



Patrick Gubaldi
2016

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An Update of Events and Information

EL PASO BAR JOURNAL

September 2017

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Linda Rivas

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Nancy Gallego

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Miranda III, Carlos Maldonado

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.



It is my honor and great privilege to serve as President of the El Paso Bar Association this year. I look forward to working with you and the leadership of the Association to have a great year. I want to thank our Immediate Past President, Chris Antcliff, for providing our Bar the utmost in professional leadership and direction this past year. We elected an outstanding group of dedicated officers board members for 2017-2018. We formed our agenda at our July retreat and are hard at work to bring you a very strong program this coming year.

We are celebrating our 120th anniversary. On June 7, 1897, several members of the legal profession met in a district courtroom to establish a permanent bar association. Those members passed a resolution which established the bar's dues, officers and its continued existence. That organization exists today, 120 years later, as the El Paso Bar Association. We will celebrate our anniversary as part of our Law Day activities in May.

Our program begins with our monthly luncheon at noon on September 12th at the El Paso Club. We are very excited to have the newly-elected Mayor of El Paso, the Honorable Dee Margo, as our guest speaker. I expect a big turnout so please RSVP Nancy Gallego at your first opportunity.

This year the Association returns to Las Vegas for its 22nd Annual Trial Practice Seminar, to be held February 8 – 10, 2018 at the beautiful Bellagio Hotel. We have negotiated very reasonable room rates for a resort of this caliber – just \$139 - \$169 per night, plus tax. Book early as we expect the block to fill quickly. This year our Seminar features a two-track program, with the second track focusing on criminal law practice.

Our award – winning Access to Justice Clinic, chaired this year by Laura Enriquez, will be held on a Saturday this Fall. The Lawyers for Patriots Clinic, led by the always - outstanding efforts of Judge Angie Juarez Barill and her staff, together with Monica Perez and Noemi Lopez, will be held on a Saturday in the Fall and in the Spring. Dates and locations for these events will be provided soon. I want to encourage you to attend these events. Provide just a few hours of *pro bono* service to your community and you will not be disappointed. You will be rewarded with many a “thank you” and “God bless you” for your service. There is no greater reward for your time.

Our goals for the year include forming a volunteer legal clinic for veterans to be held once a month at a fixed day, time and location, with a Task Force of volunteer lawyers, who are eager to volunteer about three hours of their time on a rotating basis every other month. If you are interested in joining the Task Force, please contact Phil Mullin, Jennifer Vandenbosch, or Dan Hernandez.

The Bar Journal is moving to paperless distribution starting this year. The cost for print editions is among the highest expense items in our budget. If you wish to continue to receive a print edition, just fill out the back page of this edition and return it to Nancy Gallego before October 15th. Otherwise, you will receive an email link to the next online edition. The award – winning Bar Journal will continue its mission to provide high-quality, informative and entertaining articles of interest to El Paso area lawyers. Over time, we plan to offer exclusive content in the paperless edition.

If you are not a member of the Association, I am reaching out to you to join. Dues are very reasonable at \$130.00 per year for regular members, only \$65 per year for government attorneys, and just \$35.00 per year if you are licensed to practice for less than two years. If you take advantage of the programs and luncheons that offer CLE credits, and participate in the other activities, you will be rewarded far in the excess of the dues paid. To our returning members, you are the backbone of the Association and we look forward to an exciting year ahead. The Association is only as strong as its membership and I ask you to join with your officers and push to increase membership and participation this year.

With every good wish, I am
Very truly yours,

Mark D. Dore

PRESIDENT El Paso Bar Association

EL PASO BAR ASSOCIATION
SEPTEMBER BAR LUNCHEON

Tuesday, September 12, 2017

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

Guest Speaker will be the Honorable
 Dee Margo, Mayor, City of El Paso

Door prizes will be given out

Please make your reservations by Monday,
 September 11, 2017 at 1:00 p.m. at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

EL PASO BAR ASSOCIATION
OCTOBER BAR LUNCHEON

Tuesday, October 10, 2017

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

Guest Speaker
 to be announced

Door prizes will be given out

Please make your reservations by Monday, October
 9, 2017 at 1:00 p.m. at nancy@elpasobar.com or
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EPBA ANNUAL HOLIDAY PARTY

will be on Thursday, December 7, 2017
 at the El Paso Community Foundation Room,
 details will be on our website.

120th Anniversary Composite Photo

The El Paso Bar Association is celebrating its 120th
 Anniversary and as part of our celebration we will be doing a
 Composite Photo Shoot for all our members.

The Photo Shoot is scheduled for October 10-19, 2017
 at the Holiday Inn Express. RCL Portraits will be taking
 the photographs. They will be sending out letters that
 will give you the time and date of your photo shoot.

If you have any questions, please contact Nancy at the El Paso Bar Association,
ngallego.epba@sbcglobal.net



El Paso Young Lawyers Association win community service award

The El Paso Young Lawyers Association may operate in a completely different time zone than other young lawyer affiliates in the state. But geographic distance has not kept the State Bar's public service arm from noticing all the hard work that EPYLA has put into serving its members, the profession, and the borderland community.

At the annual State Bar of Texas Local Bar Leaders Convention in Houston, the Texas Young Lawyers Association awarded EPYLA second place for overall comprehensive programming among small cities in Texas. (Although El Paso has a population of more than 650,000 people, TYLA classifies El Paso in the small city category, with the large cities being Austin, Dallas, San Antonio, and Houston). The Corpus Christi Young Lawyers Association edged out EPYLA for first place. The Hidalgo County Young Lawyers Association took third place in the comprehensive programming category.

The TYLA recognition is the first statewide award EPYLA has received in more than four years. Outgoing EPYLA President Kirk Cooper, a staff attorney at the Eighth Court of Appeals, credits the organization's success this year to the outstanding leadership shown by project chairs and volunteers, noting that EPYLA's board "is very much a working board."

"This is the first award we've won in a long time, and it's all thanks to everyone on the board this year who worked so hard to make this city better, to serve the needy, and to keep our profession professional," Cooper wrote in a Facebook post from the conference. "Thanks again for giving me the opportunity to serve."

Among the projects that EPYLA undertook during the 2016-2017 fiscal year were:

The Annual Attorney Basketball Tournament, held in the Cathedral High School gym and organized by this year's incoming EPYLA President Monica Perez of Mounce, Green, Myers, Paxson, Safi & Galatzan. The basketball tournament is a fundraiser that defrays EPYLA's operating costs and provides attorneys and others with the opportunity to work off stress through athletics in a fun but unsurprisingly competitive environment. (Strict amateur-only rules have been adopted in recent years after an unnamed team recruited and attempted to use a former



college basketball star in its finals line-up.)

The Annual Columbus Day Golf Tournament, held at Butterfield Trail Golf Course and organized by tournament director Garrett Yancey of Mounce, Green, Myers, Paxson, Safi & Galatzan. The Golf Tournament is EPYLA's biggest fundraiser ever year. (Garrett is already at work organizing this year's tournament at the Coronado Country Club.)

The Vote America Project, led by past EPYLA Vice President and current TYLA Vice President Raymond Baeza of Farmer's Insurance. Per the TYLA web site, the Vote America Project is a video program that "educates students about the heroic efforts made for equality and democracy; the struggle of the civil rights era [and the] passage of the 1965 Voting Rights Act; and the 15th, 19th, and 26th amendments to the U.S. Constitution[.]" Vice President Baeza and other volunteers presented the Vote America video to several government classes at Montwood High School and passed out voter registration cards.

The Christmas of Hope Project, led by assistant county attorney Michael Adrian Gomez. Thanks to Michael's hard work and the generosity of local law firms, EPYLA was able to raise \$3,000 and give gifts

and financial assistance to ten children being treated for serious illnesses at El Paso Children's Hospital, as well as those children's families. Assistant city attorney Lauren Ferris' brother Christopher sat in as Santa Claus.

The El Paso-Area High School Mock Trial Tournament, led by assistant district attorney Nicole Anchondo and family law attorney Erica Rios in partnership with the Council of Judges and the 34th District Attorney's Office.

Serving as judges for the **University of Texas at El Paso's Law School Preparation Institute High School Moot Court Tournament**.

Outgoing President Cooper, outgoing Vice President Baeza, and new EPYLA board member Jordan Scruggs of the Scruggs Law Firm accepted the award in Houston on EPYLA's behalf.

EPYLA is El Paso's second largest local bar association behind the El Paso Bar Association, and one of the most active legal organizations in the community. EPYLA's members represent diverse practice areas, and the organization's 2016-2017 board consisted of prosecutors, criminal defense attorneys, civil practitioners, government attorneys, a nonprofit executive, and a major in the United States Army Judge Advocate General's Corps.

EPYLA's new officers and board of directors for the 2017-2018 fiscal year took office on July 1, 2017. As a result of EPLYLA's banner year this year, interest in board service has surged; EPLYLA has gone from having a 13-member board to a 21-member board. Monica Perez

will serve as this year's president; Linda Rivas, executive director and managing attorney of the Las Americas Immigrant Advocacy Center was named president-elect. She will take office July 1, 2018.

