



EL PASO BAR JOURNAL

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An Update of Events and Information

December 2009/January 2010

Happy Holidays!

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Pro Bono Et Malo

From Odometers to Divorces

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State Bar of Texas

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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.”

THE PRESIDENT’S PAGE

*“You can make the mountains ring or make the angels cry...
Come on people now, smile on your Brother, everybody
get together, try to love one another right now.”*

The 1960’s rock band, The Youngbloods



In keeping with this year’s theme of “Access to Justice” it is important to recognize not only the need for the provision of legal services to our marginalized communities as discussed in Ballard Shapleigh’s article on page 9 and Constance Wannamaker’s article on page 5, but also to discuss the plight of our colleagues who no longer can serve as enablers of justice.

On the one hand this month’s issue of the *Journal* focuses on our responsibility as lawyers to serve the economically and physically disadvantaged, but also on the story of a lawyer who unexpectedly suffered a permanent disability. We lawyers are not immune from the catastrophes that befall others. One day Bob Neill was living the good life you and I are enjoying today, when suddenly, unexpectedly, he found himself barely clinging to life itself.

Are any of us prepared for life’s unannounced challenges? If, God forbid, it happens to one of us, will that be when we recognize and seek the assistance of a legal service organization such as Advocacy, Inc.? When such a tragedy confronts one of our colleagues, how do the rest of us respond? In the case of a fallen or disabled member of our Bar, do we call him or her or their partners to offer assistance? Do we call their family expressing a willingness to come to their aid? What happens to their clients who are suddenly deprived of their access to justice?

In recent history, we have known of seemingly healthy or emotionally balanced colleagues who suddenly passed of natural causes, tragic accidents, decided to end their lives, or suffered from addiction. Were any of us willing to support and aid those affected by their demise?

Thus, in talking about “Access to Justice,” let us not forget our professional Brothers and Sisters, their families and their clients as they face unexpected and devastating hardship. Let us be there. Let us be just. Let us applaud the critical work of legal service organizations such as Advocacy, Inc.; but let us not be content that they will meet the demand of all those in need of our professional services.

I wish everyone the best of the Holiday Season; and a New Year full of peace, love, health and happiness. I hope to see you at the Holiday Party on Thursday, the 3rd of December, at the International Museum of Art (the original EPMOA on Montana) starting at 5:30.

Please take care of yourselves, your families, and “smile on your Brother” and Sister.

CARLOS EDUARDO CARDENAS

CALENDAR OF EVENTS

DECEMBER 2009



Tuesday, December 1
EPBA BOD Meeting

Thursday, December 3
Joint Holiday Party

Friday, December 4
Memorial for Judge Enrique Peña

Tuesday, December 8
EPBA Monthly Luncheon
Rabbi Larry Bach & Father Stowe

Wednesday, December 9
EP Women's Bar Association Luncheon

Thursday, December 10
EPPA Annual Attorney-Paralegal Luncheon

Thursday, December 24
Christmas Eve – EPBA Office Closed

Friday, December 25
Christmas Day – EPBA Office Closed

Thursday, December 31
New Year's Eve – EPBA Office Closed

JANUARY 2010

Friday, January 1
New Year's Day – EPBA Office Closed

Tuesday, January 5
EPBA BOD Meeting

Tuesday, January 12
EPBA Monthly Luncheon

Monday, January 18
Martin Luther King Day – EPBA Office Closed

FEBRUARY, 2010

Friday, February 19 & Saturday, February 20
Annual Civil Trial Seminar in Las Vegas, Nevada

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 February/March, 2010, please have the information to the Bar Association office by Friday, January 8, 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@elpasobar.com - email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this journal together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.

EL PASO BAR ASSOCIATION

December Bar Luncheon

Tuesday, December 8, 2009

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

Guest Speakers will be Rabbi Larry Bach and Father John Stowe.

They will talk about "Equal Access to Justice from a Religious Perspective"

Approved for ½ hour of Participatory Ethics.

