



# EL PASO BAR JOURNAL

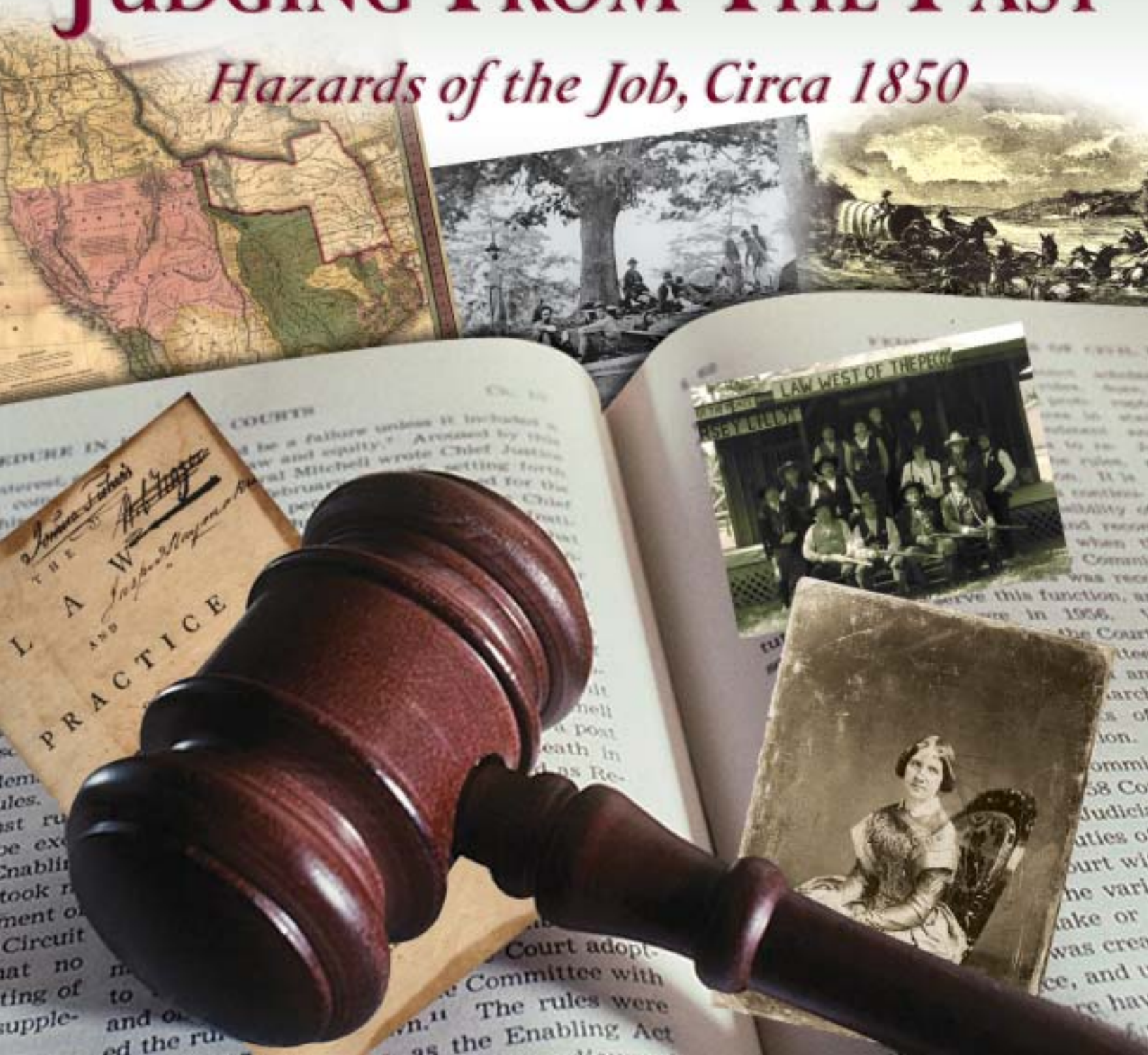
A Monthly Update of Events and Information

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October 2007

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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

# Lawyers And Family Values

I think there is something to the notion that “we are family.” However, I’d like to think that we lawyers are *familia*. The term *familia* goes beyond the nuclear family. It includes extended families.

What were our ancestors’ “family values?” What should be are our “family values” today?

The first question is a historical question. Both questions are spiritual ones. If we lose touch with our parents’ values, we may in some sense lose touch with our own souls. But our ancestors sometimes lost their way; and we must always strive to not lose our way.

Last year Justice Anne McClure wrote about “professionalism,” and emphasized



many values that also might be considered “family values.” Her list is not all inclusive. This year I was to identify some additional qualities that I believe should be included.

The value I’d like to discuss this month is “compassion.”

Our profession is both “adversarial” and “fee for service.” It has for the most part worked well, although not perfectly. For those who cannot afford a fee, the system fails.

Lawyers from the beginning of time have recognized the problem, and have contributed their time free of charge to correct individual and social injustice. For instance, Francis Scott Key and John Quincy Adams, both lawyers, appeared *pro bono* before the United States Supreme Court seeking freedom for slaves. For those who don’t recall, Francis Scott Key argued Mima Queen and Child v. Hepburn (1813). He asserted that family history should be admitted into evidence as an exception to the hearsay rule (in Mima’s case, family history was that Mima Queen’s maternal ancestor Mary had been freed by her owners which, if admitted into evidence and persuasive, would have resulted in freedom for all Mary’s descendants). Unfortunately, Key lost. John Quincy Adams argued The United States v. the Libelants and Claimants of the Schooner Amistad (1841). I recommend the movie about the case, “Amistad.” The examples of lawyers’ *pro bono* work are of course legion, and if identified and documented, would fill the shelves of thousands of libraries.

Nevertheless, the problem of providing access to justice for those who cannot afford a lawyer remains a significant one. A study recently released by the Legal Services Corporation reveals that 50 percent of indigent Americans who need and qualify for civil legal aid do not receive services, because legal aid offices do not have the resources to help them. Texas currently ranks 40th in the nation in terms of funding for legal aid.

According to Texas Supreme Court Chief Justice Wallace B. Jefferson, in his state of the judiciary address to the legislature on February 20, there are two crucial areas facing the criminal justice system. One is developing a means to manage the large number of cases involving defendants with mental illness. The second crucial need concerns the unfortunate reality that our criminal justice system, on rare occasions,

*Continued on page 4*

EL PASO BAR ASSOCIATION  
**October Bar Luncheon**

Tuesday, October 9, 2007

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

***The Argument For A Children's Hospital***

*Speaker: Dennece Knight*

*Director of the Thomason Health Foundation at Thomason Hospital, the only remaining not for profit hospital in El Paso with a charitable mission. She is the Project Director for the Proposed Children's Hospital initiative.*

**Please make your reservations by Monday, October 8, 2007 at noon by calling Nancy at 532-7052 or via email at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)**

## Lawyers And Family Values

convicts the innocent.

On October 4th the State Bar of Texas celebrated the 25th Anniversary of "Texas Lawyer's Care," a program that represents the State Bar's passionate commitment to trying to assist individuals who need justice (access to the legal system) but cannot afford to pay for it.

A contribution to the Access to Justice Foundation is one way to demonstrate our compassion. We care about those who need and deserve access to our system of justice but cannot afford it. We are *familia*.

For information about how to contribute, contact the Texas Access to Justice Foundation ([www.teajf.org](http://www.teajf.org)), or call 800-204-2222, ext. 1855. Your contribution will be recorded for history.

### THE INTERNATIONAL LAW SECTION EL PASO BAR ASSOCIATION

Presents

### *What every US Attorney Should Know About Mexican Law*

**Thursday, October 4, 2007**

1:00 p.m. – 3:00 p.m. El Paso County Courthouse  
Ceremonial Court Room 12th floor

Approved for 2.0 hours of MCLE  
 Cost is \$25.00 for members of EPBA  
 \$35.00 for nonmembers of EPBA

#### **TOPICS TO INCLUDE:**

Litigation, Corporate, Foreign Trade and Customs,  
Tax Litigation and Labor.

