



# EL PASO BAR JOURNAL

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*An Update of Events and Information*

October/November 2010

## ¡Viva Los Licenciados!

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2000 – 2001 – 2006-2010  
Star of Achievement 2000 - 2008 - 2010  
State Bar of Texas  
Best Overall Newsletter – 2003, 2007, 2010  
Publication Achievement Award  
2003 – 2005 – 2006 – 2007 – 2008 - 2010  
NABE – LexisNexis Community  
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## THE PRESIDENT’S PAGE



### The Year of the Storytellers

*“If you’ve heard this story before, don’t stop me because I’d like to hear it again.”*

GROUCHO MARX

Sometimes it is good to repeat yourself. Aren’t the best stories those you want to hear again and again? While the characters and plot may get an embellishment or two each time a great story is retold, the core of the story stays the same. In the next two months, the successes of the past serve as a foundation for the El Paso Bar Association and legal community to continue to make an even bigger impact and difference in the lives of many El Pasoans.

Many people in our community need legal services but cannot afford to hire and pay an attorney. Last year, El Paso Bar Association President Carlos Cárdenas started the Access to Justice Legal Fair not only to bring attention to the need for pro bono legal services in El Paso, but also to help provide legal services to those people most in need of them. This great event garnered multiple awards for the El Paso Bar Association from the State Bar of Texas as well as nationally with the LexisNexis 2010 Community and Education Outreach Award.

The Second Annual Access to Justice Legal Fair will take place on Saturday, October 30 from 9 a.m. to 1 p.m. at the El Paso Community College Valle Verde campus. This year, under co-chairs Laura Enriquez and Jaime Sanchez, with great help from Beto Mesta and Graciela Martinez of Texas Rio Grande Legal Aid, the El Paso Bar Association will provide information and legal services to even more of those in our community who cannot afford to pay for legal services.

The service and sacrifices of those who have served our country in the military to protect liberty and to allow us to be free should always be honored. Patterned after State Bar President Terry Tottenham’s Texas Lawyers for Texas Veterans initiative, the El Paso Bar Association, under Carlos Cárdenas with the direction and vision of chair Donald Williams, held its first El Paso Lawyers for Patriots event on May 22, 2010. The pro bono legal clinic program for military veterans in El Paso impressed many people, including the Texas Access to Justice Foundation which awarded the El Paso Bar Association a grant of \$42,500 to continue the great work started in May. A special thank you goes to Steven Silver for assisting the El Paso Bar Association with the grant application.

Under Don Williams’ continued leadership, the El Paso Lawyers for Patriots program will take place on Saturday, November 6, tentatively at the El Paso Community College Transmountain Campus. Even more services and legal consultations will be available to the veterans in our community as well as their families. This event will be the first of several clinics for El Paso veterans throughout this year.

These stories just keep getting better and better, and need to be repeated – you are encouraged to have an integral role in these events, touch the lives of others, and be part of the continuing story of our noble profession.

*Chantel Crews*

EL PASO BAR ASSOCIATION  
**October Bar Luncheon**

Tuesday, October 12, 2010

El Paso Club • 201 E. Main, 6th Floor, Chase Bank • \$20 per person • 12:00 Noon

*Guest Speaker will be*

David Hall of TRLA who will speak on the importance  
of Legal Services/Access to Justice to the profession

*Approved for 1/2 hour of Participatory Ethics by the SBOT.*

**Please note that for this luncheon we will be on the 6th floor  
as the El Paso Club is currently being renovated.**

Please make your reservations by Monday, October 11, 2010 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 9, 2010

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

*Guest Speaker will be*

Col. Francis King, Office of the Staff Judge Advocate, Ft.  
Bliss who will speak on the JAG and what it does.

*Pending approval of MCLE.*

*Salute to Veterans*

Please make your reservations by Monday, November 8, 2010 at noon  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)

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its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office.  
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# 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 Dec/Jan, 2010/2011, please have the information to the Bar Association office by Friday, November 10, 2010. 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@elpaso-bar.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, 2010

**Tuesday, October 5** EPBA Board Meeting  
**Wednesday, October 6 - Friday, October 8** -  
 11th Annual Texas Association of Drug Court  
 Training Conference  
**Monday, October 11**  
 Columbus Day EPBA & County Closed  
**Tuesday, October 12**  
 EPBA Monthly Luncheon  
 Guest Speaker – David Hall  
**Wednesday, October 13**  
 EPWBA Monthly Meeting  
**Wednesday, October 20**  
 Contract Essentials/Visual & Performing  
 Arts Lecture & CLE  
**Thursday, October 21**  
 EPPA Monthly Luncheon  
 Celebration of Texas Paralegal Day  
**Saturday, October 23**  
 EP Probate Bar Wills Clinic  
**Friday, October 29**  
 3rd Annual El Paso County  
 Mental Health Law Conference  
**Friday, October 29**  
 3rd Annual el Paso County Mental Health  
 Law Conference

**Saturday, October 30**

2nd Annual Access to Justice Legal Fair

## NOVEMBER, 2010

**Tuesday, November 2**  
 EPBA Board Meeting  
**Friday, November 5**  
 MABA Annual Banquet  
**Saturday, November 6**  
 El Paso Lawyers for Patriots Legal Fair  
**Tuesday, November 9**  
 EPBA Monthly Luncheon  
 Salute to Veterans  
**Thursday, November 11**  
 Veteran's Day  
**Friday, November 12**  
 EPPA 1st Annual Golf Tournament  
**Saturday, November 13**  
 Wine Tasting/Social Zin Valle Vineyards  
**Thursday, November 18**  
 EPPA Monthly Luncheon  
**Thursday, November 25**  
 Thanksgiving Day  
 EPBA & County Closed  
**Friday, November 26**  
 Thanksgiving Holiday  
 EPBA & County Closed

## UPCOMING EVENTS

**Thursday, December 9**  
 Joint Holiday Party

**February 18 & 19, 2011**  
 15th Annual Civil Trial Seminar Inn of the Mountain Gods

# DAVID HALL to Speak At October Monthly Luncheon

**M**ark your calendar for Tuesday, October 12 at 12 noon at the El Paso Club (6th floor) for the EPBA monthly luncheon. David Hall, director of Texas RioGrande Legal Aid (TRLA), the largest legal aid program in the

State of Texas and the third largest in the nation, will be our featured speaker.

Although TRLA only served eight counties when he first joined, the organization now serves sixty-eight Texas counties and includes an office

in Nashville, Tennessee that serves migrant workers in six other states.

David Hall was recently named one of the top twenty-five attorneys of the last quarter century by Texas Lawyer.

# EL PASO LAWYERS FOR THE ARTS

Wednesday October 20, 2010 5:30 PM at the El Paso Museum of Art

Please join us on Wednesday October 20, 2010 at 5:30 PM

in the El Paso Energy Auditorium at the El Paso Museum of Art as the Museum sponsors the Contract Basics for Visual and Performing Artists as part of El Paso Lawyers For The Arts.

In this talk, Contract Basics for Visual and Performing Artists, two main contract arrangements between artists and arts organizations will be discussed: fiscal sponsorship agreements and consignment agreements.

**1.5 hours of continuing legal education credit will be applied for and provided to attending lawyers and legal assistants free of charge.**

This event is co-sponsored by The Federal Bar Association - El Paso Chapter, and The El Paso Bar Association.

## PROGRAM SCHEDULE

**5:30 PM** - Contract Basics for Visual and Performing Artists, a lecture by Sergio Muñoz Sarmiento (1.5 hour CLE credit)

**7:00 PM** - Cocktail Reception

**You may attend the presentations free of charge.**

**Seating is on a first come, first served basis and is limited to 220 persons.**

**An RSVP is required by October 15, 2010 at (915) 532-1707.**

El Paso Lawyers for the Arts is a regional support group formed by the El Paso Museum of Art to educate El Paso attorneys in legal matters relating to artists and fine arts groups, and to be able to provide legal services both professionally and on a pro bono basis to the El Paso community. The Museum desires to promote a greater working dialogue between the El Paso legal and arts communities, and sees the sponsorship of this program as a first step towards that goal.

Sergio Muñoz Sarmiento is a native El Pasoan who received his BA from UTEP, his MFA from the California Institute of Arts, and his JD from Cornell Law School. He is in practice in New York City and is an Adjunct Instructor at the Brooklyn Law School. Mr. Sarmiento is actively engaged in the promotion of professional expertise in the field of art and law and is a frequent speaker to professional groups throughout the country.

**For more information call Jeffrey Romney, EPMA Head of Development (915) 532-1707 or visit Lawyers for the Arts on Facebook ([lawyersforthearts@gmail.com](mailto:lawyersforthearts@gmail.com)), or [www.elpasoartmuseum.org](http://www.elpasoartmuseum.org)**



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# *Ethics Opinions From The Professional Ethics Committee For The State Bar Of Texas*

## *April 2010 – August 2010*

■ BY GUY N. FIELDS III

*Dear Colleagues:*

The Ethics Committee of the El Paso Bar Association as part of the state-wide theme of Access to Justice, is presenting brief synopses of recent Ethics Opinions. The Supreme Court of Texas appoints the nine members of the Professional Ethics Committee for the State Bar of Texas from members of the bar and the judiciary. The court also appoints the committee's chair. According to Section 81.092(c) of the Texas Government Code, "Committee opinions are not binding on the supreme court." The full texts of the Ethics Opinions are available on the website of the Texas Center for Legal Ethics at [www.tclep.org](http://www.tclep.org).

