



# EL PASO BAR JOURNAL

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*Articles, Events and Information*

October/November 2011

SENIOR LAWYER INTERVIEW

## CHIEF JUSTICE DAVID WELLINGTON CHEW

*By Clinton F. Cross Page 13*

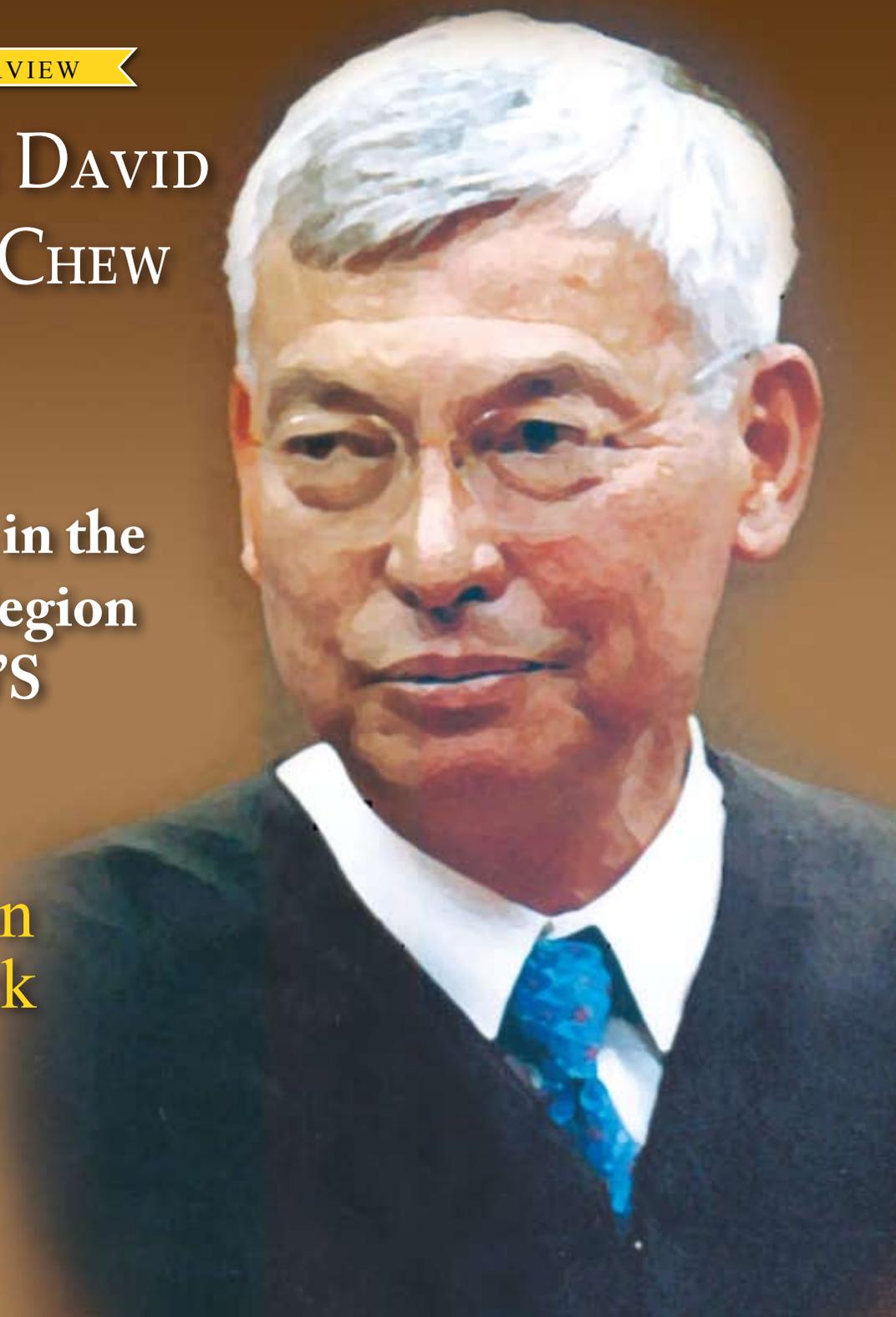
## Women's Rights in the El Paso Juarez Region During the 1700'S

*By Janet Monteros Page 7*

## A Conversation with Bob Black

PRESIDENT OF THE  
STATE BAR OF TEXAS

*By Clinton F. Cross Page 15*



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## THE PRESIDENT’S PAGE



*Lawyers Serve All*

### “The Great Levelers”

Atticus Finch, one of the great fictional trial lawyers, states in *To Kill a Mockingbird*: “Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal. I’m no idealist to believe firmly in the integrity of our courts and in the jury system--that is no ideal to me, it is a living, working reality.” In last month’s *El Paso Bar Journal*, Clinton Cross pointed out that while imperfect, our legal system provides a foundation for justice, as long as each of us is dedicated to the respectful practice of law. He also asked how attorneys can provide legal services to those in need.

The El Paso Bar Association continues to provide greater access to justice for those in need of legal services. I encourage all attorneys to participate in our upcoming clinics and programs. These include the Third Annual Access to Justice Fair to be held on October 29, 2011 at El Paso Community College’s Valle Verde Campus. I thank Beto Mesta and George Andritsos for their outstanding work on this project.

Also, the El Paso Lawyers for Patriots program will hold a clinic for veterans on Saturday, November 19, at El Paso Community College’s Transmountain Campus. Don Williams has again provided exceptional service to our veterans. Don’s efforts in organizing last year’s clinics, as well as other outstanding work in providing services to veterans, resulted in a State Bar of Texas Presidential Citation. Additionally, under the leadership of Chantel Crews, the El Paso Bar Association received a Star of Achievement Award for its work with veterans last year. Please join us in continuing our work on these valuable projects.

Mark your calendars for the Bar’s Annual Civil Trial Seminar, which will take place in Las Vegas on February 17-18, 2012. The seminar will be held at the Monte Carlo Resort & Casino, so make your reservations early.

Also join us for our monthly luncheons on the second Tuesday of every month at the El Paso Club.

Bruce A. Koehler

Cover: Chief Justice David Chew’s Investiture Portrait

EL PASO BAR ASSOCIATION  
**October Bar Luncheon**

Tuesday, October 11, 2011

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

**Guest Speaker will be**  
Chief Justice David Wellington Chew

**Please make your reservations by Monday, October 10, 2011 at noon  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)**

EL PASO BAR ASSOCIATION  
**November Bar Luncheon**

Tuesday, November 8, 2011

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

***This will be our annual Salute to Veterans***

**Please make your reservations by Monday, November 7, 2011 at noon  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)**

Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office. An article in the Bar Journal is not, and should never be construed to be, an endorsement of a person for political office.

# CALENDAR OF EVENTS

*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 month of December, 2011/January, 2012, please have the information to the Bar Association office by Friday, November 4, 2011. 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.*

## OCTOBER, 2011

**Tuesday, October 4**  
EPBA BOD Meeting

**Saturday, October 8**  
MABA Annual Meeting &  
Banquet

**Monday, October 10**  
EPBA Office Closed  
Columbus Day

**Tuesday, October 11**  
EPBA Monthly Luncheon

**Thursday, October 20**  
EPPA Monthly Luncheon

**Saturday, October 29**  
ATJ Legal Fair

**Monday, October 31**  
Halloween

## NOVEMBER, 2011

**Tuesday, November 1**  
EPBA BOD Meeting

**Friday, November 4**  
EPPA 2nd Annual Golf  
Tournament

**Tuesday, November 8**  
EPBA Monthly Luncheon

**Wednesday, November 9**  
Swearing in of  
New Attorneys

**Friday, November 11**  
EPBA Office Closed  
Veteran's Day

**Thursday, November 17**  
EPPA Monthly Luncheon

**Thursday, November 24**  
EPBA Office Closed  
Thanksgiving Day

**Friday, November 25**

EPBA Office Closed  
Day after Thanksgiving

## February, 2012

**Friday, February 17**  
16th Annual Civil Trial  
Seminar  
Monte Carlo  
Resort & Casino  
Las Vegas, NV

**Saturday, February 18**  
16th Annual Civil  
Trial Seminar  
Monte Carlo Resort  
& Casino  
Las Vegas, NV

## ACCESS TO JUSTICE LEGAL FAIR

The Third Annual Access to Justice Legal  
Fair will be held on  
**Saturday, October 29, 2011**  
at the Valle Verde Campus of El Paso  
Community College  
from 9:00 a.m. – 2:00 p.m.