Please send your check to El Paso Bar Association, 500 E. San Antonio, Room L-115, El Paso, Texas 79901. If you have any questions, please contact Nancy at 532-7052 or [atnancy@elpasobar.com](mailto:atnancy@elpasobar.com)

# CALENDAR OF EVENTS

## OCTOBER, 2007



**Tuesday, October 2**

*EPBA Board Meeting*

**Thursday, October 4**

*EPWBA Monthly Meeting*

**Thursday, October 4**

*International Law Section Seminar*

**Thursday, October 4**

*Immigration Law Section Meeting*

**Friday, October 5**

*Coffee & Donuts at the Bar Office*

**Tuesday, October 9**

*EPBA Monthly Luncheon*

**Tuesday, October 16**

*EPWBA Past President's Luncheon*

**Friday, October 19**

*Coffee & Donuts at the Bar Office*

**Friday, October 19**

*EPFLBA "Family Law 201" Seminar*

**Saturday, October 20**

*EPBA 110th Anniversary Dinner Gala*

### UPCOMING EVENTS

**Friday, November 2**

*EPCFBA Supreme Court Review*

**Friday, January 25, 2008.**

*Immigration Training Seminar*

**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 November, 2007, please have the information to the Bar Association office by Wednesday, October 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

If you have not sent in your **2007-2008 Bar Association Membership Dues** please do so. Please go to our website, [www.elpasobar.com](http://www.elpasobar.com) to download the statement and send to our office.

Our 110th Anniversary Photo Composite which will be unveiled at our **110th Anniversary Dinner Party on Saturday, October 20, 2007.**

Make sure that your dues are paid..

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# So You Want to be a Judge?

## (Part One)

■ BY THE HONORABLE BILL MOODY

In the last dozen years more judicial races have been contested in El Paso than ever before. Whether the courts were newly created, open benches created by vacancies, or challenged incumbents, longer ballots faced local voters, less and less aware of all but a few of the high profile candidates. Some contests have drawn multiple candidates forcing an inevitable and costly run-off. The average judicial race is costing between \$50,000 and \$100,000 locally and non-incumbents have frequently been forced to use their own money or borrow heavily. The lengthy campaign season has affected non-incumbents' abilities to practice law and campaign simultaneously that often times has adversely affected their law business. Incumbents are forced to use all their vacation time campaigning and every weekend and evening on the campaign trail. Family times are greatly reduced. If one is fortunate to win an election, the prospects of another opponent within four years is becoming more likely. Most judicial elections are boring and issueless to everyone except lawyers, with the exception of those that become mean spirited, ugly, demeaning, and little more than negative mud slinging messes. If we could only return to the good old days when only the ablest lawyers were forced into becoming judges and performed the job as a service to the community.

Let's return for a while to those days when El Paso was a young growing community rushing through the glorious days of the Old West. Between 1850 and 1900 El Paso County had only one District Court. Given a variety of different numbers, 11, 18, 25, 20, it eventually settled as the 34th District Court in 1894. Between 1870 and 1876, three men served as "The Judge" of El Paso County. Gaylord Clarke, Simon Bolivar Newcomb, and Charles Howard presided over the most turbulent years the El Paso judiciary has ever witnessed. One was a conservative Republican, one a Radical Republican, and one a Democrat. One was impeached and removed from office, and he was the most fortunate of the three. One was shot at point blank range by a shotgun in the

*Let's return for a while to those days when El Paso was a young growing community rushing through the glorious days of the Old West. Between 1850 and 1900 El Paso County had only one District Court. Given several different numbers 11, 18, 25, 20, and eventually the 34th District Court in 1894.*



*1870 view of El Paso Street viewed from area near present Plaza Theater looking south. Just beyond barber pole on right side of street is location of Ben Dowell's Salloon where Seator Fountain was shot on 12-7-1870, the present location of the Camino Real Hotel.*

chest and died instantly. Even he was more fortunate than the last judge who was executed by a mob firing squad that resorted to machetes and axes to finish the job, hacking the judge to death and finally throwing his remains down an abandoned well.

In 1870, El Paso's population was a mere 464 people and the County with over 2,000 people had been organized for only 20 years. El Paso was extremely isolated with the only contact with the outside world maintained by wagon trains, army supply wagons, and stagecoaches that arrived infrequently and irregularly often times encountering Indian raids. The closest supply centers were located hundreds of miles away in San Antonio, Santa Fe, and Chihuahua. The native former Mexican population remained stable during the Civil War but most of the Confederate sympathizers abandoned El Paso when Union troops occupied

the area in August 1862. With the end of the Civil War, El Paso was placed under military rule followed by Radical Republican rule. The reconstruction era in El Paso mirrored much of the South, with former Confederates losing their property and other civil rights, including the right to vote and to hold public office. The few remaining Anglos: The Schutzes, Simeon Hart, Ben Dowell, the Gillett brothers, and Joseph Magoffin were now joined by a new group of Republicans led by W.W. Mills, one of only two El Pasoans who voted against secession in 1861. A group of Californians who served in the Union Army and arrived as occupying troops with the California Column became an important political factor and were led by the volatile and controversial Albert Jennings Fountain. Mills and Fountain initially worked together and established the Republican Party dominance in El Paso. Two very unique

men aided them in their effort. Luis Cardis, an Italian immigrant, who arrived in El Paso at the end of the Civil War, learned Spanish and became the leading valley politician by gaining the support of the Mexican-American population. Cardis' close friend and political ally, the Reverend Antonio Borajo, ran his Catholic parish in San Elizario with an iron fist and preached politics from his priestly pulpit.

By 1869 a major split in the Republican Party occurred in Texas and El Paso. In El Paso it pitted the W.W. Mills group (the Conservative Republicans) against Albert Fountain (the Radical Republicans). In the November 1869 election Albert Fountain defeated the Mills forces in the key El Paso County race for State Senator. Attorney Ben F. Williams, a former Democrat and Confederate soldier, was one of the few defectors from the Mills faction. In a four-day election overseen by U.S. Army troops Fountain was elected by a vote of 191 to 134. There were only 122 registered voters listed for El Paso County but over 300 votes were cast. W.W. Mills immediately protested claiming that Fountain with Williams' assistance had stolen the election from him. The protest was denied and Senator Fountain took his seat in the Texas Legislature where he became the Majority Leader for the Republicans and a key floor leader for the Radical Republicans' legislative agenda. There was a vacancy on the 25th District Court of El Paso, which was considered one of the primary patronage plums of the upcoming legislative session. Ben Williams anticipated the appointment for the only District Court in El Paso County. Fountain, possibly in an attempt to win over some of Mills' supporters, recommended Gaylord J. Clarke. Clarke had attended college with W.W. Mills in New York at Union College. Later Clarke attended Albany Law School and became a successful attorney in Albany, New York. He moved to El Paso in 1867 for his wife's health and began practicing law and also worked for W.W. Mills in the U.S. Custom Office. Clarke was an accomplished writer of poetry and prose, well read and a gifted orator. He and his charming wife Frances brought a higher quality of culture to El Paso. They were also deeply religious and devout Episcopalians. Senator Fountain and Clarke persuaded the Reverend Joseph W. Tays, a native of Nova Scotia, to come to El Paso. After moving to El Paso with his two young boys he founded St. Clements Episcopal Church, the first Protestant Church in the El Paso Valley in 1870. (See Richard Feuille's article on Parson Tays and St. Clements Church).



*Gaylord Clarke 25th District City Judge 1870  
murdered near Ben Dowell's Saloon Dec. 7, 1870.*

The Clarke's home located at the corner of Overland and El Paso Street was one of the finest in El Paso (it had wooden not dirt floors) and he shared the home with Senator Fountain and his growing family. While Judge Clarke was a refined intellectual, not everyone in El Paso favored his appointment, most of all the highly jealous Ben Williams. Over 40 El Pasoans petitioned the Governor in support of the judgeship for Williams, but Fountain's support of the governor's legislative agenda and the fact that W.W. Mills was married to former Governor Hamilton's daughter clearly outweighed Ben Williams' local support. Ben Williams was outraged and did not keep his feelings to himself criticizing both Judge Clarke and Senator Fountain in the most expressive of West Texas language in every saloon, gambling hall, and business, to anyone who would listen. He even expressed his feelings loud enough in Judge Clarke's courtroom to receive a stern rebuke from the Judge. His hard drinking and anger grew until it erupted in violence on December 7, 1870.

