



EL PASO BAR JOURNAL

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An Update of Events and Information

December 2013- January 2014

Playing Well With Others: Simple Professional Courtesies

By Chief Justice Ann McClure Page 7

Valuing Gideon's Gold: How Much Justice Can We Afford?

*By M. Clara Garcia Hernandez
and Carole J. Powell Page 12*

Morton Act Summary & Notice of Change in County Attorney's Office Open File Policy For Criminal Cases

By Patricia López Page 14



Stuart L. Leeds

proudly announces
the reopening of his law office.

January 1, 2014

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The El Paso Bar Journal is a bi-monthly publication of the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to the attention of Nancy Gallego. All submissions must be received by the Bar office on or before the 10th day of the month preceding publication. Calendar listings, classified ads, display ads, and feature articles should not be considered an endorsement of any service, product, program, seminar or event. Please contact the Bar office for ad rates. Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office. An article in the Bar Journal is not, and should never be construed to be, an endorsement of a person for political office.

PRESIDENT'S PAGE



Honoring our past and building for the future

This Journal should reach you before the Joint Bar Association Holiday Party scheduled for December 12 at the El Paso Community Foundation. It will be a great time for fellowship and to enjoy the holiday season. I look forward to seeing you there.

This Fall the El Paso Bar Association has continued its tradition of holding two fantastic service events—the Access to Justice Legal Fair in October and the El Paso Lawyers for Patriots Legal Clinic in November. Both events were very successful as they afforded members of the El Paso Bar Association the opportunity to meet with numerous members of the community and provide them with needed legal advice.

With great pride, the El Paso Bar Association held its November luncheon in honor of and salute to veterans. Star Chacon sang a wonderful rendition of our National Anthem. Thereafter, the special guest speaker was Col. Karen H. Carlisle, Staff Judge Advocate for the 1st Armored Division and Fort Bliss, Texas. Col. Carlisle is the first female attorney to ever hold that position. Col. Carlisle is the principal legal advisor to the Commanding General, Deputy Commanding Generals, Chief of Staff, the Division Staff, and the Garrison Commander and Staff. She leads and mentors over 150 attorneys, paralegal specialists and technicians.

Col. Carlisle's presentation reminded us how the members of our Armed Forces, both active and veteran, have played such an important role in protecting the rights we enjoy on a daily basis. As always, I encourage you to take time to thank those who have courageously served our Country.

This past November, the El Paso Legal community lost one of its shining stars with the passing of Richard H. Feuille. Mr. Feuille was a highly respected and admired attorney who practiced law in El Paso since 1948. Mr. Feuille first started practicing law in El Paso with the law firm of Jones, Hardie, Grambling and Howell, which later became known as Hardie, Grambling, Sims and Feuille. Thereafter, he joined the law firm of Scott, Hulse, Marshall and Feuille. Over the years, Mr. Feuille always found time to comfort and counsel friends and clients at times when they were experiencing personal problems. As many from his generation, Mr. Feuille proudly served in the military of the United States. He was also President of the El Paso Bar Association in 1972. Mr. Feuille was a great man who will be missed.

Dan Hernandez and members of his committee have done a great job in planning the El Paso Bar Association's 18th Annual Civil Trial Practice Seminar to be held in San Diego, California on February 13-15th, 2014. On behalf of the El Paso Bar Association, I invite you to join us for a weekend of fun and education.

The El Paso Bar Association will host an informative seminar on mandatory e-filing, the Odyssey system and standard court procedures on Thursday, December 12, 2013, scheduled from 1:30 p.m. to 4:30 p.m. in the El Paso County Commissioners Court, 3rd Floor of the El Paso Courthouse.

Randolph Grambling,
President

EL PASO BAR ASSOCIATION
December Bar Luncheon
Tuesday, December 10, 2013

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

*Guest Speaker will be Mario Martinez, who will speak
on his 50 years as an attorney.*

We will be honoring all our 50-year attorneys.

Door prizes will be given out

Please make your reservations by Monday, December 9, 2013 at 1:00 p.m.
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

Please make sure you RSVP.

EL PASO BAR ASSOCIATION
January Bar Luncheon
Tuesday, January 14, 2014

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

Guest Speaker to be announced

Door prizes will be given out

Please make your reservations by Monday, January 14, 2014 at 1:00 p.m.
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

Please make sure you RSVP.

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CALENDAR OF EVENTS

December, 2013

Tuesday, December 3

EPBA BOD Meeting

Tuesday, December 10

EPBA Monthly Luncheon

Mario Martinez, 50-Year Attorney

Wednesday, December 11

EPALP Monthly Luncheon

Thursday, December 12

EPPA Annual Attorney/Paralegal Luncheon

Thursday, December 12

Mandatory E-Filing Seminar

Thursday, December 12

Joint Bar Association Holiday Party

& Silent Auction

Friday, December 13

El Paso Family Law Bar Association

Holiday Party

Saturday, December 14

EPYLA "Christmas of Hope"

Tuesday, December 24

Christmas Eve

EPBA Office Closed

Wednesday, December 25

Christmas Day

EPBA Office Closed

Thursday, December 26

Day after Christmas

EPBA Office Closed

Tuesday, December 31

New Year's Eve

EPBA Office Closed

January, 2014

Wednesday, January 1

New Year's Day

EPBA Office Closed

Thursday, January 2

Day after New Year's

EPBA Office Closed

Tuesday, January 7

EPBA BOD Meeting

Tuesday, January 8

EPALP Monthly Luncheon

Tuesday, January 14

EPBA Monthly Luncheon

Thursday, January 16

EPPA Monthly Luncheon

Monday, January 20

Martin Luther King Day

EPBA Office Closed

Upcoming Events

February 2014

Thursday 13, Friday 14,

& Saturday 15, 2014

*18th Annual Civil Trial Practice Seminar
The Declan Suites, San Diego, CA*

UPCOMING HOLIDAYS

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

Tuesday, December 24, 2013

Christmas Eve

Tuesday, December 31, 2013

New Year's Eve

Wednesday, December 25, 2013

Christmas Day

Wednesday, January 1, 2014

New Year's Day

Thursday, December 26, 2013

Day after Christmas

Thursday, January 2, 2014

Day after New Year's

Monday, January 20, 2014

Martin Luther King Day

The El Paso Bar Foundation

wishes to announce that the deadline is

February 1, 2014 for grant applications to be filed with the Foundation for grants for the year 2014.

Please see

<http://www.elpasobar.com/barfoundation.asp>

for further information.



Save the Date!!!

18TH ANNUAL CIVIL PRACTICE TRIAL SEMINAR

February 13, 14 & 15, 2014

San Diego, California

The Declan Suites San Diego
at Symphony Hall (\$149 a night)

To make your hotel reservations go to <http://elpasobar.com/> or call 1/800/483-8173 and mention you are with the El Paso Bar Association group.

Registration form is on page 18 of this bar journal.

Meet You Board Leaders

Each issue the Journal will feature several members of the Bar's Board of Directors so that members will know their leaders and representatives.

Brock Benjamin



Brock Benjamin is serving the second year of his term on the Board of Directors. He is a board certified criminal law practitioner and has been on his own for three years. Prior to his solo practice, Mr. Benjamin was employed almost four years with

the District Attorney's office. Mr. Benjamin was the 2005 valedictorian of Thurgood Marshall School of Law and attended Austin Peay for his undergraduate degree. Says Mr. Benjamin of Board service: My dad always stressed [that] part of being a professional is participating in community activities. Part of being a lawyer is being active in the local bar and helping focus its efforts. I can't complain about what is happening if I am not part of the "solution." This year he plans to continue working on the Criminal Law committee's review of the indigent representation plan for El Paso. Mr. Benjamin enjoys hunting and camping with his children and is also a private pilot who enjoys "burning holes in the sky." He and his wife Monica are proud parents of 7 year-old Zev and 3 year-old Pax.

