



EL PASO BAR JOURNAL

A Monthly Update of Events and Information

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June 2007

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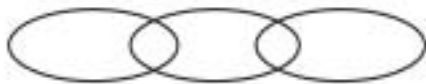
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The El Paso Bar Bulletin is a monthly publication for the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to above address to the attention of Nancy Gallego. All the submissions must be in the office on or before the 10th of the month preceding publication. You may either fax or email your submission. Articles published in the Bar Bulletin do not necessarily reflect the opinions of the El Paso Bar Association, its Officers or the Board of Directors. Calendar listing, classified ad, display ad, and feature articles should not be considered an endorsement of any service, product, program, seminar or event. Please contact our office for ad rates.

THE PRESIDENT'S PAGE

PUTTING THE PROFESSIONAL BACK IN THE PROFESSION

“N” Is For Network

This is my last President's Page and I am rapidly approaching escape velocity as the end of my term nears. This past year has been an incredible experience and I am grateful to the membership who sufficiently trusted my leadership skills to allow me the opportunity to serve at the helm. The course has not always been easy, nor have the waters been smooth. But the legal community of El Paso continues to amaze me with its perseverance, perspicacity, and professionalism [I love triplet alliteration]. We are a diverse group who share common goals and, I have



learned, an intense desire to improve our image as a whole and our reputations as individuals. Thank you for reading this series of articles and for your positive responses. I'm pleasantly surprised by the attention the topic has drawn.

The dictionary tells us that a network is an informally interconnected group or association of friends or professional colleagues. In that sense, it is a noun. We also use it as a verb to describe the way in which lawyers interact socially for the purpose of gaining connections or personal advancement. Yet it's more than that – a whole lot more.

“Networking” operates both vertically and laterally.

Vertical networking is best understood in the context of mentoring. I've been blessed with several mentors in my life, each offering a different perspective and chiseling a separate facet of my career. I could never “be” them, but I'm a better lawyer for having known them. They were terrific role models. Perhaps I could call that ascendant vertical networking – looking upward for guidance. I have also tried to mentor others, which is an opportunity to “pay it forward” – a way of thanking those who blazed the trail for me by paving the way for those who follow. Maybe that's descendant networking at its best.

Lateral networking, of course, means reaching out to others who share a similar area of practice or those to whom you want to market your skills. Appellate lawyers, for example, market their talents to litigators. Without a trial, where's the appeal? In a broader context, lateral networking reached new potential this past year. The El Paso Bar Association networked with all of the separate and specialty associations in one way or another. I won't repeat here all of the joint efforts as they have been well reported in past issues. Specifically, I want to thank Anna Perez [president of MABA], Katari Buck [president of the Women's Bar], Morgan Hazelton [president of El Paso Young Lawyers], Laura Strathmann [president of the Family Law Bar], Gerry Howard [president of the Federal Bar], and Darron Powell [president of the Probate Bar] for their cooperation and

Continued on page 4

EL PASO BAR ASSOCIATION

June Bar Luncheon

Tuesday, June 12, 2007

El Paso Club. 201 E. Main, 18th Floor,
Chase Bank - \$14 per person. 12:00 Noon

Nominations and Elections of Officers and Directors

“An El Pasoan Inside the White House”

Guest Speaker will be *Veronica “Ronnye” Vargas Stidvent*

Please make your reservations by Monday, June 11, 2007 at noon by calling Nancy at 532-7052 or via email at nancy@elpaso.com

“N” Is For Network

participation. Your leadership inspires me.

I am also grateful to the officers and directors of EPBA, and to our amazing Executive Director, Nancy Gallego. Their team spirit and vision lead me to this one conclusion – the Bar is in good hands. President-Elect Judge Robert Anchondo will take EPBA and the El Paso Bar Foundation to new heights. As Chief Justice David Wellington Chew is wont to say, I wish them calm seas and a favorable wind.

Ann McClure
President

2007-2008 OFFICERS AND DIRECTORS OF THE EL PASO BAR ASSOCIATION

The nominating Committee of the El Paso Bar Association has nominated the following attorneys for the 2007-2008 Bar Year:

Officers	Directors (3-Year Term)
Judge Robert Anchondo – President	Regina Arditti
Cori Harbour – President Elect	Katari Buck
Carlos Cardenas – Vice President	Walker Crowson
Chantel Crews – Treasurer	Anna Perez
Dick Alcalá – Secretary	Jaime Sanchez

We will hold the Election and Swearing In at our June Bar Luncheon Meeting on Tuesday, June 12, 2007 at 12:00 noon at the El Paso Club.
Call Nancy at 532-7052 to make your reservations.

CALENDAR OF EVENTS

JUNE, 2007



Friday, June 1

Coffee & donuts at EPBA Office

Tuesday, June 5

EPBA Board Meeting

Tuesday, June 12

EPBA Monthly Luncheon

Friday, June 15

Coffee & donuts at EPBA Office

Tuesday, June 19

Juneteenth Day, EPBA closed

Thursday, June 21

EPBA Monthly Meeting

Thursday, June 21 & Friday, June 22

SBOT Annual Meeting, San Antonio

Upcoming Events

Thursday, July 12

Bankruptcy Section, Lunch & Learn Seminar

Wednesday, August 22

110th Anniversary Photo Shoot

Thursday, August 23

110th Anniversary Photo Shoot

Friday, August 24

110th Anniversary Photo Shoot

Friday, October 19

EPBA 110th Anniversary Dinner & Party

Friday, February 15 & Saturday, February 16, 2008

12th Annual Civil Trial Seminar, Paris Hotel, Las Vegas, NV

PLEASE NOTE: Please check the Bulletin for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Bulletin for your upcoming event or function for the month of September, 2007, please have the information to the Bar Association office by Friday, August 10, 2007. In order to publish your information we must have it in writing. WE WILL MAKE NO EXCEPTIONS. We also reserve the right to make any editorial changes as we deem necessary. Please note that there is no charge for this service: (915) 532-7052; (915) 532-7067-fax; nancy@elpasobar.com - email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this bulletin together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.