If you would like to volunteer to give advise  
please contact George Andritsos  
at 566-9995, Alberto Mesta at 585-5100  
or Nancy at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)

## El Paso Lawyers for Patriots Veterans Legal Clinic

The **Second Annual El Paso Lawyers for  
Patriots Legal Clinic**  
will be held on  
**Saturday, November 19, 2011**  
at the **Transmountain Campus of El Paso  
Community College**  
from 9:00 a.m. – 2:00 p.m.

If you would like to volunteer to give advise  
please contact Donald L. Williams at 564-  
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# ADVANCE SHEET, circa 1280

■ BY CHARLES GAUNCE

*Legal Reference Librarian The University of Texas at El Paso*

From the Bills Presented to the Justices During  
the Eyre of Staffordshire of 21 Edward I:

Hervey the son of Clement of Wolverhampton complaineth to the Justices of our lord the King of Richard Attwal and William of Longdon, bailiffs of the Bishop for the Franchise of Lichfield, for that while this same Hervey was riding towards Farewell along the highroad without the town of Lichfield upon the Monday next after the Feast of St. Margaret in the twentieth year of the reign of Edward, the aforesaid Edward and William came there by the procurement of Fremond the rider and Alexander the clerk and wrongfully took the aforesaid Hervey and made him return against his will, and brought him into the town of Lichfield and there kept him on his horse in the high street from the hour of noon until after vespers, for they would not let him go until that he had found sureties that he would comply with the demands of those same Fremond and Alexander, a disgrace and detriment which the aforesaid Hervey would not willingly have suffered for ten pounds and more. And of this he prayeth favourable consideration and remedy.

*Endorsements.*

Finished

Failed to prosecute.

The selected case raises many interesting

aspects of human nature that even today should be addressed by our legal system. Hervey presented his complaint about a shakedown by the local Bishop to the court. Having filed the case, perhaps he thought better of it and determined he did not wish to return to the area and risk further retribution by the local clergy, and that the better course of action was to simply let the matter drop. Most attorneys today will recognize this as a "vent your spleen" action – where the plaintiff files the suit out of anger at being done wrong. My experience is that most judges will recognize this case more as a "frivolous lawsuit" that simply consumes judicial resources. That is what I really want to talk about.

My position, and it is certainly up for discussion, is that there is no such thing as a frivolous lawsuit. Instead of getting angry and either hiring thugs or doing it himself, Hervey did not then resort to breaking the kneecaps of the Bishop or his henchmen. Clearly he got beyond the stage of writing out his grievance as he actually filed it with the court, but by doing so he managed to get his anger out of his system. Letting people present their allegations of being aggrieved at the hands of others serves an important social purpose: even if Hervey's suit had progressed to trial and he had lost, he was likely to accept the determination of the community that his claim was not sufficient, just or worthy. The process of letting people seek the judgment of the community in large measure permits us to not devolve into seeking retribution for every slight, real or imagined. In short, the ability to seek a community resolution keeps us civil. Judges who rail against frivolous lawsuits are really just complaining that they have to do the job they are getting paid for.

## EPBA/County Holidays

The El Paso Bar Association and the El Paso County Courthouse will be closed on the following dates:

Monday, October 10, 2011 – *Columbus Day*

Friday, November 11, 2011 – *Veteran's Day*

Thursday, November 24, 2011 – *Thanksgiving Day*

Friday, November 25, 2011 – *The Day after Thanksgiving*

# Women's Rights in the El Paso Juarez Region During the 1700'S

■ BY JANET MONTEROS

In 1763 Composer Wolfgang Amadeus Mozart was seven years old, Thomas Jefferson was twenty years old, and George Washington had only recently married Martha Washington. Catherine the Great had just been named the Empress of Russia. In 1763 the French and Indian War was concluded. In thirteen years, the colonies would declare their independence from Great Britain.

In 1763 in the El Paso-Juarez region women were filing lawsuits and conducting their business affairs as a matter of course. A review of the records in the archives housed at the University of Texas at El Paso titled "Ciudad Juarez Municipal Archives" reveal a vigorously litigious climate for the El Paso Juarez region. For instance, one can find in the records the case of a woman named Maria Josepha Alderete, who filed a lawsuit in 1763 in her own name against Joseph Maria Duran of Ysleta.<sup>1</sup> The records also reveal criminal charges filed by a woman, Antonia Theodora Telles Xiron, against a man, Juan Vigil.<sup>2</sup>

A review of the San Antonio Bexar county archives also shows that women were allowed to grant power of attorney, buy and sell property on their own and hold others to contracts.<sup>3</sup> A review of the records for the El Paso Juarez area demonstrates the existence of these privileges in this area, such as in a petition for title to land filed in 1762 by Maria Gamboa.<sup>4</sup> Joint ownership of land is revealed through a land survey recorded in the Juarez El Paso area in 1763 which shows the demarcation of lands (land survey) belonging to Alferez Julian Garcia de Noriega and Josepha de los Angeles.<sup>5</sup>

The fact that women in the Spanish Colonial New World could file an action *pro se*, or inherit property, was an anomaly in Anglo-Saxon legal



*De español y mulata, morisca.* Painting by Miguel Cabrera, 1763

communities during that time. The fact that they could maintain actions for property was also highly unusual. In England in 1765, William Blackstone published his summary of English common law, and the disparities of treatment between men and women were revealed in his writings.<sup>6</sup> The legal status of women depended in great part on her marital status; married women had very few rights.<sup>7</sup> Blackstone's influence on Anglo-American law was monumental.

The American colonies during the 1700's contained a patchwork of intestacy laws, some concentrating land in the eldest son, especially in the southern colonies, echoing the British and European laws of primogeniture, which favored inheritance of the entire estate by the oldest male heir.<sup>8</sup> In addition, in the seventeenth and eighteenth centuries, very few women

wrote wills.<sup>9</sup> At that time, all of a woman's personal property became her husband's when they married, and the husband had management and control over all her real property.<sup>10</sup> A married woman could execute a will conveying her personal property only with her husband's express consent.<sup>11</sup>

The explanation for the existence of women's legal rights in the 18th century in the Spanish Colonial New World lies in large part to the efforts of Alfonso X, a Spanish king who had in 1256 ordered the reorganization of the laws of Castile.<sup>12</sup> This reorganization of the sometimes conflicting laws within the Spanish provinces and towns was known as *Las Siete Partidas*, or the Seven Divisions of Law, dealing with canon law, government and administration, property and maintaining society, domestic relations, financial obligations and maritime law, inheritances and guardianships, and the seventh, crime and general principles of law.<sup>13</sup>

The Spanish law as set forth in the *Las Siete Partidas* gave men and women similar legal capacities.<sup>14</sup> Although husbands and wives usually could not sue one another, they could sue each other for restitution of property that belonged to one or the other individually.<sup>15</sup> Women could also, in certain instances, serve as an attorney for another person if her ward had an impediment which would not allow her ward to enlist the management of his cause to a more appropriate advocate.<sup>16</sup> Wives and husbands were not allowed to be witnesses for or against each other. "The wife cannot give evidence for or against her husband, nor the husband for or against his wife in any cause where they are plaintiff or defendant."<sup>17</sup>

Spanish political leaders believed that use of the community property model in New

World would promote population of the New World, as they believed it had assisted in the repopulation of Spanish lands gained from the Moors.<sup>18</sup> The Spanish settlers brought with them not only the community property model, but many other rights and traditions set forth in *Las Siete Partidas*.

Anglo-American settlers in Texas often complained bitterly about Mexican law. A reason for revolt against Mexico stated by many Anglo-American settlers, which was explicitly stated in the Texans' 1836 Declaration of Independence, was the failure of Mexican law to provide for jury trials. Many of the Texas settlers, however, were poor. Many came to Texas to escape their creditors, and many more feared them. The homestead laws and community property laws in the State of Texas, based upon Spanish law, helped protect debtors from the feared creditor lawsuits. The political movement to promote feminist empowerment came much later in our history.<sup>19</sup> When however in 1840 the Republic of Texas purportedly adopted the Common Law

of England as the law of the Republic it either intentionally or inadvertently retained in its legal system many Spanish rules. The adoption of these rules from Mexico brought with their

adoption some unintended consequences, consequences that empowered women and advanced the interests of justice.

Janet I. Monteros

1 University of Texas at El Paso, "UTEP" Ciudad Juarez Municipal Archives, "CJMA," MF 513, part II, Roll 7, 7-18 Lawsuit, *Maria Josepha Alderete vs. Joseph Maria Duran*, Yselta. 1763.

2 UTEP, CJMA, MF513, part II, Roll 8, paging sequence 2, 1-38 *Autos criminales...charges against Juan Vigil by Antonia Theodora Telles Xiron*. 1764.

3 *Id.* at 72.

