



EL PASO BAR JOURNAL

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An Update of Events and Information

April / May 2010

TEXAS RIO GRANDE LEGAL SERVICES:

Providing Access to Justice for the Poor

By Alberto Mesta, Jr. Page 6

*Pro Bono Et Malo
From Odometers to Divorces*

By Ballard Shapleigh. Page 8

*A Joint Adventure
with Mark Howell*

By Larry Fields. Page 11

*Senior Lawyer
Interview: Alan Rash
By Clinton Cross. Page 13*



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THE PRESIDENT’S PAGE

Law Day 2010: “Law in the 21st Century: Enduring Traditions, Emerging Challenges”



This year Law Day will be celebrated nationally on Saturday, May 1, 2010. The State Bar of Texas describes this year’s theme as follows:

“As we begin the second decade of the twenty-first century, the law is changing dramatically as it seeks to shape and adapt to new conditions... In a global era, all of us must renew our commitment to enduring principals of law, recognize the need to to adapt our practices, and acquire new cultural understandings,.....matters such as human rights, criminal justice, dispute resolution, and environmental regulation become not just international issues – between nations – but shared concerns. Law Day 2010 provides us with an opportunity to understand and appreciate the emerging challenges and enduring traditions of law in the 21st century.”

One of our core and most enduring legal traditions upon which the *United States Constitution* was framed is the RULE OF LAW. We have all heard that we are “a government of laws and not of men.” To that end, the 21st Century and the threat of terroristic attacks upon our country poses a great challenge to the RULE OF LAW, and the rights of the accused in particular and the *Bill of Rights* as a whole.

This year the El Paso Bar Association will host its annual Law Day Dinner and Awards Banquet on Saturday, the 1st of May at the El Paso Country Club, beginning at 6:00 p.m. We are fortunate to have Mr. Dicky Grigg as the keynote speaker. Mr. Grigg practices with the Austin law firm of Spivey & Grigg, L.L.P. Among his many honors and accomplishments, Mr. Grigg is Board Certified in Personal Injury Law, presided as President of the Texas Chapter of the American Board of Trial Advocates (ABOTA), and has been consistently listed as “Super Lawyer” by *Texas Monthly Magazine* and one of the “Best Lawyers in America” since 1994.

Mr. Grigg presents a compelling story regarding an Afghan citizen he represented, labeled as an “enemy combatant” by our government. His client, pleading his innocence, was detained in Guantanamo Bay before being released without ever having the opportunity for a fair and impartial hearing for over seven years. “The legal challenges to treatment of detainees at GTMO is not only about the detainees, it is about the RULE OF LAW in America”, declares Mr. Grigg. Did our government set up Guantanamo to escape the RULE OF LAW? How did we let Guantanamo happen? What is the current status of Guantanamo? What does the future hold for detainees and for America? In keeping with this year’s EPBA theme of “Access to Justice”, Dicky Grigg’s talk will explore these questions.

On behalf of the Board of Directors of the El Paso Bar Association we hope you will join us for this presentation*, for the awarding of our annual awards, and an evening of collegiality.

Carlos Eduardo Cárdenas, President

**The EPBA has applied for .75 hours of Ethics CLE credit for Mr. Grigg’s presentation. For further details please see page 22.*

EL PASO BAR ASSOCIATION

April Bar Luncheon

Tuesday, April 13, 2010

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

*Guest Speakers will be Nolan Richardson and Russ Bradburd.**Mr. Richardson will have his new book available for signing.*Please make your reservations by Monday, April 12, 2010 at noon by calling Nancy at 532-7052
or via email at nancy@elpasobar.com

EL PASO BAR ASSOCIATION

May Bar Luncheon

Tuesday, May 11, 2010

Ft. Bliss 12:00 noon

This will be a joint luncheon with the JAG at Ft. Bliss.

Please note as we are having the luncheon at Ft. Bliss you will need to take some extra time to get there and back. You will also need to make sure you have your insurance card and registration with you. You might want to car pool with other people in your office.

Please make your reservations by Monday, May 10, 2010 at noon
by sending your RSVP to ngallego.epba@sbcglobal.net

New project aims to make *pro bono* work easier

The El Paso Bar Association and Texas RioGrande Legal Aid (TRLA) are proud to announce the launch of a Community Justice Program in El Paso aimed at helping low-income families and providing efficient volunteer opportunities for private attorneys. The Community Justice Project (CJP) is an innovative *pro bono* clinic model that helps low-income families resolve basic legal needs. Based on the successful CJPs in San Antonio and the Rio Grande Valley, the El Paso CJP will occur every two months and will utilize the volunteer efforts of private attorneys, judges, court personnel, Office of the Attorney General and the district clerk.

Beginning in El Paso this June, TRLA's eligible clients* that need a divorce will be able to attend a CJP clinic, be assigned a volunteer

attorney, and have their divorce finalized by a volunteer judge 60 days later. The CJP will be held in the courthouse, so that judges, their personnel, and the district clerk's office can easily attend. In short, the CJP is an efficient and effective way for the private bar to meet the legal needs of disadvantaged El Pasoans.

"The CJP model will work well in El Paso by making it easier for volunteer attorneys to fulfill the mandatory *pro bono* requirement, while contributing to access to justice efforts," says El Paso Bar President Carlos Cardenas.

All CJP divorce cases will be screened for income eligibility and prepped ahead of time so that the volunteer attorney has a head start on the case and can file the divorce at their initial meeting with the client. Volunteer attorneys will also have mentors available to them and will

be provided an annual, no-cost CLE training in family law matters and ethics.

Added Cardenas, "This is an exciting new addition to the El Paso community. All members of the El Paso Bar Association should renew their commitment to *pro bono* service by working with TRLA and the CJP."

To learn more about the CJP, or to become a CJP volunteer, please contact Graciela Martinez, *Pro Bono* Coordinator, Texas RioGrande Legal Aid, Inc. 1331 Texas Ave., El Paso, Texas 79901

(915) 585-5100 or gmartinez@trla.org

*Eligible clients are those that live below 125 percent of federal poverty guidelines. For example, to be eligible for this service a family of four would have to have an annual income, including public benefits, of \$27,563 or less.



CALENDAR OF EVENTS

APRIL 2010

Thursday, April 1

EPBA & County Offices Closed

Friday, April 2

EPBA & County Offices Closed, Good Friday

Sunday, April 4

Easter Sunday

Tuesday, April 6

EPBA Board Meeting

Friday, April 9

EPBA & SBOT Consumer Law Seminar

Tuesday, April 13

EPBA Monthly Luncheon

Nolan Richardson and Russ Bradburd

Thursday, April 15

EPYLA Monthly Luncheon Meeting

Thursday, April 15

EPPA Monthly Luncheon Meeting

MAY 2010

Saturday, May 1

Law Day Dinner & Awards Banquet

Tuesday, May 4

EPBA BOD Meeting

Wednesday, May 5

Cinco de Mayo

Sunday, May 9

Mother's Day

Tuesday, May 11

EPBA Monthly Luncheon

Luncheon at Ft. Bliss with the JAG

Saturday, May 15

Armed Forces Day

Thursday, May 20

EPPA Monthly Luncheon Meeting

Thursday, May 20

TTLA/EPBA Ethics Seminar

Saturday, May 22

EPBA Patriots Veteran's Program & Legal Clinic

Monday, May 31

EPBA & County Offices Closed, Memorial Day

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 June, 2010, please have the information to the Bar Association office by Friday, May 7, 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.

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TEXAS RIO GRANDE LEGAL SERVICES: Providing Access to Justice for the Poor

■ BY ALBERTO MESTA, JR.

“My landlord said to leave my apartment by tomorrow; can he do that?” Emma Flores warmly replies to the first client of the day, “Please sign in,” and hands an intake sheet asking for information.

“*El Patrón no me pago el viernes*” says the man with boxer hands wearing an Arkansas landscaping cap to Emma.

“Legal Aid, how can I help you?” Emma answers the phone. “Let me see if she’s in,” she tells the caller.

“When were you served?” she asks the sullen man.

Despite being a few minutes after 8 a.m., people have filled the reception area; some with kids bundled up, some with abuelita bundled up. The homeless veteran with mental health issues, who enjoys watching “The View” and is sipping coffee provided to clients, has made himself comfortable in front of the TV. Always upbeat, Emma continues answering the phone and answering question after question to those seeking “ayuda de legal aid.”

About TRLA

In 2002, Coastal Bend Legal Services, Bexar County Legal Aid Association, El Paso Legal Assistance Society, Texas Rural Legal Aid, and Legal Aid of Central Texas merged into Texas RioGrande Legal Aid (TRLA). After this merger, TRLA became the third largest provider of legal aid in the nation, with a 68-county service area approximately the size of Colorado. The service area now includes the entire Texas-Mexico border, the metropolitan areas of Austin, San Antonio, Corpus Christi, Laredo, El Paso, and the Rio Grande Valley. Moreover, the service area includes the statewide migrant farm worker program, and the six southern states served by our Southern Migrant Legal Services office in Nashville.

TRLA’s mission is to promote the dignity, self-sufficiency, safety and stability of low-income Texans by providing high-quality civil legal assistance and related educational services. Our screening process is designed to identify clients whose problems are life-threatening or life-altering; helping these clients is our highest priority. TRLA provides legal aid to more than

“I think that [TRLA] is the problem because they’re supplying these people with the information and they’re telling them all about the federal laws and everything.”

Deaf Smith County Sheriff Travis McPherson.
Howard Gault Co. v. Texas Rural Legal Aid, Inc.
615 F Supp. 916 at 925 (N.D. Tex-Amarillo Div 1985)



21,000 low-income Texas residents each year.

TRLA clients share two very important characteristics: they are overwhelmingly Latino, and they are oppressively poor. Clients who are eligible for TRLA’s services must generally be at or below 125% of Federal Poverty Guideline, which means a family of four qualifies earning \$25,813 a year. Over 2.6 million residents of Southwest Texas are considered eligible for TRLA services, a ratio of almost 20,000 potential clients per lawyer.

TRLA currently has 145 full-time lawyers in 14 offices, including 15 attorneys in El Paso. The product of a national recruitment effort, most TRLA lawyers are from top-tier law schools, including the University of Texas, Harvard, University of California-Hastings, Stanford, NYU, and Yale. The legal problems encountered by low-income clients are among the most challenging to be faced by lawyers anywhere in the country. TRLA attorneys work in thirty-nine distinct practice areas, including family, employment, migrant farm labor, consumer, environmental justice, civil rights, and international child abduction. The TRLA El Paso office provides legal services and education outreach to clients in all of these areas, as well as the following special programs:

Legal Clinic for the Homeless

For many, the best site to look for work is the corner of Oregon St. and Paisano Ave. For others, the corner of Newman St. and Muertos (known to most as Myrtle Ave.) is convenient.