**Guy N. Fields, III**

COMMITTEE MEMBER

### SUMMARIES OF ETHICS OPINIONS

**Opinion No. 596 (April 2010):** A lawyer proposes to enter into an employment agreement with a client who is the beneficiary of a life insurance policy on a decedent. The client will assign the lawyer a specific dollar amount of the proceeds from the policy in payment of the lawyer's fees. Under the assignment the proceeds will be paid by the insurance company directly to the lawyer.

The Ethics Committee opined that under the Texas Disciplinary Rules of Professional Conduct, a lawyer may receive an assignment of insurance proceeds as compensation for legal services already completed at the time of the assignment, subject only to the generally applicable requirements concerning legal fees as set forth in Rule 1.04.

If the assignment is for services that have not been completed, any payment received under the policy must be held and accounted for in compliance with Rule 1.14 until the completion of services.

However, under Rule 1.08(h), a lawyer



may not receive an assignment of a policy for services in litigation that has not been completed with respect to a claim on the policy unless the assignment is a permissible contingent fee under Rule 1.08(h)(2).

**Opinion No. 597 (May 2010):** Partnership XYZ is a law firm composed of three partners – X, Y, and Z. The partnership has three offices – one in Texas, one in New Mexico, and one in Mexico. X, who is a Texas resident and a member of the State Bar of Texas, has his office in Texas and most of his work is done in that office. Y, a lawyer licensed to practice law in New Mexico, has his office in New Mexico and conducts most of his law practice in the New Mexico office. Z is a citizen and resident of Mexico who is licensed to practice law in Mexico and has his office in Mexico, where he carries out most of his legal work. Y and Z are not licensed to practice law in Texas.

In their law practice as partners in XYZ, X, Y, and Z are in contact daily by telephone and e-mail. In addition, from time to time each of the lawyers participates by telephone or electronically in work for XYZ clients who are located out of the state or country in which the particular lawyer has his office. Also, from time to time Y and Z travel to Texas to work on legal matters for clients of XYZ. The work done by Y or Z in Texas is normally for brief periods of a week or less but

occasionally the work on a particular project may require Y or Z to work primarily in Texas for a longer period of up to several months. If Y or Z participates in representation of clients before courts or administrative bodies in Texas, he complies with all applicable local rules of the court or administrative body concerned, including any requirements with respect to admission to practice pro hac vice. Similarly, from time to time X travels to New Mexico or Mexico and performs legal services related to a particular project for a temporary period that may extend up to several months in unusual cases.

The Texas Disciplinary Rules of Professional Conduct govern the conduct of lawyers licensed in Texas. Thus X is subject to the Rules but Y and Z are not themselves generally subject to these Rules. The Opinion discusses the Rules and Texas law which, in general, prohibit persons who are not lawyers licensed in Texas from engaging in the unauthorized practice of law in Texas. Further, under Rule 5.05(b), a Texas lawyer is prohibited from assisting "a person who is not a member of the bar in the performance of activity which constitutes the unauthorized practice of law". The Opinion further discusses the development of the concept of what constitutes the "unauthorized practice of law" as applied to a multijurisdictional practice, including the 2002 amendments to the American Bar Association Model Rule of Professional Conduct 5.5.

In light of the absence of any specific rule or substantial case law development, the Ethics Committee opined that under the Texas Disciplinary Rules of Professional Conduct, a Texas lawyer may practice law as a member of a law firm with lawyers who are licensed only in jurisdictions other than Texas and who practice law in offices of the law firm located outside of Texas. The Texas lawyer does not improperly assist in the unauthorized practice of law when non-Texas lawyers, who are members of the law firm duly licensed in another jurisdiction and who normally practice in offices of the law firm outside of Texas, from time to time provide, in

compliance with any applicable local rules and without themselves establishing a systematic and continuous presence in Texas, legal services in Texas as members of the law firm.

**Opinion No. 598 (July 2010):** Prior to seeking employment as an associate with a law firm, a lawyer personally represented a person (“Former Client”) in several breach of contract suits. The law firm currently represents a client who is suing Former Client in a breach of contract action. The matter involved in the current lawsuit is not the same as the matters in which the lawyer being considered for employment had represented Former Client. If the law firm hires the lawyer, the law firm proposes to screen the new associate from all matters involving Former Client.

The Ethics Committee discussed the application of Rule 1.09(a) and (b) to the facts and held that, while the Rules are not designed to be rules for procedural decisions, Texas courts have looked to Rule 1.09 for guidelines in the case of disqualification motions based upon prior representations of former clients. Under Professional Ethics Committee Opinion 578 (July 2007), if a law firm’s hiring of a lawyer might cause a litigation opponent to seek disqualification of the law firm in a pending matter for a client, the law firm should disclose to the client this circumstance and the potential consequences of disqualification.

The Ethics Committee therefore opined that under the Texas Disciplinary Rules of Professional Conduct, absent consent by the adverse party, a law firm may not continue as counsel in a litigation matter after hiring as an associate a lawyer who formerly represented an adverse party if a reasonable probability exists that representation in the litigation by the associate would violate obligations of confidentiality under Rule 1.05 owed to the adverse party or if the current litigation matter is the same as, or substantially related to, the matter in which the associate represented the adverse party. If the new associate could not represent the law firm’s client in current litigation because of the associate’s prior representation of the adverse party, the entire law firm would be prohibited from continuing the current representation. If the representation is prohibited, this prohibition would not be affected by the law firm’s screening the newly hired associate from the current representation against the associate’s former client.

**Opinion No. 599 (July 2010):** A lawyer represents an individual who is being prosecuted

for a misdemeanor in municipal court. In addition to representing the client in the criminal prosecution, the lawyer also serves as the client’s bail bondsman.

The municipal court promulgates a form for bail bonds used in the court’s criminal proceedings. The bond form obligates the client, as principal, and the client’s surety (here, the lawyer) to pay a specified amount plus fees and expenses that may be incurred by a peace officer in re-arresting the client if any of the conditions of the bond are violated. The conditions of the bond include the client’s promise to appear before the municipal court at a specified date and time.

In addition to the standard language in the municipal court’s form of bond, the lawyer has added language providing for the client’s agreement that, if the client does not make the required personal appearance before the court, the lawyer or an associate is authorized to plead “no contest” on behalf of the client. The language added by the lawyer includes an acknowledgment by the client that such “no contest” plea for the client will have the effect of a guilty plea and will bind the client to pay a fine and court costs, which if unpaid will result in the issuance of a warrant for the client’s arrest.

The Ethics Committee opined that under the Texas Disciplinary Rules of Professional Conduct, specifically Rules, 1.02(a) (lawyer shall abide by a client’s decision as to a plea in a criminal case), 1.06 (loyalty owed to a client) and 1.08(a) (engaging in a business transaction with a client), it is not permissible for a lawyer who serves as bail bondsman for his client in a criminal prosecution to add to the court’s form of bond a provision in which the client agrees that, if the client fails to appear in court, the attorney is authorized to enter a “no contest” pleas that will result in a fine and may result in the issuance of a warrant for the client’s arrest. Such an arrangement is a prohibited business transaction between lawyer and client that is not on terms fair and reasonable to the client, creates an impermissible conflict of interest for the lawyer, and impermissibly purports to eliminate the lawyer’s duty to consult with, and abide by the decision of, the client concerning the entry of a plea.

**Opinion No. 600 (August 2010):** A Texas governmental agency issues licenses to qualified persons to engage in a specific business. The agency is composed of a legal division and an enforcement division. The legal division represents the agency in obtaining enforcement

orders but does not have supervisory authority or control over the enforcement division.

The enforcement division of the agency, which is staffed by licensed officers who are not lawyers, investigates complaints against persons regulated by the agency and monitors such persons’ compliance with orders previously issued for violations of the agency’s regulations. Lawyers in the agency’s legal division are not involved in the investigation of violations until the matter is referred to the legal division for the possible issuance of a disciplinary order. After a disciplinary order is issued against a regulated person, the enforcement division, without further involvement of the legal division, is charged with monitoring the regulated person’s compliance with the requirements of the order, which may continue up to five years.

In most cases, regulated persons that are investigated by the agency’s enforcement division or are subject to monitoring for compliance with a disciplinary order are represented by legal counsel with respect to the agency’s regulation. In some cases, lawyers for regulated persons have formally requested that the agency’s enforcement division personnel communicate with a regulated person only through the particular regulated person’s lawyer.

The Opinion discusses the application of Rule 4.02(a) of the Texas Disciplinary Rules of Professional Conduct which prohibits a lawyer from communicating directly concerning a matter with a person known to be represented by a lawyer unless the person’s lawyer consents or the communication is otherwise authorized by law.