4 UTEP, CJMA, MF 513, part II, Roll 8, paging sequence 1 365-372 (1762).

5 UTEP, CJMA, MF 513, part II, Roll 8, paging sequence 1 355-364 (1763).

6 Jean S. Stunz, *Hers, His and Theirs: Community Property Law In Spain and Early Texas*, pages 100-101 (Texas Tech University Press 2010).

7 *Id.*

8 Adam J. Hirsch, *Inheritance: United States Law*, in 3 *Oxford International Encyclopedia of Legal History* 235-40 (Stanley N. Katz ed. 2009).

9 Kristine S. Knaplund, *The Evolution of Women's Rights in Inheritance* (January 2008) (unpublished manuscript, on file with Pepperdine University School of Law).

10 *Id.*

11 *Id.*

12 Stunz, *Hers, His and Theirs: Community Property Law In Spain and Early Texas*, page 15-16.

13 *Id.* at 18.

14 *Id.* at 20.

15 *Partida Third Title 1 – Of Justice, Law No. 5, Las Siete Partidas*, translation by L. Moreau Lislet and Henry Carleton; Counselors at Law (New Orleans: James M'Karher, No. 60, Chartres street (1820).

16 *Id.*, *Partida Third, Title XVI, Law 5, Vol. 1, p. 113.*

17 See, *Partida Third, Title XVI, Vol. 1, Law 15, p. 199.*

18 Stunz, *Hers, His, and Theirs: Community Property in Spain and Early Texas*, pages 57-58.

19 *Id.* at 172-173

# THE LAW WEST OF THE PECOS

BY JUSTICE ANN CRAWFORD MCCLURE

On June 15th, the 8th Court of Appeals issued an opinion reversing a defendant's conviction as a result of charge error. See *Gelinas v. State*, No. 08-09-00246-CR, 2011 WL 2420858 (Tex.App.–El Paso June 15, 2011). Mr. Gelinas was charged by information with the offense of driving while intoxicated, a Class-B misdemeanor. A jury found him guilty and the trial court sentenced him to 180 days in jail and a \$1,000 fine. The trial court suspended the sentence and ordered fifteen months' community supervision.

In his dispositive issue, Appellant complained that the trial court abused its discretion in failing to give his requested suppression instruction to the jury:

If you the jury find that Trooper Diego Marquez illegally stopped the defendant on February 16, 2007, or have any reasonable doubt thereof, you are instructed to exclude all evidence obtained by the trooper from and after the illegal stop from -- during your deliberations.

The trial court agreed to give an instruction "on the business of the stop," and amended its charge to read as follows:

You are instructed that under our law no evidence obtained or derived by an officer or other person as a result of an unlawful stop and detention shall be admissible in evidence against such accused. An officer is permitted to make a temporary investigative detention of a motorist if the officer has specific articulable facts, which, taken together with the rational inferences from those facts, lead him to conclude that a person detained actually is, has been, or soon will be engaged in criminal activity. Now, bearing in mind this instruction, **if you find from the evidence that on the occasion in question the Defendant, James Henry Gelinas, was driving his vehicle on a public road immediately preceding his stop and detention by the officer and you find from the evidence**

**that his vehicle failed to comply with the Texas Transportation Code Provision, which requires a white light to illuminate the vehicle's license plate or you have a reasonable doubt thereof, then such stopping of the accused would be illegal** and, if you find the facts so to be, or if you have a reasonable doubt thereof, you will disregard this testimony of Trooper Marquez relative to his stopping the defendant and his conclusions drawn as a result thereof, and you will not consider such evidence for any purpose whatsoever.

[Emphasis added.]

Appellant contended on appeal that after agreeing to submit the requested suppression charge, "which was substantially correct" the trial court instead "submitted a special charge which instructed the jury to do exactly the opposite of what [Appellant] had requested in his special charge." The court agreed. The charge submitted was erroneous because

it instructed the jury that if they believed Appellant had violated the Transportation Code, then the initial stop was illegal. See TEX.CODE CRIM.PROC.ANN. art. 38.23(a) (West 2005).

The court compared the instant facts with those in *Hutch v. State*, 922 S.W.2d 166 (Tex. Crim.App. 1996). There, police officers stopped a vehicle in which Hutch was a passenger because neither he nor the driver was wearing a seat belt. As the officers approached, Hutch leaned forward and dropped an object on the floor which was later determined to be cocaine. At trial, Hutch testified that he and the driver were wearing their seat belts. Because his testimony contradicted the police officers, the trial judge instructed the jury that illegally obtained evidence is inadmissible. But the instruction there, like the instruction here, was absolutely backwards:

[I]f you find from the evidence that . . . the driver and front seat passenger were not wearing seat belts . . . then such stopping of the accused would be illegal.

*Id.* at 69. A majority of the court of appeals determined that the charge was an incorrect statement of the law but found no egregious harm. Justice O'Connor dissented, finding that, "[i]t cannot be harmless error to instruct the jury that the law is the opposite of what it actually is." *Hutch v. State*, 881 S.W.2d 92, 96 (Tex. App.--Houston [1st Dist.], pet. granted) (O'Connor, J., dissenting).

The Court of Criminal Appeals granted the petition for review. The majority opinion began by discussing the *Almanza* standard of harm, noting that "errors which result in egregious harm are those that affect 'the very basis of the case,' deprive the defendant of a 'valuable right,' or 'vitally affect a defensive theory.'" *Hutch*, 922 S.W.2d at 171, citing *Almanza v. State*, 686 S.W.2d 157, 172 (Tex. Crim.App. 1985). The opinion explained that the instruction was unquestionably wrong and, "[a]s noted by Justice O'Connor, the instruction was 180 degrees opposite of what it should have been." *Hutch*, 922 S.W.2d at 172. The majority considered the *Almanza* factors for determining whether the error was egregious.

With regard to the first factor, the majority faulted the court of appeals for its determination that nothing in the record indicated that the jury misunderstood the law. This was wrong for two reasons. First, the court of appeals did



not consider the appellate presumption that the jury is presumed to have understood and followed the charge absent evidence to the contrary. *Id.* Second, the error occurred in the application paragraph. Even though the charge otherwise gave a correct statement of the law, the instruction did not authorize the jury to consider or not consider the evidence obtained from the stop. *Id.* The authority to consider or not consider the evidence came solely from the erroneous application paragraph. *Id.* at 173.

The majority then addressed whether the charge error related to a contested issue. It faulted the court of appeals for considering whether the testimony was equivocal.

This was erroneous. Under an *Almanza* analysis, there is no requirement that the testimony be equivocal; in fact parties often present unequivocal evidence to support their respective sides of the case. Instead, this factor asks if the jury charge error related to a contested issue. In the instant case, the issue was obviously contested, otherwise an instruction would not have been required. *Thomas v. State*, 723 S.W.2d 696, 707 (Tex. Crim. App. 1986) (When a factual dispute arises as to whether the evidence was legally obtained, a charge on the issue is required.). In fact, the legality of the stop was the crux of appellant's case.

*Id.* at 173 (footnote omitted).

Turning to the third factor—final arguments—the *Hutch* majority quickly rejected the contention

that legal arguments could cure charge error:

The United States Supreme Court, when faced with the assertion that a prosecutor's argument on a presumption of innocence cures a jury charge deficient in that instruction, wrote 'arguments of counsel cannot substitute for instructions by the court.' [Citation deleted]. And, we have similarly noted that 'jury argument is not a substitute for a proper jury charge.'

*Id.* at 173-74. The majority then recognized that because the application paragraph was so flawed as to charge the jury on the opposite of what the law actually provides and because the legality of the stop was a hotly contested issue, the error could not be cured by jury arguments. *Id.* at 174. Because the error vitally affected Hutch's defensive theory, the court reversed and remanded.

The right to a trial by jury in criminal matters is among those fundamental rights guaranteed by our Constitutions. In order to effectuate this valuable right, there is a minimal requirement that the instructions to the jury not be exactly opposite of what the law actually is.

*Id.*

Following the *Hutch* analysis, the 8th Court of Appeals reversed and remanded the *Gelinas* case to the trial court.

