



# EL PASO BAR JOURNAL

A Monthly Update of Events and Information

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November/December 2007

## THE LAW OF WAR



*In this issue*  
**Ft. Bliss Holds  
1,500 Mexican  
civilians**  
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**Judges Sacked,  
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**El Paso Site of Texas'  
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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

**W**e are *familia*—members of an extended family with shared training and values. I am a parent figure in the courtroom. As your President I am also for one brief, but I hope, shining moment, your family patriarch. As such, I write about *familia* values.

I want to discuss today our role as members of the larger *familia* that we serve, the community at large.

Many of us serve our community as spiritual, religious, and political leaders. Lawyers are educated, skilled, and, most important, respected. We are members of a “secular priesthood.” We are members of a profession that makes our democracy work because of respect for the “rule of law.”



But respect for lawyers and the “rule of law” is diminishing.

If we lose the respect of the lay community, the “rule of law,” and therefore our democracy itself, will be at risk. I suspect you think I exaggerate. The judiciary, as well as the legal profession itself, has many critics.

What led to this state of affairs? Let’s consider a few—not all—of the issues we face today.

First, some lawyers advertise distastefully. Somehow health care providers seem to be able to advertise with more restraint and taste than we do. Each one of us needs to compete, but distasteful advertising degrades our collective image. Can’t we do better?

Second, according to a recent survey commissioned by the American Bar Association (as reported in the October, 2007 issue of the ABA Journal) civility between lawyers has declined in recent years. Clients love a good fight, and some of us want to build reputations as great warrior chiefs. Can’t we fight fair, and with courtesy—just as we should fight fair and with courtesy at home?

Third, the ABA reports that the cost of litigation has become prohibitive in recent years. Again, fighting pays. But shouldn’t we lawyers remember our peacemaker role, even if making peace is less profitable than making war?

So, the first thing we have to do is try to clean up our own act.

Next, we need to keep doing many of the things that many of us have done well in the past, and that many of are continuing to do well today.

In many ways, we are all community leaders. Don’t be afraid to stand up and lead. We can maintain respect for the law if we ourselves are respectful and respected. Our ancestors did it. Every lawyer interviewed in this Journal as a “Senior Lawyer” did it. We must keep doing it.

In addition, we shouldn’t be afraid to boast about how we have contributed to our community at large. Lawyers helped build this city, economically and

*Continued on page 4*

## EL PASO BAR ASSOCIATION November Bar Luncheon

Tuesday, November 13, 2007

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

***Guest Speakers will be Col Randy T. Kirkvold, Staff Judge Advocate and Captain Casey Z. Thomas, Special Assistant U.S. Attorney,***

who will speak about the Ft. Bliss expansion and what the Judge Advocates do across the world, plus a discussion on some specific Law of War cases that magnify the importance of law training for our Soldier's in harm's way.

**Approved for ½ hour of MCLE by the SBOT**

**Please make your reservations by Monday, November 12, 2007 at noon  
by calling Nancy at 532-7052 or via email at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)**

## December Bar Luncheon

Tuesday, December 11, 2007

El Paso Club, \$14.00 per person

***Guest Speaker TBA***

### President's Message continued from page 3

spiritually. We should be proud of what we have done, and what we are continuing to do.

This year, we will be highlighting in the El Paso Bar Journal contributions that we lawyers have made in the past to the larger *familia* that we serve—economic, spiritual, and religious. Because our Bar Association has limited resources, our Board recently voted to limit distribution of this Journal to El Paso Bar members, and to reduce the number of issues published.

Reading our Bar Journal, we all may feel better about ourselves--about how we

have helped build the El Paso of today. However, that won't help us much with the general public. If we want to improve our reputation, and thus maintain our leadership role and respect for the "rule of law," we must communicate our message to others, people who live and work outside the legal profession.

As one small step, I recommend that you share your Bar Journal with others, rather than throwing it away. Put a copy in your waiting room. If an issue might be of special interest to someone you know, share it. With help from each one of you

we might all get some good will and respect by using a magazine to communicate with others, a magazine that would otherwise just get tossed in the trash.


Little steps will help you with your larger *familia*, as I'm sure they also help you at home. Good communication and courtesy at home, in the workplace, in the courthouse, and with the community at large is the key to successful relationships--and perhaps to success at home, in the office, and in the marketplace.

JUDGE ROBERT ANCHONDO  
PRESIDENT

**The El Paso Bar Journal is combining the November and December issues in this edition. Please be sure and get your January and February announcements to Nancy Gallego by December 10th.**

# CALENDAR OF EVENTS

## NOVEMBER, 2007



**Thursday, November 1**  
*EPWBA Monthly Meeting*  
**Thursday, November 1**  
*Immigration Section Meeting*  
**Friday, November 2**  
*Coffee & Donuts in Bar Office*  
**Friday, November 2**  
*FBA – Supreme Court Review*  
**Friday, November 2**  
*MABA General Meeting*  
**Tuesday, November 6**  
*EPBA Board Meeting*  
**Thursday, November 8**  
*EPYLA Comedy Night*  
**Monday, November 12**  
*EPBA Office Closed – Veteran's Day*  
**Tuesday, November 13**  
*EPBA Monthly Luncheon*  
**Wednesday, November 14**  
*EPYLA Monthly Meeting*  
**Friday, November 16**  
*Coffee & Donuts in Bar Office*  
**Thursday & Friday,**  
**November 22 & 23**  
*EPBA Office Closed – Thanksgiving*

## DECEMBER, 2007

**Tuesday, December 4**  
*EPBA Board Meeting*  
**Thursday, December 6**  
*EPWBA Monthly Meeting*  
**Friday, December 7**  
*Coffee & Donuts in Bar Office*  
**Friday, December 7**  
*MABA General Meeting*  
**Tuesday, December 11**  
*EPBA Monthly Luncheon*  
**Friday, December 14**  
*EPCLSA Chinese Auction*  
**Friday, December 21**  
*Coffee & Donuts in Bar Office*  
**Monday & Tuesday,**  
**December 24 & 25**  
*EPBA Office Closed –*  
*Christmas Holiday*  
**Monday & Tuesday,**  
**December 31 & January 1**  
*EPBA Office Closed –*  
*New Year's Holiday*

### Upcoming Events

**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 January & February, 2008, please have the information to the Bar Association office by Monday, December 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.

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## NOTICE:

The El Paso Bar Journal is being published as follows – November & December, 2007 will be combined as will January & February 2008. March, April, May and June will be monthly issues. Contact the Bar Office if you have any questions regarding this schedule.

