
 forum with candidates for:
 Justice, 8th Court of Appeals
 District Attorney

Door prizes will be given out

Please make your reservations by Monday,
 February 8, 2016 at 1:00 p.m. at nancy@elpasobar.com
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EL PASO BAR ASSOCIATION
January Bar Luncheon

Tuesday, March 8, 2016

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

Guest Speaker
 to be announced

Door prizes will be given out

Please make your reservations by
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Advance Sheet, circa 1318 A.D.

BY CHARLES GAUNCE

Michaelmas Term, 12 Edward II

“A woman brought the *cui in vita* against him who had entered by her husband, and she demanded certain tenements etc. The tenant asked for a view, but this was counterpleaded, because the statute [Statute of Westminster II (1215), c. 48] wills ‘that a view be granted only in case where a view is necessary.’ Now since he ought not to be ignorant of what tenements the husband enfeoffed him there is no need for the view. And because the statute specifies in what circumstances a view (though granted at common law) shall not be granted, and since the present case did not come under the statute, the view was granted.”

Cui in vita was the writ a widow used to regain possession of her premises that her

husband had alienated during his lifetime. In the present case we are confronted with a widow seeking to regain title to her own real estate that her husband had conveyed to another. I suppose it would be unkind to suggest that it comes as no surprise that her husband became dead after conveying away his wife’s property, but justifiable homicide is not the gist of this case.

Rather, this case is about the litigants really, really, not being able to agree to anything. I suppose we have all had such cases, and most judges tend to think unkindly about them. The issue here is that the tenant demanded that there should be a viewing of the leased premises. The widow’s response was to the effect: “Well, there is no need for wasting the time and costs associated with this, as he darn well knows what lands he rented.” The tenant’s claim appears reasonable on its face, but it also suggests that there is an opportunity for mischief. When the notes of what is included in the conveyance are produced following the viewing, anything not itemized is subject to being retained by the tenant if the widow is successful in the pursuit

of her writ.

The judges took the easy way out: by reciting that a view was available at common law, they then noted the statute provided circumstances when a view would not be required. Concluding that none of the statutory bases for denying a view were present, they ordered the view to proceed.

In some ways this is analogous to the case where a husband files for divorce from his wife, and a wife also files for a divorce from her husband. Then the parties spend a remarkable sum of money having their counsel argue why their respective service of process upon their spouse was effective, and the service of process by their spouse upon them was defective. Usually the court will simply hold that it doesn’t matter, as if one of the parties have obtained good service, the case will proceed, and since both of the parties are seeking a divorce, service of process was good. Sometimes a rational decision is reached and justice prevails!.

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

CALENDAR OF EVENTS

FEBRUARY 2016

Tuesday, February 2

EPBA BOD Meeting

Tuesday, February 9

EPBA Monthly Luncheon
Candidates Forum

Wednesday, February 10

EPALP Monthly Meeting

Thursday, February 11

20th Annual Civil Trial Practice Seminar
Venetian Hotel, Las Vegas, Nevada

Friday, February 12

20th Annual Civil Trial Practice Seminar
Venetian Hotel, Las Vegas, Nevada

Saturday, February 13

20th Annual Civil Trial Practice Seminar
Venetian Hotel, Las Vegas, Nevada

Sunday, February 14

Valentine’s Day

Monday, February 15

EPBA Office Closed – President’s Day

Thursday, February 18

EPPA Monthly Luncheon

MARCH 2016

Tuesday, March 1

EPBA BOD Meeting

Tuesday, March 8

EPBA Monthly Luncheon
TBA

Wednesday, March 9

EPALP Monthly Meeting

Thursday, March 17

EPPA Monthly Luncheon

Friday, March 25

EPBA Office Closed – Good Friday

Thursday, March 31

EPBA Office Closed – Cesar Chavez Day

Thursday, March 31

EPYLA & EPBA Law Day Award Nominations
Deadline

UPCOMING EVENTS:

APRIL 2016

Saturday, April 30

Law Day Dinner and Awards Banquet

SENIOR LAWYER INTERVIEW

COLBERT NATHANIEL COLDWELL

BY CLINTON F. CROSS

CROSS: Tell me a little bit about your family.

COLDWELL: My father Harold Coldwell graduated from El Paso High and went to the Naval Academy. My mother grew up in Missouri. She taught stenography and typing in Punahoa, Oahu, where President Obama went to school for awhile. After retiring from the navy, my father returned to El Paso to teach mathematics at University of Texas in El Paso (UTEP).

CROSS: Siblings?

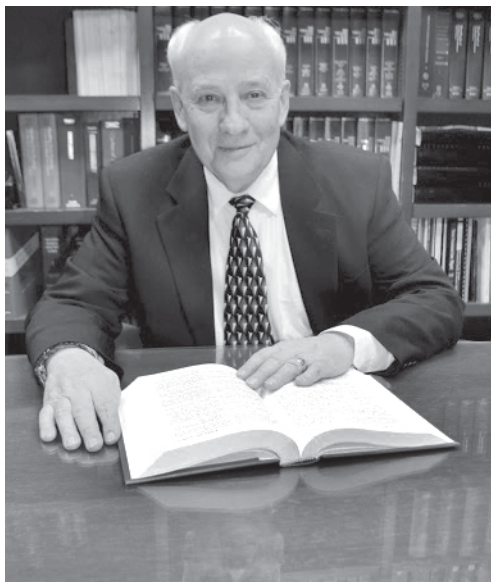
COLDWELL: My brother Michie went to the Naval Academy and Harvard Business School and then worked for IBM. One of my sisters attended Stanford and became a social worker. My other sister went to Radford and Smith where she taught English at The Tower School in Delaware.

CROSS: Schooling?

COLDWELL: I went to about twelve schools before I moved to El Paso. I graduated from El Paso High. My senior year I lived with my aunt Eleanor Coldwell. Eleanor was the widow of former 65th District Court Judge Ballard Coldwell, my father's eldest brother. I then went to the University of Texas, graduating with a Bachelor of Arts and a Doctor of Jurisprudence.

CROSS: I'd like to take a moment to digress. You mentioned your uncle Ballard Coldwell. For those who don't know you, I'd like you to briefly comment on some of lawyers in your family.

COLDWELL: My great grandfather was Colbert Coldwell. He came to El Paso as a Santa Fe trader about 1840 and learned to speak Spanish. When Colonel Doniphan came to El Paso before the Mexican War, Colbert served as his guide and interpreter. He later studied law and became a lawyer. During the Civil War he became a Republican unionist and spent some time in jail for being a Union sympathizer. Thereafter, General Sheridan appointed him to serve on the Texas Supreme Court. During his service, he participated in deciding the "Juneteenth" case. Thereafter, he



Colbert Nathaniel Coldwell

returned to El Paso as Collector of Customs. For a time, he practiced law in the firm of Coldwell, Fountain, and Blacker. Fountain Theater in Old Mesilla is named his former law partner after Albert Jennings Fountain. Coldwell opposed the Reconstruction KKK and several people threatened to kill him. By the way, I am writing a book about him.

Colbert Coldwell had two sons who became lawyers, my grandfather William Michie Coldwell and Nathaniel Colbert Coldwell.

William Michie Coldwell was licensed in 1876 in San Elizario when he was 20 years old and practiced until 1927. Coldwell Elementary School is named after him. He served as County Attorney in El Paso, and had to first take an oath that he had never engaged in a duel.

Nathaniel Colbert Coldwell practiced law in El Paso and also served as County Attorney. He then moved to several other places. When in Durango, Colorado he married cattle rustler and desperado Ike Stockton's widow. U.S. Supreme Court Justice Field's bodyguard and U.S. Marshall killed Justice Terry during an altercation on a train. The incident led to a famous U.S. Supreme Court opinion, *In re Nagle*. He also became the executor of former California Supreme Court Justice. His son got into the real estate business and founded the

firm known as Coldwell Banker.

