



EL PASO BAR JOURNAL

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September/2008

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Beauty of
Diversity





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THE PRESIDENT'S PAGE

When I moved to El Paso eleven years ago, fresh out of law school and ready to begin my clerkship with the Eighth Court of Appeals, I knew no one here. I immediately joined the El Paso Bar Association, the Young Lawyers Association and the Women's Bar Association in hope of making new friends. I found kindred spirits in these organizations: folks who were proud of our profession and who wanted make a difference in our community. I jumped right in and started volunteering, first for the Children's Christmas Party and then the Bench-Bar Banquet. When my clerkship ended and I was offered a staff attorney position, I decided to scrap my plans to move to Washington, D.C. in pursuit of an L.L.M. and to stay in El Paso instead. I became more and more involved in these organizations and had a whole new circle of friends. I was enjoying my job and my bar activities, and could easily see myself becoming a "Bar Junkie".



In the next few years, I was honored to serve as President of both the Women's Bar Association and the Young Lawyers Association. But back then, I never thought I would one day be privileged enough to serve as President of the El Paso Bar Association. When the opportunity presented itself in 2004, I was both thrilled and humbled that the officers and directors had faith in me to lead this organization. Over the next several years, as I ascended through the ranks, I prepared myself for this year by learning as much as I could about the organization's purpose, bylaws, budget, etc. When I took the oath in June, with my family in the audience cheering me on, I became the youngest attorney to ever hold the office of President and only the fourth woman.

As we learned last year, during the 110th Anniversary, this organization has a rich history. I hope to contribute in some small way to that history and I hope you'll join me. I encourage each of you

Continued on page 4

EL PASO BAR ASSOCIATION

September Bar Luncheon

Tuesday, September 9, 2008

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

Legislative Update Panel
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**Please make your reservations by Monday, September 8, 2008 at noon by calling Nancy at 532-7052
or via email at nancy@elpasobar.com**

Continued from page 3

to invite a colleague to our monthly luncheons (the second Tuesday of the month at the El Paso Club) and to attend our CLE events. We have some great things in store this year and we want to see as many El Paso lawyers involved as possible. The section of Bar will be sponsoring brown bag lunch CLEs—the first one, a one-hour Ethics CLE, is scheduled for October 23rd at Noon in the Ceremonial Courtroom—and we're going back to Las

Vegas February 20-21, 2009 for the 13th Annual Civil Trial Seminar. The Holiday Party will make its return this year as well, so keep your calendars open for what promises to be another fun-filled social event.

You will also notice a few new additions to the Bar Journal this year: we've added a poetry page, *legal literati*, to foster and celebrate that creativity among us, and we've added a series of legal cartoons. Finally, since

we're coming off of a year in which we celebrated our history, my theme will be the "Evolution of the Practice" and I'll touch on that in the next issue. Thank you again for the opportunity to serve. I am looking forward to a great year!



CORI HARBOUR

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CALENDAR OF EVENTS

SEPTEMBER 2008



- Monday, September 1**
EPBA Office Closed, Labor Day
- Tuesday, September 2**
EPBA Board Meeting
- Thursday, September 4**
TRLA's Art with a Cause
- Friday, September 5**
Coffee & Donuts in Bar Office
- Friday, September 5**
MABA General Meeting
- Tuesday, September 9**
EPBA Monthly Luncheon
- Wednesday, September 10**
EPYLA Monthly Meeting
- Saturday, September 13**
MABA Annual Banquet
- Wednesday, September 17**
EPWBA Kick-Off Reception
- Wednesday, September 17**
TRLA Night Clinic
- Friday, September 19**
Coffee & Donuts in Bar Office

- Thursday, September 25**
EPYLA Comedy Night
- Friday, September 26**
Interpreter's Ice Cream Social

Upcoming Events

(mark your calendars)

- Monday, October 6**
FBA Presentation
- Thursday, October 23**
EPBA Ethics Seminar
- Wednesday – Friday, October 29-31**
Advanced PI Video Seminar
- December, 2008**
Holiday Party
- Friday, January 23, 2009**
*Wills, Estate Planning
& Probate Seminar*
- Friday & Saturday, February 20 & 21, 2009**
*13th Annual Civil Trial Seminar,
Las Vegas, NV*

PLEASE NOTE: Please check the Journal 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 Journal for your upcoming event or function for the months of October/November, 2008, please have the information to the Bar Association office by Wednesday, September 10, 2008. 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 journal 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.

2008-2009 MEMBERSHIP DUES

The 2008-2009 Membership Dues
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The Amazing Beauty of Diversity

BY JUDGE OSCAR G. GABALDÓN, JR.

“ As long as the differences and diversities of mankind exist, democracy must allow for compromise, for accommodation, and for the recognition of differences.”

With this statement, American politician Eugene McCarthy brings to the foreground the importance of respecting diversity, lest we risk the injection of disorder in an otherwise peaceful and forward-moving society. It is a commonly accepted fact that individuality of necessity entails diversity at different levels. There is diversity in philosophies and thinking; diversity in ethnic origins; diversity in race; diversity in socio-economic realms; diversity in religion and politics; diversity in the makeup of professions. The list can go on *ad infinitum*.

Diversity, however, affords us with opportunities, such as the opportunity to challenge assumptions, as writer and lecturer Anne Wilson Schaef observes. By virtue of our human propensities, we sometimes assume things about others that differ from us in one way or another. For example, some people assume that lawyers are untrustworthy and self-serving, and so the lawyers are sometimes called “sharks,” “ambulance chasers” and then some. The fact is that the vast majority of lawyers are men and women of high integrity, good will, and admirable character. While the bar encompasses members of different styles, different levels of experience, different cultural backgrounds, and so many other different characteristics, by respecting the diversity of the bar membership, one discovers the richness of the individual selfless contributions many bar members can, and do, make in our communities.

While many things may divide us, there are perhaps more things we share that are of far greater value.¹ Continents and other borders may divide us, but our humanity unites us. Our ability to reason, to forgive, to be empathetic, to communicate, and to do other human undertakings serves as a binding element which collectively makes us members of the human race. As members of the human race we are each entitled to enjoy all the freedoms and privileges that being

human naturally and of right reach out to embrace us. Felix Adler, the founder of the Society for Ethical Culture, perhaps best explains this idea of our connectedness when he says “[People] may be said to resemble not the bricks of which a house is built, but the pieces of a picture puzzle, each differing in shape, but matching the rest, and thus bringing out the picture.” Former President Jimmy Carter, in turn, puts it this way: “We have become not a melting pot but a beautiful mosaic. Different people, different beliefs, different yearnings, different hopes, different dreams.”

Sadly, there are some that are locked in a prison of prejudice, bias, and narrow-mindedness, who fail to appreciate the beauty and complexity of diversity. Franklin Thomas, the head of a group (TFF Study Group) assisting in the development of South Africa, describes this sentiment as follows: “One day our descendants will think it incredible that we paid so much attention to things like the amount of melanin in our skin or the shape of our eyes or our gender instead of the unique features of each of us as complex human beings.” To those folks who cannot accept the magnificence of diversity, perhaps they can heed John F. Kennedy’s call. He states “If we cannot end now our differences, at least we can help make the world safe for diversity.” Recognition that human diversity makes tolerance more than a virtue and that it is, in fact, needed for survival is something that basic human reason and prudence points us to.²

Let us cherish diversity for all the precious treasures that accompany it. The comfort of differences is present, so long as we humbly accept that even though we are unique by virtue of our individuality, we are forever connected to all that surrounds our

existence, particularly our fellow human beings. Let us celebrate diversity! Even within our own individuality we find that diversity dwells freely. “We do not grow absolutely, chronologically. We grow sometimes in one dimension, and not in another; unevenly. We grow partially. We are relative. We are mature in one realm, childish in another. The past, present, and future mingle and pull us backward, forward, or fix us in the present. We are made up of layers, cells, constellations.”³ Once we begin to recognize and accept diversity as a gift and as an aesthetic reality, the chains of prejudice, bias, and narrow-mindedness that hold us in bondage will become loosen, and then we will be better able to look to a more promising and enriching future. We will see with enlightened eyes that “The wave of the future is not the conquest of the world by a single dogmatic creed but the liberation of the diverse energies of free nations and free men.”⁴ This is our hope. This is our destiny!

