



# EL PASO BAR JOURNAL

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*An Update of Events and Information*

September 2014

## **JUDICIAL SPOTLIGHT:**

### **ASSOCIATE JUSTICE GUADALUPE RIVERA**

*By Clinton F. Cross*

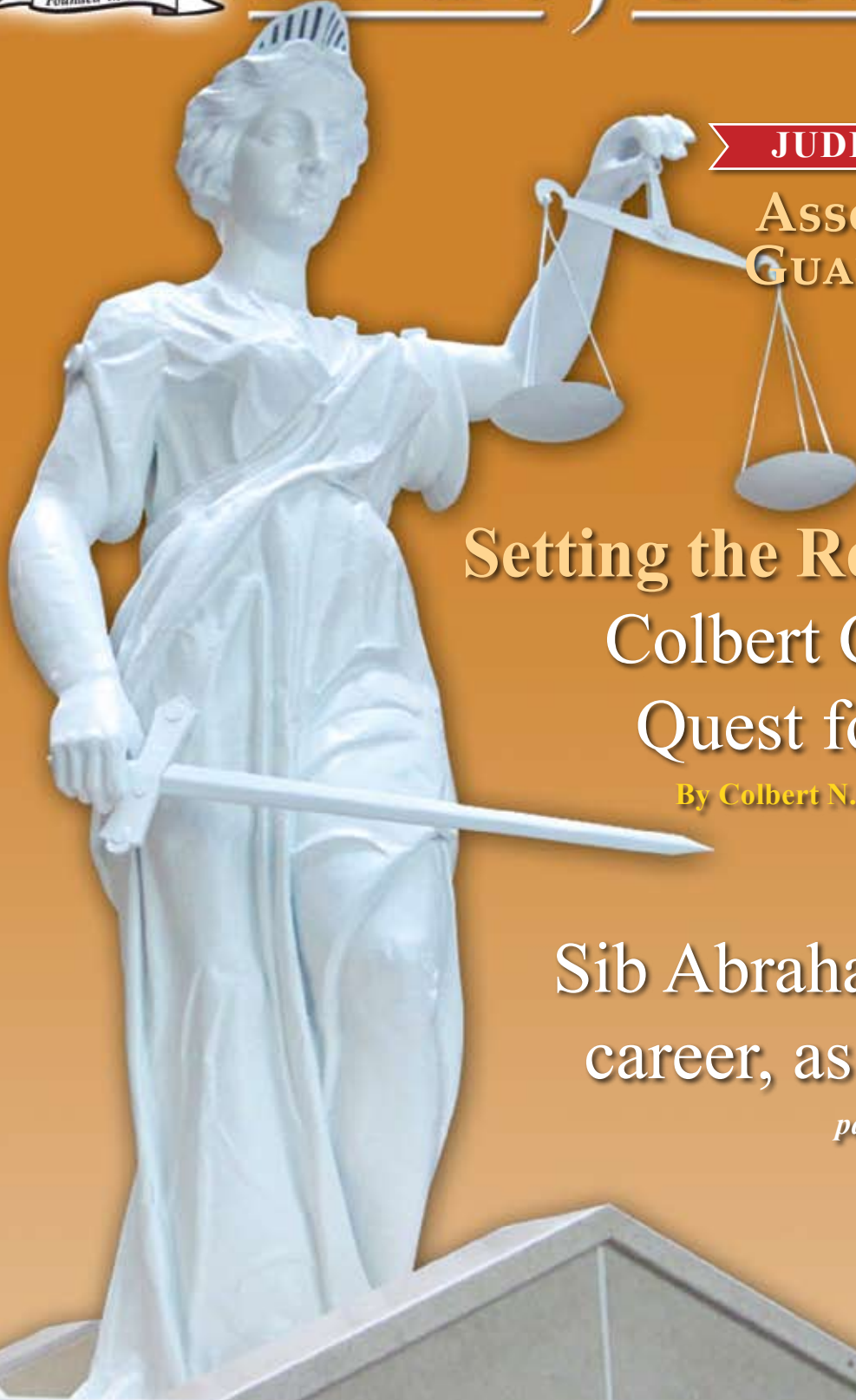
*page 12*

### **Setting the Record Straight: Colbert Coldwell's Quest for Justice**

*By Colbert N. Coldwell page 7*

### **Sib Abraham's life and career, as told by Sib**

*page 10*



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 Publication Achievement Award  
 NABE LexisNexis Awards  
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 -2007, 2010 & 2012  
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 Excellence in Special Publications – 2008

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*The El Paso Bar Journal is a bi-monthly publication of the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to the attention of Nancy Gallego. All submissions must be received by the Bar office on or before the 10th day of the month preceding publication. Calendar listings, classified ads, display ads, and feature articles should not be considered an endorsement of any service, product, program, seminar or event. Please contact the Bar office for ad rates. Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office. An article in the Bar Journal is not, and should never be construed to be, an endorsement of a person for political office.*

## PRESIDENT'S PAGE



El Paso has the greatest lawyers. Our lawyers are intelligent, well-educated and talented. For these reasons, my bar theme is “Hire an El Paso Lawyer, El Paso has the Best and the Brightest.”

When Johnny Manziel (the best college player in the country) was looking for a lawyer, he hired an El Paso lawyer (Jim Darnell). We have been blessed with some of the most amazing talent in the state in our Bar. There are lawyers in this community that get hired throughout the state and nation to handle cases because of their expertise.

However, some have the misconception that if you hire an out of town lawyer, you're getting a better lawyer. I completely disagree. We need to change these opinions. El Paso has the finest talent in the State of Texas.

We have many great lawyers in our legal community, and I will highlight those lawyers throughout the year. We recently lost one of the greatest El Paso lawyers when Joseph “Sib” Abraham passed away. I did not know Mr. Abraham well but instead had seen him in trial. Sib Abraham was hired throughout the country to try criminal cases. He handled and tried high profile cases with some of the best lawyers in the country with great success. In addition to being a great trial lawyer, he was a gentleman and was very well respected by our community. He believed in justice and worked hard for his clients. He was a great representative of the El Paso lawyer.

My goal this bar year is to convince our local governments and businesses to always hire an El Paso lawyer. We need to highlight the talent in our Bar. There is no reason to hire an out of town attorney.

El Paso Lawyers know the people; they understand our court systems; they know the judges; they understand the local rules; and they know our juries.

I hope at the end of my bar year that I have opened the eyes of many locals so that they understand that for all your legal needs, hire the best—choose an El Paso lawyer.

**Laura Enriquez**,  
 President

*Cover: Lady Justice, courtesy of Edgar Rincón  
 See back page for full story.*

# Meet Your President Laura Enriquez

BY JUDGE MARIA SALAS-MENDOZA

"I knew I wanted to be a lawyer when I was 5 years old because I thought it would be great to know your rights and argue with people," says El Paso Bar Association Bar President Laura Enriquez. This early decision led Enriquez down a stellar educational path to graduate from the University of Texas at Austin where she received a bachelor's degree and then to Baylor School of Law, where she was on the Board of Barristers.

Enriquez began her legal career at the law firm of Hicks and Lucky. She left and spent a year in the District Attorney's office "trying cases" before she returned to Hicks and Lucky. Enriquez is currently a shareholder with the firm of Mounce, Green, Myers, et al. and is Board Certified in Personal Injury Trial Law.

Asked to share a quick war story, Enriquez gave the quickest: I once tried a civil case defending a large tractor trailer company in Hudspeth County where the jury read the

charge, ate dinner and gave me a zero verdict and all in a matter of 8 minutes. It was on December 23rd, two days before Christmas.

Enriquez has tried many cases with and against lawyers for whom she has great respect, in state and federal courts in Texas and New Mexico. "If I tried listing all the amazing lawyers I've had the privilege to work with, I'd surely miss one," she says not wanting to name names. In developing her theme for the Bar Association this year, Enriquez recalled these great lawyers including some of the assistant district attorneys and criminal defense lawyers she's met stating emphatically, "We have some of the best lawyers around."

Having spent several years on the executive committee of the Bar Board, Enriquez sees the role of the Bar Association to serve as the liaison for all bar associations and central to the collaboration of all bar associations' efforts to improve our community. As its leader this

year, Ms. Enriquez will continue the Access to Justice and El Paso Lawyers for Patriots programs of the Bar and is looking forward to another great Civil Trial Seminar in Las Vegas in 2015.

To "meet your president" one must know about Enriquez's passion outside the courtroom. She says, "My long time obsession has been sports. I watch and follow all sports. I watched my first Masters for 4 days straight at the age of seven. My favorite sport is football. I love the NFL and my first child Daniela was named after Dan Marino my favorite football player. I try to watch a couple of hours of Sports Center every night." Enriquez is married to Humberto Enriquez and they have three children, Daniela, Diego and Lucas. The Enriquez family is rounded out by their dogs, Lulu and Cowboy.