The Ethics Committee opined that under the Texas Disciplinary Rules of Professional Conduct, a lawyer for a Texas governmental agency is not required to limit communications by the agency’s enforcement officers who are not subject to the lawyer’s direct supervisory authority with regulated persons who are represented by lawyers. However, a lawyer for a governmental agency is not permitted to communicate directly with a regulated person that is represented in the matter by a lawyer who has not consented to the communications and is not permitted to cause or encourage such communications by other agency employees, and the agency lawyer is obligated to prevent such communications by employees over whom the lawyer has direct supervisory authority.

# JUDGE DONALD L. WILLIAMS: *A modern man for all seasons*

■ BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

As one of the most prominent and active attorneys in El Paso, Judge Donald Leon Williams has championed numerous efforts that have helped to enhance the caliber and prestige of the El Paso judicial, legal, and civic community. Born in the Space Age City of Houston, Texas, in 1951, Judge Williams attended high school in Bitburg, Germany and graduated from Burges High School in El Paso. Thereafter, Judge Williams was appointed to, and attended, the United States Military Academy at West Point in 1969. The first African-American President of the UTEP Student Government Association, and a Top Ten Senior, Judge Williams graduated from UTEP in 1973 with a B.A. in Political Science. He received his law degree in 1975 from the University of Texas at Austin School of Law, where he was, among other things, the President of the Thurgood Marshall Legal Society, Director of Project Info-Law (Minority Recruitment), and Law School Representative to the University Student Senate.

Throughout his professional career, Judge Williams has worked in a variety of capacities. He worked with the Travis County Attorney's office and was an attorney with the U.S. Army JAGC. He has also worn many other hats, including that of Criminal Law Magistrate, Associate Judge (several appointments), Family Law Mediator, college instructor, and has engaged in the private practice of law for many years.

Judge Williams is frequently the recipient of countless honors, including military, academic, professional, and civic awards and recognitions, for his passionate and consistent efforts towards the betterment of the bar, the judiciary, and the community. Often a featured local celebrity in a variety of media avenues, Judge Williams's professional and civic leadership involvements have been many, including being the featured speaker and presenter at many professional and civic events, as well serving in a variety of leadership positions such as President of the Family Law Bar Association and Chairman of the Black El Paso Democrats, to name a few.

Now on his last term as a member of the



*Judge Williams is frequently the recipient of countless honors, including military, academic, professional, and civic awards and recognitions, for his passionate and consistent efforts towards the betterment of the bar, the judiciary, and the community.*

El Paso Bar Association board of directors, Judge Williams never ceases to advocate for the critical importance of attorneys becoming actively involved in the different El Paso bar associations. Judge Williams, in essence, exemplifies the thinking of writer Brenda Ueland, who said, "In true courage, there is always an element of choice, of an ethical choice, and of anguish, and also of action and deed. There is always a flame of spirit in it, a vision of some necessity higher than oneself."

In spite of his busy activism, Judge Williams always makes sure that his wife, Ruth García-Ybarra Williams, their three adult children, and two lovely grandchildren, are always at the center of his life. He shares the sentiments found in the question pondered by the writer, Elbert Hubbard: "No matter what you've done for yourself or for humanity, if you can't look back on having given love and attention to your own family, what have you really accomplished?"

# ADVANCE SHEET, *circa 1314*

■ BY CHARLES GAUNCE

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

This issue's case is remarkable in its anonymity. It comes to us from the Hilary Term of the seventh year of the reign of Edward II.

"In a writ of wardship of the body the defendant claimed nurture only and said that another claimant had a writ to recover the same wardship pending against him; and that he said that he was ready to deliver [the infant] to whomever the Court should award him; and so a day was given him, the same day the which the defendant had against the claimant that was not a party [to the present writ]; and he was told to produce the infant on the same day. On that day the defendant had himself essoined against both the plaintiffs. The essoin was challenged because he had been told on the last day to produce the body of the infant. Yet the essoin was ruled good, and the two plaintiffs were present and pleaded against each other and joined issue on the priority [of feoffment], and this in the absence of the defendant."

While it is entirely possible to get lost in the pronouns of the report, it is clear that two different persons were claiming to be the guardian of an infant. The court essentially approved what we today recognize as an interpleader to resolve the dispute. Since the dispute was actually between the two claiming to be entitled to possession of the infant, the court held that the child was not required to be present for the hearing. One can only wonder about the binding nature of the decree issued by the court since the report fails to identify either of the persons claiming possession of the child, and it fails to identify the child as well.

We can look at this case as representing a simpler time - a time when the courts issued rulings and all involved accepted the rulings for what they were: clearly correct even in the absence of any identifying information. On the other hand, the more cynical might



look upon this case as representative of a cavalier judiciary not sufficiently involved in the disputes presented to even attempt to identify the litigants before it. Have you ever had a client complain that that justice seems so impersonal? Well, there is a precedent for that.

While investigating this case, I had questions about some of the terms used. So I will report my discoveries here. Did you ever wonder why the Supreme Court begins its term on the first Monday in October? The answer is: Tradition. In the middle ages, the English divided the legal year into terms: Michaelmas which ran from October through December, Hilary which ran from January through March, Easter which ran from April through May, and Trinity which ran from June through July. The courts were in vacation between terms and no trials were conducted while the court was in vacation. A ceremony was held in Westminster Hall at the beginning of the Michaelmas term, the Lord Chancellor's Breakfast, to mark the beginning of the legal year. The Supreme Court largely follows this traditional legal year, albeit without the trek to Westminster Hall for breakfast. I suppose this is one of the losses that the legal profession must bear as a result of the War of Independence.

## CONFLICTS? RESOLUTIONS!

*Solving Problems--Closing Cases*

### Patricia Palafox

*Bilingual Attorney  
Mediator-Arbitrator*



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of Professional  
mediation & Arbitration;  
28 years of Legal  
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and trust over the last thirteen years*

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## SENIOR LAWYER INTERVIEW

## BILL MOUNCE

■ BY CLINTON F. CROSS

*William J. Mounce is the “Mounce” in the firm of Mounce, Green, Myers, Safi, Paxson & Galatzan, PC. He was born in a small town in the Texas Panhandle, and attended college on a football scholarship. Recommended for employment by Dean Page Keeton of the University of Texas Law School, Mounce came to El Paso in 1957 to work for the firm of Hardie, Grambling, Sims and Feuille.*



William J. Mounce

**O**n November 14, 1964, William Mounce argued a case before the United States Supreme Court. *City of El Paso v. Simmons*, 379 U.S. 497 (1965). If today in the comfort of your home or office you would like to listen to that argument on the internet, go to: [www.oyes.org](http://www.oyes.org), then go to “Search” and type in “*City of El Paso v. Simmons*.”

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

**MOUNCE:** I was born in McLean, Texas, about 70 miles east of Amarillo. My father, Hal Mounce, was a cotton ginner. I had three brothers. Two are still alive.

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

**MOUNCE:** I went to grade school and high school in McLean. I went to New Mexico A & M (now New Mexico State) on a football scholarship and majored in physical education.

**CROSS:** After graduation, what did you do?

**MOUNCE:** I coached football at New Mexico State for one year. Then I joined the 82nd Airborne Division. I was stationed at Ft. Bragg, North Carolina and Watertown, New York. Although the Korean War was going on, the President kept the 82nd in reserve in

the United States in the event of a serious threat to our nation’s security were to develop. So I never got to go to Korea.

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

**MOUNCE:** I went to the University of Texas.

I had a lot of fun in law school. A friend, Bob Alvis, and I rented a house by Lake Austin. We bought a motorboat, and then suddenly we had a lot of friends.

**CROSS:** How did you do?

**MOUNCE:** I was a Quizmaster. I made Law Review. And in 1957 I graduated.

**CROSS:** How did you end up in El Paso?

**MOUNCE:** One day during my senior year Dean Page Keeton called me into his office and asked me to interview with the El Paso firm of Hardie, Grambling, Sims, and Feuille. At the time Thornton Hardie was a member of the Board of Regents of the University of Texas and the firm needed a lawyer to help represent the El Paso Natural Gas Company. Apparently the Dean thought I could help them.

I was the ninth lawyer in the firm, and the only associate. My starting salary was \$300 a month.

**CROSS:** Do you remember any judges or lawyers when you first came to town that particularly impressed you?

**MOUNCE:** Ben Howell was Vice President of El Paso Natural Gas Company. He also served on the Texas State Board of Education, and argued cases before the United States Supreme Court.

John Grambling, a firm partner, was honest and hard-working. Judge Morris Galatzan was a judge, and very impressive. He later joined our firm.

Besides representing the Gas Company, I also tried as many cases as I could—usually insurance defense cases. I remember Jack Luscombe, giving me a pretty good run for my money now and then.

**CROSS:** Any particularly interesting cases?

**MOUNCE:** I argued a case before the United States Supreme Court in 1964 that may be of interest to your readers. The case involved a suit to establish title to land that had been sold by the Texas State Land Board in 1910. The purchaser failed to pay in accordance with the terms of the sale. State law allowed for reinstatement, but in 1941 the law was amended limiting reinstatement rights to five years from the forfeiture date. The land was forfeited in 1947, and Simmons thereafter took quitclaim deeds to the land. He then filed for reinstatement and tendered payment for the land more than five years later.