For more information on EPLYLA's upcoming

events or to join and get involved, like the "El Paso Young Lawyers Association" Facebook page or contact any board member.

(As for the agenda this year? Well, all that can be said is—we're coming for you, Corpus Christi.)

El Paso Youth Places First in Texas State Bar Competition

BY JANET MONTEROS

Rodrigo Estrada, a student at Fabens High School, placed first in Texas by winning the highly competitive Texas Citizen Bee and also made contest history by not only placing 1st in the Texas Citizen Bee but also by winning the Civic Conversation Award. Rodrigo received a near perfect score and received a \$1,500 scholarship from the State Bar of Texas.

The Texas Citizen Bee Finals is a statewide civics education competition funded by the Hatton W. Sumners Foundation. The event, organized by the State Bar of Texas, offers teachers and high school students an exciting way to study America's heritage. Students use an online study guide program created by the Bill of Rights Institute that covers the U.S. Constitution and other important documents, people, issues, civic values, and skills. The winning student



from each regional competition competes in the state competition, held at the Texas Law Center and Texas State Capitol, judged by attorneys and political science professor. El Paso's Rodrigo Estrada placed first!

It is clear that Rodrigo Estrada has a stellar

and promising future ahead of him, graduating as Valedictorian with a GPA of 107.59 all the while serving in a variety of leadership positions including Class President, Debate Team Captain, Science Team Captain, Head Drum Major, and History Club President. He became acquainted with his mentor, Danny Razo, our El Paso Bar Association board member, while serving as a student attorney in the Socorro Municipal Teen Court. Rodrigo Estrada will be attending the University of Chicago as 1 of 80 full-ride QuestBridge Scholarship recipients and plans on pursuing a double major in economics and political science. El Paso can be certain that it will hear more from Rodrigo Estrada in the near future!

JANET MONTEROS is a government attorney practicing in El Paso.

EL PASO BAR ASSOCIATION NOVEMBER BAR LUNCHEON

Tuesday, November 14, 2017

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

This will be our
annual salute to veterans

Door prizes will be given out

Please make your reservations by Monday,
November 13, 2017 at 1:00 p.m. at nancy@elpasobar.com
or ngallego.epba@sbcglobal.net

EL PASO BAR ASSOCIATION DECEMBER BAR LUNCHEON

Tuesday, December 12, 2017

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

This is our annual salute
to our 50 year attorneys

Guest Speaker will be Tom Vick,
President of the State Bar of Texas

Please make your reservations by Monday, December
11, 2017 at 1:00 p.m. at nancy@elpasobar.com or
ngallego.epba@sbcglobal.net

Local bar associations announce new executive board directors and officers

EL PASO BAR ASSOCIATION

500 E. San Antonio, Room 1204
El Paso, Texas 79901
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2019

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Judge Penny Hamilton
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Gabriel Perez
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2020

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2017-2018

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Kristin Kimmelman
Louis Lopez
Rifian Newaz
Randolph Ortega
Kamie Salome
Shane Wagman

**EL PASO PARALEGAL ASSOCIATION
2017 GENERAL MEMBERSHIP MEETINGS**

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

September 21, 2017

Speaker: Tiffany N. Joudi
Topic: To Be Determined

October 19, 2017

Speaker: Paralegal Day 1/2 Day Seminar - Co-Sponsor State Bar of Texas-Paralegal Division
Topic: visit El Paso Paralegal Association Website

November 16, 2017

Speaker: Marissa A. Hackert Topic: Your Client is in bankruptcy: Now What? Chapter 7 & 13 fundamentals for civil practitioners.

December 6, 2017

Attorney/Paralegal Luncheon Time: 12:00 p.m.
Location: To be announced, visit El Paso Paralegal Association Website for information on location, speaker and topic: www.elppa.org

SAVE THE DATE!!!!
22nd Annual Civil Trial Practice Seminar
February 8, 9 & 10, 2018



BELLAGIO HOTEL AND RESORT LAS VEGAS, NEVADA
Rates are \$139 for February 8, 2018 and \$169 for February 9 & 10, 2018
Once we have the schedule we will post it to our website.

EL PASO ASSOCIATION OF LEGAL PROFESSIONALS EVENTS CALENDAR

September Education Meeting

September 13, 2017 12:00 pm

Speaker: Jose Gurany

Topic: Equal Employment Opportunities Commission
American Disabilities Act

We will be collecting gently used, professional clothing for residents at the Sarah McNight Transitional Living Center and El Paso Homeless Vets Shelter.

September Business Meeting

September 27, 2017 12:00 pm

Location: Kemp Smith

October Education Meeting

October 11, 2017 12:00 pm

Speaker: Diana Valdez

Topic: TBA

We will be collecting treats, small toys for a trick-or-treat event at El Paso Children's Hospital.

Court Observance Week

Will focus on the 14th Amendment

October 9, 2017 to October 13, 2017

On October 14, 1974, President Gerald R. Ford signed a proclamation designating the second full week of October as NALS Court Observance Week.

This proclamation established the basis for a NALS tradition of recognizing the skill and dedication to the system we serve. NALS has continued this tradition over the years by establishing an annual theme which our states and chapters promote when hosting Court Observance Week events locally.

Today, 43 years after the proclamation was signed, NALS continues each year to recognize the second full week of October as Court Observance Week. NALS members have upheld the legacy established by this proclamation by sponsoring and participating in themed activities that promote understanding of courtroom procedures. The 2017 Court Observance Week theme, Fourteenth Amendment, is based on the American Bar Association's Law Day 2017 theme, in which NALS participated as an Alliance Partner (www.lawday.org).

Details about Court Observance Week will be posted on our website on a later date.

October Business Meeting

October 25, 2017 12:00 pm

Location: TBA

Our long awaited Legal Directory will be available for purchase soon!

If you have not yet, please send your pre-orders to EPALP.org@gmail.com or rachel@expressrecords.net

Retrospective: The El Paso Bar Association Turns 120

A brief look at where we've been and where we are now

BY KIRK COOPER

The El Paso Bar Association is marking its 120th birthday this year.

Although the bar association existed in various forms as a loose, informal gathering of attorneys practicing as far back as the Civil War era, the El Paso Bar Association was not formally incorporated until July 7, 1897. According to J. Morgan Broadus' book *The Legal Heritage of El Paso*, in the years leading up to the formal formation of the bar association, an average of 35 attorneys were practicing in El Paso County. All were white males mostly hailing from other parts of Texas and other Southern states.

The El Paso Bar Association was founded, in part, to ensure that lawyers seeking admission to practice in El Paso courts were actually qualified to do their jobs. Prior to the passage of the State Bar Act of 1939, lawyers were not required to be members of the State Bar of Texas in order to practice law. Instead, the Texas Bar Association—as it was originally known—was a voluntary association headquartered in Galveston that held little sway over legal practices 796 miles away in El Paso. In the absence of a formalized statewide bar association with licensing authority, individual judges throughout Texas decided for themselves who could practice in their courts on a case-by-case basis. At best, this meant administrative headaches for judges. At worst, this meant that the make-up of lawyers in a given area hinged not on who knew the law—but rather, who knew the judge.

Enter the El Paso Bar Association.

Beginning in 1868, as the number of lawyers practicing in El Paso surged with the advent of the railroad, the local judge in El Paso tasked three attorneys with vetting new lawyers and making recommendations as to who should be allowed to practice law. As lawyer William Coldwell recalled during his speech at the bar association's first banquet, in Reconstruction-era El Paso following the Civil War, "it was hard to find a judge, sheriff, and prosecutor all sober so a case could be tried." The Bar Committee, as it was then known, eventually was subsumed into the El Paso Bar Association at large.

In addition to examining lawyers, the El Paso Bar Association was initially known for its glitzy yearly galas attended by dignitaries

from both sides of the border and various parts of the United States. As the number of lawyers practicing in El Paso increased dramatically through 1920 and the State Bar of Texas took charge of licensing attorneys throughout the state in the 1940s, the mission of the El Paso Bar Association shifted. The local bar became a well-known civic organization that provided education for its members and support for the community, particularly during World War II. The Bar Association has also for many years invited guests from around the country to address members and provide them with continuing legal education. The Bar Association occasionally stood up to take anti-communist positions, and for a stretch of time, one of the Bar Association's top concerns was making sure its members' business wasn't undercut by the advent of quick Mexican divorces performed on American couples in Juarez. The Bar Association also created the Lawyer Referral Service, which allowed the general public to find attorneys during the times in which direct attorney advertising was illegal. The Lawyer Referral Service continues to this day.

Broadus' history of the Bar Association's early years shows that the local newspapers covered many bar events during the 1930s and 1940s, considering the Bar Association to be a vital part of El Paso's civil society. Indeed, many bar association officers and directors to this day have gone on to serve the community—for example, former El Paso mayor Ray Caballero was once president of the bar association.

