



EL PASO BAR JOURNAL

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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.”

THE PRESIDENT’S PAGE

At the beginning of the bar year, I told you my theme was “the evolution of the practice” and I can think of no better example of this than the recognition of our 50-year lawyers at the December bar luncheon. I sat and listened to the fine gentlemen tell their stories (quietly calculating my age when/if I reach that 50-year mark!), I realized how dramatically the practice of law has changed. What would we do without computers and fax machines?! How could I function without my cell phone and electronic research?! But the changes are more significant than just the advances in technology. Fred Morton stated it best when he told of how today’s lawyers know the rules of procedure and evidence backwards and forwards and know how to use them both as a shield and a sword, but often forget the most important rule of all, the one we all learned in kindergarten: the Golden Rule. Mr. Morton told of the days when ethics



were part of the norm, not some abstract concept that was taught in separate CLE courses, deals were made on handshakes, extensions were agreed upon by a telephone call, and cases were settled on the merits, not after years of drawn out discovery tactics and the accumulation of unnecessary attorney’s fees. Most importantly, at the end of the day, the attorneys were friends, able to put aside their case-related disputes and enjoy the collegiality of the profession, sharing proudly in the prestige of being a lawyer.

Someone who practiced the Golden Rule in every aspect of this life was Ray Pearson. When he passed away in December, El Paso lost not only a great lawyer, but a great citizen. Mr. Pearson was licensed for 53 years and in that time he touched many lives through his kindness, professionalism, and courage. He was truly dedicated to making the world a better place. I had the opportunity to meet Mr. Pearson shortly after arriving in El Paso, as he was my landlord. I remember arriving home from work on numerous occasions to be met in the driveway by Mr. Pearson, who would eagerly guide me to his backyard to show off his beekeeping project and tell me all about the bees. It has been said that beekeeping is a metaphor for life. I know that I learned quite a bit through my conversations with Mr. Pearson about his bees and looking back, I recognize many intersections with life. For this reason, I am sharing with you one of Mr. Pearson’s credos. I hope you will all take something from it and remember to practice the Golden Rule.

Cori

Continued on page 4

== CAN YOU HONESTLY JUDGE? ==

*Pray don't find fault with the man who
Limps or stumbles along the road,
Unless you have worn the shoes he wears
or struggled beneath his load
There may be tacks in his shoes that hurt,
Though hidden from view;*

*Or the burden he bears placed on your back
might cause you to stumble too.*

Don't sneer at the man whos down today.

*Unless you have felt the blow
That caused his fall, or felt the shame that
only the fallen know.
You may be strong, but still the blows that
Were his, if dealt to you
In the self-same way at the very same time
Might cause you to stagger too.
Don't be too harsh with the man who sins
or pelt him with words or stones,
Unless you are sure, yes, doubly sure that
you have no sins of your own.*

EL PASO BAR ASSOCIATION February Bar Luncheon

Tuesday, February 10, 2009

El Paso Club, 201 E. Main, 18th Floor, Chase Bank

\$20 per person. 12:00 Noon

**Please make your reservations by Monday, February 9, 2009 at noon by calling
Nancy at 532-7052 or via email at nancy@elpasobar.com**

March Bar Luncheon

Tuesday, March 10, 2009

El Paso Club, 201 E. Main, 18th Floor, Chase Bank

\$20 per person. 12:00 Noon

**Please make your reservations by Monday, March 9, 2009 at noon by calling
Nancy at 532-7052 or via email at nancy@elpasobar.com**

CALENDAR OF EVENTS

FEBRUARY-MARCH 2009



PLEASE NOTE: Please check the Journal for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Journal for your upcoming event or function for the months of April/May, 2009, please have the information to the Bar Association office by Tuesday, February 13, 2009. In order to publish your information we must have it in writing. WE WILL MAKE NO EXCEPTIONS. We also reserve the right to make any editorial changes as we deem necessary. Please note that there is no charge for this service: (915) 532-7052; (915) 532-7067-fax; nancy@elpasobar.com - email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this journal together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.

February, 2009

Tuesday, February 3
EPBA BOD Meeting

Friday, February 6
MABA General Meeting

Tuesday, February 10
EPBA Monthly Luncheon

Thursday, February 12
EPYLA Monthly Meeting

Thursday, February 12
EPYLA Happy Hour

Saturday, February 14
Valentine's Day

Monday, February 16
EPBA/Courthouse Closed
President's Day

Wednesday, February 18
TRLA Legal Clinic

Thursday, February 19
EPPA Monthly Meeting

Friday, February 20
13th Annual Civil Trial Seminar, Las Vegas, NV

Saturday, February 21
13th Annual Civil Trial Seminar Las Vegas, NV

Wednesday, February 25
Ash Wednesday

March, 2009

Tuesday, March 3
EPBA BOD Meeting

Friday, March 6
MABA General Meeting

Tuesday, March 10
EPBA Monthly Luncheon

Thursday, March 12
EPYLA Monthly Meeting

Thursday, March 12
EPYLA Happy Hour

Tuesday, March 17
St. Patrick's Day

Thursday, March 19
EPPA Monthly Luncheon

Thursday, March 19
Franchise Law Seminar

Wednesday, March 18
TRLA Legal Clinic

Tuesday, March 31
EPBA/Courthouse Closed
Cesar Chavez Day

Upcoming Events (mark your calendars)

Saturday, May 9, 2009

Law Day Dinner and Awards Banquet

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.

WHAT IS ARBITRATION?

BY JUDGE ENRIQUE PEÑA

Arbitration, at its core, is a form of dispute resolution. Arbitration is a private quasi-judicial determination of a dispute by either a single arbitrator or a panel of arbitrators (a tribunal). The disputing parties, like in a judicial proceeding, hand over the power to decide the dispute to the arbitrator(s). Generally, the decision of the arbitrator or arbitrator(s) is final and binding.

History

During the Industrial Revolution arbitration was promoted as being faster, less adversarial, and cheaper, by large corporations who argued that too many valuable business relationships were being destroyed through years of expensive litigation in courts. In addition, these businesses, while recognizing that agreements to arbitrate were not enforceable at common law, even though both parties having agreed to arbitration, also recognized that at any time one of the parties could opt out of the mutual agreement and **A Look At Arbitration** decide to take their chances in court instead.

The response to these concerns occurred in 1920 by enactment of the New York Arbitration Act followed by enactment of the United States Arbitration Act in 1925. Both of these Acts made agreements to arbitrate valid and enforceable (unless one party could establish fraud, unconscionability or some other ground for rescission which undermined the validity of the entire contract). The USAA is now known as the Federal Arbitration Act. The United States Supreme Court in the 1980's and 1990's interpreted the FAA to cover almost the full scope of interstate commerce. During those years the Court also held that FAA preempted many states laws covering arbitration.

Texas

Spanish law, not common law, influenced the introduction of arbitration in Texas. In 1827 the Constitution of Coahuila and Texas allowed its inhabitants " free to terminate his controversies.....by means of arbitrators". In 1845 the Constitution of Texas established arbitration as a means of deciding differences whenever the parties elected to do so. In 1846 the Texas Legislature enacted the first statute establishing a procedure for arbitration. Of



interest is that this statute allowed the parties to reserve the right of appeal and made agreements to arbitrate irrevocable.

In 1995 Article 224 of Vernon's Annotated Statutes was redesignated to the current Texas Civil Practice & Remedies Code § 171.001 et seq.

Advantages of Arbitration

• Choice of Arbitrator

Parties choose the arbitrator.

• Privacy

The hearings are confidential. Not open to media or public. Final decisions are not published.

• Efficiency

Arbitrations are heard sooner and shorter in length.

• Convenience

Hearing are set at times convenient to all parties.

• Finality

No right of appeal.

• Cost

Arbitrations tend to be less expensive than pursuing a lawsuit.

• Flexibility

Arbitrator not bound by strict rules of procedure. Rules of evidence are relaxed. Criticism

• No power to negotiate

Unfair to employees and consumers who have no say in the formulation of contract.

• Limits on discovery

Limitations may be placed by contract on the discovery process.

• Filing fees

Higher than court costs.

• Court rules

Court rules do not apply to arbitration. No guarantee to a fair process.

• Limits on damages

Arbitration contacts limit amount of damages recoverable.

• No appellate review

Arbitral rulings are subject to review only for gross malfeasance, fraud, bias, failure to disclose relationship with parties or where arbitrator exceeds his authority.

Conclusion

Arbitration—once heralded as a more effective and efficient alternative dispute resolution mechanism than litigation--- is now being criticized for replicating some of the failings of litigation—namely excessive cost and duration of proceedings.

However, the greatest strength of arbitration—its procedural flexibility----is being overlooked as a means of controlling costs and duration of proceedings. In arbitration, costs essentially stem from five sources: arbitral institutions, arbitrators, experts, counsel and the process itself. The first two sources are unique to arbitration, while the last three are sources of costs in litigation, as well. However, the flexibility of arbitration permits parties to manage costs by selecting the features that they value most.