Some live at the Farmworker Center on 9th street, surviving on day-labor work until the green chile fields of Southern New Mexico are ready to be planted. Others live at the Opportunity Center coping with loss of stable employment, the loss of permanent housing, and for some the loss of family. Potential employers passing by the sites in a pickup truck invite a mix of personal promotion and desperation as the homeless laborer attempts to land a job offer for that day. Some employers feed on that desperation.

“I cannot be in it for myself... serving others is an essential component of a complete life” is Everett Saucedo’s mantra, learned while attending Georgetown University. As the director of TRLA’s Legal Clinic for the Homeless he serves a unique and vulnerable population. On any given day, about 1,400 individuals are considered homeless according to El Paso Coalition for the Homeless. About 1,100 individuals are living in shelters, while almost 300 are on the streets.

Everett leads the Legal Clinic for the Homeless, which helps homeless clients apply for disability benefits, obtain housing, and clear minor misdemeanor, such as jaywalking. Frequently, he seeks to recover wages from those exploiting this vulnerable population. Everett recalls, “One of my homeless clients agreed to do construction work for a *patrón*. The *patrón* did not pay the client, and when he tried to resolve the matter on his own, the *patrón* made excuses and broken promises.” The homeless client sought legal assistance

from the Legal Clinic for the Homeless, and Everett talked with the contractor and was able to settle the wage claim quickly.

Homeless Prevention/ Rapid Rehousing

Veronica Carbajal and a single mom sit across from each other where a portrait of César Chávez and a Brown University diploma witness the retelling of a downward spiral. “It was cold and the furnace and the water heater weren’t working,” said the client. “My daughter got sick and the school sent her home.” She missed work at her part-time job and was not able to make up the hours. She asked the landlord about the needed repairs, but was ignored. Concerned about her daughter’s health, the client used her own very limited funds to conduct the repairs, but now is short on the rent. Veronica gathers the information while comforting the single mom.

Veronica directs the Homelessness Prevention and Rapid Re-Housing Program (HPRP) at TRLA. TRLA received a grant funded with stimulus money to provide legal assistance to families who are facing homelessness due to the economic recession. Along with Veronica, the HPRP is composed of a dedicated intake paralegal and another attorney, Michael Russell.

Michael sends the landlord a demand letter requesting reimbursement for the repairs. Instead the next day she places a back-dated notice to vacate on the client’s door. The landlord sends another notice, signed by an El Paso Police Officer, purportedly attesting to the date of the service, that she will no longer accept rent payments. An eviction suit soon follows and the landlord’s harassment of the client commences.

Despite the overwhelming evidence of the landlord’s conduct, she refuses to settle. Her tone changes, however, when the El Paso Police Office whose name was forged by the landlord, appears at the eviction hearing. The landlord



TRLA Staff

reimburses the single mom for the repairs, forfeits a month’s rent, and provides ample time for the single mom to move out. Veronica says, “our work thrives on collaboration.” With the involvement of community partners, such as Project Vida, the client obtains financial assistance for a deposit and moving expenses to relocate into a new apartment that has a lower rent payment in line with her diminished income. The client is relieved and most importantly has a place to live. She still has struggles ahead.

Medical Legal Partnerships for El Paso

The doctor tells her patient, “Here’s a prescription for medicine and a prescription for an attorney.” As incredulous as that may sound, all over the United States., health care providers who treat low-income individuals and families are turning to a new specialist to help keep them healthy and safe: the poverty law lawyer. Medical-legal partnerships integrate lawyers in a health setting to tackle the social and environmental factors of poverty that negatively impact health.

The Medical-Legal Partnerships for El Paso (MLP) is a collaborative project among

TRLA, University Medical Center El Paso, and Centro San Vicente Family Health Center. The project partners medical service providers with TRLA to make available legal services to patients and their families at the same site they are seeking medical care. By addressing the social determinants of health—e.g., habitability of homes, appeals of public benefits denied—limitations to better health are more easily overcome. In addition, physicians are educated about the effects of poverty on the health and stability of their patients.

In less than 3 months, the MLP but has already assisted more than 30 families. Typical assistance includes applications for Supplemental Security Income and appeal of denial or loss of Medicaid benefits.

Jamye Ward is a 4th generation El Pasoan, whose life in El Paso attracted her to work for the poor and under-represented. She spent the first seven years of her legal career as a corporate lawyer and, though that was a very satisfying experience, she “was not in direct contact with people who desperately need legal representation.”

Jamye states, “El Paso is a wonderful city full of good people and values I love and respect. Unfortunately, it is also a city full of needs and limited resources to meet those needs.” With the Medical-Legal Partnerships, El Paso is at the forefront in providing innovative ideas to provide services to low-income individuals.

Coda

Emma’s shift at the reception desk is ending. She will now start her secretarial duties, such as calling clients and drafting letters. For more than 20 years she has been at TRLA. When asked why she stayed so long, she replies, “I love what I do. Every day is different.”

Alberto Mesta Jr. is the branch manager of the El Paso office of Texas RioGrande Legal Aid. He is a graduate of the University of Texas School of Law.

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HOW CIVILIZATION CAME TO EL PASO

Pro Bono Et Malo

From Odometers to Divorces

Access to Justice in the Sage Brush and Chaparral Days of the 20th Century

Part III

■ BY BALLARD COLDWELL SHAPLEIGH

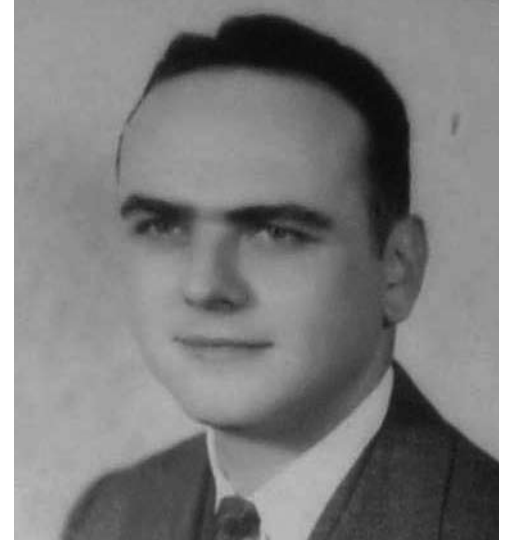
Access to justice in Texas, be it civil or criminal, is rooted in the tradition of providing legal representation to indigent defendants accused of felonies and misdemeanors. The guarantee of legal counsel in criminal cases, regardless of ability to pay, has been the law in Texas for over 150 years, and for more than 100 years before *Gideon v. Wainwright* was handed down in 1963.

As early as 1857, the Texas Code of Criminal Procedure provided that, “(w)hen the defendant is brought into Court, for the purpose of being arraigned, if it appears that he has no counsel, and is too poor to employ counsel, the Court shall appoint one or more practicing attorneys to defend him.” In addition, Article 1, Section 10 of the present Texas Constitution also guarantees the right of counsel, and this guarantee has been found in every Texas Constitution since Texas became a Republic in 1836.

Never mind that Lone Star-style due process, during those lonely days and lonely nights before 24-hour cable TV news, also allowed defense counsel to be appointed up to one day before trial. Texas has been good about providing lawyers to all those in need, and not just to those facing the noose.

But lawyers who fall asleep, especially in the glare of Gideon’s trumpet, have been a problem. Because of them, the State of Texas attracts national headlines and a famously bad rap when it comes to the defense of indigent people and their access to justice, sadly so given a legal history certainly more glorious than that of Florida, as Mr. Gideon discovered when he was forced to act as his own lawyer in a burglary case, all the while maintaining his innocence and telling the trial judge, “The United States Supreme Court says I am entitled to be represented by counsel.”

There is, for example, the story about the defense lawyer described in court filings as “no more sentient than a potted plant” who, according to the court reporter and several of the



The late Mark F. Howell (L, in 1969) and the late Schuyler B. Marshall, III (R, in 1964), both graduates of U.T. Law School, figured prominently in the effort to bring legal aid to El Paso in the '60s.

jurors, frequently fell asleep for up to ten minutes at a time during his client’s death penalty trial.

The lawyer denied sleeping. Rather, he said, he was concentrating with his eyes closed. A federal appeals court ruled that, “Unconscious counsel equates to no counsel at all.”

Then there was the lawyer with El Paso roots, and a father who had served on the Eighth Court of Appeals, who was permitted the standard six to nine months to submit a writ for a death row inmate. However, he did nothing for three years.

When he was summoned before the Court of Criminal Appeals in 2006 to explain - gasping for breath after running so as not to be late - he told the court that he had done nothing on the case beyond meeting briefly with his client and obtaining the trial record.

“Over the years my attitude toward work changed. Frankly, my practice slowed down,” he said, shrugging. The court found him in contempt, fined him \$500 and assigned a new lawyer to the writ. A few weeks later, he enjoyed the distinction of being the only lawyer

to be kicked off the court’s habeas list for poor performance.

Of course, other attorneys try to maintain their attitude toward work and still worry about meeting deadlines. There was the East Texas lawyer in a 2003 appeal whose submission was comprised mainly of his death row client’s incoherent letters. He blamed the pressure of meeting deadlines for the condition of the writ, which cited only one precedent and made few legal arguments. “I’m just about out of carbon paper,” reads the strikingly unconventional brief, which earned him a fee in excess of \$20,000 from the Texas treasury. “As soon as I get some more typing supplies I have about thirty more errors I want . . . in my appeal.”

More recently, Sharon Keller, the chief justice of the highest criminal court in the state, refused to keep her court open past 5 p.m. so defense lawyers for a convicted killer on death row could file a last-minute appeal. The killer, convicted in the 1986 rape and murder of a Houston-area nurse and mother of seven, was put to death hours later. The Presiding Judge

was put on trial for judicial misconduct last August.

Her opponents, who now call her "Sharon Killer," wanted her resignation or removal from office. A special master ruled in August that Keller did not deserve to be removed from office or even to be given "further reprimand beyond the public humiliation she has surely suffered." The situation has still not run its course. In February, prosecutors for the State Commission on Judicial Conduct argued that Keller's "willful and/or persistent conduct" in the case authorizes the commission to sanction her anyway.

After *Gideon v. Wainwright*, the United States Supreme Court has repeatedly held that people accused of criminal offenses that might result in incarceration or loss of life have the right to legal representation at taxpayer expense.

The policy reasons for providing free legal services for the poor in civil matters is similar: there is little justice in a fee-for-service system for clients who cannot pay a fee, and it is not in our nation's best interest to leave significant segments of the population vulnerable to injustice.

The effort to bring legal aid to El Paso for civil disputes began as early as 1953, when Yale Law School graduate Richard T. Marshall, tried to get the Bar interested in helping the poor. By 1957, he had persuaded Ricky Feuille, a graduate of the University of Virginia Law School, to help present a proposal for legal aid to United Fund (now known as the United Way).