My first cousin John Colbert Coldwell served as El Paso County Judge.

I could continue, but I think you get the idea. Lots of lawyers in the family.

By the way, I believe I have to earn respect from others for what I do—not what my ancestors or relatives did or did not do. For me, my family history gives me a sense of identity and a sense of connectedness to the past and to my community. I answered your questions about my family because I assume you thought my family history is also a part of El Paso's community history and might be interesting to others.

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

COLDWELL: I joined my cousin Judge Coldwell for a few years. I officed with Clark Hughes, Alan Rash, Alan Poague. I then went to work for Peticolas, Luscomb, Stevens, and Windle. Harry Lee Hudspeth and I both made partner. In 1980 I left that firm and joined Guevara, Rebe, and Bauman.

CROSS: What are you doing today?

COLDWELL: I practice with Guevara, Bauman, Coldwell, and Reedman. I specialize in civil trial practice. I was licensed in New Mexico in 1982 and I have a number of cases there.

CROSS: Any interesting cases?

COLDWELL: I lost the first case I tried, even though Wayne Windle tried to mentor me to victory. I appealed. The El Paso Court of Civil Appeals affirmed. I appealed again. I argued the case in the Texas Supreme Court and won. I now claim three wins in the Texas Supreme Court with no losses. *Monarch Marking System Company v. Reeds Photo Mart*.

I also had an interesting New Mexico case against a funeral home for charging for embalming a deceased family member and then failing to embalm the deceased, the New Mexico cause of action being outrage committed on human remains. I tried the case three times and finally got a good but confidential settlement.

No Pawn in a Game of Thrones: Queen Isabella of Castile Set a Lasting Precedent for Texas Women

BY DAVID A. FURLOW

In some of the best lyrics penned about the Lone Star State, Robert Earl Keene sang, “the road goes on forever, and the party never ends.” The same goes for the Castilian legal traditions that still shape community property law, divorce proceedings, and marital property rights in Texas: *El Camino Real de los Tejas* goes on forever, and the party never ends. The legal concepts conquistadors, missionaries, and cattle ranchers first brought to the Southwest during the sixteenth, seventeenth, and eighteenth centuries continue to shape the rights of Texas women.

The history of women’s rights in Texas begins in Europe with the *Hill* of a fifteenth century Iberian-royalty team: Queen Isabella I of Castile, who, with her husband King Ferdinand of Aragon, jointly exercised power as the *Most Catholic Majesties* of the Empire of Spain. In the Texas Supreme Court Historical Society’s book *The Texas Supreme Court: A Narrative History, 1836–1986*, historian James L. Haley argued that Isabella must be counted as the first of the many tough-minded, independent women who profoundly shaped the rights of Texas women.

Thru the life she lived, the example she set, and the body of Castilian law she gave to Texas, Isabella set a precedent and bequeathed a legal legacy of feminine empowerment to future generations. As Jim Haley observed in *The Texas Supreme Court’s* Prologue,

In England, a woman’s identity became subsumed in that of her husband when she married; property that was hers before marriage became his; she could not enter into contracts—her station was roughly equivalent to that of a child or a mental incompetent. Under civil law, things were vastly different, as indeed was embodied by Isabella herself, who as a young princess had been so used as a pawn in the

Photo of El Camino Real west of San Marcos by David Furlow

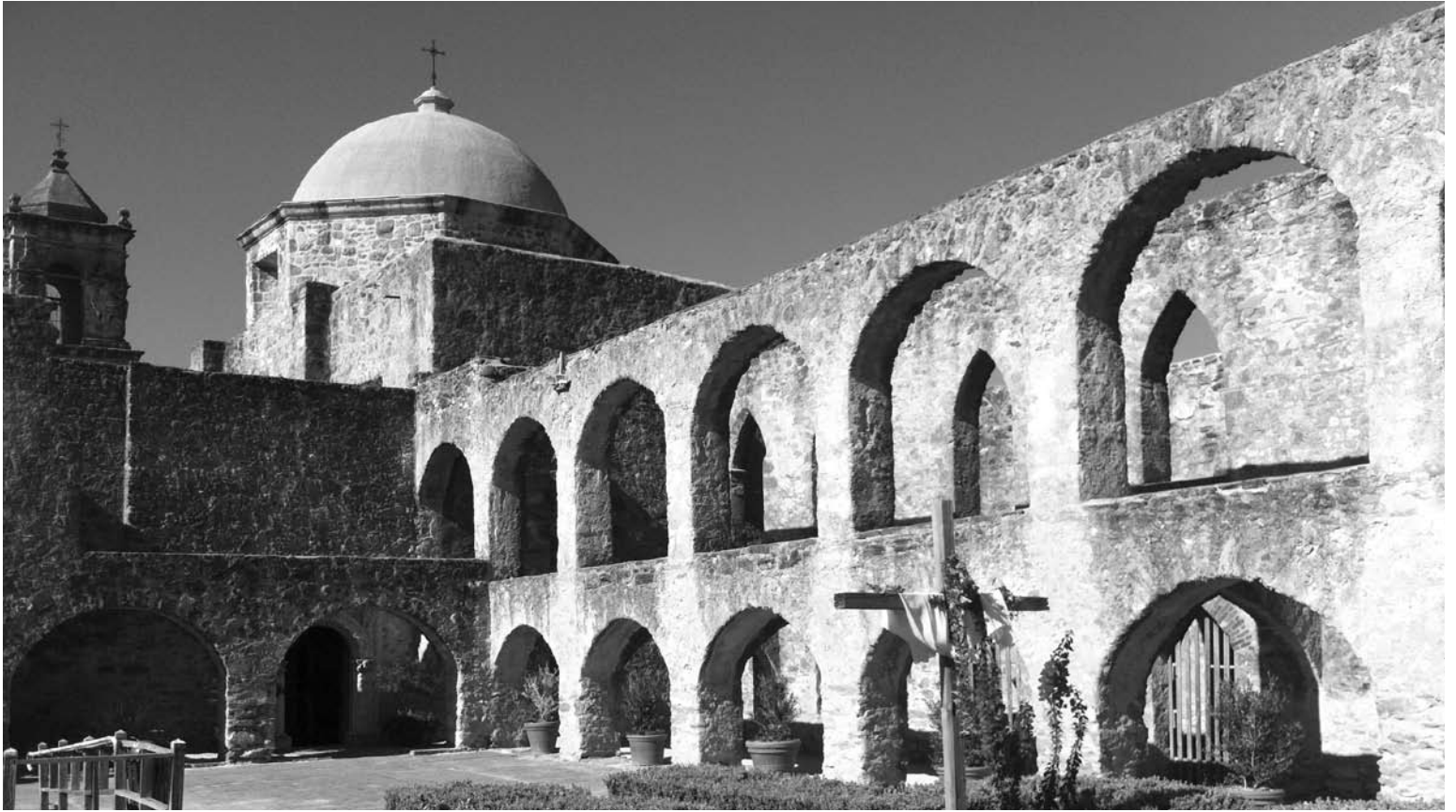


The King’s Road, El Camino Real, built during the period of Spanish rule, continues to cross Texas today, just as Castilian concepts of community property law and homestead protection continue to shape women’s rights in Texas.

games of powerful men that when she married, she refused a crown matrimonial. It was she herself who chose Ferdinand of Aragon as her husband, insisted on taking her throne as Ferdinand’s equal in power, and squeezed a prenuptial agreement from him.