When the tone for the arbitration process is set by the parties, the arbitration is generally focused and efficient.

Mediation – Alternative to Family Law Litigation

■ BY OUISA D. DAVIS / Attorney at Law

*Division Chief, Friend of the Court/Family Law Information Center
El Paso County Domestic Relations Office*

The courtroom is not always the proper environment for decision-making around the most intimate of human relationships. Issues of the dissolution of marriage in a no-fault setting, distribution of marital property and debt, and establishment of orders involving the shared parenting of children are not always appropriate for the adversarial process. The ever-increasing cost and delay of litigation often creates more hostility between participants in the family law system and an ever-increasing burden on the resources available to provide for the needs of children of the marriage.

One of the most important tools in the family law litigator's toolbox is alternative dispute resolution, particularly mediation. When parties can meet informally in an unhurried setting to attempt resolution of critical legal and emotional issues, such as child custody and shared parenting, the division of property and debt, mediation allows time and space for people to decide how to end a legal and emotional relationship in a fair and honest manner, and forms the foundation of a positive environment for future shared and cooperative parenting of children.

Subchapter G, Chapter 6 of the Texas Family Code provides several options to incorporate alternative dispute resolution techniques in the divorce and establishment of parent-child orders.¹ Between arbitration, mediation, collaborative law approaches and informal settlement conferences, family law litigants have a menu replete with alternatives to the economic and emotional cost of litigation with which they can express their views and positions, develop options as to their children, and create framework toward conversion of their marital relationship into an on-going, realistic parenting partnership. Thus, they can be empowered to create workable responses to the challenges that face them in their future (and much-changed) relationship.

Tex. Fam. Code § 6.602 provides that "on the written agreement of the parties or on the court's own motion, the court may refer a suit



for dissolution of a marriage to mediation." At any time before the final mediation order is issued, if there is a history of family violence, a party may file a written objection to the referral of the case to mediation. In the event of such an objection, the court determines if the objection is valid and can enter specific orders to protect the physical and emotional safety of the objecting party, including that the parties not be required to have face-to-face contact and be placed in separate rooms during mediation. The mediated settlement agreement is binding on the parties – if clearly stated that the agreement is not subject to revocation and signed by both parties and their attorneys, if any.²

A mediator's role is that of a facilitator; mediation is not a judicial or formal hearing, but an informal meeting where litigants can attempt to resolve disputes to the satisfaction of all. This focus allows a healing process correlative with such personal and emotional drama to begin; a process necessary for successful cooperative parenting.

The mediation is confidential; no information learned in the process can be used against the other party in the event of trial, nor can the mediator share information obtained in the course of the mediation. This confidentiality

provides security in the value of the process and its outcome.

The El Paso County Domestic Relations Office (EPCDRO) mediates cases involving family law disputes in many different situations. Licensed social workers meet with parents and children to develop parenting plans that are both consistent with the children's needs and encourage both parents to continue in cooperative parenting relationships. Three certified attorney-mediators (Terry Pasqualone, Kristina Voorhies-Legan, and Ouisa Davis) partner with attorneys and litigants to mediate the disputes standing in the way of amicable settlement of cases.

For family law litigants with limited means, mediation and other dispute resolution techniques are generally beyond reach. The EPCDRO provides an avenue to this form of dispute resolution. While mediation within the community's private sector can range from \$2,500 to \$5,000, the EPCDRO provides family law mediation services at \$300 per party for ½ day and \$600 per party for a full day session.

Of course, not all issues involved in a family law case are appropriate for mediation; some issues are best left to the court, ranging from

property valuation to complex distribution questions. However, most issues involving conservatorship, access and possession, and cooperative parenting can, and probably should, be referred to mediation. In that way, all questions around care of children and appropriate parenting schedules can be discussed and resolved between the parties.

Here are some key elements to remember (and remind your family law client) in preparation for a mediation session:

- The mediator needs all relevant information regarding the case. If the division of the marital estate to be mediated, the inventories and appraisements should be filed or provided to the mediator before the session. EPCDRO attorney-mediators review the court file before the session.

- A confidential statement should be prepared by each party and submitted to the mediator prior to the mediation. This letter should set forth the relevant issues about the case, the expected outcome, as well as an understanding of the other litigant's expectations, and any options which may be explored.

- Review the standard possession schedule and prepare alternatives to the statutory structure. A more or less generous schedule may be appropriate or the schedule should be tailored to present options for people with non-traditional work schedules.

- Consider areas of common ground that lend credibility to the cooperative process; that way, litigants have a vision of successful collaboration that can provide fertile ground for addressing contested issues.

If mediation is unsuccessful, at least an attempt was made – that, in itself, can be seen as something to celebrate and should be honored. Walking away from the table with a sense that they are able to decide critical and emotional issues involving families and their children, rather than having decisions imposed by a judge, leaves family law litigants more whole, more able to live out their future commitments to one another – and their children.

To enlist mediation services through the EPCDRO, call Maria Elena Diaz at 834-8200 ext. 4026.

Footnotes:

- 1 Tex. Fam. Code, §§6.601, 6.602, 6.603, 6.604 (1999)
- 2 Tex. Fam. Code §6.602(b) (1999)

El Paso County Resolution Dispute Center

■ BY PATRICIA GROSS, COORDINATOR

The El Paso County Dispute Resolution Center (DRC) was created in 1988 by the El Paso County Commissioners Court in accordance with the Texas Civil Practice and Remedies Code, Sec 152.002. and the operation of this County Program was entrusted to the Rio Grande Council of Governments, a voluntary association of local governments established under state law for the purpose of intergovernmental cooperation.

In July, 1988 the DRC began providing Alternative Dispute Resolution (ADR) services to El Paso County. At that juncture the DRC provided various forms of ADR: Mediation, Arbitration, Medical Liability Review Panels and Moderated Settlement Conferences, Mediation has continued to be the least expensive and expeditious method to move a case through litigation or towards settlement. Therefore, it is consistently the most requested form of ADR. Utilization of this service by the Courts and private citizens, represents a substantial savings to the County of El Paso while affording an effective resolution for the parties in dispute.

Comprised of two separate offices that share resources and coordinate services, the DRC maintains an office at the El Paso County Courthouse (Ste.LL-112), and the Neighborhood Justice Office, which is located at the Rio Grande Council of Governments

at 1100 N. Stanton, Ste 610. The staff, all of whom are trained Mediators includes: Patricia Gross, FT Coordinator, Yolanda Gomez, FT Neighborhood Mediation Technician, Norma Salinger, PT Mediation Technician and Gloria Graells, FT Courthouse Mediation Technician.

Case referrals in the Courthouse originate primarily by Order of the District and County Courts, or are requested by the Attorneys of Record. Neighborhood Justice case referrals are received from the El Paso Police Department, Sheriff's Office, Office of the Attorney General, Municipal Court, Justice of the Peace Courts, other agencies or word of mouth.

Pro Bono Mediators, Attorney and non-Attorney, are recruited and trained by the staff of the DRC to conduct the Mediation sessions. Mediators or Co-Mediation teams are assigned to a case on the basis of their experience with the subject matter and skill level, to provide the optimum opportunity for disputing parties to explore viable settlement options in a confidential, non-threatening environment, empowering the parties to take ownership of the terms of the settlement. Therefore, while the Mediators are responsible for facilitating the process, the ultimate responsibility for the outcome of the session, is rightfully preserved for the parties themselves. When parties design the terms of the agreement, they are more inclined to adhere to the agreement that was generated in the Mediation session.

The DRC maintains a pool of Pro-Bono Mediators qualified to mediate most civil cases and some criminal cases. Mediators receive training in Basic Skills, Family Mediation to include Divorce, Child Custody and Child Visitation, Probate cases and Victim/Offender Mediation and take Continuing Education classes, including the "Children Cope with Divorce" class.

Cases are accepted prior to litigation, during litigation, in lieu of litigation and post litigation. The majority of cases heard involve, contracts, real estate, personal injury claims, family issues, probate, employment, landlord/tenant, consumer merchant, neighbor problems, automobile purchases and automobile repair. Cases that are not accepted include cases against the utility companies (electricity, gas, water bills etc.) or cases regarding hospital bills.

Operating as a non-profit, the DRC channels all funds collected, directly back into providing services. As per the Texas Civil Practice and Remedies Code, Sec. 152.004., \$15.00 of each civil and probate case filed in El Paso County goes to fund the operation of the DRC offices. If a case is in litigation, there is no fee for the Mediation. In Neighborhood Justice cases, the complainant pays a \$20.00 filing fee; the service is free to the responding party/parties. These fees may be waived for a client that is unemployed or is financially challenged.