In 1966, the El Paso Bar Association finally got into the act by appointing a committee on legal aid chaired by 1964 Bar President, Schuyler B. Marshall, III. Its purpose was to draft a proposal for Project Bravo to submit to OEO (Office of Economic Opportunity) for funding. The proposed budget called for annual salaries of \$12,000 for a chief attorney, \$9,000 for an assistant attorney, \$7,200 for an investigator, and \$4,200 and \$3,600 for two secretaries. At that time, a lawyer fresh out of law school could expect to earn \$8,400 to \$12,000 with a local firm. With one year of experience, those salaries increased to \$12,000 and \$15,000.

The Bar's proposal was intended to be similar to the Bar's already existing referral service. It called for an office with five lawyers on the fifth floor of the old courthouse, where the Elections Department and the Court of Civil Appeals were already located. The overflow would be handled by other Bar members according to their specialty on a rotating basis.

The Bar Association's first proposals were

39 EP Dealers Named In Odometer Injunctions

A two-month investigation into odometer tampering in El Paso area closed Tuesday when 11th District Judge Edwin Herrero in El Paso signed 39 permanent injunctions against car dealers accused of the deceptive practice. The first action against the practice anywhere in Texas, the move by the State Attorney General's office is the most sweeping against odometer tampering in the nation. In a flurry of legal activity several weeks in the past, Wayne Rogers of the Attorney General's office filed the barrage of injunction petitions. Last Tuesday, attorneys for the defendants immediately filed general denials. But Herrero apparently agreed to the terms of the injunctions, both sides allowed Judge Herrero to rule immediately, and he granted the permanent injunctions, effective immediately, without any further hearing. The injunctions will prohibit each of the dealers named from rolling back the mileage — directly or indirectly — on cars they intend to sell to the public. The court's action also requires dealers to disclose in writing any changes to odometer mileage due to replacement or repair.

Mercury; Gen Hens Oldsmobile; George Super Volkswagen; Lone Star Auto Sales; Mack Massey Rambler; Navajo Buick; Northwest Detroit; Northeast Toyota, Inc.; Ford Schneider Pontiac Co.; South Auto Sales. Attorney: C and F Motors; Car City; D and D Motors; Deed Motors; Dick Canales; Moore; Treasury; Geraldine Motor Co.; Dyer Auto Sales; Fairview Motors; Francisco Auto Center; Hayes Porsche; Audi; Kemp Motor Co.; Kress Auto Sales; Northern Dodge, Inc.; Rollins Motors Co., Inc.; Tri-State Auto Rental; Vehicle Rentals Inc. and Arango Motors, Inc. In Austin, Attorney General Crawford Martin said the suits were filed under the Deceptive Trade Practices Act because Texas has no law making odometer tampering illegal. He said that other actions may follow, Martin said time and staff limitations make complaints against offenders hard to pursue, especially against individuals. "While a majority of the injunctions involve car dealers and leasing compa-

Today's Chuckle: The insurance is very high who finds he is insured by a lender and the finds out the lender's. (C) The Weather: El Paso and vicinity — Considerably steady and continued cool Wednes- Tuesday next chance of rain. 80 to mid 60s, following overnight breeze of

The El Paso Times

Odometer Rollbacks Have Been Probed

By ALLEN PUSEY A two-month investigation into the practice of tampering with odometers in El Paso area closed Tuesday when 11th District Judge Edwin Herrero in El Paso signed 39 permanent injunctions against car dealers accused of the deceptive practice. The first action against the practice anywhere in Texas, the move by the State Attorney General's office is the most sweeping against odometer tampering in the nation. In a flurry of legal activity several weeks in the past, Wayne Rogers of the Attorney General's office filed the barrage of injunction petitions. Last Tuesday, attorneys for the defendants immediately filed general denials. But Herrero apparently agreed to the terms of the injunctions, both sides allowed Judge Herrero to rule immediately, and he granted the permanent injunctions, effective immediately, without any further hearing. The injunctions will prohibit each of the dealers named from rolling back the mileage — directly or indirectly — on cars they intend to sell to the public. The court's action also requires dealers to disclose in writing any changes to odometer mileage due to replacement or repair.

WESTERN UNION TELEGRAM W. A. HARRISON, INC. 598-5411

A Lapse Of Activity Odometer Probe Stalled?

By ALLEN PUSEY Turning a lapse of activity into an apparent stall, the failure of the State Attorney General's Office to file actions this week against local car dealers suspended of odometer tampering has given officials in El Paso cause to suspect that

UNDERSTANDING LACK OF FUNDS PREVENTING PROSECUTION OF ODOMETER CASE, TEXAS CONSUMER ASSOCIATION OFFERS TO LOAN ATTORNEY GENERAL FUNDS TO CARRY OUT HIS RESPONSIBILITY ENTRUSTED BY THE PEOPLE OF TEXAS. THIS CASE IS MOST IMPORTANT TO CONSUMERS IN TEXAS. TEXAS CONSUMER ASSOCIATION LEON SANDERS

El Paso Buyers May Take Closer Look at Mileage on Used Car 'Cream Puffs'

By JANE PEMBERTON A lot of second-hand car buyers are going to be looking pretty close at the mileage on those "cream puffs" days, now that the Attorney General's office has launched an investigation in El Paso into the practice of tampering with car odometers. "A lot of variation, a legal method of setting records, materials and memos from an incorporated firm, have been handed out to a number of local new and used car dealers," The Herald-Post carried the above story on the current investigation which may lead to statewide legal action across Texas. The Attorney General's office yesterday announced that their representatives are handing out letters of violation to El Paso. An El Paso mechanic told the Herald-Post today that turning back an odometer which registers mileage on a vehicle) can be done in several different ways and none in particular difficult for a person with mechanical knowledge. "The hardest method, but probably the most accurate, is to roll up the dash and get to the odometer," he said. "Then take off the back cover plate of the odometer. You can see all the gears which run."

El Paso buyers may take a closer look at the mileage on used cars. The final issue of the investigation, which has been largely discussed, is to replace the odometer system. The mechanic who made a living from the practice, including one last detailed practice for his purpose. There is no State Law banning the actual practice of odometer tampering, but the sale of vehicles with lower mileage readings is considered to be illegal. "The last and less common method, which is hardly ever done anymore, is to replace the whole odometer system. The way used mainly on certain small cars and cars where the odometer system was non-removable. To do it, they just uncrew the unit and replace it with another odometer system, probably obtained from a wrecked car, which has low mileage or which contains a warranty record on the car." The mechanic noted that any tampered mechanic can probably spot a car in which mileage has been tampered back. "If he knows where to look and



A.G. Crawford Martin

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Allen Pusey, now managing editor of the ABA Journal, covered the odometer rollback story for the El Paso Times and the El Paso Journal, and Jane Pemberton reported for the Herald-Post. The controversy, which generated local headlines in the summer and fall of 1972, eventually spread across the state.

rejected by the OEO at least three times. Schuyler Marshall even met with Sargent Shriver, the national director of OEO (and the first director of the Peace Corps and President Kennedy's brother-in-law), when the latter visited El Paso in October, 1967. Marshall, the son of a Dallas County Sheriff, indicated to Shriver that he was unhappy with the "run around" the bar committee had received.

Marshall also said the OEO did not agree with the concept that offices be located in the courthouse because the poor would fear a building symbolizing, for them, a great deal of negativity from other dealings. He said that the OEO had suggested a storefront.

Shriver agreed to reconsider, but the Bar's proposal was rejected again. Marshall told an interviewer that the plan was rejected because Shriver wanted an innovative program that would organize the poor and include "such things as rent strikes, marches on City Hall, and sit-ins in tenement owner's homes," activities Marshall considered to be akin to revolution. Marshall maintained that the Bar proposal had a means for voicing the poor's complaints — they could bring their complaints to a lawyer in the proposed program and the lawyer would go to City Hall to voice it.

Other lawyers, like Richard T. Marshall and Mark F. Howell, described the Bar's 1966 proposal as nothing more than a "token program" consisting of a few lawyers applying a referral service to handle 400 to 500 cases a year. They said it would be assigning cases to lawyers who had no interest in them. To prod the Bar along, Dick Marshall and Tom Diamond formed a group called "Consejo" with the objective of submitting a proposal they knew had no chance. The point of this effort was to make the Bar aware that it should "get busy." In November, 1968, Mark Howell began to develop his own proposal. Howell, whose father Ben R. Howell was also a prominent El Paso lawyer, visited the regional office of OEO

to determine the requisites of an application for funding. He also drew from the success of other cities. And his efforts coincided with a career change, announced in March 1969, from being a partner in the firm of Peticolas, Luscombe and Stephens to starting a solo practice in the Southwest National Bank Building.

Mark Howell's proposal was accepted and funded, and the legal assistance program began in April 1969, which the Bar Association opposed. The Bar's opposition resulted in the El Paso program being financed directly by the national Office of Legal Services, rather than through a Texas state organization.

Once the office was opened in the fall of 1969, a young staff under Fred Weldon's direction got to work on typical low income legal needs: divorces (which the office "automated" using early automatic paper tape "programmed" typewriting equipment to prepare repetitive court filings, social security disability denial challenges, child custody cases, unemployment compensation hearings, immigration cases, welfare denials, public and private housing evictions, and, especially at EPLAS, consumer rights issues.

But EPLAS also was involved in major "impact" litigation of the sort that infuriated the program's opponents. Besides Steve Bercu's *Morales* case, the office appeared as counsel for plaintiffs in a desegregation case against the El Paso School District, obtained a ruling requiring the presence of interpreters where necessary in unemployment compensation proceedings, brought suit to declare unconstitutional the absence of an *in forma pauperis* appeal process for low income tenants fighting eviction from below code properties, and successfully represented intervenor low income voters in the *Bullock v. Carter* case at the U.S. Supreme Court holding unconstitutional the requirement of a filing fee in Texas Democratic Party primary elections. A police brutality suit and help in organizing a public housing tenants group (and then representing that group in disputes with El Paso Housing Authority) were also "impact" representations taken on in the early years of EPLAS.

Even in more conventional consumer rights representations, EPLAS attorneys found cases that had impact far beyond their individual clients. For example, consider the odometer roll back controversy and this cast of characters: UTEP student Bill Meredith, a local car dealer, legal aid lawyer Clinton Cross, assistant district attorney Doris Sipes and the Texas Automobile Dealer's Association.

There is only one group of people that



Clinton F. Cross, one of the last U.T. Law graduates to be awarded an L.L.B. & a J.D. in 1968, hired on with the El Paso Legal Aid office in 1969, and was the lawyer assigned to Bill Meredith's odometer rollback case.

is as much if not more maligned in public opinion polls as lawyers, and that is car dealers. Ironically, in recent polls about whom Americans trust, poor people, teachers, police officers and protestant ministers typically rank highest. Lawyers, stockbrokers and managers of HMOs rank the lowest. But car dealers are the bottom dwellers.

