



EL PASO BAR JOURNAL

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June 2010

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State Bar of Texas

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2003 – 2005 – 2006 – 2007 – 2008

NABE – LexisNexis Community

& Educational Outreach Award 2007

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THE PRESIDENT’S PAGE



As I reflect on this past year, I thank all the members of the El Paso Bar Association for allowing me the honor and privilege to serve you and the oldest permanent bar association in the State of Texas. Thank you for allowing me to give back, in a small way, to a profession that has been good to me and of which, I am proud to be a member.

The best part of my service is the opportunity to meet good lawyers and people related to this Association I consider friends and, had I not met, I would have a life less fulfilled. I truly feel blessed and there are many people to whom I express my gratitude. However, due to space constraints and fear of omitting anyone I will simply thank you all, and you know who you are.

Our Association is fortunate to have a hard-working and committed Board of Directors and an Executive Director, Nancy Gallego. Nancy has dutifully been the core of this organization for 17 years and this year we were able to establish a retirement account for her, sponsored by the Past Presidents of this organization, in an expression of appreciation.

I thank and congratulate the Board for all of this year’s accomplishments. A critical goal for the year was to stop the trend of declining membership. Because of our Board’s efforts and your renewals the decline not only halted, membership rose from 551 members last year to 627 members in fiscal 2009-10. This increase provided a much needed shot in the arm to our dues based budget.

The second substantive issue this year was to re-focus the Bar’s attention and efforts toward equal access to justice (ATJ) and the delivery of legal services to the poor and marginalized citizens of El Paso County. We did so knowing the need is great, the cause is worthy, and the duty to meet this demand is ours because we, as attorneys, possess a special skill that only we can contribute in securing equal justice under the law.

I am pleased to report that this Association met this objective in a manner that should make everyone proud. Not only did we sustain a dialogue on ATJ throughout the year in this Journal; we came through with effective programs that, in addition to helping those in need of our services, also placed us in a positive light among the citizens of El Paso. One such program is a weekly half-hour talk show on Radio KAMA which provides free legal guidance to a Spanish speaking audience.

And as I write this column, I am in receipt of the news from the American Bar Association offices in Chicago that the El Paso Bar Association was selected to receive the local bar 2010 Community and Educational Outreach Award for its “Access to Justice Fair” held on October 31, 2009. At this first ever EPBA event over 400 El Pasoans benefitted from pro bono consultations and classroom clinics donated by dozens of our members.

Our year will end with a similar first-time program, “El Paso Lawyers for Patriots” which as I write this, will take place on May 22, 2010. This free legal clinic for veterans, active duty military personnel and their families is a way for us to show our gratitude for the courageous service and sacrifices our veterans and active military have exhibited to secure the rule of law.

Although the end of this fiscal year is near, the cause to improve everyone’s lot by fortifying ATJ should never run its course at the turn of a calendar’s page.

I am encouraged that our Board unanimously voted to produce the “Access to Justice Fair” on an annual basis. And with the competence and dedication already exhibited by our next President, Chantel Crews, I leave this office assured our efforts toward ATJ will not wane and our Bar will be stronger than ever.

In one final plea: please take care of yourselves, your families, and let’s take care of those who depend on us to breathe life into those words chiseled upon the facade of the highest Court of the land: “Equal Justice Under Law”.

Carlos Eduardo Cárdenas, President

*“And now the end is here
 And so I face the final curtain
 My friend, I’ll say it clear
 I’ll state my case, of which I’m certain...”*

-Frank Sinatra

EL PASO BAR ASSOCIATION

June Bar Luncheon

Tuesday, June 8, 2010

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

Guest Speaker will be Chief Justice David Wellington Chew, 8th Court of Appeals who will speak on the Lady Liberty project, the progress and the funding.

We will also have the Election and Swearing In of our new slate of Officers and Directors for the 2010-2011 Bar Year.

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Bruce Koehler – President Elect
Judge Maria Salas-Mendoza – Vice President
Randy Grambling – Treasurer
Laura Enriquez – Secretary

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Please make your reservations by Monday, June 7, 2010 at noon by calling Nancy at 532-7052 or via email at nancy@elpasobar.com

El Paso Lawyers for the Arts

■ BY MARK HEDRICK

The El Paso Museum of Art is the sponsor of a program on Thursday, July 1, 2009, at 5:30 PM, at the El Paso Energy Auditorium of the El Paso Museum of Art to promote the formation of El Paso Lawyers For The Arts. The El Paso Bar Association and the Federal Bar Association El Paso Chapter are co-sponsors of this program, and 2 hours of CLE credit will be applied for and provided to attending lawyers and legal assistants free of charge.

It is envisioned that El Paso Lawyers for the Arts will be a support group formed to educate El Paso attorneys in legal matters relating to artists and fine arts groups, and to be able to provide legal services both professionally and on

a *pro bono* basis to the El Paso community. The Museum desires to promote a greater working dialogue between the El Paso legal and arts communities, and sees the sponsorship of this program as a first step towards that goal.

The speaker for this program is Sergio Munoz Sarmiento. He is a native El Pasoan who received his BA from UTEP, his MFA from the California Institute of Arts, and his JD from Cornell Law School. He is in practice in New York City and is an Adjunct Instructor at the Brooklyn Law School. Mr. Sarmiento is actively engaged in the promotion of professional expertise in the field of art and law and is a frequent speaker to professional groups throughout the country.

The schedule for this program is:

5:30 – 6:30 Presentation on Intellectual

Property Law and Copyrights
(1 hour CLE credit)

6:30 – 7:00 Cocktail Reception/Break
 provided by El Paso Museum of Art

7:00 – 8:00 Presentation and discussion on
 Lawyers For The Arts
(1 Hour CLE credit)

You may attend either, or both, presentations
 free of charge.

RSVP required - Attendance limited to 220. RSVP to the El Paso Museum of Art your intention to attend by phoning (915) 532-1707 or by emailing the Development Office of the El Paso Museum of Art romneyjk@elpasotexas.gov prior to July 1. Museum hours are Monday through Friday 9-5, extended Thursday hours through 9 pm, Sunday 12-5. For more information go to www.elpasoartmuseum.org.



CALENDAR OF EVENTS

JUNE 2010

Tuesday, June 1
EPBA Board Meeting

Saturday, June 5
*EPWBA Annual Charity Ball
Battle of the Bands & Talent Show*

Tuesday, June 8
*EPBA Monthly Luncheon
Chief Justice David Wellington Chew
Election and Swearing In
of EPBA Officers/Directors*

Thursday, June 17
EPPA Monthly Luncheon Meeting

Friday, June 18
*EPBA & County closed
for Juneteenth Day*

JULY, 2010

*2010-2011 Membership Dues
Statement due in EPBA office*

Thursday, July 1
*El Paso Lawyers for the Arts
Seminar & Reception*

Monday, July 5
*EPBA & County closed –
Independence Day*

PLEASE NOTE: Please check the Journal for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Journal for your upcoming event or function for the month of September, 2010, please have the information to the Bar Association office by Friday, August 6, 2010. 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.

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TEXAS APPLESEED:

Finding Practical Solutions to Remove Justice Barriers

■BY REBECCA LIGHTSEY, J.D.

Executive Director, Texas Appleseed

Over the past decade, public interest law center Texas Appleseed has been involved in some of the most significant justice issues facing the state and nation. It has succeeded time and again in protecting the rights of the most vulnerable. To what does Texas Appleseed attribute its effectiveness? It credits the power of the pro bono bar.--Editors

As part of a network of Appleseed centers in 15 states and Mexico City begun by a small group of Harvard Law School alumni, Texas Appleseed opened its doors in 1996 as a law center in the public interest. From the beginning, Texas Appleseed has partnered with pro bono attorneys at law firms and corporations across the state to find practical solutions to difficult social and economic justice challenges.

Unlike many nonprofits, Texas Appleseed serves no one constituency and does not take individual cases. Instead, it uses its detailed research findings, advocacy, amicus briefs, legal action and public awareness to help change laws, policies and marketplace practices to achieve greater justice.

For its efforts, Appleseed has won awards as wide-ranging as the 2009 Best of the Best Award from **El Paso's Invest in the American Dream** initiative for encouraging reform of the high-cost, unregulated payday and auto title industry in Texas, the **W. Frank Newton Award** from the State Bar of Texas for its indigent defense reform work, the **Ring of Honor Award** from the Mental Health Association in Texas for work to improve legal representation of persons with mental disabilities, and the **Pioneer Award** from the Texas New Alliance Task Force for encouraging banks and credit unions to offer financial products and services needed by low-income and immigrant consumers.

Stories with the Power to Inspire Reform

Texas Appleseed was established to tackle impediments to justice in a systemic way, but it is the individual stories of vulnerable people that motivate pro bono attorneys to team with our experienced staff to conduct legal research,



Texas Appleseed was established to tackle impediments to justice in a systemic way, but it is the individual stories of vulnerable people that motivate pro bono attorneys to team with our experienced staff to conduct legal research, file an amicus brief, conduct field interviews, and more.

file an amicus brief, conduct field interviews, and more. The following stories are just a few that have inspired our work to correct injustice:

■**Immigrants with mental disabilities.** A 50-year-old legal permanent resident with schizophrenia, who had lived in New York City since 1974, was ordered to serve 90 days in a mental institution after a New York criminal court declared him incompetent to stand trial on a trespassing charge. Instead, he was transferred to the Willacy County Regional Detention Facility in South Texas to face deportation—and so abruptly, that his family and lawyer did not know what had happened. At the detention center, he received no medication for weeks, and in March 2010, was deported to the Dominican Republic. His mother is convinced he will die on the streets.