# SALT OF THE EARTH

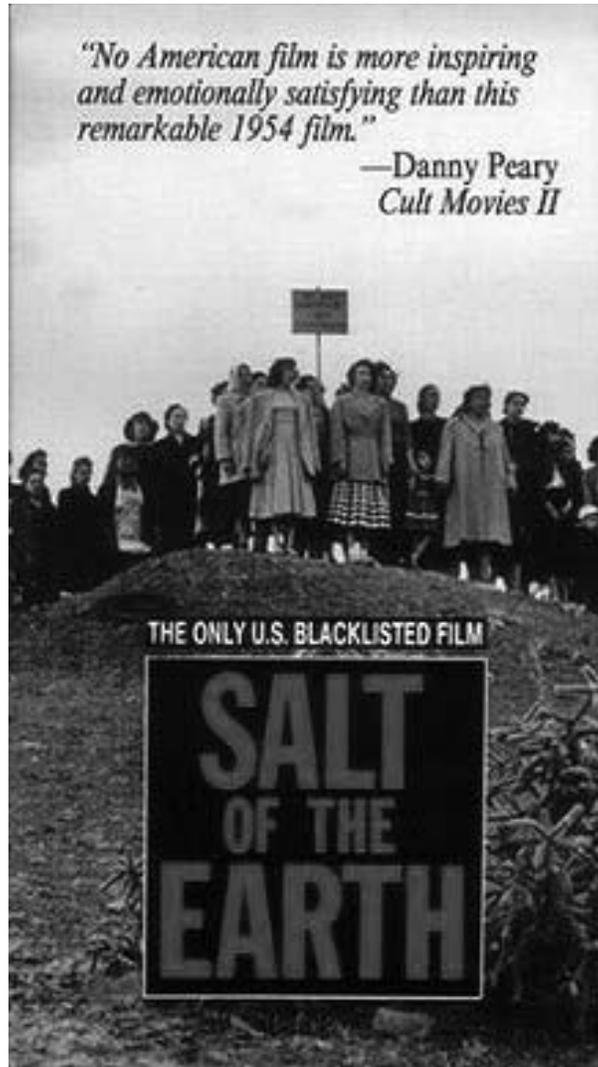
*A Movie that is a True Story and Is Itself History*

BY DONNA J. SNYDER

**S***alt of the Earth* is a movie about a miners' strike in New Mexico in the early 1950's. The events depicted in the movie also led to one of the El Paso legal community's most important legacies to U.S. jurisprudence, the *Jencks* doctrine, created by the U.S. Supreme Court and requiring criminal prosecutors to reveal to the defense for potential impeachment purposes any statements made to government agents during the investigation leading up to prosecution. That doctrine led Congress' passage of the Jencks Act, and ultimately resulted in similar laws in every state and federal jurisdiction.

Clinton Jencks, a World War II veteran who won the Distinguished Flying Cross and six Air Medals for combat service,<sup>1</sup> was a union organizer sent to Bayard, New Mexico to help miners organize and demand equal treatment in housing, which was segregated; equal pay for equal work; and allocation of dangerous assignments. White workers were treated better than Mexican and Mexican American workers in all of these aspects of their work. The mining company, Empire Zinc, was determined to break the back of the union, and made effective use of the Taft-Hartley Act and its injunctive relief provisions used to stop the miners from picketing the mine. That statute also required labor organizers to sign a "non-Communist" oath. Jencks traveled to El Paso to sign this required affidavit, which is why the subsequent case against Clinton Jencks for false swearing came to be heard in El Paso.

Management tactics were poised to succeed in breaking the strike once the union was enjoined from blocking access to the mine. The miners could not afford the fines and jail sentences that would ensue if they defied the injunction. Jencks and another union organizer suggested that the wives of the miners take over the picket line. After at first opposing the exposure of their wives to violence, and balking at the gender role reversal, the miners agreed



Movie Poster

and the wives replaced the men and continued the picket, in the face of escalating violence because of the owners' use of violent goons and official oppression. The local sheriff's office and strike breakers repeatedly tried to break the picket line, but the women held firm. At one point over sixty women and children were placed in the county jail on trumped up charges. Children participated, too, even an infant child of one of the Irish union organizers, was carried by her mother on the picket line.

These were dark days for workers struggling for the right to fair treatment. Another

manifestation of the *zeitgeist* was the oppressive acts of the FBI and the House Un-American Activities Committee (HUAC), purportedly seeking to identify "Reds" and "Pinkos" in order to thwart their presumed efforts to overthrow the U.S. government. Jencks was prosecuted in El Paso federal court. The government alleged he perjured himself when he signed a loyalty oath and denied membership in the Communist Party when he became involved in the Empire Mine strike. The prosecution relied on an FBI informant, Harvey Matsuo, and one other witness who testified that Jencks had lied when he swore that he was not affiliated with the Communist party. That case gave rise to the *Jencks* doctrine, as the prosecutors refused to reveal to the defense certain statements taken from witnesses prior to the trial, which had been collected during the investigation of the case, and Judge R.E. Thomason refused to order the disclosure of the documents. Jencks' FBI file later established that "it took a lot of cheating and collaboration to destroy the left-labor milieu"<sup>2</sup> Clinton Jencks and others lived within.

As is well known, one of the chief targets of HUAC was the film industry, perceived as a hot bed of communist sympathizers. Extreme efforts to find or fabricate evidence culminated in the infamous black list which excluded from work writers, directors, actors, technical workers and others in the film industry. Among those black listed were many who cited the Fifth Amendment in defense of their refusal to cooperate with the government. A smaller group of unfriendly witnesses, known as the Hollywood Ten, cited the First Amendment rights of association as a defense to being forced to testify before HUAC, and were sentenced to terms in prison for contempt and expelled from Hollywood. One of them was Herbert Biberman, who later produced the movie, *Salt of the Earth*.

Paul Jarrico, a black listed screen writer,

*Even before shooting the film began, the fact that it was using black listed film makers and striking miners in the film created a media scandal. Due to pressure from the film technician's union leader's virulent anti-Communist hysteria, most Hollywood workers would not work on the movie. Ultimately, the filmmakers "put together a crew of documentary filmmakers, black-listed union members, and African Americans [who were] ineligible for membership" in that union.*

happened to encounter Jencks after while they were both vacationing at what has been called a "Red" Dude Ranch in New Mexico.<sup>3</sup> The Empire Zinc strike was at its height, and Jencks' family was feeling the pressure: his wife had been beaten up at a demonstration, his thirteen year old daughter had been arrested on the picket line, and his nine year old son had been tear-gassed.<sup>4</sup> Jarrico was inspired by Jencks' story of the strike and how it transcended basic labor issues of safety and equal pay for equal work, squarely addressing issues of race and gender. He visited the striking miners and resolved to make a movie and enlisted the help of Biberman to make the movie. Jarrico wrote much of the script while staying in Silver City, New Mexico and visiting the striking community.

Even before shooting the film began, the fact that it was using black listed film makers and striking miners in the film created a media scandal. Due to pressure from the film technician's union leader's virulent anti-Communist hysteria, most Hollywood workers would not work on the movie. Ultimately, the filmmakers "put together a crew of documentary filmmakers, black-listed union members, and African Americans [who were] ineligible for membership" in that union. HUAC member Donald Jackson denounced the movie on the



Clinton Jencks in *Salt of the Earth*



Kids in jail in *Salt of the Earth*

floor of the House of Representatives before it was even released. Local vigilantes began to attack the film makers, shooting at Jencks' car and assaulting him, threatening to kill the crew. Jencks and other union leaders were told to leave the town of Bayard. Efforts to film in near-by towns were also unsuccessful. Even after the filmmakers concluded their filming and left the area, local residents continued to menace the miners and union workers with arson and gunshots.

Because few U.S. actors would associate themselves with the Hollywood black list, the miners and their wives portrayed themselves in the movie except for the female lead, Rosaria Revueltas, who was a famous Mexican movie star. As a result of her participation in the film, she was targeted by the U.S. government due to visa irregularities, which resulted in another El Paso related case. El Paso lawyer Joe Calamia represented her.<sup>5</sup> Her ultimate deportation, because her visa lacked an entry stamp, resulted in requiring the last few scenes of the movie to be shot in Mexico.

Almost all the other actors in *Salt of the Earth* were the miners themselves, their families, and the union organizers. Jencks himself played a small part. Notwithstanding the film's international acclaim and continuing

cherished status among progressives in the US, very few US residents have ever seen it. The big studios used their power to squelch access to theaters and projectionists, and few people ever saw a public screening. Even as late as the 1980's copies of the movie were rare and had to be special ordered, before the proliferation of videos and video stores. Now it is available through most video chains. It has been preserved by the Museum of Modern Art as a cultural treasure. Previously, screenings occurred in museums and cultural centers and book stores. Now it is available for download free of charge.<sup>6</sup>

The film, *Salt of the Earth*, won international acclaim and is an enduring cultural treasure for people who work for social justice. A now defunct Albuquerque, New Mexico book store was called "*Salt of the Earth*" in commemoration of the film, featured the literature of political progressives and their history from throughout the Americas, and attracted famed writers from throughout the world who read to the local community. Closer to home, renowned El Paso artist Gloria Osuna Pérez, now deceased, included a portrait of the lead female character, as portrayed by Rosaria Revuelta in the film, in a brilliant series of portraits of Mexican American and Mexican women. That series of portraits was featured at the El Paso Art Museum as part of Osuna Pérez's installation called *La Madre Cosmica*.<sup>7</sup> Many books and articles have been written about the movie.