In 1971, Bill Meredith was in the market to buy a used car. He visited a local dealership on Mesa St and ambled through the used car lot escorted by a salesman. One car in particular caught his eye. While taking stock of the interior, he looked in the glove box. There he found the owner's manual and, serendipitously, a service log in which the prior owner had kept meticulous records.

The log entries described the lube jobs, oil changes and all other work, and gave the odometer readings on each date of service. As he sat in the front seat, the student looked over the log and found the mileage on the last date of service - 51,072 miles. The young student then glanced over at the odometer on the dash board. To his jaw-dropping amazement, the odometer on the dash board read 32,000 miles. Someone had turned back the mileage by 19,072 miles to make the car appear as if it had much less usage than it really had.

When confronted, the car dealer admitted to rolling back the odometer. The excuse was, "every dealer in town does it."

Meredith did not buy the car but instead took his complaint to legal aid, where he talked to Clinton Cross. Cross, who at the time was also Vice President of the Texas Consumer

Association, collected written evidence and a sworn statement from the student and submitted both to the Attorney General's office.

For the first time ever, Attorney General Crawford Martin, who had recently been defeated in his re-election bid by John Hill, took the position that the practice was deceptive. The office secured from the local dealer an Assurance of Voluntary Compliance. The dealer did not admit he had rolled back the vehicle's odometer, but promised to never in the future roll back odometers of used cars offered for sale by his business. The Assurance was filed in Austin.

Because of the allegations about odometer tampering, El Paso District Attorney Steve Simmons decided to begin his own investigation. Doris Sipes, chief of the Consumer Fraud Section of the DA's office, was put in charge. She convened the grand jury and gathered more evidence about the practice. The District Attorney's new evidence was then turned over to Attorney General Crawford Martin.

The Attorney General received the evidence, but failed to take action. By December 1971, the story erupted in the midst of coverage about the presidential campaigns of Richard Nixon and George McGovern. Allen Pusey, who is now the managing editor of the ABA Journal published in Chicago, reported on the odometer scandal for the *El Paso Times* and for the *El Paso Journal*.

An *El Paso Herald-Post* article about the odometer roll-backs shared the front page with news about what was most likely Bill Clinton's first-ever visit to El Paso. Clinton, then a Yale law student, had taken a job with McGovern's campaign and was assigned to lead his 1972 presidential campaign in Texas. He arrived in El Paso on September 10, 1972 to meet with Woodrow Bean and others to plan a big Democratic Party "Love In" necessitated by Bean's unapologetic support for Hubert Humphrey.

By early September, 1972, the probe appeared "stalled like a used car," as the *Herald-Post* put it, when the Attorney General's office, which held exclusive jurisdiction over complaints about deceptive trade practices, failed to appear in El Paso as scheduled to file petitions for preliminary injunctions against local car dealers.

"We have reason to believe," an unnamed source in Austin told Allen Pusey, "that lawyers representing the car dealers have been in close contact with the Attorney General's Office regarding this investigation." Similar investigations in Dallas and Houston had also bogged down.

Weeks earlier, investigators from the AG's office collected volumes of records from El Paso car dealers suspected of spinning back the mileage on used car odometers. The investigation produced sworn affidavits from three local mechanics all of whom made a living from this activity. One of the roll back specialists kept detailed records for tax reasons. The state's investigators were eventually relieved of their duties.

When Attorney General Martin failed to file suit against any of the El Paso car dealers as promised, claiming "lack of funds," Leon Sanders, president of the Texas Consumer Association, sent General Martin a telegram from Center, Texas (a small town seventeen miles from the Louisiana state line) offering to loan the AG sufficient funds "to carry out his responsibilities entrusted by the people of Texas." A few days later, Robert Owen, chief of Crawford Martin's Consumer Protection Division, replied, informing Sanders that his office had "just found" sufficient funds to continue its investigation.

In November 1972, the Attorney General's

Office obtained judgments in the 171st District Court from Judge Edwin Berliner granting permanent injunctions against thirty-nine new and used automobile dealers in El Paso for odometer tampering. Thereafter, the AG also accepted 1500 Assurances of Voluntary Compliance from car dealers throughout the state of Texas. In these Assurances, filed in Austin, every member of the Texas Automobile Dealers Association, while denying that they had ever rolled back the mileage on used cars, promised never to do so in the future.

All the names of the thirty-nine El Paso car dealers sued by the Texas Attorney General's office were published in the local newspapers.

Days later, a letter to the editor of the El Paso Times expressed outrage that the "used car crowd" had been let off the hook. The letter writer complained that one of his employees bought an automobile with more than 80,000 miles but, he wrote, the odometer read 56,000 miles at the time of purchase.

"Who got stuck on these 'deals,' he asked, 'people who couldn't afford it, that's who. The

working guy or gal who needed transportation to get to and from work as our city bus system has been and is lousy, city wide. ... If you and I as individuals pulled a stunt like that we would be so far back in jail it would take a pea shooter to feed us and a 30¢ post card to wish us 'happy day, sucker!'"

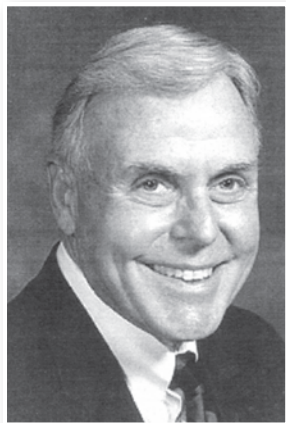
Lincoln advised lawyers to "discourage litigation and to persuade your neighbors to compromise whenever you can." But what would the landscape of justice look like without litigation? And despite the Bar's best efforts to promote *pro bono* activities and volunteerism, this is not exactly Mr. Rogers' Neighborhood of Make-Believe given the appalling violence in Juarez that recently took the life of Arthur Redelfs who was known to almost everyone who works in the criminal courts.

As the newspaper told us last July, El Paso still ranks last in volunteerism, and perhaps in singing "Won't You Be My Neighbor?" Therefore, he or she who loves the law, as the old saying goes, will get their fill of it especially if it means volunteering for people who are not likely to return the favor, or "pay it forward."

The "Civilization" series is written in appreciation of the 113th anniversary of the El Paso Bar Association and the agenda of Bar President Carlos Cardenas regarding access to justice, with assistance and encouragement from the poet, Edgar Rincón Luna. The following resources have been consulted: C.L. Sonnichsen, *Pass of the North-Four Centuries on the Rio Grande*; J. Morgan Broaddus, *The Legal Heritage of El Paso*; Morris A. Galatzan, *A History of the El Paso Bar Association, June 24, 1919 to July 24, 1984*; William Meredith, *The Early History of El Paso Legal Assistance Society 1969-1973* (Masters Thesis; UTEP); 32 Tex Bar J. 177, 377 (1969); Richard Neely, *Saving The Law*, Litigation Vol. 18, No. 3 at p. 3 (Spring 1992); *Judge Frees Texas Inmate Whose Lawyer Slept at Trial*, NEW YORK TIMES (March 2, 2000); *Man Freed After 13 Months in Jail*, DALLAS MORNING NEWS (August 8, 2000); *Death Penalty in Texas Case is Overturned, Citing Lawyer*, NEW YORK TIMES (August 31, 2000); *Muting Gideon's Trumpet: The Crisis in Indigent Defense in Texas*, STATE BAR OF TEXAS COMMITTEE ON LEGAL SERVICES TO THE POOR IN CRIMINAL MATTERS (September 22, 2000), *A State of Denial: Texas Justice and the Death Penalty*, TEXAS DEFENDER SERVICE (October 2000) (Chapter Six: The Right to Counsel in Texas: You Get What You Pay For). 4 *E.g. Judges. Resolution Seeks Upgrade of Legal Defense for the Poor in Texas*, FORT WORTH STARTELEGRAM (September 27, 2000); *Texas Needs to Provide More Competent Lawyers*, Editorial - DALLAS MORNING NEWS (September 12, 2000); *The Cost of Poor Advice*, TIME at 36 (July 5, 1999); *Burdine v. Johnson*, 66 F.Supp.2d 854 (N.D. Tex. 1999), *vacated and remanded* 231 F.3d 950 (5th Cir., October 27, 2000), *petition for rehearing en banc granted* 2000 WL 1785536 (5th Cir., December 5, 2000); *Judge Says Inmate Wrongly Convicted*, Howard Swindle and Dan Malone, DALLAS MORNING NEWS (September 10, 2000); *Texas Case Highlights Defense Gap*, Steve Mills, CHICAGO TRIBUNE (June 19, 2000); *Decision may take months on Judge Sharon Keller in execution case*, NEW YORK TIMES (August 22, 2009); Hilary Hylton, *A Texas Judge on Trial: Closed to a Death-Row Appeal?* TIME, Aug. 13, 2009; El Paso Public Library archives of the *El Paso Times* and the *El Paso Herald-Post*; and the records of the El Paso District Clerk's office. 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.

A Joint Adventure with Mark Howell

BY LARRY FIELDS



Mark F. Howell (L) circa 1999 & Larry Fields (R)

This is a story about my "joint adventure" with Mark F. Howell, solo-practitioner, lawyer extraordinaire, loyal El Paso Democrat, and cutting edge advocate on a number of controversial political issues, such as federally funded legal services for the poor.

I met Mark shortly after he and Malcolm McGregor had settled litigation against ASARCO addressing lead poisoning effects on El Paso children. I had just graduated Magna Cum Laude from South Texas College of Law, having served as

Editor-in-Chief of the South Texas Law Journal. Mark was involved, informed and inviting. I felt sincerity, honesty, integrity and warm, comfortable humor.

And then he said "Larry, I think you should join me in a joint adventure." It was 1975. I agreed.

Mark had a client whom we will call Nicholas. He was a gypsy, or gitano, who while crossing the border from Juarez into El Paso had some jewelry on the seat of his car. Nicholas said it was personal property that did not have to be declared. The government confiscated it, saying it was inventory for sale in the United States that he had failed to declare. Mark had

filed a suit against the government to recover the jewelry on a one-third contingent fee.

The government valued the jewelry at \$100,000. Nicholas said it was worth about \$20,000 – just a few nice pieces belonging to his wife.

The case was set for trial in about sixty days and Nicholas was nowhere to be found. Obviously, the case was worthless without Nicholas. We had to find him.

After exhausting the contact information we had, we started looking in the gitanoria, a gypsy commune, in Juárez. Mark was fluent in Spanish, about 6'4", athletic, with broad shoulders, narrow hips and a warm, friendly, gentle way, and he was good with people.