There are several variations of the explosive events that resulted in the death of Judge Clarke which are not uncommon in the historical records of early El Paso. The following is a composite of the various renditions the author feels are the most reliable.

The morning of December 7 was clear and cool and Ben Williams was one of the first customers to enter El Paso's best-known bar, Ben Dowell's Saloon. He was thirsty and in a bad mood. Several drinks did nothing to improve his disposition. Soon he was ranting and raving about Senator Fountain and Judge



*Albert Fountain (photo) El Paso State Senator  
1869-1874. His and his 10-year-old son's  
disappearance Feb. 1, 1896 near Las Cruces  
remains one of areas most famous unsolved  
murders.*

Clarke. The few employees present at Dowell's Saloon were surprised when Senator Fountain strolled inside cane in hand. Hearing his name used in vain angered Fountain and a brief verbal exchange occurred. An irate Williams with almost a years worth of pent up anger reached for his derringer and fired two shots hitting Senator Fountain twice. One shot struck Fountain in the chest, but legal papers and a watch in his breast pocket deflected the bullet resulting in merely a bloody flesh wound. The second bullet struck him in the leg causing a serious injury that resulted in a life long limp. Fountain who was unarmed used his cane as best as possible to fend off Williams' attack. Williams fled to his boarding house a short distance away and barricaded himself in his room. An enraged and bleeding Fountain limped toward his home to get a rifle and returned to even the score.

Part II will follow with the Williams – Judge Clarke confrontation and the political assassination of Judge Clarke's successor, Judge Newcomb.

I would like to give credit to: C.L. Sonnichsen, author of Pass of the North, J. Morgan Broaddus, Jr., author of The Legal Heritage of El Paso, W.H. Timmons, author of El Paso -- A Borderland History; and Gordon R. Owen, author of The Two Albert's Fountain and Fall, for their research upon which I have partly drawn in preparing this article.

# How Civilization Came to El Paso

## *Law and Lawyers in the Sage Brush and Chaparral Days Reprised*

■ BY BALLARD C. SHAPLEIGH, COLBERT NATHANIEL COLDWELL AND DAVID J. FERRELL

*Advocacy Chair, EPITA*

The El Paso Bar Association and America's favorite pastime share a common 110-year-old milestone. The Texas Rangers' 30 runs in a 30-3 win over the Orioles in the first game of a doubleheader in August were the most by one team since 1897, and the El Paso Bar Association, formally organized *nudum pactum* on June 9, 1897, is marking 110 years of existence.

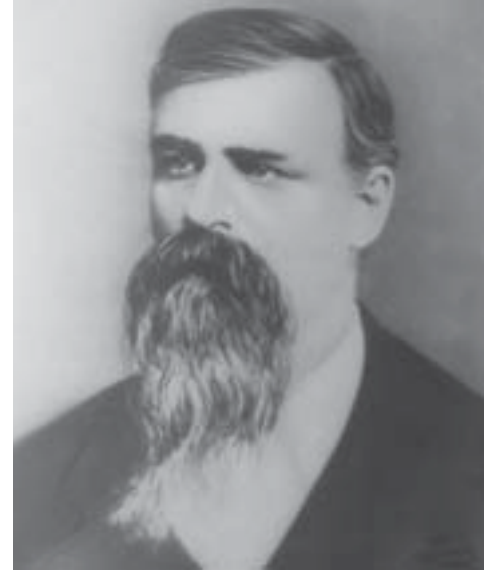
But as befits a place where "it was hard to find a judge, sheriff, and prosecutor all sober so a case could be tried", the Bar Association took five more years to hold its first banquet. Thus, the birth of the Bar Association encompassed the terms of two presidents, William McKinley and Theodore Roosevelt; Mark Twain happened to be the most famous American then living. The long gestation is hardly surprising since in 1900, there was only one attorney in El Paso, Judge Josiah F. Crosby, who could describe from personal experience the ante-bellum conditions in the El Paso of the 1850s as he was the only lawyer who bothered to return and live in El Paso after the Civil War. In the entire state, there were 4,600 men and 17 women licensed to practice law in 1900, and of these only 315 belonged to what was then called the Texas Bar Association.

Forty years earlier, the census of 1860 gave El Paso a population of 428 persons, among whom were 45 laborers, 4 gentlemen, 17 professional cooks, 4 wagoners, 1 preacher, 23 stage drivers and 15 merchants and, most importantly, 4 lawyers and 1 judge. El Paso was booming because two years before this census, in 1858, the Butterfield Overland Mail Co. established its first stagecoach stop in El Paso as the midway point between Missouri and California, and for forty years their offices were the largest in downtown El Paso.

In 1866 the county's government was moved from San Elizario to Ysleta, another of the oldest settlements in the county. Then in 1868 San Elizario again became county seat; it retained the role until 1873, when another election made Ysleta county seat. In 1883, after



*Colbert Coldwell*



*Allen Blacker*

yet another hotly contested election, El Paso became the county seat where it has remained to this day.

During the 1870s the area surrounding El Paso was still constantly under harassment from Indian attacks and outlaws. By 1878, the community of El Paso (as opposed to the communities of Ysleta and San Elizario) had grown to a population of about 650 with five stores, three saloons, three hotels, a customhouse, a Masonic Lodge, three physicians, one school, no churches and a total of six lawyers. Ysleta, the county seat, was described as a flourishing settlement and when the District Court was in session, was reportedly overpopulated with visitors.

Before the arrival of the railroads in 1881-1882, prospective jurors and members of the legal profession were forced to travel to the county seats in San Elizario and later Ysleta on horseback or by wagon, and often had to plan on spending one or more nights away from home to complete their business.

With this backdrop, the first annual banquet of the Bar Association was held on January 13, 1902. That evening William Michie Coldwell realized – "not with one burst of assuredness

and splendor...but slowly, painfully, and with infinite reluctance, as the consciousness of error upon an Appellate Court during the argument of a motion for rehearing" - why he among the 60 other members of the Bar there assembled was asked to deliver the principal address later published under the title "How Civilization Came to El Paso - Law and Lawyers in the Sage Brush and Chaparral Days".

For a man "whose peculiarities and conceit were legendary", according to J.F. Hulse, it was a matter of no small importance to him that he had been selected as the keynote speaker to share a dais with the evenings' other luminous orators like Maj. W.H. Burges, a future State Bar President, and A. B. Fall, a future U.S. Senator and Interior Secretary (notwithstanding the Teapot Dome scandal making him the first Presidential cabinet member to go to prison for his actions in office). W.M. Coldwell told his learned brothers that, "one man and one alone, has practiced law for nearly thirty years without following the majority to the grave, or his clients to Huntsville." "With proud modesty", he said, "I confess it. I am that man" and announced that he had adopted the immortal answer to the eternal question "what



memorable thing did you do?" - his answer being, "I survived." He conceded afterwards to his family that this address was his first attempt at humor. But, since it is still not clear that intelligence has any long-term survival value, judging by his progeny, how exactly did he come to survive?

His father, Colbert Coldwell, passed through El Paso in the 1840's. As a young man Colbert engaged in the Santa Fe trade for five years from 1840 to 1845, spending the bulk of his time in Chihuahua, before returning to Tennessee to study law. In Chihuahua, Colbert learned the Spanish language. He also accompanied Kit Carson on Carson's first trip to Mexico and in 1846, during the Mexican War, he was a translator for General Kearny in the overland invasion of Santa Fe and accompanied the Missouri Volunteers in the expedition south to El Paso and on to Chihuahua under Colonel Alexander Doniphan. Before the commencement of hostilities at the Battle of Brazito twenty miles north of El Paso near present-day Vado, he parlayed with a Mexican officer. Their heated exchange of words, as related in a dispatch by Lt. Kribben, was soon followed by pitched battle and a victory on Christmas Day, 1846. According to historian Leon Metz, "the antecedents of Ft. Bliss began with Colonel Alexander Doniphan and his 846 man force of Missouri Farm Boys."