■**Foster children.** A 28-year-old woman told Texas Appleseed she moved nine times and had

about a dozen caseworkers during her years in long-term foster care. She was sexually abused in one foster placement and served a stint in prison before turning her life around and earning an advanced college degree. She has seven siblings, but today, only knows where three of them are.

■**Hurricane victims.** Sixteen months after Hurricane Ike damaged his long-time home so severely that he was forced to move into a FEMA trailer, this Galveston homeowner and others like him are still waiting for disaster assistance to rebuild.

■**Payday and auto title loan borrowers.** A Killeen retiree, strapped for money after paying for the surgery and treatment of his wife's pancreatic cancer, applied for a traditional bank loan to help his daughter relocate her family after her return from Iraq. When he was turned down, he used his pickup truck as collateral for a one-month auto title loan. The fees on his loan

ultimately exceeded \$1,200 a month.

Children disciplined at school. In April 2009, six students at a Texas high school were hospitalized and the school evacuated when pepper spray, used to break up a cafeteria food fight, got into the school's ventilation system. In Texas, many school districts refuse to make their school policing policies available to parents and the public.

Texas Applesseed's Early Successes

Before Texas Applesseed embarked on the above challenges, it cut its teeth in its first five years on two major issues: diversifying the state's law schools and ensuring fair legal representation to indigent defendants.

In the wake of *Hopwood v. Texas* (1996) which barred the use of race as a factor in admission to Texas public law schools, Texas Applesseed created its Diversity Legal Scholars program. Because law schools were increasing their reliance on Law School Admissions Test (LSAT) scores, Texas Applesseed partnered with Kaplan to offer scholarships covering the full cost of LSAT review courses for disadvantaged minority students. Today, more than 230 scholarships have been awarded -- and 32 attorneys from across the state -- including attorneys practicing in El Paso -- are volunteering to mentor these scholars during law school.

Presenting an even greater challenge was the issue of indigent defense in Texas. Texas Applesseed conducted detailed research and released findings that helped build a reform movement. The result: passage of the state's landmark Fair Defense Act in 2001. This law fundamentally changed the way that lawyers are appointed to poor people who are accused of a crime in Texas, ensuring that their attorneys are better qualified and appointed more quickly.

Current Priority Projects

Texas Applesseed is currently working in the following priority areas that address many

of the injustices highlighted in the individual stories above.

Immigration Court & Detention Reform. With *pro bono* partner **Akin Gump Straus Hauer & Feld LLP**, Texas Applesseed has just released a report documenting a year's worth of field research into how immigrants with mental disabilities are treated in the immigration system. Immigration Customs Enforcement and the U.S. Justice Department are currently reviewing Texas Applesseed's recommendations for reform which include: 1) improving the detention system's capacity to recognize and provide care for immigrants with mental illness; 2) adopting consistent immigration court procedures to recognize and accommodate people with mental disabilities; and 3) providing safeguards to ensure safe domestic release or repatriation of immigrants with mental disabilities.

Texas' School-to-Prison Pipeline. Texas Applesseed issued a groundbreaking School-to-Prison Pipeline report in 2007, made possible by help from more than 60 attorneys at nine law firms coordinated by lead *pro bono* firm **Vinson & Elkins LLP**. That report documented the "push out" effect of discretionary school disciplinary policies that contribute to school dropout and a greater likelihood of entering the juvenile justice system. Applesseed used these findings to help pass a bill in 2009 to require schools to consider a student's "intent" when reaching disciplinary decisions. Just last month, Texas Applesseed released its report on student expulsion and documented the same disproportionate impact on minority and special education students as was reflected in earlier research on discretionary school suspensions and alternative school placements. Texas Applesseed will release another report later this year on the impact of ticketing, arrest and use of force by school police officers. Already, Texas Applesseed has gone to court to require school districts to release their campus police "use of force" policies to parents and the public.

Foster care. At the request of the Texas Supreme Court's Permanent Commission on Children, Youth & Families, Texas Applesseed and lead *pro bono* partner **Fulbright & Jaworski L.L.P.** are researching ways in which the courts and legal system can improve the life outcomes of children in long-term foster care (Permanent Managing Conservatorship). Research shows that children in PMC are at greater risk of poverty, drug use, homelessness, and justice system involvement after leaving the foster care system. A report and recommendations will be released this year.

Payday and auto title reform. Texas Applesseed applauds El Paso and other cities for passing resolutions urging Texas lawmakers to close a legal loophole that allows payday and auto title businesses to charge exorbitant rates for short-term loans. Texas Applesseed, the AARP and other public interest groups are working together to push for interest rates on short-term loans that are fair, not predatory.

Hurricane recovery. Texas Applesseed has worked to ensure that billions of dollars in federal disaster recovery funds are directed to Texas' communities hardest hit by Hurricanes Ike and Dolly and that federal law is followed in applying a portion of this money to rebuild affordable housing.

Measuring Applesseed's Impact

The 28-member Board of attorneys share a passion for *pro bono* and social justice. Our successes are measured annually against a Board-approved matrix of tangible goals and objectives, yet there are unquantifiable, far-reaching impacts to the work we do. As Texas Applesseed founders noted, "You can count the seeds in an apple, but not the apples in any one seed."

Visit our website, www.texasapplesseed.net, and contact our Legal Director Deborah Fowler at dfowler@texasapplesseed.net to find out how to get involved. Help us plant the seeds of justice.



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LAW WEST OF THE PECOS

■ BY JACQUELINE SHI

Law Clerk for Chief Justice David Chew

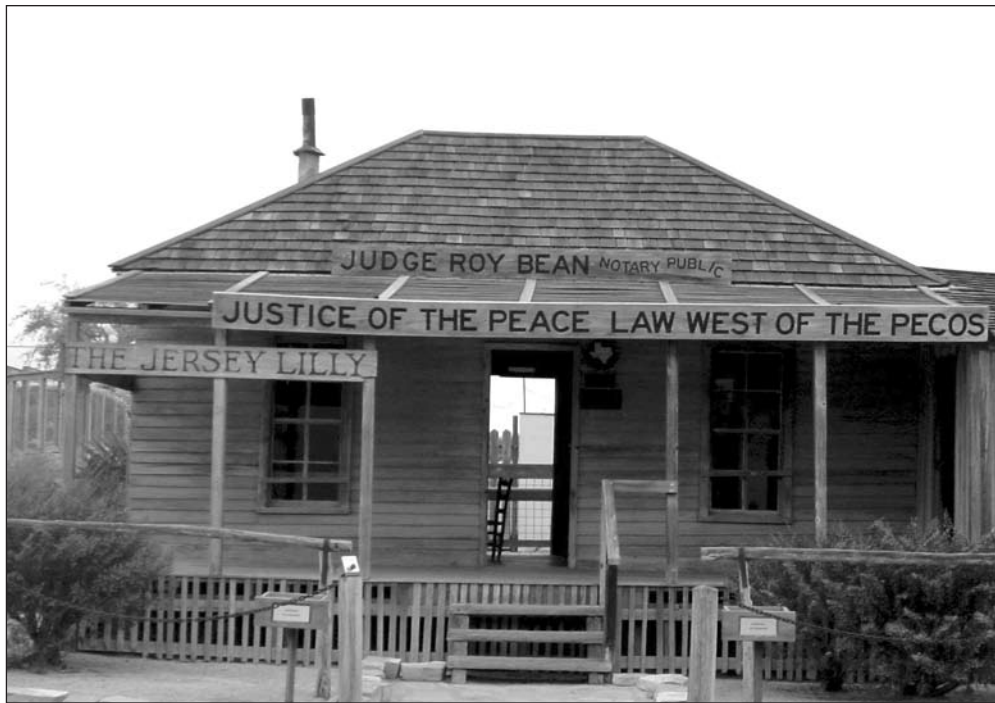
The Burlington Northern and Santa Fe Railway Company f/k/a/ The Atchison, Topeka and Santa Fe Railway Company v. National Union Fire Insurance Company of Pittsburgh, PA, No. 08-06-00022-CV (Dec. 9, 2009)

Burlington Northern and Santa Fe Railway Company (BNSF or railroad) brought an appeal after the trial court entered a take-nothing summary judgment in favor of National Union Fire Insurance Company (National Union). The trial court determined that National Union did not have a duty to defend the railroad, and that the railroad had no right to indemnity.

In 1994, BNSF entered into a three-year contract with SSI Mobley for a vegetation control along the railroad's right-of-ways in Texas. As part of the contract, SSI Mobley agreed to purchase a comprehensive general liability policy and a contractual liability policy, and that BNSF would be named as an "additional insured" on the policies. SSI Mobley purchased the required insurance from National Union. BNSF filed this lawsuit against National Union after the insurance company decided to deny the railroad's claims for defense and indemnity for liability arising out of a railroad crossing accident.