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(Footnotes)

1 Former NASA astronaut Donald E. Williams.

2 Dubos, Rene. *Celebrations of Life*, 1981.

3 Quote from author Anais Nin.

4 Quote from John F. Kennedy

Trial And Error

(Part I)

Assembling the Scales of Justice for the Murder of Ted Andress

This is the third in a series of articles describing the 1959 shooting and killing of Ted Andress, the prominent lawyer for whom Andress High School is named. The first article, contained in the May 2008 edition of the *El Paso Bar Journal*, details the facts of the homicide by Dr. Harold Eidinoff, M.D. The second article, in the June 2008 issue of the *Bar Journal*, explores the killer's motives and the previous relationship between the accused and the deceased and discusses the fallout, including a multitude of lawsuits, resulting from the admission of nude photographs in a suit to recover attorneys fees which had been incurred in a divorce case involving Eidinoff and his first wife, Sylvia. The current article begins to examine the details of Eidinoff's criminal trial on a charge of murder. As the story continues, Dr. Eidinoff has been arrested and detained in the El Paso County jail. He is awaiting trial, and is being defended by the legendary Percy Foreman of Houston. Foreman was originally retained by the doctor two years earlier to appeal an \$80,000 libel verdict that Andress won against Eidinoff. — Clinton Cross



Mrs. Harold Eidinoff and Dr. Eidinoff's attorney, Percy Foreman of Houston.

Photo courtesy of *El Paso Herald Post*, Jan. 30, 1959

■ BY BALLARD C. SHAPLEIGH

When seeking to tip the scales for his clients, the noted criminal defense lawyer Percy Foreman did not cleave to a common tenet of fairness - that justice, though due to the accused, is due also to the accuser. His tactic was to act as if the murder victim, not his client, was on trial. By "trying" everyone except his clients, the disheveled 6 ft. 4 in., 250-lb. Foreman lost a defendant to the executioner's chair just once in the 1500-plus murder cases he handled over a forty year career. By his own account, only sixty-four of Foreman's clients had gone to prison. At the time that Eidinoff's case came up for trial in 1959, the *El Paso Times* referred to Foreman as a "veteran of nearly 300 murder trials," but it may have been more than twice that number.

Foreman was famous for saying that "there is no better trial lawyer in the U.S. than me." As if to confirm his boast, *Time* magazine reported that in another homicide as open and notorious as the murder of prominent El Paso lawyer Ted Andress, "Percy Foreman took on the case of a Houston father who had gunned down his stepdaughter's teen-age lover in plain view of witnesses. Foreman excoriated the dead sinner, hauled a church pulpit in front of the jury, delivered a sermon on teen-age vice, and tearfully recited a Sir Walter Scott poem about 'pious fathers.' The father was acquitted." Foreman also used to quote Aaron Burr, a bit cynically perhaps, that the law is "whatever is boldly asserted and plausibly maintained."

Foreman preferred that his clients pay his fees in cash, but he would take anything of value becoming, at one time, the largest landowner in Harris County. He was known for renting warehouses for the cars, jewelry and other valuables he accumulated

as payment for his bill, even accepting four circus elephants. He once misplaced \$4.5 million in bearer bonds he received in the Sakowitz divorce case, which were eventually found in the Houston hotel room that he had rented for 30 years after the hotel went into bankruptcy.

According to a 1969 profile in *Time*, Foreman was said to be shocked and appalled at the act of killing, his revulsion extending not only to state-ordered executions but to the actions of game hunters as well. He enjoyed telling the story of a deer hunter who, while sitting in tree blind, fell out and impaled himself on the antlers of the deer he intended to shoot, saying that it was "divine justice."

Unfortunately for Harold Eidinoff, M.D., Foreman's favorite tactic - to denounce a murder victim as a scoundrel and reprobate who deservedly had it coming - could not be boldly asserted and plausibly maintained to explain the slaying of a prominent attorney and school board president like Ted Andress. Eidinoff had no piety to exploit at the examining trial, nor even a theory of self-defense. So in the absence of that most Texas-like of all defenses - that "he badly needed killin'" - Foreman was left with a defense of insanity, the origins of which had been fashioned by him two years earlier in 1957. Foreman built his theory around the testimony of three Houston psychiatrists to whom he accompanied Eidinoff for examination so Foreman could appeal Andress' libel verdict against Eidinoff for \$110,000, reduced to \$80,000 by remittitur.

Sam Moore, only two years out of the University of Texas School of Law, saw much of the courtroom proceedings in El Paso. Foreman, he says, never raised his voice and he never took his eyes off of the witness on the stand. And Foreman's

presence was so commanding, he adds, that none in the gallery took their eyes off of him.

The state's first witness at the examining trial was limousine driver Thomas Shacklee, one of many people in the immediate vicinity of the shooting. He said Eidinoff, at close range, initially fired two shots at Andress, who was still wearing his convention badge from attending the national school board conference in San Francisco. Eidinoff then stood over him to fire three more shots after Andress fell, Shacklee said, adding that Eidinoff offered no resistance when another cabdriver grabbed and held him. In fact, testified Shacklee, the doctor was much calmer than his captor. What many remember even today is that Andress was so freshly off the airplane that he was still reaching—for but had not yet touched his luggage—when he was killed. Since he had not actually taken physical possession of his bags, he was by that circumstance deemed to have not completed his journey and his widow collected on a substantial flight insurance policy.

Whether Eidinoff was more litigious before or after he killed Andress is hard to say. But it was clear who was making the key decisions. From the date Foreman was retained to appeal Andress' \$80,000 libel verdict handed down on December 15, 1957 through the date of Eidinoff's jury trial which ended in November, 1959, the key decision-maker was Percy Foreman. And Foreman decided that Eidinoff would look and sound crazy for those two years.

His case had gone from civil to criminal in the blink of an eye. So, wasting no time, Foreman began publicizing his defense just a week after the murder arguing to the Eighth Court of Civil Appeals, and a courtroom full of reporters, that the libel verdict should be set aside. As he said, "from my 30 years of practice at the bar in over 600 murder cases, not to speak of others I have observed, I had not talked to Dr. Eidinoff three minutes until I realized he was insane and incapable of representing himself. Furthermore, I recognized his insanity as of a dangerous type." Raising the issue of the condition of Eidinoff's mind for the first time on the appeal of the libel case, Foreman told the appellate court that when he took the proctologist to Houston where he was adjudged insane on the affidavits of three psychiatrists, he "only did what should have been done by someone here [in El Paso] years ago."

A month later, at the examining trial for the murder case on March 5, 1959, Eidinoff walked into the courtroom prominently waving the nude photo of himself in front of his chest. The photo had been enlarged. With Sylvia Eidinoff nodding in agreement, Foreman argued vehemently against bail saying, "I don't want Dr. Eidinoff



Trial Judge William E. Ward – replaced William E. Clayton (below) on the bench of the Eighth Court of Civil Appeals in 1969, and remained on the appellate court well after it finally acquired criminal jurisdiction in 1981



District Attorney William E. Clayton – at the time of his death in 1970, was reported to have "held more public legal offices in El Paso county than any other lawyer in history"
(Photos Courtesy of the Eighth Court of Appeals)

to be allowed his freedom at any time during the remainder of his natural life. He will always have resentment against somebody and there is no telling who his next victim might be if he is allowed out of custody." After hearing this, Judge Charles Windberg naturally refused to fix any bail.

Foreman steered clear of asking any questions

of the state's witnesses that touched on his client's mental condition. Instead he focused on the possibility that Andress was carrying a weapon, exploring the potential of a self-defense plea. Still while no evidence was adduced about his current mental state, everyone knew from newspaper reports that Eidinoff had gone on several fasts and one hunger strike and had to be force-fed. After one episode of starving himself, Eidinoff made a telling admission about his mental condition when he told Sheriff Bailey, "I know what I am doing. Don't worry about me."