To schedule a Mediation session, please contact the DRC staff at 546-8189 (Courthouse)

Alternative Dispute Resolution Has Historical Roots

■ BY CLINTON F. CROSS

The minutes of a Society of Friends (Quakers) in 1699 suggests that mandatory alternative dispute resolution has early historical roots in our culture. The minutes report a dispute between Cornelius Empson and George Harlan (ancestor of two U.S. Supreme Court justices) and Robert Way, which was first prosecuted by Cornelius in a court of law without permission of the church community. The church community assessed responsibility for costs incurred in litigating the dispute. In addition, Cornelius was chastised for filing a lawsuit against Harlan and Empson without first obtaining the consent of Friends. The record reports as follows:

“At a Quarterly meeting held at Randall Vernon’s the 7th day of the 6th month, 1699....

“Newark monthly meeting being called they present a matter of difference between Cornelius Empson of ye one party and George Harlan and Robert Waye of the other party, about ye throwing down of some old ruins of a mill dam, which difference was debated in this meeting, and ye said parties mutually referring the determination thereof to the meeting, which is that Cornelius shall pay ye court charges on George Harlan’s account and two thirds of ye charges on Robert Waye’s account, and that George Harlan and Robert Waye shall acknowledge that they were too forward in doing what they did without ye said Cornelius’ leave, and that ye said Cornelius shall acknowledge to this meeting his forwardness in prosecuting of them by law without the Consent of friends.

“The said parties having heard the above since of the meeting they jointly acknowledge their satisfaction.”

Chief Justice David Wellington Chew: A TRAILBLAZER

■ BY CORI A. HARBOUR

The El Paso Bar Association wishes to congratulate Chief Justice David Wellington Chew on his recent honor: receiving the National Asian Pacific American Bar Association’s Trailblazer Award. The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors and law students. NAPABA represents the interests of over 40,000 attorneys and approximately 57 local Asian Pacific American bar associations. Its members represent solo practitioners, large firm lawyers, corporate counsel, legal service and non-profit attorneys, and lawyers serving at all levels of government. NAPABA continues to be a leader in addressing civil rights issues confronting Asian Pacific American communities. Through its national network of committees and affiliates, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace, works to eliminate hate crimes and anti-immigrant sentiment, and promotes

professional development of minorities in the legal profession.

The Trailblazer Award recognizes the outstanding achievements, commitment, and leadership of NAPABA lawyers who have paved the way for the advancement of other Asian Pacific American attorneys. Each year, NAPABA honors a member from each of its nine membership regions who meets these criteria. Awardees are selected by the regional governors and the affiliates of each region and represent diverse paths and achievements. Each of the award recipients has demonstrated vision, courage, and tenacity in their careers, and has made substantial and lasting contributions to both the Asian Pacific American legal community and the broader Asian Pacific American community

Chief Justice Chew was recognized as the first Asian Pacific American justice (1995) and chief justice (2006) of the court of appeals of Texas. He is the highest ranking Asian Pacific American elected official in Texas. Chief Justice Chew is the son of Wellington Yee Chew, the first Asian Pacific American to be licensed to practice law in Texas.



Mediation & child protective services cases: *A promising merger for peace*

■ BY JUDGE OSCAR G. GABALDÓN, JR.

*"Peace is not the product of terror or fear.
Peace is not the silence of cemeteries.
Peace is not the silent revolt of violent repression.
Peace is the generous, tranquil contribution of all
to the good of all.
Peace is dynamism. Peace is generosity.
It is right and it is duty."
~Bishop Oscar Romero~*

The emotional and mental roller coaster that many children and families ride when they come into the child protective services (CPS) system can be tremendously agonizing, scary, painful, and often times totally devoid of peace in the mind and in the deepest reaches of the soul. After all, those that come into the child welfare court system usually face the dreaded risk of permanently losing their children after enduring a trying termination of parental rights case, which in legal circles is referred to as "the death penalty case of family law." Not only do the parents lose their children; the children lose their parents.

What worst thing can an individual undergo, aside from losing his or her own life, than to lose his or her children permanently and forever? That is what is at stake in child protective services (CPS) cases. True, there is the federal mandate that reasonable efforts be made to try and help the children be reunified with their parents; however, the reality is that some parents are either unwilling, unable, or both unwilling and unable to provide their children with a safe environment. For these parents, the death of the parent-child relationship they have with their children becomes an ominous possibility. So, what can be done to reduce the already existing friction and turmoil commonly existent in CPS cases?

The trend in child welfare cases is to utilize alternative dispute resolution avenues rather than the traditional adversarial approach to resolving parent-child relationship disputes. These types of cases are already taxed with a significant amount of emotional and mental stress for both the parents and the children, and often times for other family members, case workers, attorneys, and other interested and



affected persons. It only makes reasonable and prudent sense to seek ways to ameliorate the pain, suffering, and stress if at all possible.

The mediation of disputes in child welfare cases is something that has proven to be both a promising tool of peaceful resolution and a godsend. More and more child protective services cases are being resolved through the mediation process. El Paso's CPS mediation efforts have been recognized throughout the state. This southwest community is fortunate to have extremely experienced and knowledgeable professional counselors and practicing attorneys serve in its coveted circle of mediators for CPS cases. These mediators have an extensive and solid background in the field of child welfare. Their commitment to the peaceful and effective resolution of child welfare cases is in line with the philosophy of the National Council of Juvenile and Family Court Judges, which consistently advocates for "best practices" in the handling of both dependency and juvenile court cases. As more and more child welfare cases are resolved through effective mediation, better outcomes for children can be achieved.

CPS mediations are designed to help everyone in the mediation process truly focus on the "best interests" of children. This is undoubtedly a significant benefit to both the children and their parents. However, there are other advantages that mediations afford; for example, mediations can help the parties arrive at more prompt and

efficient resolutions, something that litigation will usually not lend itself to. Additionally, mediations can many times help to curtail the costs that come with litigation. The parties can also participate more fully, and they are able to put forth their individual positions more freely and openly than is the case in the traditional litigation avenue. The informal atmosphere of mediation also gives the parties a more comfortable ambience in which they can work together towards resolving their differences. Moreover, the confidentiality aspects of the mediation process are also something that parties find desirable and which they appreciate. Such confidentiality brings a heightened level of comfort to them. It goes without saying, therefore, that these advantages make the mediation process a very attractive and highly sought out peaceful avenue to handle disputed child protective services court cases.

We have a responsibility, moral and otherwise, to seek out ways to achieve peaceful resolutions to our differences. This is especially the case when children are involved, for as former Secretary-General of the United Nations Kofi Annan declares: "There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, and their lives are free from fear and want and that they grow up in peace." Amen to that!

Crime And Punishment

(Part II)

The Path Of Justice For The Murder Of Ted Andress

Leads to Another Six Person Jury Trial in Rusk

■ BY BALLARD C. SHAPLEIGH



Rusk State Hospital for the mentally ill was opened in 1919 by the conversion of the state's second enclosed penitentiary building (l) into a hospital for the care of the "Negro insane," and today includes amenities like lakeside cabins & paddle boats (r), in a campus-like setting (lower left).

This is the sixth article in a series describing the killing of Ted Andress, the prominent lawyer for whom Andress High School is named. His death fifty years ago by gunshot by the hand of Harold Eidinoff, M.D. at the El Paso International Airport stunned the city at the end of January, 1959. The series on the Andress assassination began with the May, 2008 issue of the Bar Journal and continues with Eidinoff's latest courtroom adventure to once again decide the issue of his sanity.

-- Clinton Cross

To cope with crisis, many people rely on the classic formula of a beginning, a muddle, and an end. But not Harold Eidinoff. He wanted to skip the *muddle* and jump to the end.

He and his lawyer were now complaining about the "political pressure" being exerted to keep him on the grounds of Rusk State Hospital. They offered numerous letters addressed to the hospital superintendent from people like the former District Attorney and current Court of Civil Appeals Justice, William E. Clayton, and organizations like the El Paso Bar Association.

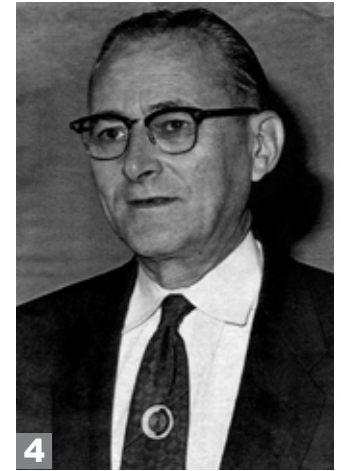
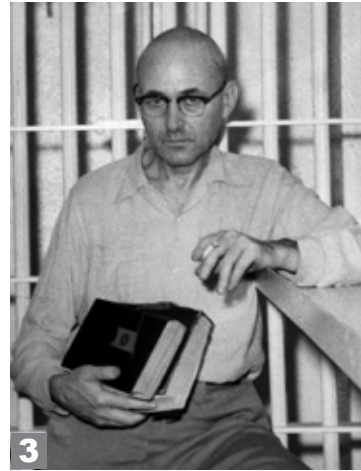
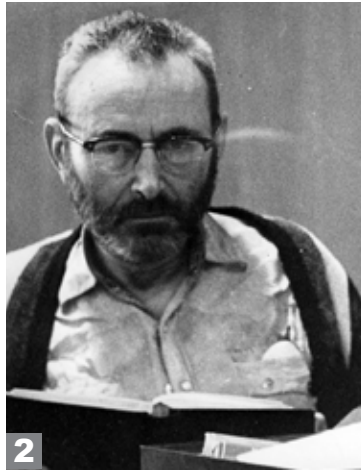
Their evidence also included a document from the Rusk superintendent saying that Eidinoff would never be released from the mental hospital except by court order. Eidinoff's lawyer, Willis Jarrell, hammered on the state's witnesses to show that this was an irregular practice and that the Rusk superintendent could have released Eidinoff at any time he believed Eidinoff cured of mental illness.