The trial court entered a final, take-nothing judgment in National Union's favor at the end of 2005. The court then withdrew its partial summary judgment order and denied the railroad's motion for entry of summary judgment on the damages issue. The court also granted National Union's later motion for summary judgment "in all things." BNSF subsequently appealed to the El Paso Court of Appeals.

The court first considered whether BNSF qualified as an "additional insured" under the CGL policy terms. According to the plain meaning of the "Additional Insured" endorsement page attached to the policy, BNSF was entitled to coverage for liability arising from bodily injury or property damage caused by SSI Mobley's operations, and was not covered for claims alleging the railroad's own negligence. As a result, BNSF qualified as an "additional



insured" if the plaintiffs in the underlying lawsuits sought recovery based on SSI Mobley's negligence and not the railroad's. To determine this, the court applied the "eight corners rule," and compared the policy provisions to the allegations in the underlying petition.

In key respects, the facts in *Evanston* parallel to the facts in the instant case. Following *Evanston Ins. Co. v. ATOFINA Petrochemicals, Inc.*, 256 S.W.3d 660 (Tex.2008), the court determined that BNSF qualified as an additional insured under SSI Mobley's CGL policy, and National Union breached its duty to defend.

The court's final inquiry regarding the second issue on appeal was whether the "PRODUCTS-COMPLETED OPERATIONS HAZARD" exclusion negated National Union's duty to defend. The court construed the definition of this exclusion according to the plain meaning of the words chosen by the parties. To determine if SSI Mobley's work was "not completed" at the time of the collision, the court looked at three definitions of "completed." The court concluded that National Union did not have a duty to defend the railroad, and that the trial court did not err by granting summary judgment in the insurer's favor on this cause of action.

In its final issue, BNSF contended the trial court erred by granting National Union's motion for summary judgment on the insurer's duty to indemnify. BNSF's arguments were based entirely on its duty to defend. BNSF argued the products-completed operations hazard exclusion did not apply to bar coverage. The court rejected this argument. BNSF also argued that National Union failed to establish that allegations of BNSF's own negligence prevented it from qualifying as an additional insured under the policy. The court determined BNSF met the requirements to qualify as an additional insured under the policy. But because the court concluded that National Union's coverage exclusion applied, any coverage BNSF may have been entitled to was negated. As such, the court concluded the trial court did not err in granting summary judgment regarding indemnity.

Because summary judgment was proper, the court did not address the propriety of the insurer's no-evidence motion, or BNSF's request that the case be remanded for reconsideration of apportionment of liability and attorney's fees and costs.

Texas Rio Grande Legal Aid Update

■ BY ALBERTO MESTA, JR.

Branch Manager, TRLA, El Paso Office

For many years, legal aid and public defender lawyers have labored under the disability of representing poor people. Since lawyers are like other folk usually judged by the company they keep, the public perception has often been that lawyers who represent the poor are also poor lawyers. Perhaps the following update on some of the recent successes of TRLA's lawyers here and around the State of Texas may help dispel the myth that poor people are also represented by poor lawyers. Editors

As an attorney with Texas RioGrande Legal Aid (TRLA), I am fortunate to work with bright and remarkable people. These individuals work in the 14 TRLA offices across Texas, including the westernmost office of El Paso.

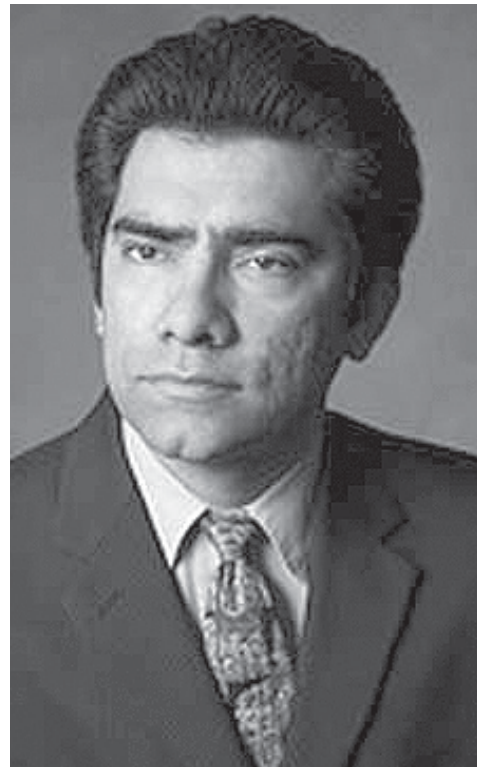
Pablo Almaguer, who works in TRLA's Edinburg office, was elected to serve as Chair of the Board of Directors of the State Bar of Texas. His one-year term begins in June. He previously served as president of the Hidalgo County Bar Association. Pablo is the Private Attorney Involvement Group Coordinator for TRLA. His position includes the organization-wide responsibility of bridging the communication gap between pro bono volunteers and TRLA's opportunities. He has worked closely with the El Paso TRLA office to implement a Community Justice Program with the El Paso Bar and Family Court Judiciary to streamline

the placement of mandatory pro-bono cases. A training and CLE on the Community Justice Program will be forthcoming in June. Pablo is a graduate of the Chicago-Kent School of Law

Soraya Yanar Hanshew, was appointed Minority Director for the Board of Directors of the Texas Young Lawyers' Association. Soraya's practice focuses on employment law, with an emphasis on age discrimination. She is a graduate of Stanford Law School.

Locally, the El Paso Young Lawyers' Association (EPYLA) selected Selina Llaguno as Vice-President and Joey Veith as Secretary. Selina represents survivors of domestic violence and is a graduate of the University of Texas School of Law. Joey also represents survivors of domestic violence and organizes the highly popular EPYLA Basketball League, which is open to attorneys of all ages. Joey is a graduate of the University of California-Hastings College of Law.

Anji Hamilton, one of the newest attorneys at TRLA and the El Paso office achieved the highest score statewide for this past February's Texas state bar exam. She moved to El Paso last summer and volunteered in my office for two months before funding was acquired to hire her for a staff attorney position. She practices employment law focused on national origin discrimination, and she conducts educational seminars for both employees and employers. By achieving the highest score on the bar exam, the Texas Supreme Court requested that Anji



Pablo Almaguer

give a speech to the inductees at the swearing in ceremony in Austin on May 24, 2010. Anji is a graduate of American University School of Law.

Alberto Mesta Jr. is the branch manager of the El Paso office of Texas RioGrande Legal Aid.

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SENIOR LAWYER INTERVIEW

KARL FRIEDMAN

■ BY CLINTON F. CROSS

This month I visited with Karl Friedman, a 50 year lawyer, in his beautiful Upper Valley home, and chatted with him about his family and his work.

CROSS: *Tell me a little bit about your family.*

FRIEDMAN: My father was born and raised in the Bronx. He served in the army during World War I. He was injured during his service. Although he initially received full disability compensation, he relinquished his right to this benefit. He then moved to Denver and sold life insurance. He met Ray Ginsburg on a trip to El Paso and married her. Ray's family owned the Eagle Department Store on Santa Fe and Overland.

After his marriage, my father moved to El Paso and went into the luggage business with Abe Bargman (El Paso attorney Phil Bargman's uncle). Incidentally, Phil and I were born one day apart at Hotel Dieu.

My father also got into business with Hal Christie, head of the Reconstruction Finance Corporation (a New Deal program) in El Paso. President Roosevelt appointed him the head of the rationing board here in El Paso. He was a cotton farmer and he was the first to use metal trailers to transport cotton to the gin. He built many properties in Fabens and served as Fabens's first mayor. Hal Christie and my father also started the El Paso Tennis Club.

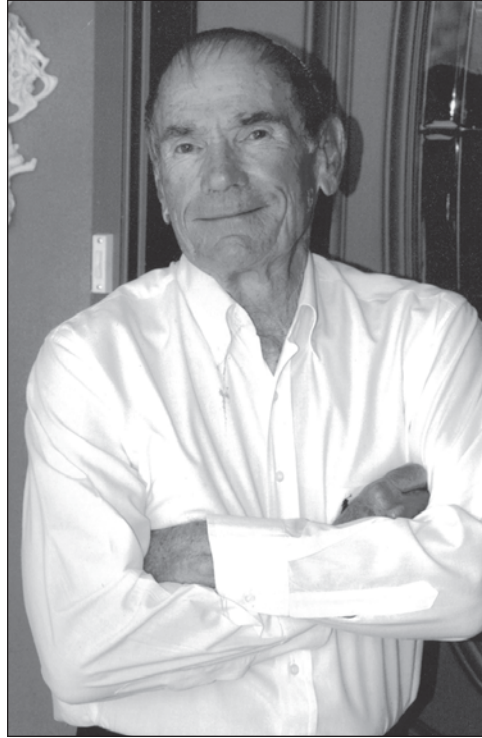
My mother and father had five children. Two of the children are now deceased. The third child, Etta Mae, is the mother of local attorney Jim Scherr. The fourth, Allan Jay, is a composer and producer. He is very talented musically.

CROSS: *Where did you go to School?*

FRIEDMAN: I attended White, Fabens, and Crockett Elementary schools. I attended Austin and El Paso high schools and Allen Military Academy. I graduated from the El Paso College of Mines in 1945.

CROSS: *What did you do after you graduated?*

FRIEDMAN: I farmed my Dad's place in the Upper Valley and sold real estate. Later I



purchased my own farm in Hudspeth County.