While the movie *Salt of the Earth* may have found limited audience, the El Paso legal community and the *Jencks* case changed federal and state law regarding obligations of fair play that is part of a prosecutor's obligation to ensure that justice is done. In the long run, the Jencks doctrine had a greater impact than the movie, notwithstanding the passion, dedication and sacrifices involved in producing the movie.

1 Schrecker, Ellen, *Many are the Crimes: McCarthyism in America* (Princeton University Press 1998), p. 313.

2 *Ibid.*, p. 311.

3 *Ibid.*, p. 310.

4 *Ibid.*, p. 316..

5 Joe Calamia also represented Harvey Matusow, the informant whose testimony was used to prosecute Jenks. Matusow was held in contempt for lying in court by Judge R. E. Thomason when the witness recanted his testimony. See *El Paso Bar Journal*, September 2011, p. 9-10.

6 You can download the movie for free at [http://www.archive.org/details/clacanonl\\_SaltOfTheEarth](http://www.archive.org/details/clacanonl_SaltOfTheEarth).

7 Another portrait by the renowned artist hung in the White House as part of the Clinton collection of contemporary American artists.

# Why Hire a Private Investigator?

BY GUSTAVO MONROY, PI AND LEE GAUDREAU-VARGAS

What are the reasons and what is the process by which an attorney would choose to hire a private investigator? Just as you would not want your private investigator filing motions and arguing cases in court, some matters -- such as locating important documents, finding witnesses, lost heirs and other work that requires a trained analyst of information and its sources -- should be left to the experts. It will save you both time and money, allowing you to focus on your own area of expertise: the law. A good private investigator is one who is licensed and trained to not only uncover information or persons with acumen and alacrity but, also to pick up on clues, trends or patterns relevant to your case. In this day and age, there is such a plethora of information that the ability to locate the precise information necessary for a case, the skill to be able to sift the useful from the useless, is not only important but vital. This is where a private investigator can help.

But how can you tell the difference between a well-trained investigator and one who has a license but lacks the skills or knowledge for the job? What are the questions you can ask to determine if there is a fit?

First you must establish the business fundamentals. Check to see that the investigator has the basic elements of a business and of a licensed professional. A private investigator in Texas, as in most states, must be licensed. Ask for the individual's license number and check to see that it is valid. In Texas, you can check the license number online through the Texas Department of Public Safety under the Private Security Bureau Licensing Services section. Secondly, what business structure do they have? Are they a corporation? Check their corporate status. Are they insured? Texas requires all private investigators to be insured. These basic elements must be established before moving forward with any candidate for the job.

Next, you must consider the professional qualifications of the investigator. This is especially important in Texas, since the state does not require much documentation on one's investigative background, so there should be some follow-up on your part. Ask if the investigator was previously in law enforcement or the military. If so, did they work in an investigative capacity? If they do not have previous experience



*The state of Texas requires that a contract be signed between an investigator and his or her client. This gives the investigator the authority to conduct an investigation on specific people, places, or things without violating privacy laws.*

in law enforcement or the military, perhaps they have worked for a private investigative firm and have only on-the-job training. How many years did the individual work for the investigative firm and in what capacity did they work? What is their educational background? Obviously the higher the education level the more practiced an investigator will be at research and other necessary investigative skills. Then inquire about their current business. Find out how many years they've been practicing and how many of their cases were like yours. How did those cases turn out? In what area is their specialty? Are there areas in which they're inexperienced? Will this affect your needs? The more professional experience the investigator has the better.

Lastly, you must consider issues of character and check to see that there is a personal fit between you and your future investigator. What overall impression do you receive from

this person? Is his first concern money? Your needs, not money, should always come first. How responsive is the investigator to your needs? Are your calls answered immediately or within a reasonably short window of time or is the response time delayed? Is your investigator available to you 24/7 or only Monday thru Friday from 9 – 5? On an important case, the availability of your investigator to respond in a timely fashion could become pivotal. Has this person displayed an ethical nature and a sense of decency in his professional work? What about his thoughts on confidentiality? Similar to attorney-client privilege, a private investigator is bound by laws of confidentiality. While there are legal exceptions, you can expect your information to be kept private between the two of you. Never be afraid to ask for a reference or customer testimonials. Although an investigator will keep the details of a case private, there should be previous clients that are satisfied with his work and are willing to recommend it.

Once you have considered the investigator's business fundamentals, professional qualifications and character, how do you move forward? The state of Texas requires that a contract be signed between an investigator and his or her client. This gives the investigator the authority to conduct an investigation on specific people, places, or things without violating privacy laws. There should also be an agreed price for services provided. Generally, private investigators will charge anywhere from \$65 to \$120 an hour, or more, plus expenses. Sometimes an investigator may charge a flat fee for a basic service, such as finding an elusive death certificate, but regardless, this should all be outlined in any contract that you sign.

The steps outlined above should act as a guide in the process of choosing and hiring a private investigator. A good private investigator can make a positive difference in a case and allow you to focus on your own area of expertise.

*Gustavo Monroy is the founder of The Steel Cloud Company - a private intelligence agency. He is a seasoned licensed private investigator in both TX and CA; security consultant and former USMC Intelligence Agent. [www.steelcloud.US](http://www.steelcloud.US). Lee Gaudreau-Vargas is a writer and marketing consultant.*

## SENIOR LAWYER INTERVIEW

## CHIEF JUSTICE DAVID WELLINGTON CHEW

■ BY CLINTON F. CROSS

**I** recently learned that Chief Justice David Wellington Chew planned to retire. He agreed to meet me in my office and tell me a little bit about his life and his plans.

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

**CHEW:** I am the son of Wellington Yee Chew and Patricia M. Chew. He was a very prominent attorney in El Paso, a Texas Legal Legend, and involved in a lot of different civic projects. He graduated from SMU law school in 1951, a product of the GI Bill, began practice with Joe Calamia. Mayor Bert Williams appointed my father to the El Paso Civil Service Commission. He was the last president of the El Paso County School District before single county school districts were replaced by various “independent” school districts. He also served on the Dell City School Board. And he was very active in the Democratic Party and founder of the Northeast El Paso Democrats. The Wellington Y. Chew Senior Citizens Center and park is named after him.

My mother stayed home until her youngest started school and then went back to school and obtained her Master’s in Education. She was an elementary teacher and retired as the principal at Travis School Elementary School.

**CROSS: Where did you grow up?**

**CHEW:** I grew up in Northeast El Paso, graduating from Irvin High School in 1966. I played the trombone, ran track, including cross country. Scholastically, I made the Honor Society but wasn’t in the top ten.

**CROSS: Siblings? Wife?**

**CHEW:** I am the oldest of four children. My sister, Linda Chew, judge of the 327th District Court, is the next. Patricia Chew, judge of Probate Court Number one, is the number three child. And, a late arrival, our brother Brian is, I think, 14 years junior to me. Brian was schooled in Switzerland to work in the hotel restaurant industry and did so for a number of years but settled in Atlanta, Georgia and is running the IT department of the Georgia MLS and is working on his MBA, after deciding that there were too many JDs in the family.

My wife is Mandy Chew; she was born in



*Chief Justice David Wellington Chew*

North Carolina but moved to Hawaii where she graduated from the University of Hawaii. We met when I was home-ported at Pearl Harbor. She was a long time hospital administrator and is now Executive Director of the Insights Science Museum.

**CROSS: Children?**

**CHEW:** We have one child, Wellington M. Chew, who works and lives in Austin, Texas.

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

**CHEW:** After high school, I started college at Texas Western College; it changed its name right after the first of the year. The only thing of interest that year was that I “walked on” and tried out for the football team. That was the year that Billy Stevens was quarterback. I was a little light for football, a good 110 pounds; I hadn’t played in high school, but I could catch a football pretty good. But after breaking both my thumbs while trying to be a safety and receiving kick offs for the varsity, a week before the season started I quit the team. I thought I better save my eligibility for another day.

In June of 1968 I went to the Naval Academy and survived Plebe year, despite being one of only two Asians that year; the other was a Chew from South Korea. I tried out for “150 pound football,” a major sport back East, but didn’t

make the final cut and that ended my dreams of playing organized football. Right before graduation, we had service selection night where you selected the branch of the Navy you aspired to. I was thinking of going into the Marine Corps but fortunately my class standing was too low and I went Surface Navy and picked a destroyer escort home-ported in Pearl Harbor. I graduated in 1971 and was commissioned an Ensign in the United States Navy.