**JUDGE MARIA SALAS-MENDOZA**  
is Judge of the 120th district court

## EL PASO BAR ASSOCIATION September Bar Luncheon Tuesday, September 9, 2014

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

*Guest Speaker*

**Texas Supreme Court Justice Jeffrey Boyd**

*who will speak on "How Their Views Impact Certain Cases"*

Approved for ½ hour of Participatory Ethics.

**Door prizes will be given out**

Please make your reservations by Monday, September 8, 2014 at 1:00 p.m.  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)

**Please make sure you RSVP.**

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



# CALENDAR OF EVENTS

## SEPTEMBER

**Tuesday, September 2**

EPBA BOD Meeting

**Tuesday, September 9**

EPBA Monthly Luncheon

Guest Speaker: Texas Supreme Court Justice Jeffrey Boyd

**Thursday, September 11 & Friday, September 12**

Nuts and Bolts of Child Welfare Law

**Thursday, September 18**

EPPA Monthly Luncheon

**Tuesday, September 30**

Labor & Employment Section Seminar

## UPCOMING EVENTS:

**Tuesday, October 7**

EPBA BOD Meeting

**Tuesday, October 14**

EPBA Monthly Luncheon

**Thursday, February 12-14, 2015**

19th Annual Civil Trial Practice Seminar  
Las Vegas, Nevada

## ATTENTION ATTORNEYS: CRIMINAL APPOINTMENTS

IF YOU WISH TO BE APPOINTED TO CRIMINAL FELONY AND MISDEMEANOR CASES, YOU MUST FILL OUT THE FOLLOWING APPLICATION:

1. **EL PASO DISTRICT AND COUNTY COURTS TEXAS FAIR DEFENSE ACT ATTORNEY APPLICATION**  
IF YOU WISH TO HAVE AN EXCEPTION TO RECEIVE CRIMINAL CASE APPOINTMENTS BECAUSE YOU CURRENTLY DO NOT HAVE THE NECESSARY CLE HOURS OR TRAINING, YOU MUST FILL OUT THE FOLLOWING APPLICATION:
2. **EL PASO DISTRICT AND COUNTY COURTS APPLICATION FOR EXCEPTION TO QUALIFICATIONS TO RECEIVE CRIMINAL CASE APPOINTMENTS**

THE APPLICATIONS MAY BE PICKED UP AT ANY OF THE DISTRICT COURTS, COUNTY COURTS AT LAW, COUNTY CRIMINAL COURTS AT LAW, COUNTY COURT ADMINISTRATION (ROOM 302), JAIL MAGISTRATE, EL PASO BAR ASSOCIATION (LL-112) AND THE COUNCIL OF JUDGES ADMINISTRATION (ROOM 101).

**ALL ORIGINAL APPLICATIONS MUST BE RETURNED TO THE COUNCIL OF JUDGES ADMINISTRATION, 500 E. SAN ANTONIO #101, EL PASO, TX 79901**

“THE EL PASO CRIMINAL DISTRICT AND COUNTY COURTS PLAN STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS” WAS APPROVED BY THE COUNCIL OF JUDGES ON JULY 31, 2014. THE PLAN IS AVAILABLE ON THE COUNCIL OF JUDGES ADMINISTRATION COUNTY WEBSITE, [www.epcounty.com](http://www.epcounty.com). ALSO ON THE COUNCIL'S WEBSITE IS THE “EL PASO CRIMINAL DISTRICT AND COUNTY COURT SCHEDULE OF FEES FOR THE COMPENSATION OF COURT APPOINTED COUNSEL” TO BE EFFECTIVE SEPTEMBER 1, 2014.

**ALL APPLICATIONS MENTIONED ABOVE ARE ALSO AVAILABLE ON THE COUNCIL OF JUDGES ADMINISTRATION WEBSITE WHICH CAN BE FILLED OUT ON LINE.**

CJA-8/15/14

## CHARLES E. VINSON MEMORIAL RESOLUTION

The Eighth District Court of Appeals and the El Paso Bar Association will hold a Memorial Resolution Ceremony for Charles E. Vinson on **Wednesday, September 17, 2014 at 10:00 a.m.** at the Eighth Court of Appeals, 12th Floor, El Paso County Courthouse.

# ADVANCE SHEET, November 23, 1506 A.D.

BY CHARLES GAUNCE

Our case for consideration comes from the Council of Henry VII.

“George Bardeseie of Bardesie of counsel with Kyrkebye is by decree of this counsel put to silence forever never to be harde in this Counsel in anie cause. And injoynd to appere on Friday nexte & laie a cause whie he shoulde not be committed to warde for his disobedience in Counsellinge Kirkebie to make none answer to the title of Lande contrary to the commaundemente and decree of this Counsell xxv Novembris.”

Henry VII, it has come to be known in history as something else – The Star Chamber.

Probably the best known for its speed and flexibility in reaching conclusions, the Star Chamber litigants soon found that the decrees of the chamber could be quite arbitrary. Most historians today agree that the chamber eventually became an instrument for oppression instead of the speedy justice originally intended. Proceedings of the Star Chamber were closed to the public, an objection that remained on the minds of the English speaking people through the drafting of the U. S. Bill of Rights, specifically, Amendment VI, when it states, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial....”

The first observation I have to this little dust-up is, Wow! Henry’s counsel was clearly attempting to get the attention of an attorney, George Bardeseie for his legal advice to Kyrkebye (or Kyrkebie) to the effect that he should not answer in a dispute regarding the title of land. As a result, the council summarily disbarred Bardeseie from making any further appearance before the council. Not being satisfied with depriving the attorney of his ability to earn a living at his chosen craft, the counsel further directed the attorney to show cause, within two days, as to why he should not be committed to custody.

The second observation I have is that it is really sort of remarkable to our modern judicial thinking that this case comes to us with nothing that would constitute a case caption beyond the date of the council’s order. George should have known better. Any good attorney will know the disposition tendencies of the court he or she appears before, and George was really pushing the boundaries in this case. While the name of the tribunal is, technically, the Council of

Notwithstanding the council’s powers of summary judgment (in a sense not usually anticipated by those practicing law today), it is clear that the counsel did not feel too comfortable with the process of placing someone in custody without at least hearing from the offending person. I suspect that George was not anticipating his pending hearing, considering that the council deciding this matter had just deprived him of the ability to earn a living practicing law, particularly since the council could charge him with perjury if they did not like his answers to questions asked by the council. Alternatively, if he made no answer, he would be charged with contempt of court.

The crime of perjury was one of the crimes developed in Star Chamber that survives to this day. Other such crimes are attempt, conspiracy, criminal libel, and perjury. Our history, even our oppressive history, continues to impact our world today.

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

## SAVE THE DATE!!! 19<sup>th</sup> Annual Civil Trial Practice Seminar

Mirage Hotel & Casino  
Las Vegas, Nevada

February 12, 13 & 14, 2015

*Make your plans to join  
us for a great seminar!!!*



## Nuts and Bolts of Child Welfare Law

Thursday, September 11 & Friday, September 12

Commissioner’s Courtroom, 3rd Floor,  
El Paso County Courthouse

*Approved for 12.0 hours of MCLE*

**Cost is \$40 for attorneys/\$20 for non-attorneys**

# Setting the Record Straight: Colbert Coldwell's Quest for Justice\*

BY COLBERT N. COLDWELL

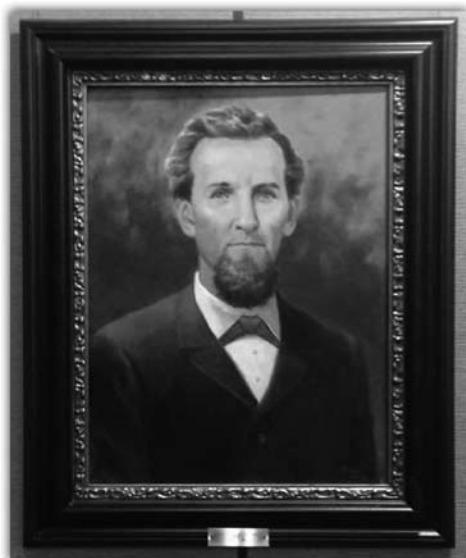
\*Reprinted with permission from the author and the publisher, the Texas Supreme Court Historical Society. Originally published at: *Colbert N. Coldwell, Setting the Record Straight: Colbert Coldwell's Quest for Justice*, J. Tex. Sup. Ct. Hist. Soc'y, Spring 2014, at 21."