CROSS: *So how did you end up becoming a lawyer?*

FRIEDMAN: During the Korean conflict, I was drafted. I served two years in the army in Germany. After my discharge, Tom Diamond talked me into going to Baylor Law School. I graduated in 1960 and passed the Bar exam.

CROSS: *Then back to El Paso?*

FRIEDMAN: Correct. I came home and opened my own office. Some years later I formed a partnership with Herb Ehrlich and Stanley Rosen. My nephew Jim Scherr cut his teeth as a lawyer in our firm.

CROSS: *When did you get married?*

FRIEDMAN: I married Gayle Kahn a few years after I began practicing law. I had three children from this marriage, Romee, Stephen Kory, and Daren. Romee married Jared Herbert, and she lives here now. She is a television and print journalist. Stephen Kory lives in Manhattan. He is general manager of Music Television Video (MTV). He has received three

Emmy awards. Daren lives in Jerusalem and is studying the Torah. He and his wife have three children, and another is expected in June.

My second wife was Jane House, who I lost on October 16th. She was born and raised here. She was a multi-talented artist, a sculptress, a doll maker, a painter. Some of her work is on display at the Doubletree Hotel, especially in the lobby and on the 17th floor.

CROSS: *I understand you ultimately left the practice and became a full time businessman?*

FRIEDMAN: Yes, for many years I managed many of the family holdings from my office at the corner of Myrtle and Campbell.

CROSS: *Any public interest work?*

FRIEDMAN: I served on many boards, among them the Heart Association, the YMCA, and the United Jewish Appeal. I am a life member of the UTEP alumni association. I have been a member of the Shrine Temple, the Scottish Rite Temple (50 year member), and the Masonic Lodge.

CROSS: *Any pro bono work?*

FRIEDMAN: I handled a number of *pro bono* cases. I remember an immigration case in particular. Bob Millard asked me to help him with the case. Our client was from Mexico, but he had lived in this country for many years. He went to Juarez for the funeral of a relative and was arrested upon re-entry on the grounds that he had made an unlawful entry. We contended that our client had made a "casual departure." I argued the case before the Board of Immigration Appeals in Washington, D.C., and lost. Bob made the same argument before the Fifth Circuit, and he won.

CROSS: *Any advice for young lawyers?*

FRIEDMAN: We should strive to excel in our profession but also maintain a balanced lifestyle. I play golf and tennis, ski, bike, and participate in yoga. I am an avid and eclectic reader. I spend time with my children. All this has helped me maintain a healthy and youthful approach to life. I am still exploring.

ADVANCE SHEET, 1603

The Trial of Sir Walter Raleigh

■ BY CHARLES GAUNCE

Legal Reference Librarian University of Texas at El Paso

Evidence classes love to present the trial of Sir Walter Raleigh to students, not for the justice presented by the case, but to shock the conscience of the students and show them that the long-term development of the law has resulted in a system of justice that is the best in the world.

The underlying question presented by the trial was not whether Sir Walter Raleigh was guilty of treason, but rather, to what extent could the government go to secure a conviction believed to be necessary for the security of the state?

I will leave it to the reader to research the personage of Sir Walter in detail, and will only assert that he was widely viewed as being among the most notable figures of his time. His fame was legendary under Queen Elizabeth I, but under her successor, King James I, Sir Walter was imprisoned in the Tower of London for treason within mere months of Elizabeth's death.

The charges against Sir Walter were that he had conspired with others to place Lady Arabella Stuart on the throne instead of James, and used Spanish forces to secure her hold on the throne and reinstitute the Roman Church as the official religion of the kingdom. History has come to refer to this plot as the Main Plot, as there was also pending what history calls the Bye Plot – an attempt to kidnap King James and force him to convert to Catholicism. The discovery and investigation of the Bye Plot led to the discovery of Lord Cobham's discussions with the King of Spain to install Lady Arabella Stuart on the English throne. Under questioning, Lord Cobham confessed and implicated Sir Walter as a co-conspirator. The trial of some of the major figures of the Bye Plot ended in convictions only two days before the Trial of Sir Walter commenced. The charges were first disclosed to Sir Walter at the commencement of the trial.

As in all things Old English, procedures of the day were somewhat different than modern American practice, and the Court to try the case consisted of eleven persons, seven "of good position," and four judges. The prosecutor was



Sir Edward Coke, but the Court also presented evidence to the jurors. The evidence against Sir Walter consisted, in sum and substance, of the written confession and accusation of Lord Cobham against Sir Walter. Sir Walter was not entitled to call witnesses on his behalf, for the thinking at the time was that the prosecution had the burden of fully and completely establishing the truth of the allegations against the accused. If the case was not fully established, the accused was not guilty, and conversely, if the case was fully established, then anything the accused could present made no difference. A second major distinction between the procedure of the time and today was that Sir Walter was not permitted to have assistance of counsel. Again, the thinking was that no need for counsel was necessary due to the tremendous burden of proof imposed on the prosecution.

History generally accords to the Lord Chief Justice presiding over the trial, Sir John Popham, a fair and orderly hearing. Today, if the proceedings were called a circus, the description would be considered as exceptionally kind. The

letter of Lord Cobham implicating Sir Walter was presented and Sir Walter responded by asserting that Lord Cobham should be brought to court to testify. Digressing into arcania, Sir Walter's demand that he be permitted to cross examine Cobham relied on the Statutes of 1 Edw. VI, c. 12, § 22, and 5 and 6 Edw. VI, c. 11, § 12. The Lord Chief Justice refused the request stating that those statutes had been repealed. In fact, Popham was relying on a statute (1 and 2 Ph. and M. [Philip and Mary], c. 10 § 7), that provided trials for treason should be had according to the common law, but he totally neglected section 7 of the same act incorporating the provisions of 5 and 6 Edw. VI requiring the presence of two witnesses to be at trial to testify. Who among us has not been the victim of selective interpretation?

Reading the foregoing, it should come as no surprise that Sir Walter was found guilty. Let's recap:

No assistance of counsel – check.

No right to call witness on his behalf – check.

No right to cross-examine witnesses – check.

No right to be told the charges prior to trial – check.

Conducting the trial in a highly charged political atmosphere - check

Upon his conviction, (seriously now, did you really have any doubt?) the Lord Chief Justice announced the sentence as follows: "[S]ince you have been found guilty of these horrible Treasons, the judgment of this court is, That you shall be had from hence to the place whence you came, there to remain until the day of execution; and from thence you shall be drawn upon a hurdle through the open streets to the place of execution; there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off, and thrown into the fire before your eyes; then your head to be stricken off from your body, and your body shall be divided into four quarters to be disposed of at the King's pleasure: And God have mercy upon your soul."

Thereafter, Sir Walter was imprisoned in the Tower of London for fourteen years, then permitted to mount an expedition to Guiana to search for gold, and then executed upon not finding any.

As for the objective fairness of the trial, one of the trial judges later declared that, "the trial injured and degraded the justice of England". Even Lord Popham remarked, "I hope I shall never see the like again".

On the 315th anniversary of the trial, Sir Harry L. Stephenson delivered a lecture to the Royal Historical Society in which he stated: "Of the many men who have been unjustly convicted he was perhaps the most illustrious. We have learned better since his day, and have created a system of justice of which we have real reasons to be proud, but how have we done it? To my mind the answer comes as clear as clear can be. We have done it by studying our

law continuously, diligently, honestly, and with such ability as was ours, for let us say 1000 years. Each generation has preserved from its inheritance most of what was good, much that was useless, and some at least of what was bad, but the process of growth has never ceased, and I should so far boast of my country as to say that our faces have ever been turned to the light."

Can the American legal system continue to make that claim?

Gerry Howard: An Advocate For Professional Involvement

By JUDGE OSCAR G. GABALDÓN, JR.

Gerry Howard hails from the Queen City of the Ozarks, otherwise known as Springfield, Missouri; however, he was "raised in a variety of places." Like his father and father-in-law, Gerry spent time in the military. After graduating from West Virginia University in 1978, Gerry joined the Army and came to Ft. Bliss, his first duty station.

While stationed at Ft. Bliss, Gerry met and married Pam Cook. They were later blessed with the birth of their two daughters, Elizabeth and Christine. In 1994, Gerry returned to El Paso and retired in 1998. Afterwards, he attended law school at the University of Houston and graduated in 2001. After clerking for two years for U.S. District

Judge David Briones, Gerry joined the law firm of Kemp Smith in 2003.

Gerry joined the El Paso Bar Association shortly after arriving in El Paso. He is currently completing his term as a member of the bar association's board of directors. He hopes that as a member of the association's board of directors he has constructively contributed to the growth and development of the association.

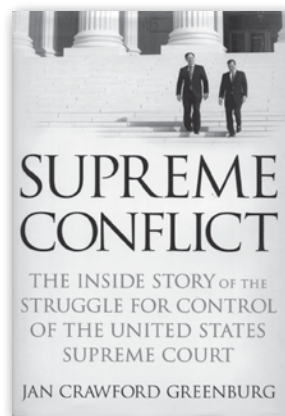
Gerry believes judges and attorneys should support and become actively involved in one or more local bar associations. Without broad based professional participation, he argues, bar associations cannot "truly reflect the interest of the bar as a whole."