Phillip Mullin



Phillip Mullin is serving the last year of a term set to end in 2014. He has been in private practice since February 1979 concentrating primarily in the areas of family law, wills and probate law with some criminal

law. From 1976 to 1994, he served in the U.S. Army Reserve as a JAGC officer, retiring as a Lieutenant Colonel in 1994. Before 1976, he spent four years practicing government contract law at the U.S. Army Aviation Systems Command in St. Louis, Missouri and the U.S. Army Korea Procurement Agency in Seoul, Korea. From 1976 to February 1979, Mr. Mullin worked in the El Paso County Attorney's

office in the Child Support Division, CPS unit and as a misdemeanor prosecutor. Mr. Mullin is a graduate of Loyola University, where he received a B.A. in Political Science, and the University of Texas School of Law, Austin. He is past president of the El Paso Family Law Bar Association, El Paso Jaycees and St. Raphael Men's Association. He is an active member of the Knights of Columbus and has served on the El Paso Catholic Diocese Finance Counsel for over 20 years. While Mr. Mullin has been active in many professional and community organizations, he has not served on this Board but decided to do so "to offer my experience and perspective gained as result of my previous activities." This year he hopes to ensure the Board is reminded of the needs and perspectives of solo practitioners as well to assist the organization to effectively deal with issues affecting the military. He and his wife, Suki, have been married 38 years, have two children, Kathryn Waggoner and Patrick Mullen, and one grandchild, Nathan Wesley Waggoner. While he has made—what he calls—feeble attempts to play golf, he says, "Tiger and Lefty need not fear me."

Mark Dore



Mr. Dore is the newly seated Secretary of the El Paso Bar Association Board of Directors. In May 2014, he will have completed 20 years with Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C. where he currently practices employer-side labor and employment

law, primarily employment litigation defense. He began his professional work in the firm now known as Strong, Pipkin, Bissell & Ledyard, LLP in Beaumont where he developed an interest in labor law. Mr. Dore uses the term "labor law" because at that time "traditional union/management law was predominate over employment litigation." In 1987, he joined Alaniz & Schraeder, L.L.P., in Houston, where he learned the nuts and bolts of labor law and employment discrimination litigation. Through the assignment of a few El Paso clients, he

met Carl Green, Kurt Paxson, Bruce Koehler, Steve Hughes, and other lawyers with whom the thought it would be a great opportunity to work on a daily basis. In 1994, he joined the firm and he says of that move, "Joining the firm and moving to El Paso was one of the best decisions I ever made. Not only do I appreciate the opportunity to work in a respected firm and learn from great lawyers and good people, it is a true blessing to practice law in a collegial legal community like El Paso. I have never missed Houston or Southeast Texas." Mr. Dore graduated from Baylor University in 1977 (B.A.) and South Texas College in Law in 1983 (J.D.). He was a member of the Order of the Lytae and Comments Editor for the South Texas Law Journal. Mr. Dore is on the Board because the high practice demands forces lawyers to forgo devoting time to community service and helping others and this service will provide an opportunity to serve. Also, he wants to help preserve collegiality in the legal profession. Mr. Dore says that the practice has changed substantially from when he started practicing. He comments, "[In the past], civility was a requirement, not a sign of weakness. The stress of the law practice was far less when the lawyers knew and respected each other. The El Paso Bar Association is the one institution whose mission is to uphold those values." This year he hopes to assist with the continuing legal education efforts of the Bar and lend support to the projects that help the citizens of El Paso, including the Lawyers for Patriot's project and the Access to Justice Legal Fair.

Mr. Dore and his wife, Rhonda, have been married for 19 years which he describes as "the happiest 19 years of [his] life." Rhonda is Vice President of Sanders/Wingo Advertising, Inc., and an artist in her spare time. They have two children and two beautiful grandchildren, ages 1 and 3. Mr. Dore's stepson, Chris Little, was a star fullback for Coronado High School who now practices law in Houston. Mr. Dore enjoys photography, gym visits, open-water diving, and foreign travel. Along with three rescue cats, he has "acquired" about two dozen indigenous desert box turtles that signal the warm weather ahead when they emerge from hibernation every April.

Playing Well With Others: Simple Professional Courtesies

(First of three parts)

CHIEF JUSTICE ANN McCLURE
Eighth Court of Appeals

INTRODUCTION

When I first began writing on ethics some years ago, I thought that the perfect title would be, “Is Civil Law an Oxymoron?” The word “oxymoron” is a figure of speech or expressed idea in which apparently contradictory terms appear in conjunction with each other (e.g. *bittersweet*). It is believed the word originated from the Greek word *oxumMros*, which meant “pointedly foolish.” I felt rather foolish myself when my research quickly revealed that at least three other commentators had already coined the phrase.¹ I shifted gears quickly. Perhaps we should focus as much on “courtesy” as we do “professionalism” and “civility.”

I can remember the early lessons I was taught as a child: don’t run with scissors, keep your elbows off the table, chew with your mouth closed, and play well with others. My mother wanted to raise a well-mannered daughter. How ironic that we need to be reminded even in our adult years. There are still schoolyard bullies among us. The bullies of the legal profession have been dubbed Rambo, although there are plenty of Rambettes in practice too.

WHAT DOES IT MEAN?

The concept of professionalism is amorphous; it means different things to different people. Thus, any rational discussion requires that we define our terms. Dean Roscoe Pound of Harvard Law School suggested: “The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood.”² Justice

Sandra Day O’Connor described it as requiring “adherence to the highest ethical standards of conduct” in the representation of clients while tempering “bold advocacy . . . with a sense of responsibility to the larger legal system. . . .”³

According to Justice Stephen H. Grimes of the Florida Supreme Court, a professional is knowledgeable, skillful, and ethical and treats fellow members of the bar with respect.⁴ In its broadest sense, professionalism is “an aspirational standard of conduct that exceeds the mandates of the Disciplinary Rules of Professional Conduct.”⁵ Whether it is a function of my age, my experience, or his role as a mentor, I am most drawn to the definition enunciated by former Texas Supreme Court Justice Eugene A. Cook: “To me, professionalism is synonymous with common courtesy, civility, and the Golden Rule.”⁶ To many, the Golden Rule has Biblical implications; to others it simply means, “What goes around, comes around.”

THE EMERGENCE OF RAMBO

Justice Cook identified several factors which contributed to the birth of the Rambo litigator: the tremendous increase in the number of attorneys; the increasing compensation; the increasing number of hours worked; the trend towards treating the practice as a business; and the negative perception of the legal community.⁷ Law schools continue to enroll and graduate the same number of students. The State Bar of Texas licenses more than 3000 lawyers per year. Some believe that the lawyer explosion feeds poor public perception. Competition is high – competition for jobs and competition for business.

This in turn feeds the advertising crisis – what gets clients in the door? Full page color ads in the yellow pages. Television ads with audio and visual effects. Solicitations following car accidents. One Houston attorney noted that in the 1950’s, practicing law was a calling; in the ‘70s, it was a profession; in the ‘80s, it became a business and now it is perceived as a racket.⁸

In my view, Rambo is an attitude – a belief that the rules don’t apply to those who take litigation seriously. One Dallas firm has succinctly, and quite publicly, declared that “[c]lient loyalty shouldn’t be sacrificed for professional courtesy.”⁹ A former president of the American Bar Association explained that to Rambo, “litigation is war. The lawyer is a gladiator and the object is to wipe out the other side.”¹⁰ But once again, Justice Cook says it best: “A Rambo lawyer’s meat ax approach is to the practice of law what date rape is to courtship.”¹¹ It’s a gloves-off, in-your-face, “gotcha” mentality: draw first blood; give no quarter; gain every advantage; make no concession; offer no compromise; play hardball and win at all costs.