Ironically, the crisis created by Eidinoff was book-ended by two newspaper editorials

germane to the issues at hand. The first appeared in the *Herald Post* on Monday, January 26, 1959; the second appeared in the *El Paso Times* on Saturday, June 5, 1968, almost ten years after the murder. Both inferred that the criminal justice system was inadequate to remedy serious wrongs.

In the first editorial, appearing two days before Andress was killed under the caption "Improve Criminal Laws", the *El Paso Herald-Post* pushed the just-convened 56th Legislature to change how the courts operate, citing the need to protect honest people over criminals and their lawyers. The 56th Legislature included not only El Paso lawyers like Sen. Frank Owen III and Reps. Malcolm McGregor and Mauro Rosas, but also individuals like Henry B. Gonzalez, Preston Smith, Bob Bullock, Crawford Martin and Waggoner Carr. The *Herald-Post* editorial board suggested that sentencing should be conducted exclusively by judges because uneducated juries permitted criminals "to escape with slaps on the wrist."

The editors at the *Herald-Post* then engaged in some good old-fashioned lawyer



Photos Courtesy UTEP Library, Special Collections Dept. Herald-Post Records, MS 348

The Faces of Harold Eidinoff – (L to R) (1) as he appeared after the killing, in February, 1959, holding enlarged copies of his nude photo; (2) attending to trial in Lubbock in Oct., 1959; (3) as a '60s writ writer in Cherokee county jail; (4) at his jury trial in Oct., 1968.

bashing. Without the slightest regard for the distinction between witnesses and advocates, the newspaper called for a law to require all lawyers, when stepping into a courtroom, to raise their right hand and swear an oath like an ordinary witness. The lawyers who opposed this proposition were condemned as pettifogging shysters who go about their business feeling that, “they must lie to win.” The editorial board found it strange that attorneys, who make ostentatious claims to being guided by ethics, would oppose a law that required truthfulness since “a liar has no ethics.”

The tradition of allowing defendants to choose jury sentencing over sentencing by a judge dates back to colonial times. The colonial tradition of keeping the sentencing power with jurors, and therefore in the hands of the community and not in the hands of judges who were often distrusted, was so strong that as late as 1960 thirteen states still retained jury sentencing in non-capital cases. Today there are but five holdouts: Arkansas, Missouri, Oklahoma, Virginia and Texas are the only states that still permit juries to make the sentencing decision. While the notion of putting certain kinds of criminal cases into arbitration or mediation is being discussed, it is not an established feature in Texas criminal jurisprudence.

Since he was not having much luck with juries, Eidinoff might have opted for a bench trial. In any event, to bring his own wheel full circle, Eidinoff went back to federal court again in October, 1967. Naturally, he demanded another sanity hearing, and that meant a jury trial.

Freedom was in the air. This was around the same time that activist Reies López Tijerina,

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PAGE FOURTEEN MONDAY, JANUARY 26, 1969

Improve Criminal Laws

WE HAVE SEEN NO NEWS of bills being introduced in the Legislature for the purpose of making criminal courts agencies of the honest people rather than of criminals and criminal lawyers.

We understand, however, that a commission has been studying the problem, and we hope it comes up with a solution.

The sentencing of a criminal, after he has been found guilty by a jury, should be left to the judge. He knows that 50 years means 12 and a sentence of 10 years is actually 2½ years.

The law that permits criminals to escape with slaps on the wrist should be repealed and replaced by one designed for the protection of the people.

We hope, too, the commission suggests a law that lawyers, like witnesses, must take an oath to tell the truth in court or be subject to the penalties for perjury.

Why so many lawyers oppose that law can have but one answer: they feel they must lie to win, and their morals are such that conscience doesn't bother them.

Why men who claim to have ethics fight a law that would require truthfulness is strange. A liar has no ethics.

a leader in the 1960s struggle to restore New Mexican land grants to the descendants of their Spanish colonial and Mexican owners who had raided the courthouse in Tierra Amarilla, N.M., was demanding a personal audience with President Johnson in El Paso during the signing of the Chamizal Treaty.

Eidinoff eventually got the audience he

wished for, but Reies Tijerina did not. Eidinoff's audience - another hearing to decide if he was well enough to be released from Rusk State Hospital - was scheduled for October, 1968.

Keeping up with Eidinoff was a full time job; he admitted at a hearing in Dallas earlier that year to filing 19 separate suits to free himself. Due to a peculiarity in Texas law existing since the days of the Republic, the state Attorney's General office was lending an ever-greater hand to the El Paso District Attorney's office to cope with the growing mountain of litigation filed by Eidinoff in Smith and Cherokee counties, far from El Paso.

Texas law defines the Attorney General as an executive branch authority under Article IV of the Texas Constitution, but unconventionally places local prosecutors, like district and county attorneys, within the judicial branch under Article V. Statutory provisions permit the AG to help local DAs. In this case, a lot of manpower was needed to attend hearings and to help defray the costs of keeping up with the flood of Eidinoff's court filings. However, the major burdens of litigation, like the conduct of jury trials, still fell on the El Paso district attorney because of institutional memory.

“The way it worked,” says W. Barton Boling, then the most recent El Paso District Attorney forced to step into the Eidinoff mess, “is that the Cherokee county attorney would be served with Eidinoff's latest petition or writ. The Cherokee county attorney would then call our office for guidance on what to do.” That request usually meant that Boling was required to travel to Rusk. For this trial, the Cherokee county attorney, James Perkins (a member of the

2008-2009 Alumni Association Executive Committee for UT law school) joined him in the Rusk courtroom.

Boling says that the sanity hearing was conducted under the newly enacted Mental Health Code. When some of the state's doctors told him they had changed their opinions about Eidinoff's condition, he knew that the trial would not go routinely. He remembered that one of the doctors, apparently seduced by the groovy flower power of the late Sixties, had not only changed his mind but his appearance as well. He appeared sporting a long beard and casual dress, telling Boling that Eidinoff "was alright and that [he] couldn't testify he was off his rocker." Dr. Anne Zimmerer, described in press reports as "a chic platinum blonde", stated flatly that, "I found no trace of paranoia and I was looking for it."

Eidinoff, at 59 years of age, contended as always that he was healthy and sane and deserved to be released. But like any doctor who had killed a prominent lawyer in the same way that Jack Ruby later killed Lee Harvey Oswald, by shooting him five times at point-blank range with a .38 caliber handgun in front of a horrified crowd, Eidinoff remained tormented. He told this six-person jury that, "As long as I'm legally insane, I can't touch a penny of my funds. I'm locked up with a lot of psychotic people and I can't possibly live normally. One thing is on my mind: How do I get out?"

Drs. A.J. Bankhead (a Tyler psychiatrist), James Hunter (a resident psychiatrist at the hospital), William T. Moore (a Dallas private practitioner) and George B. Tipton (a young private practitioner) all testified that Eidinoff was still mentally ill, suffering from delusions and needed hospitalization.

Tipton was Boling's first witness. Tipton testified that Eidinoff was not able to judge facts or evidence, except that which he wanted to believe. He said that Eidinoff needed treatment, but would not accept it, testifying that, "if he won't take the medicine, there's no use to prescribe it." On several occasions, Tipton told the jury that Eidinoff suffered delusions, which he defined as "a false belief that sounds convincing and would be true if the original premise were true."

He said two of the delusions included Eidinoff's belief that he was being imprisoned by political pressure, and his belief that nothing was wrong with his mind. He recalled that Eidinoff had presented his wife with an attractive bag made of scrap leather, with an inscription

It's The Law

FREQUENTLY THERE IS reason to wonder about the wisdom of the law, but, in the long run, after serious thought, we usually wind up by asking: What would be better?

The case of Dr. Harold Eidinoff is a point in hand.

Dr. Eidinoff shot and killed El Paso attorney Ted Andress.

A jury in Lubbock found he was insane at the time and committed him to an asylum.

Ever since, Eidinoff has made efforts to prove his sanity. Trial after trial has been held. The last one, in Rusk, Texas, resulted in a jury finding that he is sane now.