All these areas of Spanish jurisprudence would come to have enormous implications for the land we would know as Texas. It was Isabella who took the lead in outfitting Columbus’s expedition, and her gamble paid off: his discovery of the New World. The successes of the conquistadores, Pizarro in Peru and Cortés in Mexico, made Spain the domi-





Mission Nuestra Señora de la Purísima Concepción de Acuña in San Antonio.

nant power in Europe and opened the floodgates of looted native wealth. Within two generations, Spanish cities in the New World had become cultural centers in their own right, with writers and composers, cathedrals and universities, and the complex, arcane system of laws whose enforcement descended from viceroy down to governor and further down to commandants civil and military.¹

In Chapter 3 of *The Texas Supreme Court* (“A Functioning Judiciary”), Haley described how John Hemphill preserved and expanded women’s rights to community property and homestead protection under the Spanish/Mexican law still in effect while Hemphill served as Chief Justice of the Supreme Court of Texas during the Republic:

A second realm of law that presented Hemphill with an opportunity to preserve the Spanish influence in Texas law was in the rights of married women. Under the common law in effect in most

Public domain, Wikipedia http://en.wikipedia.org/wiki/Isabella_I_of_Castile#/media/File:Isabel_la_Cat%C3%B3lica-2.jpg



Queen Isabella of Spain, from the painting Isabel la Católica, attributed to Gerard David, ca. 1520,

of the United States, wives were virtually the property of their husbands, with very little room

to maneuver into meaningful independent lives of their own. In Texas under Spain, wives had enjoyed the benefits of community property: they entered a marriage with property of their own, and if the marriage dissolved they retained their original property, and moreover had a right to part of the wealth that they had created as a couple. Even as it adopted the common law as its default value, the Texas Congress, as it did with pleadings, carved out an exception in embracing the concept of community property.²

As Haley explains, Chief Justice Hemphill exercised his influence as a jurist and as a drafter of Texas’s 1845 state constitution to protect the elevated status women enjoyed under some aspects of Castilian Spanish law:

It was inevitable that the two philosophies on the status of women would collide in Texas’s Supreme Court, and in *Scott and Solomon v. Maynard, et ux.*,³ Hemphill made clear his deter-

mination that counsel practicing before the Supreme Court had better acquire a working familiarity with Spanish law, because relationships entered into before Texas independence, whether contracts or marriages, would be governed by the law in force at the time they were entered into.

Hemphill also led the Court in a Latin-influenced approach to the law of creditor and debtor. Whereas in the common law, imprisonment for debt was still common practice, Spanish civil law had taken a milder view

toward debt since the days of Ferdinand and Isabella. Countless early settlers came to Texas to escape creditors in their home country...⁴

The Castilian civil law that Chief Justice Hemphill respected and revered enough to write into the 1845 Constitution gave married women in Texas greater property rights than their sisters had enjoyed in England and the rest of the American Republic.⁵

The progressive nature of Texas marital property law nevertheless went unrecognized at the women's rights convention at Seneca Falls, New York on July 19–20, 1848. The

convention's leaders declared that New York was the first state in the nation to secure community property rights for women, ignoring the fact that Texas had entered the United States three years earlier with those rights and more inscribed in its laws.⁶ The shadow of slavery cast a pall over everything Texan at that time, while the smoke of the Mexican War obscured any effort to recognize the unique rights Texas women then enjoyed.

[Editors' Note: A visual-lyrics version of Robert Earl Keene's song can be found at <https://www.youtube.com/watch?v=eN3BIPWg2U>.]

Footnotes

1. James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: Univ. of Tex. Press, 2013), 2–3.
2. *Ibid.*, 177-80.
3. Dallam 548, 553 (1843), cited in Haley, *Texas Supreme Court*, 39 and 261 nn. 31-32.
4. Excerpts from Haley's *Texas Supreme Court* are used by permission of the University of Texas Press and author Jim Haley.

5. See generally Mary Wollstonecraft, *Vindication of the Rights of Woman* (London: 1792; reprint, New York: Penguin, 1975); Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: Univ. of N. Carolina Press, 1980), 9-10, 120-34, 141-42, and 144-48 (women's property rights).
6. Haley, *Texas Supreme Court*, 1, citing James W. Paulsen, "Community Property and the Early American Women's Rights Movement: The Texas Connection," *Idaho Law Review* 32 (1996).

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HOW CIVILIZATION CAME TO EL PASO

“The First Thing We Do, Let’s...”

The Assassination of Young Lawyers Oppenheimer and Lyons in 1929
Part I

BY BALLARD COLDWELL SHAPLEIGH

To the best of the Bar’s collective memory, lawyers have been killed in the line of duty, or perhaps better said, because of their duties, only three times in Twentieth Century El Paso. This is the story about the first time it happened. – Clinton Cross, Editor

Shakespeare’s famous but ominous line – ‘The first thing we do, let’s kill all the lawyers’¹ – a line often heard and just as often uttered only half in jest, was delivered by Dick the Butcher, a cohort of the rebel Jack Cade who wished to ascend to the throne of England by expelling the occupant, Henry VI. In their plot, killing all the lawyers will win Butcher and Cade freedom from all laws and allow for an easier ascension.

In the context of public opinion, the line offers an easy, handy way to express the disdain felt for a corrupt, unethical and insufferable individual lawyer in particular and the unpopularity of the legal profession in general. Lawyers on the other hand, not surprisingly, see it another way. Lawyers see themselves as insuring justice in society because they are the proverbial protectors of truth and justice, professionals who work hard to bring civility, order and due process to the American way of life.

The goal of Dick the Butcher and Jack Cade, lawyers argue, was to subvert and destroy the law so that ordinary citizens would have no legal protection. Dick the Butcher, in wishing to kill all the lawyers, was actually advocating anarchy and lawlessness. Despite English history, or the reasons for Henry VI’s unpopularity, or even the substance of the play itself, many lawyers will still argue that Shakespeare actually intended this expression to be the highest and best compliment of the legal profession, or so the thinking goes.

But when it actually happens, when lawyers are killed, it is the product of evil. Some say that desire and illusion are the roots of evil. And so it was with José Marin when he assassinated two, young prominent El Paso lawyers on May 31, 1929.

“EP Lawyers Know Violent Death” was

Courtesy Edwin Moyer family



Herbert D. Oppenheimer

the headline of an *El Paso Times* article on December 27, 1978 following the Christmas Eve murder of Lee Chagra in his office that year, described by the media as a petty robbery. The article also described the killing of Ted Andress, gunned down in an ambush at the El Paso International Airport in 1959 by a doctor whom he had opposed in a divorce, and the murder of two other lawyers in their offices thirty years earlier in 1929.

Their names were Herbert Dannenbaum Oppenheimer and Francis Joseph Lyons. The two lawyers, Oppenheimer and Lyons, were murdered in cold blood in their own office about noon on a pleasant Friday.

When Herbert D. Oppenheimer and Frank Lyons were gunned down on May 31, 1929, El Paso’s population was approaching 102,000.

R.E. Thomason was mayor. Stewart Berkshire was the district attorney.

In February of that year, pioneering newspaper and TV man Dorrance Roderick moved from Lubbock to purchase the *El Paso Herald* and the *El Paso Times*. (Roderick would eventually see an El Paso-born granddaughter marry Bob Woodward of Watergate fame.) The Wall Street Crash of October 1929 was four months away, and the Great Depression loomed. Herbert Hoover, a Republican, was president.

Lyons and Oppenheimer, well-known El Paso lawyers, were born the year before and after famous U.S. amateur golfer Francis Ouimet. Lyons was born on February 28, 1892 in El Paso and Oppenheimer on June 2, 1894 in St. Joseph, Missouri. Each came to enjoy an excellent reputation among the seasoned professionals of the El Paso Bar Association.

While the twenty-year-old Ouimet was preparing to play in and win the 1913 U.S. Open, Lyons and Oppenheimer were preparing for their legal careers, engaged in university studies, winning debates and oratorical contests. Ouimet lived to ripe old age. He died in 1967 of natural causes at the age of 74.