Some neighbors knew Nicholas and reported that he had moved to Mexico City. Nicholas had no telephone listing there, so it seemed reasonable, and maybe fun, for us to go there to find him. So we flew out of the Juárez Airport to Mexico City in search of our client. We would start in the gitanoria there. We hoped that when Nicholas heard that we are looking for him, he would contact our office.

We found the gitanoria, and I stood by while Mark explained to some community leaders that we were Nicholas's lawyers, that we were not the law or trouble, that we were looking for our client, and that our client would want us to locate him so he could recover his property.

First, our sincerity, veracity and commitment had to be evaluated. We were invited by a small group of men who appeared to be community leaders to drink with them what turned out to be a great deal of pulque, a killer Mexican alcoholic drink that is mildly flavored to taste like watermelon, peach, and mango. Apparently we passed the screening test. One of the men told us that Nicholas had gone to Guatemala City, Guatemala a few days before. He did not have a telephone number, but he gave us an address.

The next morning we missed our intended flight to Guatemala because of profound slow motion caused by the pulque. When we arrived it was late in the day so we caught a cab and made a beeline for the address. The cabbie was nervous. The address was in the part of town where the gypsies lived and he was not comfortable there. No problem, Mark's silver tongue and a generous tip got us there promptly, about 8:30 p.m. It was a retail shop with living quarters above it and a garage door-like metal security front. It was locked up, no lights on, located on a dark street, and there were no sign of lights in the neighboring shops. So we went next door and knocked, and knocked, and

knocked. Finally a somewhat irritated neighbor answered the door. He indicated that Nicholas had left town in a hurry the night before. The neighbor thought Nicholas was going to San Pedro Sula, a city in northern Honduras.

Under the circumstances what should a couple of really savvy, committed, "strictly business" lawyers do?

The next morning, we flew to San Pedro Sula. We stayed in a pretty nice Holiday Inn with an indoor swimming pool, located on the barren, unpaved, dusty, treeless city square. The gitanoria was small in population, but produced some useful information. More than one person knew Nicholas, and each one said that if he was in Honduras he was probably in Tegucigalpa, the capital. If he was not there, a woman living at an address they gave us should know where to find him.

Tegucigalpa is a beautiful, apparently affluent city, especially compared to San Pedro Sula. Tree lined, well-maintained cobble stone roads over scenic hills, fronted with old mansions, with bustling traffic and public transportation.

When we asked the hotel concierge about the location of the gitanoria, we received an incredulous response. The concierge would not give us a commitment that the cab driver could or would take us where we wanted to go; only that he would try to help us find Nicholas.

The cab driver showed signs of nervousness as we approached our destination. He would not go to the designated address, but only near the designated address, and he refused to wait or return for us.

We thought we could somehow find a way back to the hotel on our own, so behind a building on a corner we got out of the cab. Our driver also got out of the cab and showed us where we wanted to go by cautiously pointing to a building on a hill two blocks away.

We headed up the hill on foot, as the cab driver made a u-turn and drove away. As we walked, I was thankful for Mark's size, fluency and persuasive skills. After all, I told myself, we were doing a good thing for our client. All the people we had met were cordial and helpful. And I asked myself, perhaps hopefully, why would anyone want to harm us?

Our destination was a commercial building on the corner of two paved thoroughfares. There was very light traffic, no signs or advertising, white painted walls, with concrete sidewalk, curb and gutter, arched entry, a single metal door with a knob, no window, and no doorbell.

A hefty man, with two others behind him, answered the knock. He listened to our

explanation--that we were Nicholas's American lawyers, representing him in a case to recover his jewelry, that the case was set for trial, and that Nicholas would want us to find him. He told us to wait, and he then closed and locked the door.

A few minutes later, we were escorted into a large, almost empty, rectangular room and told to stand in a particular spot to await *La Reina*. *La Reina*? Questions flooded my thoughts: Were we to meet with a queen? Was this an audience? What was the protocol?

There was little pomp and circumstance. No music. The ten or twelve court guards wore no uniforms, but were burly men, each in his own way. They stood around the perimeter of the room, talking quietly, occasionally looking in our direction. We waited.

About 30 minutes later a hand carved, wooden throne was carried into the room by four of the guards. It was ornately carved, chair height with a seat about three feet in width and no back.

Then *La Reina* entered the room, laboriously walking, with a guard on each arm and a cane, or maybe it was a staff, in her hand. She was not wearing a crown or gown, just a simple dress. She was about five feet tall and probably weighed about two hundred and thirty pounds. She filled the seat of the throne.

Mark respectfully addressed her. She acknowledged that she understood the story, and that she understood our mission. She then replied that she had never heard of Nicholas, and did not understand why we thought she would know him. She dismissed us and instructed a guard to arrange for transportation to take us back to our hotel.

On our way back to El Paso, Nicholas called Mark's office from Paris, France. He said that he had heard we were looking for him. He reassured us that he and his wife would be back in El Paso in time for the trial.

As trial approached, the government disclosed that the jewelry in evidence had been lost. The government offered \$20,000 for the jewelry. We settled for an amount between that offer and the \$100,000 that the government insisted the jewelry was worth. That one-third contingent fee was plenty to cover our travels, and then some.

And so began my Joint Adventure with Mark F. Howell. I am honored and proud to have advocated at his side. Maybe it is true that what we send around comes around. I assign Mark at least partial blame for a card my loving wife once gave me. It said: "If you are not living on the edge, you are taking up too much room."

SENIOR LAWYER INTERVIEW

ALAN RASH

■ BY CLINTON F. CROSS

This month I interview a “senior lawyer” who lived and practiced in a time only some of us remember.

His work, and his law firm’s work, should be remembered because it left a significant imprint on this community that continues to vibrate today.

CROSS: *Tell me a little bit about your parents.*

RASH: My father, Glenn Rash, was born in Montana where my grandfather was the owner of a stage coach line and a livery stable. My father gave up on horses and became a diamond driller and a mining engineer. My mother, Clara Chambers, was born in Canada, and her father was a “frontier” Methodist minister, farmer, newspaper editor, and shop keeper. My parents were married in Clairsholme, Alberta in 1916. He worked in many mining endeavors in Canada, Alaska, the western United States and in Arizona. I was born in 1931 in Fallbrook, California.

My father was fortunate during the great depression to get a job with a mining company in Mexico. It was in Mexico that I spent all my early childhood years.

CROSS: *So did you go to school in Mexico?*

RASH: I started Primary School in a company operated facility in the City of Pachuca, State of Hidalgo. Because mining community personnel in Mexico during the 1930’s were quite diverse, the Mexican, United States and United Kingdom flags all flew over the school; and before starting classes in the morning, the students would gather together and sing the Mexican National Anthem, the United States’ National Anthem, and God Save Our Royal King.

CROSS: *I assume you eventually moved back to the States.*

RASH: When I was ready for junior high school in 1943 my parents moved me to El Paso and where I attended Austin High School. I entered Texas Western College in 1949. I graduated with a B.A. in January of



I was a sole practitioner in March of 1969 when Tom Diamond, my first boss with the Texas Highway Department, and I decided to establish a law firm together, which ultimately became Diamond Rash, P.C. We practiced law together for thirty-nine years.

1953 and enrolled in the Graduate School at UT Austin with the intent of getting a Masters in Economics.

CROSS: *So you have a double degree?*

RASH: No, before I could finish I got drafted. I spent the better part of the next two years in the Army during the latter part of the Korean War. I was released from active duty in February of 1955 and discharged from the Reserve as a Sergeant in April of 1961.

CROSS: *Then you went to law school?*

RASH: Yes, in August of 1957 I was admitted to the University of Texas Law School. My brother in law, Dick Shinaut, a

navy veteran, and I started together, studied together, and in January 1960 also graduated together. I was admitted to the State Bar in April of that year.

CROSS: *Tell me about your family.*

RASH: I married Joy Shinaut in May of 1956. We have now been married for 53 years. Joy has been a school teacher, a church administrator, a Realtor and always a home keeper. We have been together during hard as well as good times. We have three sons and ten grand children. We now enjoy the peace and quiet of retired life. Our oldest son Steve is a CPA and a senior partner in Lauterbach & Borschow in El Paso. Rick owns a Val Pak franchise in Phoenix. Paul is an agent with American General in El Paso.

CROSS: *O.K., your wife put you through law school, or at least put up with you through law school. So, what did you do after you graduated?*

RASH: Joy and I decided to come home to El Paso. After the Bar Exam in March, there was an awkward period before I knew what my grade would be, and I was not yet a lawyer. I had a wife and two children and I needed a job.

I got lucky. Tom Diamond was the chief right-of-way agent for the Texas Highway Department. He hired me to engage in the acquisition of land for I-10. Tom soon left that office to work for the County Judge, Woodrow Bean.

I learned a lot in my first job about eminent domain, and negotiating to buy land from unwilling land owners while acquiring land for the proposed construction of Interstate 10 through East El Paso, Sierra Blanca, and Van Horn.

In late 1960 I “hung” up my shingle and started to practice law. From that point until I retired in 1999, I never failed to earn enough fees to pay the rent. As a young lawyer, I was mentored by Jerry Shifrin and Jim Irion. Both of them were fine men, good lawyers, who have both since passed on. Needless to say, I took on

any case that walked in the door. I never made a specific count, but my best recollection is that there were about 300 lawyers then practicing in El Paso County.

I was a sole practitioner in March of 1969 when Tom Diamond, my first boss with the Texas Highway Department, and I decided to establish a law firm together, which ultimately became Diamond Rash, P.C. We practiced law together for thirty-nine years. Tom Diamond is the best lawyer I have ever known. He has the unique and expert ability to recall and understand the law and apply it to the facts in question, and reach the correct conclusion.

In addition to Tom Diamond, I have been fortunate to be associated with many good lawyers such as Don Leslie, Nelson Smith, Larry Schwartz, John Batoon, Ron Jackson, Bob Truhill and John Akard.

CROSS: Did the Diamond, Rash firm specialize in any particular area of practice?

RASH: We valued all of our clients. However, I think the City of El Paso and its various instrumentalities, as well as the Tigua Indian Tribe, and the Alabama Coushatta Indian Tribe, were especially important.

We concentrated on bankruptcy, real estate, domestic relations, probate, immigration, commercial transactions, insurance defense, product liability, municipal law which included utility rate regulation and public and/or municipal finance. There was some personal injury litigation.

From 1980 until I retired, I concentrated primarily on municipal finance as an Issuer's Counsel or as Bond Counsel in connection with the issuance of tax exempt municipal bonds by governmental authorities.

I remember with respect the excellent service provided to the justice system by Federal District Judge R. E. Thomason, and by State District Judges David Mulcahy, R.E. Cunningham, Hans Brockmoller, Bill Ward, Ed Berliner, Morris Galaztan, Sam Paxson and Ward Koehler; and by County Court at Law Judges M.V. [Buddy] Ward, Richard Crawford and George Rodriguez, Sr.