## Executive Editor's Introduction by David A. Furlow

The Texas Supreme Court Historical Society is honored to publish an article about Texas Supreme Court Justice Colbert Coldwell written by his great-grandson, El Paso lawyer Colbert Nathaniel Coldwell. First licensed to practice law in Texas on September 18, 1967, after graduating from the University of Texas Law School, Colbert Nathaniel Coldwell has long played a prominent role in El Paso.

Colbert Nathaniel and his cousin Colbert Coldwell worked with Texas Supreme Court Historical Society board member Judge Mark Davidson and Baker Botts attorney Bill Kroger to commemorate their great-grandfather's service on the Reconstruction era Court by hanging a portrait of him in Judge Mark Davidson's court in 2008. Justice Coldwell's portrait, painted by artist Jearine Reat, hangs with honor beside those of other judges of the Eleventh Judicial District Court, originally the Seventh Judicial District Court, the first district court in Harris County.

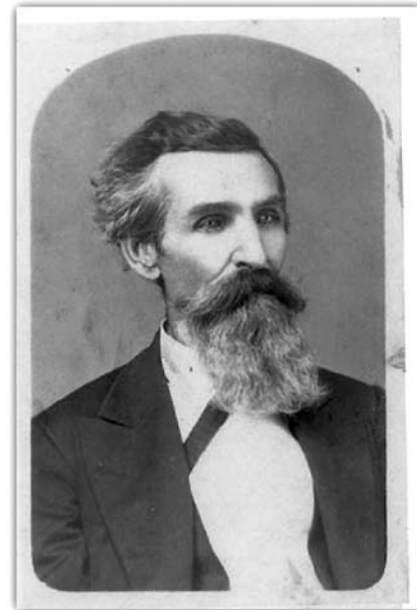
A harsh blue norther blew through the broad streets of Marshall, Texas on December 30, 1867, slashing at the Union League banners next to the Harrison County Courthouse.<sup>1</sup> But the howling wind could not keep Colbert Coldwell, Associate Justice of the Texas Supreme Court, and his entourage of Radical Republicans and freedmen advisors, from walking to the courthouse. Nor could it silence the band of black musicians playing "Battle Hymn of the Republic" to cheer



Portrait of Justice Colbert Coldwell on display in the Eleventh Judicial District Court in Houston. Dedicated and hung in 2008, photo by David A. Furlow

on three hundred freedmen gathering nearby for the Republican rally. Colbert Coldwell, a Tennessee-born Texan who opposed Secession before the war, yet owned eleven slaves by war's end,<sup>2</sup> was in Marshall seeking votes for the February 1868 race to serve as a delegate in Texas's Constitutional Convention of 1868.<sup>3</sup>

Coldwell's status as an Associate Justice of the Texas Supreme Court Justice could not shield him from a bullet, his enemies warned. Not when he "stirred up" ex-slaves to vote for Radical Republicans over the Democrats who had dominated the Lone Star State's politics for decades. And not when Coldwell owed his appointment to General "Little Phil"



Texas Supreme Court Justice Colbert Coldwell, a/k/a Colbert Caldwell, family photograph taken in Topeka, Kansas, ca. 1880; provided by Colbert Nathaniel Coldwell

Sheridan, the five-foot, four-inch commander of the federal Fifth Military District responsible for enforcing the Military Reconstruction Act of 1867 in Texas and Louisiana.<sup>4</sup> Too many Texans remembered Little Phil's bloody victories in Kentucky, Tennessee, and Georgia; his devastation of the Shenandoah Valley; and his cavalry corps' role in compelling Robert E. Lee's surrender in April, 1865. Many Texans found it hard to respect anyone appointed by Sheridan after his July 30, 1867 removal of recently-elected Texas Governor James W.

1 See Randolph B. Campbell, *Grass-Roots Reconstruction in Texas, 1865–1880* (1997), at 116–117 [hereinafter *Grass-Roots*]; Charles Christopher Jackson, "Caldwell, Colbert," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fca10> (last visited Feb. 17, 2014) [hereinafter *Colbert Caldwell*]. Colbert Nathaniel Coldwell, *Colbert Coldwell's Quest* 126–43 (unpublished manuscript) (on file with author and the Texas Supreme Court Historical Society) [hereinafter *Coldwell's Quest*].

2 See JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986*, 81 (2013) (referring to "Colbert Caldwell (spelled 'Coldwell' in some sources)" and his service on the Texas Supreme Court).

3 See *GRASS-ROOTS*, at 117.

4 See Joseph G. Dawson III, "Sheridan, Philip Henry," *HANDBOOK OF TEXAS ONLINE*, <http://www.tshaonline.org/handbook/online/articles/fsh26> (last visited Feb. 17, 2014).



Throckmorton, a former Confederate cavalry officer, or Sheridan's September 10, 1867 firing of all of the judges serving on the Texas Supreme Court of Texas, as "impediments to the reconstruction of the State."<sup>5</sup>

So when Colbert Coldwell came to Marshall, he came prepared for trouble. And he suspected something was wrong as soon as A.G. Adams, the Deputy Sheriff, refused his request to use the courthouse's main courtroom.<sup>6</sup> Not one to be thwarted, Coldwell led his supporters down to the basement hallways, where three hundred freedmen crowded in to get out of the cold. After giving a stump speech, Justice Coldwell asked the freedmen to elect him in the February 1868 election. Then one of Coldwell's entourage broke into song, rallying voters with "Rally 'Round the Flag, Boys." It was a song ex-Confederates hated. S. J. Richardson, Marshall's Chief of Police and a former captain in the Confederate Army, worried that the song might lead to a riot. He strode into the basement hallway, pulled his pistol, and fired it into the ceiling to drive the freedmen outside.

When Assistant Deputy A.G. Adams arrived, ostensibly to preserve order, Justice Coldwell assumed that he was there to do Police Chief Richardson's bidding. Coldwell led his men outside, where several fellow members of the Union League surged around, shielding the Justice as they sought refuge at the federal military base in Marshall.<sup>7</sup> To make the promise of equal rights a reality, Justice Coldwell repeatedly risked his life, especially in 1868, after he won his election to the Constitutional Convention and the editor of *The Houston Telegraph* published an editorial about Justice Coldwell and Morgan Hamilton, the brother of former Governor Colossal Jack Hamilton: "We say it solemnly, such men ought to die."<sup>8</sup>

A few weeks afterwards, in Jefferson, the Klan murdered George W. Smith, a Union Army veteran who supported the rights of freedmen, and two freedmen, then marched toward Justice Coldwell's house, intending to seize and murder

him as well. Justice Coldwell escaped, while his young son Nathaniel's testimony helped arrest and convict some of the murderers after a ten-week trial.<sup>9</sup>

Much of what has been written about Justice Coldwell is wrong. Many authoritative reference books, including the Texas State Historical Association's *Handbook of Texas*, misspell Colbert Coldwell's name as Colbert Caldwell, with an a. Many members of the sprawling Scotch-Irish family of Coldwells and Caldwells spelled their name that way. But the Justice and his descendants, as well as judges, lawyers, and historians who hung his portrait in the Eleventh Judicial District Court's courtroom in Harris County on October 18, 2008, did not misspell.<sup>10</sup> When Justice Coldwell litigated an important issue of creditor law in the courts of Kansas, he did so under the surname Coldwell, not Caldwell.<sup>11</sup> When Justice Coldwell's grandson entered the real estate business, he named his company Coldwell Banker.<sup>12</sup>

Colbert Coldwell was born in Shelbyville, Tennessee. His father died of cholera when he was eleven. He came to Texas with an uncle, Hamilton Ledbetter, who settled in Victoria after 1836, then lived with his uncle Thomas Alfred Coldwell in southwestern Missouri. He went overland from Missouri on the Santa Fe Trail, with the scout and trailblazer, Kit Carson.<sup>13</sup>

Coldwell engaged in the Santa Fe trade, based for six years in Chihuahua, Mexico and traveled as far south as Durango. He learned Spanish, his trade prospered, and he became a close friend of one New Mexico Governor, Mariano Martinez de Lejanza, from whom he received trade preferences. During the Mexican War he was interpreter and guide for the Missouri Volunteer Regiment under Colonel Alexander Doniphan, which captured El Paso and Chihuahua. He played a prominent role at the Battle of Brazito, New Mexico on Christmas Day, 1846, twenty-six miles north of El Paso.

After the Mexican War, Coldwell "read" law and engaged in the family trading business. He

married Martha Michie and moved to St. Francis County, Arkansas where he traded, practiced law, and served in the Arkansas Legislature. He served as a delegate to the 1856 Democratic Convention that nominated President James Buchanan. Coldwell moved, with his wife and seven children, to Mansfield, Texas, in 1859, and campaigned in the 1860 presidential election for Stephen Douglas, the Northern Democratic candidate.