There are many who believe that the death of civility coincided with sanctions and the civil death penalty – the ability to strike your pleadings. As a result, lawyers began to feel that if they accommodated their adversary, they were doing a disservice to their client. If you asked them, they would tell you the client expects Rambo; the client expects hardball; if I don’t play hardball, they’ll fire me, they’ll file a grievance, they’ll sue me for malpractice. So they did what they believed their clients expected. Is that an excuse? Maybe that really is

1. See Justice Eugene A. Cook, *Professionalism and the Practice of Law*, 23 TEX. TECH L. REV. 967 (1992), citing Justice Arthur Gilbert, *Civility, Trial*, April 1991, at 106 (“The phrase ‘civil law’ is becoming an oxymoron.”); Jeanette Ahlenius, *Do We Toss Them or Teach Them?*, 57 TEX. BAR J. at 1090 (November 1994) (“What is really at the root of the public’s perception that ‘professional lawyer’ is an oxymoron?”).

2. Roscoe Pound, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

3. Sandra Day O’Connor, *Meaning of Professionalism*. . . , *THE PROFESSIONAL LAWYER*, Spring 1989 at 1.

4. *THE BENCHER*, *THE NEWSLETTER OF THE AMERICAN INNS OF COURT FOUNDATION*, May 1990 at 4.

5. *Delta Air Lines, Inc. v. Cooker*, 908 S.W.2d 632 (Vance, J., dissenting), citing Jewel Arrington, *Everyday Professionalism*, 56 TEX. BAR J. 232 (1993).

6. Cook at 957.

7. Cook at 961.

8. J.D. Bucky Allshouse, *Professionalism in Family Law*, STATE BAR OF TEXAS ADVANCED FAMILY LAW COURSE Chapter 1, p.1 (1993).

9. Cook at 970, citing Loren Berger, *Waging ‘Rambo’ Litigation: Bickel & Brewer’s Tactics Stir Resentment*, *THE TEXAS LAWYER*, May 16, 1988, at 1, col. 1.

what the clients expect. They complain about Rambo when Rambo represents the other side. But when they need to hire a lawyer, they want Rambo on their side. And then there are those clients who themselves play Rambo and want to hire a puppet. J. P. Morgan was once quoted as saying, "I don't want a lawyer to tell me what I can't do. I hire him to tell me how to do what I want to do."

Recognizing Rambo

Rambo tactics are like pornography – you know it when you see it.¹² One humorist has offered the "Top 10 Ways to Spot a Rambo Litigator":

- (1) Foams at the mouth during depositions;
- (2) Traces of camouflage paint on the briefcase;
- (3) Proudly displays tattoos of his favorite objections;
- (4) Continually seeks clarification of difficult terms such as "you" and "when."
- (5) Always signs a settlement agreement in disappearing ink;
- (6) Office decor includes framed pictures of a spouse, children, and the family piranha;
- (7) Refuses to join a firm whose medical insurance does not cover regular rabies shots;
- (8) Affectionately refers to Attila the Hun and Genghis Khan as role models;
- (9) Was voted "Most Likely to Harass, Delay, and Obfuscate" in high school;
- (10) Look for the office building with the scorched earth in front.¹³

Recognizing the Problem

By 1987, the legal profession began to recognize that Rambo was a problem. The Dallas Bar Association was the first to adopt a mandate for professionalism, entitled "Lawyer's Creed" and "Guidelines of Professional Courtesy." The next year, the judges for the United States District Courts for the Northern District of Texas, sitting *en banc*, adopted the Dallas guidelines as standards of litigation conduct.¹³ While I have mentioned Justice Cook several times already, I have yet to say that in my view at least, he is the father of professionalism in Texas. When

he became a justice on the Supreme Court, he spearheaded the creation of a Committee on Professionalism. With Justice Cook serving as chair, the committee drafted a statewide code of professionalism. On November 7, 1989, both the Texas Supreme Court and the Court of Criminal Appeals promulgated and adopted THE TEXAS LAWYER'S CREED – A MANDATE FOR PROFESSIONALISM. As a result, Texas became the first state to implement an official, albeit aspirational, policy of professional conduct. The courts were quick to embrace it. "Neither justice nor our fellow man is served until the principles stated in this creed become the moral fabric that all lawyers wear throughout their personal and professional lives."¹⁵ With that impetus, the Texas Center for Legal Ethics and Professionalism was founded in 1989 to promote and enhance professionalism, ethics and civility among lawyers. The first of its kind in the nation, it seeks to address unprofessional behavior with a multi-faceted and systematic strategy. It operates as a learning center, a resource center, and a mobilization center.¹⁶ But Rambo isn't just a civil trial lawyer; he soon branched out into civil appellate practice.

Rambo "Appeals" to a Whole New Crowd

By the early 1990's, some appellate practitioners were noticing behavior that was "unnecessary, unprofessional and unlikely to make a favorable impression on the appellate court."¹⁷ In that article, Dubose explained the history of the Standards for Appellate Conduct, which stemmed from a paper he had written for the 1993 Advanced Civil Appellate Practice Course, entitled *Ten Suggestions for a More Civilized Appellate Bar*. These Ten Commandments, if you will, are as follows:

- (1) Do not make personal attacks on opposing counsel.
- (2) Do not accuse opponents of lying unless you can prove it or it is a matter of substance and significance.
- (3) Do not oppose motions for extensions of time, motions for leave to exceed the page limitations, or motions for leave to file post-submission briefs.
- (4) Agree to the substitution of copies when original documents or exhibits

have been lost.

- (5) In briefing, do not fail to provide record references.
- (6) Do not file last minute briefs.
- (7) Do not argue outside the record.
- (8) Avoid arguing frivolous positions.
- (9) Do not distract the court during your opponent's argument.
- (10) Communicate with opposing counsel throughout the appellate process.

When Dubose became the Chair of the Appellate Section in 1995, he appointed a committee, chaired by Charles R. "Skip" Watson of Amarillo, to draft an appellate version of the Texas Lawyer's Creed. Both Dubose and Justice Cook served on the committee, as did I, along with other appellate specialists. While the committee was hard at work, the Appellate Section conducted a survey in which appellate judges were asked, "What type of unethical or unprofessional conduct disturbs you most?" Here is their Top Ten list:

- (1) Misrepresenting the law.
- (2) Misrepresenting the record.
- (3) Personal attacks on opposing counsel.
- (4) Reference to matters outside the record.
- (5) Taking "pot shots" at a prior opinion of the court that stands against counsel's theory.
- (6) Sarcastic, histrionic or emotional arguments.
- (7) Physical reaction to opposing counsel's argument.
- (8) Apparent lack of preparation.
- (9) Frivolous requests for sanctions.
- (10) Inappropriate demeanor.