At the conclusion of the examining trial, Foreman allowed *El Paso Times* reporter Art Leibson to conduct a lengthy interview with an incoherent, nonresponsive Eidinoff, about which Leibson memorably wrote, "his unwashed condition was somewhat overpowering." Eidinoff evaded any questions about killing Andress, always turning his thoughts back to the photos saying that "the terrible thing, what really hurts, is that they were allowed to show them in court." After his arrest Eidinoff seemed to channel his hatred toward the jury that awarded Andress \$110,000, because in his view, "the money they seized could be used to protect my wife and children." Later, his target would be District Attorney William E. Clayton.

The murder trial was scheduled for May 25, 1959 before Judge William E. Ward, but Foreman filed a motion for a sanity hearing at the last minute on the day trial was to begin. Under the law at the time—"the old insane-insane" as former District Attorney Barton Boling calls it—the jury was asked to determine if Eidinoff was mentally deranged at the time of the murder and at the time of trial. If the jury found that he was insane at the time of the killing but was sane at the time of the hearing, he would walk out of the courtroom a free man. If there was a finding that he was sane at the time of the murder, but insane at the time of the hearing, he would be committed to a state hospital until he had recovered enough to stand trial. A finding that he was insane at both times, the contention urged by Foreman, would have resulted in Eidinoff's being committed to a mental hospital without having to stand trial—in effect an acquittal. Only if a jury found he was sane at both times would he face trial on the murder indictment.

Judge Ward summoned a venire of 500 and spent a hectic week trying to get a jury. But he was definitely the man for this job. Judge William E. "Bill" Ward (not to be confused with his father Milton V. "Buddy" Ward who was also a judge, then presiding over the County Court at Law No. 1) had been appointed to the 34th District Court bench in 1955 to universal acclaim.

Jack Luscombe was quoted in the newspaper as saying, "It's the best appointment the Governor [Alan Shivers] ever made." Ellis Mayfield gave the welcoming address for the Bar Association, saying that his former law school roommate would "serve with the greatest of dignity."

Judge Ward's father, Buddy, had been lured to work in Mexico by his cousin, Enrique Creel, Mexico's Ambassador to the United States. But "when the Mexican Revolution broke out being kin to Enrique Creel became a shootin' offense," as Buddy used to say, and the family moved to El Paso. Many years after the Eidinoff case concluded, Judge Ward described some of the challenges he encountered trying to conduct jury trials, saying to a reporter:

After only two jurors were seated, Ward granted the defense motion for a change of venue.

During the years when I was District Judge, I was charged with trying the criminal cases. In those days the county wasn't so large. ...We tried all the El Paso, Hudspeth and Culberson counties criminal cases. During that time we only had one death penalty case.The main headache was that jurors in every felony case were locked up from the time they were selected until the time they completed their task. That was a constant problem for them and everybody. You had to live with that day and night, quartering them and feeding them, all kind of complications arising in their own families. In the old courthouse before it was remodeled, we had jury quarters for men only. After I became District Judge, we had the ladies, of course, for jurors. We handled that for a while because at first there weren't too many ladies who showed up and we could get by with it, but when the ladies started showing up, we had to take them to a hotel....When this building was remodeled, we had jury quarters on the fifth floor for both ladies and gentlemen, two big dormitories.

Three sites were submitted by the district attorney. The defense selected Lubbock over San Angelo and Wichita Falls. In presenting his application for a different trial venue, the publicity savvy Foreman complained to the trial court that, "Today the administration of justice is influenced more by the public media such as newspaper and radio and television broadcasts than by the Constitution of the State of Texas or the Code of Criminal Procedure," this after doing his best to cast a wide shadow of influence over the pool of available jurors in El Paso.

Like an omen, Eidinoff's sanity hearing began with jury selection in Lubbock on Monday, October 19, 1959, at the same time the fraud

Top photo (L-R), Deputy Noe Fernandez and Eidinoff; Middle (L-R), Prosecutors Berliner and Clayton; Bottom (L-R), Jim Bowmer and Foreman's law school classmate Ernest Guinn conferring with Foreman.

committed by Charles Van Doren in TV's quiz show scandal was unfolding before Congress. Fifty-two witnesses were subpoenaed to appear in Lubbock and, according to the El Paso Times, they were having to pay their own way. Eidinoff, again, stayed in character. He made a "miserable court appearance for the hearing;" unshaven, hair matted, and in a filthy western shirt that had apparently not been washed since he wore it in the El Paso county jail before the case was transferred to Lubbock at the end of May. His trousers were stuffed into dirty western boots. Like a village eccentric, "he shuffled into the courtroom carrying a shopping bag full of reading

material he began handing out to newsmen.” He also conspicuously carried an account of the Nazi concentration camp atrocities entitled “Tyranny on Trial”, telling newsmen he was in a similar predicament and “in a concentration camp, you can’t care how you look.”

Throughout jury selection, Eidinoff spoke freely with all who would listen that El Paso gangsters were out to kill him and his family. He told of warning Ruth Lutz and her lawyer not to make any copies of the nude photos taken from a trunk in the basement of his home. He said, "I refused to talk to Leo, but I went to his rabbi and asked him to talk to Leo. I said at the time that

there would be trouble over those pictures." He had begun to read the New Testament, carrying the Bible into court, and calling himself a "Jewish-Christian", but he steadfastly refused to discuss the murder. When asked why he singled out Andress as opposed to Ruth Lutz or Leo Jaffe, Eidinoff replied that, "it's all there in the Bible. Just read the Book of Job. It's all there."

According to Leibson, most of his "hatred" was now directed at District Attorney William Clayton for heading a giant conspiracy against him. Eidinoff reportedly showed little active interest in the proceedings except to glare at Clayton. "All lawyers are crazy," he told Leibson, probably without knowing that Leibson was also an attorney, "but Clayton" – shaking a finger in his direction – "is 150% insane. Lawyers are all insane and they are driving the world insane," he ranted. "I will go down in history as a martyr," he said, adding "from now on the legal profession will wait a long time before committing such perverted and degenerate acts [like using nude photos in a lawsuit]." He also told Leibson, "Texas should give me a medal for what I am doing. Some day she will, but it may be posthumously," he said, as a reward for his efforts - consisting of sending jailhouse letters to Gov. Price Daniel and to legislators - to make it a felony to show a nude photograph to any person without his permission.

In addition to Clayton, the state was represented by first assistant district attorney Edwin F. Berliner, who later became judge of the 171st District Court. They were assisted by Lubbock D.A. George Gilkerson. The sanity hearing took just under three weeks to complete, with the advantage to Eidinoff being that his lawyers would get two bites at the insanity defense - once at the hearing and once at the trial on the merits - and two swipes at the state's witnesses. As if to remind everyone who was in charge, Foreman announced to the court and assembled reporters before the weekend recess that he intended to call as his first witness

the victim's widow, Lucille Andress. Instead, he first called District Attorney Clayton, and then all the state's witnesses who were eyewitnesses to the killing except Mrs. Andress.

Foreman knew, of course, that he had the burden of establishing by a preponderance of evidence that Eidinoff was not sane as the law presumed. But he also knew he had the advantage of presenting his case to the jury first and having the right to open and close the arguments after the evidence was all in. Foreman told potential jurors that he intended to prove three persons - Ted Andress, Leo Jaffe and Ruth Lutz – were the individuals responsible for showing the nude photos of Eidinoff and his wife. This event, Foreman claimed, caused Eidinoff "a mortification that had such an impact as to trigger true paranoia. The question is did he know right from wrong at the time he killed Andress? He knew that killing was wrong, but did he know that killing Andress was wrong."

Over and over again, Foreman hammered home the notion that if found insane Eidinoff would be committed permanently for life to a mental institution under maximum security, always repeating there was no cure for the paranoia Eidinoff was suffering. He told the venire that Eidinoff was afflicted with a form of insanity that would, "when it reaches its full cycle, inevitably result in death." Painting an almost Dickensian picture, Foreman told the venire that Eidinoff's condition "is incurable and under a finding by the jury that he was and is insane,...you would be committing him to eternal, perpetual, until death confinement in a hospital for the insane." Clayton responded by reading Texas law to the effect that an acquittal by reason of insanity meant that the person was no longer charged with a criminal offense and the head of the hospital to which he had been committed, in his sole discretion, could transfer, furlough or discharge him.