The State sold the land to the City of El Paso in 1955, and the City filed suit to determine title. The Court of Appeals held that the 1941 law impaired the obligation of contracts. The Supreme Court reversed, and held that the State statute impaired no protected right under the Contract Clause.

**CROSS:** Your family?

**MOUNCE:** I married Romaine Roche, who was at the time Ben Howell’s secretary. Her father was Bill Roche, a local attorney. Her brother, also named Bill Roche, is also an attorney. We have two children, Hal Mounce and Kathy Bennett.

# THE EL PASO YOUNG LAWYERS ASSOCIATION

■ BY CARLOS MADRID

*President, 2010-2011*

The goals of the El Paso Young Lawyers Association ("EPYLA") are: (1) to serve young lawyers in the El Paso, Texas area by presenting activities which will be of assistance to their practice of law, undertaking projects and programs which will be of benefit to young lawyers, and establishing a close relationship among the young lawyers in the El Paso, Texas area; and (2) to serve the public interest in the El Paso, Texas area by facilitating the administration of justice, promoting reform in the law, foster and respect for the law, and advancing the role of the legal profession in serving the public. To that end, EPYLA works hard to provide young lawyers the tools necessary to have a successful career, while also being proud to consider itself the service arm of the El Paso Bar.



*One of EPYLA's biggest projects is the annual Christmas of Hope party, designed to benefit the children of parents who are suffering from cancer and who are receiving cancer treatments.*

## **Helping Young Lawyers (& Soon-To-Be Young Lawyers)**

EPYLA aims to assist young lawyers by providing a plethora of training and networking opportunities. In the spring of 2010, EPYLA offered New Lawyer Training. The project was a success, and this year two New Lawyer Trainings are being organized. CLE opportunities are also available at most of the EPYLA monthly meetings. As for networking, EPYLA members meet and mingle with each other at the monthly happy hours. There are also several opportunities for EPYLA members to meet and form relationships with judges and more experienced attorneys. This year, a judicial liaison position was established to promote relationships between EPYLA members and the judiciary. The Honorable Philip R. Martinez is the judicial liaison for 2010-2011.

EPYLA also wants to assist prospective young

lawyers who are still in law school. Every summer, EPYLA hosts an event where members of the El Paso Bar can mingle with law students intending to return to El Paso after graduation. Members of EPYLA have, in the past, informally mentored law students throughout the year. Plans for a formal mentorship program are in the works.

## **Public Service**

EPYLA organizes many projects aimed at advancing the role of the legal profession in serving the public. Several of the projects, such as this year's reintroduction of Wills for Heroes, and a project aimed at informing senior citizens about available property tax exemptions, are designed to provide legal assistance/advice to members of the public. One of EPYLA's biggest projects is the annual Christmas of Hope party, designed to benefit the children of parents who are

suffering from cancer and who are receiving cancer treatments. This year, EPYLA will also be researching ways to assist El Paso's homeless population, with the goal of establishing a voucher program to help the homeless obtain access to food and other necessities.

## **Fostering Diversity**

EPYLA believes that a successful legal community should reflect the diversity of the community at large. As such, EPYLA organizes and participates in projects aimed at improving education and encouraging students of all ages to work hard and consider pursuing a legal career. Throughout the year, EPYLA makes presentations at area elementary, middle, and high schools on varied topics such as civil rights, the importance of voting, and our legal system.

Every year EPYLA works with the District Attorney's Office to organize the annual High School Mock Trial competition.

In 2009, EPYLA worked with the Texas Young Lawyers Association and the University of Texas at El Paso to help put together El Paso's Minority Pre-Law Student Symposium for High School Students. The second Symposium is scheduled for next month. In the spring, EPYLA will be working with the Mexican American Bar Association of El Paso on a project to increase diversity in all professional fields, including the law, medicine, and engineering. Be alert for future announcements regarding this project.

Attorneys 36 years of age or younger, or in their first five years of licensure, are eligible for EPYLA. If you would like to be a member, please contact EPYLA Treasurer Ellic Sahualla at [ESahualla@epcounty.com](mailto:ESahualla@epcounty.com) for a membership application. We look forward to welcoming you soon!

## EPYLA STAR OF THE MONTH

# Joey Veith

■ BY ELLIC SAHUALLA

The old saying that “nice guys finish last” has never been more wrong than with this month’s El Paso Young Lawyers Association Star of the Month, Joey Veith. Those of you who have had the pleasure of meeting Joey know exactly what I mean, and I hope that those of you who have not will have the opportunity soon. Joey’s selfless dedication to public service makes him a true asset to both EPLYA and El Paso itself.

Joey was born and raised in rainy Seattle alongside his sister Emily. Both of Joey’s parents pursued successful careers in medicine, making it all the more unusual that he and his sister both ended up becoming lawyers. As a child, Joey cultivated a love of sports that has stuck with him to this day. Academically, his interests turned to government, economics, and above all philosophy, in which he earned his bachelor of arts from the University of Southern California in 2004.

Living in Los Angeles is something that Joey still cherishes. The mellow California weather

allowed him to bike to school year-round and the diverse population gave him the chance to meet interesting people from all over the world. That lifestyle blossomed into a thirst for new experiences that led him abroad after graduation, when Joey spent a year in rural China working as an English instructor for a college in Hunan Province. His time there—teaching, learning, helping those in need—provided direction for Joey, a passion for public service that found expression throughout his legal career.

After returning from China, Joey attended the University of California’s Hastings College of Law, where he continued helping others through the Hastings Civil Justice Clinic. The clinic afforded Joey the opportunity to represent indigent clients in a variety of legal matters, and the skills that Joey learned there translated perfectly into his current position with Texas RioGrande Legal Aid.

Through TRLA, Joey serves El Paso by



Joey Veith & Family

representing some of the poorest members of the community in family, probate, and property matters. Joey also generously donates his time to EPLYA: in addition to serving as this year’s secretary, Joey has sat on the board of directors since 2009 and managed EPLYA’s basketball league for the last three seasons. These professional activities are balanced against a rabid devotion to USC sports, and even more

importantly, his two greatest loves: his better half, Penelope Espinoza (an assistant professor at UTEP’s Center for Research on Education Reform), and their two year old son, Noah.

Joey has already accomplished a great deal, which is why I confidently look forward to even bigger things from him in the future. On behalf of EPLYA, I would like to thank Joey Veith for his hard work and his commitment to this community. We wish him nothing but the best as his career moves forward.

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# JIM SCHERR'S STORY

*As Told to Stephanie Townsend Allala*

**I**f you are a fortunate attorney, once in a lifetime a case comes to you that strikes at your very core. *Mendoza v. Contico* is one such case. In it, a U.S. court held that a U.S. company could be held liable for its actions in Mexico involving Mexican citizens. Recently, Stephanie Townsend Allala visited the law office of Scherr, Legate, PLC, and convinced Jim Scherr to tell the tale.

**Townsend Allala: How did you meet the Mendoza family?**

**Scherr:** Dr. San Juana Mendoza was like Mother Teresa. Her life was devoted to the Tarahumara Indians. She lived -- she breathed -- she brought them clothes and food and -- and spent a lot of time there and was highly respected.

Dr. Mendoza had a little sister named Lorena, who was in her 20s who went to work in Ciudad Juárez for a U.S. company called Continental Sprayers. She sought employment with a U.S. company because she felt that it would give her a future, an opportunity, security and the know-how to advance her future and her life.

*This is why I had become a lawyer. It's our job to stand up for what's right and to not let people cover up and not allow injustices to occur and to hold others responsible for the harm that they inflict on others.*

She was an accountant, a *contadora*, for Continental Sprayers, one of the first twin plant operations in Ciudad Juárez with headquarters in St. Louis, Missouri. They chose Juarez because of the cheap labor.

By this time Continental Sprayers' parent company was called Contico.

When Delphi opened, Delphi approached all the employees of Contico. Continental Sprayers

was paying them \$24 a week for a 48-hour work week and Delphi was paying them higher wages, I think it was \$28 a week. So Contico decided that they needed to find a better employment market and that they wanted to find a community where they could control employment.

The manager for the El Paso region, who was right here at the Butterfield Trail in El Paso, decided he was going to personally seek out their new location, and he went to various communities before deciding that he would open their operations in Palomas, México, because Palomas would be the only show in town. They were going to open up with 100 employees and they -- instead of paying \$24 a week, he could get by with \$22 for a 48-hour work week. The general manager went to the most powerful man in town, a reputed drug dealer, and leased from the reputed drug dealer a former grocery store for Contico's facility which happened to be right across the street from the reputed drug dealer's home.

Contico then sought employees in Palomas. How were they going to handle the payroll? At that time, there was a Bancomer branch in Palomas. But because of the cost, the manager here in El Paso didn't want to spend the money.