# So You Want to be a Judge?

## (Part Two)

■ BY THE HONORABLE BILL MOODY

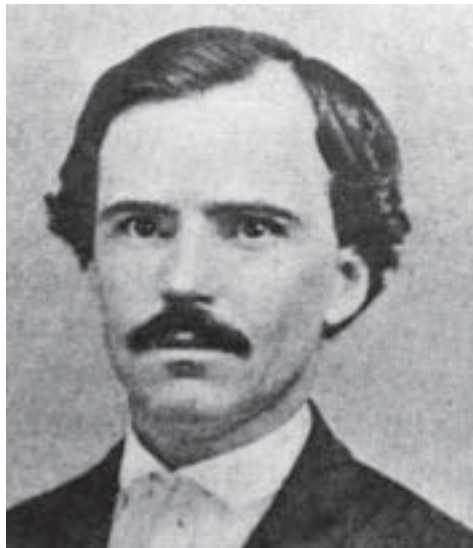
The battle among Republican presidential contenders now unfolding in our nation looks like a love-fest when compared to the pitched battle between El Paso Republicans that erupted soon after the Civil War. Before it was over, one judge was dead, and another forced out of office. At the time, two Republican Party factions controlled El Paso's politics, and one of those factions enjoyed influence in Austin that modern day El Paso politicians can only envy.

Senator Fountain became the Texas Senate Republican Leader after the Civil War, and one of the first beneficiaries of his new power was Gaylord Clarke, El Paso attorney and staunch Episcopalian friend of Fountain. Gaylord Clarke rather than Ben Williams was appointed as Judge of El Paso's 25th District Court, which enraged Williams. This anger came to a boiling point on the morning of December 7, 1870, at Ben Dowell's Saloon, when Ben Williams shot State Senator Fountain twice, wounding him. Ben Williams ran to his boarding house and barricaded himself inside as Senator Fountain limped to his residence to get his rifle, return, and even the score.

Fountain ran into a stunned Judge Clarke who was briefly told of the attempted assassination. Judge Clarke ordered several men standing nearby, including Lt. French of the Texas State Police, to join him as a posse and go arrest Williams for attempted murder. All of the men were armed, except Judge Clarke, who ordered Williams to come out and surrender immediately. Williams defied the judge's order and remained holed up in his room for several minutes. The posse tried to force the door open when Williams bolted out of the door shotgun in hand. The posse scattered except for Judge Clarke who ducked behind a pillar, but came face to face with Williams. Clarke yelled at Williams, "Don't you dare!" A remorseless Williams fired a double blast into the Judge's chest at point blank range killing him instantly. It was reported that Williams was so close to Clarke that the powder from the blast started the judge's suit on fire. The posse regained their courage, realizing Williams was out of ammunition, and opened fire on Williams hitting him several times. Lt. French fired the final fatal shot into Williams' head, as he



*El Paso of 1870*



*W.W. Mills*

lay wounded on the ground. Allegedly, Senator Fountain returned, rifle in hand, in time to see Judge Clarke fall. He claimed he hit Williams in the chest with a rifle shot.

Judge Clarke's funeral was one of the grandest in El Paso. A Juarez brass band and an honor guard of local law enforcement officers and Texas Rangers paraded down El Paso Street behind the casket. His close friend, Parson Tays, reminded the whole town of what a magnificent man had been lost by the vile act of his cowardly assassin.

The vacancy on the 25th District Court was not filled until February 1, 1871, when Governor Davis appointed 32 year old Simon Bolivar

Newcomb to the court, filling the vacancy created by Judge Clarke's death. On February 3, the Texas Senate confirmed his appointment with only slight opposition. The fact that Newcomb did not reside or had never been within 500 miles of El Paso was overlooked, as was his lack of U.S. citizenship. Possibly no one else wanted the job.

Judge Newcomb was born in Nova Scotia, Canada, and a subject of Great Britain in 1871. After he left the bench, he did obtain U.S. citizenship in 1875. A relative of his served as Secretary of State under Governor Davis from 1870 to 1874, and Newcomb served under his influence as Assistant Secretary of State, until his appointment to the 25th District Court in El Paso. Many in the Austin community warned Newcomb to turn down the appointment because El Paso was desolate and dangerous, a poor dusty town filled with gunfighters and gamblers. It took an adventuresome spirit to hitch a team of horses to a wagon and head across Wild West Texas. Near Hueco Tanks Judge Newcomb almost lost his life and his scalp, but was able to avoid a small hostile band of Apaches.

When he was a child, Newcomb's family moved to Texas where his mother died of yellow fever and his grandmother raised him. In 1855 he left Texas to rejoin his father in Canada where he attended the finest schools and received his law degree. He trained with A.S. Hardy, a future Prime Minister of Canada, and practiced law in Toledo, Ohio, before returning to Texas after his wife's death. His world class legal talent stood

out brilliantly in El Paso. Newcomb also brought efficient and orderly court scheduling with him. Slow and irregular Court sessions were replaced with quick, orderly, and systematic hearings. Court opened on the first Monday of May 1871 in San Elizario, the County Seat, and by the time the longest session in memory of the court ended in September, only one case remained pending on Judge Newcomb's docket. At the close of the session the lawyers drafted a resolution praising Judge Newcomb's competence, integrity, and judicial demeanor.

Newcomb, a Radical Republican, became closely aligned with El Paso Radical Republicans led by Senator Fountain. W.W. Mills, still angry over his loss to Fountain in 1869, had reformed a new alliance with the Italian kingmaker Cardis, the volatile Father Borajo, and former Democrat and Confederate attorney, Charles Howard. In a letter to the Secretary of State, Judge Newcomb complained that Mills, Howard, and Cardis were getting illiterate Mexican-Americans to sign a petition charging Newcomb with all sorts of crimes that were nothing but lies. To make matters worse, Cardis allegedly hired a freed slave to kill the Judge. The petition, signed by 250 El

Paso residents, almost every registered voter, was presented to the Texas Legislature, through W.W. Mills and A.J. Hamilton. Judge Newcomb was caught in a vicious local and state wide Republican political gunfight. Hamilton replaced Davis as Governor, and the Radicals were defeated by the Conservatives throughout Texas. One of the first judicial casualties was, the "Carpetbagger from Canada," Judge Newcomb. In April 1874, the Texas Legislature removed him for various acts of public corruption by a unanimous vote. The next day, Charles Howard was appointed to replace Newcomb. Few State Judges have been treated so shabbily and unfairly as Judge Newcomb, but such was the tough world of politics in Reconstruction Texas. Forced to move to New Mexico, as was his local mentor, Albert Fountain, Newcomb maintained a successful law practice in Las Cruces. A lifelong Republican,

he was restored to public office as both District Attorney and State Legislator from Dona Ana County, regaining some of his lost dignity. Upon his death in 1901, the New Mexico Bar highly praised Newcomb as a pioneer New Mexico lawyer and public official.