One family tradition not authenticated in any official account has it that Colbert and the Mexican parlay officer knew each other and had some old scores to settle from past dealings. Though neither was armed, they scuffled at the rupture of negotiations which was a sign to both sides to commence battle.

In 1847 he was admitted to the bar and began practicing law in Arkansas. He later served as an Arkansas state legislator before leaving for Texas in 1859. He settled first in Mansfield, near Fort Worth, and then relocated to Navasota. Coldwell married Julia Michie, and he and his wife had eight children, including Nathaniel Colbert Coldwell and William Michie Coldwell. Both of these sons, along with their father, would eventually come to practice law in El Paso and occupy offices of public trust including the positions of county attorney, city attorney and district attorney.

Toward the end of Civil War, Colbert Coldwell was detained in jail nine months at Galveston for his continued open opposition to secession. After the Civil War, Coldwell was appointed District Judge of the 7th Judicial District by his former jail mate at Galveston, provisional governor A. J. (Jack) Hamilton



*Photo of the Ysleta Courthouse-  
Commissioners Courtroom*

on August 23, 1865. He was then appointed associate justice of the Texas Supreme Court on October 18, 1867 by Gen. Philip H. Sheridan, Reconstruction commander of the Fifth Military District. As an associate justice on the five member Texas Supreme Court, Coldwell joined in the dissenting opinion in the Emancipation Cases, *Hall v. Keese* and *Dougherty v. Cartwright*, 31 Tex. 504 (Tex. 1868). Although he previously had been a slave owner, the contracts at issue for the purchase and sale of slaves were not enforceable in his opinion because Lincoln's Emancipation Proclamation had the effect of abolishing slavery. The same year he campaigned to be a delegate to the Texas Constitutional Convention of 1868-69, he was nearly killed by a white mob while speaking to a mostly black crowd during the campaign, but won the election and became a leader among the moderate Republicans at the convention. He was removed from his seat on the bench in 1869 when radical Republicans rose to power.

Following his Supreme Court service, Colbert Coldwell was nominated by President Grant as the U.S. Collector of Customs in El Paso and confirmed in 1873. In those days, before the income tax, the federal government was principally financed by import duties charged on foreign goods. Then as now, El Paso had been a crossroads of commerce, north and south to Mexico as well as east and west to California. Besides an annual salary of \$5,000, the Collector would receive 25% of the value of contraband seized by customs

riders, who would share another 25% bounty. The appointment was a political plum, but in a remote orchard. His past familiarity with the area as a Santa Fe/Chihuahua trader and Doniphan Expedition translator must have weighed heavily in his favor.

After retiring from that post, he relocated first to Winfield, Kansas and then to California, leaving behind his third son W.M. Coldwell. According to his youngest daughter Mattie, Colbert made enough money from the practice of law that he was able to save his salary as Collector of Customs in El Paso. He died in Fresno on April 18, 1892. A grandson, also named Colbert Coldwell, co-founded the Coldwell Banker real estate company in San Francisco after the 1904 earthquake.

Of his six surviving children, two became lawyers and practiced law in El Paso - Nathaniel Colbert ("N.C.") and, beginning in the 1870's, youngest son William Michie ("W.M.") In 1876, N.C. Coldwell was unopposed in the race for El Paso county attorney in the same election that also saw Joseph Magoffin win the office of county judge. In June 1876, the Twentieth Judicial District convened for the first time in El Paso County under its new title (which formerly had been the Twenty-fifth District comprised for judicial purposes of El Paso, Tom Green, Pecos and Presidio Counties.) According to reports, Allen Blacker presided as judge and N.C. Coldwell served as combined county and district attorney for reasons not fully known. N.C. Coldwell, whose son founded the San Francisco real estate company, also engaged in the private practice of law with his father in El Paso and in Winfield, Kansas, and then on his own in Pueblo and Durango, Colorado where he married the widow of gunned-down outlaw Ike Stockton and ended his days a prominent attorney in Fresno, California.

Colbert Coldwell was one of the few Southerners to see the futility of secession. After the Civil War he may have profited in the short term with high office during Reconstruction with his Republican connections, but he nonetheless faced a bleak future in Texas after the Compromise of 1876.

Next: How one lawyer survived the practice of law on the frontier.

Besides family papers and diaries, the authors wish to acknowledge use of the following resources: *Pass of the North-Four Centuries on the Rio Grande* by C.L. Sonnichsen; *The Legal Heritage of El Paso* by J. Morgan Broaddus; *Texas Lawyer* by James F. Hulse; and *Turning Points in El Paso* by Leon Metz, as well as the internet sources linked.

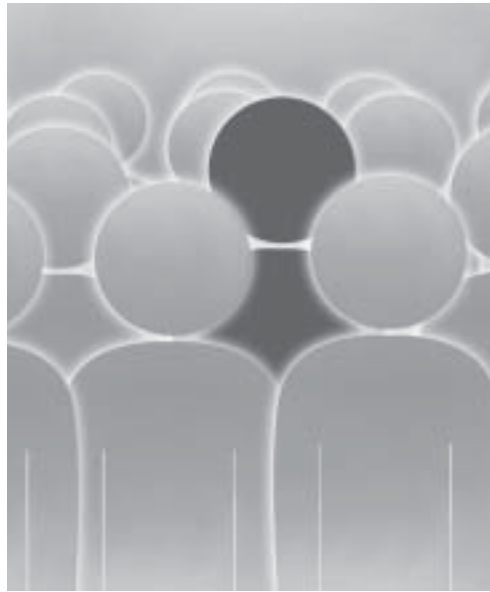
# COLLABORATION: A TOOL OF THE WISE LAWYER

■ BY JUDGE OSCAR G. GABALDÓN, JR.

“From James Madison’s fiery debate at the Constitutional Convention in 1787, through landmark Supreme Court decisions in *Brown vs. the Board of Education* and *Gideon vs. Wainwright*, to championing the causes of environmental protection, fair housing, and public health in the year 2000, the legal profession has played a crucial role throughout American history. Writing the script for our unfolding American drama, legal practitioners serve as the connecting link between society and the rule of law. In doing so, they humanize or dehumanize our system of laws, and provide or preclude access to our judicial system.”<sup>1</sup> This observation clearly demonstrates that lawyers play a significant role in helping to bring about quality of life changes that benefit so many.

Mohandas Karamchand Gandhi observed: “The best way to find yourself is to lose yourself in the service of others.” This is precisely the concept behind collaboration, something that lawyers should seek to engage in when trying to achieve the greater good. True collaboration calls for us to immerse ourselves in the service of others. This, in and of itself, can help bring out the best in us. In its most simple form, collaboration refers to those processes where people work together on a project or activity. The collaboration may involve a few individuals or it may involve larger groups, such as organizations and even entire societies. In truth, collaboration is much more intense than what this description covers.

Historically, mankind’s survival and ability to move forward in a progressive manner has largely depended on collaboration. Uniting together, with a shared purpose, allows people to bring about needed change that can be of great benefit to many. Unfortunately, the lack of belief by people, in their own abilities as a community, often times prevents the formation of collaborative groups. Maxwell Maltz, author of the 30 million copy best seller, *Psycho-Cybernetics*, wrote: “Often the only difference between success and a failure is not one’s better abilities or ideas, but the courage that one has to bet on one’s ideas, to take a calculated



*Collaboration can help achieve lofty and noble objectives. Prudence calls for everyone that is involved in a group effort, aimed at bringing benefit to others, should seriously consider a collaborative approach to the task.*

risk – and to act.” Hence, an essential factor of collaboration is to trust one’s ability to contribute positively to a common cause.

It is important that in order to better grasp the principles or elements behind the idea of collaboration that we differentiate and compare collaboration from coordination and cooperation. Though all these concepts involve similar elements, they are nonetheless different and distinct realities. It is not uncommon, however, for these concepts to overlap due to their similarities.

Coordination requires the involvement of more than one person, as is the case with cooperation and collaboration; however, the focus in coordination is in determining who is responsible for what parts of an undertaking, whereas the focus of cooperation

is on mutual trust in achieving a mutual benefit. Like cooperation, collaboration also incorporates mutual trust and respect; and like coordination, collaboration also involves an understanding of who is responsible for what. However, collaboration involves more than this. Collaboration involves long-term commitment, a sense of belonging to something larger than oneself, and a more active process that engages the diversity of knowledge, experiences, skills and abilities of the collaborators.