Coldwell refused military service under the Confederacy, causing his legal practice to languish during the Civil War. He traded from his home at Navasota to Brownsville and into Mexico during the war, only to see his wagons, mule teams, and goods commandeered by the increasingly desperate Confederates. He spent nine months in jail in late 1864 and through April, 1865 as a Union sympathizer. Soon after the Civil War ended, he won appointment as the first Chairman of the Union League in Texas, established to support for public office only reliable Union men. In August 1865, Provisional Governor Andrew Jackson "Colossal Jack" Hamilton appointed him as District Judge of the Seventh Judicial District, which included Galveston, Houston, Huntsville, and several rural counties. Judge Coldwell helped re-establish the rule of law after the war and generously assisted many former Confederates obtain the restoration of their legal rights and law licenses, including Judges James A. Baker and Peter W. Gray, founders of the Baker Botts law firm.

On November 27, 1865, Seventh District Judge Colbert Coldwell addressed the first Harris County grand jury to convene after the Civil War. Speaking to powerful community leaders, he emphasized their duty to respect the rights of former slaves under the recently amended U.S. Constitution:

"Gentlemen:—you have been duly elected, empanelled and sworn as grand jurors...and it is now incumbent upon me to give you in charge such matters as

5 See MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* 40–41 (2011).

6 See Van Craddock, "Caldwell survived mob, 'Marshall Riot,'" *LONGVIEW NEWS-JOURNAL* (Oct. 30, 2011). See also Colbert Coldwell's letter to Gov. E. M. Pease, *HOLDINGS OF THE TEXAS STATE ARCHIVES, GOVERNOR'S PAPERS, ELISHA M. PEASE, Folder 28* (Dec. 26-31, 1867).

7 See Letter from Donald Campbell to Governor E. M. Pease (Dec. 31, 1867), in *PEACE PAPERS*.

8 See *Journal of the Reconstruction Convention* (1868), vol. 1, at 504, available at <https://archive.org/details/journalofreconst11texa> (last visited Feb. 17, 2014).

9 See Coldwell's Quest, at 143–59; Max S. Lale, "Stockade Case," *HANDBOOK OF TEXAS ONLINE*, <http://www.tshaonline.org/handbook/online/articles/jrs03> (last visited Feb. 17, 2014).

10 See J.R. Gonzales, *Portrait unveiling honors Reconstruction-era judge*, *Houston Chron.*, Oct. 18, 2008, <http://blog.chron.com/bayoucityhistory/2008/10/portrait-unveiling-honors-reconstruction-era-judge>.

11 See *Tootle, Hosea & Co. v. Coldwell*, 30 Ka. 125, 1 P. 329 (1883).

12 See *id.*

13 See Coldwell's Quest, at 32–55; Colbert Caldwell.



may come before you....[N]ow that the national authority is fully restored, and peace has again asserted her mild dominion....we should . . . steadily bear in mind, that upon the juries of the country—grand and petit, devolves the not less arduous task of bringing order out of chaos, by a firm and impartial administration of the criminal laws....

“The civil war which has recently terminated involved the destruction of the institution of slavery in this State, and swept away with it those distinctions, both as to protection and liability to punishment, which hitherto existed between whites and blacks. Hence the late slaves—now freedmen—and that class denominated “free persons of color,” stand upon terms of perfect equality with all other persons in the ‘penal code.’

“This greatly enlarges the scope of your enquiries...It is logical and necessarily follows that persons of African descent are competent witnesses where any of that race are parties. The reason of their exclusion heretofore, it is now believed, has ceased to exist. It was because they were slaves, and descendants of slaves....

“And here an axiomatic principle, as old as our system of jurisprudence comes to our aid. ‘When the reason of the law fails, the law likewise fails.’... The tree having been cut up, by the roots, it would be idle to suppose that its branches could still flourish.”<sup>14</sup>

In 1867, Major General Philip Sheridan appointed Coldwell and four other anti-secessionists, including his mentor and colleague, former Provisional Governor and leading pre-war attorney, A.J. Hamilton, to a reconstituted Texas Supreme Court. Coldwell was the only appointee with prior judicial experience.

Coldwell soon moved to Jefferson, then the second largest city of Texas, and acted as a political organizer in northeast Texas for the moderate Republican Governor, Elisha M. Pease. Although Coldwell had been a slave owner, he championed the right of former slaves to enjoy full civil and political rights in Marshall, Jefferson and elsewhere in Texas. This support for the rights of freedmen earned him the enmity of unreconstructed Confederates who supported the underground groups that

became the Ku Klux Klan. He evaded assassins laying in ambush to kill him in Jefferson, and elsewhere.

Despite those attacks, voters elected Coldwell to serve as Jefferson’s delegate to the Constitutional Convention of 1868–1869. Once there, Coldwell and fellow Supreme Court Justices A.J. Hamilton and Livingston Lindsay led Moderate Republicans while continuing to serve on the Court. The Ultra Radical Republicans, led by former Union

Brigadier Gen. Edmund J. Davis, won the Convention’s first test vote by electing Davis President of the Convention over Coldwell by 44 to 33. Coldwell wrote the committee report on terror and violence, a subject on which he had first-hand experience. Davis convinced the Convention’s delegates to ratify the Fourteenth Amendment by granting full civil rights to freedmen as a condition for Reconstruction and for Texas’s readmission to the Union.

Coldwell and other Convention delegates debated many issues, including the terms of a new state constitution; the effect of legal acts undertaken during the Civil War; the ab initio question of whether all acts taken during rebellion from the beginning of the war were illegal or, on the other hand, whether only those acts tainted with support for the Confederacy were illegal; whether Texas should divide into as many as five states; the rate and extent of taxation; ways to address widespread lawlessness; and measures concerning railroads and public schools. Coldwell successfully opposed Governor Davis’s efforts to divide the state, and in 1869, a military commander replaced all five justices of the Texas Supreme Court.

At a recess during the Convention in October 1868, a local branch of Klan, known as the Knights of the Rising Sun, killed carpetbagger Convention Delegate and former Union Captain George W. Smith and two Negroes in Coldwell’s hometown of Jefferson. When two black witnesses escaped lynching, the leaders of the enraged mob sought to kill the remaining Republicans in Jefferson. Warned by shots outside, Judge Coldwell took off in the night with two sons, barely avoiding a search party. Coldwell sent his fourteen-year-old son Nathaniel to tell his wife Martha and their three daughters that he was safe. As Nat neared the house the Klan search party caught him and grilled him for several hours, sometimes threatening to kill him. Nathaniel defied them, saying, “You can kill me, that’s all you could do. I won’t tell.”

The Klansmen gave up the search and the next day all the Republicans in Jefferson fled town. While the Coldwells left for the safety of New Orleans, federal troops went to work apprehending suspects and convened a tribunal known as the Stockade Case for the place where the military tribunal conducted its lengthy proceedings. Nat and the two blacks who escaped the lynch mob were important witnesses. Because of false alibis and Klan disguises, the tribunal convicted only three men of Smith’s murder and another three for threatening Judge Coldwell’s life. But the federal prosecution put a damper on Klan activity in northeast Texas.

During his two years on the Texas Supreme Court, Justice Coldwell’s opinions dealt with the usual array of commercial and criminal cases of the day, including liability for payment of debts in Confederate money. He was the lead writer in expounding on the issue of self-defense and in deciding cases involving proof in the Spanish language from trials in south and west Texas.

In *Ake v. State*, a case involving the particularly brutal torture of Negro suspects in a sensational inter-racial murder, Justice Coldwell addressed issues arising from a confession obtained by hanging one of the suspects three times until nearly dead, then staking him to the ground and burning brush over him until skin peeled from his feet. Justice Coldwell’s opinion rebuked “these monstrosities” to “mark in pointed and emphatic phrase our utter detestation of this fiendish outrage” from “this abominable and detestable villainy.”

In 1873, President Ulysses S. Grant appointed Justice Coldwell to serve as the Collector of Customs at El Paso, a post Coldwell held until 1877. From El Paso he successfully appealed to the Texas Supreme Court *Lyles v. State*, which established the requirement that jurors be able to speak and deliberate in English. He then moved to Kansas to please his long-suffering wife, practicing law there. While visiting his lawyer son Nathaniel’s home in Fresno, California, Justice Coldwell died in 1892, leaving a record of honorable service and bravery in the face of constant danger.

**COLBERT NATHANIEL COLDWELL** is a partner with the El Paso law firm of Guavara, Baumann, Coldwell & Reedman, LLP. He is licensed to practice law in Texas and New Mexico and is an Approved Attorney for the Consulado General de Mexico (General Consulate of Mexico), based in El Paso. Coldwell is a former trustee of the State Bar of Texas Insurance Trust, and is a current trustee of the Coldwell Foundation for medical research on heart disease and cancer.

<sup>14</sup> See Coldwell’s Quest, at 2.