CROSS: Tom Diamond is still around, but he won't answer any of my questions.

RASH: There should be a book written about Tom's activities on behalf of Texas Indians, and his role in obtaining recognition for the Tiguas, the Kickapoos, and the Alabama Coushattas all as federally recognized Texas Indian Tribes, should not be forgotten. Our

work in this area also included litigation involving land claims, and efforts to establish gaming casinos. Additionally, Tom played an important role in the creation of the Guadalupe National Park.

CROSS: What were some of your more interesting cases?

RASH: We were hired in the mid-70's by the City to represent it in what has been called the "Civic Center Case". The welds to the huge metal boxes that provided support for the civic center theatre "sombbrero" roof cracked. The contractor quit working, and the building could not be completed. Also, the flat roof to the main exhibition hall proved to be structurally defective.

This evolved into complex litigation involving the general contractor, various sub-contractors, several material suppliers and vendors, architects and engineers, and a national welding and metallurgical institute. Many El Paso lawyers, as well as out of town lawyers, and expert witnesses were retained and/or hired and we were all involved in years of discovery and preparation for trial. Tom Diamond, a registered civil engineer with a degree from Stanford, was a key member of our trial team.

The case was ultimately settled. The City's interest in the theatre building and the roof to the exhibition hall was protected and conserved. All the structural defects were fixed.

CROSS: What about your work for the Tiguas?

RASH: We assisted the Tiguas in establishing their first gaming casino. It was a matter of understanding and applying established Indian law to a completely new body of federal law concerning Indian gaming. The organization and establishment of a functional gaming casino by the Tiguas was not a simple matter and took years to accomplish. Even though it has been temporarily restricted, it will inevitably be recognized as a legal operation for the Indians and be reestablished.

CROSS: Any criminal cases?

RASH: I was appointed by Federal Judge Darwin Suttle to represent an inmate incarcerated in the Atlanta Federal Prison, in a *habeas corpus* proceeding, which had been moved back to El Paso where he had been tried and convicted. The defendant had been observed receiving a large bundle of various controlled substances in Juarez, transporting the drugs to El Paso, and then boarding a bus

with the drugs and traveling to New York, where he was arrested.

The initial trial involved the "old" Federal marijuana statute, and the trial judge, Owen Brewster, had included a reference to the presumption clause in the charge to the jury, which clause was an integral part of the statute. The Defendant had received excellent representation by court appointed counsel in that trial.

Subsequent to his conviction and sentence, the Supreme Court decided, in what was known as the Timothy O'Leary case, that the presumption clause in the statute was unconstitutional. The issue in the *habeas corpus* proceeding was whether or not the decision in the O'Leary case should be applied retroactively.

The case was successfully tried before Judge Suttle who ruled that it should be applied retroactively. The Justice Department appealed to the 5th Circuit, where the decision of the trial court was upheld. Certiorari was denied by the Supreme Court. As a result, the defendant's conviction was overturned. And, as a result of this decision, many other convictions were also thereafter overturned.

I worked on this case for about two years. It involved a great deal of expense, including travel and the printing of pleadings filed with the appellate courts. I received no compensation for my time or reimbursement of expenses, and I expected none.

CROSS: Any public service work?

RASH: In 1960 I worked with many friends, led by Tad Smith, to strengthen the Republican Party in El Paso. As part of that effort I served as Chair of the County Republican Party from 1964-1965 and again from 1969-1970.

Incidentally, Tom Diamond served as Chair of the County Democrat Party in 1964. However, we never let conflicting political perspectives interfere with our law practice.

I ran unsuccessfully in 1962 for election to a new seat for El Paso in the Texas House of Representatives, and in 1968 for Judge of the 65th District Court upon the retirement of Judge R. E. Cunningham. I thought I had heard a public cry that said: "Rash, we want you". However, what that cry really said, was: "Rash, stay home!" Regardless of the outcome, both campaigns were worth the personal effort.

Over the years I have worked for the election of many Republican candidates to local, state and national office. Such efforts were always worth the experience, particularly when El Paso

County supported Republicans, particularly some gubernatorial and presidential candidates. I was especially pleased to assist in the efforts to secure the appointment of Ward Koehler as District Judge by Governor Clements, and thereafter to work in his campaigns for reelection. Further, I was fortunate to work as Special Counsel in 1971-1972 to the Committee to Re-Elect the President, the RNC and the State GOP, as to ballot security matters in Texas.

I was appointed to the Board of the Texas Guaranteed Student Loan Corporation by Governor Bill Clements on April 28, 1989, and confirmed by the Texas Senate on June 5, 1989. I was reappointed to the Board by Governor George W. Bush on March 27, 1995, and confirmed by the Texas Senate April 5,

1995. I served on the Board continuously for nine years, with five of those years as Chairman of the Board. During my tenure on the Board, the Corporation guaranteed 2.9 million student loans for 1 million Texas post secondary students in an amount exceeding \$8.8 Billion Dollars.

I was an active and participating member of the various Masonic Bodies in El Paso.

I was a member of Mt. Franklin Kiwanis Club, and I served as President from 1971-1972.

I was a Board member and an officer of the El Paso County Historical Society. El Paso has an impressive and fascinating history that deserves preservation.

I worked in the Sun Carnival Association

for more than ten years. I had the honor to serve as President in 1977. It is a special community effort and involves a thousand or more volunteers every year in many activities, including the Parade, the Basketball Tournament and the Sun Bowl Game. It probably does more than any other community effort to provide national recognition for El Paso.

CROSS: *What are you up to these days?*

RASH: I am retired and do not practice law. Joy and I live a quiet life and enjoy our activities with family and friends. I have had several extensive back surgeries, but I am recovering nicely.

Ethics opinions from the professional ethics committee for the State Bar of Texas

SEPTEMBER 2009 - FEBRUARY 2010

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.

Guy N. Fields, III
Committee Member

SUMMARIES OF ETHICS OPINIONS

Opinion No. 588 (September 2009): Client, who is not a lawyer, consults lawyer concerning a claim under the Texas Deceptive Trade Practice-Consumer Protection Act. In accordance with lawyer's usual practice, lawyer proposes a contingent fee agreement that provides lawyer will receive one third of the total amount recovered and requires client to pay all costs and



expenses. Following a jury trial, client receives a judgment for \$12,000, including \$6,000 for reasonable and necessary attorneys' fees. The defendant paid the judgment. Pursuant to the fee agreement, the contingent fee paid to the lawyer was \$4,000, with the net payment to the client of \$8,000.

The Ethics Committee held that Rule 5.04(a) of the Texas Disciplinary Rules of Professional Conduct, which provides that a lawyer shall not share legal fees with a non-lawyer, was

inapplicable to these facts. It held that there would be no violation when some amounts paid for legal fees pursuant to a judgment are retained by the litigant, unless the award of legal fees legally belongs to the lawyer rather than the client. Under Texas law, in most cases an award of legal fees belongs to the litigant and not the litigant's lawyer. Therefore, there was no impermissible sharing of legal fees.

The Ethics Committee contrasted this Opinion with the conclusion reached in Opinion 526 (May 1998) on the basis that attorneys' fees awarded in a class action suit could not be shared because in a normal class action suit a court award of attorneys' fee is specifically made to the attorneys representing the class and not to the class members.

Opinion No. 589 (September 2009): In connection with representing a client, a lawyer learns facts strongly indicating that the opposing party and an adverse witness may be involved in illegal activity in which the client is not involved. The lawyer is considering reporting this information to the appropriate law enforcement authorities.

The Ethics Committee held that the Texas Disciplinary Rules of Professional Conduct do not specifically require a lawyer to report

possible illegal activity of an adverse party or witness. If the information regarding the activity was confidential that related to the client or was supplied by the client, then Rule 105 would generally prohibit reporting unless the client consented or reporting was required under a court order, the Texas Disciplinary Rules of Professional Conduct, or other law. Additionally, Rule 4.04(a) restricts such reporting if it has no substantial purpose other than to embarrass, delay or burden the third party. Further, Rule 4.04(b)(1) would prohibit a lawyer from reporting the activity if the lawyer's sole purpose is to gain an advantage in the matter for which the lawyer is providing representation.

For purposes of applying Rules 4.04(a) and 4.04(b)(1), the lawyer's purposes must be evaluated on a case-by-case basis, taking into

account all circumstances. Moreover under Rule 8.04(a)(1), the lawyer is prohibited from seeking to circumvent Rule 4.04 by causing the lawyer's client to make the report that would violate Rule 4.04 if made by the lawyer.

The Opinion specifically does not address obligations imposed under other applicable laws or rules, such as Section 261.101 of the Texas Family Code which requires the reporting of child abuse or neglect.

Opinion No. 590 (December 2009): A law firm offers membership in the firm to a lawyer conditioned upon the lawyer's signing an agreement providing that: (1) if the lawyer leaves the firm, the lawyer will not solicit the firm's clients to become the lawyer's clients; and (2) after the termination of the lawyer's membership in the firm, the lawyer will pay

the firm a percentage of all fees collected by the lawyer for services after the lawyer leaves the firm to clients that had been clients of the firm.

The Ethics Committee held that Rules 5.06(a) and 1.04(f) of the Texas Disciplinary Rules of Professional Conduct prohibit such an agreement.

Rule 5.06(a) specifically prohibits a lawyer from participating in a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

Rule 1.04(f) specifically prohibits an agreement requiring a lawyer to pay to a law firm a percentage of fees received by the lawyer from former firm clients for the lawyer's services after the lawyer leaves the firm.

EPYLA STAR OF THE MONTH

John Valdez

BY PATSY LÓPEZ

Have you ever wondered how one gets to be featured in the El Paso Young Lawyer's Association Spotlight article? This month's attorney definitely merits a description of the process. EPYLA takes nominations from its board members for this honor, and I must say that I have never seen as overwhelming a response for one individual as I did for this issue's spotlighted attorney, Mr. John Valdez.

For those who have never met John, he is a fourth year associate at the El Paso branch of Ray, Valdez, McChristian and Jeans with a reputation for being an all around good guy.

John grew up in central El Paso and graduated from Austin High School before enrolling at UTEP. Although John's childhood dream was to become an attorney, he gave up on the idea in his early college years and decided to become an accountant instead. But as fate would have it, John encountered UTEP Professor Dr. Webking and the Law School Preparation Institute, which encouraged him to

pursue his dream. In 2001 John graduated with an honors accounting degree and went on to attend law school at Texas Tech University.