Foreman and Clayton clashed. In one

exchange, when the judge sustained a Clayton objection to the form of one of his questions, Foreman shot back, "I don't need Clayton to phrase my questions for me." Then, after Foreman had explained his theory of "true paranoia" and the likelihood of lifetime confinement, Clayton replied that true paranoia was so rare that it did not exist in this case and he pointed out that if found insane, Eidinoff would "stand acquitted of murder and [could not] be sent to a hospital for the criminally insane but to an ordinary mental institution. Clayton added, "he will not be a criminal in any sense of the word."

Foreman told reporters that he intended to call ten or eleven expert witnesses to the stand following a full airing of the circumstances under which Eidinoff killed Andress. He told the court, "We intend to use every witness subpoenaed by the state for the preliminary hearing, the recent habeas corpus hearing, and for the trial itself, and we will start with the factual witnesses. I do not expect that part to take more than a day and a half." Foreman also indicated that he was having his client examined again, this time by Lubbock physicians for brain damage.

Sitting with Foreman were Luther Jones, Jr. of Corpus Christi, Jim Bowmer of Temple and Travis Shelton, the former Lubbock district attorney and a future State Bar President. Though most of the venire panel was qualified within three days, the all-male jury was not seated until the following Monday. The last two women on the venire of 250 people were dismissed after Foreman said that possibly as many as 100 copies of lewd photographs could be introduced into evidence. When voir dire began, a few witnesses from El Paso were already on hand, including Justice of the Peace Charles Windberg, Jr., who had conducted the examining trial, Sheriff Bob Bailey, County Jailer Raymond O'Rourke and Neo Fernandez, bailiff. What the empanelled jury heard from them and the other witnesses will be explored in the next issue.

The Ted Andress Assassination series is written in appreciation of the request to commemorate the 110th anniversary of the Bar Association with assistance and encouragement from Stephanie Townsend-Allala and Clinton Cross for which the author is very grateful. The following resources have been used: *Eidinoff v. Andress*, 321 S.W.2d 368 (Tex. Civ. App. - El Paso 1959, writ ref. n.r.e.); the Paul Freund Collection, Harvard Law School Library; *Time Magazine*, March 18, 1966 and March 21, 1969, The *El Paso Times* and The *El Paso Herald Post* archives of the El Paso Public Library; and personal interviews. This presentation 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 was created pursuant to fair use guidelines and further use is prohibited.

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First Annual El Paso County Mental Health Law Conference



Sponsored by the El Paso County Attorney, District Attorney and Public Defender Offices

Topics:

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- A Crash Course in Criminal Incompetency Proceedings Under Art. 46B, TCCP
- Nuts and Bolts of Involuntary Civil Commitments
- The Incompetency Maze—Defense Advocacy for the Mentally Ill
- The Ethics of Representing the Mentally Ill
- Panel discussion with Guest Speakers:

Judge Yvonne Rodriguez, Probate Ct #1

Judge Ricardo Herrera, County Court #1

Bruce Pander, Asst. Public Defender

James Darnell, Attorney at Law

Chief Deputy Dolores Messick, EPPO

Judge Eduardo Gamboa, Probate Ct #2

Gary Larcenaire, CEO MHM

Robert Warach, Attorney at Law

Sgt. Charles DeNio, EPPD

Friday September 26, 2008

8:00a.m — 4:30p.m.

Refreshments Provided

Lunch on Your Own

Opening Remarks Given by:

Jose R. Rodriguez, County Attorney

Jaime Esparza, District Attorney

Clara Hernandez, Public Defender

FREE 5 CLE Hours and 1 Ethics Hour

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Contact Anne Emmer, Mental Health Unit Paralegal (915) 546-2050 ext 3667 or email - anne.emmer@ca.epcounty.com

TRLA Free Legal Clinics

As lawyers, we all know that legal problems can be overwhelming and cause a great deal of stress in anyone's life. Many people in El Paso are living on the edge of financial disaster and, although they may have serious legal problems, do not have the means to hire a lawyer or simply do not know how to go about finding the correct information or referral they may need. In an effort

to meet such needs, Texas RioGrande Legal Aid, Inc. (TRLA) hosts free legal clinics from 5:00-7:00 p.m., on the third Wednesday of each month at the TRLA office, 1331 Texas Ave. The TRLA legal clinics are available to anyone on a first come, first serve basis. No financial qualifications are required. Specific areas of the law are designated for each month but consultation on any civil law issue will be made available. TRLA

will offer free continuing legal education for all volunteer attorneys each month immediately prior to the legal clinics. CLE course topics will be related to the area of law designated for that evening's clinic. Legal clinics are an excellent opportunity for volunteer lawyers to serve the community and build goodwill in the El Paso Bar. For more information, contact the TRLA office at 585-5100.

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Come to our free legal clinics and help yourself to peace of mind.

| Date | Clinic Title | Date | Clinic Title |
|--------------------|---------------------------------|-------------------|-----------------------|
| July 16, 2008 | Children's Rights and Resources | February 18, 2009 | Trouble with the IRS? |
| August 20, 2008 | Children's Rights and Resources | March 18, 2009 | Trouble with the IRS? |
| September 17, 2008 | Employee's Rights | April 15, 2009 | Identity Theft |
| October 15, 2008 | Help! My home is not in my name | May 20, 2009 | Civil Rights |
| November 17, 2008 | Consumer Rights | June 17, 2009 | Expunctions |
| January 21, 2009 | Am I in a common law marriage? | | |

When: Third Wednesday of the month

Time: From 5:00p.m. to 7:00p.m.

Place: **1331 Texas**
(Corner of Texas & Newman)

Call 585-5100 or email receptionistelp@trla.org for more info.

On the web visit: www.trla.org/teams/cli.php

Absolutely no cost to receive legal advice!

Individuals are seen on a first come, first serve basis. Legal clinics are made possible by Texas RioGrande Legal Aid, a nonprofit organization that provides free legal services to low-income and disadvantaged clients.



Ice Cream Social

Friday, September 26, 2008,

12:00 – 1:00 p.m.

Room L-106,

El Paso County Courthouse

El Paso County Courthouse Staff Court Interpreters team members are celebrating the

INTERNATIONAL YEAR OF LANGUAGES
with this year's theme,

“Terminology – Words Matter”

promoting and preserving the diversity of languages spoken by people around the world and specifically the terminology established by experts in all realms of human activity.

▶ SENIOR LAWYER INTERVIEW ◀

WAYNE WINDLE

■ BY CLINTON F. CROSS

The interviews with Sanford Cox and Wayne Windle are connected to the articles about Ted Andress because both lawyers began their careers with the Andress law firm.



Court Knocks Down Ban on Soldier Vote

AUSTIN — The U. S. Supreme Court ruled Monday that Texas cannot prohibit servicemen from voting in the state if they meet residence requirements, and state legislators hailed the decision.

"I believe it is just and right that military personnel who

holding the soldier ever to controvert the presumption of non-residence, the Texas statute imposes an individual discrimination in violation of the (Federal Constitution's) 14th amendment."

Justice Potter Stewart, writing the opinion, said the court realized a special problem: "May be involved in determin-

I like short interviews. If my interview is short enough I am more hopeful the reader will finish it before a more compelling duty seems to distract. This interview is a little bit longer than usual. It could be a lot longer than usual. Don't get distracted.

CROSS: *Childhood, as we all know, is formative. What was yours like?*

WINDLE: I grew up in Texarkana, Texas and went to high school during the early 1950s. Rock & Roll was big at that time. Elvis visited our area on several occasions. My father was a baseball player and owned the local minor league baseball team, as well as some other businesses. My mother was a successful real estate agent.

My childhood was very pleasant, until my father died. I was 16 at the time.