In next month's issue, I shall write Part Three of the article, "So You Want to be a Judge?," with the dramatic story of how Judge Howard, Luis Cardis, Father Borajo, the Texas Rangers, and others became involved in what has been called the San Elizario Salt War of 1877.

*I would like to again give credit to: C.L. Sonnichsen, author of Pass of the North, J. Morgan Broadus, Jr., author of The Legal Heritage of El Paso, W.H. Timmons, author of El Paso, Gordon R. Owen, author of The Two Albert's Fountain and Fall, and noted El Paso historian, Leon Metz, for their research, upon which I have partly drawn in preparing this article.*



Luis Cardis

### EL PASO'S LEGAL HISTORY REVEALED

# How Civilization Consorted with El Paso

## *Law Licensing in the Sage Brush and Chaparral Days*

BY BALLARD COLDWELL SHAPLEIGH AND COLBERT NATHANIEL COLDWELL

America, said Oscar Wilde, is the only country that went from barbarism to decadence without civilization in between. The beginning of the 19<sup>th</sup> century embraced a revolutionary, if not civilized, five decades in El Paso to be sure. From 1800 to 1850, a tiny community isolated beyond belief is, as C.L. Sonnichsen writes, transformed into a well-known stopping place, first for Santa Fe traders like W. M. Coldwell's father and then for Forty-Niners and the U.S. Army. The orientation changes from the north-south direction of the Santa Fe-Mexico City axis to the east west routes of American commerce.

By 1900, two years before the first bar banquet on January 13, 1902, there were about



Trading on the Santa Fe Trail in 1845

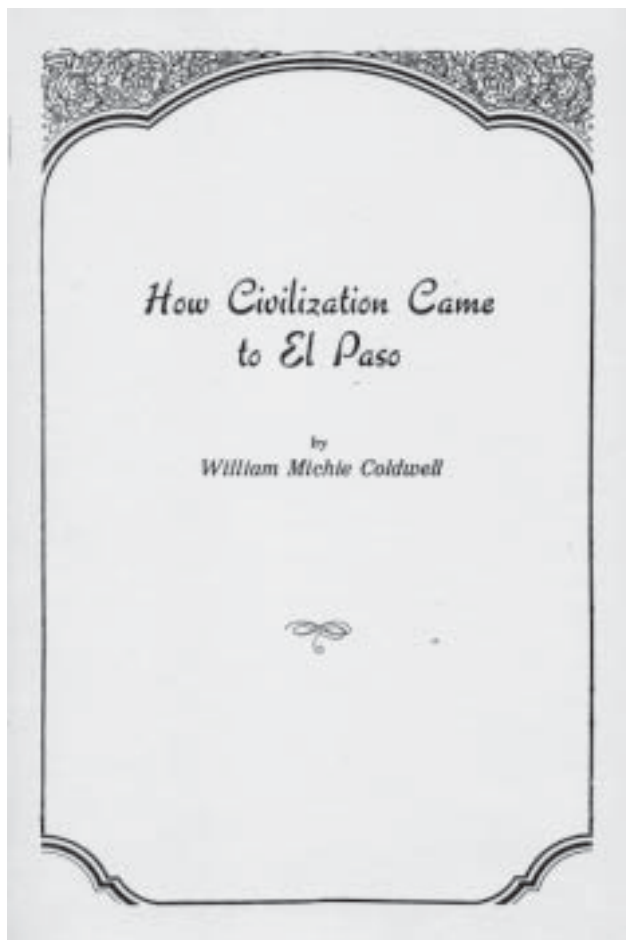
*Continued on page 8*

fifty lawyers (including Judge Crosby, the only antebellum lawyer still around) and some 10 law firms or partnerships in town. In an address to the El Paso Bar Association in the late 1970s, James F. Hulse said about the early lawyers of El Paso that “the most eccentric, no doubt, was W. M. Coldwell, whose conceit and peculiarities were legendary”. J.F. Hulse arrived and began practicing law in El Paso in 1929, about two years after Coldwell’s death, so the hearsay basis of these comments may have been relatively fresh and not too embellished. These comments were repeated in *Texas Lawyer: The Life of W.H. Burges*, Hulse’s book about his mentor and senior partner who had come to El Paso in 1889 because of asthma.

However, according to an intimate friend quoted at Coldwell’s death in 1927, that friend being none other than Major W. H. Burges, the most striking thing about W.M. Coldwell was not eccentricity or conceit, but “his powerful and original mind with an insatiable thirst for knowledge of all history of all countries.” Personality aside, how W.M. Coldwell became a lawyer at least offers a glimpse into the process of law licensure in the sage brush and chaparral days.

Texas became the 28th state on Dec. 29, 1845. While law licenses were not unknown before statehood in Spanish Texas and in the early days of the “Glorious Republic” of Texas, professional standards were raised to a higher and more formal level with passage of “An Act to Regulate the License and Practice of Attornies and Counselors at Law” on May 12, 1846 by the First Legislature of the State of Texas. Like earlier law, this statute provided for the issuance of both permanent and temporary law licenses.

Any person desiring to become a practicing attorney was initially required to obtain a certificate from a county court judge affirming that he had resided in the state for at least six months, that he was twenty-one years of age or older, and that had a good reputation for “moral character and honest deportment.” This certificate was presented to a district judge or a Supreme Court justice, each of whom was empowered to issue a temporary law license that was valid for the remainder of that specific term of court. If the applicant sought a permanent license, the judge would appoint a committee of three or more lawyers to set a date upon which they could orally examine the



The keynote address delivered at the first Bar Banquet in 1902 was published in the *Lone Star Edition of the World's Best Orations* in 1923

applicant in open court. Then if the majority of the committee and the court were satisfied with the applicant’s credentials, he was granted his permanent license “the next day.”

If a temporary or permanent license was granted by a district court, then the attorney could practice before any district or inferior court. If the license was issued by the Supreme Court, then the applicant could practice before any court in the state. This provision was abolished, though, in April 1873 by the passage of a legislative act permitting an attorney to practice before the appellate courts upon the presentation of a license from a district court. Thus the district courts became in effect the sole licensing agent of the state and remained so until 1903.