2007-2008 BAR ASSOCIATION MEMBERSHIP DUES

The 2007-2008 Bar Association Membership Dues Statements have been mailed.

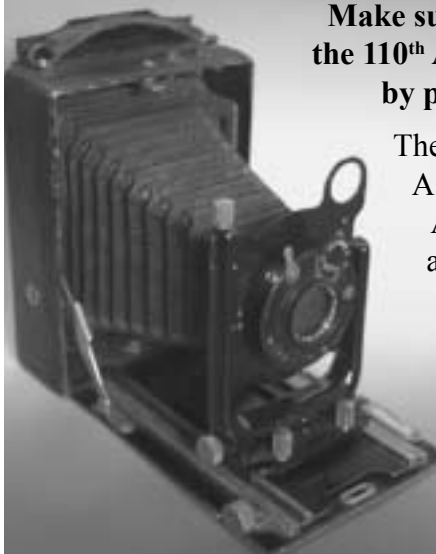
Please fill out and return with your membership dues.

This year we will be doing our **110th Anniversary Photo Composite** which will be unveiled at our 110th Anniversary Dinner Party on Friday, October 19, 2007.

Make sure that your dues are paid to be a part of this Composite.

If you have any questions or did not receive your dues statement, please contact the Bar Association office at 532-7052 or via email at nancy@elpasobar.com

110TH ANNIVERSARY COMPOSITE PHOTO



Make sure that your photo appears in the 110th Anniversary Composite Photo by paying your membership dues.

The photos will be taken in the Bar Association office on Wednesday, August 22, Thursday, August 23 and Friday, August 24 from 8:00 a.m. to 5:00 p.m.

The photos will be taken in alphabetical order.

Please contact the Bar Association office if you have any questions.

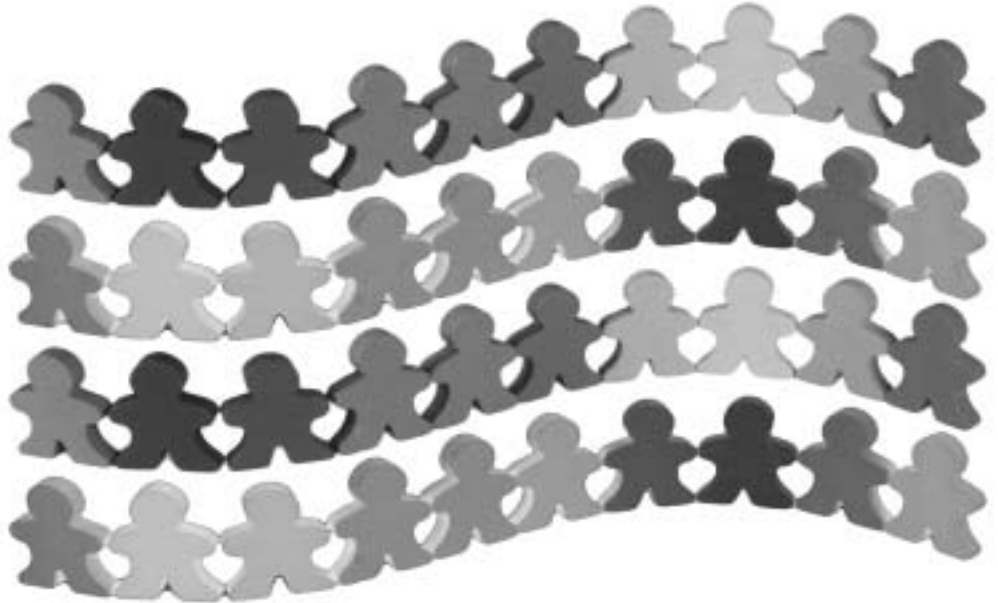
The Art of Successful Networking

■ BY JUDGE OSCAR G. GABALDÓN JR.

“The single most important ingredient for success is the knack for getting along with others.” When one of our former Presidents [Roosevelt] made this observation, he captured a key element of successful networking. Without the ability and skill to get along with others, there can be no true networking. The art of networking can be a lifetime skill that can result in all sorts of benefits.

Networking is found in a variety of contexts. Traditionally, the most prevalent networking areas have been business, economic, entrepreneurial, and social networking. The common element with all of these types of networking is the human element. Whether the focus of networking activity is business or social, or some other type of networking, it cannot be emphasized enough that the more one places the needs of others first, the more likely that others will be willing to reciprocate. Bob Burg attests to this sentiment when he says: “The successful networkers [that] I know, the ones receiving tons of referrals and feeling truly happy about themselves, continually put the other person’s needs ahead of their own.” The network that is developed may be a simple network; however, other networks can be quite complex. Regardless of the size of the network, the interactions among people are a significant component in the level of effectiveness the network will achieve.

Though many engage in networking efforts day in and day out, they should question whether the networking efforts are pursued in an ethical and principle-based manner. There are some whose sole focus in networking is to achieve their own self-serving interests. They will take from others, but will not want to give in return. This approach to networking often times leads to the failure of networking attempts. Those that drain the network relationship wholly in their favor are eventually seen for who they truly are – people that take advantage of others. They will lure others with their self-serving sales pitches. They will misrepresent facts. They will promise the world. In short, they will let others hear what they think they [others] want to hear, but, in return, they will not come through for others. In short, they are devoid of a sense of fair play and integrity. Pursuing networking



with integrity is essential to good networking. However, this alone is insufficient to establish successful networking relationships.