Does that mean Eidinoff now will be tried for the murder of Andress? Oh, no. He already was tried for that and found to have been insane when it was committed.

The jury verdict means Eidinoff will go scot free.

That's the way the law is.

Human beings may be insane at one time and completely sane another.

The jury in Rusk found that Eidinoff now is sane and should be returned to society.

Would you change the law?

The El Paso Times Editorial-Oct. 5, 1968

in the bottom of the bag reading, "Made by Dr. Harold Eidinoff while imprisoned in Rusk State Hospital through political pressure."

All the hospital psychiatrists testified that Eidinoff was still suffering from paranoia, with Moore saying that it could take "five to ten years to correct." He recommended that Eidinoff remain hospitalized for continued treatment to "insure against the chance he may lose control and again act in a destructive way." Dr. Hunter told jurors that he had from 320 to more than 500 patients under his care. He agreed with the other hospital psychiatrists that Eidinoff suffered from paranoid delusions and grandiosity. Eidinoff delusions, all the doctors said, caused him to believe he was being persecuted, that he was held in the hospital by political pressure, and that he was never being treated.

Eidinoff took the stand in what reporters described as "a dramatic last minute bid for freedom." His appearance ended a nine-day long parade of witnesses, including psychiatrists, psychologists, and hospital attendants most of whom were employed by the state. His testimony was described as "calm, and apparently earnest", accompanied by mild gestures. He spoke in a low, well-modulated voice, facing the jury. Everyone in the courtroom reportedly hung onto his words.

During the trial, Eidinoff reportedly had considerable freedom about the courthouse. He chatted frequently with newsmen. He talked to friends he had made since his stay in the hospital. There was little or no restraint on him, according to reporters covering the case.

Eidinoff testified, "I was recovering from a severe mental disturbance when I came to Rusk. But then I found I couldn't get out, and this thing preyed on my mind. I felt there was nothing to hope for; I had to seek out help," he said explaining his almost continuous litigation aiming at freedom since the entered the hospital. He added, "Unless I could get help, it was hopeless. No doctor ever said to me, 'You're mentally ill but we'll treat you and send you home.' Each time I asked, they shrugged their shoulders. The only purpose of filing suits has been an effort to get out."

Asked by his lawyer about treatment, Eidinoff said that his ward physician, Dr. James Hunter, had done nothing for him. "He never examined me. He never prescribed anything. He never assigned me to group therapy and he always said he never had time," Eidinoff said, repeating again that he was being detained in the hospital because of political pressure.

During a recess, Eidinoff told a reporter that, "For the first time, I think we've definitely established that political pressure was brought to bear to keep me locked up." Talking about the prospect of going free, he said he felt "like the Dallas Cowboys must have felt last winter at Green Bay with the Packers on their backs," referring to the famous NFC championship game known as the Ice Bowl, won by Green Bay 21-17 in the last seconds of the game.

When testimony resumed, he was asked whether he felt any remorse for killing Andress. Eidinoff replied, rather incredibly, that, "I will regret to the last day of my life that the shooting ever occurred. I've never said I was right. I was wrong. I don't know what else I can do. Those things cannot be recalled or done away with."

He also testified that he held no animosity against either the physicians or the lawyers connected with his case, saying "I will take any number of oaths that I'll never file another suit once I get out of Rusk. For everything that has happened, I now realize it was my own poor judgment. I got myself into it." However, on cross-examination, when Boling asked him if he understood that several doctors had testified that he was ever mentally ill and suffering from paranoia, Eidinoff deflected the insinuation that something was wrong with him, stating defiantly

that, "Paranoia has been put on my record."

The Cherokee County jury deliberated for only 50 minutes before the verdict came in. Many trial lawyers see a sign of things to come in the length of a jury's deliberation. Even Eidinoff, now a courtroom veteran, told a reporter minutes before the verdict came in, "I'm not optimistic."

He should have been. The jury found Eidinoff sane, sending shock waves through the justice system. But the jury also decided that Eidinoff

should remain in the hospital until a court decision was made on a release date. Curiously, there were no newspaper headlines announcing this major development, only articles below the fold on the front page.

On Saturday, October 4, 1968 the day after the verdict, the El Paso Times ran an editorial about the Eidinoff verdict under the title, "It's the Law." The editorial began by observing that the law may not seem rational, but we are usually hard-pressed to come up with something

better. The editorial described Eidinoff's case as "a point in hand." The jury's verdict, the editors concluded, would mean that Eidinoff would "go scot free."

But would he go scot free? Now that he was found "not mentally ill," was Eidinoff released from the courtroom to the streets, a free man, or was he fated to remain in the hospital by circumstances beyond his control? *Ya veremos. Nada está lejos, sólo te tardas en llegar.*

The *Ted Andress Assassination* series is written to commemorate the 110th anniversary of the Bar Association with assistance and encouragement from Edgar Rincón Luna, Reyes Mata and Clinton Cross for which the author is grateful. The following resources have been used: Sonnichsen Special Collections Department, University of Texas at El Paso Library, *El Paso Herald-Post records*, MS 348; *The Paul Freund Papers*, Eidinoff, Harold 1966 Box 13, Folder 7, Harvard Law School Library; *Ex Parte Eidinoff*, 408 S.W.2d 540 (Tex. Civ. App.- Tyler, 1966, writ ref. n.r.e.); *Eidinoff v. Kreimeyer* 87 S. Ct. 898, 386 U.S. 905, 17 L. Ed. 2d 801 (1967); *Eidinoff v. Connolly*, 281 F. Supp. 191 (U.S. Dist. Ct.- N. Dist. Tex. 1968); *Connolly v. Eidinoff*, 442 S.W. 2d 415 (Tex. Civ. App.- Tyler 1969, d'm w/out juris.); Morris B. Hoffman, *The Case for Jury Sentencing*, 52 Duke L. J. 951 (2003); *Time Magazine*, March 18, 1966 and March 21, 1969, *The El Paso Times* and *The El Paso Herald Post* archives of the El Paso Public Library; and personal interviews. This presentation includes the creative work of others. This property is being used by permission or under a claim of "fair use" pursuant to 17 U.S.C. §107, and was created pursuant to fair use guidelines and further use is prohibited.

Monica Pineda receives first Judge Enrique H. Peña Scholarship

■ BY CLINTON F. CROSS

Ms. Monica Pineda is the recipient of the first scholarship awarded by a permanent endowment at the University of Texas at El Paso (UTEP), the Judge Enrique H. Peña Endowed Scholarship. The endowment was established in 2008.

Ms. Pineda graduates in May of 2009 with a Bachelor of Arts in Political Science. She is on the Dean's List and a member of *The Honor Society of Phi Kappa Phi*. She used the scholarship to pay for her tuition. She continues to work her part-time jobs to cover general living expenses.

Having herself survived an abusive and broken home, Monica is determined to succeed in law school and return home to advocate for families. Immigration law is also an interest.

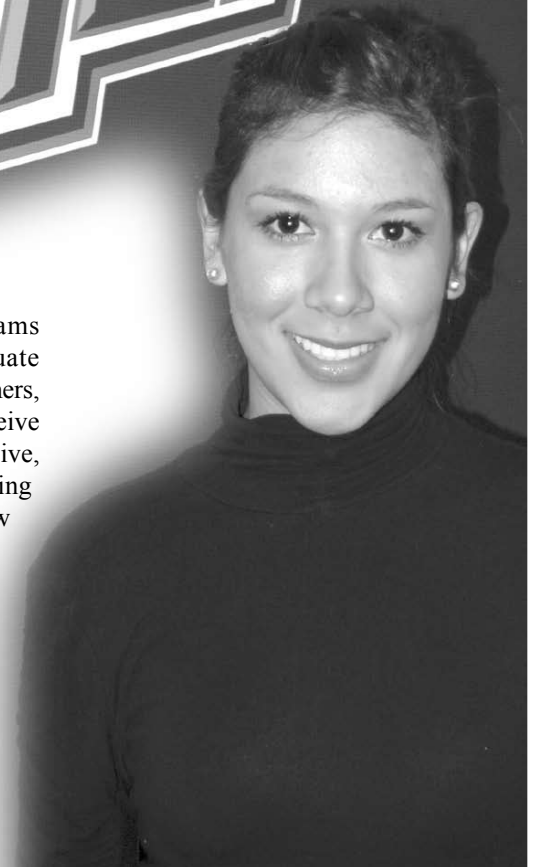
Upon receiving the news of her selection for the Judge Enrique H. Peña scholarship, Monica said that she would be forever thankful to the legal community. "They invested in me, and in my education. I am honored, and humbled."

The Law School Preparation Institute (LSPI) at UTEP is entering its 11th year and more than 350 students have completed the program. Approximately 65 different law schools have

accepted a UTEP-LSPI student. Many of these students have returned to El Paso.