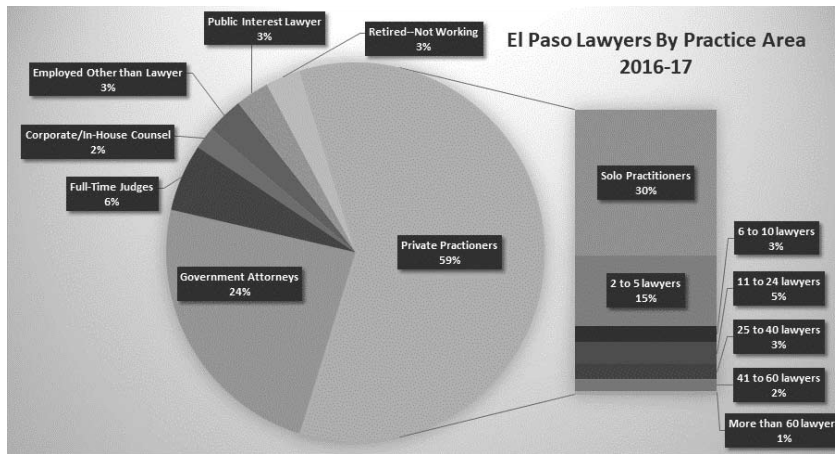
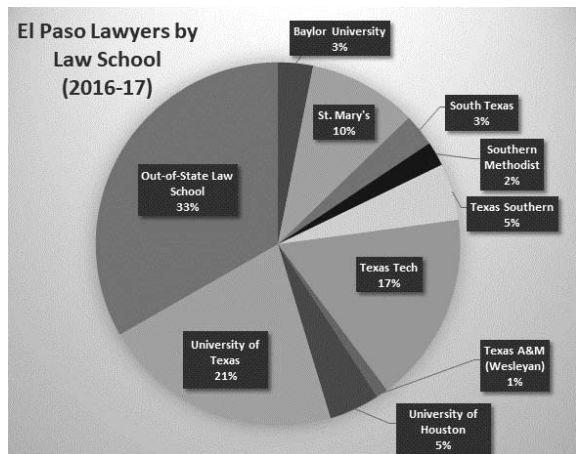
Still, the organization had its missteps throughout the years, and more than occasionally found itself—at least initially—on the wrong side of history. The sixties and seventies were a particularly tumultuous time for the El Paso Bar Association as the organization struggle to cope with social change. While Broadus' history lists Ethel S. Abbott as the first woman admitted to membership in the El Paso Bar Association in 1902, it would be another 62 years before the next woman, Wanda Elaine Creamer, was accepted as a member on October 13, 1964 (Creamer, who flew as a pilot with the Ninety-Nines aviation club, was also El Paso's first female prosecutor).

That same year, the El Paso Bar Association faced the prospect of its first African-American

member. According to Judge Morris Galatza's *History of the El Paso Bar Association*, while the Bar's Membership Committee was usually in charge of deciding who could join the organization, the Bar's Board of Directors traditionally bypassed the committee and directly extended membership to JAG officers at Fort Bliss as a professional courtesy. However, minutes from the June 9, 1964, meeting show that when the Board learned that it was possible that one of the incoming JAG officers was black, the directors reconsidered their stance on automatic membership:

The following military applications for membership were approved: 1st Lt. Joseph F. Fackel, 1st Lt. Malcolm T. Lawn, Capt. J.D. Pruett, and 1st Lt. Thomas C. Bigley, Jr. The President [Schulyer B. Marshall] instructed the Secretary [Orba Lee Malone] to notify these officers of their being approved for membership, but prior to that, to ascertain whether any of them might be Negro. It was explained that the Association has never voted on a policy one way or another of admitting Negroes; that our By-Laws make the Board of Directors approval of military applicants final, and that should a Negro officer ever be involved that the Association as a whole should vote on the matter, not just the Board.

Nevertheless, the El Paso Bar Association had become more diverse, and the Bar was leading the charge on the access to justice front. Between 1981 and 1982, El Paso's was one of the first bar associations in the country to institute a mandatory pro bono program. All the judges of the local courts signed orders requiring any attorney practicing in their courts to either take on a certain number of pro bono hours. The program was widely acclaimed and nationally recognized; Justice Lewis Powell even mentioned it in a United States Supreme Court opinion. However, at the behest of a group of lawyers who objected to the practice, the Texas Attorney General eventually put an end to the mandatory pro bono program, stating that while the goal was laudable, the courts did not have the authority to compel compliance. Still, the pro bono spirit lives on through the El Paso Bar Association's current Lawyers for Patriot clinics, as well as through the efforts of Texas RioGrande Legal Aid, other nonprofit legal groups, and various projects put on by the smaller bar associations.



THE EL PASO BAR ASSOCIATION TODAY

The face of the El Paso Bar Association has changed greatly in the last 120 years. Even in the last ten years, the Bar has changed in composition. Statistics from the State Bar of Texas' Department of Research and Analysis prove it.

Who Are El Paso's Lawyers?

As of the State Bar's last census in 2016, there were 1,286 lawyers practicing in El Paso County.

In the last ten years, the total percentage of both women lawyers and Hispanic/Latino lawyers has increased. The El Paso Bar Association is more ethnically diverse than the Texas lawyer population as a whole.

Where Do El Paso Lawyers Work?

Most El Paso lawyers (59 percent) are in private practice, and most private practitioners are in solo practice—30 percent of all El Paso lawyers go it solo. Government lawyers make up 24 percent of El Paso's lawyer population. Five percent of El Paso lawyers are full-time judges. The remainder of lawyers in El Paso work in-house, in public interest capacities, in non-legal jobs, or are retired or otherwise unemployed.

Where Did El Paso Lawyers Go to Law School?

Two-thirds of El Paso lawyers (67 percent) attended law school in Texas. The top three law schools with alumni in El Paso are the University of Texas (27 percent), Texas Tech University (20 percent), and St. Mary's University (10 percent). Other law schools alumni represented in El Paso include Texas Southern University (5 percent), the University of Houston (5 percent), Baylor University (3 percent), South Texas College of Law (3

percent), Southern Methodist University (2 percent), and Texas A&M (1 percent). Thirty-three percent of El Paso lawyers went to law school out-of-state.

Challenges Ahead

However, as the El Paso Bar Association moves forward, two demographic challenges appear on the horizon.

First, the State Bar of Texas's 2016 statistical report shows there is a shortage of lawyers practicing in El Paso relative to the population at large. Although the raw number of lawyers has increased since the El Paso Bar Association was formed, the number of lawyers per capita has decreased dramatically in the last 120 years. In 1890, El Paso had an average of 35 lawyers practicing in an area with a population of about 10,000 people, meaning there was about one lawyer for every 285 people. In 2016, census estimates placed the City of El Paso's 2016 population at 683,080, but State Bar of Texas statistics for that same year show that only 1,286 lawyers practice in El Paso County. That means that currently, there is only about one lawyer for every 531 people.

Second, the number of lawyers approaching or passing the retirement age has increased steadily over the past ten years. In 2006, 16 percent of all lawyers in El Paso were over the age of 60; in 2016, 30 percent of lawyers—nearly one-third of the bar—are over the age of 60. The median age of the typical El Paso lawyer has risen from 48 to 51. And while lawyers tend to practice their profession longer than people in other jobs, the number of new lawyers coming to El Paso may not be enough to cover the spread as older lawyers begin to leave the workforce. Between 2006 and 2016, El Paso gained 169 lawyers. That's fewer than the 246 attorneys in El Paso currently over the age of 65 that are eligible to retire.

CONCLUSION

The El Paso Bar Association has been a fixture of the community for more than a century. El Paso's lawyers have weathered many storms and risen to meet the demands of a changing world. Though the particulars of the practice of law are in flux, and though the bar faces demographic challenges ahead, if the past 120 years are any indication, the El Paso Bar Association will endure.

KIRK COOPER is the senior staff attorney to Justice Yvonne Rodriguez at the Texas Eighth Court of Appeals. He is editor-in-chief of the El Paso Bar Journal.

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Local Color: El Paso prosecutor makes mark on West Texas art scene

BY KIRK COOPER

By day, assistant district attorney Patrick Gabaldon prosecutes criminal cases, mostly in narcotics. He is also one of the prosecutors that District Attorney Jaime Esparza has assigned to take care of the felony cases “down district” in small towns like Van Horn and Sierra Blanca. Patrick’s only been out of law school for five years, but like many trial lawyers, he’s already got his fair share of war stories. He recounts to me the general details of an escape case he recently prosecuted. The defendant was up on two charges. In the end, he says, both sides came away with something—the jury found the defendant guilty on one charge, and not guilty on another.

A split verdict in a country courtroom. Just another day.

But once justice has been doled out and night falls, Patrick the prosecutor sheds his suit and tie—and he paints. He tells me that there may



be a correlation between his life as an attorney and his paintings.