As the old saying goes, there are two kinds of lawyers: one who knows the law and one who knows the judge. But with so much power over law licenses vested in the district courts, how confident were young lawyers about the prospects of earning a license and pursuing a legal career? The answer is open

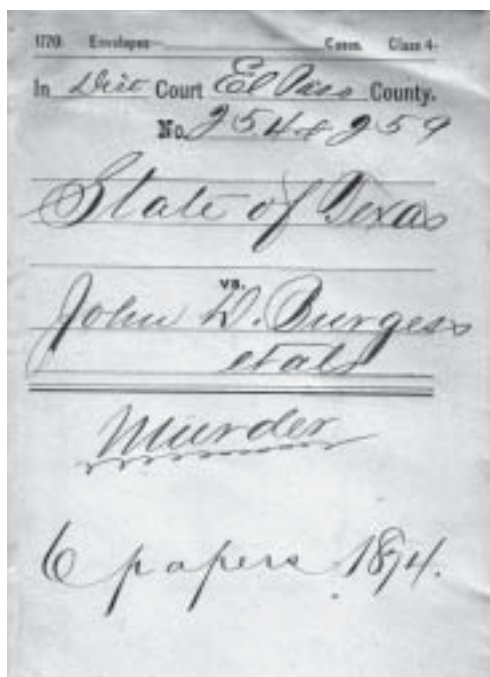
to conjecture. As the audience heard at the inaugural bar banquet that evening of Jan. 13, 1902 where it was explained by after-dinner keynote speaker W.M. Coldwell ‘How Civilization Came to El Paso’ (corroborated by Judge Moody in these pages in his ‘So You Want to Be a Judge?’ series):

“District Judges died numerously, suddenly and violently. We had six in five years. One signed another man’s name to a quitclaim deed, and an appreciative State (it was an Austin jury that did it) gave him board and lodging and variegated clothing for a term of years in a retired institution; the next one was killed by a lawyer to whom an ungrateful profession has denied a monument; another was impeached because he was a Republican and was drawing a salary that a Democrat needed. Besides, he was an unnaturalized Englishman who wanted lawyers who didn’t have shirts, to wear horse-hair wigs and barrister’s gowns. Still another perished in the midst of an uprising and his successor was so horrified by the terrors of his situation that he temporarily lost the possession of his faculties and thus became disqualified for election to the Texas Legislature, to which he was condemned before he recovered his senses.”

The 1846 regulatory act also allowed an immigrating (or out-of-state) attorney to practice law in Texas if he was already licensed by any court in the state from which he emigrated. He was not subject to any residency requirement but did have to prove with satisfactory evidence to the judge of the Texas court to which he applied that he was a man of good reputation for moral character. In addition to these provisions, all licensees were required to take an oath or affirmation prescribed by the Constitution of Texas and administered by the judge or clerk of court. No person convicted of bribery, perjury, forgery, larceny, or other felonies or treason could obtain a license to practice law, and conviction for these crimes was grounds for revocation of an attorney’s license, and these requirements have been retained to the present day.

An interesting section of this first law-licensing statute provided that anyone attempting to practice law in Texas without a license was liable to fine of from \$50 to \$500 - no small sums in 1846! One half of the fine went to the county treasury, and the other half went to whomever informed the court of the violation!





1874 Indictment Envelope



Map of El Paso, 1886

## LAW AND ORDER IN THE SAGE BRUSH DAYS

Born in 1855, aspiring lawyer W.M. Coldwell is described as a voracious reader (his ordinary reading time was until two o'clock in the morning), subscribed to periodicals, many in foreign languages, including French, German, Italian and Greek, and was teaching himself Portuguese at the time of his death, a habit he retained in the El Paso of the mid-1870s before the railroad, telegraph and electricity arrived. At the Coldwell table with older brother Nathaniel, according to youngest sister Mattie, there was what amounted to a regular law lecture with every meal. When his father Colbert Coldwell became Collector of Customs in El Paso in 1873, his father also practiced law on the frontier with older brother Nathaniel Colbert and they enjoyed a lucrative clientele.

As a youth in El Paso, Billy (as his family called him) hunted avidly supplying the family with rabbits and even ducks, which his mother refused to serve because they tasted like fish, and quail so numerous then that they were taken by net and the excess sold to Army families at Ft. Bliss. Eventually and maybe inevitably because of parental anxiety, his father suggested that Billy, then 18, attend a

District Court session at San Elizario and take the bar examination.

The three-member bar examination committee, which included Allen Blacker, treated him gently out of deference to his age and his father's status. His father told them to "give it to him" so they made a rigorous bombardment of difficult questions, all of which he answered in a "dull and unemotional way with his arm laid over the back of his chair." When they returned home that evening, Billy said, "Mattie, tell mother that a man came home with father and will be here for supper." When his mother Martha Coldwell was so informed she came in to see, "Where is that man--who is he?" Billy indicated by tapping his chest and bowed to his mother, "Right here he is."

After the committee reported favorably for licensure, his father had to arrange a special act of the Texas Legislature to remove his disability and allow Billy to be a member of the bar because he was not yet 21 years old, a legislative event not uncommon where the licensing of young lawyers was concerned. But on the occasion of the first bar banquet early in the next century, from a perspective thirty years removed from those early days,

he reported on the tedious, nerve-wracking, intimidating and intense experience of sitting for a bar examination and obtaining his law license in the sage brush and chaparral days in this way:

"The fraternity had a keen eye for merit – they detected mine. I wonder why litigants have not been equally discerning. It is true that one of the members of the examining committee held office under my father; another had borrowed \$5 from me the day before (it was all I had – he asked for \$10), and the third was a constitutional and skeptical misanthrope in the last stages of a mortal malady, who hated this world and feared no other. But these factors were not the basis of their report; at least, they did not mention them. It is a proof of the slowness of retribution, that two of these misguided men survived, apparently untroubled by conscience, for three or four years; the district judge did not live so long – and I never knew his excuse."

It has been said civilization is the art of living in towns of such size that everyone does not know everyone else. The next part will examine how that began to happen from one lawyer's perspective."