**CROSS: Naval Career?**

**CHEW:** After commissioning and some specialty schools, I reported onboard the U.S.S. Claud Jones (DE-1033), a destroyer escort configured to gather electronic intelligence from Soviet missiles. When President Nixon ordered the mining of the Haiphong, North Vietnam, my ship was quickly deployed and I was “fleeted up” to be the Operations Officer as an Ensign, which was two ranks below what the position called for. I served on two deployments to Viet Nam, the longest being in the Gulf of Tonkin, where our most important task was to try to avoid being run over by the carriers doing flight operations. The ship was also sent on several special operations in the South Pacific where our biggest task was to collect telemetry from Soviet ICBM missile tests and not get hit by any of the MIRVs in the impact zone, which was our station. I received a number of awards as a result of this tour of duty, including the Navy Achievement Medal, National Defense Medal, the Vietnam Service Medal (2 stars) and the Republic of Vietnam Campaign Medal. In 1973, I was selected as Outstanding Junior Officer of the Third Fleet.

In 1974, I was transferred to cruiser destroyer group twelve as an Admiral’s Aide. I served on the first exchange of ships between the Soviet Union and the United States since the end of World War II. The staff was embarked on probably more than a dozen different ships during that time.

After two tours sea duty, and seeing my bride very infrequently, and with a desire to practice with my father, I resigned my regular commission, joined the reserves, and entered law school at SMU. After eleven years of active and reserve duty, I was discharged as a Lieutenant Commander.

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

**CHEW:** I went to law school so I could join my father in the practice of law. While I was on a fast track as a naval officer, the back to back sea duty and the prospect of yet another tour of sea duty after only a short tour ashore, I came as they say, to a fork in the road, where I had to stay in the navy or try to join my father. Mandy and I chose the latter.

**CROSS: Did that happen?**

**CHEW:** Unfortunately, my father died when I was half way through school.

**CROSS: I am sorry to hear that. So after you graduated, what did you do?**

**CHEW:** My father's young associate, Paul M. Douglas, maintained my father's practice and he paid the rent on my father's office for a year and a half. After I graduated and passed the Bar, I moved into my father's office, sat at his desk and on his chair, and started working with Paul. I had not been a lawyer a week, when Immigration Judge Bill Weinert called me and told me that I was set for a deportation hearing the next week; he and all the other immigration judges had postponed all of my Dad's cases waiting for my arrival. Paul and I soon became partners and practiced together for sixteen years. We practiced as "Douglas & Chew, PC" until my sister Linda joined us and we became "Douglas, Chew & Chew."

We had a general practice, but Paul and I were board certified in immigration and nationality law and that was our specialty. I was twice listed in *The Best Lawyers in America* as one of the best lawyers in America in that field. We probably had the largest immigration practice in the Southwest

**CROSS: When did you first get involved in politics?**

**CHEW:** In the summer of 1989, I ran for City Council for Suzie Azar's seat as West Central Representative. There were five in that race. I received about 38% of the vote the first election and won the runoff pretty easily.

**CROSS: Get anything done?**

**CHEW:** Well, I didn't get real street cars going again, but I am proud that I primarily drafted the City's Accessibility Ordinance, an ordinance that predated the American with Disabilities Act. We got the ordinance passed over some significant opposition.

**CROSS: Did you run for re-election?**

**CHEW:** I did. I had three opponents and I won the general re-election, but I was two votes shy of a majority. And then I lost the run-off re-

election to Chuy Terrazas. So really, I lost that election by two votes.

**CROSS: What about your judicial career?**

**CHEW:** In 1994, after Justice Koehler announced his retirement, I ran for his seat on the Court of Appeals. I ran against Mickey Solis, Luis Labrado, and Mike Gibson. Mickey and I ended up in the run-off, and I won. I then had to run against a Republican, Julia Vaughn from Midland. It was a good year for Republicans and a bad year for Democrats across the state. George Bush defeated Ann Richards. I was the only Democrat that year that was able to defeat a Republican opponent in a contested Court of Appeals race. When the polls closed in most of Texas, I was behind Julia about 10,000 votes, but as the top vote getter in El Paso county in that election, I won by about 6,000. I haven't been opposed in any election since then.

I went on the court with Ann McClure. We flipped a coin to determine which one of us would be the senior justice. Ann won the toss, so I was the junior justice for most of my time on the court. I also served with Chief Justice (Ret'd) Richard Barajas, Justice Susan Larsen, when we were still a four judge court.

**CROSS: Any other judicial offices?**

**CHEW:** In 2006 Chief Justice Barajas retired, and Governor Rick Perry appointed me Chief Justice. However, I ran for re-election as a Democrat. The Governor appointed Kenn Carr to fill my seat, who did run for re-election as a Republican. He was defeated by then District Judge Guadalupe Rivera.

I have been Chief since 2006.

By the way, in April 1999 Governor George W. Bush appointed me to the Texas Supreme Court to assist in rendering a decision in two companion cases that were consolidated and styled *In Re Masonite Corporation*. The Supreme Court could not render an opinion because one of the justices recused herself and the remaining eight justices were divided four to four, creating a deadlock. Chief Justice Tom Phillips asked me if I wanted to have a group picture taken, but I told him I would settle for being a footnote in the published decision. I am the only Democrat to serve on the Texas Supreme Court since I have been a justice.

**CROSS: Any Bar Association activities or awards worthy of note?**

**CHEW:** I did a lot of work retrieving "Lady Liberty," a statute that was on our courthouse at the turn of the century.

In 2002, the Asian Pacific Islander Section of the State of Texas established a "Justice David

Wellington Chew Award" in my name. And in 2009, the Asian Pacific American Bar Association honored me with their Trailblazer award for that year.

**CROSS: When are you leaving the Eighth Court of Appeals?**

**CHEW:** I will resign as Chief at midnight on October 11, 2011.

**CROSS: Who will replace you on the court?**

**CHEW:** On October 12 at 9 a.m. in the Court of Appeals, I will swear in Justice Ann McClure as the 14th Chief Justice of the El Paso Court of Appeals; a court by the way which celebrated its 100th year anniversary in June of 2011.

**CROSS: Why are you leaving?**

**CHEW:** I have been very blessed and I have loved being on the court and especially being the Chief. I have worked with wonderful judges and we have an exceptional staff – from the Clerk of the Court, Denise Pacheco and her deputies, to my Legal Assistant, Gloria Gravalos, and the many attorneys who have worked with me as law clerks or staff attorneys, and I am sad to leave. I have been Chief Justice during two legislative sessions.

I feel that the legislature as a whole simply does not appreciate the importance of a qualified and committed judiciary. The legislature does not want to appropriate sufficient funds to attract the best and brightest lawyers to serve in that career path. In fact, the appropriation for the state judiciary is less than 1% of the entire state budget. Isn't justice worth a few dollars? They don't seem to think so.

I am young enough to start another career that might pay me enough to buy a boat. Mandy and I plan to return to the sea again.

**CROSS: So you are sailing into the sunset, from now on merely a part of El Paso's community and judicial history?**

**CHEW:** Wrong, counselor! I will be serving as a Senior Judge subject to assignment, so I will return from time to time, or as often as Chief Justice McClure will invite me.

**CROSS: What are you going to do next?**

**CHEW:** My third, and hopefully last, career is going to be in industrial real estate brokerage with my former law partner Paul Douglas' firm, "Grubb & Ellis | Select Regional Solutions." I will be working in their McAllen, Texas office. I didn't really want to go back into the practice of law and I haven't had a boss since I left the Navy, so Paul's offer sounded pretty good.

# A Conversation with Bob Black

## PRESIDENT OF THE STATE BAR OF TEXAS

BY CLINTON F. CROSS

**B**ob Black, an El Paso native and the current President of the State Bar of Texas, kept his promise to Mark Osborn last month and brought the State Bar Board of Directors here for a meeting. On the final day, a childhood neighbor of the family, Erich Morales, an Assistant County Attorney, had a conversation with Bob about being born and raised here. The following is a summary of their conversation. Ed.

**Erich:** Bob, you and I grew up in the same neighborhood in El Paso. We went to school with a number of classmates who did quite well later in life. Do you think there was something unique about our neighborhood, and our generation, which contributed to the success of so many of our classmates from that place in that era?

**Bob:** Yes, we grew up in the neighborhood around Sumatra and Ceylon streets, and Sumatra Park. I had four brothers and sisters, and two of my siblings as well as my mother still live in El Paso.

When I was a kid, El Paso was a track capital. It was one of the ways to get ahead. I ran cross country. When I was a sophomore in high school, I got cleated, and then shoved into a ravine. I knew then I had lost my chance for a track scholarship. My dad said, "Son, there are others who need that scholarship more than you." That was a great lesson for me. We all have different challenges. We have to overcome the challenges that are handed to us.