“I do find that when I’m maybe a little stressed out, painting helps with coping.”

There’s nothing unusual about an attorney having a hobby. After all, the law is a demand-

ing, high-conflict profession with a notoriously high rate of depression and anxiety. Sometimes the only way to stay sane as a lawyer is to be able to blow off some steam. Some people run marathons. Some people play a musical instrument loudly at 3 a.m. to the annoyance of their

neighbors. Patrick paints.

But Patrick isn't just another attorney who dabbles in art as a creative escape from the stresses of life in the courtroom. Patrick Gabaldon is, by any definition of the word, a "real" artist. You can buy prints of his work at Chuco Relic, the El Paso-themed curio shop in the trendy Montecillo shopping center. His paintings hang at Legal Aid's art gallery, at the Ode Brewery, even the El Paso Chihuahuas' Stadium. There are rumors and murmurs that his work may end up in other civic buildings like the county courthouse or the airport. And when outgoing mayor Oscar Leeser needed a gift to give to city councilmembers as a "thank you," he chose to give them signed copies of a painting Patrick did.

Patrick is one of a burgeoning cadre of local artists making their mark on this city's cultural fabric and turning El Paso into a place that puts Marfa's storied art scene to shame. As he and I sit to talk at a back booth at Monarch—the dark, funky, post-punk hipster dive bar wedged between I-10 and the cathedral—I tell him that I think everyone who read about Marfa in the New York Times and who wants to see good art should actually travel 300 miles west and come to El Paso instead. He nods.

"Don't get me wrong," he says. "Marfa's cool. I get it. You've got good art, and you've got Big Bend out there. But in terms of unique, high-quality visionary art, you can't beat El Paso. Go Downtown. You'll see work that is amazing and different. I cannot stop bragging on how lucky we are to have so many unique and hyper-talented artists. A lot of them are overlooked, but I feel like the time is coming for more acceptance and celebration for more recognition for our art scene."

Like many artists, Patrick first discovered the extent of his talent while holding a glass of wine in his hand. Unlike many artists, Patrick had this revelation strike while sitting in a group art drink-and-paint date night with his girlfriend.

The evening started simply enough. The instructor had a picture that everyone in the class had to paint. As the instructor walked everyone through the process, Patrick—whose art experience consisted largely only of doodles in law school book margins—noticed that his version of the picture didn't turn out half bad.

He hung the piece up in his workspace. Soon, other prosecutors noticed.

"One of my colleagues saw the picture and said, 'hey, could you paint one of those for

me?'" So I did. And that's kind of what got all this started."

Two things jump out at you about Patrick's art. The first is the style. While one of Patrick's early works involved an El Paso-adapted version of the classic impressionist painting *Starry Night*, Patrick's style is a little more contemporary. Think less Vincent Van Gogh and more Stan Lee from Marvel.

"I feel like people who were born in the 80s—people who are the same age as you and me—we were all kind of influenced by the same things: video games, comic books, animation, things like that. So my art is influenced a lot by comic book art." Patrick says. "I tend to use a lot of heavy dark lines to outline bright colors."

His works may have a comic book quality about them, but when it comes to the colors he chooses, Patrick's paintings straddle the line between hyperreal and surreal. One of his earliest works is a series of four pieces ostensibly focused on El Paso's Spanish adobe missions: the church in Socorro, the chapel in San Elizario, the humble temple in Clint. They're all there, all white, marked off with thick black lines. But the real story is in the sky. In one piece, the sky is deep blue. In one, it's blood red. Another piece has a green sky. Another has a purple sky. It's a recurring theme in his paintings—look up and see the different shades and shapes.

"I love color, and I love the desert. So much of our area is defined by brown rock and blue sky that sometimes we often forget those small splashes of color that really set the tone for the culture of the region. So I love the slight greens and the dusty blues in the cactuses, and the sunsets here are amazing. There's color everywhere."

While the brownness of the landscape makes all the other colors in the environment around him obvious, he admits that he might see things that others might insist aren't actually there—and that maybe, it's all just in his head. "When I say that, I've got family and friends that would say, you're crazy. It's all just a big dust bowl out here."

"El Paso is weird," Patrick tells me. "But I love living here so much."

That fierce defense of this weird city ties into the second thing that jumps out at you about Patrick's art: the subject matter. His works can certainly be appreciated by anyone with a love of desert landscapes or anyone with an eye toward vibrant colors or the eclectic quiriness that tends to find refuge in the Southwest. But Patrick is a native son of El Paso. He graduated from Montwood High School and UTEP before leaving to law school at St. Mary's.

The images will resonate with you in a special way if El Paso runs in your veins. If you grew up here, or if this place grew on you, you will understand Patrick Gabaldon's art in a different dimension.

Case in point: one of Patrick's most popular prints for sale at Chuco Relic is a depiction of the 2013 demolition of the ASARCO copper smelter's 829-foot-tall smokestack. It's an image burned in the minds of many El Pasoans. In the space of thirty seconds, almost a hundred years of history fell to Earth like a domino.

In Patrick's painting, the smokestack has already started falling over, but instead of soot and dirt, a cloud of hearts streams out of the top. It's a funny image that evokes a laugh. But as Patrick explains the meaning of the painting (the hearts came about because he was supposed to do a Valentine's Day show), the thing that makes the painting compelling becomes clear. Patrick puts into words what it is I didn't realize I liked about the painting: it symbolizes the conflicted relationship El Pasoans have with the smelter and the legacy it left behind.

"The image itself represents a lot. A lot of families used to live around the ASARCO plant, and a lot of people suffered from the pollution and the poisonous gases ASARCO created. So for many people, it falling down was welcome. It was not just a release, but it was a way to remember everybody who was negatively affected by the plant, to move past the suffering. But then again, a lot of people had an affinity for it. It was a city landmark. It gave people jobs. Everyone saw it. Everyone had memories associated with it. So the ASARCO plant represented a lot of things for a lot of different people."

In the end, Patrick attributes his success to his "why not?" attitude. It got him through law school ("I thought about going to law school, and I said to myself, 'why not?'"). It got him through the bar exam. It got him a job back home in El Paso. And it got him from a seat at an art night to the walls of the offices and homes of city leaders.

Patrick and other artists like him remind us that this city we call home is charming in its own unique way. El Paso has mountains. It has sunsets. It has flecks of unexpected color.

And among it all is a prosecutor with a paintbrush.

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YOUNG LAWYER SPOTLIGHT:

Linda Y. Rivas

BY KIRK COOPER

Are you from El Paso originally?

I was actually born in Mexico, but I've been here since I was four. My dad working in Pachuca, Hidalgo, so that's how I ended up being born there. I grew up in El Paso. I went to El Paso High. Then I went to UTEP. I studied psychology, and my minor was in legal reasoning. I was part of LSPI [UTEP's Law School Preparation Institute].

What made you want to go to law school?

I went to law school knowing I wanted to do immigration law, with the reason being that I saw how an immigration attorney helped an aunt and cousins of mine gain residency here. I just remember how much hope they placed in this one woman—they would always refer to her as “la abogada.” I was also very inspired by a political science class at UTEP. That, coupled with how encouraging the LSPI was to a person like me who does not come from a law background made law school accessible. I wanted to help people, and it felt like the only way I could really make an impact was through law.

You are currently the executive director and managing attorney at the Las Americas Immigrant Advocacy Center. Tell me a little bit about Las Americas.

Las Americas is a 30-year-old nonprofit organization that provides immigration legal services, with a mission to make these legal services accessible to all. We provide legal services at a nominal fee and pro bono services, particularly at the immigration detention center by providing free consultations to people who are detained and in need of legal services. We look into a case to see if we're able to take the case, provide legal advice, referrals, oftentimes we provide forms of project materials to help people fight their asylum cases.

What kind of cases do you work on?

Las Americas does asylum cases. That's actually the essence of our mission. We started as an asylum project mainly helping refugees from Central America, and now our services have expanded and we help people from all over the world. In years past, we've helped people from Bangladesh, Afghanistan, Sudan, Nigeria, the Ivory Coast, El Salvador, Mexico,



Colombia.

In addition to asylum we also do representation of victims under VAWA [the Violence Against Women Act] and U visa laws. We were also working with deferred action for childhood arrival (DACA). At this moment, the future of that program is uncertain, but when it started we helped 300 people obtain DACA benefits. We also do family petitions—spousal petitions, children petitions, parents. And we do citizenship.

You're not only the managing attorney, you're also the nonprofit's executive director. How do you balance the role of being an attorney with being an executive director?

That's a good question. I think the best part about wearing a number of hats in nonprofit is a little bit of balancing. Sometimes it's a break from the legal work to focus on development and administrative work and human resources, such as hiring and training volunteers, recruiting law interns to help with research projects—that's actually something really fulfilling. I love the part of my job that includes educating immersion groups that come to the border that want to learn about immigration and want to learn about what's going on. We educate interns and UTEP students, El Paso Community College students. Now we've even expanded our program to include high school students.