This "Civilization" series was written in appreciation of the request of El Paso Bar President, the Hon. Robert Anchondo, to commemorate the 110th anniversary of the Bar Association with assistance and encouragement from Clinton Cross, for which the authors are extremely grateful. 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 Broadus; *Texas Lawyer*; *The Life of W. H. Burges* by James F. Hulse; Ralph W. Yarborough, *A History of Law Licensing in Texas*, Centennial History of the Texas Bar: 1882-1982 (1981), and William Vincent Bryars, *Lone Star Edition of the World's Best Orations* (Ferd. P.Kaiser Publishing Co., Chicago, Ill. 1923). This presentation also includes the creative work of others. This property is being used by permission or under a claim of "fair use" pursuant to 17 U.S.C. §107, and this presentation was created pursuant to fair use guidelines and further use is prohibited.



# EL PASO BAR ASSOCIATION | 110TH ANNIVERSARY CELEBRATION



**G**reetings everyone, on October 20, 2007 the El Paso Bar Association celebrated its 110th anniversary with elegance and professionalism. I am so proud for being a part of a wonderful association which is dedicated for its honor, trust and leadership. The event was a success and I believe enlightened not only the legal community but also the general public with its legal history. As Bar President I want to personally congratulate and applaud the efforts for those who were in the planning stages from the beginning to the end and also want to thank those who were able to look at our rich legal tradition.

**Robert Anchondo**





## EL PASO BAR ASSOCIATION

### 110TH ANNIVERSARY CELEBRATION

**T**he El Paso Bar Association's celebration of its 110th Anniversary on October 20, 2007 was a tremendous success. We want to say a special thank you to all of the sponsors whose contributions enabled us to celebrate the 110 year history of the El Paso Bar Association and to preserve the story of the Bar and its impact on our community.

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Firth Johnston Martinez  
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## SENIOR LAWYER INTERVIEW

BY CLINTON CROSS

## PATRICIA L. PALAFOX

*I interview this month Patricia Palafox. At one time, female lawyers were a rare breed in a male dominated profession.*

*When I interview a female lawyer that even approaches "senior" status, I believe I am interviewing a pioneer.*

**CROSS:** Patricia, would you tell me a little bit about your family background.

**PALAFOX:** My connection to El Paso can be found in "history of El Paso" books. My great great maternal grandfather Benigno Alderete lived in the building that is now called the Alderete-Candelaria home, where the Tigua Indian reservation is located. Alderetes were heavily involved in local Ysleta politics in the late 1800's. My father's family immigrated from Mexico in the late 1920's. My paternal grandfather was a doctor in Mexico who subsequently opened a practice in El Paso. Thereafter, my father and two brothers became doctors. I was the first daughter to become a lawyer, and now two of my sisters are lawyers. My maternal grandfather came from a long line of judges and lawyers in New Mexico, and when I was sworn into the New Mexico bar in 1980, I was the sixth New Mexico Armijo to be so sworn. Currently a New Mexico relative is on the New Mexico Supreme Court.

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

**PALAFOX:** My legal career began in 1977 when I enrolled in the University of New Mexico School of Law with the intention of returning to El Paso.

**CROSS:** Was that your original life plan, after graduating from college?

**PALAFOX:** I had left El

Paso ten years earlier to see the world and thought I would never return. As many of us have found out, there is no place like home, and I returned happily.

Now I see the world from my home base of El Paso. In the last few years I have visited Africa twice, spent Christmas 2005 in Antarctica, cruised the Galapagos Islands, boated up the Amazon River where pink dolphins jumped out of the water, marveled at Machu Pichu in Peru, visited with migrating whales up close at their whale nursery in Baja California, and wandered the jungles of Costa Rica four times. There are still so many places I want to visit. My friends at the courthouse greet me with, "So where are you going this year?"

**CROSS:** If you love to travel and explore, you must also be an adventurer. What else about your character that you might be willing to share with me?

**PALAFOX:** I am also a tree hugging animal lover.

When I saw the condition of our Animal Control building eight years ago, I set out to change the situation. We now have a lovely new building. Sadly, the situation for the animals there and at other shelters has not changed that much and we still kill 23,000 pets in El Paso as our form of animal control. I am a member of several animal organizations working to better the situation for our pets and wildlife in El Paso County. Besides still serving on the El Paso City County Animal Shelter Advisory Committee which I chaired for several years, I am a member of the Humane Society of El Paso and the Chihuahuan Desert Wildlife Rescue Boards of Director. During baby bird season, I joyfully feed little baby birds at one of the certified wildlife rehabilitators facilities. My proudest award was the Community Service Award given to me in 2003 by the El Paso Veterinary Association.



**CROSS:** Tell me a little bit about your legal career.

**PALAFOX:** My legal career started in a traditional manner when I joined the labor section of Scott Hulse Law firm in El Paso. I was the third woman lawyer to be hired by the firm. One year later I struck out on my own and opened my own law practice. After doing the usual criminal appointments and every other kind of case that came down the road, I ended up specializing in workers compensation and personal injury law in Texas and New Mexico.

I spent several years as a Municipal Judge in El Paso, learning a lot about what being a judge means. Seven years later I decided to “get a life” and became General Counsel of Providence Memorial Hospital. When it was sold in 1995 to Tenet Healthcare, I left to start a mediation practice, and twelve years later, I am still enjoying resolving cases and receiving the grateful “thank-you’s” from lawyers and their clients. I am also a Hearing Officer for the City of El Paso’s Civil Service Commission and the Texas Education Agency. My practice allows me to travel to exotic places without worrying about answering summary judgment motions or getting ready for trial.

By the way, I am proud of the Mediator of

*I spent several years as a Municipal Judge in El Paso, learning a lot about what being a judge means. Seven years later I decided to “get a life” and became General Counsel of Providence Memorial Hospital. When it was sold in 1995 to Tenet Healthcare, I left to start a mediation practice, and twelve years later, I am still enjoying resolving cases and receiving the grateful “thank-you’s” from lawyers and their clients.*

the Year award I once received from the El Paso Bar Association.

**CROSS:** Do you feel like you were a trailblazer in your profession?

**PALAFOX:** Typical of any woman’s attitude regarding divulging her age, I would like to say that although I am a senior lawyer, I am not that old but the fact that women did not start entering the law area until fairly recently, makes me one of the “senior” attorneys. When I started practicing in El Paso, all the women lawyers knew each other, and went out together several times a week. There were no women District Judges, much less Federal Judges in El

Paso. Now I go to Women’s Bar functions and do not know many of the women lawyers. All our benches have women, and women are not seen as a rarity when they enter a courtroom.

**CROSS:** I forgot to ask you, but I’d like to know: Why did you go to law school in the first place?

**PALAFOX:** Like all lawyers, I entered the practice because I wanted to make the world a better place. One day my dream will be achieved when someone says “what ever happened to Patricia Palafox?,” and the answer will be: “She is off somewhere in Africa saving the elephants.”