CROSS: *School?*

WINDLE: I went to high school in Texarkana. I then went to the University of Texas where I obtained my degree in business administration and my law degree. At that time you could get both degrees within six years without going to summer school.

I needed to work in the summers to help pay for college. One summer I had four jobs. My wife and I also started a business. She made sandwiches. Then starting from about 9:30 to 11:00 at night I would go to dormitories and fraternity houses and announce on the intercom, "Night Bite is here." My wife and I were able to make more money per month that summer than I was able to make my first year as a lawyer.

CROSS: *Tell me about your family.*

WINDLE: Janice Woods Windle and I have been married for over 50 years. We have two children living in El Paso, along with five grandchildren.

My wife's career as President of the El Paso Community Foundation and an author has provided wonderful experiences and excitement for all of us. One of the most exciting times was when Janice and I were able to watch CBS film a movie based on her first book, *True Women*.

The movie characters played Janice's ancestors. We spent a day with one of the actresses, visiting the places where her character (Janice's great grandmother) had actually lived. At that time this actress was virtually unknown. Now almost everyone has heard of Angelina Jolie.

CROSS: *I know that Texarkana is closer to Chicago than to El Paso. How in the world did you end up out here?*

WINDLE: I decided to interview with the El Paso firm of Andress, Lipscomb, Peticolas and Fisk because I had never before interviewed with a law firm and I wanted some interview experience. I had also never been to El Paso. I had no reason to believe I would ever be interested in going there.

During the interview William C. Peticolas told me that Ted Andress, the firm's primary trial lawyer, had recently been murdered. The firm needed a trial lawyer. After the interview, I was invited to visit the firm. I was very impressed by El Paso, as well as the law firm.

In July of 1961 I walked into Ted Andress' former office and began my life's work.

CROSS: *So I take it you've spent your life in private practice?*

WINDLE: With two brief detours. In 1962, less than a year after I began practicing with the firm, Federal Judge R. E. Thomason asked Bill Peticolas if they would allow me to take a leave of absence from the firm and serve as his law clerk. At that time the Judge did not have a law clerk and he needed help immediately because the Billie Sol Estes case, which was receiving national and international publicity, was just beginning in his court.

My service with Judge Thomason was one of the greatest experiences I have ever had personally and professionally. I learned more

law and more about people during those seven months than I had previously learned in my entire life.

CROSS: *I assume that after your “leave of absence” you went back to work for the law firm that first hired you?*

WINDLE: Yes. But the firm of Andress, Lipscomb, Peticolas and Fisk eventually split and merged with Jack Luscomb and ultimately became the law firm of Peticolas, Luscomb, Stevens & Windle.

I left the practice of law in 1981 and for three years I was Executive Vice-President of a firm known as First Financial Enterprises, a holding company that owned several savings and loan associations and an insurance company. Compared to being a trial lawyer, the job was a piece of cake. I missed the excitement of trial work and so I went back to practicing law.

CROSS: *Where?*

WINDLE: In 1984 I began practicing law with Pat Dudley and Paul Dudley. Eventually the firm became known as Dudley, Dudley & Windle. By the end of 1999 the Dudleys and most of the other lawyers in the firm had retired or left the practice of law. When at that time I was given the opportunity to become a shareholder in the firm of Scott, Hulse, Marshall, Feuille, Finger & Thurmond I decided to accept it.

CROSS: *What are you doing now?*

WINDLE: On September 1, 2007, I left the Scott/Hulse firm with five other lawyers. We formed our own litigation firm, Windle, Hood, Alley, Norton, Brittain & Jay. We are in the process of moving into new offices on the 13th floor of the Chase Tower.

CROSS: *How old were you when you decided to start your own law firm?*

WINDLE: Seventy.

CROSS: *Did you ever have time to do any community work?*

WINDLE: Like most lawyers I have opportunities to serve on numerous boards and committees. When Don Henderson was mayor I was chairman of the Zoning Board of Adjustment and was the attorney for The City on all matters involving regulation of utilities.

CROSS: *Did you ever seek elected public office?*

WINDLE: I have been on a West Texas ballot five times. In 1972 I ran for the State Senate. As a candidate I was obviously not as good



as I thought I was. I did not make the runoff. Tati Santiesteban and Paul Moreno were in the runoff. Tati eventually won.

I was elected four times--from 1978 through 1984--to the State Board of Education from this congressional district. This was a position that was very rewarding to me. I actually felt that the work I was doing was helpful to public education in Texas. Also I have to admit that it satisfied my political ego to hold an elected office.

CROSS: *Do you have some particularly interesting cases that you can share with me?*

WINDLE: I like to talk about three cases in particular. Sometimes I feel that I enjoy talking about them more than my friends enjoy listening.

CROSS: *Pick one. I've got to get back to the office in a few minutes.*

WINDLE: Years ago I argued an interesting voting rights case before the United States Supreme Court, which resulted in members of the military in Texas gaining a right to vote. Thousands of members of the military probably gained their right to vote as a result of this case. In fact, more than 30 years afterwards, at a seminar, a retired soldier in San Antonio saw my name tag and stopped me to thank me for the case. I have also been informed that I was the youngest lawyer, at age 27, to argue a case before the United States Supreme Court. Today if I argued a case before the United States Supreme Court I might be one of the oldest.

I have some clear memories about this case. I needed to keep my fees and expenses to a minimum. My clients, Sergeant Herbert

Carrington and Sergeant Nicolo Niglio, raised money for my fees and expenses in the case through direct public solicitations as well as cake sales and hot dog fundraisers. Congressman Richard White helped me do that by allowing Janice and me to stay in his home during my entire visit to Washington.

Since I was only 27 years of age I knew that I would be nervous. I went to Washington three days early and sat in on several arguments, hoping I'd feel more comfortable in the courtroom when my case was reached.

Each day prior to the day of my argument, as I approached the door of the courtroom, the doorman would examine my identification card showing that I was admitted to practice before the US Supreme Court. On the day of my argument, my wife and I walked down this long corridor which was lined on both sides with hundreds of school children who had arrived in buses. On this day, as we approached the door, the doorman remembered my name and with great flare, swung the door open and announced as loud as he could, "Good morning Mr. Windle." You could hear all these high school kids saying, "Who's Windle, who's Windle?" Obviously, the doorman made me appear to be a whole lot more important than I really was.

I began my argument by contending that a 1954 amendment to the Texas Constitution violated the Equal Protection Clause of the 14th Amendment. As soon as I made that statement Justice Arthur Goldberg said, "We know what the 1954 Amendment says, what was the law before that?" I answered that before that, servicemen were classed with minors, lunatics, and the like. At which time Justice Hugo Black spoke up and said, "I guess the state thought this was reform legislation." I thought things were off to a pretty good start since Justice Black was already making fun of the law I was attacking.

As I concluded my closing argument and walked back to the counsel table, Justice Brennan turned to Whizzer White and in a very loud voice (so loud that my wife could hear it sitting on the row behind the Mississippi Freedom Riders whose case was up next) said, "That young man certainly made a very fine argument, don't you think?"

It was fun standing in line to get my overcoat and signing autographs for the high school kids that heard the argument. Obviously they still thought I was some kind of VIP.

CROSS: *O.K., Wayne, I've got to get back to work right now. By the way, I might want to talk to you again sometime. We didn't get to talk about all of your favorite cases. And you're still litigating.*

When the Court Interpreter Cannot Hear, Due Process Stops

■ BY A. SAMUEL ADELO

Federal and state certified court interpreter

One of the best kept courtroom secrets may well be that court interpreters frequently cannot hear courtroom discourse. The interpreter usually sits next to the defendant and defense counsel, the most difficult place for the interpreter to adequately hear all the parties who speak during a court hearing. Moreover, the interpreter's voice overlaps the speaker's voice, making it even more difficult to hear what is being said. By contrast, court reporters and monitors are positioned where their ability to hear every word spoken is maximized.

All objective criterion referenced studies concerning the court interpreter's task conclude that the principal causes of interpreter fatigue are faulty acoustics, prolonged periods on task, lack of familiarity with relevant subject matter, complex terminology and excessively fast and incoherent discourse which negatively affects the interpreter's task.