Door Prize donated by Cori Harbour

Luncheon Sponsored by Ainsa Hutson, LLP

Please make your reservations by Monday, December 7, 2009 at noon by calling Nancy at 532-7052 or via email at nancy@elpasobar.com

EL PASO BAR ASSOCIATION

January Bar Luncheon

Tuesday, January 12, 2010

El Paso Club, 201 E. Main, 18th Floor

12:00 noon * \$20.00 per person

Please make your reservations by Monday, January 11, 2010 at noon by sending your RSVP to ngallego.epba@sbcglobal.net or nancy@elpasobar.com

ADVOCACY INCORPORATED:

Protection and Advocacy for Texans with Disabilities

■ BY CONSTANCE R. WANNAMAKER

Regional Managing Attorney, El Paso Regional Office

If's the last hope for some, the only hope for others. It's a chance for safety, security, and justice. And it's only available for those who have no place to go for help. Advocacy, Inc. is a quiet partner in El Paso's struggle to give voice to those in need.—Editors.

Introduction:

Coping with Disabilities

A mother of a young child calls, frantic, feeling helpless, not knowing where to turn. The school told her that her autistic child, who was receiving educational services in a regular classroom with both disabled and non-disabled students will be placed in a self-contained "life-skills" class, where she will be taught only basic life necessities and only with other children with disabilities.

A patient calls, terrified because she is being told she no longer qualified for mental health services through El Paso Mental Health and Mental Retardation and she doesn't know where she will be able to get the medication she needs to control her schizophrenia. This medication is critical to her existence—it enables her to live her life, function in society, hold a job and pay her bills.

An employee calls, newly diagnosed with Type 1 diabetes. When he told his boss he now requires breaks to test his blood sugar and that he may have to inject himself with insulin while at work, he was fired.

These are just a few examples of the types of calls for assistance that Advocacy, Inc. receives on any given day.

Now imagine that instead of legs, you have wheels, but the restaurant where your family and friends want to meet you for dinner has stairs leading to its entrance. Or that you try to meet your co-workers for happy hour at the bar down the street, but you find that there are no curb cuts on the sidewalk, and the crossing signal doesn't give you sufficient time to safely cross. Or that you go to your polling place to vote and then learn that your wheelchair will not fit through the door. Or that you try to find an apartment to rent but everyone you look you



are told that there are no available accessible apartments.

Imagine that you are an adult who has always taken care of yourself, but then one day you have an accident or a stroke or an aneurism and suffer a traumatic brain injury. Suddenly you can no longer walk, dress yourself or even toilet yourself. You may even find that a guardianship is now in place over your person and your estate and that you no longer have control over your own health care decisions, or where you live, or what happens to all of your belongings and your money.

Imagine that you are a parent and your child's school calls and says they want to evaluate your child for a possible disability. Then you get letters from doctors and diagnosticians that throw around acronyms like ADD or ADHD or mention autism or asperger's or maybe even bi-polar or schizophrenia, but who don't explain what they mean or what you need to do about it. Maybe your child has behavior problems and is being restrained repeatedly, even secluded, during the school day.

Imagine that you have been committed by a court or a guardian to an institution like a psychiatric hospital or a state school for persons with intellectual disabilities. You are being forced against your will to take medication with

side effects that make you sick or cloud your mind. You may suffer abuse and neglect by those charged with your care. Imagine you have no family or friends who can help you.

These are the fear, concerns, and lives of the individuals with disabilities for whom Advocacy, Inc. provides protection and advocacy services.

Our Mission

In 1975, congress passed the Developmental Disabilities Assistance and Bill of Rights Act. (DD Act). The DD Act mandated that each state receiving DD funds establish a protection and Advocacy, Inc. (P&A) system to protect the rights and interests of persons with developmental (intellectual) disabilities.

Advocacy, Inc., began in 1977 as the independent, non-profit protection and Advocacy, Inc. (P & A) agency for the State of Texas. The State Bar of Texas served as the initial funding conduit.

In 1986, the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) became law, expanding the protection and advocacy system to include those with mental illness as well as those with intellectual disabilities. The P&A system was further expanded in 1993 when Congress approved, for the first time, full funding for the Protection and Advocacy of Individual Rights program (PAIR) which had been established in 1978 under the Rehabilitation Act. The PAIR program allows Advocacy, Inc. to expand its scope to provide services to individuals with disabilities who do not fall under the DD or PAIMI programs.