Networking requires preparation and planning. Fred Couples observes: “When you are prepared, you’re more confident. When you have a strategy, you’re more comfortable.” Aside from preparation and planning, there are some other basics of good networking. Good networking basics are focused on relationships rather than simply connections. Conventional ideas about networking revolve around the “quantity of contacts”. Good networking does not thrive on the number of contacts one makes. It is the “quality of the relationships” that counts most. For example, some people will network for employment without having an interest in the people or the organizations they are seeking help from in seeking a job. The effort made by the networker to relate to people and organizations are superficial. This kind of networker will obtain whatever useful information he or she can obtain from another, but will soon lose interest in that other person or business when no more is to be gained from them. Nicholas Corcodilos refers to this as the “so-called ‘business card exchanges.’”¹

Those who care about others in their networking will invest their time and energy on relationships. They will seek to learn from and about those persons and businesses they network with. They want to keep in touch. “The point is, after a time you become known entities to one another. You become members

of one another’s circle. You’ll help one another because you’re friends, not because it will pay off later.”² This entails wanting and working on developing a relationship of trust – a circle of trust. It is a process of getting to know each other. Since this process is a growth process, it calls for patience and for integrity to help it mature and succeed.

Involvement in one’s professional community is also extremely important. This opens the door for opportunities to blossom. Working with others on projects allows for relationships to strengthen and establish themselves more solidly. Dialogue flourishes when working with others, and the willingness for helping each other likewise flourishes. On both sides of the networking relationship there is a demonstrated sense of value for one another and a commitment towards pursuing outcomes of mutual benefit.

“If you want others to open doors for you, open the door to them first. Give before you expect to get, and you will develop a good network: a circle of friends who will always be glad to help you because you’re one of them.”³

1 Corcodilos, Nicholas A. “A Good Network Is A Circle of Friends – Part 1.” Headhunter Articles (2007).

2 Ibid.

3 Corcodilos, Nicholas A. “A Good Network Is A Circle of Friends – Part 2.” Headhunter Articles (2007).

FROM ONE BAR TO ANOTHER

■ STEPHANIE TOWNSEND ALLALA

As is the pattern for so many high-achieving lawyers, one thing led to another for Victor Poulos, whose renovation of an old house on Campbell exposed a long-unused wine-cellar, which rekindled an interest in wines, which led to planting “a few grapes” in 2000.

Of course, it couldn't end there, so Poulos now owns and operates Zin Valle Vineyards, in Canutillo, Texas.

“It was supposed to be a weekend, work-in-the-fields, drive-the-tractor therapy thing,” Poulos said. “Now, we have three employees, (and I spend) at least 20 hours a week on the wine business. It satisfies my creative side. I grow a product, I make something consumers like. People come out on weekends, and you see the happy side of people, instead of the angry, sad side we see in law.”

Poulos, a 1976 graduate of Washburn University, in Topeka, Kan., doesn't stop at the winery. A pilot since 16, he also is an investor in FliteLite, a company that manufactures lights for pilot headsets and is currently restoring a 1943 Beech Staggerwing antique Bi-plane. He recently sold his interest in Saturn of El Paso and Las Cruces, and he owned an Italian restaurant, Renelli's.

The idea is to “find a hobby and relaxation that will also make you money,” Poulos said.

Not all his non-lawyering activities make money, however.

“Fortunately my family and law partners understand that I'm not happy without projects, so they let me have my projects,” Poulos said. That includes public service, and while Poulos said “civic things can eat you up,” that hasn't stopped him from serving on numerous boards, such as the Airport Board, the Zoological Board, The Paso Del Norte Group and the El



“It satisfies my creative side. I grow a product, I make something consumers like. People come out on weekends, and you see the happy side of people, instead of the angry, sad side we see in law.”

Paso Police Foundation.

Poulos, 54, grew up in Kansas, where he was a political science graduate from the University of Kansas in 1974. He moved to El Paso in 1980

to work at Mayfield and Perrenot, where he was head of litigation until 1996. Prior to moving to El Paso, Poulos was a Judge Advocate General (JAG) officer at Fort Hood, Texas. Poulos also served in the infantry and went to “jump school.”

He was licensed in four states, Iowa, Texas, Kansas, and New Mexico, in his words, “bouncing around” following his military service. When he finally bounced to El Paso, Poulos worked primarily in commercial litigation and insurance defense for Allstate Insurance, before striking out on his own in 1996 to do plaintiffs work.

“Insurance companies became unrealistic with attorneys in terms of paying fees,” Poulos said. He now works in medical malpractice and personal injury with Volk, Poulos, Coates, LLC.

Previously, he worked with attorneys John Grost and Al Melendez for a short time, and in 2000, with attorney John Dickey, he began restoring the law office building at 1520 Campbell.

Which brings us back to the beginning of this story.

“It was a 100-year-old house, and it had an old basement that once was a wine cellar. It took a lot of time and effort in building the wine cellar, which re-piqued my interest in wine,” Poulos said. “I began serious collecting, and started a Friday afternoon wine tasting.”

A neighbor, Ken Stark, owner of La Vina, convinced Poulos to plant five acres of grapes. Poulos' “few grapes” now produce up to 2,000 cases of wine a year.

“The fun part of producing the wine is designing the labels. Bob Hoy recently bought the right to have his dog's picture on our Dog Merlot Label. The proceeds from our Merlot wine are donated to the Humane Society,” Poulos said.

Like any worthwhile pursuit, Poulos said, owning and operating the winery “pulls you out of the doldrums. It's a fun business.”

Post-Concussion Syndrome: Is it Real?

BY KELLY PIERCE-GONZALES,
RN, MSN, LNC-Csp

The young man woke in the middle of the night drenched in sweat from some unremembered nightmare and feeling exhausted as if he had not slept a wink. He lay awake looking at the ceiling the rest of the night, until the sun began to slowly creep into his window. He showered, dressed, and left his house for the drive to his scheduled doctor's appointment. On the way, he has to stop a time or two as his anxiety level rises. He is literally scared to death of driving. He finally makes it to the doctor's office for his neurological evaluations with no memory of the last five minutes of his drive. He begins to walk toward the office, and, as he is trying to ignore his growing headache, he realizes that he has locked his keys in his car, and the car is still running. He feels a sense of profound sadness, and then quickly becomes angry. This young man had a concussion six months ago when he was involved in a car accident that was not his fault. He had no history of mental issues before the accident and now has lost his job due to these symptoms.