LSPI was the first program of its kind in the country and is the most rigorous of all prelaw programs nationwide. Open to UTEP undergraduate students the program extends over two summers, and students who complete the program receive nine units of college credit as well as extensive, comprehensive guidance and aid in preparing for the Law School Admissions Test, the law application process, and law school itself.

For more information about the Judge Enrique H. Peña Endowed Scholarship or other funding opportunities for LSPI and/or UTEP, please visit www.utep.edu/givingto or call Rene Acosta, Director of Development for University College, at (915) 747-6170 or Sylvia M. Hernandez, Director of Development for College of Liberal Arts, at (915) 747-8527.



First Woman Lawyer In Texas Lived In El Paso

■ BY CLINTON F. CROSS

In the October/November issue of the El Paso Bar Journal, we reported on El Paso Women Lawyers. We listed some of "the early ones," beginning with Ethel Shirley Abbott. We overlooked Mrs. Edith W. Locke (a Quaker), perhaps because she never actually practiced law. But according to Betty Trapp Chapman, she was licensed to practice law in El Paso on May 20, 1902, and she was the very first woman to be licensed to practice law in the State of Texas. Betty Chapman's book, *Rough Road to Justice: The Journey of Women Lawyers in Texas*, can be purchased from the State Bar of Texas. To order, go to www.TexasBarBooks.com or call the State Bar Sales Desk at (800) 204-222, Ext. 1411.



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SENIOR LAWYER INTERVIEW

JUDGE TOM SPIECZNY

■ BY CLINTON F. CROSS

This month I interviewed Judge Tom Spieczny. I know Judge Spieczny as a fair and compassionate judge. There are others who know him as a tough and relentless competitor.

Cross: *Tell me about your family background.*

Spieczny: All of my grandparents were born in Poland. They were poor farmers who immigrated to the United States in the early 1900s, entering this country at Ellis Island. My parents, like many of their generation, left school the day they turned fourteen to go to work. My dad worked for over forty-nine years in a factory two miles from our home.

Cross: *Where did you go to school?*

Spieczny: I attended public schools in New Jersey, and received a scholarship to Princeton University. I got my law degree at Vanderbilt Law School in Nashville.

Cross: *I understand that you were an athlete.*

Spieczny: I went to a very small high school so I played football, basketball, baseball and ran track. In college I played football until I smashed up my knee pretty badly.

Cross: *Did that end your athletic career?*

Spieczny: As far as inter-collegiate competition, it did. I kept playing recreational league basketball, softball and baseball, and ran one marathon. I took up tennis in my 40's and am proud to say that I won the El Paso Bar Association's tennis tournament eight times.

Cross: *Has old age and injuries slowed you down?*

Spieczny: I had a hip replaced in 2003, a lumbar laminectomy in 2007, and had both knees replaced this summer. I am back to



playing tennis and have skied twice this winter, so I hope to stay active.

Cross: *How does a New Jersey guy get to El Paso?*

Spieczny: After law school, I worked for the Department of Labor in Washington, D.C. That job led to a position with a labor union based in New York City. The union was involved with a strike at Farah Manufacturing, and I made many trips here to represent the strikers in various legal actions. After the strike ended and the workers were successfully unionized, I really missed El Paso. I had many friends here, and I loved the sunshine. I was young and foolhardy enough to move out here and hang out a shingle as a solo practitioner.

Cross: *Your family? Wife? Children?*

Spieczny: I met my wife here in El Paso in the '70s, after she had returned from two years of serving as a Peace Corps volunteer in Ethiopia. We married in 1979 and we have two children, both now in their mid-twenties, who seem to be doing well.

Cross: *Tell me a bit about your legal career.*

Spieczny: I enjoyed and endured the peaks

I enjoyed and endured the peaks and valleys of a solo practice for over thirty years. It was mostly an employment law/civil rights practice. For many years I was the only Board Certified Labor lawyer in town who represented employees.

and valleys of a solo practice for over thirty years. It was mostly an employment law/civil rights practice. For many years I was the only Board Certified Labor lawyer in town who represented employees.

Cross: *I understand that, through your family, you have ties to both Presidents Clinton and Obama.*

Spieczny: My brother-in-law, John Podesta, worked in the Clinton White House and eventually became President Clinton's Chief of Staff. He also headed the Obama transition team.

Cross: *I know that during your career you tried many significant and complex employment discrimination cases, and that as a result you were recognized by Texas Monthly as a "Super Lawyer." After that you won a highly contested election to obtain your present judicial position. Is there any one moment in your legal/judicial career that really stands out?*

Spieczny: Without question, it was last November, when I had the incredible honor of swearing my daughter in as a Texas attorney.

Cross: *Have there been any lawyers or judges who have been role models for you?*

Spieczny: There have been many. The two lawyers who most stand out are Albert Armendariz, Sr. and George McAlmon. The two judges would be Herbie "Tio" Cooper and Royal Furgeson.

|| EPYLA STAR OF THE MONTH ||

A Bleeding Heart Liberal? *Is this what the world needs more of?*

■ BY MATT WATSON

Now that I have caught your attention, I want to introduce you to Patricia “Patsy” Lopez. While many of us simply pursue the interests of our clients in direct exchange for our own pecuniary gain, Patsy has taken a different path. She spends her working hours primarily assisting those who are economically disadvantaged with housing issues at our local non-profit Texas Rio Grande Legal Aide. She also provides legal support for victims of domestic violence seeking divorce and a new beginning.

From conventional beginnings in a household with a mother who was a homemaker and father who worked as a truck driver, Patsy has propelled herself through law school at our state’s most selective public school, UT Law. She recently graduated in May of 2006 after working as an intern for Judge David Briones, Senator Eliot Shapleigh, Judge Guadalupe Rivera, the El Paso County Attorney, as well as completing work on the Texas Civil Rights Project, Children’s Rights Clinic Transnational Worker’s Rights Clinic, and Housing Clinic.

Patsy has surely met people who could help her achieve what we would all like...a big house, fancy car, vacations others talk about. However, Patsy has chosen not to immediately “break the bank” with her excellent education

and connections, but instead help those most in need and without the economic means to achieve what is generally considered to be fair and just. In her own words, Patsy states that her choice to become a lawyer was because “I thought I could positively impact my community and fight socioeconomic inequities I witnessed growing up through the practice of law.” *Somehow I remember starting off law school with similar aspirations...what about you? In what direction have we each gone?*

Patsy is a true leader. She was recently selected as one of 19 participants state wide for the State Bar of Texas Leadership Program and currently serves on the Board of Directors for the El Paso Young Lawyer’s Association. Her past commitments and awards are too numerous to include here but suffice it to say, it is a wonder how she finds time to sleep!

Somehow Patsy remains well rounded. Each season, she follows her favorite football team, the Longhorns, and eagerly hopes they crush their rival, the Aggies! She enjoys poetry, time with friends and family, music of all varieties, good Italian food, and occasionally finds time to go camping.

In short, whether or not Patsy is a bleeding heart liberal is for you to decide! However, Patsy’s community focus provides a shining example of the good deeds possible in the

profession of law. We each hold the keys to the achievement of such ends and achieve them to varying degrees. Whatever direction your career takes you, I encourage you to introduce yourself to Patsy when you next see her and commend her for her honorable pursuit of the practice of law.



ADVANCE SHEET, circa 1202

■ BY CHARLES GAUNCE

Legal Reference Librarian University of Texas at El Paso

The case of interest this issue of interesting in that is shows the various issues of illegal immigration are not of recent origin. The language needs some explanation for an understanding of the case.

A leech is a medical practitioner. Clearly this derives from the most advanced medical practice of the day—the application of leeches as a cure for whatever malady was bothering you. Note that this practice probably contributed to the demise of George Washington roughly 500 years later. Scientific advances used to be a lot slower.

A knight’s fee was the amount of land that gave rise to an obligation to support a knight in military service and varied by location (since even then, some realty was viewed as being more valuable than other parcels – it is, after all, tax law).

The case is from the Pleas and Assizes on the Morrow of the Holy Trinity, before Simon de Pateshull, Eustace de Fauconberg, and their fellows, in the Fourth Year of the Reign of King John (1202).

Upon payment of twenty shillings, the local physician would be permitted to remain in

country in lieu of leaving and paying a far greater sum for reentry. Who knew that a medical practitioner would be in such demand? Couldn’t the locals find someone else locally who was willing to place leeches on sick people? Perhaps there is something to the argument that illegal immigrants perform jobs that others are simply unwilling to do at any price.

Alan the leech of Bolsover gives the King twenty shillings for license to remain [in England] and that he need not cross the sea on account of half a knight’s fee.

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Open DNS Network Protection

■ BY DAVID J. FERRELL
djf@elpasolaw.com

Protection of your internet network at work and at home has become a complex and often expensive venture. When you have multiple computers, protection can be a time killer with all the updates and permutations that hacker and content protection requires.