In order to effectively coordinate, it is crucial that some methodology of problem resolution be in place, and that the necessary tools, to succeed in the coordinating efforts, be available. The tools might be technology, certain expertise, networking, and other resources. In coordination, overlapping of responsibilities is avoided through careful identification of each individual’s assigned tasks. The best scenario in coordination would be, therefore, to achieve a balance of tasks, roles, and schedules. However, the level of interdependence, in coordination, is low. Individual latitude is also kept at a low level. The efforts of the parties in coordination are geared towards accomplishing a common goal. Once the goal is reached, the coordination ends.

Cooperation, on the other hand, usually involves more consultation between the persons than coordination. A higher level of information sharing is present in cooperation than in coordination. There is a mutual advantage that is fostered by dividing and sharing the work. Solutions involving complicated situations can be more effectively handled. The level of interdependence in cooperation is notably more than in coordination efforts. Like with coordination, once the goal is achieved, the participants do not need to maintain an ongoing relationship. Collaboration incorporates many of the aspects of coordination and cooperation within its dynamics.

Collaboration calls for a diversity in the makeup of participants; however, the participants should bring to the table skills aimed at fostering and maintaining a collaborative spirit at all times. Collaboration is used to collectively reach results that cannot otherwise be obtained by working alone. Many times, collaboration helps to bring about creative, unique, and

above-average results. Collaboration enables the participants to come together with a shared vision, to build consensus, and to obtain a common understanding. The level of interdependence is usually significantly more than with coordination and cooperation. Moreover, the relationship between those involved in the collaborative continues beyond the individual accomplishments that the collaborative set out to achieve.

From what has been described regarding collaboration, it is rather easy to recognize that collaborative groups are interdependent groups. That is, they are teams. Coordinated groups are not teams. Cooperative groups may or may not be teams. Teamwork must be consistently pursued. Without a commitment to teamwork, a collaborative will undoubtedly fail to meet its objectives.

The trend is to develop useful collaborative conditions and processes, particularly in areas addressing family dependency matters, mental health services, and other societal components of major importance to a community's overall welfare. This entails analyzing the particular needs of the community prior to identifying the stakeholders of the collaborative. Once the needs are identified, the stakeholders are identified. For example, often time projects are undertaken without the involvement of those to be affected by those projects, and this many times contributes to results in a finished product that are less than ideal. Take for instance the insightful observation made by Lawrence Baca, President of the Native American Bar Association: "Of the hundreds of opinions written every year involving issues of Federal Indian Law—issues of Treaty Rights, issues of land rights, issues involving the sovereign powers of Indian tribes—none has ever been written by someone who was an American Indian."<sup>2</sup> Had the American Indian been a participant in contributing to the development of Indian laws, we would probably have better Federal Indian Law that is more precise and conducive to serving the needs of the Indian populations.

The stakeholders of the collaborative come together to develop and implement the necessary actions and programs designed to meet the community's needs. It is very important that those that will be collaborating together get to know each other. Time should be given to assess and evaluate the compatibility among the collaborative. Next, there must be a commitment and a willingness to share ideas and agree on a common vision.

When pursuing the collaborative group's goals and objectives, it is recommended that

some form of evaluative tool be in place that can provide technical assistance and feedback on the progress of the collaborative. This way, the strengths and shortcomings of the collaborative efforts are more timely and accurately identified and taken action on.

The reality of things is that resources are sometimes scarce. Even if the resources are present, sometimes they do decrease while the needs increase. These sorts of situations can often benefit from strong collaborative relationships, especially since many times there are grants, special projects, programs, and other initiatives that are involved and that can benefit through collaborative interventions. A sound collaboration brings cohesiveness and enhancement of resource attributes that move things forward. The community is strengthened and its collective membership is empowered.

Throughout the entire collaborative process, communication is perhaps at the core of the collaboration's ultimate successes. When failed communication and a lack of inclusiveness prevail among the partners to the collaborative, often times a downward domino effect ensues. This domino effect can lead to all kinds of chaos, including the commission of critical errors and maybe even the demise of the collaboration itself or, not all too uncommon, the need to overhaul the collaboration. The ripple effect of this unfortunate failure many times leads to an urgent call for damage control.

Aside from providing education to the public concerning its mission and activities, the ideal collaborative group will always seek input from the public or other groups that have an interest in the collaborative group's initiatives. Thus, the collaborative group benefits from the feedback. The sharing and collection of information will provide the collaborative group with additional and useful data.

The many benefits of collaboration, such as shared leadership and decision making, make collaboration attractive. It is a tribute to the public's dignity and nobility. Abraham Lincoln captures this sentiment all too well when he said: "With public sentiment, nothing can fail; without it, nothing can succeed. Consequently he who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions."<sup>3</sup>

Collaboration can help achieve lofty and noble objectives. Prudence calls for everyone that is involved in a group effort, aimed at bringing benefit to others, should seriously consider a collaborative approach to the task. Lawyers and other professionals are in a position to do so much good for so many in need. Cynthia Adcock of the Association of

American Law Schools states: "... people in need of legal assistance are from all races, ethnic groups, and ages. They include the working poor, veterans, family farmers, people with disabilities, victims of natural disasters, and the elderly. Two-thirds of legal services clients are women, most of them mothers with children. Many are formerly middle class and became poor because of age, unemployment, illness, or the breakup of a family."<sup>3</sup> Stories abound about the plight of so many in need.

"The particular vulnerability of those in need of legal services is also illustrated in *Bearing Witness: Legal Services Clients Tell Their Stories*, a recently published report by the Brennan Center for Justice. One client describes immigrating to the United States to enter a marriage, then facing a daily choice between physical abuse or the risk of deportation. Another tells how the public school system wrongly forced her child into classes containing only the most disturbed students. A third describes financial hardship when an illness ended her husband's career and forced the family into poverty, while the State denied them the Medicaid coverage that offered the best hope of treatment and recovery. A fourth tells how the federal government separated her family from its ancestral Alaskan land. And a fifth describes fighting to secure medical supplies vital to her diabetic daughter's survival."<sup>4</sup>

Regardless of whether the need is great or the need is not so demanding, collaboration is an awesome tool to use in order to enhance the effectiveness and the success of many desired goals. In collaboration, we are afforded the opportunity to truly progress and amplify our ideas in a way we might not otherwise be able to do so. The wise person has the insight to recognize this reality. One such person, Estill I. Green, captures the spirit of collaboration with these words: "Clearly no group can, as an entity, create ideas. Only individuals can do this. A group of individuals may, however, stimulate one another in the creation of ideas." That is the essence of collaboration. That is the call to the wise that focus on bringing about excellence in all their dealings, all their relationships, and all their pursuits.

1.- "The Collaboration," Lawyers for One America [http://www.lawyersforoneamerica.org/barnone/barnone\\_collaboration.html](http://www.lawyersforoneamerica.org/barnone/barnone_collaboration.html).

2.- Ibid.

3.- Adcock, Cynthia. *Pro Bono: The Heart of the Matter*

4.- "The Collaboration," Lawyers for One America [http://www.lawyersforoneamerica.org/barnone\\_collaboration.html](http://www.lawyersforoneamerica.org/barnone_collaboration.html)

## SENIOR LAWYER INTERVIEW

BY CLINTON CROSS

## CRAWFORD S. KERR, JR.

*This month I interview Crawford S. Kerr, Jr., who today practices with the same firm he joined shortly after World War II.*

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

**KERR:** My parents both came from small towns in central Texas, Rogers and Lampasas. As a result of Pancho Villa's invasion, my father first came to El Paso in 1916 driving trucks for the U.S. Army. In 1918 he joined the Navy in El Paso, and was sent to Algiers, Louisiana, where he contracted tuberculosis. Consequently, he received an honorable discharge from the Navy.

He and my mother came to Clint, Texas, in 1919, where he pursued his former employment as a land surveyor. When the International Water and Boundary Commission was formed in 1926, my father was hired as the third employee to be a surveyor. He remained with that agency until 1975 as a civil engineer when he retired.