The above case illustrates a classic scenario of someone who is suffering from Post-Concussion Syndrome (PCS). This diagnosis, while controversial, is common for those who have received a concussion such as that received by the young man above in a car accident. The concussion may be only minor, and the severity of the concussion does not determine whether or not a person will develop this disorder. It is not truly understood exactly how many patients will develop symptoms of PCS following a concussion. Many varied symptoms are seen in Post-Concussion Syndrome. Three categories of symptoms are commonly identified with this disorder and include physical, mental, and emotional symptoms.

Physical symptoms may include:

- Headache
- Dizziness
- Impaired balance



- Nausea and/or vomiting
- Inability to sleep

Emotional symptoms may include:

- Depression
- Aggression
- Anxiety
- Irritability

Cognitive symptoms may include:

- Difficulty remembering things
- Difficulty concentrating
- Confusion
- Impaired judgment
- Decrease in social skills

These symptoms are the most commonly exhibited symptoms and several are reflected in the scenario listed above while the young man was simply trying to drive to an appointment. It is easy to see where this diagnosis and the resulting symptoms would be devastating to the one suffering from them. Many people have to try and deal with this issue as well as other injuries that may have been sustained in the same car accident.

The treatment for Post-Concussion Syndrome

includes therapy to try and help the person cope with the symptoms and try and get them back to their previous state before the accident. Medications may be prescribed to help control some of the symptoms, such as anxiety and depression. Of course, nothing can completely eliminate or control the symptoms, and the symptoms may continue for weeks, months, or years following the accident.

The controversial aspect of PCS involves the symptoms and time of onset which vary from person to person, and many of these symptoms are easy to exaggerate or even fake. There are questionnaires that can be administered to measure PCS, but this disorder will not show up on an X-Ray, MRI, or other diagnostic test. Those who are savvy with litigation issues and are interested in increasing their settlement in a law suit may be able to fabricate or greatly exaggerate their condition following an accident.

Attorneys who defend plaintiffs in personal injury cases involving PCS will want to be certain that their clients are not found to be malingering or exaggerating their condition in order to increase their settlement. Attorneys who have a Legal Nurse Consultant (LNC) review their personal injury cases that involve PCS may be certain that she will identify all pertinent medical records to support the PCS diagnosis, identify specific symptoms the client has reported in the medical records, and ensure that a qualified physician has made the diagnosis clearly. The LNC can also attend the IME, if the attorney wishes. In addition, an LNC may be able to help identify from the records if the patient is malingering, or if the patient is truly suffering from this disorder. This will ensure that the patient gets the amount of settlement that he deserves for his mental disorder and mental anguish. Is this not every attorney's goal?

Kelly Pierce-Gonzales, RN, MSN, LNC-Csp
Legal Nurse Consultant
KPG Medical-Legal Consulting, Inc.
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Researching History

■ BY CLINTON CROSS

Next year the El Paso Bar will be researching its history, and sharing it with others.

As we all know, history is not just what happens, but what gets written down. Some history can be found in books and on the internet. But a great deal of our history is also "privately owned." It is known by individuals, families, or sub-communities within our larger community, but it has not been shared with the larger community.

Our hope is to capture some of that history, record it, and share it with others and our posterity. Some questions about El Paso's legal history might include:

1. How did Native Americans resolve disputes within their communities?
2. How did the Spanish and Mexican settlers resolve disputes in the Southwest before the Mexican War of 1846?
3. When did the Republic of Texas adopt the Common Law of England as the law of the Republic?
4. When did Anglo-American jurisprudence actually become a reality in El Paso?

5. Who were some of El Paso's first lawyers?

6. What was the first court to be established in El Paso?

7. When was Texas state jurisdiction established?

8. What is the history of our county court jurisdiction?

9. What is the history of state appellate jurisdiction in this area?

10. What was the first federal court to have jurisdiction over El Paso cases?

11. When was the Western District established?

12. Who were the first Hispanic lawyers to practice here? The first women lawyers? The first Jewish lawyers? The first Mormon lawyers? The first lawyers of Arabic descent? Chinese? Estonian? Korean?

13. What were some of the most important and/or interesting cases to be tried in El Paso?

PLEASE, if you think you have a story to share, contact Clinton Cross, Chairman of the El Paso Bar Historical Committee, and let him know you want to help with this project.



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What's In Your Wallet?

■ ANN McCLURE, PRESIDENT

No, this isn't an advertisement for Capital One. But where money is concerned, folks seem to pay a bit more attention. This is about the El Paso Plan and the amount of money attorneys pay to buy out of court appointments in indigent criminal cases.

The El Paso Plan was created in 1986. Without regard to the federal lawsuit that inspired its creation, the Plan resulted from a contract between the El Paso Bar Association, El Paso County Commissioners Court, the district judges of El Paso County, the statutory county courts at law, and the criminal defense lawyers. The agreement recognized the need for all attorneys to contribute to the defense of the indigent. The crafting of the document was no small feat. The final proposal was presented by the Criminal Law Committee of EPBA to Commissioners Court in August 1986. As originally drafted, all attorneys licensed to practice law who resided in El Paso County were required to defend indigents in criminal cases unless exempted from appointments. Two exemptions are pertinent to my discussion here.

First, attorneys could pay \$400 for each year exemption is sought, with the Plan year running from October 1st through September 30th. Second, an exemption was provided for attorneys who were over the age of 60 on October 1st of each year. The contract required EPBA to manage and segregate the funds and, after deducting all actual necessary expenses, to pay the balance to



Commissioners Court. The County could only use these designated funds for salaries and expenses of the public defender, the criminal magistrate, the criminal court coordinator, and/or attorneys' fees paid to private attorneys arising from indigent criminal appointments.