John is licensed in Texas and New Mexico and currently practices civil litigation, primarily in New Mexico. In his personal life, John stayed true to appreciation of the outdoors which was instilled in him by his father. He has a purple belt in judo and was inducted in to the 'El Paso Boxing/Martial Arts Hall of Fame' and named El Paso's "Martial Artist of the Year" in 1997. John is also an avid snow boarder and mountain biker. His completion of the 'New Belgium Brewing Company's Urban Assault 35-Mile Bike Race' in Austin, Texas last summer, with a broken elbow and two fractured wrists, is a testament to his commitment and dedication to everything



he does.

Amidst all of this, John has always found the time to be an active member of EPYLA. He can be relied on to participate in the organization's activities and help on any project when asked.

Because John is quite humble about his accomplishments I enlisted the help of his wife, Scott Hulse Associate Diana Valdez, to unearth the interesting facts about John I have shared with you.

When asked about his future goals, John very modestly responded that he would like to enjoy life and try to maintain a good balance between work and his personal life.

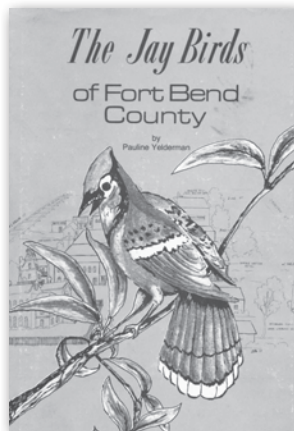
We thank John for his work with EPYLA and we look forward to his continued participation in EPYLA and other professional organizations.

The Book Review

Some El Pasoans are familiar with the two U.S. Supreme Court cases that originated here challenging the White Primary legislation enacted by the Texas legislature during the 1920's. Dr. Lawrence Nixon challenged that legislation twice, took his challenges to the U.S. Supreme Court twice, won both cases, but as a result of continued political machinations did not get to vote in the Democratic Party primary until after World War II. The history of this legal struggle is documented in Conrey Bryson's book, *Dr. Nixon and the White Primary*, a copy of which is available for checkout in our law library.

Few El Pasoans, however, are aware of the last of the White Primary cases, a case that arose out of Fort Bend County, Texas. The Jaybird Democratic Association of Fort Bend County, a private organization with membership limited to Whites, was formed shortly after the Civil War by former confederates concerned about the growing political power of the Black population in their county. Long after *Smith v. Allright*--which after World War II held Dr. Nixon's old enemy (the Democratic Party's White Primary) unconstitutional--the Jaybird Association continued to conduct its own primary in Fort Bend County. After the primary, the winners of the Jaybird Association's primary would be embraced by the Democratic Party as their party's nominees to run in the general election against the Republican Party's nominees for office.

The Jay Birds of Fort Bend County reviews the history of the Jaybird Association, and the subsequent struggle to hold this primary unconstitutional. As in the earlier White Primary cases, the NAACP led the fight to



THE JAY BIRDS of Fort Bend County A White Man's Union

By Pauline Yelderman

TEXIAN PRESS, WACO, TEXAS 1979

This month Clinton F. Cross reviews a rare book about the Jaybird Primary of Fort Bend County, Texas—a primary that effectively disenfranchised Blacks from voting in Fort Bend County until the 1950's, available for checkout in the Judge Robert J. Galvan Law Library.

declare the Jaybird device unconstitutional. The NAACP retained Houston attorney J. Edwin Smith to challenge the practice. Smith had to overcome the argument that the Fort Bend County procedures did not constitute "state action" and thus did not fall under the prohibitions of the Civil Rights Amendments to the United State's Constitution. In *Terry v. Adams*, 345 U.S. 461 (1953), the U.S. Supreme Court struck down the practice. Years later, Smith explained, "I had to win. Otherwise, there would have been 'Jaybird Associations' all over the United States."

In 1958, Smith ran for the Texas Supreme Court against Judge Wilmer Brady Hunt of Houston (whose son, Grainger, was one of the co-founders of the Chihuahuan Desert Research Institute) and Justice Robert Hamilton of the El Paso Court of Civil Appeals. Judge Hunt's campaign took a turn for the worse when Grainger got bit by a rattlesnake. Grainger almost died, and Judge Hunt quit campaigning. The two Houston lawyers split the vote, and Justice Hamilton, who was really from Midland, won the race.

Readers are invited to submit book reviews for publication in the El Paso Bar Journal. Books reviewed should be available for checkout in the Robert J. Galvan Law Library. Readers are invited to contribute books to the library, or recommend their purchase.

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Share Computer Files – With Yourself and Maybe Others

■ BY DAVID J. FERRELL

djf@elpasolaw.com

Remember when the “tennis shoe network” was the only network that law firms had? You would prepare your document, save it to a floppy, then walk it to your partner’s office and give it to him for collaboration. Then we networked with wire. Ethernet cards were installed in everyone’s computer and wire ran through the ceiling or under the carpet or anywhere else so all computers were joined either through a “server” or on a “peer to peer” basis.

Next, wireless networks came into being. A wireless enabled router could connect all computers in the firm without wire. That was great, but I still saved certain unfinished items of my work and emailed them to myself or saved them to a thumb drive to work on at home or at the courthouse or wherever.

Of course I have GoToMyPC on my office desktop and I can access that computer from anywhere, but sometimes it is a little difficult since I have 3 levels of encryption that I have to go through to access my office computer. So, is there an easier solution, at least for small jobs?

Yes, for simple document access that you may be working on at the moment but you don’t want to be anchored to your office there is a free program called DROPBOX.

Dropbox uses a very simple process. The interface is built right into your desktop(s). The Dropbox website has easy to read instructions on how to download and install the software. There are five basic steps.

1. Download the software from <http://www.dropbox.com/>

2. Install the software (this creates your Dropbox folder on your desktop)

3. Drag and drop any file or folder into your Dropbox folder.

4. Once your file(s)/folder(s) are inside your Dropbox folder, the program immediately starts syncing it to the Dropbox website secure servers. After this has finished, your Dropbox icon on your taskbar is marked with a green check. Your file(s)/folder(s) are now safely backed up online and also accessible from the Dropbox website. (<http://www.getdropbox.com>)



com)

5. Install Dropbox (<http://www.getdropbox.com/install>) on the other computers you use, and they’ll also receive a copy of the files you’ve put in your Dropbox. And, anything you put in any Dropbox folder on any of your authorized computers will sync to all other computers that you authorize.

A great feature is that Dropbox is watching your file(s), so, any changes you make will sync up instantly and automatically to your other computers. This gives you the freedom to work on any computer you choose. For more help adding files to Dropbox, go to <https://www.getdropbox.com/help/90>.

Another great feature is the “PUBLIC FOLDER”. The Public Folder lets you easily

share single files in your Dropbox. Any file you put in this folder gets its own Internet link so that you can share it with others-- even non-Dropbox users. These links work even if your computer is turned off. Using the Public Folder option takes two steps.

Step 1: Drop a file into the Public folder.

Step 2: Right-click/control-click this file, then choose Dropbox > Copy Public Link. This copies the Internet link to your file so that you can paste it somewhere else, the LINK is on your clipboard. Now you can share this file with others: just paste the link into e-mails, instant message conversations, blogs, etc.! For help with sharing files, go to <http://www.getdropbox.com/help/16>. Caveat: Don’t put private items in the PUBLIC folder.

The free Dropbox account comes with 2GB of space that you can use for as long as you like. If you need more space you can buy 50 to 100 GB for \$9.99 to \$19.99 a month.

Dropbox works on Windows XP, Windows Vista, Windows 7, Macintosh and Linux.

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www.reportersink.net New website arriving soon

ADVANCE SHEET, circa 1250

BY CHARLES GAUNCE

Legal Reference Librarian University of Texas at El Paso

Some claim that greed and corruption have always been and still are a part of our flawed human condition, and this case supports this contention. We begin our discussion with the charging documents for Inquisitions Concerning the Venison in the Forest of Rockingham, in the Name of Hugh of Goldingham. The charge of interest is as follows:

“By writ; three does. The wife of Sir Geoffrey of Langley, the justice of the forest, caused a doe to be taken in the bailiwick of Rockingham on the Monday next after the Octave of the Purification of the Blessed Mary in the same year; and a doe in the bailiwick of the park on the Wednesday next following; and a doe in the same bailiwick on the Thursday next following, of the gift of the lord king.”

Most of us who took property law in school had a hard time trying to understand springing uses, shifting uses, the rule against perpetuities, the doctrine of worthier title, and a motley

collection of early English arcana. We all know our teachers made us struggle with these concepts to torture us, not because they were useful.

This case involves forest law. Although forest law is as arcane as much of the property law we had to learn in school, our case involves a moral lesson that remains very relevant for some of us in El Paso today.

Several hundred years ago, the crown owned all of the forest lands, and laws protecting these lands from the people who actually lived there were complex, extensive, and strictly enforced. The game that lived in the forest and the fallen branches were property of the king and could only be taken by royal permission - permission that was not easily obtained. The laws were enforced by a cadre of officials. Among these officials were the foresters who walked the forests daily to assure the laws were adhered to and to discover wrong doing, verdurers who received the evidence of wrong doing from the foresters and presented it to the forest court, wardens who were the executive officers of the king administering forest business (it

was to these officers any permissions to take game or wood were addressed), justices of the forest who were in the oversight role over the wardens, and, of course, the king.

The allegation in the charging document recited above is that the wife of a justice of the forest acquired a hobby of taking game from the forest without the king's permission. While we do not know what happened to Sir Geoffrey's wife, we can assume that the charge carried with it a substantial embarrassment for Sir Geoffrey as his direct supervisor (the king) was the person from whom his wife was stealing.

Those who are close to powerful people sometimes gamble they will receive protection from the powerful if they are caught. This case highlights the fact that such protection is not always guaranteed. If Sir Geoffrey had attempted to protect his wife, he could have been charged as a co-conspirator. Protect your spouse or protect yourself—it can be a tough call.

For those close to the powerful, and sometimes even for the powerful, greed and corruption has its risks.

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



Legal Literati

This month the El Paso Bar Journal literary page presents a poem by Scott P. Foster

ICE CREAM

I want ice cream,
delicious, sweet, and cold.
Freeze my tongue, now I can't talk.

Send my memory for a walk
down stony trails of old
when I would dream
of ice cream.

Scott P. Foster formerly served as prosecutor in Paris, Bonham, and El Paso, Texas. He is former City Attorney for Paris, Texas, and was a police officer in Lufkin, Texas.

LEGAL LITERATI CALL FOR SUBMISSIONS:

The practice of law requires the ability to use the written or spoken word to provoke or prompt an intended result. Consequently, throughout history, lawyers have been known for creativity in the arts as well as in formulating arguments. The El Paso Bar Association wants to celebrate this aspect of the legal profession, and to encourage its members to recognize and cultivate their own creative impulses. We ask members or other law related professionals to provide their poems, lyrics, very short stories, or other creative expression.

Please submit your work for consideration to Poetry Editor
Donna J. Snyder via email to donna.snyder@epcounty.com.