**CROSS: Tell me about your family growing up.**

**KERR:** I had an older sister, Mary Edythe, and two younger brothers, Bill and Larry. We lived in Ysleta until 1941 when the family moved to El Paso.

**CROSS: Where did you go to school?**

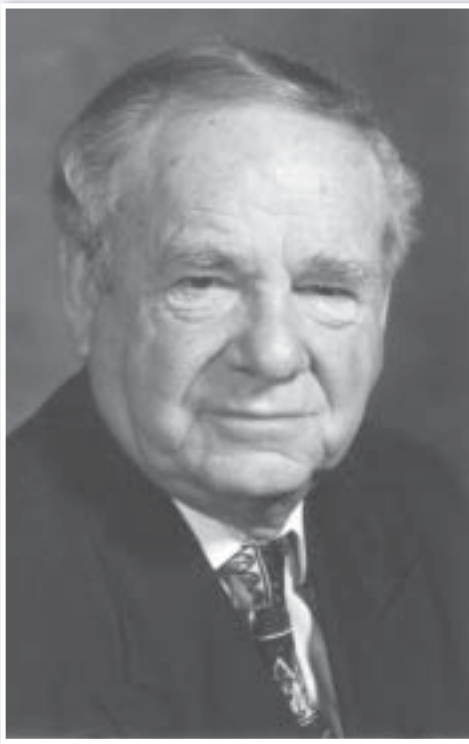
**KERR:** I attended Ysleta High for two years and El Paso High for two years. After attending Texas Western College of Mines at El Paso for one year, I was drafted into the Navy.

**CROSS: Then what happened?**

**KERR:** I spent eighteen months at sea on an LST. I survived the Battle of Okinawa, two typhoons, and a tidal wave at Hilo, Hawaii. I received an honorable discharge in the summer of 1946.

**CROSS: Then did you go back to school?**

**KERR:** I returned to the College of Mines, studying geology, engineering, business administration, and finally finished as a history major.

**CROSS: Marriage?**

**KERR:** I got married in 1948 to Marian (Nita) Rogers, a third generation El Pasoan.

**CROSS: Where did you go to law school?**

**KERR:** When I was in the Navy, I became friends with several lawyers which convinced me to pursue the law as a career. When I told my mother, she cried. But I did it anyway. I went to the University of Texas at Austin and obtained my diploma--signed by Dean Page Keeton--in January 1951. I obtained my license on December 2, 1950, before I graduated.

**CROSS: First job?**

**KERR:** I went to work for Edwards, Belk, and Hunter, which had an illustrious history. The firm began in 1916 as Thomason, Lea, McGrady and Edwards. It then became Lea and Edwards, and then Edwards, Belk, and Hunter.

Frank Hunter was a trial attorney, and Bates Belk was a business attorney. El Paso was growing, and we profited from that growth. We represented Cashway Building Materials, El Paso Sand Products, El Paso Rock Quarry, and many other businesses. Our law firm helped establish the Bank of El Paso.

**CROSS: Second job?**

**KERR:** I'm 81, and I still have the same job. Only now, I'm a named partner, and I practice with my son, Jay Kerr. Most of my work at this point is probate. In years past my practice was primarily real estate. Recently, I've been working on wind energy leases whereby electricity is generated using wind turbine generators.

**CROSS: Any other children?**

**KERR:** Four daughters: Carolyn Anderson (El Paso), Elizabeth ("Betsy") Nichols (Austin), Shelley Norris (Manhattan, Kansas), and Ginny Frye (Dallas).

**CROSS: Any interesting cases?**

**KERR:** I had a close call on one case that added twenty years to my psychological age, which means I'm really 101 years old.

I represented Farah Manufacturing. Evelina Ortega and Ray Caballero sued my client, claiming Farah had retaliated against their client for filing a worker's compensation claim. They called a rebuttal witness they had not previously disclosed as a possible witness prior to trial. Evelina and Ray obtained a verdict against my client in the amount of \$1,138,080.00. After the verdict, I had many sleepless nights.

Fortunately, on appeal the Court of Appeals reversed and remanded because the plaintiff failed to comply with the discovery rules in effect at the time. The Texas Supreme Court affirmed the appellate court's decision. *Alvarado v. Farah Manufacturing Company, Inc.*, 830 SW2d 911 (Tex. 1992).

**CROSS:** *Ever get involved in politics?*

**KERR:** I was Price Daniel, Sr.'s campaign manager here in El Paso, when he ran for Governor.

**CROSS:** *Any life outside the law practice?*

**KERR:** I got involved with horses as an activity I could share with my children. I joined the El Paso Sheriff's Posse in 1961, and I have ridden in forty-one Sun Carnival parades. I also served as president of the Coronado High PTA, El Paso 20/30 Club, the Sheriff's Posse, the Del Norte Club, and the Trail Riders Association. However, I pretty much stuck to practicing law.

**CROSS:** *How has the practice of law changed since you first entered the Edwards, Belk and Hunter law firm?*

**KERR:** It's getting harder to maintain a sense of community in the profession. In the

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early days, the courts held jury docket call every Monday morning. Forty or fifty lawyers would always be there. Younger lawyers would meet on Thursdays at Bolton's Cafe joined from time to time by judges. Later on, on Fridays, I would eat at the Paso Del Norte Hotel with older lawyers. It was easier then for a young lawyer to seek advice and counsel from experienced lawyers.

Later, lawyers started going to The Central in Juarez, then to the Florida Cafe, also in Juarez.

One thing I miss is the annual lawyers banquet in February in which not only lawyers from El Paso, but also lawyers from all over West Texas would attend. Those were great events.

Over the years I've grown to respect the legal profession as being one of honorable men whose word was also their trust, not only in El Paso, but also in the other parts of Texas and the USA.

## SAVE THE DATE

**Sept. 29, 2007 (9 a.m. to 6 p.m.):** The El Paso Public Library will host its *Second Annual Great Southwest Book Fair*. Admission is free. In connection with the event, at 4 p.m, Assistant County *Donna Snyder* will be reading her poetry at the History Museum.

**Oct. 6, 2007 (11 a.m.):** *Justice Chew* and **Judge Moody** will appear on the *Leon Metz* radio show (KHRO, 1650 AM) discussing El Paso legal history.

**Nov. 16 through Dec. 8, 2007:** Assistant Texas Attorney General *Jim Daross* will be acting in "*Musical Comedy Murders of 1940*," being presented at the El Paso Playhouse, 2501 Montana.

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*Thomas J. Beall was the 6th President from 1886 to 1887.*



*William Henry Burges, Jr. served as the 29th President from 1909 to 1910.*



*John L. Dyer, Jr. was the 35th President from 1915 to 1916*



*Cullen Smith*

## ALL THE PRESIDENTS WERE MEN

■ BY BALLARD SHAPLEIGH AND DAVID J. FERRELL

For 110 years, indeed until the election of the oft-publicized Harriet Miers in 1992, all of the Presidents of the State Bar of Texas were men. Three of those men did time in El Paso. So we claim them, just as we lay claim to astronaut Danny Olivas who started his training at Burges High School or to current USGA President Walter Driver, Jr., a lawyer and nephew of Ellis O. Mayfield, who went from Austin High School to UT Law School via Stanford and the Cardinal (nee Indian) golf team.

That's the good news. The bad news - the last lawyer from El Paso to serve as State Bar President was 92 years ago. His name was John L. Dyer, Jr.

Dyer was the 35th President from 1915 to 1916 and has a major street in northeast El Paso named for him. According to a State Bar publication, "his father was one of the best known lawyers in Texas and Dyer attained a standing equal to that of his father." Dyer was born in Waco in 1873, never attended law school but received his legal training as a night student in the office of his father's firm and by acting as a deputy district clerk in McClennan County. He was admitted to the Bar in 1897 (there's that year again) and practiced for two years in Waco before moving to El Paso where "he immediately took his position in the front

ranks of El Paso's finest lawyers and became one of El Paso's foremost citizens." He served as assistant district attorney in 1900 and was subsequently appointed city attorney for two years during Mayor Hammett's administration. In 1909, he also served one year on the El Paso School Board. Dyer moved to Los Angeles in 1925 and continued his practice there until he died in 1929. He was buried in El Paso.