The Plan envisioned that an Administrative Committee would periodically re-evaluate the terms of the buyout upon the request of any contracting party. In 1992, the committee was reconstituted and recommended two changes. The cost of the buy-out was increased to \$600 and the age exemption was reduced to age 55. There have been no changes to the plan in the

past thirteen years.

In the past few weeks, County Judge Anthony Cobos has requested that an Administrative Committee be convened. I have appointed Carlos Cardenas as the EPBA representative on the Committee. Presiding District Judge Patrick Garcia has appointed Judge David Guaderrama as the district judge representative. Presiding County Court At Law Judge Sue Kurita will represent the statutory county court judges. Mike Gibson will represent the criminal law practitioners. Judge Cobos will represent Commissioners court.

These are the facts which the Committee will consider. Based on State Bar records, there are 1117 attorneys subject to the Plan. Roughly one-half are members of the El Paso Bar Association. Only 21% of the 1117 eligible attorneys participate in the Plan. In the last six years, the number of attorneys opting out of the Plan has dropped from 300 to 228. The funds generated in that same time frame have dropped from \$180,000 to \$136,800. The Committee will need to determine whether revenue is more likely to be enhanced by increasing the amount of the buy-out [which may have the unwanted effect of reducing participation], reducing the amount of the buy-out [which may increase participation], or increasing the age exemption [putting baby boomers back into the mix].

Now is the time to voice your opinion. Call or e-mail the Bar offices, Carlos Cardenas, or moi. As I said, "What's in your wallet?"



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SENIOR LAWYER INTERVIEW

■ BY CLINTON CROSS

DEBRA KANOF

(PART TWO)

Last month I began to interview Debra Kanof, Assistant United States' Attorney. She told me about her family, her childhood, her dreams to be a lawyer. This month I talk with her about her career as an Assistant United States Attorney.

CROSS: I think I left off talking to you about your early experiences as an attorney. If I can summarize, you bounced around a bit—first trying to get a job in El Paso, then going to Houston and Corpus Christi. You finally ended back home working for the District Attorney, but weren't too happy there. Do I remember your story correctly?

KANOF: Sort of, but you left a lot out. Maybe you should re-read your notes?

CROSS: O.K., I will. But right now I just want to know...what happened next?

KANOF: In August of 1986, I was critically ill and spent a week in a hospital. During this time, I began to realize that the District Attorney's office was not the right place for me. My dream was to work in the U.S. Attorney's Office, the "Cadillac of prosecution," but even the most seasoned and successful Assistant District Attorneys were not scoring an interview "across the street." So I did not apply.

I have a deep religious faith. I can only explain what happened next as an undeniable act of our Creator.

In February of 1987, I placed a private letter of resignation on the District Attorney's chair (he was out of town). Later that morning, I attended an *in camera* hearing on the admissibility of a video taped interview of the three year old child of a murder defendant, Danny Huffman, who was accused of murdering his then eight month pregnant wife, whose body was found floating in the Rio Grande. As my venerable opponent Sib Abraham and I exited chambers, the press blocked our egress. After Sib's

short interview and my "no comment," most of the cameramen began packing their cameras.

One camera stayed lighted. A microphone was shoved in my face: "Isn't it true, Ms. Kanof, that you have resigned from the District Attorney's office and that you will not be trying this case?" I panicked, pushed the reporter and cameraman out of the way, held out my hand and ran to the elevator saying: "come on guys, give me a break." My encounter with the news crew appeared promptly on the ten o'clock news.

Diane McHugh, the wife of USAO Office Chief Tom McHugh, was watching the news. She turned to her husband and said, "Honey, you know, that's who you need in the U.S. Attorney's Office."

Six weeks later, and without having made so much as an application, on April 6, 1987, I was sworn in as an Assistant U.S. Attorney.

I just celebrated my twentieth anniversary as an Assistant U.S. Attorney. Although Liz Rogers and a few other women had served short terms in the United States Attorney's Office, I was the only female Assistant United State's Attorney for my first three years in the office. The men of the federal government accepted me as a fellow professional, and then promptly "baptized me by fire." Judge Harry Lee Hudspeth instilled fear in all new Assistant United State's Attorneys, but my fear quickly turned to deep admiration for a great jurist, who taught integrity by example, and challenged me to learn to research and write, skills that are essential in federal court.

CROSS: Any community work outside the office?

KANOF: I began both professional and community involvement with a bang. I served on a plethora of United Way funded boards, including the YWCA, Prevent Blindness, Epilepsy, the Red Cross, the Shelter for Battered Women, the National Association for the Prevention of Child Abuse, and so on. I also participate in women's organizations, including the Women's Political Caucus and Executive Forum. I was President of the Women's Bar (and thus an ex-officio El Paso Bar Director), and a member of Mexican American Bar Association and Black El Paso Democrats.



I significantly curtailed my community involvement when I became a white collar prosecutor in the U.S. Attorney's Office. However, I performed collateral duties as an EEO counselor for the Executive Office of U.S. Attorneys and as an evaluator of other U.S. Attorney's offices for the Department of Justice. I also served as an instructor at the National Advocacy Center and did a three month detail at the Department in the Child Exploitation and Obscenity Section.

I recently accepted a position as a member of the Board of Directors of the El Paso Holocaust Museum. This work is rewarding from a historical point of view, but also resonates today in light of the devastation and genocide currently taking place in Africa.

CROSS: Most interesting cases?

KANOF: I tried and lost an acquaintance rape case soon after beginning at the District Attorney's office. This case taught me some important lessons. I'll never forget the predominantly female jury who acquitted a man who had raped a co-worker's "live-in" pregnant girlfriend. The jury said the victim was "living in sin," and sleeping on a bare mattress on the floor. The jury concluded that the defendant, who lived with his parents and was going to school, could not have been guilty. The adage that women judge women most harshly played out with jurors in rape trials.

I felt responsible for putting my witnesses through the pain of reliving in court a terrible, terrible experience, and then failing to obtain for them vindication and justice and vowed to learn all I could not to repeat the experience.