Gerry Howard

The Book Review

With President Obama's nomination of Elena Kagan to the United States Supreme Court, lawyers may want to take a moment to review President George W. Bush's very successful efforts to move the court away from the approach taken by the Warren court and in a conservative direction. ABC correspondent Jan Crawford Greenberg's book *Supreme Conflict* provides a fascinating "insider" view of the political struggle that ultimately resulted in the appointment Chief Justice John Roberts and Justice Samuel Alito to the court. The book has received excellent reviews from both liberal and conservative commentators. It is available for checkout from the Robert J. Galvan Law Library, located on the twelfth floor of the El Paso County Courthouse. *ed.*



SUPREME CONFLICT:
The Inside Story of the Struggle for Control of the United States Supreme Court

by **Jan Crawford Greenburg**
PENGUIN PRESS, NEW YORK, 2007

Readers are invited to submit book reviews for publication in the El Paso Bar Journal. Books reviewed should be available for checkout in the Robert J. Galvan Law Library. Readers are invited to contribute books to the library, or recommend their purchase.

Ethics opinions from the professional ethics committee for the State Bar of Texas

JANUARY 2010 - FEBRUARY 2010

BY GUY N. FIELDS III

Dear Colleagues:

The Ethics Committee of the El Paso Bar Association as part of the state-wide theme of Access to Justice, is presenting brief synopses of recent Ethics Opinions. The Supreme Court of Texas appoints the nine members of the Professional Ethics Committee for the State Bar of Texas from members of the bar and the judiciary. The court also appoints the committee's chair. According to Section 81.092(c) of the Texas Government Code, "Committee opinions are not binding on the supreme court." The full texts of the Ethics Opinions are available on the website of the Texas Center for Legal Ethics at www.tclep.org.

Guy N. Fields, III



Committee Member Opinion No. 591 (January 2010): Three law firms, the Jones Smith Law Firm, the Johnson Davis Law Firm, and the Morris Law Firm, wish to advertise cooperatively under the name "Jones Smith Group." The "Jones Smith Group" is not a law firm. None of the three law firms individually uses the name "Jones Smith Group." The three law firms practice in adjoining offices, share expenses, and their practices are closely related. All three law firms participate in many of the cases originated by each of the firms individually. This participation is pursuant to a written disclosure and consent agreement that is entered into by the client and the originating law firm and that discloses the association of other lawyers or law firms as required by Rule 1.04(f) of the Texas Disciplinary Rules of Professional Conduct. Each of the three law firms advertises under its own name.

Rule 7.04(o) of the Texas Disciplinary Rules of Professional Conduct permits lawyers to advertise as part of an advertising cooperative or venture of two or more lawyers not in the same firm so long as the requirements set out in the Rule are met. Under Rule 7.04(o), each such cooperative advertisement must meet specified requirements including the requirement of Rule 7.04(o)(5) that the advertisement "does not

otherwise violate the Texas Disciplinary Rules of Professional Conduct."

Rule 7.01(e) prohibits a lawyer from using, in advertising in the public media or in seeking professional employment, any "trade or fictitious name" except for a firm name that is permitted under Rule 7.01(a) and that is used in the lawyer's letterhead, business cards, office sign and other aspects of the lawyer's practice. It was the opinion of the Committee that the name "Jones Smith Group" is a trade name since the name would be understood by the public as a name adopted to designate the business conducted by the lawyers advertising their services under this name. Consequently the use of the trade name would be prohibited by Rule 7.01(e).

Opinion No. 592 (January 2010): A was suspended from practicing law. While suspended, A referred a case to Lawyer B. A, B and the client signed a referral agreement while A was suspended. B believed A to be licensed at the time the referral agreement was signed.

Rule 5.04(a) of the Texas Disciplinary Rules of Professional Conduct provides that lawyer shall not share or promise to share legal fees with a non-lawyer, except under circumstances not applicable here. The Ethics Committee held that a suspended lawyer is a "non-lawyer"

for purposes of the Rule. Thus the referral agreement violates the Rule and Lawyer B is prohibited from acting on the referral agreement. Further, the terms of the Rule are violated without regard to the knowledge of the lawyers involved.

The Opinion distinguishes Opinion 568 (April 2006) which concerned a referral agreement entered into before the referring lawyer was disbarred and before the fee became payable. That Opinion permitted fee sharing with a suspended or disbarred lawyer in that specific circumstance.

The Opinion further notes the changes in Rule 1.04, effective March 1, 2005, which set forth new requirements regarding fee sharing between lawyers not in the same firm.

Opinion No. 593 (February 2010): A lawyer failed to timely file a lawsuit on behalf of a client, resulting in the client's claim being barred by the statute of limitations. This was the only matter in which the lawyer was representing the client. The lawyer, recognizing the malpractice, presented to the client an agreement to settle the malpractice claim. The client entered into the settlement agreement and accepted the lawyer's payment. The client was not represented by independent counsel in the settlement of this matter.

The Ethics Committee opined that under the Texas Disciplinary Rules of Professional Conduct, a lawyer may settle a malpractice claim with a client not represented by independent counsel if the lawyer: (1) discloses the malpractice and the termination of the lawyer-client relationship to the client; (2) advises the now former client in writing that independent representation is appropriate with respect to the client's consideration of the lawyer's offer to settle the malpractice claim; and (3) does not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in connection with the negotiation and settlement of the malpractice claim.

Rule 1.06(b)(2) of the Texas Disciplinary Rules of Professional Conduct provides that a lawyer shall not represent a person if the representation of that person reasonably appears to be or becomes adversely limited by the lawyer's own interest. Although Rule 1.06(c) provides that, if the client consents, a lawyer may represent a client in certain circumstances where representation would otherwise be prohibited, the Ethics Committee held that, in the case of malpractice for which the consequences cannot be significantly mitigated through continued legal representation, under Rule 1.06 the lawyer-client relationship must end as to the matter in which the malpractice arose. Further, Rules 2.01, 1.15(d) and 8.04(a)(3) require that the lawyer, as promptly as reasonably possible, must terminate the lawyer-client relationship and inform the client that the malpractice has occurred and that the lawyer-client relationship has been terminated.

Opinion No. 594 (February 2010): A lawyer represents a client on her personal injury claim and recovers from the opposing party an award. The fee agreement between the lawyer and the client allows the lawyer to deduct from any award the expenses paid by the lawyer in

connection with the representation. The client had incurred medical expenses relating to the representation, which were intended to be paid out of the recovery, totaling \$5,000. The lawyer negotiates a release of these expenses for \$500 and pays this amount to obtain a complete release of the amount due. The lawyer then issues to the client a check in an amount equal to the client's gross recovery less legal fees as provided in the engagement agreement and less \$5,000 for the medical expenses that have been released. With the check the lawyer gives the client a document showing the amount of the award, the amount of legal fees charged, the \$5,000 medical expense charge that has been released, and the amount of the net recovery that is being paid to the client.

The Ethics Committee determined that in the absence of disclosure to and agreement with a client to the contrary, charging, collecting, or recouping from a client more for a third-party expense than the amount of the expense actually paid by a lawyer would violate the requirements of Rules 1.04(c), 1.03(b), and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

The factual situation considered in the Opinion did not include the related but distinct subjects of additional charges for general office overhead and charges for the provision of in-house services. ABA Opinion 93-379 addresses these questions and concludes that, in the absence of disclosure and agreement to the contrary, when a client has engaged a lawyer to provide legal services for a fee, charging, collecting, or recouping additional charges for general office overhead is prohibited because the client may reasonably be expected to understand that the lawyer's general office overhead expenses are subsumed within the agreed-upon fee (whether determined on an hourly, flat fee, contingent fee, or other basis). The Ethics Committee agreed with

that opinion.

Opinion No. 595 (February 2010): A lawyer represented a client in various matters. The lawyer's fees billed to the client remain unpaid and the lawyer decided to pursue collection efforts. During the course of the lawyer's representation of the client, the lawyer learned that the client was shown to have committed fraud and other offenses in litigation which the client was a party but for which the lawyer did not represent the client. All of the information known to the lawyer concerning the client's fraud and other offenses is a public record relating to the litigation.

Rule 1.05(b) of the Texas Disciplinary Rules of Professional Conduct provides generally that a lawyer is prohibited from using a former client's "confidential information" to the disadvantage of the former client. The term "confidential information" is defined in Rule 1.05(a) to include "privileged information" and "unprivileged information". In this factual situation the information is "unprivileged information" so that if no exception applies and the client does not consent the lawyer may not use the information unless the "confidential information" has become generally known. Interestingly, the Opinion states that a matter may be of public record simply by being included in a government record but may not be "generally known" the determination of which is a question of fact.

If the information has not become generally known, a lawyer may still be allowed to reveal the information under the exceptions stated in paragraphs (c) through (f) of Rule 1.05, which include a controversy between the lawyer and the former client concerning the payment of legal fees. Thus the lawyer may be permitted under Rule 1.05(c)(5) to use the information to the extent, but only to the extent, necessary to enforce the lawyer's claim.

The Texas Association of Drug Court Professionals Conference to be held in El Paso

BY JAY L. NYE

*Public Defender, TADCP
Board Of Directors, 243rd
And 384th Drug Court
Teams*

Judge Robert Anchondo has been elected as Vice President and Jay Nye has been elected to the Board of Directors of The Texas Association of Drug Court Professions (TADCP).