The Standards for Appellate Conduct were jointly approved by both the Texas Supreme Court and the Court of Criminal Appeals on October 30, 1997, except for the section entitled "The Court's Relationship with Counsel." By resolution dated November 5, 1997, the Eighth Court of Appeals adopted them in their entirety, specifically recognizing "that the justices themselves are in the unique position of putting a stop to unethical and unprofessional behavior." The

10. Cook at 970, citing THE NEW YORK TIMES, Aug. 5, 1988, at 21.

11. Cook at 979.

12. Robert N. Saylor, *Rambo Litigation: Why Hardball Tactics Don't Work*, A.B.A. J., March 1, 1988.

13. John G. Browning, *Top 10 Ways to Spot a Rambo Litigator*, TEX. BAR J. OCTOBER 1990 at 1094.

14. See *Dondi Properties Corp. v. Commerce Savings & Loan Ass'n.*, 121 F.R.D. 284 (N.D. Tex. 1988).

15. *Warrilow v. Norrell*, 791 S.W.2d 515, 531 n.3 (Tex.App.—Corpus Christi 1989, writ denied) (Nye, J., concurring).

16. See William B. Hilgers, *The Path of Professionalism*, TEX. BAR J. November 1994 at 1089.

two high courts finally adopted “The Court’s Relationship with Counsel” on February 1, 1999. As a result, Texas became the first jurisdiction in the United States to adopt standards of professional conduct directed toward appellate practice.¹⁸ Although the standards are applicable

17. Kevin Dubose, *Talking the Talk and Walking the Walk*, STATE BAR OF TEXAS ADVANCED CIVIL APPELLATE PRACTICE COURSE D, D-1 (1999).

18. Dubose at 1.

to both civil and criminal practice, one commentator has observed “that these issues arise almost entirely in the context of the civil justice system, not the criminal justice system. No one ever seems to ask why, but the question needs to be asked. I do not have an answer, but the implica-

19 Judge Royal Ferguson, *Should the Federal Courts of Texas Adopt the Texas Lawyer’s Creed?*, 57 TEX.BAR J. at 1110 (November 1994).

tions of the question are at least interesting and perhaps even far-reaching.”¹⁹

*Coming in the next issue:
The Standards of Appellate Conduct.*

ANN CRAWFORD MCCLURE

is Chief Justice of the 8th Court of Appeals.

A Tribute to Police Officers

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

I sat quietly on the sofa chair as I watched my little boy, Osky, so intently focused on a television show about law enforcement. I wondered what thoughts lingered in his mind at that moment. His little face and his expressions gave me a hint. He smiled as the police officers in the show went about the city in their cruisers. Osky took joy and pride in his heroes for their commitment to our safety. My son had discovered his dream, his life’s passion...his purpose in life. He never wavered.

Day in and day out police officers leave the comfort of their homes and embark on a perilous journey, which others sometimes take for granted. Often, what awaits them are routine encounters with those that violate the laws of civilized societies. However, the darker side also looms, often in unknown regions, at hours unexpected, and in hidden forms that bring great chaos and sometimes unparalleled distress to good people—murders, sexual assaults, robberies, and the many other felonies that create sometimes unbearable pain and suffering to many innocent victims and their loved ones.

Another important dimension to the practice of law enforcement involves the everyday good works of police officers, who go over and beyond simply enforcing our laws. We hear about a police officer buying shoes and a coat for a shivering homeless man cuddled up in a street corner. We hear about a police officer who works beyond his or her duty hours to assure that a lonely young lady caught in the cold rain in the middle of the night is given a safe ride in a police cruiser to



*Officer Oscar Gabaldón III
and Judge Oscar Gabaldón*

a warm and safe destination. We hear about a police officer who patiently takes time to counsel a troubled youth who has brought heartache to a single mother who does not know what else to do to keep her son from becoming a lost soul.

Police officers are trained to respect law abiding citizens and to interact with them in a courteous manner, but they must sometimes present themselves to suspected offenders in an assertive and firm demeanor, to better assure adherence to and respect for the law. In some of these encounters, in the heat of confrontation, some police officers may react inappropriately. As in all professions, it only takes one bad apple to put a black eye on the rest of the profession. We must be careful, however, not to judge all police officers collectively, based on the misconduct of a few individuals. The vast majority of our law enforcement officers are worthy of our highest

respect. They are the “boots on the ground” and the “first responders” in the struggle to uphold and enforce the “rule of law” in our free and civilized society.

A few days ago, I asked my son, Officer Oscar G. Gabaldón III what were some of the responsibilities he most enjoyed as a police officer. He gave me a litany of things he loved about his vocation; however, I was especially pleased to hear him say that he enjoyed the challenges and opportunities presented by trying to resolve conflicts and dilemmas through patient and meaningful dialogue. He hopes for success but when dialogue fails the safety and well-being of others is always his non-negotiable priority.

As my son concluded his comments, I began to think about my work and his. As judge of a child abuse and neglect court, I hope conflicts and dilemmas can be resolved by patient and meaningful dialogue, but when dialogue fails my priority is the safety of the children in my court. I then began to think about St. Michael the Archangel, the Patron Saint of Police Officers, and then the meaning of our time on this earth—that we are all here to serve others and not to just work for ourselves.

OSCAR GABALDÓN is an Associate Judge of the 65th District Court responsible for overseeing the trial of Child Abuse and Neglect cases. He is certified by the National Association of Counsel for Children and the American Bar Association as a Child Welfare Law Specialist (CWLS).

Association News

El Paso Paralegal Association

■ The El Paso Paralegal Association will hold its Annual Attorney Paralegal Luncheon on Thursday, December 12, 2013, at noon at the El Paso Club, Chase Tower, 201 E. Main Drive, 18th Floor. Special Guest Speaker: Texas

State Bar President Lisa Tatum. The cost is \$24.00 per person. Limited Seating – tickets must be purchased by December 6, 2013. Contact Kim Ramirez for tickets or for more information at (915) 546-5329 or orkram@kempsmith.com.

SENIOR LAWYER INTERVIEW

RICK FEUILLE

BY CLINTON F. CROSS

Clinton Cross interviewed Rick Feuille in October, 2004 and the interview was published in the November, 2004 issue of the *El Paso Bar Bulletin*. Rick died on October 22, 2013. The editors of the *Bar Journal* decided to republish the interview that Rick Feuille provided for the *Bar Bulletin* nine years ago.

CROSS: *Let's start with your childhood. Where did you grow up?*

FEUILLE: I was born in Mexico City, Mexico on June 12, 1920. My father was studying civil law there, as he planned to represent American oil businesses in South America and Mexico.

When I was six years old, my father suddenly died. My mother moved back to El Paso and I grew up here. I had two brothers and three sisters.

CROSS: *Tell me something about your educational background.*

FEUILLE: I attended Dudley Grade School and El Paso High. I then went to the University of Virginia. After obtaining my undergraduate education, I entered the University of Virginia Law School.

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

FEUILLE: My father was a lawyer and both my grandfathers were lawyers (one served on the Court of Civil Appeals in Texarkana) and many of my uncles and other ancestors were lawyers. I grew up believing I was supposed to be a lawyer.

CROSS: *When did you graduate?*

FEUILLE: Unfortunately, I was only in my second year in law school when the Japanese bombed Pearl Harbor. On December 8th, I left school and returned to El Paso where I enlisted as a private in the United States Army.

CROSS: *So you served as a "grunt" throughout World War Two?*

FEUILLE: Not really. I was soon commissioned as a 2nd Lieutenant in the Air



Rick Feuille

Corps. I was sent to the Pacific, and assisted the Marine Corps during the entire invasion of Iwo Jima. I saw the famous raising of the flag on the volcanic mountain there.

CROSS: *Any medals?*

FEUILLE: Bronze Star for valor and meritorious service.

CROSS: *So you enlisted as a private. What rank did you have when you were discharged four years later?*

FEUILLE: I was promoted to the rank of Major shortly before I was assigned to the Iwo Jima campaign.