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Judicial Spotlight

Name:

Presiding Judge Daniel Robledo City of El Paso

Court:

Municipal Court # 5

Years on the Bench:

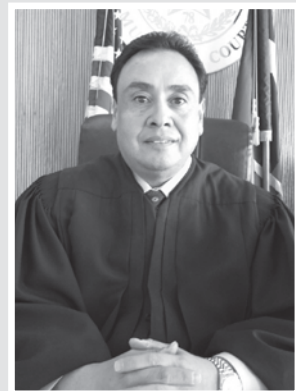
11 years

Education:

Law Degree at Thurgood Marshall School of Law, Houston, Texas

Deputy Court Clerk:

Lupe Holguin



What is your view of the role of a court in society?

Courts should be "equalizers" in our society. In other words, justice should be administered equally in our judicial system between "the well to do" and "not so well to do" people in our society, in civil disputes as well as in criminal cases.

What characteristics and qualities do you believe are important for a judge to possess?

Deciding when to allow the admission of evidence in a case is one of the most important jobs of a trial judge. For example, when a criminal case is before the judge and certain evidence, crucial to the prosecution of the case, is suppressible, and the defense attorney has filed the proper motions, it is the duty of the judge based on the facts of the case and the law, to suppress the evidence. A good judge will follow the law without regard to the political consequences.

Describe a day when you, as a lawyer or a judge, felt particularly satisfied or proud.

In 1998 I had some serious health issues and I almost died. It took me from six months to a year to restore health and get my business back to full swing. Since my near death experience, I have felt more keenly pride and satisfaction in my work. As lawyers and judges, I believe we should all take a great deal pride in our work and our profession, every day of the year.

What is your favourite book or movie?

I am presently reading a book called *The Steel Wave*. It is a true story about the invasion of Europe during World War II, starting with the landings on the beaches of Normandy on June 6, 1944. This book is written by individuals who actually participated in planning and fighting the war against the Germans to liberate France and other countries. My dad participated in some of these campaigns. He used to tell me stories about his experiences.

I am reading *The Steel Wave* because I want to better understand what my father, Justo Robledo, experienced during his campaign across Europe, and what actually happened to the soldiers when they stormed the beaches of Normandy, fighting against the German defenses. My dad passed away last year on May 4, 2009 and I miss him dearly.

HON. ROBERT J. GALVAN COUNTY LAW LIBRARY NEWS

BY LYNN SANCHEZ

The Law Library has acquired the following materials of general interest, which are available for check out:

Dees, Morris (with Steve Fiffer),
A Lawyer's Journey: The Morris Dees Story
(American Bar Association, 2001)

Klarman, Michael
*From JIM CROW to CIVIL RIGHTS:
The Supreme Court and the Struggle for Racial Equality*
(Oxford University Press, 2004)

Lewis, Anthony
Gideon's Trumpet
(Random House, 1964)

Yelderman, Pauline
The Jay Birds of Fort Bend County
(Texian Press, 1979)



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El Paso Interpreters & Translators Association

15th Annual Conference "Expanding Our Interpreting & Translating Horizons"

The Holiday Inn El Paso
900 Sunland Park Drive
El Paso, Texas

SATURDAY// 4/17/2010
8AM - 5:30 PM

Opening Remarks: The Honorable Kathleen Cardone, Judge, U.S. District Court, Western District of Texas

Keynote Speaker: Dr. Kirsten F. Nigro, Chair of Languages & Linguistics Department, UTEP

Presenters: Dr. Roseann Dueñas González, Maria Cecilia Marty, Mary Esther Diaz, Eta Trabling, Mary Mooney, & Adriana Garcia.

Exhibitors: Agnese Haury Institute for Interpretation
The Monterey Institute of International Studies
Pacific Interpreters Inc. El Paso Community College
MasterWord Services InTrans Books Services
Recruiting agencies
Lunch, pastries, coffee and refreshments are included with registration fees.
Door prizes

Registration Deadline: April 12, 2010

On-site registration from 7:45 - 8:00 AM

Registration fees:
Members: \$100 Non-Members: \$125 Students: \$50

On-site registration fees:
Members: \$125 Non-Members: \$150 Students: \$75.00

Registration Info: www.metroplexepita.org

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Josefina Font: 915-203-5633

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El Paso Lawyers for Patriots
Veterans Program
& Legal Clinic
Saturday, May 22, 2010

El Paso Community College
Valle Verde Campus
9:00 a.m. - 2:00 p.m.

**Consumer and
Commercial Law Seminar**
FREE

April 9, 2010 - 9:00 A.M.

8th Court of Appeals
(12th Floor - El Paso
County Courthouse)

Sponsored by the:

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Law Section of The State Bar of Texas
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*RSVP: Nancy Gallego at 532-7664
to confirm that you will attend.*

Space is limited!

Texas Trial Lawyers Association
/El Paso Bar Association

Ethics Seminar

Thursday, May 20, 2010

12:00 Noon

Cafe Mayapan
2000 Texas Ave.

Cost: \$15.00 includes lunch

Approved for 1.0 hours of Ethics

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Office space available, receptionist,
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SATURDAY, MAY 1, 2010

6:00 p.m. until 9:00 p.m.

EL PASO COUNTRY CLUB

Cost is \$50 per person

\$15.00 per child under 12 years of age

6:00 - 7:00 p.m. - Happy Hour

7:00 p.m. - 8:00 p.m. - Dinner

8:00 p.m. - 8:30 p.m. - Guest Speaker

8:30 p.m. - 9:00 p.m. - Awards

RSVP by Thursday, April 22, 2010

Please contact Nancy at ngallego.epba@sbcglobal.net
if you need additional information.

LAW DAY CHESS TOURNAMENT



The El Paso Bar Association is seeking volunteers to play chess in the annual **Law Day Chess Tournament** with other lawyers and a primary and secondary school children, who are primarily from low income school districts.

If you are interested in participating, please contact Omar Carmona at 921-9555.

ASSOCIATION NEWS

El Paso Women's Bar Association

♦ **SAVE THE DATE:** Please join the El Paso Women's Bar Association for its annual Charity Bash on Saturday, June 5th at the El Paso Country Club. The theme is "Lawyers Got Talent, Reloaded, Battle of the Bands!" Watch the mail for your invitation and contact ssno@scotthulse.com for details and/or to sponsor the event.

El Paso Paralegal Association

♦ The El Paso Paralegal Association will hold its April Luncheon on Thursday, April 15, 2010 at 12:00 noon at the El Paso Club. Cost is \$15 for Buffet or \$10.50 for Salad Bar. Guest Speaker will be Gary McNeil, Executive Director of the Texas Board of Legal Specialization who will be speaking on board certification. Please RSVP to Rachel Magdaleno at rmadkaleno@rbch.net

El Paso Young Lawyers Association

♦ The El Paso Young Lawyers Association will hold its April Luncheon on Thursday, April 15, 2010 at 12:00 noon at the Maria Bonita Restaurant, 717 E. San Antonio. Guest Speaker will be Enrique Moreno from the Citizens' Commission on Best Practices in Government.

The El Paso Young Lawyers Association

is soliciting nominations for Outstanding Young Lawyer, Outstanding Jurist, Outstanding Senior Lawyer, Outstanding Lawyer, Outstanding Pre-Law Student, the Liberty Bell Award, the Professionalism Award, the Pro Bono Awards and the Mediators of the Year Awards for 2009-2010.

Please submit your nominations to Denise Butterworth at dbutterworth@epcounty.com by Wednesday, April 14th, 2010.

The awards for will be presented at the Law Day Dinner on Saturday, May 1, 2010.

Please make your nominations as complete as possible. Describe your nominee's background, qualifications, and his or her activities or contributions, which will be considered when selecting the award recipients. Please also include his or her address and phone number in the nomination.

OUTSTANDING YOUNG LAWYER:

Please consider the following criteria: The nominee must be licensed to practice in Texas and must be 36 years of age or younger, or is in his/her first five years of licensure, regardless of age, on June 1, 2009. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING JURIST:

Please consider the following criteria: The nominee must be currently serving as an active Administrative, Federal or State Judge. The nominee cannot be standing for election or re-election during the year in which the award is given. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING SENIOR LAWYER:

Please consider the following criteria: The nominee must be licensed to practice in Texas. The nominee must have practiced law for 30 years or be over the age of 60 and have practiced law for 15 years. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING LAWYER:

Please consider the following criteria: The nominee must be licensed to practice in Texas. The nominee must be aged out of the Young Lawyer category (i.e., over 36 years of age on June 1, 2009), but not yet eligible for the Senior Lawyer category. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING PRE-LAW STUDENT

(The Cori A. Harbour Award):

Please consider the following criteria: The nominee must be a student enrolled in an institute of higher learning who plans to study law after graduation. In addition, while all outstanding qualities are considered, particular attention is given to service to the community, service to the profession, academic ability, maturity, and integrity.

PROFESSIONALISM AWARD:

Please consider the following criteria: The nominee must be licensed to practice in Texas. He or she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. The nominee should be an inspiring role model for the bar, respected by his or her peers, and someone who makes us proud of the legal profession. Nominations can be based on a lifetime, or a specific occurrence of professionalism. In addition, attention is given to service to the profession and service to the community.

PRO BONO AWARDS:

These awards honor individuals and law firms (large and small) for the volunteer work they do. Please consider the following criteria: Number of hours of pro bono work done, as well as, the volunteer attitude and effect of the nominee's pro bono work. In addition, attention is given to service to the profession and service to the community. These awards will be selected by the Pro Bono Committee of the El Paso Bar Association to honor those who have given so much to the El Paso community during the 2009-2010 Bar Year.

THE LIBERTY BELL AWARD:

The award is given to a non-attorney who has made a contribution to the legal community.

THE HONORABLE ENRIQUE H. PEÑA

MEDIATOR OF THE YEAR AWARD:

These awards honor an attorney and a non-attorney mediator for their work in 2009-2010. Please consider the following criteria: Effectiveness in mediation, allowing all sides to be heard in the mediation process, and contribution to promoting use of alternative dispute resolution as an alternative to litigation. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community. These awards will be selected by the ADR Committee of the El Paso Bar Association.

OUTSTANDING FEDERAL ATTORNEY:

Please consider the following criteria: The nominee must be licensed to practice in the State of Texas. This attorney must work in one of the Federal offices. He or she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. Please send your nominations to Nancy at the El Paso Bar Association office.

OUTSTANDING STATE ATTORNEY:

Please consider the following criteria. The nominee must be licensed to practice in the State of Texas. This attorney must work in one of the State offices. He or she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. Please send your nominations to Nancy at the El Paso Bar Association office.

Your nominations are sincerely appreciated and will help us recognize and give credit to deserving judges, lawyers and others who have made a positive impact on our profession and community.



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