Oppenheimer and Lyons, however, died as young men in 1929 at the hand of an assassin, one after the other, first Oppenheimer then Lyons. They were law school classmates and became law partners, developing a lucrative practice under the name of Lyons & Oppenheimer. Each had a beautiful young wife and small children.

Herbert D. Oppenheimer was buried in Mount Sinai cemetery on the Sunday following his senseless death. Rabbi Joseph Roth officiated. Pallbearers were his Kern Place neighbor Karl P. Goodman, Isadore Goodman, Walter Pragor, Fabian Stolaroff, Abe Bargman and Jerry Harris.

Student's Council



TOP ROW—Zellers, King, Hawley, Lohmann, Davis.
CENTER ROW—Brady, Butler, Gambrell, Lyons, Meador, Nelson, Green.
BOTTOM ROW—Derrick, Michotka, Walker, Wagstaff, McComas, Williamson.

OFFICERS

FRANCIS J. LYONS President
THOS. D. GAMBRELL Vice-President
REESE MEADOR Secretary-Treasurer

1916 Cactus-Top: Students Association Officers, Bottom: Lyons profile,

Karl P. Goodman and his family lived at 905 Cincinnati, across the way from the Oppenheimer residence at 916 Park Drive. Goodman's daughter Gertrude, almost five years old at the time and nicknamed Sugar by her father for her sweet disposition, could still recall that day 80 years later, saying she knew that something had happened because of the somber mood displayed by all the adults and the frenetic activity of all of the people coming in and out of her parent's house.

Lyons, a Catholic, was buried the next day in Evergreen Alameda Cemetery. Well-known

and much-beloved businessman Karl P. Goodman again saw duty as an honorary pallbearer, along with members of the El Paso Bar, including Mayor R. E. Thomason, Judge Ballard Coldwell of the 65th District Court, District Attorney Stewart Berkshire, J.M. Nealon, a former District Attorney, Judge David Mulcahey, and Thornton Hardie, future chairman of the U.T. Board of Regents (1957-1963) and grandfather to lawyer and mediator, Bill Hardie, Jr.

In commenting on the tragedy the editors at the *El Paso Herald* wrote in an editorial that "the slaying of two prominent El Paso attorneys...came as a shock. Messrs. Lyons and Oppenheimer, although comparatively young men, were of extended residence in El Paso, of excellent families and of corresponding social and professional connections. They leave many friends to mourn their death."

The 1916 UT Cactus confirms that Oppenheimer and Lyons were classmates and fraternity brothers at UT law school, and the yearbook provides insight into their character with humorous profiles of the newly graduating lawyers. For example, below the photo of William Emory Loose, shown to be from El Paso, it says "Bill hails from Elephant Butte, N.M. – really. Just where that metropolis is and why Bill left there, we don't know."

In the 1916 Cactus, Lyons is profiled as follows:

FRANCIS JOSEPH LYONS – El Paso – LLB. Delta Episolon Rho; Rusticusses; Newman Club; Athenaeum; Second Prize Evans Contest '14; Winner of State, Southern and National Intercollegiate Peace Contest '14; President of Student's Association '15-'16. PANCHO – "Down with 'em," he howls in dire and abysmal tones. A stern look crosses his manly features and again he mutters his anathema.

He refers to 'frats.' You see he is an exponent of democracy and won his fame by opposing everything that smacked of plutocracy. That's why the high school boys say his speech in the declamation contests. Frank says he is not like Henry Clay, for he is 'both right and President.

The study of law and an interest in debate brought Oppenheimer and Lyons together. Today, there are two main kinds of college debating programs. One focuses on a single topic or proposition in which the sides are typically in favor and opposed, and the other is known as parliamentary debate in which the subjects are not disclosed in advance. The debater is thus required to be fast on his or her feet, and possess substantial knowledge about many subjects. Oppenheimer and Lyons began at an early age.

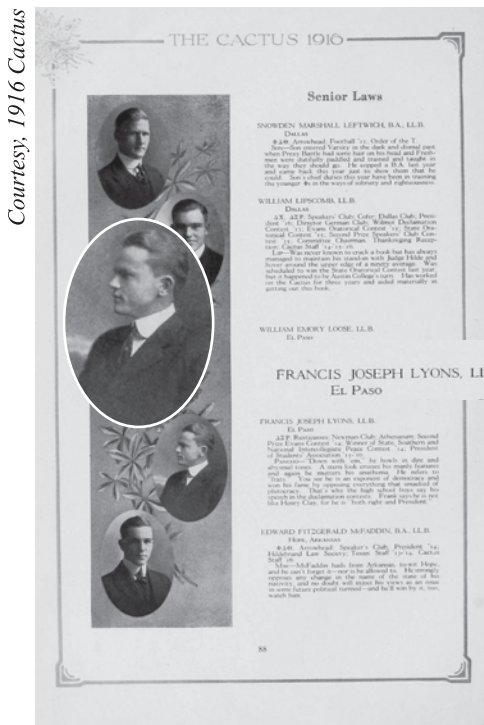
Herbert Oppenheimer was born in St. Joseph, Missouri. He studied as an undergraduate at the University of Michigan where he was a member of the debate team. He also began his postgraduate legal studies at the University of Michigan Law School.

In 1915, he transferred to the University of Texas Law School, where his nickname was "Opp" and it was observed that he had come from Michigan "where from all accounts he was the original oratorical kid." As a student, he was apparently anything but the quiet, retiring type and not shy about asking questions in class.

Like Lyons, Oppenheimer received his LLB in 1916. Both men were classmates of another well-known El Paso lawyer, Harold Potash. In the 1916 Cactus, Oppenheimer's senior yearbook photo is encaptioned:

HERBERT D. OPPENHEIMER – St. Joseph, Missouri – LLB. Delta Epsilon Rho. OPP – Oppenheimer comes from Michigan, where, from all accounts he was the original oratorical Kid. He spent too much time here learning Texas law on Married Women to bother much about Shurtertery, but says he can be called upon in a pinch whenever it becomes necessary to save the country.

When he was barely out of law school, with parents who were born in Germany, Oppen-



Courtesy, 1916 Cactus



Courtesy, 1916 Cactus

Oppenheimer profile

heimer was nonetheless made part of the first World War I draft in El Paso and ordered to report to Camp Travis in September 1917 together with other familiar long-time El Paso names like Frank Feuille, Jr, William K. Ramsey, and Thomas G. Gunning. Oppenheimer served with the American Expeditionary Forces in France from July, 1918 to May, 1919.

Upon his return, he resumed his legal career and married Ethel Amstater. They had three children. At the time of their father's death, James was age 5; Betty Irene, age 3; and Fanny Jean, age 1 ½.

Lyons, who usually went by "Frank," was born and raised in El Paso. His parents were Timothy Lyons and Ellen Caples. He attended the University of Texas where his nickname was "Pancho." He was involved in a variety of campus activities, even serving as President of the Students' Association in 1915-'16.

Lyons was also a gifted orator. He won declamation contests, even as a schoolboy. But his legal training might have given him a new edge, found in this classical advice of the times - "never write down your speeches beforehand; if you do, you may perhaps be a good declaimer, but will never be a debater."

During the summer of 1914, Frank Lyons won the "national peace oratorical contest" at a peace conference held in Lake Mohawk, NY. His achievement was reported far and wide. Lyon had won the right to represent the south at the southern contest held at Vanderbilt University. He was a junior in the University of

Texas and was reported to be "one of the eight hundred and eighty students who are earning their way through college." The *San Antonio Light* reported that the subject of his oration was "Education for Peace." Lyons emphasized the fact that he was a Texan.

As an El Pasoan, he came to the contest with an understanding keener than that of his fellow competitors about this question relating to the difficulties brought about by the Mexican Revolution, to wit: "How will Texas respond in the face of this crisis? Facing the Mexican boundary for eight hundred miles, Texas is today peculiarly the guardian of the nation. The situation calls not for agitation and jingoism, but for rare patience, sanity and self control. Through troubled waters our chosen captain is guiding the ship of state. It is no time for mutiny; no time for giving orders, but rather the time for obedience."