In 1983, Carol Pennock and I tried Dr. Raymond Showrey for murder. While touted as an abortionist, the evidence showed that in addition to strangling eight month gestational babies in utero, which at the time was legal, he also asphyxiated them upon delivery. We worked that case late into the night. After argument, we waited. On an unusually stormy night in El Paso, at about 10:00 p.m., after waiting what seemed like an eternity for the verdict, a huge flash of lightening was followed by an enormous clap of thunder. The lights in the old courthouse flickered and the phone rang: "You have a verdict." We had won the case.

The most controversial case of my state career was the child molestation in daycare case against Michelle Noble and Gay Dove. I still find that people disagree about this case. I never had a doubt in my mind about what happened, but much of my trust in the children's stories was based on what they told me privately, without

Being at the forefront of the movement to facilitate abused children's and women's testimony, preventing re-traumatization of the victim over and over again, is one of the things about which I am most proud.

parents or social workers present to influence them. The evidence at trial was just the tip of the iceberg of the children's ability to detail their molestation.

I am proud to be the first prosecutor in Texas to test the first law enacted in the country allowing videotaped testimony of sexually victimized children. Regardless of the Texas Court of Criminal Appeals decision finding the statute unconstitutional, the U.S. Supreme Court eventually, in an Illinois case, found that the alternative testimony of traumatized kids was admissible under strict statutory standards. Being at the forefront of the movement to facilitate abused children's and women's testimony, preventing re-traumatization of the victim over and over again, is one of the things about which I am most proud.

As an Assistant U.S. Attorney, my first big win was a typical bridge case, except that it netted the largest seizure of Mexican black tar heroine in history. The driver's story was so good that I think Judge Hudspeth almost granted a motion for judgment of acquittal.

I was able to use my state training in a case against Paul Dumpson, a serial rapist who took his three unwitting teenage victims to a part of the desert that just happened to be owned by Ft. Bliss; and I was able to use it again in a case against Sergio Hernandez, a drifter who kidnapped a nine year old child, spirited her to Mexico for five months and basically made her his sex slave.

On July 17, 1990, the U. S. Attorney flew to El Paso from a meeting with the President concerning the failure of savings and loan associations and banks--a crisis in the United States at the time. He walked into my office and said that I was, henceforth to be designated the El Paso FIRREA (bank fraud) prosecutor. "But I can't even balance my checkbook," I protested. Who says God does not have a sense of humor! Thus began my white collar career, to the glee of my parents who always hoped I would get to prosecute a "better class of criminal." Much like high school and your least favorite subject, I learned what I needed to know about financial statements and transactions long enough to argue to a jury, and then promptly forgot what I'd

learned until the next time. Fortunately, I was blessed with two very patient FBI agents who were also certified public accountants and willing to spend Saturdays teaching me basic accounting principles over and over and over...

The prosecution of the first failed financial institution in El Paso, Western Bank, and its first female bank president, gave me my white collar legs, but it also sealed my withdrawal from most of my community involvement. I developed a discomfort, in socializing with people I might someday be required to prosecute.

As much as I disliked bank fraud, I loved healthcare fraud. Coming from a family of doctors, it seemed tailor-made for my white collar career. Dr. Gifford's conviction, followed by Dr. Bieganowski's conviction, was only a path to the biggest case of my career: Columbia/HCA. The Wall Street Journal had a hard time understanding how the largest acute healthcare provider in the world could be toppled by prosecutors in the sleepy, dusty west Texas town of El Paso. One of the proudest and saddest days of my life was receiving (along with my co-counsels, Assistant United States' Attorneys Jose Luis Gonzalez and Steve Garcia) the highest award this country has to offer a prosecutor: the Attorney General's Award for Exceptional Service. Sadly, my mother had just passed away. Next to serving justice, my country and my community, making my parents proud was the biggest motivation in my career. The first phone call, usually from the court clerk's phone in the courtroom, after every verdict, was to my parents.

A month after I received this award, on September 11, 2001, the United States' was invaded by terrorists, who changed the face of our travel, our sense of personal security, and the management of law enforcement resources in this country.

When I began as an Assistant United States' Attorney, there were four assistants practicing criminal law and one assistant practicing civil law. The El Paso Division of the Western District of Texas now has thirty-four attorneys doing a vast variety of work, including anti-terrorism prosecution. There is nowhere else I would rather be.

The Shame/Liability Of Lost Or Stolen Computer Data

BY DAVID J. FERRELL

(Djf@elpasolaw.com)

When I was in the Navy I was issued a manual to study complicated electronic systems used by naval aircraft including fighters and bombers that flew off the USS Enterprise where I was stationed and where I was working as an aviation electronic technician. I was advised that I would be tested on the same material for promotion. The manual had approximately fifteen hundred pages and about two hundred of those pages were printed on pink paper signifying that the material there was CLASSIFIED. I was warned that if I took that manual off the ship I would be punished and if I lost the manual I would be prosecuted.

We have much more serious problems now with government secrets in the computer age. In a September 2006 article in the Washington Post we learn that more than 1,100 laptop computers filled with sensitive government data have vanished from the Department of Commerce since 2001, including nearly 250 from the Census Bureau containing personal information such as names, incomes and Social Security numbers¹.

What about the IRS? Inspectors recently looking into this matter found that 490 laptops had been reported stolen between January 2, 2003 and June 13, 2006. Unfortunately, because reporting procedures for stolen laptops were often not followed, there isn't a real way to know whether this number is accurate².

What about the FBI? In a SECOND audit of this federal agency that took 44 months to complete, it was discovered that the FBI lost 160 weapons and 160 laptop computers—a massive improvement over the 354 weapons and 317 laptops reported lost during the first 28-month-long audit³.