*All articles submitted for publication must be submitted in final form and must have a byline*



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# Character really does count!

■ BY JUDGE OSCAR G. GABALDÓN, JR.



Character cannot be developed in ease and quiet. Only through experience of trial and suffering can the soul be strengthened, ambition inspired, and success achieved.<sup>1</sup> These reflective words give us a glimpse into the mind and soul of Helen Keller, a woman that has uplifted the hearts of many, both young and old. She not only taught that character is the strength inside of us, she demonstrated that throughout her life. She did this by daring us to encounter obstacles with dignity and an unwavering commitment to doing what is right in spite of the temptation to simply succumb to conformity and mediocrity.

John C. Maxwell speaks about people that are character-driven versus those that are emotion-driven.<sup>2</sup> He states that while character-driven people do right, then feel good, emotion-driven people feel good, then do right. He also notes that character-driven people are commitment driven, while emotion-driven people are convenience driven. Character-driven people make principle-based decisions, while emotion-driven people make popular-based decisions. With character-driven people, it is action that controls attitude. With emotion-driven people, attitude controls action. Character-driven people create momentum, whereas emotion-driven people wait for momentum. Even in the form of their questions, one can sometimes spot the character-driven person from the emotion-driven person. For example, character-driven people tend to focus on questions such as “What are my responsibilities?” while the emotion-driven people will ask “What are my rights?”

Maxwell further observes that while many leaders are alike in their promises, they will many times differ in their character. One’s character is defined by who we are. Who we are is largely a matter of choice. Moreover, character is built little by little, a piece at a time. The parts include thought, choice, courage and determination.<sup>3</sup> Since individuals are limited by the parameters of their character, we many times will witness very successful people come to a point where they can no longer function as successfully.



Often times, a lack of solid character is at the core of such an occurrence. Abraham Lincoln knew all too well that nearly all men can stand adversity, but he believed that if you want to test a man’s character, you give him power. This is one very reliable way to discover a person’s character. When holding a position of power, one’s character can be nakedly revealed.

The lack of a strong character foundation leads some into chaos. Thus, Maxwell regards strong character as the key to a lasting success. He reminds us that while charisma may open the door to opportunity and ability may get you to the top, it is character that keeps you there. “Character is the anchor of life.”<sup>4</sup> This anchor is strength. “When you don’t have strength within, you won’t have respect without.”<sup>5</sup> Lacking the kind of strength that only character can provide diminishes one’s stature as a person that is value-based in life.

Ethical values are at the heart of character. Trustworthiness, respect, responsibility, fairness, caring, and citizenship are the six pillars of character.<sup>6</sup> Trustworthiness entails honesty, courage to do the right thing, reliability, and loyalty. Respect calls for tolerance, consideration, good manners, and peaceful approaches. Responsibility involves perseverance, self-control, self-discipline, accountability, thoughtfulness, and

sound judgment. Fairness incorporates open-mindedness, sharing, active listening, and attention to the plight of others. Caring includes kindness, compassion, gratitude, forgiveness, and helping those in need. Citizenship centers on cooperation, involvement in the community, staying informed, being neighborly, respecting the rule of law, respecting authority, and protecting the environment. Character, therefore, involves these six core ethical values and much more.

Developing one’s character is something that calls for a conscious effort. “You cannot dream yourself into a character; you must hammer and forge yourself one.”<sup>7</sup> Everyone has an obligation to diligently exert attention and effort in forging one’s own traits of character. This is an ongoing process that entails vigilance and constant regulating in order to develop one’s best possible character. Some have described this process as follows: Character first starts with our thoughts, for our thoughts become our actions. Our actions become our habits. Habits lead to character. Character determines our destiny.

Abraham Lincoln eloquently and poetically provides a thoughtful insight into the essence of character by stating: “Character is like a tree and reputation is like its shadow. The shadow is what we think of it; the tree is the real thing. I desire so to conduct the affairs of this administration that if at the end, when I come to lay down the reins of power, I have lost every other friend on earth, I shall at least have one friend left, and that friend shall be down inside me.” These words of wisdom are quite revealing, for it is character that ultimately counts. Simply put: “A man’s character is his fate.”<sup>8</sup>

1 Quote from Helen Keller (1880-1968).

2 Maxwell, John C. *Maximum Impact: Developing the Leader within You*.

3 Based on a comment by John Luther.

4 Quote from John C. Maxwell.

5 Ibid

6 “The Six Pillars of Character.” <http://www.charactercounts.org/defsix.htm>

7 Quote from James A. Froude (1818-1894).

8 Heraclitus (540 B.C.-480 B.C.). “On the Universe.”

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## EL PASO'S LEGAL HISTORY REVEALED

# The Internment of Mexican Troops at Fort Bliss in 1914

■ BY BRITTANY BUTTERFIELD

When 3,500 Mexican troops invaded the United States in 1914, it turned Ft. Bliss into a temporary internment camp for the 1,500 Mexican men, women and children (and assorted farm animals) who accompanied the troops. In the months that followed, the post's officers of the United States Army Judge Advocate General Corps, or "JAG," soon became Constitutional Law experts (yes, they must be fed and sheltered) and drew national attention, with a story in the *New York Times*.

Ft. Bliss' JAG office is, for the most part, tasked with handling the personal legal issues of individual soldiers. The 1914 internment exemplifies the JAG's ability to also give advice on military matters that can have far-reaching diplomatic and life-or-death consequences. Forces of the Mexican Army Division of the North, led by General Salvador Mercado, crossed into the United States at Presidio, Texas. The Division consisted of 3,500 soldiers, and was accompanied by approximately 1,500 civilian men, women, and children. All 5,000 people were arrested by the United States troops. As a result of this incident, the JAGs were called to resolve a host of legal questions. One prominent issue was what obligations under international law the United States owed to the Mexican troops and civilians who had crossed the border. The military lawyers determined that, under the Hague and Geneva Conventions, the United States has to intern the troops and provide them with basic necessities.