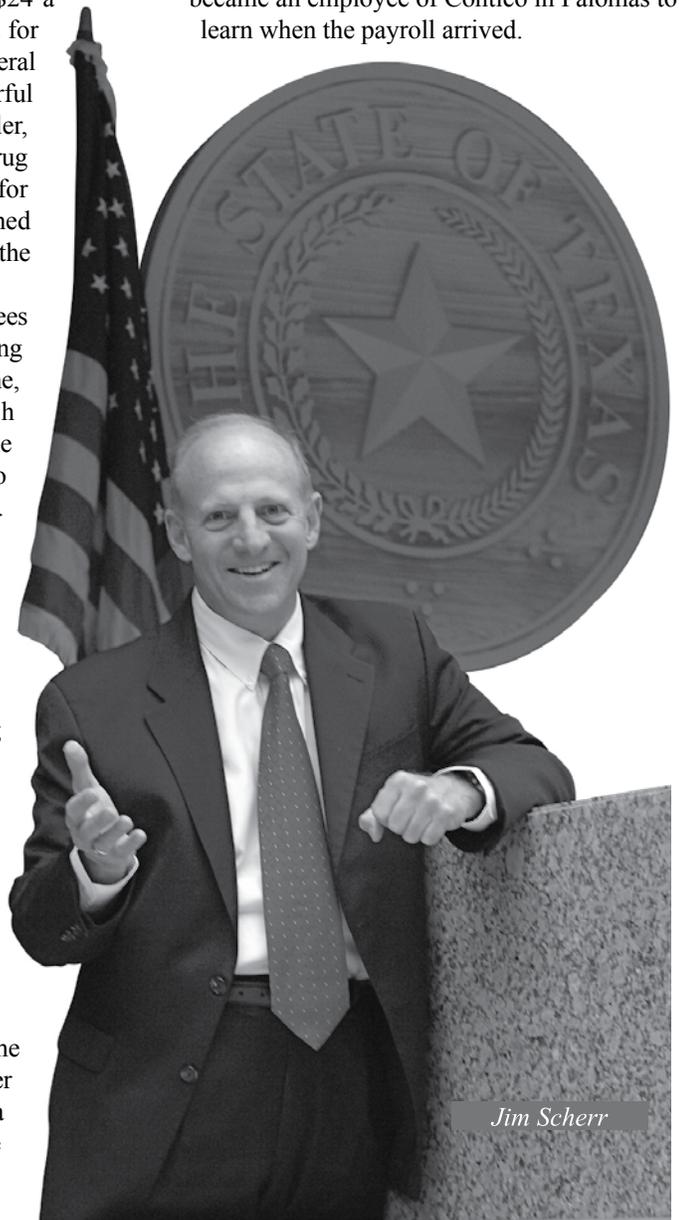
**Townsend Allala: On what?**

**Scherr:** Paying the bank fees for the payroll. There were daily deliveries by armored car and twice on Fridays bringing payroll from Ciudad Juárez banks to cover payroll. Because it cost him \$65 dollars a week, he didn't want to spend the money. Instead, they set up a system where they would use a car, an accountant, Lorena, and a driver who would leave Juárez from their facility every Friday morning at the same time and drive the same route to deliver cash payroll of about \$2,000 a week to employees who were working in Palomas.

Contico told them that when they got to the checkpoint outside of Juarez, take the suitcase and put it underneath the seat and declare you have nothing, for fear that you may get robbed.

Meanwhile Palomas was becoming a dangerous city. Some of the drug dealers had come in wearing federal or state police uniforms and apparently tried to kidnap somebody at the facility. They were unsuccessful. In the meantime, Contico kept running the payroll every single week, every Friday same time, same route, same three people.

One of the drug dealers infiltrated and became an employee of Contico in Palomas to learn when the payroll arrived.



*Jim Scherr*

One Friday, Lorena and the driver didn't make it. They didn't show up. Palomas Contico called Juarez Contico about noon and said, "Where's our payroll?" They originally thought that it had been stolen.

**Townsend Allala: So they thought -- Contico thought that their employees had stolen their money?**

**Scherr:** Exactly. Well, they -- they then put out a search party to try to find what happened to the money and even Gandara, the manager of the company from El Paso, drove over there himself trying to find them. Well, they didn't find them.

**Townsend Allala: When did they find them?**

**Scherr:** Three or four days later a company representative called the family and told Lorena's parents, "I'm sorry. Your daughter died."

**Townsend Allala: What?**

**Scherr:** The family didn't know how it happened. Dr. Mendoza asked what happened and the company denied knowing. Dr. Mendoza went to the police and they wouldn't tell her anything. Dr. Mendoza sought legal counsel. She went looking for lawyers all over the place. Stephanie, she went to every plaintiff lawyer in El Paso. She went to lawyers out of town.

**Townsend Allala: And?**

**Scherr:** Nobody wanted to take the case.

One day I get a call from a lawyer out of St. Louis and the guy says, "You know, they've been everywhere and I don't think they've ever called you, Jim, and I don't know if you could help them but -- would you at least talk to this lady?"

San Juana came in and I met with her. All the family knew is that Lorena died on the way to deliver payroll to Palomas Contico -- that she died at work. But, you know, when you meet with someone like Mother Teresa and you look in her eyes and you hear the story, you just want to help her. It was pretty powerful.

I brought my partner Sam Legate into the room and I said, "Okay, Sam, we got to figure out how to find out what happened and what occurred," because, you know, there's got to be some theory as to how this came about? So that will be our mission.

So San Juana and her relatives told the story again, to both of us. My thought was, "I don't care if it's a U.S. company and it's a Mexican citizen in Mexico getting killed, that's a U.S.



Lorena Mendoza

company they're working for and they should at least share what happened and let them know and they should be responsible for her death."

I filed suit on a theory that there shouldn't be a double standard for safety in Mexico as compared to the U.S., and that Contico was negligent and grossly negligent in causing the death of this person.

This is why I had become a lawyer. It's our job to stand up for what's right and to not let people cover up and not allow injustices to occur and to hold others responsible for the harm that they inflict on others.

In the meantime I was hiring people to go investigate for me what happened. We found out that the police file had been stolen.

We had a very difficult time in discovery. They fought us every step of the way: on discovery; on providing us information. The defense denied even knowing what happened.

But we finally started finding out what had occurred.

**Townsend Allala: How hard was that?**

**Scherr:** Really it was extremely hard to gather evidence in Mexico. But let me tell you what I did. I hired an expert witness -- I decided this was going to be the case that I was going to make certain to do whatever I could to help.

Number one, I knew Contico would raise the defense that this was purely a Mexican citizen working for a Mexican company, that they had -- that there was a full system of laws in Mexico that should not obligate a U.S. company to be responsible for its wrongdoings in a foreign country. So I made a phone call. I already knew -- who in conflicts of law is the --

**Townsend Allala: Russell Weintraub.**

**Scherr:** Absolutely.

**Townsend Allala: My Conflicts of Law professor at U.T.-Law. Did you use him?**

**Scherr:** I called Russell. I had never met him. I called him out of the blue and I called Russell and I said, "Dr. Weintraub, my name is Jim Scherr. I'm in El Paso, Texas, and I want you to work on a case for me."

He started off by telling me, "Mr. Scherr, I'm sorry. I can't help you. My last case was Exxon. I just did a case for City Bank. I work for the biggest companies in the world. I just came back from London arguing a case. You know, I don't work for individuals."

And I told him the story and then I asked him, "Mr. Weintraub, what do you charge?" And he told me, and it was outrageous.

And I said, "I will send you a check. Will you work for me? I will prepay whatever you ask."

Dr. Weintraub said, "Mr. Scherr, I'll take the case."

I investigated and hired Pete Palmer, "Mr. Palmer, my name is Jim Scherr. I'm from El Paso and I want your help on a case."

Mr. Palmer was head of C.I.A. for Mexico and Latin America. And I asked him, "Will you be my expert witness on this case to investigate it and to prove up what happened?" He said, "Well, I won't investigate it because it may affect my ability to testify on what I find, but I'll guide you." Okay?

So my expert was the head of C.I.A. South America, Latin America. So that kinda gives you a little bit of the players.

**Townsend Allala: You don't do much small, do you, Mr. Scherr?**

**Scherr:** So we now have our case -- the team put together and I go work like -- as hard as I can on behalf of my -- my family.

**Townsend Allala: How long did the case go on?**

**Scherr:** Well, it was 1992 when it was filed and I think it was '97 before we finally went to trial.

**Townsend Allala: Okay. So in those five years --**

**Scherr:** A lot happened.

*To be continued in the December issue....*

Transcription of interview courtesy of Sharon Cardon & Co., Court Reporters.

## HOW CIVILIZATION CAME TO EL PASO

## ¡Viva Los Licenciados!

*El Paso Lawyers in the Sagebrush and Chaparral Days of the Mexican Revolution**Part I*

■ BY BALLARD COLDWELL SHAPLEIGH

The Mexican Revolution, chronologically the first of the great revolutionary clashes of the twentieth century, began one hundred years ago. When it was over, they say a million lives had been lost and property damage exceeded a billion dollars. Most of the revolutionary leaders had experienced a violent death.

On November 20, 1910, Porfirio Díaz was enjoying an eighth self-appointed term as President of Mexico when Francisco I. Madero issued a call for revolt. Díaz called him *el loquito*, or the little madman. The Madero clan referred to Díaz as “the great comedian.”