## SENIOR LAWYER INTERVIEW

## SIB ABRAHAM

BY CLINTON F. CROSS

*Sib Abraham died July 4, 2014. This month we republish our interview with Sib Abraham about his life and his work, first published in the January, 2007 issue of "The Bar Bulletin."*

*Jim Darnell's and Dick DeGuerin's touching testimonials to Sib's life can be found in the July/August issue of Voice for the Defense Online, search "Sib Abraham." Ed.*

**CROSS: Tell me about your parents – where they came childhood.**

**ABRAHAM:** I was the second of four children born to Joseph Abraham and Helen John. My father, along with his parents and nine siblings, immigrated from Jewkiat, Syria, to Mexico in the early 1920's, with intentions of eventually immigrating to the United States. It took almost nine years for all of the Abraham clan, including my father, to enter the United States because of quotas for Syrians. During that nine year period, my father made a living as a merchant selling tapestries, linens, shawls, silk scarves and other expensive accessories, a profession which he not only naturally excelled in but would become the etiology of his ultimate success as a businessman and real state developer/investor. When he finally entered the United States, he had already amassed a small fortune, even though he had no formal education and could not at the inception speak either Spanish or English. In 1932, my father and grandfather, along with retired Judge Henry Peña's father, drove to Pennsylvania to visit relatives. There he met my mother Helen, and after a short courtship (which was customary in those times), they married in 1932. They lived in an apartment "complex" known as Abraham Market at 501 N. Piedras, which was owned by my father's oldest brother Sam. My two sisters, Geraldine "Haifa" Malooly and Joanne Chagra, and my brother Eddie and I grew up there, along with aunts, uncles and cousins who lived in the other apartments located above Abraham's market.

Those were very special times for me. I often relive those years and I remember them with clarity and fondness, because there was such a profound unity of family, a unity which was so strong that I believe it made me a better person for having been a part of that experience. It



was during those years that my father and his brother Solomon opened the Oriental Furniture Company at 212-214 S. Stanton. They worked hard and were successful. My father also began his career as a real estate developer and investor, and in the early 1940's he sold his interest in the furniture business to uncle Solomon in order to totally concentrate on his rapidly growing real estate ventures.

My father built a beautiful home on Pittsburgh Street in the Highland Park area, a home which symbolized his success, and later built another home on Rim Road. Yet, despite his success, he always remained humble, a trait I always admired in him and one which I tried to emulate throughout my life.

I went to Houston Elementary School and then El Paso High School, where I graduated in 1953. I went to high school with many of my cousins and friends who would later become my peers and successful contemporaries – Mickey Esper (who was born ten days before me), William Elias, the late Lee Chagra (who later became my brother-in-law and law partner), Norman and Dr. Fred Ekery, Jimmy Salome, Mario Martinez – the list is endless. When I graduated from El Paso High School in 1953, I had plans to attend the University of Southern California, but my cousin, Billy Abraham, convinced me to follow him to Texas A & M.

I am grateful to him now for having done so because at Texas A & M I learned the values of self-discipline, hard work, dedication and "teamwork." These traits would serve me well for the next fifty years, not only in my law practice but in life. I left Texas A & M after my junior year in order to marry my high school sweetheart, Margaret Ann Caples. We had met while I was working at the Bronco Drive-In Theatre, a state-of-the-art facility that my dad's youngest brother Elias Abraham built. I was thirteen years old then. We celebrated our 51st year of marriage in August 2006. My son Billy was born in 1956 and I graduated from Texas Western College in 1958.

**CROSS: After you graduated from college, what led you into a career in law?**

**ABRAHAM:** My cousin Mickey Esper had always wanted to be a lawyer and was to start law school at the University of Houston in the fall of 1958. He suggested that I should come with him. I had never thought about that until that very moment. I am eternally grateful to him for his suggestion. Mickey, retired Judge Henry Peña, Travis Johnson, Carlos Escobar and I enrolled and ultimately graduated from the Bates College of Law. While we were there, Mickey and I discussed the idea of opening a law firm, along with my brother-in-law,



Lee Chagra (who was attending law school at the University of Texas) and naming it the “ACE” (Abraham/Chagra/Esper) Law Firm. I can’t remember why it did not reach fruition, although Lee and I ultimately became law partners for many years. In 1961, I opened my practice at the Caples Building and a year later Lee joined me.

**CROSS: Did you ever have thoughts about pursuing a political career?**

**ABRAHAM:** Before my third year of law school, law student friends suggested that I run for President. I won and vowed that I would not run for a political office again. I never felt that I had the temperament nor “makeup” to be a politician.

**CROSS: Tell me about your legal career and its evolution into success as a criminal defense lawyer:**

**ABRAHAM:** When I first opened my practice in 1961, my intentions were to develop a practice geared towards real estate and business law because of my family’s involvement in real estate and business. When Lee joined me a year later, my legal career suddenly took a different path. Lee had always wanted to practice criminal law and he convinced me to try criminal cases with him, so I did. Lee and I went to Judge William Ward in the 34th District Court and asked him to appoint us to as many criminal cases as possible, even though in those days the appointed cases were strictly *pro bono*. We even had to pay the expenses out of our pockets. Judge Ward accommodated us and our criminal law business took off—especially since we achieved remarkable success in defending those accused of committing crimes. In the mid-to-late 1960’s, conspiracy law became the new “darling” of prosecutors. Consequently, Lee and I often found ourselves wanting to be hired by multiple defendants indicted in the same case. Obviously, multiple representation created a conflict of interest, so Lee and I mutually and amicably agreed to terminate our partnership, primarily in order to maximize effective legal representation in the criminal law area. Thereafter, both of our careers as criminal defense lawyers went beyond our wildest dreams.

**CROSS: Tell me about your professional involvement.**

**ABRAHAM:** I am a member in good standing of the United States Supreme Court, the State Bar of Texas, the United States Courts of Appeal for the Second, Third, Fifth, Seventh,

Ninth, Tenth and Eleventh Circuits, the United States District Courts for the Western, Eastern, Northern and Southern Districts of Texas, and the District of Arizona, Colorado and Michigan. I am a member of the Texas Criminal Defense Lawyers Association and the National Association of Criminal Defense Lawyers. I have handled cases in over thirty different states and federal jurisdictions across the United States. In doing so, I have had the good fortune to be involved in cases with some outstanding criminal defense lawyers, an experience which I believe definitely made me a better lawyer. Lawyers like Billy Marchiondo (Albuquerque), Michael Pancer (San Diego), David Chesnoff and Oscar Goodman (Las Vegas), Larry Kazan (Phoenix), Michael Nasitir (Beverly Hills), Lee Ginsberg (New York), Dick DeGuerin (Houston), Tony Brooklier (Los Angeles), Joseph St. Veltri (Denver), Robert Driscoll (Denver), Jack Leon (San Antonio), Paul Brayman (Chicago), Lee Shalgos (Chicago), George Milner (Dallas) and Chic Kazen (Austin) not only were great advocates, but they became my very close friends. This list is by no means exhaustive as there are many others fine lawyers with whom have been privileged and honored to work with and learn from during my career.

**CROSS: Your most interesting cases?**

**ABRAHAM:** The most interesting and certainly the most rewarding case I handled was my successful representation of the Honorable Henry Peña. Retired Judge Peña was not only a great jurist who devoted his legal career to public service, but also he became a close friend and contemporary. I felt it was an honor that he chose me to represent him against the federal charges which had been filed against him. The “Not Guilty” verdicts returned by the jury in January of 1995 were the most satisfying ones of my career, because they vindicated a man who was truly innocent of the charges levied against him. Representing innocent individuals is the most frightening of all situations. A federal cocaine case in Los Angeles was another interesting case I handled in the late 1980’s, early 1990’s. It was the largest cocaine seizure in U.S. history (21 tons of cocaine and \$12,000,000.00 cash), and although the final outcome was not what I had hoped, the legal issues involved and the lawyers I worked with were extraordinary.

**CROSS: How has the “culture” and practice law change?**

**ABRAHAM:** When I first started practicing

law in 1961, life was simple and uncomplicated, so was the practice of law—your “word was your bond.” The times quickly changed beginning in the late 1960’s, some of it for the better, some of it for the worse, so did the practice of law. Everything became complicated, extremely competitive, and practicing law with “integrity and honor” became more difficult to find. Like our culture, much of the practice of law attached itself to the “ends justify the means” concept. It is not a concept I embraced. I believe the legal profession is a noble one and too often many lawyers have lost sight of that tenet. I have tried not to be one of them.