Frank Lyons had married Margaret Holton. They had two children: Peggy, age 9 and Frank, age 7. When he enlisted for World War I in 1917, Lyons was engaged as a solo practitioner in the Caples Building.

Lyons soon took a position as an assistant district attorney in El Paso working as one of two assistant prosecutors for District Attorney Leigh Clark. The other was E.B. Elfers.

Such was Lyons' reputation locally that Clark made the fact of his employment with the district attorney's office a featured centerpiece of a full-page political advertisement for reelection appearing in the *El Paso Herald*. The advertisement even noted that while Lyons had enlisted for military service with other young lawyers, he had been barred from serving due to a physical disability which was not specified.

By 1929, Lyons and Oppenheimer were practicing law together working out of the same office, the only lawyers in a small, well-regarded firm. They died together on the fifth floor of that office in the First National Building at 109 North Oregon Street. José María Marín, a former client from Mexico, shot each of them multiple times on a Friday, May 31, 1929. The newspapers said he was a Spaniard, and had harbored a grudge going on five years or more.

Oppenheimer was killed two days before his birthday. He was thirty-five years old. Lyons was thirty-seven. He and Oppenheimer employed a young woman named Isabel Perez as a secretary and stenographer. Unfortunately, she was a witness.

Six months after the assassinations, on November 18, 1929, the *Brownsville Herald* ran a strange, factually flawed story about the event which hinted at the motive behind Marín's heinous offense - mammonism. The story ran

under the headline, "Curse of Gold - Death Takes Another From Losing Line of Owners of Mine Seized by Cortez;" According to the story, a curse that had been placed upon those who sought to remove the "fabled treasures" from the San Joaquin gold mine near Santa Eulalia, Chihuahua. The story strangely implied that Marín had shown courage in trying to remove those treasures.

According to the so-called legend, a pre-Columbian Indian had placed a malediction on the mine when it was seized in the name of Carlos V by the first conquistadores under Cortés, improbable as that seizure may have been. Citing the legend, the *Brownsville Herald* story attempted to offer a sensational, historical rationale for what was actually a senseless, horrific capital murder with this description:

For 300 years men have been killing themselves and each other over the mine. Tradition has it that one of the Indians who originally worked the mine placed a curse upon it when the first conquistadores of Cortez seized it in the name of Charles V.

So potent was the curse, legends say, that only one man in ten of the detachment which confiscated the mine lived to again serve the famous Spanish commander. All the rest were slain by the poisoned arrows of the Indians or fell victim to strange maladies of the tropical desert.

Sporadic attempts were made to develop the mine for two centuries. Indians no longer used their poisoned arrows, but dysentery and typhus continued to exact a tragic toll among the European engineers sent to develop the gold workings. A young member of the famous Terrazas family early in the present century placed the mine on a paying basis only to lose it and his life during the fighting of the Madero revolution.

During the revolt years, the mine was held successively by Pascual Orozco, Tomás Urbina and Pancho Villa, all of whom died extremely violent deaths. When Obregón restored order in the troubled republic, the mine came into possession of José Marín, the man who

swallowed poison in El Paso the other day.

Marín, a citizen of Spain though living in Mexico, lacked funds for the development of the San Joaquin workings. He came to El Paso and formed a stock company, enlisting the aid of Frank Lyons and Herbert D. Oppenheimer, the two young attorneys. They purchased stock in the company and handled its legal affairs.

Things went well with the mine but badly with its owners. Marín and Oppenheimer quarreled over the division of the stock and the profits. On Aug. 15, 1925, Marín, in the manner of his country, challenged Oppenheimer to a duel with pistols. The attorney had his challenger placed under a peace bond and the duel never took place.

Friction increased. Marín accused the two attorneys of defrauding him of \$250,000, his mine and attempting

to have him deported from the United States. He filed damage suits against them. Finally on May 31 of this year Marín decided that he could contain himself no longer.

Placing a pistol in his pocket, the aged Spaniard went to the Lyons and Oppenheimer law offices. There he shot Oppenheimer to death and also killed Lyons when the latter came from an inner office to the aid of his partner. When police arrived, Marín pulled a prepared statement from his coat. It charged the lawyers with attempting to defraud him of the ill-fated mine.

The news about the murder of two young family men, which left five children without fathers, was reported not just up and down the river, from El Paso to Brownsville, but deep into Mexico and across the United States. They were accomplished lawyers. They began their training early and auspiciously, only to have their lives cut senselessly short.

Courtesy-St. Joseph Gazette



St. Joseph, MO newspaper announcement that Herbert Oppenheimer to compete in the state high school debate tournament

As trial lawyers know, nothing is so easy as to be wise after the event. And, given the circumstances of his crime, Marín was probably counting on that wisdom to win an acquittal at trial. Whether Marín succeeded will begin to be explored in the next part.

BALLARD C. SHAPLEIGH is an Assistant District Attorney

EL PASO PARALEGAL ASSOCIATION 2016 GENERAL MEMBERSHIP MEETINGS

February 18, 2016
March 17, 2016
April 20, 2016
May 19, 2016

June 16, 2016
July 21, 2016
August 18, 2016
September 15, 2016

October 20, 2016
November 17., 2016
December, 2016 -
Annual Attorney/Paralegal Luncheon

All meetings are at 12:00 Noon at a location to be announced.

Please go to the El Paso Paralegal Association Website for more information, <http://www.elppa.org/>

UPCOMING HOLIDAYS:

Monday, February 15, 2016 – *President's Day*
Friday, March 25, 2016 – *Good Friday*
Thursday, March 31, 2016 – *Cesar Chavez Day*

SAVE THE DATE

Law Day Dinner & Awards Banquet

Saturday, April 30, 2016

El Paso Country Club

Invitations to be mailed the last week in March

My Story

...everyone has one

By CLINTON F. CROSS

Part I

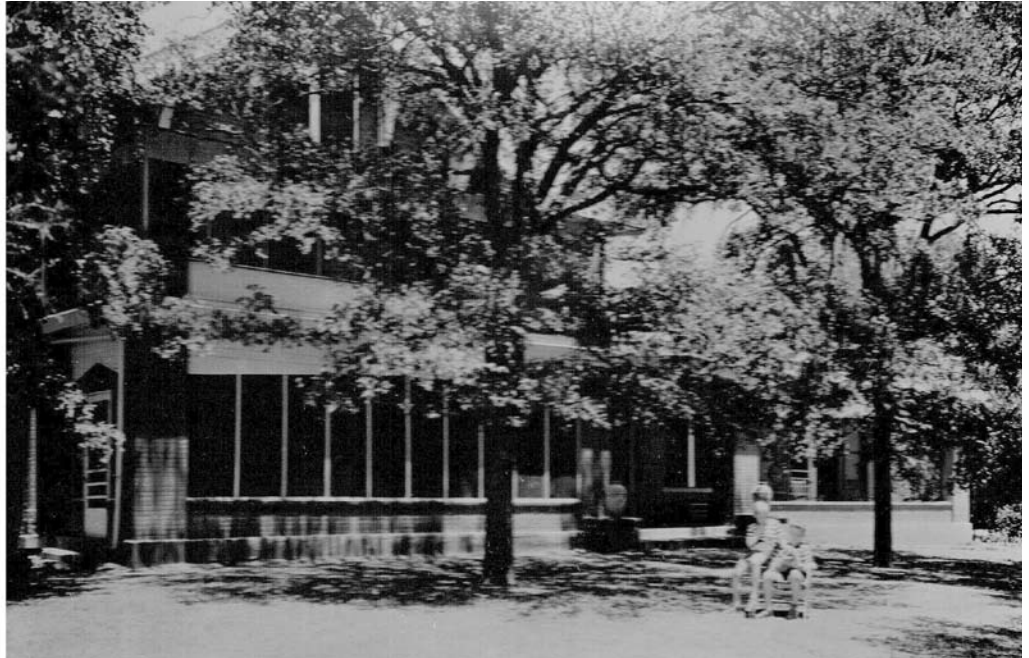
I was born March 2, 1939 at Providence Memorial Hospital in Waco, Texas and named Clinton Harlan Heath. My father, Clinton Heath, was a naval officer, having graduated from the Naval Academy in 1933. My mother, Mary Augusta Cross, was the daughter of a prominent Waco family. Her father Oliver Harlan Cross was an attorney and farmer, former state representative, prosecuting attorney, and United States Congressman.