Interpreters are under intense pressure because they know that the life and liberty of the defendant depends on the interpreter's ability to interpret precisely and exactly what is being said. The interpreter is acutely aware that misinterpretation or omission of any part of the discourse will violate the defendant's constitutional rights.

The court interpreter's task is to be accurate and precise. The discourse he or she has to interpret completely and accurately includes legal and technical terms, jargon, slang, mumbo jumbo, hesitations, false starts, repetitions and inaccuracies. The court interpreter faces very demanding and stressful working conditions compared with interpreters who work in non-legal settings.

This presentation of the court interpreter's task is offered to respectfully solicit the judges' enlightened cooperation to enable court interpreters to interpret court hearings accurately and to comply with their professional obligations and ethically do their part to mete out constitutional due process and equal protection. The court interpreter's underlying goal is to



accurately assist the court to guarantee the defendant's right to be not only physically but intellectually present at court proceedings where that defendant's life and liberty are at stake.

For many years, court interpreters have been discussing such matters among themselves. This article is an effort to resolve problems and to suggest to the courts that close-knit teamwork is necessary in cases wherein linguistically challenged defendants require the services of an interpreter. Additionally, these recommendations are respectfully offered so all parties in the courtroom form a team that ensures ethnic and racial fairness to defendants who require the services of an interpreter.

1. Speak directly to the defendant, witness or party and avoid prefacing questions or statements directed to the interpreter, such as "ask or tell the defendant ..."

2. Before a hearing begins, brief the interpreter. Explain the basic issue(s) of the case and summarize the evidence you plan to introduce.

3. Refrain from using false starts, unnecessary fillers and foggy terms. Instead, use familiar, concrete, crisp and concise terms.

4. Refrain from using ambiguous terms, double negatives and lawyerly clichés.

5. Before the hearing, ask the interpreter if there is any relationship between the interpreter and any

of the parties that may create a conflict of interest or an appearance of a conflict of interest

6. Before the hearing, ask the interpreter if he or she has previously interpreted in any stage of the case now before the court.

7. As the case progresses, do not ask the interpreter for his or her opinion concerning any aspect of the case.

8. If you disagree with any part of the interpretation, do not object on the record; instead, ask for permission to address the court and explain your objection to the judge with other counsel and the interpreter present.

9. Do not ask the interpreter to do a sight translation of a document without you present to answer questions the defendant raises while the interpreter orally interprets the content of the document.

10. From time to time, ask the interpreter if he or she needs a break to avoid interpreter fatigue.

In view of the above, all parties who actively participate in hearings are respectfully reminded to speak at reasonably understandable, audible levels not to exceed 140 words per minute. Courtroom discourse spoken at a moderate speed makes it possible for the interpreter to effectively assist the court to ensure that defendants clearly understand the discourse interpreted. Consequently, the court will have taken all reasonable steps to assure compliance with the defendant's constitutional rights of equal protection and racial ethnic fairness.

About the Author:

Sam Adelo, now retired, has been a free lance court interpreter for 24 years in the U.S. District Court and the New Mexico state district courts. He taught court interpreting for the Haury Court Interpreter Institute at the University of Arizona. He has interpreted in Texas, Oklahoma, Nebraska and Arizona. Adelo served as chair of the New Mexico Court Interpreters Advisory Committee to the New Mexico Supreme Court.

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Legal Literati

This month the El Paso Bar Journal is proud to launch its new literary page with two poems by Ann Crawford McClure

parades
are made for lovers
who like to laugh
at silly clowns
who are too sad
to laugh at
themselves

life is a book
filled with
experiences
joys
sorrows
each period
fills a chapter
take your pen
write upon the page
and let my book be published

Ann Crawford McClure is a Justice with the Eighth Court of Appeals and a former president of the El Paso Bar Association.

Legal Literati call for submissions: The practice of law requires the ability to use the written or spoken word to provoke or prompt an intended result. Effective oratory tends to utilize the occasional verbal flourish, and trial lawyers are known to make use of theatrical tools to achieve a desired outcome. Consequently, throughout history, lawyers have been known for creativity in the arts as well as in formulating arguments. The El Paso Bar Association wants to celebrate this aspect of the legal profession, and encourage its members to recognize and cultivate their own creative impulses. Beginning this issue we will present a literary page called *legal literati*, drawing upon our members or other law related professionals to provide their poems, lyrics, very short stories, or other creative expression. *Please submit your work for consideration to Poetry Editor Donna J. Snyder via email to donna.snyder@ca.epcounty.com.*

Donna Snyder is a poet, is published widely in literary journals, and is also renowned throughout the southwestern United States and northern Mexico for her readings. She is the coordinator of the Tumblewords Project, which she founded in 1995 in San Miguel, New Mexico, is poetry curator of the online magazine, newspapertree.com, and is poetry editor of the El Paso Bar Journal. She has been licensed in Texas and in New Mexico since 1982, and currently practices in the criminal division of the Office of County Attorney José R. Rodríguez.

Advance Sheet, 1286 C.E.

BY CHARLES GAUNCE

Legal Reference Librarian, University of Texas at El Paso

We lawyers have throughout history frequently dealt with mundane issues, perhaps important only to the parties involved. However, those seemingly mundane issues are in fact the warp and woof of daily life.

I share with you a case reported in 1286 C.E., during the reign of King Edward I. The case does not raise great issues; it was not published and reprinted as was the Magna Carta. But it reminds us that the human experience transcends time.



A. and B. brought their writ of nuisance against the earl Marshal and complained that he had wrongfully destroyed their mill-pond to the nuisance of their free tenement and to such a nuisance that, whereas the water used to run out of the mill-pond to their mill to grind their corn, he has leveled the enclosure so that no water remains.

Ramsey: The mill-pond cannot be leveled, but only the enclosure of the mill-pond; and since they could have had a good writ for the destruction of the enclosure we ask for judgment.

SAHAM, J. What is it that you call a mill-pond?

Ramsey: The place containing the water.

SAHAM, J. No, it is the enclosure which enclosed the water. Since you could have a good writ for the raising and enhancing of the mill-pond, for the same reason you can have one for the destruction of a mill-pond. So answer.

Ramsey: This assize can have no knowledge of the alleged nuisance because the water where the nuisance is said to have been committed is in Essex.

SAHAM, J. If it be found to be in Cambridgeshire, what further answer do you make?

Ramsey. There is a dam consisting of four stakes four feet high. When the water is lower than the stakes it flows to the mill of B. and when it is higher it runs to the earl's mill. B.'s men came and raised the dam by six feet and when the earl's men learned of this they came and restored it to its previous state.

The assize comes and says that the earl has leveled the dam otherwise than it should be and so that nothing remains of the water but all have been diverted.

SAHAM, J. Since the nuisance was committed with the earl's consent the dam is to be rebuilt at the earl's cost.



Name:

Julie Gonzalez

Court:

County Court of Law Number Two

Years on the Bench:

Judge Gonzalez started her career on the bench as a magistrate in 1996. In October of 1998, she was appointed to the County Court of Law Number Two. In 1999, she began her elected term and has maintained her position to this day.

Education:

Judge Gonzalez has a Bachelor of Arts in Business Administration with an accounting focus. She knew that she wanted to become a lawyer so, upon graduation, she enrolled in Texas Tech, where she received her Juris Doctor.

Court Coordinator:

Katy Escobedo

What comes to mind when you hear the word "justice"?:

Fairness, civil rights, doing the right thing, and cheering for the underdog.

Describe a moment when you, as either a judge or lawyer, felt justice was achieved:

As an attorney, Judge Gonzalez worked for Legal Aid, where she did a great deal of housing authority cases. Even when the client wasn't necessarily right, she felt that leaving them in housing was the right thing to do. As a judge, she remembers a case where a woman was charged with domestic violence. After a mistrial, the case ended up getting dismissed and it was found that the husband, who was the complaining witness, was using the domestic violence charge as a means to gain leverage in a custody battle with the defendant. Justice was served at the end of this case.