William Henry Burges, Jr. (for whom Burges High School is named) served as the 29th President from 1909 to 1910. He was born in Seguin, TX in 1867 and moved to El Paso in 1889 to seek relief for his severe asthma after graduating from the University of Texas Law School. He was acquainted with John Wesley Hardin and Bat Masterson, and as city attorney forced the gunmen out of our then wide-open frontier town. He helped to found the El Paso Bar Association and accumulated the largest law library in the Southwest, and an immense personal library consisting of 16,000 volumes at his death most of them dealing with history and literature. Most of these volumes were donated to the El Paso Public Library by his niece, Jane Burges Perrenot. He was Phi Beta Kappa and Order of the Coif and served on the University of Texas Board of Regents in 1911-14. His career is the subject of a 1982 book by J.F. Hulse entitled *Texas Lawyer:*

*The Life of William H. Burges.* He is also the great-great uncle to Greg Pine's daughters, Tracy and Katie.

Thomas J. Beall was the 6th President from 1886 to 1887. However, he was not living in El Paso when he served as State Bar President. He was born in Georgia in 1836 but his family moved to Marshall, Texas in 1851. He received his law degree from Cumberland University and returned to Marshall to practice law. But the Civil War called him to serve as a Captain in the Confederate Army, taking part in the Battles of Vicksburg as well as most of the final battles that led up to the surrender of Richmond. He returned to practice law in Bryan, Texas in 1865. In 1880, he moved to Ft. Worth and in 1881, to El Paso. Then in 1884 he returned to Ft. Worth for three years as an attorney for the Santa Fe Railroad. It was during this period that he served as State Bar President. Beall moved back to El Paso in 1887 where he continued to practice privately until his retirement in 1914. He was active in politics and was a member of the 1876 Electoral College in the Hayes-Tilden presidential race and was one of the eight electors who cast votes for Tilden. He died in El Paso in 1921.

And finally, one other State Bar President connected to El Paso is Cullen Smith, father of Risher Smith Gilbert.

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**E**l Paso Bar Association President Judge Robert Anchondo, has proclaimed that during his year as president, special attention will be given to the legal history of El Paso County. As part of this project articles will be printed in the El Paso Bar Journal highlighting the rich and colorful legal history of some of El Paso's most famous lawyers, judges, trials and legal issues that have molded the character and reputation of our city and county.

We encourage all lawyers, judges, paralegals, law students, pre-law students, and anyone else with an interest and knowledge of the legal history of El Paso to contact Judge Anchondo, Judge Moody or Clinton Cross.

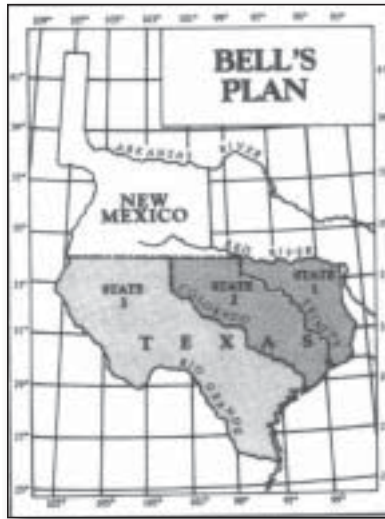
We hope to make this search of El Paso's legal roots to be entertaining and informative. The articles should be 500 to 1,000 words and be submitted to either Clinton Cross or Judge Moody.

### THE LIST BELOW ARE SOME SUGGESTED BUT NOT EXCLUSIVE TOPICS:

1. The El Paso County Courthouses at 500 East San Antonio (1886, 1917, 1955, and 1990) and the construction and politics behind them,
2. The Mexican Revolutions and El Paso lawyers involvement in the Revolutions,
3. The Tigua Indians: Their long struggle, the migration to El Paso and recognition by the U.S. and Texas along with their influences on El Paso,
4. Establishing the El Paso Bar Association and its early years and leaders,
5. The Birth of El Paso County: The Mexican-American War 1846-1848, the Treaty of Guadalupe Hidalgo, the Compromise of 1850, the Gadsden Purchase 1853, and the International Boundary Commission,
6. Military lawyers, the JAG, and Fort Bliss (Include Lt. Flipper),
7. The establishment of the U.S. District Court in El Paso, its Judges, and landmark decisions (Billie Sol Estes, Jencks, and the first airline hijacking case in the U.S.),
8. The 8th Court of Appeals: its judges and landmark decisions,
9. The El Paso State Judiciary (District, County Courts at Law and Probate Courts): their creation and famous judges,
10. Police and Municipal Courts,
11. The Chamizal Dispute,
12. El Paso's anti-discrimination ordinance (the first in a southern state since reconstruction),
13. Voting rights and Dr. Nixon's legal battles to the U.S. Supreme Court,
14. Water rights disputes in El Paso and the Rio Grande Compact Commission,
15. El Paso's reaction to Plessey v. Ferguson (1896) and Brown v. Board of Education (1954) and the Integration of Texas Western College, the Thelma White case,
16. Pioneer Asian, African, Hispanic, Jewish, Middle Eastern, and Mormon attorneys in El Paso,
17. Immigration in El Paso: the Germans, Italians, Chinese, other Asian groups, Mexicans and Central Americans and the founding of the Immigration Court and landmark immigration cases in El Paso from the Chinese Exclusionary Act to the present,
18. Pioneer female judges and attorneys and the suffrage movement in El Paso,
19. El Paso County Seat when located in San Elizario and Ysleta and the vote to change the county seat to El Paso,
20. The El Paso legal system under Spanish and Mexican rule including its modern influence,
21. Native American law in the Southwest prior to Spanish rule,
22. Lawyers who helped establish and perpetuate the churches in El Paso,
23. El Paso lawyers and the arts: those who helped found the El Paso Symphony, the Art Museum, the Ballet, Opera, Library, and the History Museum,
24. El Paso Bar Association Galas,
25. Juarez attorneys and the El Paso Bar Association,
26. El Paso's lawyer mayors,
27. Capital Murder cases and executions involving El Paso,
28. Famous El Paso murder cases (John Wesley Hardin, Ted Andress, the Patterson=s, Lee Chagra - only a few examples),
29. Famous El Paso lawmen: City police, Sheriffs, FBI, U.S. Marshals, Texas Rangers and their involvement in the El Paso legal system,
30. Pick any decade from 1850 through 1980 and develop prominent lawyers, judges, and cases of that period.



- *Thomas Benton Plan (January 16)* – would divest Texas of its northern and western territory and later split Texas into two states.



- *John Bell Plan (February 28)* – similar to Benton's Plan, but would split Texas into three states.



- *Henry Clay Plan, representing a committee of thirteen (April 17)* - reduced the size of Texas by about the same amount, but with no provision for further subdivision.

# COMPROMISE OF 1850

## (9 SEPTEMBER 1850)

■ BY HOWELL (CHIP) COBB

During its early years, Texas claimed territory about fifty percent larger than its present boundary, including parts of New Mexico, Oklahoma, Kansas, Colorado and Wyoming. Much of this land was contested by other groups, with the result that emotions on both sides of the issue reached the point of hostility by 1850.

The annexation of Texas to the United States (1845) and the subsequent gain of additional territory after the Mexican War (1848) intensified the debate concerning the extension of slavery onto the newly acquired territories. When California sought admission to the United States as a free state (1849) the hostility between the North and the South intensified.

In January 1850, Senator Henry Clay offered a series of measures in an omnibus bill which proposed: (1) admission of California as a free state; (2) organization of New Mexico and Utah territories, without mention of slavery subject to subsequent self-determination; (3) the prohibition of slave trade in Washington, D.C.; (4) a stronger fugitive slave law; and (5) the settlement of Texas boundary claims, with payment of \$10 million to Texas in exchange for its relinquishment of claims to the New Mexico territories.



- *James Pearce Plan (August 5)* – similar to Clay's Plan but set the boundaries known today.

During the debates over the Clay Omnibus Bill, a number of other boundary proposals were also debated with one proposal by Senator Benton (actually introduced before the Omnibus Bill) placing El Paso within the New Mexico territories. Some of these proposals recommended that Texas be split into two or three states, which if adopted would have

significantly increased the number of Southern senators.