**Erich:** We all came from different backgrounds, but somehow we transcended our backgrounds. Your father worked for border patrol. My father was also a civil service worker. Remember José Luis Sánchez? He later ran for Congress against Silvestre Reyes. Bill Moody, now a judge. There was a sense of obligation that we had to do better than our parents, keep moving forward.

**Bob:** My folks wanted to live in a place where all their kids could go to college. My parents sacrificed a great deal. On my dad's side, I was the first to go to college.

**Erich:** I was one of the first. It was a time when mothers still largely stayed home, looked



Bob Black

out not only for their own kids but all the kids in the neighborhood, encouraged you not just as a neighbor but as another Mom – sometimes they knew what you were up to before you did. What our parents teach us really does matter.

**Bob:** My parents transmitted character. My Dad was a wonderful man. He always told the truth. He had an honor system. That made a huge difference in my life. But as you point out, the community also mattered. I graduated from Eastwood High School and we, as well as all of the other schools in El Paso at the time, had a great debate and speech program. I participated in "Persuasive Speaking." This program taught preparation. For background information, I relied heavily on what I read in Reader's Digest. I won District. Unfortunately, when I got to Regional's I had to deal with the Sharpstown political scandal, a topic that was not covered by Reader's Digest. And I lost!

**Erich:** We had a strong sense of community in every sense. I remember going to Scotsdale Elementary School with your sister Kathy, as well as some of the other people we are talking about, and then later meeting others

at Eastwood. Carlos Sanchez – now editor of the Waco Tribune. Chris Mott – had a law firm here and is now a federal bankruptcy judge. Richarda Duffy Momsen – El Paso City Clerk. Major-General Dana Pittard, Commanding General of Ft. Bliss. The Leepers, nationally famous tax lawyers, the Abrams of J.D. Abrams Construction – now a national construction company, as well as the Yarbrough family.

Forgive me for changing the subject, Bob, but where are your folks and that cute little sister Kathy?

**Bob:** Dad passed away, Mom still lives in the neighborhood where we grew up, and Kathy is Director of Special Education in the El Paso Independent School District. She has a Ph.D.

We were all part of a very tight group. We attended St. Raphael's Church. Sam Callan was a deacon at that church. I was the Moody's paperboy for years.

Many of us played baseball together all summer long. Lloyd Taylor, now an air traffic controller, was one of the regular players. What we are talking about is that there was a generational opportunity for lots of kids in El Paso at that time.

But at first I wasn't very motivated to leave home, so I went to UTEP. I didn't show up for a lot of classes and it took me five years to finish. While I was going to UTEP, I worked for a year at the Texas Employment Commission. Seeing the people struggle I decided then my parents were right and I should go on to law school. So I made a deal with my parents: I would sell my 1969 Mustang, spend all my savings on law school, and I would "see it out." I received a lot of letters from my parents that first year. I wondered why. Later as an adult, I went back and read the letters again. It's clear to me now that my parents were very concerned that I would not finish.

Fortunately, I had adequate skills and the drive to complete the course. I did very well in law school. When I graduated, I was fortunate to be offered a number of positions including clerking opportunities and a teaching job at a law school. Instead I chose to go with "Mehaffy Weber" where I am now the managing shareholder.

I'll be back in El Paso next month, and I'll see you guys then.

# GOOD VALUES:

## *The Key Foundation To A Balanced Life*

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

“Try not to be a man of success but rather try to become a man of value.” This simple yet equally profound observation by the celebrated physicist Albert Einstein identifies a critical element that must be present to truly enjoy a balanced life. It is “value,” above everything else, which serves as the blood line of a balanced life, for a life of value infers goodness within the context of good morals, ethical principles, and all that is conducive to a noble life.

There are different perspectives when it comes to the whole idea of value. For example, some consider value to be absolute and unchanging. Others adhere to the idea of value being relative; that is, what is considered to be of value depends largely on the individual’s sociological and psychological experiences. Hence, what may be considered of value at one point in time may be subject to change depending on the person’s experiences. This is not the kind of value that I am referring to. I am not referring to values as created by our “psychological processes of desire and interest.”<sup>1</sup>

I believe that value, in its purest and unaltered state is absolute, regardless of time, condition, and space. In other words, there are “recognized values”<sup>2</sup> which humankind regards as present throughout all societies and throughout the ages. This basic and fundamental concept of value is the kind that best affords consistency in a life that is to be firmly balanced.

When we recognized that there are important things in life that help to propel us in a direction

that is positive, enriching, and overall emotionally, physically, and mentally healthy, we are validating the reality of our life’s value system. From this point, we then categorize and prioritize those aspects of our lives that can best support our pursuit and maintenance of our desired balanced life. When we fail to do this, and we deviate from assuring that goodness permeates all aspects of our life, then we are inviting the undesirables, such as dysfunction, stress, a lack of serenity, negativism, and sometimes even chaos, to enter and disrupt that balance we so much want to have in our lives.

Our ambitious hunting for “success” in terms of material possessions, prestige, power, influence, recognition, titles, positions, praise, and the like often times places our ability to enjoy a balanced life at great jeopardy. Why? The focus is on success, not on value! In the eyes of men and women, we may be successful in many regards, particularly in worldly matters, but greatly deficient and wanting on our value system which involves a level beyond the mundane. It is within the walls of solid and incorrupt virtuous values that steadfast and meaningful success thrives. In these respects, Socrates exclaimed: “Are you not ashamed of heaping up the greatest amount of money and honor and reputation, and caring so little about wisdom and truth and the greatest improvement of the soul?”

According to a Chinese proverb, laws control the lesser man, but right conduct controls the greater one. This is precisely the case when seeking to live a balanced life. That is, the individual seeks

to do right, and in that, a balanced life can be better attained. Doing something simply because it is the law or some sort of expectation does not bring the same level of nobility to a balanced life as when a person proceeds from a sense of good character and integrity to do right in and of itself. The careful nurturing and development of good character and integrity, like the finest of wines, sometimes take time to enhance in quality. The reverse is also true. The dismantling and degeneration of good character and integrity can also entail some time. Freelance writer Robert Brault puts it this way: “You do not wake up one morning a bad person. It happens by a thousand tiny surrenders of self-respect to self-interest.”

Ultimately, we choose the direction we want our lives to take. We either choose to pursue a life of value and balance or not. Once we make that choice, we own it in its entirety, and we inherit whatever consequences and outcomes are part and parcel of such choice. By the same token, so long as we still breathe, we can choose to change the direction we want to take in life. We always have the chance to do the honorable thing, the right thing.” If honor be your clothing, the suit will last a lifetime; but if clothing be your honor, it will soon be worn threadbare.”<sup>3</sup>

<sup>1</sup> See J. Prescott Johnson’s thought-provoking article “What is Value?”

<sup>2</sup> *Ibid.*

<sup>3</sup> Quote from William Arnot (1808-1875), a Scottish preacher and theological writer.

## MY DEMONS WERE REAL

### *About the Book*

Joseph Albert Calamia began his career as a criminal defense attorney in El Paso, Texas, in 1949. He was a crusader for justice, considered by many to be akin to Don Quixote, tilting at windmills. But he disagreed, “The big difference is that my demons were real.” His demons were the institutionalized practices that favored expediency over the rights of individuals; he spent his lifetime fighting to ensure peoples’ rights were not trampled by law makers and

enforcers.

Over the course of his long career, Calamia successfully challenged a host of attacks against civil liberties, including police undercover tactics and the constitutionality of searches and seizures in drug, immigration, and other cases.

Published as part of the Hispanic Civil Rights Series, this enlightening book documents the efforts of a man who devoted his life to protecting the Constitution and the Bill of Rights.

### *Upcoming book singining events:*

**October 22, 2011**

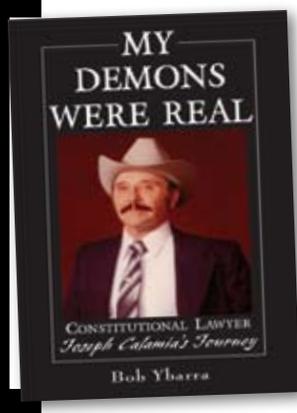
3:30 – 5:30pm

*The Law School Preparation  
Institute*

*Homecoming Tailgate Event  
University of Texas at El Paso*

– *Glory Field – Tent*

*UTEP Miners vs. Colorado  
State Rams – 6:00 pm*



## EPYLA SPOTLIGHT

## Erica Rios

BY PATSY LÓPEZ



This month the El Paso Young Lawyer's Association (EPYLA) is happy to profile Erica Rios, a 2010 graduate of Washburn University School of Law in Topeka, Kansas, and current Associate for the Law Office of Paula L. Thomas.