CROSS: *In three years you went from private to major? I'd have stayed in the army and become a General. What did you do?*

FEUILLE: I went back to law school.

I graduated from the University of Virginia in 1948. Upon graduation I received the highest academic honors, including Order of the Coif. I was also a Rhodes Scholar nominee.

I then took the Texas Bar exam and got the second highest grade in the State.

CROSS: *At that point, you could have gone almost anywhere and worked for anyone in the United States. Why did you decide to return to El Paso?*

FEUILLE: El Paso was my home and I wanted to practice law and live in my hometown. Incidentally, my father began his practice here with Tom Lea and R.E. Thomason, so my legal roots were here also.

CROSS: *What are you doing now?*

FEUILLE: In 1957, I joined Scott, Hulse, Marshall, Feuille, Finger and Thurmond. I've been listed several times in "Best Lawyers in America." I'm eighty-four years old and still practicing law.

CROSS: *While working hard at school and your law practice, I assume—since you're still practicing—that you also pay attention to physical fitness?*

FEUILLE: When I was at the University of Virginia, I was Captain of the varsity tennis team. During the 1960's and 1970's I won numerous senior tennis tournaments, including El Paso City, New Mexico State, and the Southwestern Senior Championships.

CROSS: *What aspects of your career have been the most satisfying?*

FEUILLE: I have tried cases in every kind of court, including the Supreme Court of Texas and the Fifth Circuit Court of Appeals. However, I don't consider myself a trial lawyer. I'm a business lawyer. We business lawyers don't get to brag about winning cases we could

have lost. We contribute in quiet ways.

I also represent banks. The fact is banks are crucial in the economic development of any community. I don't like to brag. I do believe, however, that I have done my job and provided my clients the very best legal advice I can.

I have also been active in the Rotary Club of El Paso since 1972. I was a co-founder and twice President and I am presently Presidential Trustee and Chairman of the El Paso Community Foundation's Board of Directors. I have been actively involved in Our Lady's Youth Center which ministers to the poor and under-privileged in Juarez, Mexico and South El Paso for more than thirty years. On numerous occasions I have served as President and Board Chairman of that organization. I was President of the United Way in 1968. I was President of the El Paso Bar Association in 1972 – 1973.

There's a lot more. How much space do you have for this interview?

CROSS: *Not much more. I know you're also active in church activities. Can you briefly*

comment on that?

FEUILLE: I have been a member of St. Clements Episcopal Church for more than seventy years. I have taught Sunday school and adult Bible studies for years. I was Senior Warden seven times. I am a Lay Reader and Lay Minister, and on the Mission Committee of the church.

CROSS: *How has the practice of law changed since you began practice here a half-century ago?*

FEUILLE: I believe it has become more of a business and less a profession. I absolutely deplore the public advertising and solicitation that is going on. Based on the many adverse comments from non-lawyers that I receive, I believe it has degraded our profession. Surveys show that the general public now rates lawyers near the very bottom of the list of the most respected occupations. However, I'm proud to be a lawyer and glad that I can still practice.

CROSS: *What are the most important qualities of a good lawyer?*

FEUILLE: Honesty, morality, ethics, fairness, courtesy, and respect for all. It is important to ascertain and present the true facts of a case, communicate promptly with clients, and keep them advised regarding matters being handled for them. A lawyer must learn and present truthfully to the court and his clients the current applicable law, and thoroughly prepare for the task at hand.

CROSS: *Your firm hires lawyers all the time. What do you look for in an associate?*

FEUILLE: I hope our associates will work hard, do a good job, and serve their clients and their community. We have a right to earn a good living, but we should not practice simply for the money or the glory. The law is a profession, a kind of secular priesthood. We should commit ourselves to the service of others and our community, not just to ourselves.

CLINTON CROSS is an Assistant El Paso County Attorney responsible for prosecuting criminal Deceptive Business Practice cases.

ADVANCE SHEET, *circa 1325 A.D.*

BY CHARLES GAUNCE

From Pleas of the fair held at Carnarvon on the morrow [June 2, 1324] of Michaelmas in the nineteenth year of the reign of King Edward.

“Cadogan, Adam's son, plaintiff appeared against Meredith, Llowarch's son, in a plea of trespass. And the said Meredith came and acknowledged; therefore he is in mercy (12d.).

Meredith, Llowarch's son, was arraigned for that he carried arms at the fair of the lord king at Carnarvaron on the feast of St. James in the aforesaid year contrary to the prohibition of the justices. And the said Meredith came and acknowledged; therefore he and his pledges are in mercy (a half-mark).

Jevan, Traherne's son, was arraigned for the same. And he came and acknowledged; therefore he is in mercy (40d.).

Sum total, 11s.”

The arms discussed were undoubtedly swords or knives as the Chinese invention of gunpowder was not readily available in England until somewhat later. The first guns were notoriously unreliable and were probably considered more as novelty items to be displayed at the fair rather than weapons to be bandied about. Nevertheless, two people apparently asserted their right to carry arms at the fair and were called out for doing so.

While it is tempting to try to make this case about the right to bear arms, doing so is an exercise in the pointless, as we are, after all, discussing activities occurring long before the Second Amendment was written, and it occurred in a place to which the Second Amendment has no applicability. Rather, the case is interesting for the banality it seems to represent: Cadogan ratted out Meredith for carrying arms at the fair; Meredith admitted to carrying those arms; Jevan was also charged with carrying arms at the fair and he admitted it (although the rat who told on him is not identified). The importance of the case lies in the last line: “Sum total, 11s.”

This is not a situation where dastardly criminal activity was afoot in violation of the King's peace at the fair. Rather, this is pure and simple taxation in the guise of criminal enforcement. While a reasonable case can be made that public safety requires young ruffians to leave their implements of self-protection at a location removed from boisterous activity and strong drink, everyone involved seems to agree that paying a fine for a violation of the rules is perfectly appropriate punishment.

I am always amazed at how litigious our society is: every traffic ticket is cause for someone to assert how grievously they have been wronged by the government – it is all just too unfair. Meredith and Jevan chose the better course: Admit the error, pay the fine, and get on with life.

CHARLES GAUNCE is the Legal Reference Librarian at the University of Texas at El Paso

Valuing Gideon's Gold: How Much Justice Can We Afford?

(First of three parts)

BY M. CLARA GARCIA HERNANDEZ AND CAROLE J. POWELL

First published by the Yale Law Journal in June, 2013 and republished with permission

INTRODUCTION

In the fifty years since sounding *Gideon's* trumpet,¹ the Supreme Court has extended *Gideon's* reach to other contexts and classes of defendants. State and local governments have heeded this call, creating and reforming indigent defense systems. Why then do equal justice and fundamental fairness continue to elude us? Can they ever be anything more than ideals? Are they, like maturity, a road but never a destination? Of what value are *Gideon* and its progeny if individuals and communities today receive only as much justice as they can afford?

To deliver effective assistance of counsel, public defenders and other assigned counsel must meet certain performance criteria, carry reasonable caseloads, count on obtaining the necessary money and resources, and have ready access to a team of experts, investigators, social workers, and support staff. National defense standards addressing these crucial factors are readily available to help communities comply with *Gideon's* call.² Sadly, however, these standards rarely come with the necessary funding. The price of fundamental justice, equal access to competent counsel, and due process is steep in our deeply criminalized, widely institutionalized nation. Communities struggling to squeeze justice into their budgets dismiss these standards as unaffordable or unrealistic. Rarely do communities consider funding this mandate by reducing arrests and incarceration for petty crime, or by reducing prison sentences.