As a judge, what responsibility do you feel towards the community?:

Judge Gonzalez feels that it is her responsibility to see that justice is done in the courtroom. She feels that judges serve as role models to the young people. She feels that people look up to and respect judges and that, as judges, they have a responsibility to "walk the walk."

INTERNATIONAL TRANSLATOR-INTERPRETER DAY Terminology – Words Matter

September 26 2008. In honor of International Translator-Interpreter Day 2008, we pay tribute this year to terminology and the work of terminologists. All language professionals acknowledge the crucial role of terminology. How can we translate, interpret, write or localize in the most efficient manner possible without this basic necessity, words, and

therefore terminology?

UNESCO and the United Nations have proclaimed 2008 the International Year of Languages and are asking Member States to promote, protect and preserve the diversity of languages spoken by people around the world. This protection entails recognition of the words used by these professionals, and specifically the terminology established by experts in all realms

of human activity. These experts are terminologists.

We also wish to acknowledge with appreciation the members of the El Paso Interpreters and Translators Association (EPITA), all translators and interpreters in the Southwest of Texas, and the dedicated professionals servicing El Paso County Courthouse, without whom our work often could not be accomplished.

Denise Butterworth

■ BY DANNY RAZO

President of El Paso Young Lawyers Association

Denise Butterworth is passionate about her job and community. El Paso has definitely benefited from this native daughter's decision to return.

Since 2005, Denise has been a Director with El Paso Young Lawyers (EPYLA). She is currently President-Elect of EPYLA. She has been active in many EPYLA projects including Wills for Heroes, Holiday Party for Disadvantaged Children, and High School Mock Trial Competition. She has also volunteered as a Big Sister for Big Brothers, Big Sisters.

She has worked with the El Paso District Attorney's office since 2000. She has practiced in the Felony Section since 2000 and the

Special Crimes Unit since 2005. She currently is involved in handling the prosecution of homicide cases. Her own words best summarize her dedication to her job:

When I talk about my job and how I came to be a prosecutor, I always explain the story as someone would when referring to their true love, i.e.: "I just knew this was the one." I knew as soon as I started working as a prosecutor that this job was "the one" for me. Through the years my cases have become extremely sad, and I have realized more than ever, what an impact my profession could have in lives that have suffered so much tragedy. I am very proud of the work that I do. I feel that God has given me the ability to speak on

behalf of those who are not strong enough to do so.

Denise is a graduate of Texas Tech Law School. While in law school, Denise stayed busy as Vice President of the Student Bar Association, a member of the Board of Barristers, and a volunteer judge for Teen Court.

Her parents are George and Nadine Butterworth, and George is also an attorney here in El Paso. Most importantly, Denise is a beaming aunt to her 15 month old nephew, Dalton. Anyone who knows Denise has heard about this sweet boy.



EPYLA Upcoming Events

■ The El Paso Young Lawyers will hold its meeting on Wednesday, September 10, 2008 at 12:00 noon at The Original Jaxon's Restaurant,

4799 N. Mesa. The Happy Hour will be at Hemingway's, 214 Cincinnati Ave from 5:30 – 7:30p.m. For more information please contact the El Paso Young Lawyers e-mail at EPYoungLawyers@gmail.com or 487-8404. Come learn about EPYLA and Community Projects for 2008-2009.

■ The El Paso Young Lawyers will hold its night of comedy on Thursday, September 25, 2008 at 7:00p.m. at Bart Reed's Comic Strip Night Club

9515 Gateway Blvd W. Tickets are \$10. For more information please contact the El Paso Young Lawyers e-mail at EPYoungLawyers@gmail.com or 487-8404.

■ The El Paso Young Lawyers will hold its meeting on Thursday, October 9, 2008 at 12:00 noon at The Original Jaxon's Restaurant,

4799 N. Mesa. The Happy Hour will be at The Loft, 2626 N Mesa St. from 5:30 – 7:30p.m. For more information please contact the El Paso Young Lawyers e-mail at EPYoungLawyers@gmail.com or 487-8404. Come learn how to relax and stay healthy in the practice of law by Las Palmas Lifecare Center.

Above the Law

MARCJACOBSSLAW.COM



Marc Jacobs, Esq. is a partner at Michelman & Robinson, LLP. Combining his professional and personal interests, in his spare time, Marc authors the "Above the Law" legal cartoons focusing on the humorous relationship between life and law. For more information on Above the Law, please visit www.marcjacobsslaw.com

Event Launches Enrique H. Peña Endowed Scholarship Fund

■ BY JOANN CHAPMAN

Retired District Court Judge and UTEP alumnus Enrique H. Peña will be remembered forever thanks to the generosity of his friends and colleagues who recently established the Judge Enrique H. Peña Endowed Scholarship.

The permanent endowment will support annual scholarships for undergraduate students enrolled in the UTEP Law School Preparation Institute who plan to attend law school. Students who apply must be enrolled full time and have a minimum GPA of 3.0.

Funds were raised to establish the scholarship on August 6th at an event honoring Judge Enrique H. Peña. Numerous law firms contributed funds to defray the costs of the event. As a result, all the contributions, more than \$36,000, went to establish the Scholarship Fund itself. The first scholarship will be awarded this year.

Members of the event committee were Judge Linda Chew, Judge Carlos Villa, Judge Gonzalo Garcia, Judge Roberto Anchondo, Ruben Robles, Gary Weiser, Carl Green, Andres Almanzan, James Martinez, Caroline Whitmore, and Jo Ann Chapman.

Judge Peña was recognized by a short video presentation which highlighted his life and career. In addition numerous members of the legal community commented on Judge Peña contributions to their lives, and to the community.

Judge Peña graduated from Texas Western College with a bachelor's degree in business administration in 1958. He obtained his law



Judge Enrique Peña

degree from the University of Houston.

Judge Peña was appointed Assistant County Attorney of El Paso in 1963. He was elected El Paso County Attorney in 1968. He was appointed judge of the Court of Domestic Relations of El Paso County in 1971.

In 1977, the Domestic Relations court's designation was changed, becoming the 327th Family Court of El Paso County. At that time, the court handled domestic relations and juvenile cases.

In 1988, the Enrique H. Peña Juvenile Justice Center opened. The Center was considered to be a "state of the art" juvenile justice center, embodying the most progressive concepts of the era.

Judge Peña also served as Chairman of the Board of Directors of the National Youth Law Center in San Francisco, a non-profit corporation dedicated to juvenile justice reform throughout the United States. National Youth Law Center's attorneys represented the plaintiffs in *Morales v. Thurman*, an important case first filed in the 1970's by attorneys with the El Paso Legal Assistance Society (now TRLA). The case lasted many decades, and reformed the practices of the juvenile justice system in Texas.

Judge Peña retired from the bench in 1991 and established Texas Arbitration Mediation Services, Inc. When he began this work, arbitration and mediation was a pioneer concept. Once again, Judge Peña's contributions were on the cutting edge of change.

Today, Judge Peña is a full time mediator at Texas Arbitration Mediation Services, Inc. He has in addition continued to maintain a private law practice. He is passionate about the law. He has helped many people in various roles—as an attorney, a judge, a mediator, or a mentor. Many attorneys and friends have learned from him.

Judge Peña is fighter and crusader. He never gives up or gives in. He is now battling cancer. He knows that he can only defeat his cancer with God's help. Don't count him out!



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Electronic Discovery Laws

Are YOU and YOUR CLIENTS in Danger?

BY DAVID J. FERRELL, PLLC

DJF@ELPASOLAW.COM

About six years ago I was hired to represent an adult daughter in a probate action involving her deceased mother and the second husband (henceforth made up name "FRANK"). The main issue in the case was the amount of property in the decedent's estate. I asked "FRANK" (my client's opponent) at a pretrial if the decedent had a computer. He said, "Yes". I asked the court to freeze any use of that computer until it could be examined for evidence, and the court issued its order. "FRANK'S" attorney asserted compliance and instructed his client to take "the computer" to my office, by himself, where I could examine it. WHAT a windfall!!