**CROSS: How does what you do contribute to the public interest as a whole?**

**ABRAHAM:** Since I first started practicing criminal defense law over 45 years ago, I am constantly asked, “How can you represent people who are guilty of committing crimes?” The answer is simple—it’s an oath I took as a lawyer in 1961 and an oath I will not betray. By illustration, I can remember when Lee Harvey Oswald was shot by Jack Ruby in 1963. At the time, Oswald was probably the most hated person in this country since it was widely believed that he had assassinated our beloved President Kennedy a few days earlier. When Oswald was rushed to the hospital, the doctors and nurses on duty used all their skills, training and experience to save his life. They did it because they, like criminal defense lawyers, took an oath which is part of their profession. Strangely, no one criticized those doctors or nurses, nor were they pilloried in the press like criminal defense lawyers. Every human being, no matter how guilty or innocent, is entitled to an effective lawyer when they are accused of committing a crime. To deny them that right is to deface our constitution.

Being a criminal defense lawyer is very much like being an oncologist. Having an adversary as powerful and formidable as the federal or state government is much like having an adversary as powerful as cancer. It is a daunting task—sometimes the results are favorable, sometimes they are not. However, when you work hard, use all your God-given talents, and utilize your valuable training in trying to keep a person’s life from being totally destroyed, it is very fulfilling. I feel I have lived a blessed life by being able to have represented those whose lives were in shambles and on the verge of destruction.

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

## JUDICIAL SPOTLIGHT:

## ASSOCIATE JUSTICE GUADALUPE RIVERA

BY CLINTON F. CROSS

*A few weeks ago, Justice Guadalupe Rivera of the Eighth Court of Appeals announced that she intended to retire as an Associate Justice of the Eighth Court of Appeals. She recently agreed to meet me in my office and tell me about her life and her plans. Ed.*

**CROSS: Tell me about your childhood.**

**RIVERA:** I was born and raised here in El Paso. I attended St. Pius X Elementary School, Loretto Academy, and the University of Texas at El Paso, graduating in 1971 with a Bachelors in Business Administration.

**CROSS: What did you do after you got your undergraduate degree?**

**RIVERA:** I worked for a short time for Farah just before the union issues began. Eventually, I transitioned into education. I taught high school geometry and algebra for a few years both in California and El Paso. Hoping to increase my income, I decided to go to law school. In 1978, I was admitted to the University of Texas School of Law, and graduated in 1981.

When I was in law school, a neighbor who had known me for most of my life, Samuel Wassaff, who was also an attorney, told me that he had spoken with the District Attorney Steve Simmons about me. "You have a job there if you want it," he said. Sometime around 1983, wanting trial experience, I called Steve Simmons and asked if he had a position available. He said, "Come on over." I started work the following week.

**CROSS: What do you remember about your experience in the District Attorney's office?**

**RIVERA:** In my first case, I sat second chair with Bill Moody in a murder case in the 327th involving family violence. It was a particularly sad case of a young woman who was unsuccessfully trying to break away from her violent boyfriend. One night he showed up at her apartment and shot her. She left behind two young children, one who witnessed the murder and he was sentenced to life in the penitentiary. After that, I tried many family violence murder cases. The very last case I tried before I left the DA's office was another homicide case. In a fit of rage, the defendant, chasing a woman who had



managed to escape out of his pickup, pursued her until he was able to run her into a levy. Then he ran over her and killed her. This case and others like it made a lasting impression on me.

**CROSS: Did these cases motivate you to become an advocate for victims of family violence?**

**RIVERA:** It was baffling to me why there was no intervention prior to the incident resulting in death when in some cases there had been calls placed to the police. In the 70's, the Texas legislature had passed legislation with many provisions for the protection of victims of family violence. I knew about the new law, but I also knew that the law was not being implemented in El Paso. In 1985, I had been elected the founding chair of the El Paso Commission for Women. The Commission for Women then became the perfect platform for hosting a conference on domestic violence. Representatives of El Paso's various law enforcement agencies were present and as a result we saw attention focused on the issue of domestic violence and many changes in the police department procedures as well as the education of officers, prosecutors and the judiciary on the issues of domestic violence. We encouraged County Attorney Danny Anchondo to designate a county attorney to represent victims of domestic violence and seek protective orders for them as provided for in the statute. As I recall, Margarito Rodriguez was the first Assistant County Attorney to begin

prosecuting these cases. By this time I was serving as Courtmaster in family law and I heard the first motion for protective order filed in El Paso County.

**CROSS: Did your interest in this problem lead you in another direction from the DA's office?**

**RIVERA:** In a way. In March, 1985, I was appointed by the Council of Judges the second of two family law Courtmasters for the County and District Courts. What we called "Courtmasters" then are today called "Associate Judges". I served as a Courtmaster or Associate Judge for almost six years, from 1985 through 1990. In those years El Paso did not have specialized courts except for the 327th juvenile court; it was designated a domestic relations court, but the docket also included criminal cases. The 65th had a DHS docket as well as both a criminal and civil docket. So every court, I believe except for the 34th had a family law docket. Domestic relations cases comprise half of all civil cases filed in El Paso County. You can imagine the number of cases transferred to the Courtmaster's docket. In those days everything was done without the benefit of computers. Out of necessity, we were the first court at the courthouse to purchase a computer to manage the docket.

**CROSS: Any significant changes occur during your time on the Courtmaster's bench?**

**RIVERA:** Before the appointment of family law Courtmasters in El Paso, the courts did not place priority on family law cases. Due process concerns made the criminal cases the priority. Also child support and possession orders were handled very differently by each court and child support enforcement was rarely seen. The Family Code had only been enacted about a decade before and still lacked the guidance it provides today. With the centralization of the family law docket in two Courtmasters, there was a more uniform approach to the handling of family law issues and cases were disposed of with more efficiency.

During my time as Courtmaster, I also became aware of the increased need for arbitration and mediation in El Paso. Although the use of



mediation and arbitration goes back in time, in the 80's, Texas courts were just beginning to use alternative dispute resolution procedures. In an effort to encourage the use of ADR by the El Paso courts, I invited Judge Frank Evans, one of the first advocates of Alternative Dispute Resolution, to visit El Paso. Judge Callan who presiding judge at the time agreed to schedule him on the agenda to speak to the Council of Judges. After Judge Evan's presentation, the Council voted to adopt mediation as a tool for resolving pending cases in El Paso. It wasn't particularly a popular concept among the lawyers because of the unknown economic consequences of settling versus litigation. Of course, now arbitration and mediation have impacted the practice of law throughout the nation.

My philosophy while on the bench was to be consistent and make a ruling. In that way the attorneys could anticipate the court's ruling and they could counsel their clients about what to expect based on their facts and possibly reach pre-trial resolution of issues. Also, they knew they could expect a timely ruling.

**CROSS: After the Courtmaster job, what did you do?**

**RIVERA:** In 1990, I was elected Judge of the 168th District Court. I served as Judge of the 168th District Court for eighteen years, managing both a civil and a criminal docket.

My first case was very stressful, not just because it was my first case. It involved the prosecution of 17 defendants including the Electric Company, the Kemp, Smith, Duncan and Hammond law firm and individual attorneys as well as executives of the Electric Company, as well as Maury Kemp. The indictment alleged 47 overt acts of conspiracy to commit theft of about \$10 million dollars from Kemp's Life Insurance company. The case lasted several months, with many high profile criminal defense lawyers from all over the State of Texas such as Roy Minton from Austin, and some local attorneys, Charlie Villa, John B. Luscombe, Sal Rebe, Ralph Harris and Jim Darnell to name just a few, appearing at every hearing. Later, the FDIC moved to transfer the case to federal court. U. S. District Judge Lucius Bunton said of the indictment that it read like a newspaper and of the list of defendants, that it read like a Who's Who list of El Pasoans. In Judge Bunton's reluctant order for transfer of the charges to federal court he quoted the "Too Fat Polka" and wrot, "I don't want her, you can have her, she's too fat for me." For the benefit of some of your readers who were not here at the time, the defendants always minted their innocence and were eventually exonerated.

In general, however, over the 18 years on the district bench, the most difficult cases were criminal cases which involved the loss or destruction of life. I tried a number of capital murder cases and found these cases emotionally draining.

**CROSS: Do you have any feelings about the effectiveness of our criminal justice system that you would like to share with your colleagues?**

**RIVERA:** Sometimes prison is the only answer, for instance, when the court is dealing with psychopathic behavior. I do think that sometimes we could do better, that sometimes the system is driven by the victim's anger, but the issue is too complex to discuss here.

I am concerned that we are sending too many people to the penitentiary. I also wish there was a more effective way to address the mental issues that are the cause of a lot of human misconduct.

**CROSS: What changes have you noticed in the practice of law during your career?**

**RIVERA:** In my time as Judge of the 168th, I saw a change in the type of cases that were being filed. At first, auto accident cases, slip and fall and medical malpractice cases were common. Later in the 1990's, after the Texas legislature had abolished many homestead protections, financial institutions began to foreclose on homes. The expansion of credit in the 80's also resulted in an expansion of debt collection cases. Tort reform chilled the medical malpractice, slip and fall, and auto accident cases. Arbitration and mediation began to play a significant role in the practice of law.