Growing up, my parents moved many times. I attended twelve public and private schools before college, including four high schools. The schools varied dramatically in many ways. I went to school with juvenile delinquents, poor kids, rich kids, and professor's kids. I went to segregated schools in the south and integrated schools in the north. The quality of the education the school's offered also varied greatly.

My anchor was my grandparents' home in Waco, Overlook Place. My great grandfather--who began his career as a destitute former Confederate soldier but by 1896 had become a bank president-- purchased the home around the turn of the century. It was in the country and contained within its walls its own magic reality. We had pet goats, cats and dogs. We had a horse. We had a windmill. Around the house there were horned toads, doodle bugs, spiders, rabbits, roses and tulips. At night crickets sang, frogs croaked and fireflies lit up the darkened sky. When it rained or stormed, we experienced the event, smelling the rain as well as feeling it.

The house had long halls front and back and down the center and a "good room" for entertaining guests and fireplaces in every bedroom. We played in the fields, never thinking about television because it did not exist or any of the other technological distractions that now consume our lives. We read books in the winter by a fireplace. We listened to bedtime stories from my grandfather, not from a TV set. In my great grandfather's house, I felt spiritually connected with the present.

My grandfather told stories about great



*Overlook Place
Clinton and Harlan Cross in front yard*



*Left to right, Harlan, Clinton and grandfather
Oliver Harlan Cross*

inventions that had changed his reality like vaccine, electricity, the telephone, the radio, the airplane. He also told stories about his life. For instance, in 1893 on his way from Alabama to California, grandfather ran out of money and got off the train in Deming. An old man by the name of Edmund G. Ross, editor of the Deming Headlight, hired him to set type and told him he could sleep on a bed at the office.

In 1867 Congress passed the Tenure of Office Act which was intended to restrict the President's power to remove cabinet officers without the approval of the Senate. Johnson was impeached for violating the Tenure of Office Act when he fired his Secretary of War. The trial was held in the Senate and required a vote of two thirds of the Senators to convict. The Radical Republicans failed by one vote in their effort to remove the President and change the nature of our constitutional framework. That one vote was cast by Edmund G. Ross, a Radical Republican from Kansas. As John Kennedy pointed out in his book Profiles in Courage, Ross was punished for his vote by being replaced in office. In 1885 President

Cleveland gave Ross a second chance in politics by appointing him Governor of the New Mexico Territory. He served as New Mexico's territorial governor until 1889.

More than any other story, I liked to hear my grandfather tell about his fight against the Ku Klux Klan in Waco in 1922. I recorded that story on a reel to reel tape recorder and today have it preserved on a DVD. My grandfather's stories sensitized me to our nation's historical experience and shaped my values.

My father was an engineer. He once gave me a steam engine for a Christmas present, but I never cared as much for steam engines as I did for people. My father invented a torpedo sight that helped the United States Navy win the battle of Leyte Gulf. He commanded a hydrographic surveying expedition that mapped the Persian Gulf. He retired with the rank of Captain, but felt he had failed because he did not make Admiral.

My parents divorced in 1956 and my name was changed to Clinton Ferguson Cross. I rarely saw my father after that.

After graduating from Fountain Valley School in Colorado Springs, Colorado, I went to Pomona College in Claremont, California. After the first semester, I got into the bad habit of cramming for finals.

I joined a fraternity but also partied with my roommate's fraternity, the Phi Delt. The President of the Phi Delt was George Folsey who with John Landis later produced a famous movie about the Phi Delt called Animal House. It was a spoof, but there was a grain of truth to the movie. The Phi Delt at Pomona College liked to party.

My brother ran away from home when he graduated from high school and showed up at Pomona. The Phi Delt initiated him into the fraternity even though he was not a Pomona



Private Clinton Cross

College student. Since the fraternity was on "double-double" probation, they were not allowed to have an office campus party pad. They solved the problem by finding a house for my brother and then paying the rent. My brother welcomed all his Phi Delt brothers at his party pad anytime 24-7.

In my junior year, I ran for Student Judiciary Chairman and I got elected. The culture then was different than it is today. The dormitories were segregated. Women were not allowed to stay out at night after ten o'clock. The men were allowed to do anything they wanted to do, but with the women locked up, there wasn't much reason to stay up late. The only available drugs were alcoholic. Alcohol was banned but my roommate and I had a secret liquor cabinet where we stashed some of the evil stuff. I never saw a marijuana cigarette in college.

The college was "progressive" because fifty percent of the student body was female. Stanford admitted two men for every woman. Yale did not admit any women until 1968. Needless to say, the women usually got better grades than the men. Unfortunately, after graduation, they sometimes had a hard time getting good jobs.

After I graduated, I joined the United States Marine Corps Reserves. In those day, the Marine Corps was composed of "a few good men." When we went through boot camp, the drill instructors emphasized the differences between men and women and let us know that until we graduated we were "girls, not men." Since "girls" and "men" were distinguished in ways that some feminists probably thought disparaging ("girls talk, men act") and since men "graduated" from being "girls" to "men," I suspect the Marine Corps has modified its message. However, I believe men need and can profit from ceremonial passages to manhood. We just need to do it the right way.

I served six months active duty and five years in the reserves. I was honorably discharged with the rank of sergeant in 1968.

I then went to UCLA School of Law. Unfortunately, my cramming habits did not work so well for me in law school. I was not invited back.

When I got the bad news, I was working for Retail Credit Corporation in Alexandria, Virginia. My mission was to dig up dirt on applicants for car insurance so the insurance companies could re-evaluate their risks and raise their rates. It was a summer job. The job was coming to an end. I did not have a "Plan B."

Suddenly, life got difficult.

To be continued

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

EL PASO PARALEGAL ASSOCIATION

2016 Slate of Officers

The following is the list of Officers that were sworn in at the Annual Meeting on January 21, 2016.

Office 2016

President (1) Olga Burkett
 President Elect Yolanda Garcia
 Vice President of Programs Yolanda Pearson
 Vice President of Membership Marina Hammond

Office 2016

Vice President of Public Relations Louise Elorreaga
 Vice President of Publications Yvette Duran
 Secretary Deja Hayes
 Parlamentarian Laura Aguilar

(1) 2015 President-Elect assumes the position of 2016 President. (2) No election; two-year term expiring Jan. 2017

CONFLICTS? RESOLUTIONS!

Solving Problems--Closing Cases

Patricia Palafox

*Bilingual Attorney
Mediator-Arbitrator*



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of Professional
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32 years of Legal
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*Thank you for your support
and trust over the last thirteen years*

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El Paso, TX 79932
Phone: 915-833-6198
Fax: 915-833-7305
palafoxpatricia@sbcglobal.net

LAW DAY AWARDS

The El Paso Young Lawyers Association and the El Paso Bar Association are soliciting nominations for the following awards: Outstanding Young Lawyer, Outstanding Jurist, Outstanding Senior Lawyer, Outstanding Lawyer, Outstanding Pre-Law Student, Liberty Bell, Professionalism, Pro Bono, Mediator of the Year, Outstanding Federal Attorney and Outstanding State Attorney for 2015-2016.