"FRANK" plugged the computer in my conference room and told me to "inspect" the machine. I found five QuickBooks data files on the hard drive which indicated five bank accounts, "FRANK" had testified at the pretrial that there was only one bank account. I then got a box of floppy disks and prepared to copy everything I could. "FRANK" got wise and shut down the machine and left in a huff. But, I had the names of those five QuickBook data files and if they were missing after my motion to compel was granted, I was sure that the court would be receptive to appropriate sanctions. The only problem was, I BECAME A WITNESS.

Anyway, the case settled but besides the lesson I learned about "doing it myself", I had my first taste, as did the other lawyer, of computer data in litigation.

Now, this issue is in almost 100% of civil litigation. The consequences for failing to properly manage e-discovery in civil litigation continue to rise. Recent court decisions are notable both for the courts' readiness to specifically identify the errors of counsel as well as the severity of the sanctions imposed for such failures. What is apparent is that courts seem to demand a standard of near perfection from in-house and outside counsel in managing e-discovery.

With the enormity of electronic document review and productions and the evolving e-discovery jurisprudence, litigants and their counsel continue to face an uncertain array of



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issues that can directly impact the outcome of a lawsuit. One thing is for sure: To manage these risks effectively, lawyers must recognize the high stakes in the e-discovery game and if they need help they need to set up an appropriate e-discovery infrastructure to help manage them.

Four MUST READ court decisions illustrate the stakes. The first, Qualcomm v. Broadcom, reflects what serious sanctions can be imposed for flagrant discovery failures. Here's a lesson in why it is so important to produce every bit of electronic evidence. In this recent patent suit, attorneys failed to produce evidence until four months after the trial. The result: Qualcomm was ordered to pay all of Broadcom's litigation fees – about \$10 million (for a link to this case go to elpasolaw.com and click on the EDD LINK on the left side of the page).

The second, Stanley v. Creative Pipe, demonstrates what can happen if counsel does not understand the basic technical aspects of e-discovery, such as keyword searching. In Victor Stanley, Inc. ("Plaintiff") vs. Creative Pipe, Inc., et al (collectively "Defendants"), Magistrate Judge Paul W. Grimm of the United States District Court for the District of Maryland found that the Defendants waived any privilege or work-product protection for the 165 electronically stored documents at issue in this case by disclosing

them to the Plaintiff (for a link to this case go to elpasolaw.com and click on the EDD LINK on the left side of the page).

The third, In re Intel, is perhaps the most troublesome of the opinions because it demonstrates that in the litigation environment, courts will dole out punishment for conduct that many attorneys might find entirely appropriate (for a link to this case go to elpasolaw.com and click on the EDD LINK on the left side of the page).

The last is an important Texas case (In re Honza - 242 S.W.3d 578) where the Court of Appeals in Waco, for all intents and purposes, affirmed a trial judge's order requiring a party to allow the opponent's forensic expert to create a mirror image of each of the computer hard drives of the other party to locate two particular documents or iterations of those documents. Honza sets a Texas first impression of access to an opponent's hard drive data, and, it asserts that "a body of state and federal decisions has emerged and has established a fairly uniform approach for such (hard drive mirroring)" {for a link to this case go to elpasolaw.com and click on the EDD LINK on the left side of the page}.

For a Sample Ex Parte Imaging Order for Computer Hard Drives etc. go to elpasolaw.com and click on the EDD LINK on the left side of the page.



Texas Rio Grande Legal Aid & Creative Kids invite

ART WITH A CAUSE

September 4, 2008 • 6pm / 8:30pm

Texas Rio Grande Legal Aid, Inc. and Creative Kids Inc. invite you to a benefit dinner featuring a book signing by renowned photographer Alan Pogue, live music and an exhibition of children's artwork from the Creative Kids program. Attendees will also receive a coupon for a free CLE. This summer, Mr. Pogue and local photographer Christ Chavez held a special photography workshop with children from the Region 19 - Migrant Education Program. Their photographs will be auctioned and incorporated into 2009 calendars, which will be available for purchase the night of the event.

Art With a Cause

September 4, 2008

OLO Gallery • 504 San Francisco Ave.

6:00pm to 8:30pm

Tickets: \$30.00

Tables: \$240.00 (seat 8)

Calendars: \$20.00

To RSVP, donate, or purchase calendars contact:

Verónica Carbajal, Attorney (TRLA)

915.585.5107 or vcarbajal@trla.org

All proceeds from the event will support Creative Kids' mission of educating children with special needs through the power of the arts and the TRLA El Paso Emergency Housing Fund which provides one-time cash assistance to clients facing foreclosure, eviction, or emergency relocation.

All contributions are tax-deductible.

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►►►ASSOCIATION NEWS

El Paso Women's Bar Association

The El Paso Women's Bar Association will have its kick-off event on Wednesday, September 17, 2008 at 5:30 p.m. at the Original Jaxon's on Mesa and Castellano. Join us for drinks and appetizers! If you are interested in joining the Women's Bar, but are not a member, please join us as our special guests. If you have any questions, please contact Toni Estaville at 546-2059x3212 or toni.estaville@yahoo.com

During September and October the Women's Bar will also be participating in the National Endowment for the Arts' Big Read. We will join the rest of El Paso by reading, "Sun Stone and Shadows: 20 Mexican Short Stories" as a community. For more information and a calendar of local events, visit www.neabigread.org or visit the El Paso Public Library. If you'd like a copy of the book for \$8.50, please contact Toni Estaville at 546-2059x3212 or toni.estaville@yahoo.com

Federal Bar Association

The El Paso Chapter of the Federal Bar Association is pleased to present Dean Erwin Chemerinsky from the U.C. Irvine Law School to speak in El Paso on Monday, October 6, 2008 at 12:00-1:30 p.m. at the El Paso Club. Cost is \$20 for members and \$25 for nonmembers, includes lunch. Please RSVP by September 29, 2008 to Evelyn Rey, 546-5200 or erey@kempsmith.com 1.5 hours of MCLE pending, including ½ hour of Ethics.

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Advanced Personal Injury Video Seminar

The El Paso Bar Association will sponsor the 2008 Advanced Personal Injury Video Seminar on Wednesday – Friday, October 29-31, 2008 to be held at the Bar Association Office, Room L-115, El Paso County Courthouse.

Approved for 16.5 hours of MCLE including 2.25 hours of Ethics. Cost is \$450 for members of EPBA and \$500 for nonmembers. 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 call Nancy at 532-7052 or at nancy@elpasobar.com

CLASSIFIEDS

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

MABA Annual Banquet

Saturday, September 13th.
At the Camino Real.
Cocktails start at 6:00 p.m.
Dinner starts at 7:00 p.m.

Tickets \$60 and each table seats 10.
Please make the checks out
to "MABA-El Paso."

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We are pleased to announce...



Miguel A. Flores
Receives Board Certification
in Consumer Bankruptcy Law

Miguel A. Flores, an attorney with Tanzy & Borrego Law Offices, recently received his Board Certification in Consumer Bankruptcy Law from the Texas Board of Legal Specialization. Mr. Flores was the only attorney in Texas in 2007 to pass the certification exam to become board certified in consumer bankruptcy law. A native El Pasoan, he is a graduate of the University of Texas at El Paso and received his Law Degree from Texas Southern University, Thurgood Marshall School of Law. Mr. Flores has been an attorney since 2002 and has practiced with Tanzy & Borrego Law Offices since 2003.

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Regina B Arditti

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NEED ETHICS CLE?

The Ethics Section of the El Paso Bar Association proudly presents

WILLIAM A. KORMAN ETHICS IN AN ERA OF INSTANT COMMUNICATIONS A. K. A. THE EMAIL THAT ROARED

Thursday, October 23, 2008
Noon to 1:00 p. m.

Registration begins at 11:30 a. m.
Ceremonial Courtroom, 12th Floor
Brown Bag Lunches Welcome

Approved for 1.0 Hour
Participatory Ethics

\$25 for EPBA Members
\$35 for non-members

For more information or to register, contact Nancy Gallego, 532-7052 or nancy@elpasobar.com



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