There is a simple and inexpensive way to help filter undesirable web content. You protect yourself not at the computer level but at the router. The router is your network's gateway to and from the internet. In small firms all your computers should access through the same router.

Your router has an IP (internet protocol) address, that is the input and output avenue for your network's internet activity.

The Domain Name System (DNS) translates your IP address to an easy to remember hostname. As an example, type 64.251.198.91 in your browser address line and you will go to elpasolaw.com. It is easier to remember names rather than numbers.

In Windows to find out any IP address go to the "Start Menu", "All Programs", "Accessories", and then "Command Prompt", enter 'ping' followed by the URL (Uniform Resources Locator) and enter". Try "ping google.com" don't include the quotation marks.

Now there is an easy and free way to

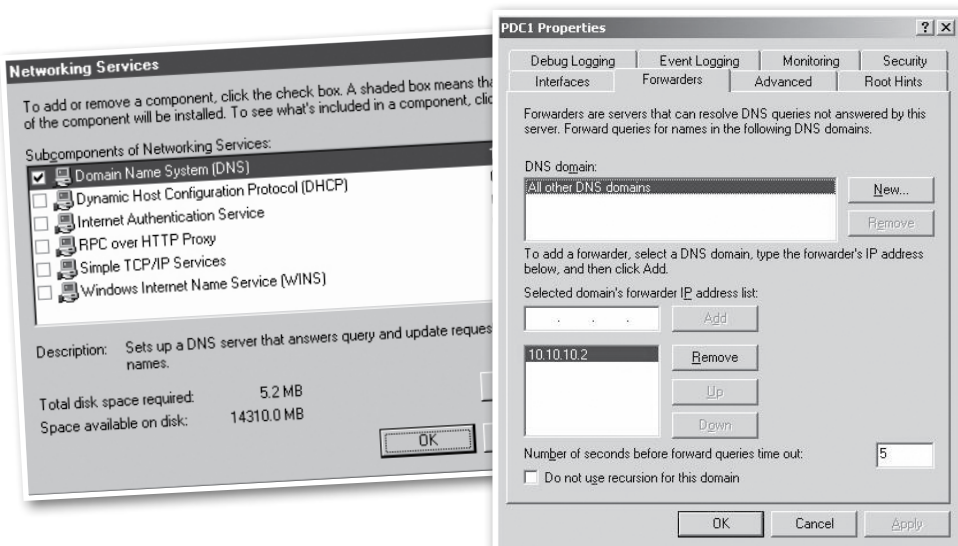
control access to your DNS-IP address both in and out. That means you can control content that is "pushed into" your network driven by outside entities and invited in by your network users.

The free, easy to use downloadable program is call OPEN DNS (<http://opendns.com>) This program adds protection to your router and filters specific sites and specific content.

Once you download the software and install it, you can access your "dashboard" by clicking on "settings". You can then choose 6 filtering levels from basic to high or you can customize your system's access in 54 specific areas from "adult themes", to "adware", to "pornography" to "web mail". You get to choose. If you want to always block certain sites (My Space etc.) you can do that too.

Once OPEN DNS is installed, there is an update program that runs in the background to keep your protection current.

Since I am a solo practitioner I am the OpenDNS administrator for my network. You/your administrator can easily change settings using the "dashboard". You/your administrator will need to know and maintain the key to your OpenDNS system and I would be very stingy with the password and user ID.



Name:

Daniel Robledo

Court:

Municipal Court Number 5, Presiding Judge

Years on the Bench:

Judge Robledo served as Municipal Court Judge for the city of Horizon from 1998 until 2001. In 2001, he was elected to the El Paso Municipal Court Number 5 and is currently serving his second term as elected judge.

Education:

Judge Robledo graduated from Bel Air High School and went to UTEP, where he received his B.S. in Criminal Justice. He then attended Thurgood Marshall School of Law, where he received his law degree in 1987.

Court Coordinator:

Lupe Holguin

What comes to mind when you think of the word "justice"?:

"I want to make sure that justice is applied equally to both the rich and poor."

Describe a moment when you, as either a judge or lawyer, felt justice was achieved.:

"I feel justice has been achieved when I'm able to get through to the young kids that come before me and I find out later that they've changed their lives because of what I've told them. If I can sit and talk to them at this early stage of their lives, it may not be too late to change the paths that they're on."

As a judge, what responsibility do you feel towards the community?:

"I feel it's my responsibility to make sure that the Constitution is adhered to by both government and city law enforcement agencies. I have a strong belief in defending the constitution, partly because of the sacrifices my father made in WWII. He fought in the Normandy Invasion and walked from Normandy to Germany, fighting in every major campaign in between. For his sacrifices, he received four Silver Stars, a Bronze Star, the Purple Heart, and a Victory Ribbon. The fact that my father fought so that our rights could be preserved got me to be a defender of our Constitution."

HON. ROBERT J. GALVAN COUNTY LAW LIBRARY NEWS

By LYNN SANCHEZ

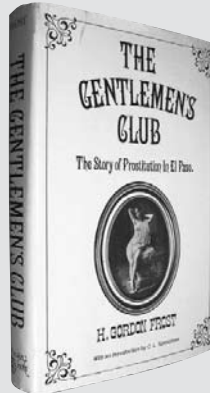
The Law Library has acquired the following materials of general interest, which are available for check out:

Paul Cool,
Salt Warriors: Insurgency on the Rio Grande
(Texas A & M University Press, College Station, 2008)
[This book is about the El Paso Salt War of 1877.
It won the 2007 Robert A. Calvert Book Prize.]

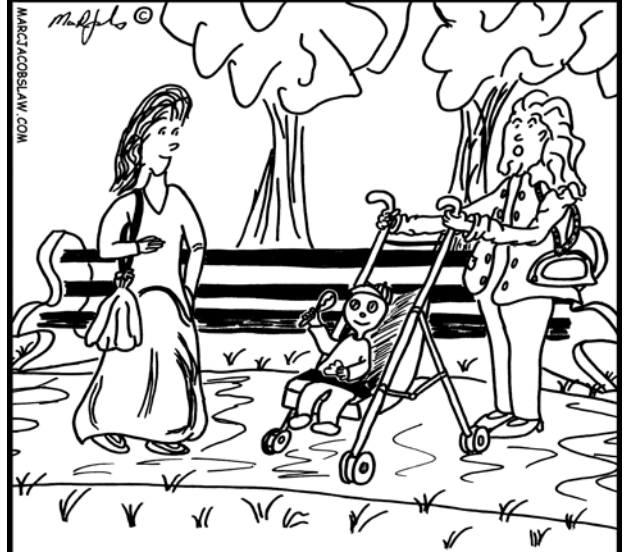
C.L. Sonnichsen,
Roy Bean: Law West of the Pecos
(The Devin-Adair Company, Old Greenwich, Conn., 1972)

H. Gordon Frost,
*The Gentlemen's Club: The Story
of Prostitution in El Paso*
(Mangan Books, El Paso, 1973)

Metz, Leon,
John Wesley Hardin: Dark Angel of Texas
(Mangan Books, 1996).



Above the Law



"HE HARDLY EVER TALKS. WE
THINK HE'S GOING TO BE A
5TH AMENDMENT ATTORNEY."

Marc Jacobs, Esq. is a partner at Michelman & Robinson, LLP. Combining his professional and personal interests, in his spare time, Marc authors the "Above the Law" legal cartoons focusing on the humorous relationship between life and law. For more information on Above the Law, please visit www.marcjacobslaw.com



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13TH ANNUAL CIVIL TRIAL SEMINAR

February 20 & 21, 2009

Paris Hotel and Casino, Las Vegas, Nevada

OVER \$1,000 IN DOOR PRIZES TO BE GIVEN OUT

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to join us for a weekend
of fun and education*

Door prizes galore
including \$1,000
grand prize at the end
of the seminar.

*Go to Southwest
Airlines to check out
the low fares to Las
Vegas.*



Registration form on page 23 of this Journal.

THE EL PASO YOUNG LAWYERS ASSOCIATION

is soliciting nominations for Outstanding Young Lawyer, Outstanding Jurist, Outstanding Senior Lawyer, Outstanding Lawyer, Outstanding Pre-Law Student, the Liberty Bell Award, the Professionalism Award, the Pro Bono Awards and The Honorable Enrique H. Peña Mediator of the Year Award 2008-2009. Please submit your written nominations to Danny Razo, 701 Magnolia, El Paso, Texas 79903, or dannyrazo@gmail.com by Friday, April 3, 2009.

THE AWARDS FOR WILL BE PRESENTED AT THE LAW DAY DINNER ON SATURDAY, MAY 9, 2009.

Please make your nominations as complete as possible. Describe your nominee's background, qualifications, and his or her activities or contributions, which will be considered when selecting the award recipients.

Please also include his or her address and phone number in the nomination.