Procedurally, I saw changes such as in the summary judgment practice; for instance, with the adoption of the "no evidence" summary judgment procedure it became easier for the movant to ask for dismissal and place the burden of producing evidence on the respondent, typically the plaintiff. There was also a change in the reluctance of courts to consider and grant summary judgments because of the mandatory language of the statute. Then we saw that courts were expected to comply with docket control guidelines set forth by the Supreme Court of Texas. As a result, the courts became more efficient.

Technology has also changed the practice of law. When I first became judge of the 168th, I physically inventoried all of the court's pending cases by going through the paper files which were brought to me in boxes in order to schedule the cases for hearings and trials. By the time I left the court, we had replaced the tedious handling

of papers in the review of pending cases by simply logging in and pulling up the files on the computer.

**CROSS: Tell me about your experience on the Court of Appeals.**

**RIVERA:** Associate Justice Ken Carr was required to stand for election after an appointment for a 2 year period to fill a vacancy left by a prior resignation. I ran for the Court of Appeals, won in the democratic primary and then won in the general election in November and took office on December 1, 2008. The transition from the District Court to the Court of Appeals was a challenging one for me. On the trial bench, rulings are made daily and the opportunity to sit back, research and reflect are practically non-existent particularly during trial, but your days are filled with constant interaction with lawyers, jurors, and participants at trial. On the appellate court you do have the opportunity to become an expert in various legal fields but by necessity, and it a very solitary existence by comparison. The number of trial judges who have moved to the appellate court is limited. I do believe, however, the appellate court benefits from the practical experience of a trial court judge.

**CROSS: What changes have you witnessed in your time on the Court of Appeals?**

**RIVERA:** The biggest change of course is the transition to e-filing. Everything is filed electronically. Intra-court memos are sent through secure methods on the computer. We can conference with each other and the staff attorneys by e-mail. All research is done by computer and we hold oral arguments from other districts by the use of video conferencing.

**CROSS: You have announced your intention to retire. Why?**

**RIVERA:** I want to continue working but I want a little more control over my life. Wiley and I have a number of young grandchildren; none live in El Paso. A grandparents place in a child's life is very important when they are young. I want to be there for them when I can make a difference.

**CROSS: Any thoughts on what you will do as far as legal work?**

**RIVERA:** I've had a full career, prosecutor, associate judge in family law, trial judge, and appellate justice. I have always had an interest in ADR because of the focus on reaching consensus or settlement so I will eventually actively pursue that. At the time I shared my decision to retire with the court, I received the

nomination to serve as a member of the Council of the ADR Section of the State Bar. I'm very excited about the prospects for the future.

**CROSS: Your family?**

**RIVERA:** Wiley and I have six children, all adults ranging in ages from 26 to 41. They

are all successful in their chosen career paths and the youngest child recently graduated from the University of Texas School of Law.

**CROSS: Any final words to the lawyers?**

**RIVERA:** Our profession is by its nature a very adversarial one and that is why over

time we have developed rules that govern our procedure, trial, evidence, ethical conduct and discipline among others. It's important first of all to study the rules and then to follow them.

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

## El Paso Lawyers Challenge Students at La Fe Preparatory Charter School Tournament

BY CLINTON F. CROSS

The El Paso Bar Association has for many years supported the development of an organized chess program for children who live in our community. First Move.org, a premier agency seeking to create a chess-based school driven curriculum for 2nd and 3rd graders, highlights the following:

1. Promotes greater Intellectual self-esteem and positive social behavior;
2. Cultivates individual and team sportsmanship;
3. Prepares students for success while in school, via the workplace and throughout their lives;
4. Provides a solid academic and social advantage for all children in each sub-group; and
5. Enhances logical deductive reasoning to solve problems typically found in STEM (Science, Technology, Engineering and Math) constructs where students learn how to analyze, plan and execute using these critical thinking skills.<sup>1</sup>

The game has become especially important to local El Pasoans as the issue of age, gender, ethnic and socio-economic status, or whether one speaks Spanish or English become irrelevant factors. All can participate and learn to win and to also win in life! At La Fe Preparatory School (and other schools in the Segundo Barrio), many students are developing the skills they need to succeed in life. In conjunction with the traditional educational curriculum, chess helps give children additional tools that will help them transcend their present life situation. Chess challenges kids to compete, to focus, concentrate, and problem solve. It also cultivates a "smart brand" association. Kids who play



chess believe they are more capable, "smarter," than other kids. Because they believe they can succeed, they are more likely to do so.

The local regional chess movement in El Paso's schools is increasing. On June 7, 2014, La Fe Preparatory School, under the enthusiastic leadership of Debra C. Garcia, tournament co-coordinator, conducted the first certified U.S. Chess Federation tournament for all elementary, middle and high school students within the El Paso, Las Cruces and Alamogordo areas. The name of the tournament, first of its type and size, was referred to as La Fe Border Barrio Open Chess Tournament. Five lawyers, Omar Carmona, Clinton Cross, Paul Kubinski, and Kyle Myers, and one lawyer in waiting, Rogelio Marquez (bar exam results pending) attended the tournament and they played the



student winners and those most interested in participating. In many situations, the attorney shared with his opponent something about himself and his work as the game progressed. When a child sometimes won (it did not happen all the time!), the defeated attorney gave the child a medal that stated, "I Beat a Lawyer." In addition to supporting a good cause, the attorneys as well as the children had fun.

Much can be gained in our community by encouraging children to participate and succeed in chess. The skills and self esteem that the children acquire playing chess contribute to their success in school (it has been proven!) and ultimately to their success in life itself.

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

1. FirstMove.org, 6/14/2014, 8/16/2014, website: <http://1stmove.org/about/>.



# Poemas ante el Catafalco: Grief and Renewal

## by Donna J. Snyder, Chimbarazu Press 2014

BY MICHAEL R. WYATT

Not many of us want to talk of death and grieving. Yet some are driven to do so. Perhaps by turn of mind, perhaps of circumstance. Donna J. Snyder comes to it honestly, and faces the task with her shoulders



drawn. A performance poet of stature and renown, Donna has just published her second book of poetry, *Poemas ante el Catafalco: Grief and Renewal*, due out in mid-September 2014. Her literary work includes publication in a multitude of poetry and academic 'zines, as well as editorship of numerous works, including a stint as assistant editor and poetry curator of this Journal.

A catafalco is a funeral bier, or a coffin or sepulcher or tomb. It is a place where we lay the dead, in honor and remembrance. It is a place where we might pray to god for the soul of the departed, or we might tell lies or read poetry to the spirits, to remember them in their lives, and to heal our own wounded soul. Donna has chosen the poetic route. In *Poemas ante el Catafalco*, Donna recites her powerful poetic lines at the foot of the funeral bier of her dearly departed husband, Mario Colin; her companion of many years, Jesus Guzman; her late father, Roy K. Snyder; and a lost colleague in the poetic arts, Raquel Najera Duran. Through her poems, she travels the dark and lonesome path from despair and grief, through remembrance and celebration, and on to renewal, of energy, of life, of the capacity to love and be loved.

And she wastes no time getting to the point. The first words written, "Death arrives," are found in an epigraph by Pablo Neruda, a muse and traveling companion. And the first poem arrives after death. "No one I know here with me" recounts the emptiness of a house, a home, a soul, a bed, life itself, after the death of a partner. The writer is at a loss for words: "In the dark, all the papers look blank, shadow against shadow. . ." Yet the words come, and they come in well-crafted structure and imagery:

Screams silent in the alienated night recede

unheard,  
tears stifled in the tactile geometry of textiles.

In the second poem, "The cruelest month," Donna remembers Jesus Guzman, her partner and lover who died in a tragic fall from the roof of their shared home, in April 2001. Although the poem draws tears, Donna stares death down, and forces a bitter laugh: "It was the sudden stop that killed him."

Throughout her poetry, Donna speaks in the language of her home, this desert crossroads of trade and culture, and that language she names Spanglish. Imagining Jesus's last breath, stolen by the cruel April wind:

Undoubtedly ¡Ay cabrón! frozen on his lips  
when he hit the ground,  
a tiny blood red rose quivering alone in the  
wind-blasted dirt.

And describing his powerful will to live:

Jesús was killed on Easter Monday and  
Tuesday and Wednesday.

His heart tan fuerte it took three times to  
kill him

In "Lamentation," Donna gracefully conflates her Jesus with the one of mythology, and creates a prayer-poem at once universal to our world and intensely personal to hers:

I am the stigmata in Jesus's hands & feet,  
purple flesh a cup for putrefaction.