Submit the following nominations to Leonardo Maldonado at maldonadolaw@outlook.com Thursday, March 31, 2016:

OUTSTANDING YOUNG LAWYER: The nominee must be licensed to practice in Texas and must be 36 years of age or younger, or is in his/her first five years of licensure, regardless of age, on June 1, 2015. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community.

OUTSTANDING JURIST: The nominee must be currently serving as an active Administrative, Federal or State Judge. The nominee cannot be standing for election or re-election during the year in which the award is given. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community.

OUTSTANDING SENIOR LAWYER: The nominee must be licensed to practice in Texas. The nominee must have practiced law for 30 years or be over the age of 60 and have practiced law for 15 years. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community.

OUTSTANDING LAWYER: The nominee must be licensed to practice in Texas. The nominee must be aged out of the Young Lawyer category (i.e. over the age of 36 years of age on June 1, 2015), but not yet eligible for the Senior Lawyer category. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community.

OUTSTANDING PRE-LAW STUDENT (THE CORIA HARBOUR AWARD): The nominee must be student enrolled in an institute of higher learning who plans to study law after graduation. In addition, while all outstanding qualities are considered, particular attention is given to service to the community, service to the profession, academic ability, maturity and integrity.

LIBERTY BELL AWARD: This award is given to a non-attorney who has made a selfless contribution to his/her community to strengthen the effectiveness of the American system of justice by instilling better understanding and appreciation of the law.

The awards will be given at the Law Day Dinner on Saturday, April 30, 2016 at the El Paso Country Club.

Please make your nominations as complete as possible. Describe your nominee's background, qualifications and his/her activities or contributions in the community. Please include his/her address and phone number in the nomination.

Submit the following nominations to Nancy Gallego at ngallego.epba@sbcglobal.net by Thursday, March 31, 2016:

DUANE A. BAKER PROFESSIONALISM AWARD: The nominee must be licensed to practice in Texas. He/she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. The nominee should be an inspiring role model for the bar, respected by his/her peers, and someone who makes us proud of the legal profession. Nominations can be based on a lifetime or a specific occurrence of professionalism. In addition, attention is given to service to the profession and service to the community.

PRO BONO AWARD: This award honors individuals or law firms (large or small) for the volunteer work they do. Please consider the following criteria: number of hours of pro bono work done, as well as the volunteers attitude and effect of the nominee's pro bono work. In addition, attention is given to service to the profession and service to the community. This award will be selected by the Legal Aid/Lawyer Referral Service Committee of the El Paso Bar Association.

HONORABLE ENRIQUE H. PENA MEDIATOR OF THE YEAR AWARD: This award honors an attorney or non-attorney mediator. Please consider the following criteria: Effectiveness in mediation, allowing all sides to be heard in the mediation process and contribution to promoting use of alternative dispute resolution as an alternative to litigation. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community. This award will be selected by the ADR Committee of the El Paso Bar Association.

OUTSTANDING FEDERAL ATTORNEY: The nominee must be licensed to practice in Texas. The nominee must work in one of the Federal offices. While all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community.

OUTSTANDING STATE ATTORNEY: The nominee must be licensed to practice in Texas. The nominee must work in one of the State offices. While all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession and service to the community.

Your nominations are sincerely appreciated and will help us recognize and give credit to deserving judges, lawyers and others who have made a positive impact on our profession and community.

Respect: The Steadfast Pedestal of Ethical Values

BY OSCAR G. GABALDÓN, JR., CWLS

"We have grasped the mystery of the atom and rejected the Sermon on the Mount. Ours is a world of nuclear giants and ethical infants. We know more about war than we know about peace, more about killing than we know about living."-----Omar Nelson Bradley

Throughout our lives, we face a diversity of challenges, occasional failures, and hopefully many achievements. Most of those achievements are in the context of our career progressions, academic achievements, professional pursuits, political aspirations, wealth accumulation, and social quests. Aside from these accomplishments, we also try hard to take care of our bodies by eating healthy, exercising, doing sports, and seeking the best medical care available. Though we sometimes struggle in keeping up with these areas in our lives, we occasionally trip and fall; nonetheless, since these things are important to us, we get up and try again. Our persistence and determination for doing these things can certainly be quite commendable.

On the other side of the coin, we often neglect our spiritual dimension. We down play the indispensable importance of a truly meaningful and valuable human existence. We worry about our nice cars getting a scratch or a dent, but do

not worry enough, or at all, about our ethical and moral blemishes. We spend more time worrying about our physical health than we do about our spiritual growth and development. We are concerned about how others perceive us, and who said what about us, but do not think twice about saying hurtful and disrespectful things about others. We are very busy worried about where we are headed next, but do not pause to check our moral compasses.

A genuinely healthy human existence includes a life that is rich in the durable pursuit and unchanging adherence to living a life of authentic goodness. But where is the starting point to living an ethical life that transcends our human tendency to focus on the lesser things and that reaches out towards the best interests of our fellowmen? Respect is the starting point of "all things ethical". Respect serves as the tree trunk for the many dimensions of ethical behaviors that branch out and blossom from it.

We respect others, regardless of their state in life, by showing that we value them, which necessarily includes sincerely giving attention and worth to their points of view, feelings, and dignity. We validate others by accepting them as they are, the whole package filled with the good and the not so good. We show them kindness and generosity. We keep the commitments we

make to them. We are not arrogant or defensive, but consider their feelings and are careful not to degrade or be discourteous.

Our ability to respect others is intrinsically tied to our self-respect. Self-respect involves taking responsibility for our life's decisions. It is rooted in taking responsibility for our lives. Self-respect also includes knowing we are entitled to be happy and to be treated with dignity. It entails choosing what path we will take in life, and not relinquishing that choice to others. Allowing others to decide our life's path lessens our self-respect, which in turn lessens our ability to better respect others. We must trust and be true to ourselves to do that which is right, honorable, and noble. Renowned statesman Frederick Douglass captured this sentiment all too well when he said, "I prefer to be true to myself, even at the hazard of incurring the ridicule of others, rather than to be false, and to incur my own abhorrence."

OSCAR GABALDÓN is an assistant City Attorney and former Associate Judge of the 65th District Court responsible for overseeing the trial of Child Abuse and Neglect cases. He is certified by the National Association of Counsel for Children and the American Bar Association as a Child Welfare Law Specialist (CWLS).

"Covert" Communications

BY DAVID J. FERRELL

I have a new Galaxy Note 5 cell phone, it is amazing! I have noticed that it has a battery life of almost 8-9 hours, so I carry an external battery backup device when I am away from my office for more than 7 hours. These devices are handy and inexpensive.

I have noticed that my cell phone gets warm when I use various APPS that run in the background (indicating more than usual battery drain) such as any apps with GPS programing, WAZE, Google Navigation, etc.). I read a recent article that discloses that Facebook runs in the background on your cell phone and drains the battery more than minimally.

So what is going on? Researchers at MIT conducted an extensive study on what they called "covert" communications. This is what some of your APPS do behind your back for your benefit

and also for the benefit of the APP developers.

The word "covert" troubles me, even if the communication is for my own good.

MIT found that dozens and dozens of APPS we have installed on our android phones are in constant communication with their respective servers exchanging data and pushing content so we can have the data we need. These researchers found that half of the communications do not help the user; these covert communications are not syncing the data we need, they are spying on our usage behavior.

Cell phone privacy (which we should not expect anymore) is a major concern. The APPS are gathering data to sell or use.

By analyzing 500 popular free APPS, MIT found that NOT allowing the APPS to make these covert communications, left the user

experience intact. That means the non-use of the data drain did nothing to hurt the usefulness of the APP for the user.

There could be normal and reasonable uses for this data collection, but what is infuriating is that users do not even know this is happening.