As a result of our hard work, the TADCP yearly conference will be held in El Paso, October 6, 7 and 8, 2010. Approximately 400 professionals from around the state will attend. The conferences will feature national, state and local speakers. The

conference will also offer great entertainment—music and food. The goal is to provide quality training for drug court professionals statewide.

Please join us in this endeavour by volunteering for the fund raiser committee, and supporting us with your tax deductible contribution.

For more information, please contact Jay Nye at: JNye@epcounty.com, Kate Sullivan at: ksullivan@epcounty.com or Ignacio (Nacho) Estrada at: 532-8250.

Fathers are a necessary piece in a child's puzzle of life

■ BY JUDGE OSCAR G. GABALDÓN, JR.

"It is a wise father that knows his own child." When the celebrated English playwright William Shakespeare uttered these thought-provoking words, the reality of absent fathers was probably foremost in his thoughts; without their presence in a child's life, they do not know the child. While some fathers chose to be absent, there are other fathers that are absent, not necessarily by their own choosing, but by other circumstances, such as a lack of awareness that they have a child, or perhaps the mother has kept the child's whereabouts secreted from the father, and the list goes on and on.

The dilemma of the absent father is frequently present in many dependency court cases. This reality calls for consistent and proactive efforts to be undertaken by the judge, child welfare officials, CASAs, parent and child attorneys, and other interested stakeholders in the dependency court case, to identify, locate, and engage fathers in their children's lives. Fathers are not only very important to their children, but they are also critical to the child welfare legal process. Therefore, everyone in the process, beginning with the judge, has an ongoing duty to assure that earnest steps are taken to involve fathers. The fathers need to be respected and afforded all their rights and privileges throughout the entire child protection legal process.

While it is true that states will differ in their legal requirements and definitions as to what may constitute a legal father as oppose to a biological father with limited parental rights, the opportunity for that father to be able to come forward into the legal arena to exercise all his rights under the law should be treated as nothing less than sacred. Hence, information concerning the father should be sought out and gathered as soon as possible in order to identify, locate, and engage fathers. In this regard, the judge usually enjoys a unique advantage, by virtue of "the power of the robe," to sometimes be able to illicit information about the father from the mother, where the mother may not reveal that information to the child protection officials, attorneys, CASAs, or others with an interest and need to know. Additionally, the judge, among other things, has the ability to order that others follow up on leads and other available information to find and properly engage fathers.

Judges are gatekeepers for the court system, as well as the ultimate arbitrators in the administration of justice for the cases coming

before them. In these respects, therefore, they are responsible for guaranteeing that all fathers, whether they are referred to as alleged, presumed, biological, putative, or whatever qualifiers are used to describe their legal status, should be afforded ample opportunity to notice of legal and court proceedings, to be appointed an attorney in accordance with existing laws, to be allowed to participate actively and equitably in all proceedings, to help facilitate their engagement in the process within legal bounds, and to consistently afford them complete due process of the law.

The Adoption Assistance and Child Welfare Act of 1980, the Adoption and Safe Families Act of 1997, and the Child and Family Service Reviews (CFSRs) are some legal measures that are in place to assure and strengthen judicial oversight over child protection cases. These bring significant attention to the importance of meaningful parental engagement. However, in spite of these, an understanding and appreciation of the importance of the fathers' role is necessary so that fathers may be more effectively and successfully engaged. Since some child protection officials have experienced unpleasant experiences with some fathers, they may be reluctant to want to commit fully to reaching out to fathers. For some, there are concerns that involvement by fathers may translate into more work, potential conflicts with the mothers, and an array of other headaches. This type of attitude is hurtful, particularly because it ignores the potential good benefits that involvement of the fathers may bring to the children and to a sound resolution of the case.

The fathers' involvement may mean better results for children; for example, it may often be preferable to place a child with the father versus placement in foster care or with some other family member. So long as fathers do not pose a risk of danger to their children, their participation in their children's lives tend to bring their children advantages of all sorts, such as financial, social, and developmental advantages. Furthermore, it is evident that if fathers are not actively sought out, are not provided adequate notice about court proceedings, and have their legal rights ignored, they, like their children, stand to lose out on significant opportunities that potentially support the promotion of the children's overall well-being and the fathers' sense of accountability and bonding towards

their children.

When fathers are involved in their children's lives, studies have shown that the children's upbringing often results in more positive outcomes. In these respects, we must also not forget that fathers have their own parents, siblings, and other relatives that are part of the children's extended family. The fathers' extended families, which often times include very dependable members, help create a sense of belonging and familial security for the children.

Moreover, children of parents that are not married in the more traditional sense should not be treated differently in how they are assisted in helping them to reunify with their parents or other family members. Those children have every right to be treated with all the rights, privileges, and attentions as any other children in the child welfare system. That means making diligent efforts to find and engage the fathers, to help the children develop or strengthen their bonding with both parents, and to seriously support both parents with appropriate services to increase their ability to properly parent and protect their children. Fathers should be part of family group conferences, family team meetings, mediations, and other types of group decision-making oriented processes. They should be afforded frequent family-like visitation opportunities with their children. They should be facilitated with the ability to go to their children's medical and dental appointments, school activities, and otherwise be part of as many aspects of the child's life as possible both in and out of foster care.

It is clear that the role of fathers is critical and essential in pursuing the best interests of children. Fathers are just as important as the mothers, and they should share equal opportunities to be responsible for and to cherish their children. Even though substantial strides have already been made to enhance court best practices and child welfare initiatives to reach out to fathers and have them engage in the process as full parental participants from beginning to end, more needs to be done. Let all fathers be welcomed with open arms, so that they may cherish their children beyond their biological ties to them. Let them embrace their children at the heart, for as the German poet, philosopher, and historian Johann Schiller once remarked: "It is not flesh and blood but the heart which makes us fathers and sons."

EPYLA STAR OF THE MONTH

Selina Llaguno

■ BY PATSY LÓPEZ

The El Paso Young Lawyer's Association is pleased to introduce the Bar to Selina Llaguno. Many of you in the Family Bar will recognize Selina as a Staff Attorney at Texas Rio Grande Legal Aid, where she has been a part of the family law team since 2007.

Selina is originally from El Paso. She graduated from Hanks High school and attended college at the University of Texas at El Paso. While in college Selina went through the Law School Preparation Institute and worked at the Center for Law & Border Studies helping other students prepare for law school and careers in law. Selina was also able to see first hand what an important role attorney can play in people's lives; as attorney's often are the only advocate one has when facing a personal crisis.

Upon graduating from UTEP Selina attended the University of Texas School of Law. During law school Selina spent her summers in El Paso interning for the Honorable Kathleen Cardone and Texas Riogrande Legal Aid (TRLA). In her third year at UT, she began working for Legal Aid's Telephone Access to Justice Project where she conducted intakes and identified legal issues for staff attorneys. She was also awarded the UT Faculty Fellowship which funds one year of employment for an attorney entering a public service practice.

Selina's project was focused on working with immigrant survivors of domestic violence. Her divorce and child custody clients often



have no legal status in the United States and are in fear for their lives due to the years of abuse and threats of deportation they have received from their batterers. While Selina's fellowship funding was limited to one year, TRLA recognized the importance of her work and kept Selina on their team, where she continues to work with and empower domestic violence survivors.

Selina has been a member of EPYLA since she returned to El Paso in 2007. She was recently elected vice president of EPYLA. Under her leadership we are confident that the EPYLA will prosper in 2010 and 2011, continuing to contribute to both the El Paso legal community and also to the larger community that we all serve.

LAW DAY AWARDS ACTIVITIES AND ACTIVITIES

■ BY NANCY GALLEGO

The Law Day Banquet on May 1 featured a presentation by Dicky Grigg, who discussed our government's policies regarding prosecution of Guantanamo detainees, his representation of one of those detainees, and the importance of remaining committed to the "rule of law."

The Young Lawyers presented awards to Judge Patricia Macias ("Outstanding Jurist"), Clinton Cross ("Outstanding Senior Lawyer"), Danny Razo ("Outstanding Young Lawyer"), Jeff Ray ("Outstanding Lawyer"), and Erik Pavia ("Outstanding Pre-Law Student"), Paco Dominguez ("Professionalism Award"), Cori Harbour ("Pro Bono Award), Mark

Briggs ("Enrique H. Pena Mediator of the Year Award"), Betty Allen Rogriguez ("Liberty Bell Award"), Debra Kanoff ("Outstanding Federal Attorney"), and Patricia Baca ("Outstanding State Attorney").

On May 8, the Bar Association sponsored a "Law Day Chess Tournament" at the Church of St. Clement for children in grades 1 through 8 (children in kindergarten competed with first graders). The following attorneys participated in the tournament: Judge Norbert Garney, Clinton Cross, Gerald Georges, and Paul Kubinski. Alex Lopez, mediation co-coordinator with Judge Oscar Gabaldon, also participated as a member of the Bar Association team.