In September 1850, various measures addressing each of the matters contained in the Clay Omnibus Bill were passed as separate pieces of legislation. From the available alternatives, the boundary resolution proposed by Senator James Pearce was adopted. As a result the South only gained two additional United States Senators. El Paso, already organized as a Texas county (see previous article in this journal), remained in Texas.

The bills moved to the House of Representatives where they passed in succession after the debate that was presided over by the Speaker of the House, Howell Cobb of Georgia. President Fillmore signed the bills into law on September 9, 1850. Texas voters approved the plan. The legislature and Governor Bell ratified the peoples' vote and boundaries were established, as they currently exist for the state of Texas.

The Author wishes to acknowledge use of the following source: El Paso -- A Borderland History, by W.H. Timmons.

*Chip Cobb has practiced law in El Paso for a number of years. He presently practices in Beaumont, Texas.*



# Participation Key for Caballero

**T**he woman who wants to be El Paso's first female District Attorney believes in single-sex education. "It is essential to the education of a woman and young girl. Especially in high school, (girls) tend to worry about what boys think. If you remove that concern, they will be more confident, more focused on themselves and (on) developing their intellectual capacity," she says.

Spoken like a graduate of Loretto Academy and Barnard College, two institutions founded on the "girls-learn-better-without-boys" principle. Theresa Caballero earned a degree in Latin American studies from Barnard because, she says, "Our proximity to the border makes the region so intriguing to me."

Contemplating graduation, her mother -- Dorothy McGill -- encouraged her daughter to attend law school. She earned her law degree from the University of Texas School of Law in 1990. "My mother told me 'go get a law degree,' then worry about what you'll do later. That was smart advice. It wasn't until I was practicing law that I realized, this is great.

"I love being a lawyer. You have power to speak out. You have some standing to take a position on something. If you're not a lawyer, you're stuck as a spectator."

She describes El Paso's legal community as being at a crossroads. "We're dealing with a very powerful government. We have to make a decision as attorneys whether we will allow that government to become more powerful, and step on our rights, or if we're going to take a hit in the pocket, and battle it back and stand up for the constitution."

Caballero approaches her campaign the way she approaches the law. "Taking on an issue, however unpopular, and being true to your client, and true to the law, is what gives me the most satisfaction in my life. I wouldn't say it is fun, though. It's the kind of thing, you go home at the end of the day or week, and think, OK, I was a real lawyer this week."

She's made headlines often in her career, in part influenced by her maternal aunt, Ann

McGill Burford, who served as the head of the Environmental Protection Agency under Ronald Reagan. She resigned amid controversy that "became a battle between the branches of government of Constitutional proportions." Burford eventually cleared the air in a book called "Are You Tough Enough?" She also influenced her niece. "My aunt literally stared down the Congress of the United States, and was vindicated.

"I'm afraid of nobody. I'm beholden to no one. I am one of the people.

Everything I have I earned on my own. When I take on a fight, it's because I want things to be better for all of us."

When asked who her heroes are, she names Crazy Horse "because he was a person who was true to his convictions. He always did what he thought was right, and he had undaunted courage, and he had no ego," and Sir Thomas More, "because he was a lawyer, he was brilliant.

In the end, he did what he thought was right, and he paid the price for it. His courage and his willingness to stand up for what he believed in is to be thoroughly admired."



**Name:**

Maria Salas-Mendoza

**Court:**

120th Judicial District Court

**Years on the Bench:**

1

**Education:**

Harvard, A.B. 1990, UCLA, J.D. 1994

**Docket type:**

Criminal & Civil

**Court Coordinator:**

Myrna Hernandez

**Pet Peeve:**

Unprofessional conduct between lawyers

**Favorite place**

**to go on vacation:**

Anywhere with El Paso's sun but without schedules and obligations

**Last book I read:**

Define "normal" - Kids' summer reading lists were interesting

**Last movie I saw:**

Rush Hour 3

**If I wasn't a judge,**

**I would be an:**

Assistant County Attorney wishing I had the patience to teach

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## ▶▶▶ ASSOCIATION NEWS

### ■ El Paso Women's Bar Association

■ The El Paso Women's Bar Association will have its next meeting on Thursday, October 4, 2007 at noon at The Original Jaxon's on Mesa and Castellano. Join us for a presentation by Dennece Knight, Director of The Thomason Health Foundation on the proposed El Paso Children's Hospital.

■ The Women's Bar Association will also be having a luncheon to recognize past presidents of the EPWBA at noon on Tuesday, October 16, 2007. A location will be determined in the next few weeks. If you are a past president or would like more information, please contact Diana Valdez at 546-8208 or at [dval@scotthulse.com](mailto:dval@scotthulse.com)

### ■ El Paso County Legal Support Association

■ The 2007 EPCLSA Legal Directories have been published and are ready to be purchased for \$10 each and they may be picked up at Kemp Smith, 221 N. Kansas, 19th Floor, El Paso, TX

### ■ Federal Bar Association

■ Supreme Court Review, Professor Erwin Chemerinsky Alston & Bird Professor of Law and Professor of Political Science at Duke University. Don't miss this unique opportunity to hear one of the preeminent legal scholars in the nation, Friday, November 2, 2007. Time and place TBA  
CLE Credit Pending. Sponsored by the El Paso Chapter, Federal Bar Association

### ■ El Paso Family Law Bar Association

■ Family Law 201 The Effective Practice Before the El Paso Family Courts  
Commissioners Courtroom, El Paso County Courthouse  
Friday, October 19, 2007 @ 8:00 a.m. – 4:30 p.m.  
Cost is \$150 – members/\$175 – nonmembers  
Send checks to Lyda Ness-Garcia, 609 Myrtle Ave. (79901)

### ■ Immigration Committee

■ The El Paso Bar Association Immigration Section will meet on Thursday, October 4, 2007 at 4:00 p.m. at 2400-A E. Yandell, If you have an interest in join the Immigration Section, please come to this meeting or if you have any question please email Danny Razo at [dannyrazo@gmail.com](mailto:dannyrazo@gmail.com)  
Coming in November: Please submit an Immigration question to the El Paso Bar Association Immigration Section and a member of the section will try to respond to the most common questions in the Bar Journal.

■ **SAVE THE DATE:** Friday, January 25, 2008. All day Immigration Training Seminar by the El Paso Bar Association Immigration Section. For more information contact Danny Razo at 881-7177 or [dannyrazo@gmail.com](mailto:dannyrazo@gmail.com)

## CLASSIFIEDS

■ **Beautiful Montana Historic District  
Offices for Lease:** 1017 Montana, includes 2 conference rooms, reception area, security/fire system and kitchen. Call 497-1627.

■ **Professional office space for lease:** The Law Offices at 619 Arizona. Call Terry Beltran at 603-3166 for more information.

■ **Central Office Space for Lease:** Office Space available, receptionist, runner, conference rooms, parking, etc. Call Bob Earp or Larry Schwartz at 542-1533.

■ **Great Address for Law Office:** For Sale: 1301 E. San Antonio St. Make your best offer. Contact: Fernando Cardiel at 612-8043.

■ **For Rent:** Well Appointed Law Office with Certain Share Amenities at The Commons, 4171 N. Mesa. Contact: Lane Reedman at 544-6646.

■ **Downtown Office Space Available for Lease,** Central area, within 1 or 2 blocks walking distance to all courts, receptionist, runner, conference rooms, parking, etc. Call Adriana at 792-9401.

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### 12TH ANNUAL CIVIL TRIAL SEMINAR February 15 & 16, 2008 Paris Hotel and Casino. Las Vegas, Nevada

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night. Please check our website for complete  
details and registration information.





## The El Paso Bar Association

Invites you to join us  
to celebrate our

# 110TH ANNIVERSARY ANNIVERSARY DINNER

**Saturday, October 20, 2007**

Judson Williams Convention Center

Celebration and Dinner to begin at 7:00 p.m.  
with a cocktail hour. Black Tie Optional  
**\$600 per table    \$75.00 per person**

*110<sup>th</sup> Anniversary Composite  
Photo will be unveiled*

Composite Photos from  
past years will be on display

For more information, please contact Nancy  
at 532-7052 or at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)



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