Sometimes that's a really nice break after having two individual hearings and two trials in one week to be able to focus on the education part. I like it. I find it to be an actual real balance to my own sanity to be able to do a

little bit of both things. It's also nice to have a little bit more control over some things when you don't really have control over the law and what your client may be eligible for.

Tell me a little about these immersion groups that come to the border, what do those involve?

Las Americas participates with different nonprofit agencies and churches that bring immersion groups here. They tend to be people from all over the world that have an interest in what's going on in the border. They want to learn about what's going on in El Paso, Texas, and Ciudad Juarez not from the media, but by actually coming to the border and seeing it. What they do is they'll spend a week on the border. They'll visit what we already refer to as the Wall, the border fence. They sometimes take a tour with Border Patrol themselves to get their perspective, and then they speak with the different agencies that help immigrants directly, where it be the migrant shelters such as Annunciation House, and also the legal service providers such as Las Americas and DMRS [Diocesan Migrant and Refugee Services]. We just let them know what asylum really looks like on the border, what family separation really looks like on the border, which we have seen more of. They also learn about trade and the way El Paso and Juarez's economies sustain each other. It's a great learning experience for them.

Do you have any interesting stories from your time at Las Americas? Do you have a case that sticks out in your mind as one of those “this is why I became a lawyer” moments?

Just the other day, I was helping a young mother do what's called a stay of removal. She lost her asylum case, which is not uncommon. She was seeking asylum from Mexico, and the judge denied her asylum, probably because so many of our Mexican asylum seekers won't necessarily fit in one of the five protected grounds that is necessary for asylum to be granted—being persecuted or having a well-founded fear of being persecuted on the basis of race, religion, nationality, membership in a particular social group, or political opinion.

The court systems are so bogged down, so

she actually didn't get her hearing until three years after her arrival. While she was here, she had a baby that was born with a severe cardiac problem. The baby needed a feeding tube and many, many heart surgeries. The mom is at a severe risk of deportation because she lost her case before we got involved—she did her case completely pro se because she did not have money for an attorney. And now her child, who is a citizen, is still in need of surgeries.

We agreed to take on the stay of removal for her. So what I'm doing is asking the Department of Homeland Security to let her stay for at least a year to see how the child's case, how the child's health condition will hopefully get better. An infant, you can only imagine, absolutely needs her mother to be there. The doctors had written letters, pleading to immigration officials to allow her to be present for the child's surgeries. So it's very motivating to do this kind of work.

You just have to remember that when you strip away the policies, when you strip away the political context of it, there's real human stories and they're so diverse. They're not just cases, they're not just numbers, and that's a really good example for me. It's just a reminder of what I do. It seems at this point that she will be here for the child's surgeries, and then after that, it's possible that once the treatment is over, the mother will not be eligible for a stay of removal

and she will have to leave. I may not agree with that, but we will be complying with the law the way it is now. But it's also motivating to remember that despite everything that's going on right now, there are policies that allow for DHS to act in a humane way.

What do you do when you're not being a lawyer? What's your non-lawyer life like?

First and foremost, I'm a mom. I have a six year old son, I try to be a very involved mom. I am a homeroom mother for my son's kindergarten class, which means I make cookies and treat bags. I'm a field trip chaperone. It's just being really present in his life through his classroom, his school, PTA stuff. He's a kindergartener so he's just starting but that is an essential balance that I need in my life, to dedicate myself to him. So having the flexibility is the really great part of being a lawyer and working in the sector where I work.

You're also the president-elect of the El Paso Young Lawyers Association, and you've served on our board for a while, since 2013. What made you want to get involved?

I really think that sometimes the nonprofit world and the immigration world doesn't always merge with the other part of our bar association such as our civil lawyers and criminal

lawyers, mostly because we're not practicing in the same courthouse. So I'm trying to bridge those gaps between nonprofit lawyers, immigration lawyers, civil and criminal lawyers, the county and the DA. And it's neat because the Young Lawyers gives me an opportunity to be connected to a lot of areas, a lot of practitioners in different areas of law. It reminds me of how diverse our legal community really is, which is exactly why I joined.

Any final thoughts?

I feel like El Paso is an incredible place to practice law. I feel very supported by our bar associations, in particular the Young Lawyers. We're a good tight-knit community, and I remind myself we're in this for the long haul. It's great to see our more senior attorneys who have known each other for years and be very connected. I think the future for us is bright. It's good to be with people who have invested their time and efforts to come back to El Paso and practice here. I'm really proud to be part of that group.

KIRK COOPER is the senior staff attorney to Justice Yvonne Rodriguez at the Texas Eighth Court of Appeals. He is editor-in-chief of the El Paso Bar Journal.

The Changing Face of Mediation

BY CHRIS ANTCLIFF

Over the last twenty-five years, as the costs of litigation and the time it takes a case to reach trial have increased exponentially, alternative dispute resolution in its various forms has taken a prominent seat at the table in an attempt to reign in some of those costs and to speed up the resolution of cases. Interestingly, like arbitration clauses, more and more contracts are including a mediation clause requiring the parties to participate in mediation as a prelude or perhaps as an alternative to litigation. More and more contracts are requiring both mediation and arbitration. Today, even as arbitration agreements are included, at an ever-increasing rate, in everything from employment agreements to real estate and personal property contracts, the primary form of alternative dispute resolution remains mediation.

As almost all attorneys and judges are aware, mediation is a goal-oriented process wherein an independent third-party neutral attempts to help

the parties fashion a solution that they can live with. The mediator is usually less focused on uncovering the truth and more intent on finding a solution. Obviously, this is very different from a trial where the judge and jury try to peer into the past and make a determination of right and wrong. Mediators, on the other hand, are concerned with "right and wrong" only as a tool to persuade one side or the other to change or modify their position.

Like all aspects of litigation, including arbitration, mediation has evolved over the last generation. Previously, mediators almost universally conducted joint opening sessions with the parties and their counsel present. Today, it is an incredibly rare occurrence for a mediator to conduct a joint session — particularly in a half-day session. Rather, the mediator usually conducts separate opening sessions with each of the parties and all participants then rely on the mediator to convey their specific positions, demands and

offers. This change seems to have occurred as a result of an increase in the antagonism already prevalent in our adversarial system. In mediation, the net result is that one party will likely offend the other and the mediator will spend a great deal of time repairing the damage created in an unnecessary joint opening session.

Reliance on the mediator for all communication between the parties and their counsel essentially means that the mediator must create an environment of trust within minutes of meeting each party. Doing so requires the active involvement of not only the mediator, but also each party's counsel. There are a number of practice tips helpful for an advocate preparing for mediation and following these simple tips will not only assist the mediator, but will also help ensure a productive and effective mediation.

Selection of the Mediator. One of the keys to a successful mediation is the selection of a mediator appropriate for the case. The simplest

and most effective way to choose a mediator is to determine the most significant obstacle to resolving the case and then selecting a mediator with specific skills targeted toward that obstacle. In the vast majority of cases, clients have to be persuaded that settlement is in their best interests – although, periodically it is the attorney who needs to be persuaded. If the case involves personal injury, medical malpractice, or contract claims, differing mediators might be chosen depending on their experience. Regardless of the area of the law involved, the mediator should have some understanding and expertise in that particular area.

Joint Sessions. As noted above, most modern mediations do not involve joint opening sessions. Part of the reason for this change is that more lawyers and mediators have come to recognize that neither side is listening to the arguments made in opening session – and no one is likely to change anyone else’s mind. Indeed, the opportunity to offend or antagonize the other side increases in joint sessions. Even when there is no joint opening session, lawyers still routinely treat mediations as mini-trials requiring a performance for the mediator and/or their client. In a short, half-day mediation, this tactic will not only waste time, it will likely irritate the mediator. A better course of action is to take direction from the mediator and adopt a less aggressive strategy. Because the opposing side is not in the room, there is no need for a performance or a necessity for the lawyer to practice a closing argument. Instead, give the mediator a concise presentation of the case including everything necessary for the mediator to make arguments on your behalf while he or she is in the other side’s room. Remember, it is difficult to provide the mediator what he or she needs to work the case if the lawyer has not done their homework – for example: speaking with witnesses, reviewing documents, and understanding the positives and negatives of the case. If the lawyer doesn’t understand their own case, it will be difficult to convince the mediator of the case’s strengths and/or value. Finally, don’t withhold information from the mediator because such a tactic risks killing the mediation. In other words, increase your credibility with the mediator by doing everything possible to persuade the mediator of the strengths of the case while acknowledging its weaknesses and, at the same time, trust the mediator to effectively communicate your position to the other side. Your strongest ally in any mediation – if you can make him or her your ally – is the mediator.