Erica was born and raised on the east side of El Paso and attended college at the University of Texas at El Paso from which she graduated in 2006. Erica attributes her interest in law to growing up in "a law enforcement family." Her father, uncle, and grandfather were all police officers which she believes instilled a fundamental interest and love of the law in her. Another big impact on Erica was the OJ Simpson murder trial which she watched night and day as an impressionable 11 year old. A new curiosity and awareness of the practice of law quickly blossomed as she watched the prosecution and defense counsel put on their respective cases. It was then that she decided she would be an attorney.

While in law school, Erica worked as a summer law clerk for the Honorable Kathleen Anderson, Associate Judge of the 383rd District Court and as a law clerk in "The Law Office of Paula L. Thomas." She became a member of the El Paso Young Lawyers Association in early 2011 and quickly proved herself an active member, ready to participate and head organization projects. By the summer of 2011 she was nominated and elected as the organizations treasurer and is doing a fantastic job this term.

Erica credits her strong family support for helping her accomplish her goal of becoming an attorney and recognizes it as one of the reasons she returned to El Paso to practice law. However, Erica is also dedicated to serving the El Paso community through her family law practice and her public service. She is eager to get help her clients and to work on community projects within EPYLA. She looks forward to becoming a board certified in family law in the future and continuing a long career in El Paso.

Although Erica has not been involved in EPYLA long, she is quickly established herself as a reliable member and the organization is happy to have her serving as an officer this year. We look forward to Erica's continued involvement and are eager to see where her leadership will take the organization.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

THERESA MORRIS, WIFE OF  
BOB MORRIS,

Plaintiff,

-vs-

JOHN COKER, ALLIS-CHALMERS  
CORPORATION AND/OR STRATE  
DIRECTIONAL DRILLING, INC.,  
Defendants.

Case Nos. A-11-MC-712-SS ✓  
A-11-MC-713-SS  
A-11-MC-714-SS  
A-11-MC-715-SS

FILED  
2011 AUG 26 PM 1:58  
CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
REPLY TO \_\_\_\_\_

**ORDER**

BE IT REMEMBERED on this day the Court reviewed the files in the above-styled causes, and now enters the following opinion and orders.

Non-parties Lance Langford, Erik Hoover, and Brigham Oil & Gas, L.P. invite the Court to quash subpoenas issued to them on behalf of Jonathan L. Woods, in relation to a matter currently pending in the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Division, because the subpoenas were not properly served, are overly broad and unduly burdensome, and seek privileged information. In response, the Court issues the following invitation of its own:

Greetings and Salutations!

You are invited to a kindergarten party on **THURSDAY, SEPTEMBER 1, 2011, at 10:00 a.m.** in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas.

The party will feature many exciting and informative lessons, including:

- How to telephone and communicate with a lawyer
- How to enter into reasonable agreements about deposition dates
- How to limit depositions to reasonable subject matter
- Why it is neither cute nor clever to attempt to quash a subpoena for technical failures of service when notice is reasonably given; and
- An advanced seminar on not wasting the time of a busy federal judge and his staff because you are unable to practice law at the level of a first year law student.

Invitation to this exclusive event is not RSVP. Please remember to bring a sack lunch! The United States Marshals have beds available if necessary, so you may wish to bring a toothbrush in case the party runs late.

Accordingly,

IT IS ORDERED that defense counsel Jonathan L. Woods, and movants' attorney Travis Barton, shall appear in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas, on **THURSDAY, SEPTEMBER 1, 2011, at 10:00 a.m.**, for a memorable and exciting event;

IT IS FINALLY ORDERED that Mr. Barton is responsible for notifying Mr. Woods of this order by providing him with a copy by mail or fax on this date.

SIGNED this the 26<sup>th</sup> day of August 2011.

*Sam Sparks*  
SAM SPARKS  
UNITED STATES DISTRICT JUDGE

712 713 714 715 mc quash ord mjh.wpd

-2-

*Sam Sparks practiced law in El Paso with "Grambling and Mounce" for many years before being appointed a federal district judge. Ed*

## JUDICIAL APPOINTMENTS

Justice Ann Crawford McClure has been appointed Chief Justice of the Texas Eighth Court of Appeals effective October 12. She will be the first female chief justice and will serve as the 14th Chief Justice in the Court's 100 year history. She graduated *magna cum laude* from Texas Christian University, and received her law degree from the University of Houston Law Center. She is a former President of the El Paso Bar Association and the Trans-Pecos Bar Association, and she has received numerous awards for her professional work. She currently chairs the Texas Center for the Judiciary Judicial Education Committee.

Chris Antcliff was appointed to fill Justice McClure's vacant seat. He is a graduate of Austin High School in El Paso, and received his B.A. and law degree from Texas Tech University and Texas Tech University School

of Law. Thereafter, he served as a law clerk for Judge David Briones, United States District Court for the Western District of Texas. Governor Perry appointed him as judge of the 448th Judicial District Court where he served for one year, and the 168th Judicial District Court for two years, but was defeated in partisan elections. Since that time he has been engaged in the private practice of law, with a focus on mediation and other forms of alternative dispute resolution.

On September 14th President Barack Obama nominated U.S. Magistrate Judge David Guaderrama to be a U.S. district judge in El Paso. He served as the 243rd District Court judge for 15 years. He was named a federal magistrate judge for the Western District of Texas in El Paso in late September 2010. The United States Senate must confirm his nomination.

## ASSOCIATION NEWS

### El Paso Paralegal Association

#### GOLF TOURNAMENT:

The El Paso Paralegal Association is having its 2nd Annual Golf Tournament on November 4, 2011 at 8am at the Underwood Golf Complex. Registration is \$75 per player. For more information please visit our website at <http://elppa.org/golftournament.aspx>

#### OCTOBER 2011

The El Paso Paralegal Association will be celebrating "Texas Paralegal Day" (officially recognized by Senate Proclamation No. 1144 on October 23 each year) at its general meeting on Thursday, October 20, 2010, noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. The cost for lunch, which is optional, is: \$15.00 buffet or \$10.50 salad bar. Please RSVP for the luncheon with Peggy Dieter at Kemp Smith: 546-5267. N

#### NOVEMBER 2011

The El Paso Paralegal Association will hold its November general meeting on Thursday, November 17, 2011 from 12:00 noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker: Honorable Linda Y. Chew. Topic: The Role of the Paralegal During Voir Dire. The cost for lunch, which is optional, is: \$16.00 buffet or \$10.50 salad bar. Please RSVP for the luncheon with Peggy Dieter at Kemp Smith: 546-5267.

## SWEARING IN CEREMONY

*The Swearing In Ceremony for New Attorneys  
will be held on*

*Wednesday, November 9, 2011 at 10:00 a.m.  
in the 8th Court of Appeals Courtroom.*

*If you are interested in participating, please call  
Denise Pacheco at 546-2240.*

## FOOD DRIVE DONATIONS NEEDED

As part of the celebration of **Texas Paralegal Day, October 23rd**, District 16 of the Paralegal Division of the State Bar of Texas is having a food drive. Bins for **non-perishable food** donations will be set up in the El Paso County Courthouse from **October 18th through October 31st**. All donations will be given to the West Texas Food Bank. For more information, please contact Linda Gonzales at (915) 832-7200 or [lgonzales@rvmjfirm.com](mailto:lgonzales@rvmjfirm.com) or Mary La Rue at (915) 545-4900 or [larue@windlehood.com](mailto:larue@windlehood.com).

## CLASSIFIEDS

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Moncada, Recruiting Coordinator. For more information visit [www.ScottHulse.com](http://www.ScottHulse.com).

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\*Note: You must be the attorney of record to view a case in the Portal.



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*Mexican American Bar Association of El Paso's  
Annual Meeting & Banquet*

*“Moving Forward”*

*Saturday, October 8, 2011*

*Arts Festival Plaza*

*Cocktails – 6:00, Dinner – 7:00*

*Individual Tickets: \$75 (limited availability)*

*Table of Ten: \$750, includes table sponsorship*

*Additional Sponsorship Opportunities:*

*Platinum: \$1,000*

*Gold: \$500*

*Silver: \$250*

*Bronze: \$125*

*(Sponsorships include listing in e-mail announcements  
regarding banquet, banquet program, and on sponsorship board  
on day of event.)*

*For tickets or sponsorship opportunities, please contact  
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or [carlos.g.madrid@gmail.com](mailto:carlos.g.madrid@gmail.com)*

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on Friday, 2/17 & \$119 on Saturday, 2/18.

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*Remember to join us for some fun and education!!!*

Contact Nancy at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net) if you have any questions.