MIT says that the top 10 covert communication perps are: Google, Gameloft, InMobi, Millennial Media, Android, Mobileleads, Tapjoy, Facebook, Unity 3d, Default and Flurry.

To see the MIT article go to:

<http://news.mit.edu/2015/data-transferred-android-apps-hiding-1119>

DAVID FERRELL is an El Paso attorney specializing in probate and criminal law. He also assists law firms in development of their computer trial and law office technology. He serves on the WEB Services Committee of the State Bar of Texas

EL PASO BAR ASSOCIATION *presents*
20TH ANNUAL CIVIL TRIAL PRACTICE SEMINAR
February 11, 12, & 13, 2016

Venetian Hotel Resort & Casino, Las Vegas, Nevada

Approved for 14.25 hours of MCLE, including 2.5 hours of Ethics by the SBOT, Pending approval for 12.0 hours of MCLE, including 2.5 hours of Ethics by the Nevada Board of Continuing Legal Education and Pending approval by the NM MCLE

Chris Antcliff, *Moderator*

Daniel Hernandez, *Seminar Course Director*

SCHEDULE

(PLEASE NOTE THAT THE SCHEDULE MAY CHANGE)

6:00 – 8:00 p.m.	THURSDAY, FEBRUARY 11, 2016 Legal Legends, Live Interview by Charles Ruhmann David Jeans, Ray, McChristian & Jeans, P.C. and Kitty Schild (Cocktails and Hors d'oeuvres)	4:00 – 5:00 pm	Deena Buchanan, Ray, McChristian & Jeans, P.C., Albuquerque Robert Trenchard, Trenchard & Hoskins, P.C., El Paso Arbitration in the Employment Law Context Rosemary Morales Marin, Scott Hulse, P.C., El Paso
7:00 – 7:45 am	FRIDAY, FEBRUARY 12, 2016 Registration	5:00 – 6:30 pm	Sponsorship Happy Hour
7:45 – 8:00 am	Welcome Chris Antcliff, Antcliff Mediation, President-Elect of El Paso Bar Association	7:00 – 8:00 am	SATURDAY, FEBRUARY 13, 2016
8:00 – 8:45 am	Update on Federal Rules Changes Gerald "Gerry" Howard, Kemp Smith LLP, El Paso	8:00 – 9:00 am	Breakfast
8:45 – 10:15 am	Texas Supreme Court Update Justice Steven Hughes and Jeff Alley, 8th Court of Appeals, El Paso	9:00 – 9:15 am	Government Liability Joseph L. Hood, Jr. and Eric Brittan, Windle, Hood, Alley, Norton, Brittan & Jay, El Paso
10:15 – 10:30 am	Morning Break	9:15 – 10:45 am	Manuel Romero, El Paso County Attorney's Office, El Paso Morning Break
10:30 – 11:15 am	Probate Law Lauren Serrano, Scott Hulse, P.C., El Paso	10:45 – 12:00 pm	Implications of <i>Nabors Well Ser vs., Ltd. v Romero</i> regarding Seatbelt Use Evidence and Biomechanical Analysis Carlos Rincon, Rincon Law Group, P.C., El Paso Dean K. Stolworthy, Ph.D, Rimkus Senior Consultant, Houston
11:15 – 12:00 pm	Probate and Fiduciary Litigation Rene Ordonez, Blanco, Ordonez, Mata & Wallace, P.C., El Paso		Judge's Panel: Dos and Don'ts in the Courtroom Hon. Frank Montalvo, Federal Court Judge, Western District, El Paso Hon. Anne T. Berton, U.S. Magistrate Judge, Western District, El Paso Hon. Laura Strathmann, 388th District Court, El Paso
12:00 - 1:00 pm	Luncheon Program – Texas Lawyers' Assistance Program Bree Buchanan, Director, Texas Lawyers Assistance Program, Austin	12:00 noon	End of Seminar
1:00 – 2:00 pm	Family Law Case Law Update Hon. Laura Strathmann, 388th District Court Judge, El Paso		Door Prizes will be given throughout the seminar
2:00 – 2:45 pm	Immigration Issues Danny Razo, Law Office of Danny Razo, El Paso		Course Materials will be in the form of a flash drive
2:45 – 3:00 pm	Afternoon Break		To book your room at the Venetian Hotel Resort & Casino, go to www.elpasobar.com to get our rate of \$209 for each night.
3:00 – 4:00 pm	New Mexico Law Every Lawyer Should Know in View of the New Reciprocity Rule Jeff Ray, Ray, McChristian & Jeans, P.C., El Paso		Cost: \$375 – Members of EPBA; \$475 – Nonmembers & \$175 – Paralegals

IF YOU DO NOT ATTEND THE THURSDAY EVENING SESSION YOU WILL ONLY RECEIVE 12.25 HOURS OF MCLE

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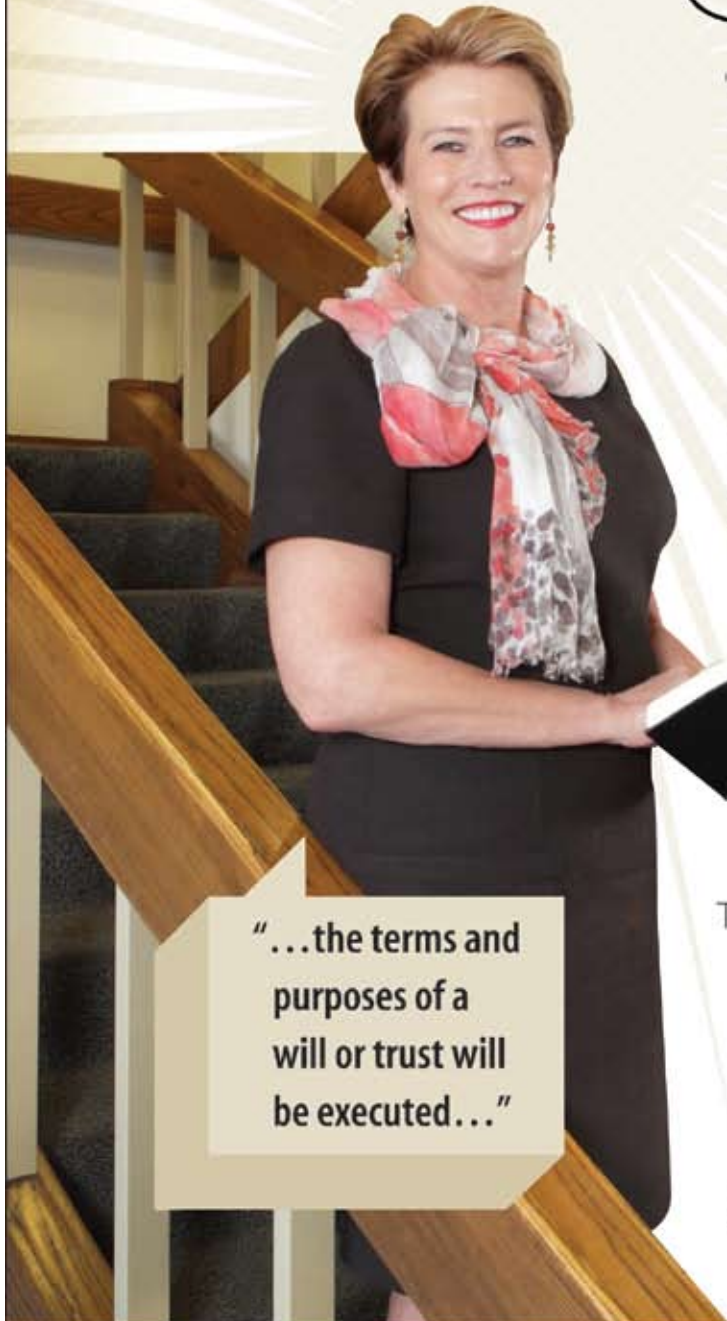
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