The Mexican Revolution was on. Treachery and betrayal were the currency of the day. So naturally prominent El Paso lawyers like W.H. Burges and Tom Lea were an important and well-documented part of the mix. Others like Zach Lamar Cobb, Juan B. Larrazola and Gunther R. Lessing played intriguing roles, but remain relatively obscure to this day. Their clients were individuals such as the Madero family, Pascual Orozco, Pancho Villa, and Victoriano Huerta and entities like the United States government.

Perhaps only San Antonio is featured in more books about Texas than El Paso, and San Antonio likes to boast that the Mexican Revolution was launched when Madero printed 5000 copies of his *Plan de San Luis Potosí* from a printing press on that city’s west side. But, as everyone knows, the kindling was actually gathered in El Paso and Cd. Juárez, and the spark that grew into a conflagration was struck not in San Antonio but at the Battle of Juárez centered within a few blocks of the El Paso County courthouse.

With Mexico, these kinds of convulsions seem to happen every hundred years or so – 1810, 1910, 2010, and so on. They are almost as predictable as the orbit of Halley’s comet that, since its earliest known observation in 466 B.C., has often been seen as a supernatural object that portended doom. In fact, Haley’s penultimate



Overview of Madero Camp on the west bank of the river looking north toward present-day West El Paso. Madero Headquarters (La Casita Gris) is shown center-right, marked by activity, with Boundary Marker 1 shown behind the Casita Gris surrounded by a fence. The footbridge, marked by triangular footings, crosses downriver of the railroad trestles.

appearance over El Paso skies in April and May 1910, forecasting the revolutionary storm in Mexico, put on a brighter show than during its last visit in 1986.

However, as revolutions go, this one revved up rather oddly. Almost as soon as the first shots rang out on May 8, 1911, in the first major military engagement of the revolution known as “the first Battle of Juárez,” the fighting stopped and the winner and loser sat down to enjoy dinner together in El Paso.

The Battle of Juárez did not consist of a series of carefully coordinated military maneuvers. It just sort of started and no one could stop it. Madero told one story. His confederates, Pancho Villa and Pascual Orozco, gave another.

The insurgents, armed with crowbars and picks, ingeniously advanced toward the center of town by punching holes through interior walls of adjoining adobe buildings so as never to expose themselves to enemy gunfire. The

*federales* simply kept retreating.

When Pancho Villa was queried about the battle by a biographer years later, Villa insisted that attacking Cd. Juárez without Madero’s knowledge or acquiescence was his plan from the beginning. He said that he and Pascual Orozco had even spent the night before in El Paso to be out of touch and to avoid being found out.

This was a bold, unabashed claim from a man who would also assert that he had been one of the revolution’s main leaders from the beginning. To the rest of the world, Pancho Villa might be the best-known figure in Mexican history, but he actually joined the revolutionary cause that made him famous barely six months before the Battle of Juárez at La Cueva Pinta in the Sierra Azúl of Chihuahua as a low-ranking commander of a company of 28 volunteers.

In Villa’s words, as summarized by David Dorado Romo in the acclaimed *Ringside Seat*

to *A Revolution*, the Battle of Juárez began as follows:

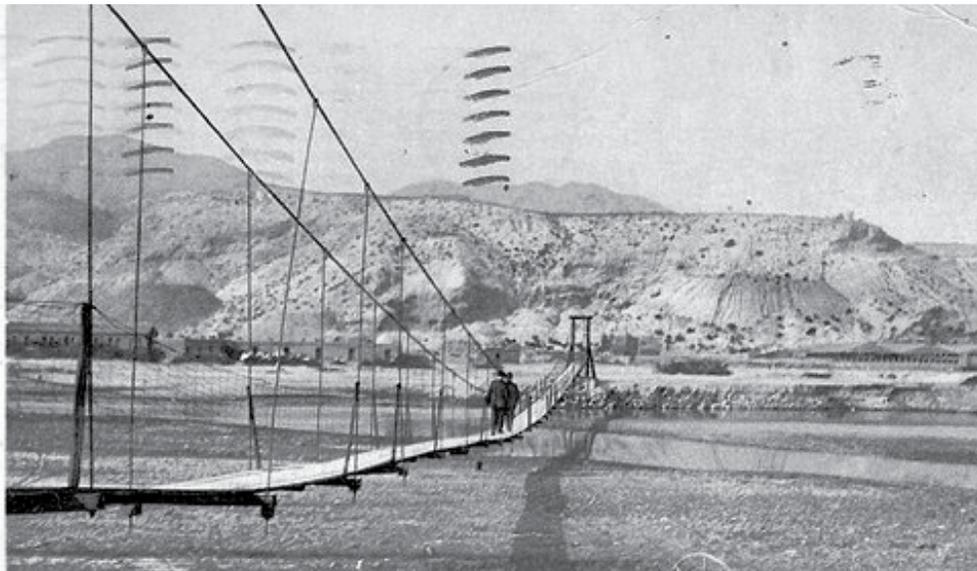
We decided the evening before [the Battle of Juárez] that [we] would send 15 men along the river in order to provoke the Federals; their orders were not to enter Juárez but rather to lure the enemy out of their shelter. Pascual Orozco and I crossed the river by the smelter and stayed in El Paso so that there would be no suspicion that we were the true authors of this plan. Our orders were put into action. The next day, at the agreed upon-time, we heard the shooting that we knew all along would break out. Pascual and I each took an automobile and gave the order to drive us down to the smelter as fast as possible. We both got there at the same time and crossed the swinging bridge in a hurry.

On the side of President Porfirio Díaz were the *federales* led by General Juan Navarro. The insurgents were led, more or less, by Francisco I. Madero. Fighting alongside Madero were Pascual Orozco, Francisco “Pancho” Villa, whose true name was José Doroteo Arango-Arámbula, and José de la Luz Blanco, among others. To appease egos, the story goes, Madero always made sure that Orozco carried a rank one grade above that of Villa.

Madero also counted on the assistance of foreigners like Italian native Guiseppi (sometimes identified as “José”) Garibaldi, Jr., for whom Garibaldi Plaza, the landmark in Mexico City known for its mariachis, is named. He was a grandson of the famous Italian liberator. Another was Benjamin Johannes Viljoen, an experienced, self-exiled general officer in the Boer Wars, who had been captured by the British and imprisoned at St. Helena, the site of Napoleon’s last incarceration. He had also served in the Transvaal parliament representing Johannesburg.

Prior to his association with Madero, Viljoen was serving as postmaster in Chamberino and farming 1700 acres in the upper valley near La Mesa, in the then-New Mexico Territory, having separated from his wife who elected to remain in South Africa.

The Madero family – Francisco, his father Francisco Sr. and his brothers Gustavo and Raul – were camped down by the river on the Mexican side with their army in the shadow of Mt. Cristo Rey. Back then, Cristo Rey was called *el cerro de muleros*. Their campsite was opposite the smelter, down river of the two railroad trestles that span the Rio Grande and



Postcard of the footbridge to and from the Madero Camp postmarked 1911

Paisano St. near the present-day intersection with Executive Center Blvd.

Madero headquarters consisted of an adobe hut south of the brick factory and International Boundary Marker One. For a while, when Madero was the provisional president of Mexico and Cd. Juárez was declared to be the capital, his headquarters was unofficially called “*La Casita Gris*.”

When Edward Marshall, a *New York Times* reporter, arrived to interview Francisco Madero at the camp, he described being seated in the little adobe hut which, he said, the correspondents called the “Brown House” or “the Palace.” Whether or not the world’s newspaper correspondents thought “gris” meant brown, it is clear that Marshall spent more time outside speaking with bespectacled brother Gustavo, who had lost an eye. He took a photo of Gustavo atop his horse up in the rocky hills, which Gustavo proclaimed as the best image of himself ever taken.

Marshall’s interviews with the Madero family took place a few days before the *New York Times* published his article on May 14, 1911, just after the Battle of Juárez, under the headline, “General Madero talks about the Mexican Revolution.”

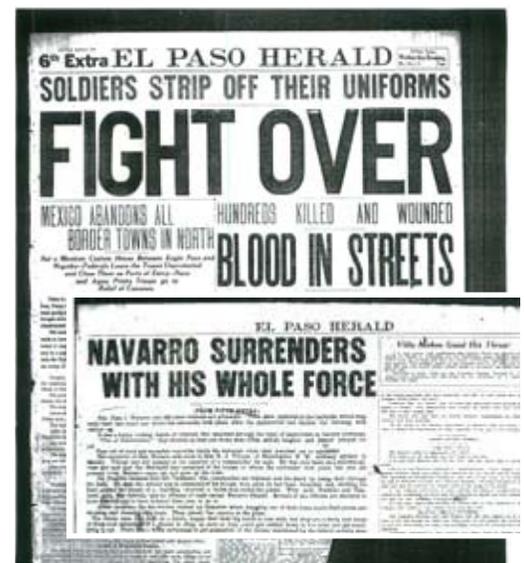
Marshall apparently made contact only with four of the Madero clan, and wondered which of the three older men (excluding Raul) was most important to the revolution. He described Francisco, Jr., then age 37, as a short (according to various accounts between 5’2” and 5’4”), slight, black-bearded, dreamy-eyed military leader who would be the least likely to be handpicked as a revolutionary leader. Raul, he wrote, looked like a vigorous young

man who saw the enjoyment in fighting but was oblivious to the consequences. He found Gustavo, in his mid-thirties and the man in charge of revolutionary finances, to be the most rational and able of them all.