Adjusting Expectations. Many lawyers arrive at mediation without having spent any real

time discussing and analyzing their case, or the process of mediation, with their client. In the modern era where billboards advertising personal injury verdicts of hundreds of thousands, or perhaps even millions of dollars in favor of plaintiffs litter our highways, it is critical that a lawyer manage his or her client’s expectations because there is only so much mediators can do to help in this regard. When a client arrives at mediation with significantly elevated expectations, it can be very difficult, and sometimes impossible, to re-set those expectations in such a short period of time. The most successful mediations occur when, prior to the mediation, an attorney spends an hour or two analyzing the case for the client, providing the client with a comprehensive evaluation of the case, including potential outcomes and recoveries, and explaining the mediation process to the client. Good lawyers don’t start a trial without intense preparation. Why would anyone enter into mediation unprepared?

Patience. The next practice tip is easy to articulate, but hard to execute. Be patient. All parties must be patient during the course of mediation because every mediation is different – each has its own pace and process. Some parties need to vent. Others need to justify their actions. Others need to be “right.” Still others simply want to get to the point as quickly as possible. Indeed, many litigants need to “dance” before they get down to business. More often than not, things proceed slowly in the beginning as the mediator gets to know the parties and the case. Often, one party will feel that the mediator is spending too much time in the other room. Be patient. Clients must be counseled to be patient. Remember, while the mediator is in the other room, he or she is communicating not only your position, but is also explaining information about the judge or arbitrator, the trial process, the venue, the appellate process, the mediator’s opinions about the strengths and weaknesses of the case as it applies to that side, and any other information, within the bounds of confidentiality, that the mediator feels might persuade the party to ultimately reach an agreement. There will definitely come a time, different in every mediation, when the mediator will begin to move very quickly and will likely require larger moves from each side. When that happens, attorneys and their clients must be ready to keep pace rather than slowing down or moving in lesser increments. In other words, pay attention to the tempo of the mediation and be ready to act when the mediator increases the pace of the mediation.

Non-Monetary Issues. Next, if there are any non-monetary concessions required as part

of an agreement, they must be communicated to the mediator prior to the end of the mediation and preferably before an agreement is reached as to money. Such concessions include, but are obviously not limited to: (1) employee resignations; (2) non-compete agreements, (3) confidentiality and non-disparagement agreements; (4) tax withholding on a portion of the settlement funds; (5) liquidated damages clauses; (6) neutral references; and, (7) satisfaction of liens, subrogation interests, and the like. All such terms can be made a part of the mediated settlement agreement, but such information must be communicated to the mediator prior to any agreement being reached. Once that information has been communicated, lawyers must trust the mediator to raise and resolve those issues at the appropriate time. Failure to discuss such issues until after a monetary agreement has been reached will seriously change the value of the case and may well inhibit resolution of the case.

Risk Assessment. Lawyers should be prepared for the mediator to separate them from their client in order to speak directly with the attorney. Mediators will often explain to the parties that such a tactic is simply a part of the mediation prior to any such separation. Separation of the lawyer from his or her client allows the mediator to speak candidly with the lawyer and vice versa – particularly when the mediator and the attorney’s evaluation of liability and/or value are not in agreement. Effective mediation requires that the lawyer and the mediator be on the same page with the client, even when the mediator and the lawyer disagree. Those differing opinions, properly focused, will likely help the client understand the risks of a trial as well as the strengths and weaknesses of their case. In essence, one of the things that the mediator is actually doing is providing an independent risk assessment to the parties.

Early Mediation. As noted earlier, more and more contracts are requiring mediation prior to the filing of a lawsuit or prior to arbitration, and there can be significant value to an early mediation of a case. Such a strategy usually works only when both lawyers understand their case and when liability is perhaps more clear. Early mediation cuts expenses and time and can reduce exposure. It has the advantage of resolving cases without protracted discovery and its attendant disputes. However, when attorneys and/or their clients are not fully up to speed on the nuances of their case or when they have not at least exchanged written discovery, it is less likely that the case will settle at an early mediation.

Make a Business Decision. There always comes a time in mediation where one party (or both) or one attorney (or both) will get emotional, frustrated, or even angry. Mediators almost universally allow parties (and sometimes their lawyers) time to vent about the case. Parties usually believe that they are “right” and the other side is wrong. Prior to the mediation, events may have evolved to a point where neither side is willing to treat the other with any degree of respect. Everyone involved must understand that it takes time for people to change their minds – with the help of the mediator – and that they will have to step back from the situation and make a more informed, less emotional decision. Once everyone is able to work past their anger, it will be time to help the parties realize that not only can they reach an agreement, but that an agreement that satisfies some of their interests is better than not reaching an agreement at all.

Be Creative. Getting the parties to the table is a solid first step. But, getting them to reach agreement requires problem solving and that often involves creativity. It is not easy to persuade someone that something is in their best interest when they are making emotional decisions. The best mediators listen, do not reject any ideas no matter how farfetched, and do not criticize the parties, attorneys, or any ideas. Listen, listen, and listen some more. And then think outside the box. Good ideas often occur late in the

process after people feel like they have run out of ideas. Thomas Edison once said “[w]hen you have exhausted all possibilities, remember this: you haven’t.”

Agree on Something. Many people, including lawyers, want to talk to the mediator about everything in dispute as soon as the mediation commences. Doing so, particularly in front of their client, will make everyone feel that the problems are overwhelming and insurmountable. Instead, it is better to focus on one key issue, usually money, and leave the other issues until later in the mediation. When that happens, the parties will begin to believe that they’re making progress and that an agreement is possible. If the parties can find something to agree on, they become invested in the mediation and other issues will often begin to fall like dominoes. At the same time, don’t wait until the last minute to bring up issues that will stall or stop the mediation. Once the parties have reached an agreement on something, pay attention to the pace of the mediation as it will increase very quickly.

Mediated Settlement Agreements. Never, never, never leave a mediation without everyone’s signature on a mediated settlement agreement if a resolution has been reached. A handshake is not enough. People often change their minds given the opportunity and time to do so. Once an agreement is reached, work

with the mediator to craft a mediated settlement agreement that evidences the will of the parties. Prior to the mediation, lawyers should consider those elements that they must have in the mediated settlement agreement as well as those terms which are less necessary and may be given up as concessions to the other side. It takes time to draft a good mediated settlement agreement, and time may be at a premium if the parties don’t reach an agreement until the very end of the mediation.

In conclusion, the use of mediation as a tool to resolve cases will only continue to increase. Why? Because it works and because parties and their counsel have a strong incentive to avoid the time and costs associated with litigation. The practical effect of that avoidance is that both mediation and arbitration will continue to expand, and may well reach a point where more mediations and arbitrations are filed with private mediators and arbitrators than cases filed at the courthouse. The end result of this change is that more cases will be resolved privately via arbitration and mediation rather than through the traditional methods using the courts. Whether the resolution of cases by private means is a step forward in our judicial process is yet to be seen.

CHRIS ANTCLIFF is the immediate past president of the El Paso Bar Association.

SENIOR LAWYER INTERVIEW

IN MEMORIAM: TOM DIAMOND

BY CLINTON CROSS

Longtime El Paso attorney Tom Diamond passed away recently at the age of 93. Tom was well-known both for his involvement in Democratic Party politics and for his legal work with the Ysleta Del Sur Pueblo tribe, also known as the Tiguas. As part of the Bar Association’s 120th anniversary history series, and in memory of Tom, the Journal has chosen to re-run portions of an interview with Clinton Cross that originally appeared in the February/March 2012 edition. –Eds.

CROSS: Tell me about your family and your childhood.

DIAMOND: I was born in Long Beach, California, March 28, 1923. My father was a

building contractor; my mother was his secretary. I also had a younger brother. During World War II, my father built a lot of military installations for the government.

CROSS: Where did you go to school?

DIAMOND: I went to Dorsey High, graduating in February of 1942. During this time, I worked for my father in construction. After I graduated, I went to UCLA as an engineering major. After one semester, I wanted to join the Marines, but I was too young and



I could not join unless my father agreed and he would not agree. He finally said he would let me go in the Army if I tried out for OCS. I made that commitment, dropped out of school, and enlisted in the army.

CROSS: So I guess we are going to talk about your military career before we get back to your education.

DIAMOND: I guess so, since I joined the Army and cut my education short.

CROSS: Where did you serve?

DIAMOND: I went to basic training at Camp McQuade in California. I tried out for OCS and was accepted. I went to Fortress Monroe in Virginia, which was an artillery base. It was called a fortress because it had a moat around it. After I graduated, I went to radar school. Then the Army sent me to Australia and then New Guinea where we set up radar stations. On January 9, 1945, I went to Lozan, an island in the Philippines. For a week before we landed, we were under constant kamikaze and submarine attack. After that we were very happy to get off the ship. However, after we got on shore and dug foxholes we got hit with a lot of artillery. That was not much fun either.

On August 17, 1945, I was having breakfast with some pilots who told me they were going to Manila as escort for the Japanese surrender team to sign a cease fire agreement. I agreed to go along. We got to Manila Bay and the pilot decided to celebrate by buzzing a destroyer. The airplane "red-lined" at 280 miles an hour when the engine cut out. We hit the water. We thought we were sinking. The escape hatch was jammed. With a lot of physical effort, we popped the hinges to get out. I had seventeen fractures in my left leg, but at the time I did not know it.