THE EL PASO COUNTY LEGAL SUPPORT ASSOCIATION

recently held elections for its 2010-2011 fiscal year and the following individuals were elected to office:

President:

Carol Gutierrez, PLS
(*ScottHulse P.C.*)

Vice President:

Jerri Boone
(*Kemp Smith LLC*)

Secretary:

Debbie Reed
(*Gordon Mott & Davis P.C.*)

Treasurer:

Faynell Poe, PP, PLS
(*Firth Johnston Martinez*)
Director: Gina Picasso, PP, PLS
(*U.S. Attorney's Office*)

Parliamentarian:

Jorie Licking, PP, PLS
(*Hunt Companies*)

Your El Paso



has received a grant from the
Texas Bar Foundation
 to train arbitrators for the
BBBF/El Paso County
Arbitration Program

*We encourage people to take advantage of
 this opportunity to serve their community.*

BBB Binding Arbitration is an out-of-court program to resolve disputes between consumers and merchants. BBB arbitrators must be attorneys or professional arbitrators.

**The FREE trainings are June 16th & 17th
 Currey Adkins, media room,
 200 S. Alto Mesa
 Breakfast & lunch provided.**

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Do I have the time?

Will I be available to hear up to four cases a year?

Am I looking for ways to expand my career portfolio?

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operations@bbbelpaso.org**

Judicial Spotlight

Name:

Philip R. Martinez

Court:

U.S. District Court,
 Western District
 of Texas, El Paso
 Division

Education:

B.A., UTEP, 1979;
 J.D., Harvard, 1982

Judicial

Experience:

County Court at
 Law No. 1 (January 1, 1991 – September 30, 1991);
 327th District Court (October 1, 1991 – February
 14, 2002); U.S. District Court, Western District
 of Texas, El Paso Division (February 15, 2002 –
 present)

Judicial Assistant:

Eva Gonzalez

Court Reporter:

Mike Nobles

**What have been your goals since being appointed
 a federal judge?**

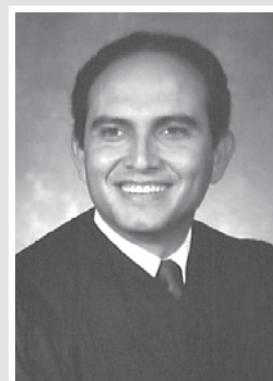
I have tried to do justice in each case and afford each litigant their day in court by efficient case management. I have also supported the Western District of Texas's efforts to secure four new federal judges, one of which would have an El Paso duty station. We have also sought to expand the number of human resources working in different agencies in the El Paso Division criminal justice system, such as probation officers, magistrate judges, U.S. attorneys, public defenders, and so on. Finally I have been working with my colleagues to transition into a new federal courthouse in El Paso, which should open for business in July 2010.

**Do you have any advice for the practicing bar in
 El Paso?**

I am always impressed with the caliber of the El Paso Bar. However, I wish lawyers would take a more active role in educating the public regarding what courts do, the benefits afforded by the judicial branch, and the importance of the rule of law. We have been accorded the keys to the legal system, and we need to make sure others recognize their role in that system.

**What is the most important title that you have
 ever had?**

The best title I have ever had is "Dad." I have two daughters and I love them both very much.



QuickBooks Online - How the CLOUD Works With Your BOOKS

BY DAVID J. FERRELL
djf@elpasolaw.com

I began using QuickBooks on my office computer in 1997 when I learned that my \$1,000 a month accounting firm was using this program to do my books and payroll. I researched in-house use of this accounting software because of frequent payroll mistakes made by that accounting firm and a major foul up in the trust account. I learned that our payroll and trust account was being administered by the most junior non-CPA secretary of the accounting firm. I went to the firm with a box of floppy disks and “acquired” my law firm’s data. I then went to Computer City and purchased QuickBooks for less than one hundred dollars and within two hours I setup the law firm’s books on my computer and discovered what a horrible job the accounting firm had done with my firm. As I remember it, we had been set up as a trucking company, that was why our trust account was fouled up. QuickBooks had/has a module that sets up a business with the regular accounting codes for certain types of businesses, INCLUDING law firms.

As good as QuickBooks was/is I became disenchanted with the frequent need to update the tax tables for payroll. QuickBooks required that I purchase a “plug in” module for my desktop version for payroll tax computations and the yearly fee began at \$249 and went up every year. QuickBooks also kept “upgrading” the desktop software, when the old version worked perfectly well for my small firm, but there were veiled threats that my QuickBooks software would be inadequate soon, and more onerous, it would not be supported by “tech support” which I used occasionally but when I did, it was critical.

In January, 2010 I got my bill for the yearly renewal of the tax tables and it was about \$350. I was also informed that I needed to upgrade the desktop software again. I was irritated, to say the least, so, I began researching other ways to keep my books. I did not want to go back to an accounting firm, bad memories don’t go away easily. So I went to QuickBooks online and downloaded the free trial version of their “cloud” accounting software.1

Initially, I was worried about having my books in the “cloud” where maybe the world had access to my accounting information but

having read the QuickBooks online materials and being assured that my data was secure, confidential and protected I decided to go ahead. QuickBooks Online is a VeriSign Secured™ product, which means they use the same data-encryption technology that banks rely on for data security. I was able to setup an online account, upload my law firm’s data and my accounting codes and try the software FREE for 30 days. The transition was simple and I kept my desktop version and data (just in case) and began using the online version. My main motivation was to eliminate the incessant update and plug in costs AND the time I had to put in each time the updates/plug in’s were needed.

I did not need 30 days to evaluate the online version, I was sold after just a week. I still got my first month free but I did not have to use my desktop version anymore. I did not have to pay the \$199.95 for 2010 QuickBooks Pro (upgrade to the desktop) and I applied for a refund of the \$350 that had been automatically charged to my credit card for the tax table plug in. I saved \$549.95 for 2010.

What did it cost me? QuickBooks online charges a monthly fee which includes updates to the software and for the payroll tax tables plug-in. AND, I don’t have to install the upgrades nor the new tax tables, QuickBooks does that. What do I pay now? \$46.82 a month.2 That’s for three users, I only use two, myself and my

administrative secretary. So, in reality, I would have paid \$549.95 for the new desktop 2010 version of QuickBooks and the tax table plug-in, but now I am paying \$46.82 a month which totals \$561.84 a year, a difference of \$11.89. AND, I don’t have to bother with updates, they come with the online version automatically.

I have an accountant that prepares my 940 and 941 reports and my annual tax return and she has access to my QuickBooks online from her home office, and she is not counted as one of the three users. If I have a question about

some tax/accounting issue my accountant can get online while I am online and we can discuss these issues on the phone. When she prepares my 940/941, W2’s and my tax return she can do it from her home office. With QuickBooks, I can prepare these documents myself BUT I feel better having a CPA review what

I am doing.

The online version of QuickBooks has many bells and whistles that are easy to use and the software adapts to the user’s needs. It works for small firms and large firms and tech support can help you set up how you want the program to display. A detailed log is created showing who is using my accounting software (me, my secretary and my accountant) and what they did (write checks, make a deposit, review my data, etc.) and when. I can access my QuickBooks from any Internet enabled computer and I often review/work on my books at home. As a matter of fact, I created my payroll checks from home for the April 15th payday, went to my office at 6:30AM, printed the checks and put them in my secretary’s drawer and proceeded to the courthouse where I had hearings for most of the morning and my staff had their paychecks when they came to work. This software computes the tax payments and sends me an e-mail of when they are due. Tax payments are made online the day before they are due.

1. <http://quickbooksonline.intuit.com>
2. Base Product for up to 3 users \$34.95
Online Payroll: \$19.95
Subtotal: \$54.90/month
20% off QuickBooks Plus
20% off Online Payroll
Current price: \$43.92



LAW DAY CHESS TOURNAMENT



*Michael McKenzie
(foreground), 6 years
old from Surrat
Elementary School in
Clint, Texas*



*Clinton Cross playing with students
participating in Law Day Chess
Tournament*



*The Honorable Norbert J. Garney with
Sebastian Gutierrez, who is wearing the
"I beat a lawyer" medal*



*Paul Kubinski playing kinder student
Michael McKenzie*

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On the web visit: www.trla.org/teams/cli.php



Legal Literati

This month the El Paso Bar Journal literary page presents a poem by Carole J. Powell

BILL OF RIGHTS RAP

Makin My Way,
Just Getting By
When I Look Up,
I Got The Blue Sky.
In This Crazy World,
We All Could Get Caught
Sometimes We're Guilty,
Sometimes We're Not.

But Just Remember,
In The US Of A
The Laws That We Have,
Can Cut Both Ways.
Better You Learn
The Rules Of The Game,
Cause If You Don't,
It Could Be A Shame.
To Make Bad Selections,
And Be A Loser
When If You Were Smart,
You Could Be A Chooser.

And Now That I'm Here,
It Shouldn't Surprise Ya
I'll Talk About Rights,
I'm Here To Apprise Ya
It's True For Us All,
Since The Revolution
We Have Rights
In The Constitution.

I Got The Right
To Hang Wit My Homies
And Look At Whatever
They Wanted To Show Me

I Got The Right
To Talk To The Man
Tell Him What's Up
It's The Law Of The Land.

The Police And The Army
Can Stay Out Of My Home
Even If I'm Talkin
To My Girl On The Phone

And Against All Comers
My Home Is My Keep
Me With My Stuff,
Expensive And Cheap
Bes' Not Be Comin
Without Good Grounds,
Go Get A Warrant,
No Snooping Around.