Gideon's fiftieth anniversary compels reflection and evaluation of our own

community's and office's efforts to mine *Gideon's* gold for each of our clients. Painful and demoralizing, valuable and encouraging, this journey reveals more questions than answers and causes more concern than celebration. Still, we remain unapologetic in our hope that one day fundamental fairness and justice will mean the same thing and we will not need to place the word "equal" before the word "justice."

We begin this Essay by exploring briefly Clarence *Gideon's* personal story, one which parallels that of so many public defenders' clients. We then discuss the seed of indigent defense reform in our community, El Paso, Texas, including the creation and growth of our office, the El Paso County Public Defender's Office. In the final two Parts, we discuss our struggle to provide effective representation in a pretrial and plea practice, particularly to our mentally ill clients.

I. WHO WAS GIDEON?

As we consider Clarence Earl *Gideon's* story, we see many men whom we have defended. *Gideon* was born in Missouri in 1910, lost his dad at the age of three, and quit school and ran away from home before entering high school.³ Thus began his cycle of aimlessness, poverty, property crimes, incarcerations, and imprisonment.⁴ He drifted through several states, married four times, and fathered three children who were taken away by child welfare authorities.⁵ In 1961, *Gideon* was charged in Florida with the felony offense of breaking and entering with the intent to commit a misdemeanor.⁶ He was forced to try

his own case before a jury because he could not afford a lawyer.⁷ The Supreme Court already had recognized the right to counsel, but left the states to decide how far to extend this right beyond capital cases.⁸ The jury found *Gideon* guilty and sentenced him to five years in prison.⁹ *Gideon* wrote a petition to the Supreme Court, arguing that Florida's failure to appoint a defense lawyer violated his Sixth Amendment right to counsel.¹⁰ In answering his petition, the Court transformed our criminal justice system:

That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.¹¹

Gideon rocked the criminal justice system, giving poor defendants a chance at a fair trial with a competent lawyer and charging the

1. For this reference, see ANTHONY LEWIS, *GIDEON'S TRUMPET* (1964).

2. See, e.g., Standing Comm. on Legal Aid & Indigent Defendants, *Ten Principles of a Public Defense Delivery System*, A.B.A. (Feb. 2002), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet_authcheckdam.pdf; *Compendium of Indigent Defense Standards*, NAT'L LEGAL AID & DEFENDER ASS'N (May 2001), http://www.nlada.org/Defender/Defender_Standards/Defender_Standards_Comp; *Indigent Defense Systems*, BUREAU OF JUST. STAT., <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=28> (last updated Oct. 14, 2011).

3. See Letter from Clarence Earl *Gideon* to Abe Fortas (Nov. 1962), in LEWIS, *supra* note 1, at 65, 65-66.

4. See *id.* at 66-71.

5. See *id.*

6. *Gideon v. Wainwright*, 372 U.S. 335, 336-37 (1963).

7. *Id.* at 337.

8. See *Powell v. Alabama*, 287 U.S. 45 (1932), *narrowed* by *Betts v. Brady*, 316 U.S. 455 (1942) (holding that the defendant must be involved in a complicated case or have a mental deficiency to be entitled to appointed counsel).

9. *Gideon*, 372 U.S. at 337.

10. *Id.*

11. *Id.* at 377.

states with delivering its promise. Unfortunately, Gideon left huge untreated gaps where the disease of rationed and unequal justice flourished and engendered challenge and reform. Gideon's progeny have tried to substantially plug these gaps, extending the right to counsel to include misdemeanors¹² and juvenile cases,¹³ and defining minimum trial standards.¹⁴ Yet, states have doggedly refused to either pay the full price of justice or to lower its cost by reducing prosecutions.

II. THE EL PASO PLAN: A TEN-KARAT GOLD NUGGET¹⁵

If Gideon were arrested in Texas today,¹⁶ he would be entitled to a court-appointed lawyer, but the devil would be in the details. How soon would he see his lawyer? Would she be a public defender? How competent would she be? What resources would she have? Would Gideon receive a fair plea offer? How soon could he get his day in court? The answers would depend on the particular county that arrests him, the particular court that adjudicates the matter, and the particular prosecutor who is assigned to the case. We have neither a state public defender system nor any other statewide system that ensures access to appointed counsel.¹⁷ Gideon would fare better in El Paso than in most Texas counties, but he would still find justice rationed.

Indigent defense reform took root in El Paso in

the mid-1980s. Inmates charged with felonies in the El Paso County Jail filed federal suit under 42 U.S.C. § 1983 to enforce their rights to appointed counsel.¹⁸ Private lawyers were appointed upon indictment, an average of over one hundred days after the arrest.¹⁹ The district attorney's office routinely failed to indict or reject a case within the required ninety days, and inmates were not being released as required by law.²⁰ Unable to bond out or to hire a lawyer, poor inmates charged with felonies languished in jail. At the time of the suit's filing, El Paso County had no formal or written indigent defense plan and no public defender office.

El Paso settled the lawsuit with a consent decree and memorandum of understanding known as "The El Paso Plan" (the Plan).²¹ The Plan created our office and a jail magistrate responsible for the early appointment of counsel. It established a hybrid system of representation which still exists today, where 50% of all felony appointments would be ours, while the other 50% and all misdemeanors would still be handled by assigned private counsel. Today, we handle approximately 60% of the felony appointments, 50% of the capital appointments, 25% of the misdemeanor appointments, and 50% of the juvenile appointments.²² We also staff several problem-solving and drug courts, and we represent noncustodial parents facing criminal contempt for failure to pay child support, unknown fathers in child abuse and neglect proceedings, and county officials facing ethics complaints. The federal

consent decree has secured our existence despite economic downturns and political battles with the judiciary and the private bar, but it has not guaranteed necessary resources.

El Paso is located at the westernmost tip of Texas. It shares an international border with Juarez, Mexico, an interstate border with New Mexico, and is home to Fort Bliss, a major army base. A significant number of residents do not speak English. El Paso had an estimated 2011 population of 820,790: 81.4% Hispanic, 13.7% non-Hispanic white, and 3.6% African American.²³ Our median income and percentage of residents living below the poverty level compares unfavorably with national figures.²⁴ Nearly 30% of El Pasoans are high-school dropouts,²⁵ and our unemployment rate was 10.3% in 2011.²⁶ In 2011, for the second consecutive year, El Paso had the lowest crime rate of any U.S. city with a population greater than 500,000, and it has been one of the three safest in the country every year since 1997.²⁷

Coming in the next issue: No jury, No foul

M. CLARA HERNANDEZ is the Chief Public Defender in the El Paso County Public Defender's Office.

CAROLE POWELL is the Deputy Chief Public Defender in the El Paso County Public Defender's Office.

The authors thank Jonathan Greenstein, Bob Storch, and Kate Sullivan for editing assistance, and to Bill Cox, Alan Flores, Christy Gonzalez, and Bertha Rodriguez for the incredibly difficult task of assembling our office's data.

12. See *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

13. See *In re Gault*, 387 U.S. 1 (1967).

14. See *Strickland v. Washington*, 466 U.S. 668 (1984).

15. Ten-karat is "[t]he lowest common gold alloy" and "not considered gold in some places, as the content is less than [fifty percent] gold. It's hard, but it can tarnish a bit." *Gold Rings – Understand Gold and Its Properties*, PRICESCOPE, <http://www.pricescop.com/wiki/engagement-rings/gold-rings> (last visited Apr. 3, 2013).

16. Gideon and his family did live for a few years in Orange, Texas, a tiny town bordering Louisiana, in the mid-1950s. He also served time in a Texas prison. See Letter from Clarence Earl Gideon to Abe Fortas, *supra* note 3, at 68-69.