Her lament for Mario Colin, "The day the artist died," is equally as powerful and graceful as her remembrance of Jesus Guzman. Donna conjures drummers in the park, calling out the dancers, whose dance is the lamentation.

Donna's language can be as graceful as the aroma of a desert rain, or it can take a turn for the absurd, the jarring contradiction of emotion and reason that is a hallmark of blind grief. Her ability to intertwine grace and absurdity shows a complex and modern mind at work:

Despair makes for strange bed fellows.



Lie down with dogs, rise up with fleas.  
(From "No one I know here with me")

All the Diegos dead,  
chrysanthemums sprouting from my head.  
(From "My two Diegos")

Although most of Donna's grieving in *Poemas* is intensely personal, she also shares in the general shocks and tragedies of our time, such as the tsunami-induced nuclear meltdown at Fukushima, and the U.S. Marine killing of the teenage goatherder, Esequiel Hernandez, Jr., outside his family home in Redford, Texas.

At the end, just as Pablo Neruda signaled impending death, he points to a necessary and life-affirming turn back toward the sun. In "Comfort," the first poem of the chapter, *Renewal*, Donna neatly turns the page:

Your absence a longing within my throat,  
I walk beside the sweet water,  
silent joy etched upon the signpost to  
freedom.

Thus, having moved from absence and longing, the bereaved lover turns toward freedom and hope, and the promise of love.

Perhaps the act of talking of death and grieving is a necessary step, like tying your boots or cinching your belt, the basic first step required before one can turn from the path of despair onto one of renewal, life, love. If so, *Poemas ante el Catafalco* should be our travelers guidebook, one we turn to when the trail seems lost.

MICHAEL R. WYATT is an Assistant County Attorney assigned to the Civil Unit

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Book release and signing for Donna Snyder's book  
*Poemas ante el Catafalco: Grief and Renewal* (New York: Chimbarazu Press 2014)

Musical performance by  
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POEMAS ANTE EL CATAFALCO:  
GRIEF AND RENEWAL

Donna J. Snyder

Thursday, September 18, 2014  
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## Judges: The Ever-Vigilant Sentinels of the People

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

When all else fails, people often resort to the courts in their search for that sometimes elusive Holy Grail we call Justice. It is in the realm of the judicial system, therefore, that we find judges, those individuals responsible for serving as guardians of our system of justice.

"The judge is a pillar of our entire justice system and the public expects the highest and irreproachable conduct from anyone performing a judicial function. Judges must endeavor for the utmost standards of integrity in both their professional and personal lives. They should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny. Judges should be fair and open-minded, devoid of any kind of political fervor."<sup>1</sup>

There exists a viable and durable tradition of judges known for their fervor in promoting the kind of justice that can only come from a well qualified judiciary. In El Paso, the judiciary is a body of vigilant group of men and women that know all too well that, as reportedly stated by Socrates, "...a judge must listen courteously, answer wisely, consider soberly and decide impartially." These judges possess virtues include the qualities of "patience, wisdom, courage, firmness, alertness, incorruptibility, sympathy, responsibility, trustworthiness, and insight."<sup>2</sup>

Some judges, unfortunately, bring injustice into their judicial realm of oversight. They do so through "prejudice, hatred, fear and ignorance."<sup>3</sup>

It goes without saying that judges should be transparent in their personal and professional undertakings. They should not play favorites with lawyers, nor failing to keep abreast of the law and judicial ethics, nor be moody or volatile. Negative behaviors reduce the public trust in the judicial system. Fortunately, there are many judges that live by the highest standards of judicial conduct. Judges who are fail to adhere to good conduct can change, and recommitting themselves to becoming the good and honest judges they were meant to be...faithful stewards of the Constitution and the values of American jurisprudence. We are all "works in progress."

1. Academic Journal of Interdisciplinary Studies, Vol. 3, No. 1 (March 2014). "The Desired Qualities of a Judge," by Md. Manjur Hossain, Mohammad Hasan Murad, and Md. Salahuddin Mahmud, 97.

2. *Id.* 100.

3. *Id.* 99.

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

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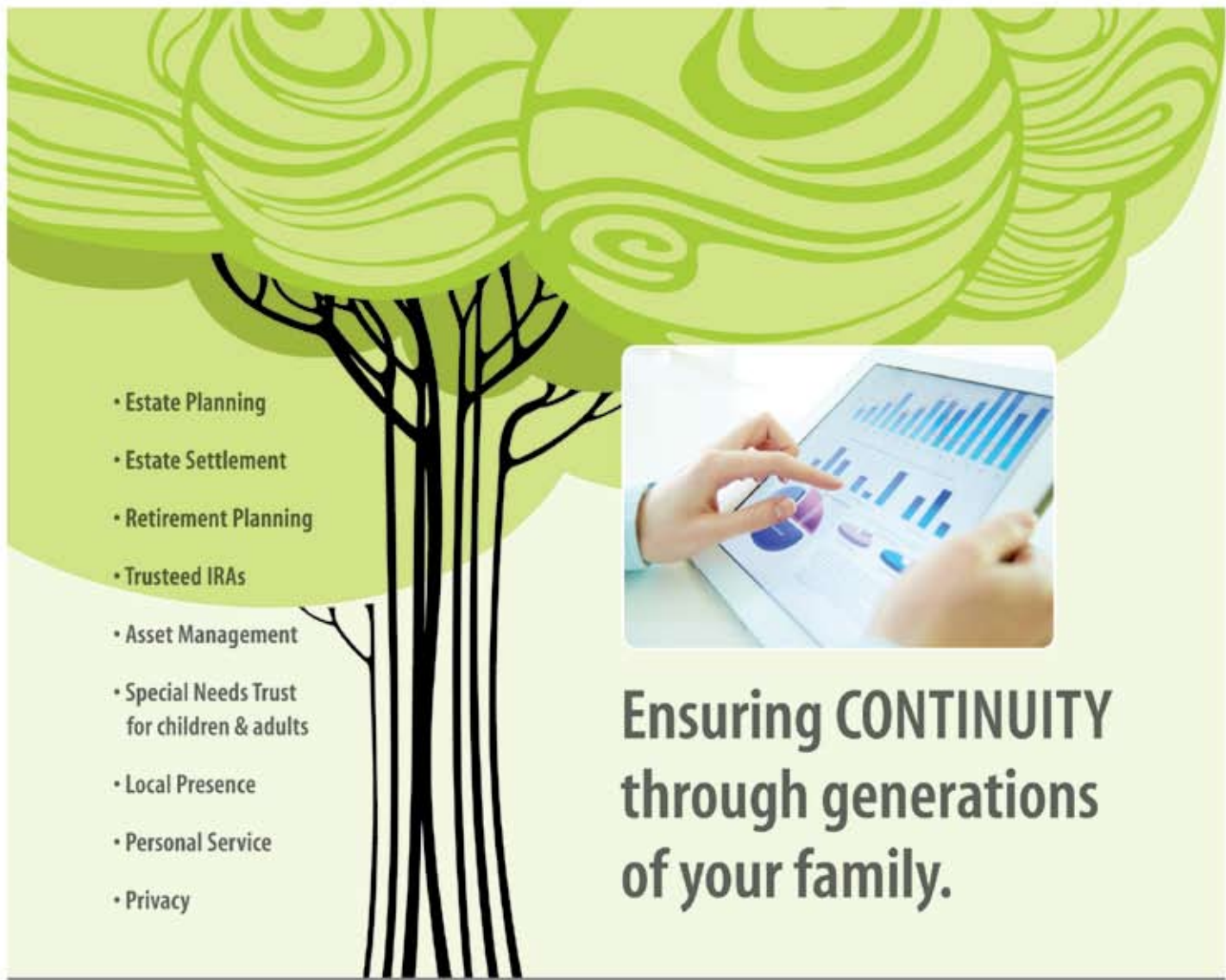
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## LADY JUSTICE RETURNS TO THE EL PASO COUNTY COURTHOUSE

Lady Justice was returned to the El Paso County Courthouse on August 25, 2014. The statute first came to El Paso in 1886, soon after the arrival of the railroad at Pass of the North. Two hundred and fifty statutes of like kind were made at the time, but now only a few remain.

Our Lady Justice lost her home when the first courthouse was demolished. When in 2007 Chief Justice Wellington Chew first saw the statue at Ascarate Park, her gown was gone and one of her feet was nearly severed.

Responding to a request from your El Paso Bar Association, the El Paso County Commissioners Court approved a request in 2007 to fund restoration of Lady Justice



and place it in the El Paso County courthouse.

Chief Justice Chew spearheaded the move to return Lady Justice to the courthouse but Rosemary Neill, Gary Williams of the El Paso Community Foundation, and many others also worked to make this project a reality for all of us.