OUTSTANDING YOUNG LAWYER:

Please consider the following criteria: 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, 2008. 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:

Please consider the following criteria: 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:

Please consider the following criteria: 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:

Please consider the following criteria: The nominee must be licensed to practice in Texas. The nominee must be a aged out of the Young Lawyer category (i.e., over 36 years of age on June 1, 2008), 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 (CORI A. HARBOUR AWARD):

Please consider the following criteria: The nominee must be a 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.

PROFESSIONALISM AWARD:

Please consider the following criteria: The nominee must be licensed to practice in Texas. He or 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 or 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 AWARDS:

These awards honor individuals and law firms (large and small) for the volunteer work they do. Please consider the following criteria: Number of hours of pro bono work done, as well as, the volunteer 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. These awards will be selected by the Pro Bono Committee of the El Paso Bar Association to honor those who have given so much to the El Paso community during the 2008-2009 Bar Year.

THE HONORABLE ENRIQUE H. PEÑA MEDIATOR OF THE YEAR AWARD

These awards honor an attorney and a non-attorney mediator for their work in 2008-2009. 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. These awards will be selected by the ADR Committee of the El Paso Bar Association.

THE LIBERTY BELL AWARD

The award is given to a non-attorney who has made a contribution to the legal community.

CONFLICTS? RESOLUTIONS!

Solving Problems--Closing Cases

Patricia Palafox

*Bilingual Attorney
Mediator-Arbitrator*



*Celebrating 13 years
of Professional
mediation & Arbitration;
28 years of Legal
Representation*

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Family Law • School Law
Construction Contracts
General Business Law



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and Arbitration Training

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Texas Wesleyan University
School of Law

The National Mediation Academy, Inc.

28 Years of Legal Representation



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and trust over the last thirteen years*

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Fax: 915-833-7305
palafoxpatricia@sbcglobal.net

▶▶▶ ASSOCIATION NEWS

El Paso Paralegal Association

▯ The El Paso Paralegal Association will hold its February Luncheon on Thursday, February 19, 2009 at 12:00 noon at the El Paso Club, 201 E. Main, 18th Floor. Cost of the luncheon is \$15.00 for buffet or \$8.50 for Salad Bar. The March Luncheon will be on Thursday, March 19, 2009 at 12:00 noon at the El Paso Club. RSVP to Lynda Camacho at 546-8311.

El Paso Young Lawyers Association

▯ The El Paso Young Lawyers will hold its February meeting on Thursday, February 12, 2009 at 12:00 noon at Great American Land & Cattle Co, 701 S Mesa Hills Drive. For more information please contact Danny Razo at dannyrazo@gmail.com or 881-7177.

Happy hour to follow; location to be announced at the meeting.

▯ The El Paso Young Lawyers is bringing its basketball league back to El Paso! We encourage all lawyers to register their teams as soon as possible. The deadline to register your team will be February 17th, 2009. Please email Joeyveith@gmail.com to register (subject: EYLA basketball). You may also email questions to that address. The season will commence on St. Patrick's Day March 17, 2009. A champion will be crowned at the end of the season. Let's play some HOOPS!!!! St. Patrick's Day Game Celebration will follow after the basketball game.

▯ The El Paso Young Lawyers will hold its March meeting on Thursday, March 12, 2009 at 12:00 noon at Great American Land & Cattle Co, 701 S Mesa Hills Drive. For more information please contact Danny Razo at dannyrazo@gmail.com or 881-7177.

Happy hour to follow; location to be announced at the meeting.

The El Paso Bar Association Moves to New Offices

**The El Paso Bar
Association has moved!!!
We are now located
in Room L-112 of the
Courthouse.**

So our address is as follows:

El Paso Bar Association
500 E. San Antonio, Room L-112
El Paso, Texas, 79901
Phone, fax, email all remain the same.

CLASSIFIEDS

Central Office Space for Lease:

Office space available, receptionist, runner, conference rooms, parking, etc. Call Bob Earp or Larry Schwartz at 542-1533.

Executive Center Drive Area Office Available

Office space with separate area for legal assistant.

Rent includes conference room, closet, phone system with voicemail, cleaning, kitchen, alarm, exterior signage, parking, waiting area, and file storage area. Available extras include server with internet access, high speed copier / scanner and fax service.

Call Craig at 915-532-1926 for details.

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EL PASO BAR ASSOCIATION *presents***13TH ANNUAL CIVIL TRIAL SEMINAR****February 20 & 21, 2009***Paris Hotel & Casino, Las Vegas, NV***Approved for 10.25 hours of MCLE/1.5 hours of Ethics****Pending Approval by the State Bar of Nevada****Friday, February 20, 2009**

- 10:00 – 10:05 a.m. **Introduction** – Cori Harbour, President
El Paso Bar Association
- 10:05 – 10:15 a.m. **Welcome** – The Honorable Oscar Goodman,
Mayor of the City of Las Vegas
- 10:15 – 11:00 a.m. **Employment Law Update** – Mark Dore, Mounce,
*Green, Myers, Safi, Paxson & Galatzan, P.C.,
El Paso, Texas*
- 11:00 – 11:40 a.m. **Family Law & the Military Issues** –
Donald Williams, El Paso, Texas
- 11:40 – 12:30 p.m. **Medical Malpractice Update** – Walter Boyaki,
Miranda & Boyaki, El Paso, Texas
- 12:30 – 1:30 p.m. **Lunch on your own**
- 1:30 – 2:00 p.m. **Trial Technology** – Roger Miller, Keith & Miller
Court Reporters/Altep, Inc.
- 2:00 – 2:30 p.m. **Deposition Strategies and Techniques** –
*Lisa Elizondo, Elizondo & Hayes, El Paso, Texas
& Walker Crowson, Crowson & Crowson,
El Paso, Texas*
- 2:30 – 3:10 p.m. **The Jury System and Voir Dire** – The Honorable
*Javier Alvarez, County Court at Law #3, El Paso,
Texas; Jeff Ray, Ray, Valdez, McChristian, & Jeans,
P.C., El Paso, Texas & Enrique Moreno, El Paso, Texas*
- 3:10 – 3:20 p.m. **Afternoon Break**
- 3:20 – 3:50 p.m. **Ethics and the Trial Lawyer** – Keith Myers,
*Mounce, Green, Myers, Safi, Paxson & Galatzan,
P.C., El Paso, Texas and Evelina Ortega,
El Paso, Texas*
- 3:50 – 4:40 p.m. **Bankruptcy Effects on Litigation** – Cheryl Lay,
Leslie & Lay, P.C., El Paso, Texas
- 4:40 – 5:30 p.m. **Advertising Review Update** – Gene Major, State
*Bar of Texas Advertising Review Committee, Austin,
Texas*
- 5:30 – 6:30 p.m. **Reception Happy Hour**

Saturday, February 21, 2009

- 7:30 – 8:30 a.m. **Breakfast**
- 8:30 – 9:05 a.m. **Appellate Issues** – Steven Hughes, Mounce, Green,
Myers, Safi, Paxson & Galatzan, P.C., El Paso, Texas
- 9:05 – 9:45 a.m. **Consumer Law Update** – Steven C. James, Attorney
at Law, El Paso, Texas
- 9:45 – 10:25 a.m. **Immigration Law Issues** – Susanna Visconti,
El Paso, Texas
- 10:25 – 10:40 a.m. **Morning Break**
- 10:40 – 11:00 a.m. **White Collar Criminal Issues and Civil Litigation**
– Mary Stillinger, El Paso, Texas
- 11:00 – 11:45 a.m. **Texas Supreme Court Update** – Gabriela Gallegos,
Vinson & Elkins, El Paso & Dallas, Texas
- 11:45 – 12:30 p.m. **Judicial Round Table: Effective Trial Advocacy**
– Hon. Linda Y. Chew, 327th District Court,
*Hon. Maria Salas- Mendoza, 120th District Court &
Hon. Tom Spieczny, County Court at Law # 7,
El Paso, Texas*
- 12:30 – 1:00 p.m. **Attorney's Fee Awards: Proving them up and
Collecting** – Enrique Chavez, Jr., El Paso, Texas

**COURSE MATERIALS PROVIDED TO ALL
ATTENDEES IN THE FORM OF A FLASH DRIVE**

Our block of rooms will be available beginning on
February 19th. Make your reservations by calling
(888)266-5687 and giving them our room reservation
code – **SPEPB9** or tell them you are with the
El Paso Bar Association Group.
Our room rate is **\$199 plus tax per night with a 2-night
minimum**. Check Southwest, U.S. Air/America
West for airfares to Las Vegas.

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(915) 532-7052 or at
nancy@elpasobar.com

The El Paso Bar Association
proudly presents

A Guide to Franchise Law for Lawyers

Presented by Earsa Jackson
Strasburger & Price

Thursday, March 19, 2009

Noon to 1:00 p.m.

Registration begins at 11:30 a.m.

Ceremonial Courtroom, 12th Floor

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For more information
contact Nancy Gallego
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