17. Most counties rely exclusively on assigned private counsel for noncapital cases, while a few counties enjoy a hybrid system of assigned counsel and public defenders. A few noncapital public defender (PD) offices in South Texas are regional. The West Texas Regional Capital Public Defender Office covers a major part of the state. See *Expansion Effort*, REGIONAL CAP. PUB. DEFENDER OFF. (Spring 2011), [http://www.txcourts.gov/tidc/pdf/RCPDO_PlanningDocument93\(April2011\).pdf](http://www.txcourts.gov/tidc/pdf/RCPDO_PlanningDocument93(April2011).pdf). The first PD offices representing adults were established in the 1980s. The Dallas County Public Defender's Office was created in 1983. *A Review of Dallas County's Indigent Defense System*, SPANGENBERG GROUP 4 (Aug. 2004),

<http://www.courts.state.tx.us/tidc/pdf/DallasPDStudy.pdf>. The Office of the Webb County Public Defender was created in 1988. *Office of the Webb County Public Defender*, WEBBCOUNTYTX.GOV, <http://webbcounty.com/PublicDefender> (last visited Apr. 3, 2013). The very first, and for many years the only, PD office in Texas was the Travis County Juvenile Public Defender, which was established in 1971. *Juvenile Public Defender*, TRAVISCOUNTYTX.GOV, http://www.co.travis.tx.us/juvenile_public_defender/default.asp (last modified Aug. 6, 2012).

18. See Notice of Pendency of Class Action, of Rights of Class Members, and of Proposed Settlement, *Maldonado v. Schild*, No. EP-86-CA-402 (W.D. Tex. 1987), <http://tidc.tamu.edu/IDPlanDocuments/El%20Paso%5CEI%20Paso%20District%20and%20County%20Court%20Federal%20Order.pdf>.

19. CRIMINAL LAW COMM., EL PASO BAR ASS'N, PUBLIC DEFENDER SYSTEM STUDY AND EARLIER APPOINTMENT OF COUNSEL 3 (1986) (on file with authors).

20. Tex. Code of Crim. Proc. Ann. art. 17.151 (West 2005).

21. See Order Approving Settlement, *Maldonado v. Schild*, No. EP-86-CA-402 (W.D. Tex., Dec. 2, 1987) (on file with authors). Thus, while other PD offices in the state are authorized, ours is the only one that is legally mandated.

22. El Paso Cnty. Pub. Defender, Office Data (on file with authors) [hereinafter EPPD Data]. Case information is maintained in our county's Justice Information Management System (JIMS).

23. *State & County Quickfacts: El Paso County, Texas*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/48/48141.html> (last updated Mar. 11, 2013).

24. See *id.* (measuring El Paso's median household income, 2007-2011, at \$38,259 per year, and persons below the poverty level, 2007-2011, at 25%); *State & County Quickfacts: USA*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last revised Jan. 10, 2013) (measuring the national median income, 2007-2011, at \$ 52,762 per year, and persons across the nation below the poverty level, 2007-2011, at 14.3%).

25. *State & County Quickfacts: El Paso County, Texas*, *supra* note 23.

26. *Labor Force Data by County: 2011 Annual Averages*, BUREAU OF LAB. STAT. (Mar. 1, 2013), <ftp://ftp.bls.gov/pub/special.requests/la/laucnty11.txt>. The statewide annual average rate for 2011 was 7.9%. *Local Area Unemployment Statistics: Unemployment Rates for States*, BUREAU OF LAB. STAT., <http://www.bls.gov/lau/lastrk11.htm> (last updated Mar. 1, 2013). 27. Aaron Bracamontes, El Paso Repeats as US City with Lowest Crime Rate Ranking, EL PASO TIMES, Dec. 8, 2011, http://www.elpasotimes.com/ci_19496681.

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Morton Act Summary & Notice of Change in County Attorney's Office Open File Policy For Criminal Cases

BY PATRICIA LÓPEZ

In 1986, Michael Morton was charged and subsequently convicted for the murder of his wife Christine Morton. On October 4, 2011, he walked out of prison exonerated of the crime by DNA evidence, having served 25 years for a crime which he did not commit.

The Michael Morton case and other cases of exonerated defendants in recent years provided the impetus for a legislative overhaul of Section 39.14 of the Texas Code of Criminal Procedure, which governs discovery in both criminal and juvenile cases. The County Attorney's Office currently has an open file policy, which allows defense attorneys to review the state's file in all criminal and juvenile cases that it prosecutes.

The new discovery bill, commonly referred to as the Michael Morton Act, requires that, upon request, prosecutors permit defense counsel the inspection and electronic duplication, copying of, and photographing of evidence, not otherwise privileged, that is in the possession, custody, or control of the state, and constitutes or contains evidence material to any matter involved in the case. This discovery requirement can be met by providing electronic duplicates of evidence to the defense.

The statute excludes certain evidence from the new requirements, such as CPS records, videotaped forensic interviews made at Child Advocacy Centers, and child pornography. It allows redaction of documents which the prosecution does not believe are discoverable and does not require the state to turn over any work product. It does however, provide that the defense may request a hearing to determine whether evidence was properly withheld by the state under these circumstances.

The Morton Act becomes effective on January 1, 2014, and applies to all offenses which are committed on or after that date.

The County Attorney's Office is implementing two new methods to provide electronic duplicates of its files to defense attorneys on criminal and juvenile cases. For criminal cases the method will be implementation of a case portal, which will be identical to that currently used by the District

Attorney's Office to provide access to files. The projected date of implementation for the County Attorney Case Portal is January 2014. Use of the County Case Portal will require registration and training for defense attorneys who have not already registered and taken the training class provided by the District Attorney's Office. Attorneys who are already registered on the District Attorney Case Portal will be able to request access to cases prosecuted by the County Attorney's Office via a link to the portal from the County Attorney web page. The portal will provide electronic copies of the County Attorney's file on theft by check, environmental and deceptive business practice cases.

For Juvenile cases, the County Attorney's Office will be providing unique defense attorney access to the Juvenile Information System (JIS) which is an electronic system used by the juvenile courts, the Juvenile Probation Department, and the County Attorney's Office. Like the portal used in criminal cases, JIS is a web based system which contains information drawn from a number of different sources and will provide defense attorneys with electronic access to the County Attorney's file. Defense access to the JIS system is also scheduled to go live in January 2014. Attorneys that will be given access to the JIS system will be defense attorneys representing juveniles in delinquency matters, attorneys representing parents in contempt matters, and guardians ad litem that have been appointed to a juvenile in the course of their delinquency matter.

The Morton Act requirements are an important measure in assuring that justice is done in prosecution. The County Attorney Case Portal and JIS system are tools for achieving that goal. Questions regarding the JIS system should be directed to Ralph Girvin at 775-2733. Please direct questions regarding the criminal case portal to Patsy López at 546-2050.

PATRICIA LÓPEZ

is Trial Team Chief of the El Paso County Attorney's Office Criminal Unit.

MANDATORY E-FILING IN EL PASO COUNTY

Notice: Mandatory E-Filing in El Paso County

The Supreme Court of Texas mandated e-filing in Texas effective **January 1, 2014** in El Paso County.

The Office of Court Administration is transitioning to a new e-filing portal called TexFile. The Texas.gov portal will be shut down by the state on **Saturday, November 30, 2013**.

To start using the new portal, register with an electronic filing service provider that has met the certification requirements of the Office of Court Administration.

Visit *www.textfile.com* for more information and webinar training opportunities.