Another pressing legal question before the Judge Advocate General Corp was what to do with the 1,500 civilians who were arrested along with the Mexican soldiers. The JAGs determined that although international law did not dictate what should be done with the accompanying civilians, it would only be proper to keep them with the troops. A *New York Times* article published in 1914 points out, "[A]s a matter of humanity, the officials here hold that there is no escape from the course that is being followed. To turn back the refugees would probably mean to deliver them for summary execution." Consequently, the entire group was relocated by train to a camp prepared for them at Fort Bliss. An article in the *New York Times* described the arrival

1914. Mexicans interned at FT Bliss after their escape across the Rio Grande

PHOTO COURTESY OF EL PASO PUBLIC LIBRARY



of the trains as follows:

When the ten trains arrived today with the refugees, bound for the military reservation at Fort Bliss, each train was run into the camp on a spur. The unloading presented an animated scene. With the women and disarmed soldiers there tumbled off dogs and fighting cocks saved from the battle of Ojinaga, and lovingly carried on the long march. One family even unloaded a burro still packing with domestic utensils.

Once the group settled into the camp at Fort Bliss, more legal questions emerged. One issue concerned the status of the civilian refugees. Captain George Estes of the 20<sup>th</sup> Infantry, writing in the *Infantry Journal* wrote that General Mercado "was informed that the status of himself, his officers and troops, was that of interned belligerents in neutral territory, as provided for in the Hague Convention." The civilians, however, did not share the troops' status. Thus, it was unclear whether or not they would be allowed to leave the camp, which was surrounded by a barbed wire fence. Initially, the United States was prepared to allow the civilians to leave, but an outbreak of smallpox forced a quarantine of the camp. As a result of the forced quarantine, a petition for a writ of *habeas corpus* was brought against the United States government by the El Paso law firm Walthall and Gamble on behalf of those interned.

In addition to the legality of the internment itself, legal questions also arose regarding the logistics of running the camp. The JAGs had to resolve whether or not the refugees could be required to work in the camp, performing tasks necessary to

maintain the health and sanitation of the camp. They also had to determine the appropriate level of discipline camp officials could give to the refugees to ensure that the officials' orders were followed. The JAGs determined that the interned civilians could be required to work doing whatever tasks were reasonably necessary to maintain the sanitation of the camp. They also explained that the camp officials could discipline the civilian within reason but cautioned that, for the most part, disciplinary action should be left to the Mexican officers who were also detained in the camp. These legal problems reflect some of the issues facing both the JAGs advocates and the legal system during the three-month period of internment at Fort Bliss. Ultimately, the five thousand civilians were moved to Fort Wingate in New Mexico.

This recollection demonstrates how JAGs stationed at Fort Bliss have addressed prominent legal issues in the past, and continues to resolve legal issues today. Their contributions to the El Paso legal community continue to be of utmost importance.

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*Brittany Butterfield is a legal intern for United States District Judge Philip R. Martinez. She will graduate from UTEP this spring, with a bachelor's degree in British and American Literature. She plans on attending law school after graduation.*

# TEXAS' FIRST CONVEYANCE (*TOMA DE POSESIÓN*) AND RECORDED LEGAL DISPUTE

■ BY TOM DIAMOND

This account is about the first known conveyance of land in what is now the State of Texas. It is also about the oldest recorded resolution of a legal dispute in what is now Texas. The events leading to these actions began with the Pueblo Revolt.

On August 10, 1680, the Pueblo Indians of New Mexico revolted against Spanish rule led by a Cacique (Chief) named Pope from the San Juan Pueblo.<sup>a</sup> The Spaniards fell back to Santa Fe and Isleta Pueblo (English spelling) south of present day Albuquerque. On September 18, 1680, the retreating Spaniards along with Indian captives arrived at Las Salineta (present day Canutillo, Texas).<sup>b</sup> By the end of the year the Indians had been relocated at three camps which are now on the north side of the Rio Grande River in Texas, which eventually became Socorro, Ysleta and Senecu Pueblos. At this time, there were no Spanish settlers living north of the Rio Grande, but instead the Spaniards and the local missionary Indians all lived south of the river at the Guadalupe Mission in El Paso (present day Juarez, Mexico). El Paso became the capital of New Mexico with Governor Otermin presiding at the site of the Guadalupe Mission.<sup>c</sup>

On November 5, 1681, Governor Otermin set out from El Paso with Spanish troops and Indian auxiliaries to reconquer New Mexico, but was repulsed. The Spaniards reconnoitered north as far as Cochiti Pueblo where they encountered large forces of hostile Indians. The Spaniards decided to return to El Paso, taking with them the remaining Tigua Indians<sup>d</sup> at the Isleta Pueblo (New Mexico).<sup>e</sup> During 1682, the three Indian Pueblos were assigned locations with the centers of the Pueblos all located on what is now the north side of the Rio Grande River in Texas.

On June 18, 1688, Don Diego de Vargas Zapata Luján Ponce de León became the Governor of New Mexico with official offices in El Paso.<sup>f</sup> On May 19, 1692, De Vargas placed Fray Joaquín de Hinojosa in charge of the Mision de Corpus Christi de Los Tiguas at Ysleta del Sur (present day Ysleta, Texas).<sup>g</sup> On this day the Governor went to the site of the Ysleta Mission and placed Hinojosa in possession of Mission Facilities.

He reported:<sup>h</sup>



*The conveyance from De Vargas to Hinojosa is the first known conveyance of land in what is now the State of Texas. The Viceroy's decision in the dispute between De Vargas and Hinojosa is the oldest known resolution of a legal dispute in what is now the State of Texas.*

“In the pueblo of Ysleta of this district of El Paso in the kingdom of New Mexico on 19 May 1692, I, the governor and captain general, have come to carry out the general inspection, which is my responsibility, and as his majesty, the king our lord, so orders me. The very reverend father, fray Joaquin de Hinojosa, president of this holy custody, in compliance with the proceedings I provided on 16 and 17 May of the present year, asked me to give him the possession contained herein and reviewed by me, the governor and captain general.

In the presence of the captain of this company, some soldiers, and other people who are citizens of this pueblo, and with the attendance of my secretary of government and war, on the patio before the door of the pueblo's church, called Corpus Christi de los Tiguas, I, the governor and captain general, led the very reverend father, fray Joaquín de Hinojosa, president of this holy custody and ecclesiastical judge in capite, by the hand through the door of the church and gave him possession of it. He took it de facto and de jure for himself, as head of this holy custody and in the name of his holy Order. Walking through the church, he saw on its high altar the depictions of images and saints, the cloths, and the cross, moving them in sign of possession. In like manner, I led him by the hand through the door of its sacristy, where he examined some vestments and other furnishings of the church's use. He went out into the church again and examined the baptismal font and removed and then replaced the lid as a sign of possession. He received possession quietly and peacefully, gainsaying nothing.