However, Gustavo apparently bore the brunt of the criticism directed at the Madero clan. He was known in some quarters by the nickname of *Ojo Parado*, or “fixed eye,” because he had lost one of his eyes. After the Battle of Juárez, Gustavo was regarded as the real head of his brother’s government having been named minister of finance. In one account, he was described as the “dandy of the Madero clan” who spent more nights in El Paso’s Sheldon Hotel than in the field. Upon arriving in El Paso after one trip to New York, he discarded his east coast suits and appeared “in khaki uniform, campaign hat and shiny leather leggings”

Gustavo spoke to Marshall of his conviction that he and his brother would die violently. He did not fear assassination, he said, but he certainly expected it and was as sure of it as the sun rising in the morning. It was their fate. His father might be spared for being too old, he said, and his other brothers for being too young, but not he and Francisco. He said that it had always been the fate of patriots in Mexico to die.

Less than two years later, in February 1913, both Madero brothers did die violently at the hands of General Victoriano Huerta in Mexico City. Gustavo was 37 and Francisco 39. (The Madero brothers, and their betrayal and execution, are mentioned in *All the Pretty Horses*, the 1992 National Book Award winner by former Kern Place resident Cormac McCarthy. The award was celebrated with a big, festive party at 1011 N. Mesa, the law



Front page headlines in the Herald marking each of the three days of the Battle of Juárez: May 8, 9 and 10, 1911

offices of the late Malcolm McGregor and a number of other well-known attorneys.)

The facts around the murders of Francisco and Gustavo are murky and unreliable. In one account, Francisco is reported to have been assassinated while being transported to the penitentiary from the National Palace in Mexico City, and being shot in the back of the head by one of his guards as he stepped out of the transport vehicle. Alternatively, as his brother Emilio insisted to the press, he was said to have been shot in his jail cell and his body then taken to the national palace for the purpose of fabricating a botched rescue and escape.

Gustavo is reported to have been either lured to dinner or kidnapped off the street and, like Francisco, subjected to *la ley fuga*, which excused killing prisoners who “attempted” to escape and under which many troublesome persons were put to death. Some accounts have him being tortured before he was killed, with his one good eye being gouged out with a knife and his lips cut off. An item in the *New York Times* in September, 1916, reported that after his son’s assassinations, Francisco I. Madero, Sr. fled with his family to El Paso where they remained for some time, but this cannot be confirmed by reference to local sources.

Given the frenzy of the three day battle and the moment-to-moment uncertainties, a brief account of the Battle of Juárez is inadequate. On the first day of battle, for example, the *El Paso Herald* put out a “ninth extra” edition.

Madero had been thinking about attacking Cd. Juárez for several weeks. He had most recently thought about attacking Juárez on the night of Sunday, May 7, 1911, and then called it off.

This was not the first time. Madero had told an *El Paso Morning Times* reporter that he would be attacking on the night of April 20 because Gen. Navarro had contemptuously refused to surrender the day before. Madero was reluctant to attack for fear of bullets striking El Paso. He thought that would cause the U.S. to intervene.

While both sides were talking peace, there was considerable traffic back and forth across the border, most of it near the smelter. El Pasoans would visit the Madero camp, and the “insurrectos” came to El Paso to shop.

Pascual Orozco came across on April 20 as well, intending to check into the Sheldon Hotel to get a good night’s rest and to see his family. But his presence made El Paso authorities nervous about keeping law and order. The authorities included the U.S. attorney, Mayor Kelly and the chief of police.

After conferring, they deemed it preferable to send Orozco back to Mexico. So the mayor, the chief of police, a deputy U.S. Marshal, two Bureau of Investigation agents and attorney Gunther R. Lessing, of the firm of Jackson and Lessing, representing the *maderistas*, secured an automobile and drove to the footbridge across the Rio Grande by the smelter and watched as Orozco returned to the Madero camp.

On May 7, Madero got word that Díaz was saying publicly that he was willing to resign. So Madero again abandoned his plans to attack.

The next morning, Monday, May 8th, Madero agreed to a cease-fire with Díaz’ representatives to last until 4:00 p.m. But “insurrectos,” commanded by Pancho Villa

and Pascual Orozco, started shooting anyway around 11:00 a.m..

Madero called General Navarro by telephone to apologize, saying that he would tell his men to withdraw. Navarro agreed to a cease-fire so Madero’s men could retreat. At 1:00 p.m., Madero ordered a cease fire, which was ignored by his insurgents. Instead, they took advantage of Navarro’s cease-fire to gain more ground.

At “Peace Grove,” a stand of cottonwood trees across the Rio Grande from the Old Globe and Hart’s Mills (e.g. the old Hacienda Restaurant), approximately a mile and half up river from the plaza of Cd. Juárez, Madero also addressed the portion of his forces (including Villa, Blanco and Orozco) that were not then involved in the battle. His message: do not move and do not fight unless ordered otherwise. But shortly after the speech, a large part of the audience disappeared to join the battle. Navarro had no alternative but to start fighting again.

At 6:30 p.m., Madero and Navarro had another telephone conversation. Madero told Gen. Navarro that he had ordered another cease-fire, so Navarro agreed once more to allow Madero’s men a second opportunity to retreat. They refused, of course, so when Navarro ceased fire, the insurgent forces advanced further into town capturing strategic locations. Navarro was forced to start fighting again.

At 9:00 p.m., Madero’s officers told Madero that they would not retreat or stop, as their advances had given them the advantage. Madero called Navarro to inform him that there would not be another cease-fire, and that Madero would wage an all-out attack.

On the second day of battle, Tuesday, May

9, Madero's forces took the battle building-to-building, burning most of the structures in their path to the center of town. Navarro's federal troops retreated to the church.

On the final morning of the Battle of Juárez, Wednesday, May 10, there was minor skirmishing before Navarro surrendered just after lunch. Among the forces of Orozco and Villa, some demanded to have Navarro executed. But it was not unanimous as some wanted Navarro to remain alive, explaining that he would suffer more.

By Saturday, tensions among the revolutionaries had risen again, to the point that Orozco placed Madero under arrest not only for failing to kill Navarro but also for excluding the *insurrectos* from the provisional cabinet and for failing to feed, pay and clothe his men. When Madero was released, the *El Paso Herald* reported that he summoned an automobile and spirited Navarro out of Juárez driving down the bank of the river to a point opposite Washington Park.

Madero last saw Navarro trying to ford the flooded river on the back of a horse borrowed from a local farmer who escorted him. The 68-year-old Navarro finally succeeded, but not before riding down towards Ysleta in search of a narrower crossing with safer bottom. He said he did not compel his horse to swim, but that he had stripped off his clothes and carried them on this back.

Three weeks later, Francisco I. Madero and General Juan Navarro, the winner and loser, attended a banquet at the Toltec Club together in celebration of Madero's victory at which attorney W.H. Burges delivered the keynote address.

If every revolution is first a thought in one man's mind, then Francisco I. Madero is probably that man as far as the Mexican Revolution is concerned. But after hearing the advice that W.H. Burges gave him on the evening of May 31, 1911 at the Toltec Club banquet celebrating the *maderista* victory in the Battle of Juárez, it is not surprising that Madero chose other El Paso lawyers to represent his interests in the United States.

As for Porfirio Díaz, he may have been thinking about the vast array of lawyers found in El Paso, like Gunther R. Lessing, who gave counsel to his enemies when he famously said, "Poor Mexico! So far from God and so close to the United States."

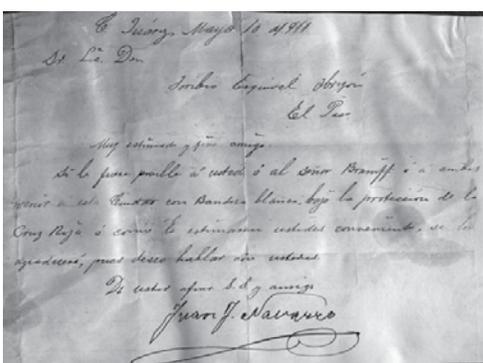
El Paso Historical Society, 043-1995-000



Madero addresses supporters, April 21, 1911

Looking for a way out, Navarro pens a note on May 10, 1911 to Toribio Esquivel Obregón an Aguascalientes lawyer in El Paso, who was identified as the "go-between" in newspapers, translated as follows:

Sonmichen Special Collections, UTEP Library



My Very Esteemed and Fine Friend:

If it is possible for you or for Mr. Braniff or both to come to this city with white flags, under the protection of the Red Cross or as you might think to be convenient, I would very much appreciate it, as I desire to speak with you.

From your (unreadable) S.S. (for seguro servidor) and friend

Juan J. Navarro

El Paso Historical Society, 043-1995-004-425



After surrender, Navarro confers with Madero in Juárez, May 10, 1911

The "Civilization" series is written in appreciation of the 113th anniversary of the El Paso Bar Association with assistance and encouragement from historians Pat Worthington, Claudia Rivers, David Dorado Romo, historian and angling consultant J. Sam Moore, Jr., and the poet Edgar Rincón Luna. Due to space limitations, the resources which have been consulted will be listed in the last part. 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.