Now I'm In Trial.
And They Have Accused Me
With All Of Their Power
They Still Can't Abuse Me.
When I'm In This Terrible Mess,
I'm Still Entitled
To Due Process.

The Man Can't Just Say,
"You Broken The Laws."
He Has To Indict Me,
On Probable Cause.

And When I'm In Trouble
It Will Be My Right
To Sit Here In Silence
Or Speak Up In My Fight.

And When It's Time
For The Jury To Judge Me
Who Will It Be,
Who Is To Budge Me
From My Life And My Loves
And Everything That Matters
If I'm Losing It All
And My Heart Is In Tatters
Who Will It Be,
Who Will Decide
The Jury Must Listen
Without Taking Sides.

When All The Witnesses
Be Talkin' Smack
They Can't Say Nothin
From Behind My Back.
I Have The Right
To Look At Their Eyes
Axe Them My Questions
Uncover Their Lies.
And If I Have Witnesses
To Help My Defense
Then I Can Call Them
At The Court's Expense

Whenever The Man
Wants To Take Me Out,
The Facts Have To Stand
Beyond Reasonable Doubt.

So Who's Gonna Help Me
If I'm A Defendant
Impoverished And Sad,
With Lots Of Dependants?
I'll Tell You Now,
Without Legal Tender,
I Know I Can Get Me A
Public Defender!

Carole Jean Powell was born and raised in El Paso, and attended Ysleta High School. She earned an associate degree in nursing in 1977 and her Bachelor's in Nursing in 1993. After working for 20 years in the nursing profession, she "switched majors" and studied law at Texas Tech. Carole has been licensed since 2000, and has worked as a deputy El Paso County Public Defender since that time.



**COUNCIL OF JUDGES ADMINISTRATION
EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO #101
EL PASO, TX 79901
(915) 546-2143
FAX (915) 546-2019**

TO: ATTORNEYS

FROM: MIKE IZQUIERDO, EXECUTIVE DIRECTOR

DATE: MAY 18, 2010

RE: CLE HOURS, EXEMPTION FORMS

ON APRIL 29TH, THE COUNCIL OF JUDGES APPROVED THE "SENATE BILL 7 CONTINUING LEGAL EDUCATION AFFIDAVIT" FOR ATTORNEYS TO SUBMIT TO THE COUNCIL OF JUDGES ADMINISTRATION STATING THAT THEY HAVE COMPLETED THEIR SIX HOURS OF CLE IN ACCORDANCE WITH SENATE BILL 7 CONTINUING LEGAL EDUCATION.

THE ATTORNEY MAY ALSO SUBMIT THE "CONTINUING LEGAL EDUCATION REPORTING FORM FOR APPOINTMENTS 2009 AND 2010. A MINIMUM OF 6 HOURS OF CRIMINAL LAW CLE IS REQUIRED DURING EACH 12 MONTH REPORTING PERIOD. THE AUDITORS REQUIRE PROOF FOR RELEASE OF PAYMENT. THEREFORE, YOU MUST SUBMIT TO OUR OFFICE THE 6 HOURS OF CLE OR THE AFFIDAVIT IN ORDER FOR AUDITORS TO RELEASE PAYMENT. YOU CAN GO TO ANY COURT HEARING CRIMINAL CASES AND SIGN AN AFFIDAVIT SWEARING THAT YOU HAVE COMPLETED THE HOURS OR YOU CAN PICK UP A COPY IN OUR OFFICE.

AS SOON AS YOU SUBMIT THE AFFIDAVIT OR THE FORM STATING THE HOURS TAKEN TO OUR OFFICE, WE WILL UPDATE OUR SYSTEM AND NOTIFY THE AUDITORS.

THE EXEMPTION FORMS ARE SENT TO THE ATTORNEYS BY THE EL PASO BAR ASSOCIATION AROUND SEPTEMBER OF EACH YEAR. THE EXEMPTION FORM, DEPENDING ON THE EXEMPTION YOU SELECT, IS SO THAT YOU WILL NOT BE APPOINTED TO A CRIMINAL CASE. A YOU MAY PICK UP A FORM FROM NANCY GALLEGU, DIRECTOR OF THE EL PASO BAR, IN THE LOWER LEVEL OF THE COURTHOUSE OR IN OUR OFFICE.

THE AFFIDAVIT FORM CAN BE FOUND IN THE COUNTY'S WEBSITE UNDER OUR DEPARTMENT.



*Carlos Eduardo Cárdenas,
President of the El Paso Bar
Association*



*Cori Harbour, President
of the Texas Young Lawyers
Association*

El Paso Bar Association & Texas Young Lawyers Association Win National Awards

The El Paso Bar Association has been selected to receive the LexisNexis 2010 Community and Educational Outreach Award for its program, Access to Justice Legal Fair, in the category of local bar with 2,000 or fewer members. And the Texas Young Lawyers Association has been selected to receive the LexisNexis 2010 Community and Educational Outreach Award for its program, R U Safe? Protecting Yourself in Cyberspace, in the category of state bar with 18,001 or more members. The awards will be presented at the ABA/NABE Membership Luncheon on August 5, 2010 in San Francisco, California.

Our congratulations to the El Paso Bar Association and to the Texas Young Lawyers Association for their outstanding community service.

▶▶▶ ASSOCIATION NEWS

El Paso Women's Bar Association

♦SAVE THE DATE: Please join the El Paso Women's Bar Association for its annual Charity Bash on Saturday, June 5th at the El Paso Country Club. The theme is :”Lawyers Got Talent, Reloaded, Battle of the Bands!” Watch the mail for your invitation and contact ssno@scotthulse.com for details and/or to sponsor the event.

El Paso Paralegal Association

♦The El Paso Paralegal Association will hold its Junel Luncheon on Thursday, June 15, 2010 at 12:00 noon at the El Paso Club. Cost is \$15 for Buffet or \$10.50 for Salad Bar. Please RSVP to Rachel Magdaleno at rmadkaleno@rbch.net

The El Paso County Legal Support Association's

♦Monthly Meeting will be held Wednesday, June 9, 2010 at Noon at the El Paso Club 18th Floor, Chase Building (Downtown) SPEAKER: Yvonne M. Acosta, RN, MSN, JD TOPIC: “Navigating through the HIPAA Maze--Practical Tips for Attorneys and Legal Assistants”

♦Monthly Meeting will be held Wednesday, July 14, 2010 at Noon at the El Paso Club 18th Floor, Chase Building (Downtown) SPEAKER: David Reyes TOPIC: “Social Security Disability”

♦Monthly Meeting will be held Wednesday, August 11, 2010 at Noon at the El Paso Club 18th Floor, Chase Building (Downtown) SPEAKER: Kristopher Dale Jarvis, Assistant U.S. Attorney TOPIC: “Border Issues”

CLASSIFIEDS

EXPERIENCED ATTORNEY

desires office sharing, work overflow, arrangement with small or medium size law firm. Have vast general practice experience including personal injury, worker's compensation, civil litigation, family law, bankruptcy, and federal agency law. If interested, contact Attorney JJ at 915/203-0006.



*Legal
Literati*

LEGAL LITERATI CALL FOR SUBMISSIONS:

The practice of law requires the ability to use the written or spoken word to provoke or prompt an intended result. Consequently, throughout history, lawyers have been known for creativity in the arts as well as in formulating arguments. The El Paso Bar Association wants to celebrate this aspect of the legal profession, and to encourage its members to recognize and cultivate their own creative impulses. We ask members or other law related professionals to provide their poems, lyrics, very short stories, or other creative expression.

Please submit your work for consideration to Poetry Editor Donna J. Snyder via email to donna.snyder@epcounty.com.

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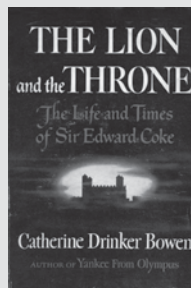
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HON. ROBERT J. GALVAN COUNTY LAW LIBRARY NEWS

By LYNN SANCHEZ

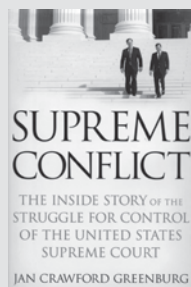
The Law Library has acquired the following materials of general interest, which are available for check out:



Bowen, Catherine Drinker

*The Lion and the Throne:
The Life and Times of Sir Edward Coke*
(Little, Brown and Company, Boston, 1956)

Sir Edward Coke prosecuted Sir Walter Raleigh, and so this book contains a discussion of that famous trial. Some may see similarities between the trial of Raleigh and some or all of the trials of the Guantanamo detainees. In any event, rights claimed by Raleigh and denied to him are now very much a part of the "rule of law" in America today [*Crawford v. Washington*, 541 U.S. 36 (2004)]-- unless, perhaps, the party's actions are perceived to constitute threats to the State--as were Raleigh's.



Greenburgh, Jan Crawford

Supreme Conflict
(The Penguin Press, New York, 2007)



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A website is a 24 hour, 7 day a week, 365 days a year salesperson. Its design and content is the face of your law firm. We consistently deliver creative, easy to navigate web designs and solutions that reflect the personality, needs, and vision of our clients. The success of your online and offline branding, communications and marketing strategy is, and always will be, our goal.

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