It turned out we had crashed in a swamp. When I stood up, I realized I had been hurt. In addition to the fractures, I had ripped open my left ankle and severed an artery. Some Filipino fisherman showed up and carried us to a road. By the time I got to a hospital, my ankle had swollen up and was infected. The Army ordered me to fly home, but I was so traumatized by my flight experience that I refused to obey. I talked to a psychiatrist who agreed with me. I finally went home on a hospital ship. I still won't fly, unless I have absolutely no choice.

After I returned to the States, I went to William Beaumont Hospital. Thereafter, I was sent to Madigan General Hospital at Ft. Lewis, Washington, for convalescence. I was discharged from the army as a Captain in 1946, when I was 23 years old. I retained my com-

mission in the reserves.

CROSS: Did you then go back to school?

DIAMOND: Yes, I went to Stanford and majored in civil engineering. When I graduated in 1949, my father was very proud. But I didn't have much of a chance to get started with my career as an engineer because I got called back to duty due to the Korean War. I was sent to Ft. Bliss where I attended guided missile school. After I graduated, I joined the faculty and became an instructor. I was discharged in 1953.

CROSS: What next?

DIAMOND: I went to Oklahoma to work as a land man in an oil patch. A land man seeks and obtains leasing rights wherever geologists think there might be oil. That's when I decided I wanted to be a lawyer.

CROSS: Did you then go to law school?

DIAMOND: I went to Baylor Law School. At that time, I had a wife and a small child, so I had to work. I worked at the Texas Highway Department, where I started the "right of way" program for the Waco District. I graduated in 1957, but stayed with the highway department as a "right of way" engineer in Waco for another two years. I was transferred to El Paso in 1959, where I started the "right of way" program here and handled the "right of way" acquisition for I-10.

CROSS: When did you make your career change from engineering to law practice?

DIAMOND: In 1959, County Judge Woodrow Bean offered me a job as his administrative assistant. He wanted me to work on the Trans-Mountain Road and the Sun Bowl. We succeeded in both projects.

Woodrow Bean opened the door for me to politics. In 1960, my wife and I worked as advance people for Lyndon Johnson. Kennedy was running for president and Lyndon was his vice presidential nominee. As you may know, Kennedy and Johnson fought it out at the convention for the presidential nomination. After Kennedy defeated Johnson, he offered Johnson the opportunity to be on the ticket as the vice presidential nominee. Johnson was reluctant to accept the nomination as he was at that time majority leader of the Senate. However, contrary to all the other Johnson supporters, Woodrow Bean urged Johnson to accept the nomination. "You will be a heartbeat away from the Presidency," he argued. It is possible that Johnson listened to Woodrow. In any event, Johnson agreed to be on the ticket.

After Kennedy's first political trip to El Paso, at the end of the day, Kennedy, Ted Sorenson, Bean, and I were at the Cortez Hotel celebrating Kennedy's visit and the enthusiastic reception he had received from many voters. We all had a few drinks. We quickly bonded with each other not only because we were on the same political team but because we were all veterans of the Pacific theater with the same military rank.

Woodrow suggested we should all visit Irma's in Juarez: a bordello with valet parking. With Woodrow in the lead, we were heading to the elevator when Kennedy suddenly stopped. I bumped into Kennedy and fell down. Sorenson fell over me. Woodrow came back and wanted to know what was going on. Kennedy said he could not go; after all, he was running for President.

Woodrow said, "Don't worry, we have a local rule here: after midnight, everyone in Juarez is invisible." Kennedy said, "the national press does not know your local rule. I can't be seen in a Mexican whorehouse while I am running for President of the United States."

So we all went back to Kennedy's suite, had a nightcap, and went to bed.

CROSS: After the election was over, what did you do?

DIAMOND: After the election, I succeeded Dick White as El Paso County Democratic Party Chairman, and I started a law firm.

CROSS: Who did you practice with?

DIAMOND: Ed Hughes, Don Thorne, Larry Schwartz, Bob Earp, Larry Baskind, Don Leslie, Norman Gordan, Alan Rash, Nelson Smith, Ron Jackson, John Batoon, Russell Leachman, Jesus Samaniego, Bob Truhill, Janette James, Brenda Norton, John Foxworth, John Searles, Mike Spurlock, Hank Hosford, Josette Flores, and others.

CROSS: What kind of practice did you have?

DIAMOND: General practice. But we were the first firm in El Paso to do bond work and municipal financing and the first firm in El Paso to be listed in the Red Book as qualified to approve bonds.

CROSS: Any interesting cases?

DIAMOND: Thirty years ago, I tried two cases before the Indians' Claim Commission for the Tiguas and the Alabama Coushatta tribes. I won both cases but they were dismissed on jurisdictional grounds as we had not filed timely

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with the Indian Claims Commission. We had not been given notice of the claims, so we did not timely file. Senator Yarborough's son, who was on the Claims Commission, gave us favorable findings on merits but dismissed both cases on a jurisdictional basis.

With the help of Congressmen Charlie Wilson and John Breaux, I was able to obtain a Congressional Reference Act for the Alabama Coushatta tribe. The Act waived sovereign immunity of the federal government and instructed the Court of Claims to hear the case and report back to Congress on the validity of the claim and the recommended value of the claim. We tried the lawsuit in Austin and Washington. That judge ruled against us. We appealed to the full Commission. The Commission reversed the judge and entered judgment in favor of the tribe in the amount of \$274 million dollars. That was twenty years ago.

We still had to collect. In order to do that, we had to get a bill through Congress. Congressman Brady, who succeeded Charlie Wilson, refused to introduce a bill authorizing payment unless the Alabama Coushatta Indians gave up their possessory rights to seventeen counties in East Texas. The Alabama Coushattas will not give up their claims. So we haven't gotten the money. But we are still trying.

CROSS: Major accomplishments?

DIAMOND: On July 4, 1965, I attended a political rally for school teachers. Congressman Dick White and I were on the program. White mentioned Oñate reaching El Paso in 1598. After the meeting, I was riding back to El Paso with Jack Salem, News Director for Channel 4. We were talking about Oñate. Jack said, "maybe you are the right lawyer to help the Indians here". I said, "What Indians?" Jack had worked with former mayor Jack Seitsinger and Wood Crumbo, Art Director at the Museum of Art, who had tried in the past to get the Tiguas federal help, with no luck. So I agreed to try to help them.

I knew Alex Calendaria at the tax office, who had Tigua ancestry. He set up a meeting with Pablo Silvas, lieutenant governor of the tribe. We met with Pablo and his wife Hermenia, Alex, and me. No one else showed up; Pablo said it was because everyone was tired of white man's empty promises. We scheduled another meeting. The next time the governor and others attended the meeting. From their appearance and conduct, I was convinced these folks were, in fact, Native Americans.

After that meeting, I began a campaign for recognition of the tribe. I was Democratic

Party chairman, John Connelly was governor, and Ralph Yarborough was the senior senator. Lyndon Johnson was president. Although Connelly and Yarborough were political opponents, I was as County Chair able to work with them. I had also worked with Attorney General Crawford Martin, who turned out to be an important player in the events about to occur. Of course, I had been one of Johnson's advance men, so I knew him. Another player, Stuart Udall, was secretary of the interior. I had invited Udall to speak here at a barbecue and had a good relationship with him. With the help of these five politicians, we got the tribe recognized.

It wasn't easy. At the time, federal policy was to terminate tribes, not to recognize them. Our campaign involved a two-step process. Crawford Martin developed the plan. First, the State of Texas had to agree to accept trust responsibility subject to a transfer of that responsibility from the United States to Texas. We got the bill through the Texas Legislature, and Governor Connelly signed it.

Then, we had to get a bill through the federal legislature recognizing the tribe and transferring responsibility to Texas. The bill got held up in the Senate for two months. Yarborough told me that he finally figured out what the problem was after he visited Senator Clinton Anderson from New Mexico, chairman of the Senate committee responsible with oversight responsibility for the Department of Interior, with a bottle of bourbon in hand. Anderson was holding up the bill. After many drinks late into the night, Anderson told Yarborough that the tribes in New Mexico had urged him to oppose recognition to the Tiguas because in 1681, the Tiguas had sold out to the Spaniards. After some more discussion under more sobering conditions, Yarborough got Anderson to change his position. When the bill finally came up for a vote, it passed.

CROSS: Your family?

DIAMOND: I met my wife, Carolyn Culbertson, on a blind date when I was attending Stanford. We had dated for several months before I decided to take her to a fraternity party at UCLA. On our way to the party, I took a "right" turn and ended up in Las Vegas, Nevada, where we got married. We have been married 63 years. We have one son, Jack, who runs our ranch in New Mexico. He also runs an elk hunting business on the ranch. I have three grandchildren, Rene Diamond, a lawyer in Albuquerque; John, who works for his father and Cammy, who is a student. I just finished

a trial with my grand-daughter Rene. She was lead counsel, and I was local counsel. The case was a milestone in my career. Incidentally, Randy Grambling was one of the lawyers on the other side.