## Recent Judicial Appointments

David Guadarrama, Judge of the 243rd District Court, recently resigned his state court position in order to accept a federal court judicial position. He will be sworn in as a United State's Magistrate on October 1, replacing U.S. Magistrate Judge Michael McDonald who retired in June.

Judge Sue Kurita was unanimously appointed to the State Commission on Judicial Conduct by the Texas Supreme Court. The State Commission oversees the conduct of Texas judges. She was sworn in on August 31, 2010. Her term will expire in November, 2015.

## Colonel Francis P. King to Speak At November Monthly Luncheon

On Tuesday, November 9 at 12 noon at the El Paso Club (6th floor) Colonel Francis P. King, Judge Advocate General at Fort Bliss, will speak at the EPBA monthly luncheon about his office, its services and his plans for dealing with the anticipated increase in troop levels at the base.

Colonel King graduated from Washington and Jefferson College, Washington, Pennsylvania in 1987, and was commissioned through the Reserve Office Training Program. Thereafter he attended the University

of Akron School of Law in Akron, Ohio, graduating in 1990. He obtained a Master of Laws degree from the Judge Advocate General's School of the Army, Charlottesville, Virginia, in 2000.

Colonel King is certified as a Master Military Justice Practitioner indicating extensive Military Justice experience in areas of courts-martial prosecution, litigation, and military criminal law. It is the highest Military Justice skill-level a Judge Advocate can attain.

### AWARD WINNING 2ND ANNUAL ACCESS TO JUSTICE LEGAL FAIR

*The Award winning 2nd Annual*

*Access To Justice Legal Fair*

**Saturday, October 30, 2010**

**9:00 a.m. – 1:00 p.m.**

**El Paso Community College,**

**Valle Verde Campus**

*We are looking for attorney volunteers to assist us on that day. If you can volunteer for a couple of hours, please call Alberto Mesta at 585-5100.*

## Judicial Spotlight



**Name:**

David J. Ferrell

**Court:**

Justice of the Peace El Paso County Precinct #4 July-December, 2010

**Prior Judicial/Public Service**

**Experience:**

6 years El Paso Associate Municipal Judge, 3 years Assistant Attorney General of Texas - Consumer Protection

**Education:**

UTEP B. S. 1974

Texas Tech School of Law J. D. 1977

**Court Co-ordinator:**

Yolanda Enriquez

**Why did you apply for the position of JP#4 when you knew it would be for only a short duration?**

My main motivation was the opportunity to be involved in the truancy issues of East El Paso. I knew that one out of every three El Paso high school students did not graduate. I felt as a JP I would have an opportunity to help. As parents and grandparents, we cannot do everything to solve this problem, but, I was going to try to do something, and as a JP I would have more tools. When my youngest son was a boy scout, I took him and 11 other scouts to a truancy hearing at night, at Montwood High School. The scouts were working on their "Citizenship in the Community" merit badge which requires attending a judicial event. The boys and I saw JP Felix Saldivar skillfully "encourage" truants and their PARENTS to comply with the Texas truancy laws. Later when my wife and I found out my youngest daughter had skipped school at Hanks High School, I went to school with her the next day and attended class with her. That was one of Felix' tools. And, I didn't have to wait for a JP hearing to take parental action. Felix' enlightened this parent and this motivational tactic worked. Incidentally, all of those scouts who attended that truancy session with Judge Saldivar NEVER had truancy problems.

**What about JP#4's staff?**

The workload of JP#4 is enormous, truancy is only a small part of the docket. The staff understands this and 99% of the time when they bring me a problem they bring several suggested solutions also; they have thought about the issue(s) and with their experience and intelligence I get to evaluate the possible solutions and most of the time I choose from one of their suggestions. They do not make suggestions when I am on the bench.

**Special mention:**

Assistant DA Matthew Moore is well prepared and knows MANY motivational tactics and programs to encourage our children to stay in school; he is the prosecutor for several of the JPs including JP#4, and there can be no doubt that he is an asset for an effective truancy solution here in El Paso.

# Courtesy Counts!

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

Courtesy is a very basic, yet essential, part of any culture, for it is at the root of a society that treasures civility and seeks an existence embraced by peace. “Nothing is ever lost by courtesy. It is the cheapest of the pleasures, costs nothing and conveys much. It pleases him who gives and him who receives, and thus, like mercy, it is twice blessed.” These words by Canadian journalist and businessman, Erastus Wiman, describe the gist of what courtesy gifts to us.

The people that have the most difficulty being courteous are usually those people that overdose on their fragile egos. We find such people in all parts of our communities. We are all subject to the temptation of falling prey to our egos by virtue of our humanity. However, if we do succumb to the tentacles of discourteous or rude behavior, we definitely can rise above it and turn such shortcomings into positive behaviors that are consistent with being courteous.

Courtesy is a gift that can be nurtured to the point of it becoming a habit, a good habit. Courtesy touches others with warmth, respect and dignity. It is the rock upon which virtues like consideration, empathy, understanding, and kindness spring forth. Good manners and courtesy are intertwined in a graceful dance.

In essence, true courtesy is founded on morality. Courtesy, like good manners, propels us to be thoughtful, hospitable, and gentle. “Courtesy facilitates successful interaction and negotiation, generously laying a foundation for understanding and harmony.”<sup>1</sup>

According to the celebrated author of a best selling book on etiquette, Amy Vanderbilt, “Good manners have much to do with emotions. To make them ring true, one must feel them, not merely exhibit them.” It is in feeling them that our gestures become genuine and sincere and not simply gestures for show.

Courtesy will bring advantages rather than disadvantages. Considering what there is to gain by being courteous versus what there is to lose by not being courteous, the prudent individual can easily see the good wisdom in favoring a courteous approach and disposition in all relationships. The simplest expressions of courtesy can have significant, and sometimes long



*According to the celebrated author of a best selling book on etiquette, Amy Vanderbilt, “Good manners have much to do with emotions. To make them ring true, one must feel them, not merely exhibit them.” It is in feeling them that our gestures become genuine and sincere and not simply gestures for show.*

lasting, impacts on relationships.

Even close relationships must rest on a foundation of courtesy. In this regard, the renowned American jurist Oliver Wendell Holmes cautions “Don’t flatter yourself that friendship authorizes you to say disagreeable things to your intimates. The nearer you come into relation with a person, the more necessary do tact and courtesy become.”

Courtesy entails being sincere, for there are those that will pretend to be courteous for the

purpose of obtaining some self-serving benefit and, once obtained, courtesy goes out the window. It is reprehensible to use the appearance of courtesy to take advantage of another. This is contrary to the noblest footing on which courtesy rests, namely, the love of others. In this context, the German writer and polymath, Johann Wolfgang von Goethe, perceptively notes that “There is a courtesy of the heart; it is allied to love. From it springs the purest courtesy in the outward behavior.”

1. “Courtesy.” *Wisdom Commons*. <http://www.wisdomcommons.org/virtue/30-courtesy/quotes>.

SAVE THE DATE

# 15<sup>TH</sup> ANNUAL CIVIL TRIAL SEMINAR

**February 18 & 19, 2011**

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the "El Paso Bar Association" to get our group rate.

Please make a note that this is a long weekend  
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## ▶▶▶ ASSOCIATION NEWS

### The El Paso Paralegal Association

♦The El Paso Paralegal Association will be celebrating "Texas Paralegal Day" (officially recognized by Senate Proclamation No. 1144 on October 23 each year) with a Fashion Show at its general meeting on Thursday, October 21, 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. Members are asked to donate toiletries for the organization's charity, The Reynolds House Homeless Shelter. Members will receive 1 raffle ticket for each toiletry donated to win a prize.

♦The El Paso Paralegal Association will hold its November meeting on Thursday, November 18, 2010 from 12:00 noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker: TBD. Topic: TBD. 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. Members are asked to remember their donations for the organization's charity: The Reynolds House Homeless Shelter.

### Mexican-American Bar Association

♦MABA will hold its Annual Banquet on Friday, November 5, 2010 at the Camino Real Hotel from 6:00 p.m. to 11:00 p.m. For tickets please contact Judge Max Munoz at 915/838-7777 or at maxmunoz1@sbcglobal.net

### El Paso Women's Bar Association

♦The El Paso Women's Bar Association will meet the second Wednesday of every month with the next meeting on Wednesday, October 13, 2010 at 5:30 p.m. and on November 10, 2010. Please call Yvonne Acosta at 533-2493 for location.

## CLASSIFIEDS

**EXPERIENCED ATTORNEY** desires office sharing, work overflow, arrangement with small or medium size law firm. Have general practice experience including personal injury, worker's compensation, civil litigation, family law, bankruptcy, and federal agency law. If interested, contact Attorney JJ at 915/203-0006.

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

### Probate Bar Clinic

Attorneys and Paralegals are needed to assist with the El Paso Probate Bar Will Clinic to be held on October 23, 2010 from 8:30 to noon at JPCourt #6, located at 190 San Elizario Rd., Clint, Texas. For more information contact Peggy Dieter by e-mail at [Peggy.Dieter@kempsmith.com](mailto:Peggy.Dieter@kempsmith.com).

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