“At the door of its convento, he asked me for possession, and in the presence of the customary witnesses and my secretary of government and war, I led the reverend father president by the hand and, in his majesty's name, gave him possession of it both de facto and de jure, which he took for himself, as head of this holy custody, and in the name of his holy Order quietly and peacefully, gainsaying nothing. He walked through the cloister, entering and leaving the cells of the convento and its workrooms, opening and closing the doors as a sign of possession, which I gave in his majesty's name, as is stated, to the reverend father.

“Having come out to the patio of the convento and church again, I stated in a loud and clear voice that I also gave and indicated to the reverend father president in his majesty's name, the possession of 4 fanegas of land for wheat and 1 for maize, as well as the land required for a garden and planting the other foodstuffs, beans, and squash, as they see fit.



It is by declaration that I gave him possession and indicated the land in his majesty's name, with the stipulation that the citizens and Indians must be given preference, both in terms of the richness and quality of irrigated land, with the water from the acequia for irrigation to ensure the harvest, as specified in the preceding possession I order kept, complied with, and carried out, according to the proceedings expressed in it. So that the possessions in this pueblo of Ysleta of the church, convento, land, and everything else contained in these proceedings of possession that took place in the presence of the witnesses and persons contained herein may be of record, I signed it on the said day, month, and year with my secretary of government and war.

Don Diego de Vargas Zapata Lujan Ponce de León

Before me,  
Juan Páez Hurtado  
Secretary of Government and War"

Fray Hinojosa requested additional assignments of land to hold for the benefit of the Indians, which

the Governor refused. This continued a long pattern of contest between Civil and Ecclesiastic authorities over control of Indian Lands, Labor, and Profits. An acrimonious exchange of documents followed with the Governor finally revoking all prior allocations of land to the church and refused to grant custody of the Indian lands to the church.<sup>l</sup>

In retaliation, Hinojosa threatened to excommunicate the Governor and the dispute was referred to the Viceroy for settlement. The Viceroy's fiscal (legal advisor) delivered an official opinion supporting the Governor's position:<sup>j</sup>

"The fiscal states in the matter of looking out for the Indians, the missionary fathers are not their sole protectors; rather any Spaniard can ask for what would benefit them, and the Governor should execute it as principal protector, looking in the first place to their comfort and then that of the Spaniards and other inhabitants. Even though land is distributed to the Pueblos in accordance with the ordinances, aside from this, if so happens that the Spaniards are as guests until with your Excellency's favor, New Mexico is pacified . . ."

Subsequently in 1751, the Governor Cachupin granted land to the three Indian Pueblos Senecu, Ysleta and Socorro. These grants are the source of all legal title in the Socorro and Ysleta Grants of El Paso County. The portion of the Senecu Grant lying north of the Rio Grande, following the Treaty of Guadalupe Hidalgo (1848), became part of the Ysleta Grant pursuant to an act of the Texas legislature.<sup>k</sup>

The conveyance from De Vargas to Hinojosa is the first known conveyance of land in what is now the State of Texas. The Viceroy's decision in the dispute between De Vargas and Hinojosa is the oldest known resolution of a legal dispute in what is now the State of Texas.

#### (Endnotes)

- a. Twitchell, History of New Mexico 1963 Vol. 1 Pg. 356 et. Seq.
- b. Heckett, The Pueblo Revolt, 1942 I c.l.l..f.f.
- c. Hughes, The Early Spanish Beginnings of El Paso, 1914:317
- d. Tigua is the Spanish spelling of Tiwa a division of the Tanoan Language Family.
- e. Hughes, The Early Spanish Beginnings of El Paso, 1914:320
- f. Espinosa, 1940:30
- g. Fewks, 1902:60
- h. Hendricks, Ysleta del Sur Pueblo Archives, Vol. 1 Pg. 149
- i. Reeve, History of New Mexico, Pg. 287
- j. Hendricks, Ysleta del Sur Pueblo Archives Vol. 1 Pg. 152
- k. Relinquishment Act of January 31, 1854.

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## SAVE THE DATE

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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, November 1, 2007 at 5:30 p.m. at The Original Jaxon's on Mesa and Castellano. Join us for a presentation by Captain Claudine Andola, Seniro Trial Counsel at Ft. Bliss, who will speak on Women in the JAG Corps. For more information, please contact Diana Valdez at [dval@scotthulse.com](mailto:dval@scotthulse.com)

■ The El Paso Women's Bar Association will be having its December meeting on Thursday, December 6, 2007 at noon at the Original Jaxon's. Join us for a judicial panel discussion on professionalism. Free CLE!!!

### ■ El Paso County Legal Support Association

■ The El Paso County Legal Support Association will conduct a Chinese Auction benefiting a local charity instead of its monthly education meeting on Friday, December 14, 2007 at noon at the El Paso Club, 201 E. Main, 18th Floor. Cost of the buffet lunch is \$14.00. For information or reservations, please call Terry Schoemer-Castillo at 533-4424.

### ■ 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, 12:00 noon, El Paso Club, Chase Bank, 18th Floor. 1.5 hours of MCLE. Sponsored by the El Paso Chapter, Federal Bar Association

### ■ Mexican American Bar Association

■ MABA will hold its general membership meeting on November 2, 2007 and December 7, 2007, at noon in room 306 of the El Paso County Courthouse. Dues are \$50 with a discounted rate of \$35 for government lawyers and lawyers who work for non-profits. For information on membership, please call Michael Wyatt at 544-0100.

### ■ Immigration Section

■ The El Paso Bar Association Immigration Section will meet on Thursday, November 1, 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)

### ■ Probate Bar Association

■ On behalf of the El Paso Probate Bar Association, Statutory Probate Courts #1 and #2, El Paso Young Lawyers and Judge Ruben Lujan, J.P. #6 and his staff, we wish to sincerely thank those attorneys, court employees, legal staff, notaries, professional fiduciaries and many volunteers who graciously donated their time on Saturday, September 29, 2007 at the jointly sponsored Wills Clinic in Clint, Texas. Over 85 wills and directives were prepared for El Paso County citizens.

### ■ El Paso Young Lawyers Association

■ EPYLA announces its First Annual Comedy Night to be held at Bart Reed's Comic Strip on Thursday, November 8, 2007. Skits will begin at 7:30 p.m. and the comedy show will begin at 8:00 p.m. Tickets are \$30 per person.

■ The EPYLA monthly meeting will be on Wednesday, November 14, 2007 at noon at the Commissioner's Courtroom, El Paso County Courthouse. We will have a CLE presentation by Cori Harbour on Legislative Updates in Criminal Law. This CLE is free and bring your lunch.

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