CROSS: I consider your life a success. Why do you think you have been successful?

DIAMOND: Four important events during my lifetime shaped my career and my life.

First, the Great Depression taught me the importance of a work ethic and to conserve resources. Second, World War II taught me the importance of working together with others; to emphasize interests shared and minimize differences. Third, my wife has been the "wind under my sails" and a "stout sea anchor in a storm."

Because of her, we have had a wonderful life together. Fourth, Baylor Law School opened the door for me to a legal career which I have enjoyed very much, with mucho gusto.

CLINTON CROSS is the former editor-in-chief of the El Paso Bar Journal. He is an assistant county attorney.

IN MEMORIAM

JOHN FASHING

April 16, 1938—June 6, 2017

John Louis Fashing was born in St. Paul, Minnesota. His father moved the family to El Paso when he came to work for the railroad. John graduated from Rusk Elementary School, Austin High School, Texas Western College, and Saint Mary's University School of Law. He was an officer in the United States Army and was a combat awarded veteran of the Vietnam War where he served in the JAG Corps. As an attorney he continually pursued justice through the courts, including presenting before the United States Supreme Court. His keen legal insight and abilities summoned the attention of the likes of Percy Foreman and Richard "Racehorse" Haynes, but John decided to vie for the bench upon the retirement of Judge Richard Crawford at County Court at Law 2. He was elected in 1974 and served unopposed for 24 years. He wrote and effected changes in legislation for the benefit of his community. He was renown as a legal scholar by his peers and was often seen walking downtown with an armful of reading material. Whether admired or feared he was always regarded as a judge's judge. Of all of his accomplishments and abilities, however, it was the role of husband, father, and grandfather where he was most adored. He was a private man, a humble man, and the finest man his family has every known. He will be sorely missed.

--From *Legacy.com*

If you have an entry for our In Memoriam tribute box, please contact Nancy at nancy@elpasobar.com or editor Kirk Cooper at kirk.cooper.antuna@gmail.com.

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DATE: October 20 and 21, 2017

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TENTATIVE SCHEDULE OF EVENTS

FRIDAY, OCTOBER 20

TOPIC	SPEAKER	TIME
REGISTRATION	IOTMG CONVENTION CENTER COFFEE, PASTERIES, COKES, & WATER	7:30-8:30 A.M.
OPENING REMARKS	MIKE GIBSON, MODERATOR Attorney, El Paso	8:25-8:30
COURTS MARTIAL	CAPT. SHERILYN BUNN Attorney El Paso	8:30-9:30
RECENT DECISIONS	YVONNE RODRIGUEZ Eighth Court of Appeals Justice, 8th Court of Appeals El Paso, Texas	9:30-10:30
BREAK	COFFEE, COKES, AND WATER	10:30-10:45
WARRANT ON A LEASH- NARCOTIC DETECTOR DOGS AND THEIR HANDLERS	DERECK WYATT Attorney, El Paso El Paso, Texas	10:45-11:45
LUNCH	ON YOUR OWN	11:45-1:00 P.M.
CRIMINAL LAW UPDATES	BARBARA HERVEY Court of Criminal Appeals Judge, Texas Court of Criminal Appeals, Austin, Texas	1:00-2:00
LEGISLATIVE UPDATE	JOE MOODY State Representative-District No. 78 El Paso	2:00-3:00
BREAK	COFFEE, COKES, AND WATER	3:00-3:15
THE GREAT WRIT-REVISITED	MICHAEL GIBSON Attorney, El Paso	3:15-4:15
PRE-TRIAL MOTION PRACTICE	JEEP DARNELL Attorney, El Paso	4:15-5:15
ADJOURN	MIKE GIBSON	5:15

SATURDAY, OCTOBER 21

SOCIAL	COFFEE, PASTERIES, COKES, AND WATER	7:45 A.M.
ETHICS	IVAN MARTINEZ Assistant District Attorney El Paso, Texas LOUIS LOPEZ Attorney, El Paso	8:00-9:00
PRACTICAL ASPECTS OF THE MENTAL HEALTH EVALUATION	MARTIN GUERRERO, MD, JD Psychiatrist/Attorney El Paso, Texas	9:00-10:00
BREAK	COFFEE, COKES, AND WATER	10:00-10:15
SIGNIFICANT DECISIONS: SCOTUS and FIFTH CIRCUIT	DONNA COLTHARP Deputy Federal Defender Western District of Texas-San Antonio	10:15-11:15
CHECK OUT	BREAK COFFEE, COKES, AND WATER	11:15-11:45
PROBATION UPDATE	MAGGIE MORALES-AINA 11:45-12:45 Director, West Texas Community Supervision and Corrections Department	
HIPPA AND ITS ETHICAL IMPLICATIONS	OMAR VILLA Assistant El Paso County Attorney, El Paso	12:45-1:45 P.M.
CLOSING REMARKS	MIKE GIBSON	1:45

COST: No charge for full-time judges or lawyers licensed less than two years
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ACCOMMODATIONS: A block of rooms has been reserved for October 19, 20, and 21, 2017, at the Inn of the Mountain Gods, 1-800-545-9011, Ext. 7660. Room prices are \$99.99 plus tax if you inform the reservation desk that you are with the El Paso Criminal Law Seminar. To assure a stay at the Inn, make your reservations on or before 3:00 P.M. SEPTEMBER 18, 2017. Your room will not be guaranteed until payment is received. For more information call Jaime Gandara at (915)546-8185, Greg Anderson at (915)595-1380, Judge Julie Gonzalez at (915)546-2145, Mike Gibson at (915)532-2977, Judge Yahara Lisa Gutierrez at (915)546-2102, or Maureen Franco at (915)534-6525.

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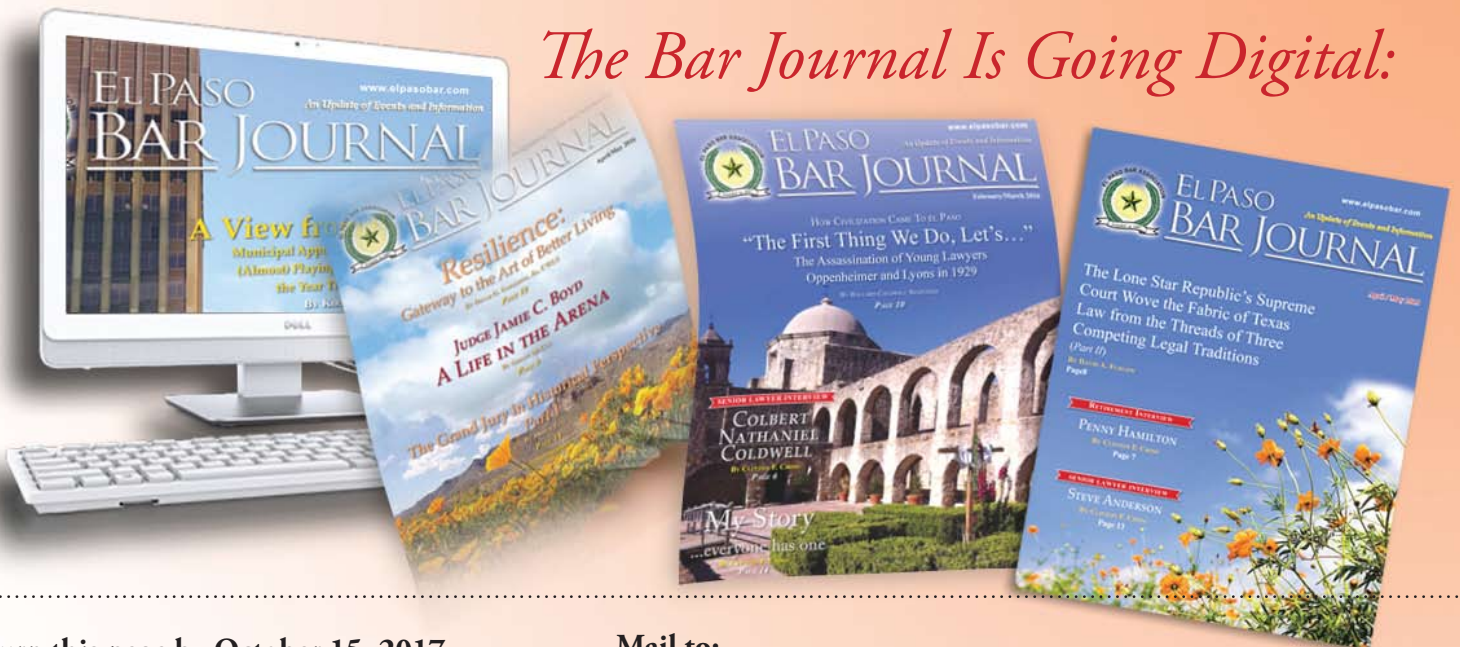
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