The El Paso Bar Association will host an informative seminar on Mandatory E-Filing, the Odyssey system and the standard court procedures on **Thursday, December 12, 2013**, scheduled from **1:30 p.m. to 4:30 p.m.** in the El Paso Commissioners Court, 3rd Floor of the El Paso County Courthouse. Pending approval of 3.0 hours of MCLE by the State Bar of Texas.

Mark your calendars to learn more about the new Mandatory E-Filing System and how it affects your practice. Some of the topics that will be covered are:

Overview of Odyssey
Basics of E-Filing
District Clerk and County Clerk Procedures
Judges Procedures

The seminar is open to Attorneys, Paralegals and Legal Secretaries.

There is no charge for this seminar, so we strongly encourage you to RSVP to Nancy at *ngallego.epba@sbcglobal.net* or at *nancy@elpasobar.com*. Seating is limited and will be on first come, first serve basis.

The El Paso Bar Association
would like to thank the following
attorneys for their support of the
El Paso Lawyers for Patriots Legal Clinic

Rebecca Bustamante	Leonard Morales
Clinton Cross	Philip Mullin
Laura Enriquez	LTC. R. Richardson
David Ferrell	Sam Snoddy
Miguel Flores	Jose Troche
Randy Grambling	Jessica Vazquez
Dan Jordan	Donald Williams
Frank Kinson	Allen Zent
Luis Labrado	Michael Zimprich

We would also like to thank the many volunteers and various agencies who spent their Saturday helping us at both clinics.

**FEDERAL BAR ASSOCIATION
EL PASO CHAPTER**



Announces the following Presentation:

**FEDERAL COURT PRACTICE
SEMINAR**

Video Replay

Thursday, December 5, 2013
Albert Armendariz, Sr., U.S. Courthouse
Jury Assembly Room, 2nd floor
525 Magoffin Ave.
El Paso, Texas
12:00 p.m. – 5:00 p.m.

This seminar covers various aspects of federal civil and criminal practice and has been approved to satisfy the requirements of Local Rule AT-1(b)(2), for Attorney Admissions to practice in the Western District of Texas.

4.0 hours MCLE, including 1.0 hours Ethics

\$115 for current FBA members
\$215 for non-FBA members

RSVP by Tuesday, December 3, by contacting Kristin Kimmelman at 915-534-6525 x229 or kristinkimmelman@gmail.com

¡Ay Chihuahuas!

BY CLINTON F. CROSS

There has been much uproar in recent weeks about the choice of our new baseball team's name, the Chihuahuas. I submit that we lawyers should embrace the name for several good reasons.

We live in a dry, sandy place. "Chihuahua" is a Nahuatl name, meaning "dry, sandy place."

The dog is culturally and historically linked to our region. When in Cuba, Christopher Columbus discovered the "Techichi," a breed of dogs believed to be the ancestors of the Chihuahua dog and wrote a letter to the King of Spain describing the breed. The Chihuahua dog was most probably bred by the Toltecs who ruled central Mexico prior to the rise of the Aztec empire. Images of the breed are found in artifacts and stone carvings in Cholula, located South of what is now Mexico City, and also in Chitzen Itza, located in the

Yucatan Peninsula. The Toltecs and the Aztecs used the dog in connection with the worship of deities as well as the voyage of the dead into the afterlife.

Finally, the first registration of a Chihuahua in the American Kennel Club Studbook was of Midget, registered by Hamilton Raynor of El Paso, Texas. The dog was whelped July 18, 1903, bred by its owner, and entered in the Studbook of 1904. Raynor registered Bonito, a litter sister to Midget, and two other Chihuahuas in the same year. Hamilton Raynor was the grandfather of Sam Blackham, former El Paso attorney, municipal court judge and a county commissioner. Sam Blackham was one of us!

Go Chihuahuas!

CLINTON CROSS is an Assistant El Paso County Attorney responsible for prosecuting criminal Deceptive Business Practice cases

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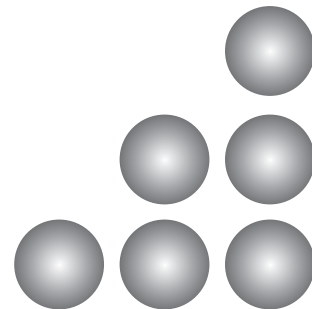
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18th Annual Civil Trial Practice Seminar

February 13, 14 & 15, 2014

Laura Enriquez, *Moderator*

Daniel Hernandez, *Course Director*

14 hours of MCLE, including 2.5 hours of Ethics, applied for *

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Join us for a Weekend of Fun & Education

Schedule

Thursday, February 13, 2014

6:00 – 8:00 p.m. Legal Legends, Interviews of Justice Guadalupe Rivera and Hector Zavaleta by Charles Ruhmann, Ruhmann Law Firm, El Paso (Cocktails and Hors d'oeuvres)

Friday, February 14, 2014

8:00 – 8:45 a.m. Registration
 8:45 – 9:00 a.m. Welcome
 Laura Enriquez, President-Elect, Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C., El Paso
 9:00 – 10:00 a.m. Preservation of Error
 John Mobbs, El Paso
 10:00 – 10:45 a.m. Consumer Law
 Steven James, El Paso
 10:45 – 11:00 a.m. Morning Break
 11:00 – 12:00 p.m. HIPPA
 CaraLyn Banks, Kemp Smith, LLP, Las Cruces, New Mexico
 12:00 – 1:00 p.m. Lunch with program
 Texas Supreme Court Update
 Chris Antcliff, El Paso
 1:00 – 2:30 p.m. Ethics Jeopardy
 Robert Dinsmoor, Ray, McChristian & Jeans, P.C., El Paso
 2:30 – 2:45 p.m. Afternoon Break
 2:45 – 3:30 p.m. Estate Planning and Probate
 Karin Carson, Hobson, Stribling & Carson, P.C., El Paso
 3:30 – 4:15 p.m. Employment Law
 John Wenke, El Paso and Chris Borunda, Ray, McChristian & Jeans, P.C., El Paso
 4:15 – 5:15 p.m. Judge's Panel: What to Do and What Not to Do
 Judge Maria Salas-Mendoza, Moderator,

120th District Court, El Paso
 Judge Laura Strathman, 388th District Court, El Paso, Judge
 Anna Perez, 41st District Court, El Paso, and
 Judge Patricia Chew
 Sponsorship Happy Hour

5:30 – 6:30 p.m.

Saturday, February 15, 2014

7:30 – 8:30 a.m. Breakfast
 8:30 – 9:30 a.m. Tax for Litigators
 Oscar Javier Ornelas, El Paso
 9:30 – 10:15 a.m. Jury Selection
 Gregory Anderson, El Paso
 Morning Break
 10:15 – 10:30 a.m. Family Law & the Military
 Philip Mullin, El Paso
 10:30 – 11:15 a.m. Commercial Litigation
 Frank Ainsa, El Paso
 11:15 – 12:00 p.m. Mediation
 Kitty Schild, El Paso and Jeff Ray, Ray, McChristian & Jeans, P.C., El Paso

Door prizes will be given throughout the seminar.

Course materials will be in the form of a flash drive.

\$350 – members of EPBA; \$400 – registration and membership dues; \$450 – nonmember & \$275 – LA/Paralegals

We will be staying at The Declan Suites San Diego with the EPBA group rate of \$149 per night, with 2 night minimum stay. To make your hotel reservations, go to <http://elpasobaracle.com> or call 1/800/483-8173 and tell them you are with the El Paso Bar Association group.

***The 14 hours of MCLE includes attending the Thursday evening portion, if you do not attend on Thursday, you will only receive 12.0 hours of MCLE.**

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