A recent audit of the National Nuclear Security Agency found that it has lost 20 desktop computers and that some of the computers it is now using were not part of its official inventory. Since the NNSA's job is to safeguard our nuclear secrets this could cause a bit of concern if not panic in the United States. What makes this even worse is the fact that the agency has failed 13 audits over the last four years, so it's not as though this news could be characterized as a wake up call

that will prompt better practices⁴.

Robert Ellis Smith of Forbes.com has written an interesting article called "Laptop Hall of Shame" documenting numerous incidents of laptop losses and has called 2006 "The Year of the Stolen Laptop"⁵.

So what do we do to protect the data on our laptops, desktops, thumb drives, etc.? Many of the above mentioned audits found that the data on the stolen or "missing" computers was not encrypted. Most of the data we have on our computers is not "ours" it belongs to our "clients"! We have a duty to safeguard this data and we do not have governmental immunity from lawsuits when the data is compromised.

ENCRYPT!! To protect our sensitive files, we need to encrypt them. There are many tools that will encrypt our data and the basic requirements of encryption are easy to understand.

First, encryption programs create a key. The longer the key, the stronger the encryption. Modern encryption is 128-bit or greater. This level of encryption is considered unbreakable today because computers are not yet powerful enough to attack this standard successfully.

Keys are used to encrypt and decrypt the data. Without the key, the data looks like gibberish. But don't let the word "key" throw you, that just means a "password" which you select. Pick a long one with letters, numbers and symbols, and you're well-protected. It is a good idea to remember the password(s).

Let's start with Windows XP; it includes encryption capabilities. To encrypt a file or folder, right-click it and select Properties. On the General tab, click Advanced. Select "Encrypt contents to secure data" and click OK. Click Apply and select your options. Click OK.

The big problem here is that Windows stores the encryption key with your user account. Anyone who knows your Windows password can automatically access your encrypted files. Or, given a little time, your Windows password, no matter how strong, could be broken. There are

numerous tools available on the Web to do just that. So, XP's encryption is easy to beat.

I recommend using a third-party program to encrypt data in Windows. The free Cryptainer LE program creates an encrypted vault on your computer and/or your storage device. It holds up to 25 MB (megabytes) of data. Simply create a key (password) and then drag and drop your files to encrypt them. It can also be used on removable media, such as a thumb drive (flash drive). There are good directions on the Cryptainer website⁶. The 25 MB free program is used by the software company to get you interested in purchasing more encryption ability. I have put Cryptainer LE on a thumb drive and it works well and is fairly intuitive in its installation and use; but, 25 MB isn't much in today's computer world.

If you need more space, Cryptainer PE allows you to encrypt 25 GB (gigabytes) of data for \$45. Other encryption programs include PGP Desktop Home, \$100, Bestcrypt, \$50, and PC-Encrypt, also \$50.

If you're on a tighter budget, consider a ZIP program. ZIP programs compress files so they are smaller. Many offer encryption as a bonus.

WinZip supports 128- or 256-bit encryption. PKZIP uses 128-bit encryption. Both are \$29.

You can also get rid of references to your document after you edit it. First, delete it from Windows 'My Recent Documents' list. Click the Start button and point to My Recent Documents. Right-click your document in the list and select Delete. This will delete the list entry, not the actual document.

Next, remove the document's name from the program you used to edit it. Some programs keep a convenient list of recently used documents. Microsoft Word, for example, shows its list in the File menu.

No doubt this is a hassle, but I sure would feel better now had our governmental agencies protected our data and I sure don't want my 'clients' data stolen and/or lost by me leaving a thumb drive at Starbucks.

Footnote Links

- [1. http://www.washingtonpost.com/wp-dyn/content/article/2006/09/21/AR2006092101602.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/09/21/AR2006092101602.html)
- [2. http://arstechnica.com/news.ars/post/20070406-inspectors-irs-lost-490-laptops-many-with-unencrypted-data.html](http://arstechnica.com/news.ars/post/20070406-inspectors-irs-lost-490-laptops-many-with-unencrypted-data.html)
- [3. http://arstechnica.com/news.ars/post/20070212-8821.html](http://arstechnica.com/news.ars/post/20070212-8821.html)
- [4. http://www.techdirt.com/articles/20070403/090135.shtml](http://www.techdirt.com/articles/20070403/090135.shtml)
- [5. http://www.forbes.com/columnists/2006/09/06/laptops-hall-of-shame-cx_res_0907laptops.html](http://www.forbes.com/columnists/2006/09/06/laptops-hall-of-shame-cx_res_0907laptops.html)
- [6. http://www.cypherix.com/cryptainerle/](http://www.cypherix.com/cryptainerle/)

Justice In El Paso From 1821-1846

■ BY CLINTON CROSS

Mexico obtained its independence from Spain in 1821, and governed Northern New Mexico (which included El Paso) until 1846 when James Magoffin met with Governor Manuel Armijo and persuaded him to abandon Santa Fe to General Stephen Watts Kearney.

Prior to Independence, New Mexico did not have a printing press, and the few books that existed were in private homes or owned by the church. With perhaps one exception, there were no doctors practicing in New Mexico during the Mexican era.

Licenciado Antonio Barreiro, from Chihuahua, was the only attorney ever to serve in New Mexico during the Mexican era. Although he was sent to New Mexico as an asesor (legal advisor) in 1831, he also served in the National Congress in Mexico City in 1833 and 1834. It's probable he was actually present in the territory for a very short period of time.

Despite several attempted reforms (which failed due to lack of resources to implement the reforms), frontier justice under the Republic remained in the hands of alcaldes and jueces de paz who had no legal training. These local



magistrates relied more on common sense and custom than on the law, but it is likely that their decisions were respected by the community they served. The nearest attorneys were in Chihuahua, hundreds of miles to the south. Nevertheless, an accused was expected to obtain a responsible person to represent his or her interests, and so was the government.

Josiah Gregg, who is credited with bringing the first printing press over the Santa Fe Trail to the New Mexican frontier, speculated that in judicial proceedings no attention was paid to

any code of laws. However, in 1827 Governor Antonio Narbona prepared an inventory of the provincial archives, and they included a copy of the Recopilación de leyes del los Reynos de las Indias, the major compendium of Spanish law, and the acts of the Spanish Cortes of 1812, along with other government legislation. In short, although justices had no formal legal education, some may have had access to laws and legal procedures.

There are records of eleven homicide cases tried during this era. In her book, "Murder and Justice in frontier New Mexico 1821-1846" (University of New Mexico Press, Albuquerque, 1997), Jill Mocho describes in considerable detail the facts and legal procedures involved in these eleven cases. The legal record regarding four cases, however, is incomplete. In seven remaining cases the suspects were eventually released. In one case the two suspects, who were confessed murderers, were eventually set free because it seemed no one knew what to do with them. Josiah Gregg commented, "I never heard of but one execution for murder in New Mexico, since the declaration of independence."

There is no record of the one case referenced by Josiah Gregg.



Save The Date

The El Paso Bar Association
will celebrate our
110TH ANNIVERSARY
with an
Anniversary Dinner
on *Friday, October 19, 2007*
at the Wyndham Hotel.

Please mark your calendar and make your plans to join us as we celebrate this grand event in our history.



EPYLA'S JUNE STAR OF THE BAR

MORGAN HAZELTON

EPYLA is proud to honor Morgan Hazelton as our May "Star of the Bar." While Morgan's contributions to EPYLA and the El Paso legal community are too numerous to mention, they are impossible to overlook. As a result of Morgan's efforts EPYLA is a stronger organization than it has ever been.

Morgan originally hales from Las Cruces, New Mexico. She studied English and German at the University of New Mexico and graduated cum laude. She attended law school at the University of Texas School of Law, and was a summer law clerk with the Scott Hulse law firm. While in law school Morgan participated in the Children's Rights Clinic, Juvenile Justice Clinic and was also the articles editor of the Texas Journal of Women and the Law.

Morgan moved back to the El Paso/Las Cruces region after law school and began to work at Scott Hulse. While at Scott Hulse, she worked in the firm's litigation section and concentrated her practice in insurance defense, defamation, and commercial litigation. Morgan left Scott Hulse in October 2005 to stay at home with her son. In the Spring 2007 she taught "Civil Rights and Liberties" at the University of Texas at El Paso.



Morgan has been an active member of EPYLA since 2001 and a director/officer since 2003. In that time Morgan has also served as EPYLA's Treasurer (2003-2004), Secretary (2004-2005), President-Elect (2005-2006) and President (2006-2007). While Morgan has actively participated in most of EPYLA's programs and events, she is proud to have supported the Wills for Heroes

Clinic, the Holiday Party for Disadvantaged Children, EPYLA's Golf Tournament, the New Lawyer Training Program, and she successfully ran the 2007 El Paso High School Mock Trial Competition

In addition to EPYLA, Morgan is a member of the El Paso Bar Association, the Women's Bar Association, and the Mexican American Bar Association. Her contributions to the El Paso community extend well beyond the bar and include her service to the El Paso Community College Foundation Board. She served as a director of the board from 2003 to January 2007, and was a member of the Executive Committee from 2004 to 2007.

Morgan is married to James Brookes and has a son Jaxon. She and James are greeters at St. Mark's United Methodist Church, and she encourages you to stop by and say hello. Her passions in life include her son Jaxon, NPR, debating, and rock and roll. While her plans for the future remain a secret, we have no doubt she will be successful in accomplishing them.

EPYLA is grateful to Morgan for her dedication and outstanding leadership. EPYLA's members are grateful to Morgan for her friendship. Congratulations!



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Give a CASA child a happy birthday!

The EPYLA will be collecting donations to purchase birthday gift cards for CASA of El Paso, Inc. to be distributed to children in the court system because of abuse and neglect. Please bring your donations to the EPBA May meeting or contact Katari Buck at kbuc@scotthulse.com or 546-8209.

CASA's Mission: CASA of El Paso trains and supports volunteers from the community to advocate for abused and neglected children who need representation in the family court system, striving to provide them safe and permanent homes.



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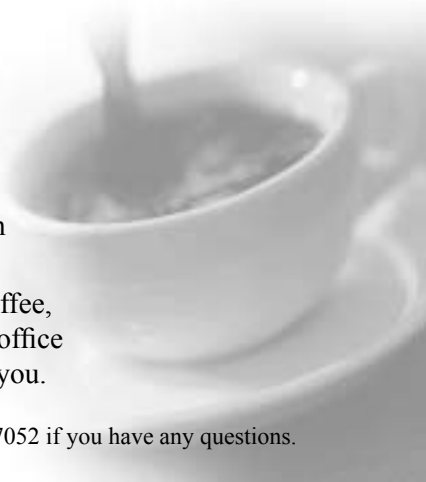
Coffee at the Bar Office

Join us for coffee and donuts while you are in the courthouse between 8:15 a.m. to 9:30 a.m. on the following dates:

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- Friday, June 15th
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- Friday, July 20th
- Friday, August 3rd
- Friday, August 17th

While you are having coffee, let us tell you about our office and what is available to you.

Call Nancy at 532-7052 if you have any questions.



ASSOCIATION NEWS

El Paso Paralegal Association

The El Paso Paralegal Association will hold its next meeting on Thursday, June 21, 2007 at 12:00 noon at the El Paso Club, 201 E. Main. Guest Speaker will be Donald Williams who will speak on Family Law issues. Optional buffet is \$14.00 or \$8.50/soup & salad. Call Denise Flynn, 546-8318 to make your reservations. Remember your donations to our charity, Candlelighters.

Schedule for the summer:

Thursday, July 19, 2007 – Guest Speaker will be Edgar Borrego.

Thursday, August 16, 2007 – Guest Speaker to be announced.

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Send your check to the El Paso Bar Association, 500 E. San Antonio, Room L-115, El Paso, Texas 79901. If you have any questions, please call Nancy at 532-7052.



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