In addition to the above programs, Advocacy, Inc.'s CAP program helps people with disabilities access services from state vocational rehabilitation agencies. Advocacy, Inc. provides information, advocacy and other support to Social Security disability beneficiaries who want to enter or return to the workforce.

Advocacy, Inc. also works, under the authority of the Help America Vote Act, to educate the public and election officials about people with disabilities' right to vote, and to

advocate for voters who encounter obstacles at the polls.

Advocacy, Inc. provides services to those suffering from Traumatic Brain Injury under its TBI program, pursuant to the federal Protection and Advocacy for Individuals with Traumatic Brain Injury Program.

And Advocacy, Inc. receives federal funding for Protection and Advocacy for Assistive Technology (AT) which provides for advocacy with AT issues including augmentative communication devices, wheelchairs, environmental control systems, and computer software and hardware. This is important as providing AT allows many individuals with disabilities to be successful in school, work and community.

Advocacy, Inc. has regional and satellite offices located throughout Texas. Its main office in Austin houses the legal services unit, comprised of experts in all areas of disability law. The regional and satellite offices deal with issues that arise within that office's region. Every office is staffed with attorneys, advocates and support staff.

Our Priorities

Because of the broad scope of our mandate and authority, Advocacy, Inc. has developed a number of priority areas on which we focus our resources. Those priorities are grouped into six major categories which are further broken into more specific subject areas. These priorities are:

Community Integration: Individuals with disabilities should live in the community with the support and services they need. Advocacy, Inc. assists their clients by referring them to the appropriate supportive services.

Protection and Civil Rights: Individuals with disabilities should not be abused or

neglected, restrained or secluded illegally, and should have the full range of rights guaranteed to everyone. Advocacy, Inc. staff, for instance, may educate individuals with disabilities about their right to be free of abuse, neglect and exploitation and monitor investigations of physical or sexual abuse or neglect by services providers such as hospitals, foster homes and state schools. Advocacy, Inc. also works to educate individuals with disabilities about their civil rights, and Advocacy, Inc. staff will represent individuals or groups of individuals whose rights have been violated.

Health Care: Individuals with disabilities should have healthcare coverage that provides all appropriate care and services, and they should have a role in assuring that their healthcare program or insurance meets their needs.

Education: Students who, because of a disability, need help to behave appropriately in school should be given positive planning and support and should not be restrained or secluded or otherwise treated improperly; students with disabilities should go to classes with children who do not have disabilities, and they should be given any support they need to socialize with other students and to succeed in school; students with disabilities who need assistive technology should get it and should receive the training needed to use it; students with disabilities should leave school prepared for life as adults in the community; and public schools should comply with all special education requirements, and they should be held accountable for all students' successes.

Advocacy, Inc. intervenes with school districts when students are being disciplined because of behavior problems related to their disabilities. Advocacy, Inc. will assist parents and families in accessing all appropriate and necessary special education services for their children with disabilities, up to and including

due process hearings, civil actions, mediation and appeals. This often involves fighting for a child to be educated in a regular education setting with his non-disabled peers with appropriate support services.

Advocacy, Inc. files many lawsuits addressing the myriads of education issues that constantly confront our clients and our client community.

Housing, Employments, Accessibility and Transportation: Individuals with disabilities should be able to rent or own homes and apartments in the community; they should have the opportunity to work; they should have full access to all facilities, programs and services of the government. In addition, public and private transportation facilities should meet the needs of individuals with disabilities.

Crime Victims Legal Services: Children with disabilities sometimes find themselves in the temporary care of the state because of parental abuse or neglect. Our attorneys often intervene in these cases to assist them in accessing appropriate health, education and other community support services.

Tomorrow's Priorities

Advocacy, Inc., Incorporated is currently undergoing a three year review of our priority areas. Please visit www.Advocacy,Inc.inc.org to complete our priorities survey and tell us what is important to you.

Conclusion

Advocacy, Inc. is often the last hope for many individuals with disabilities, a place where they can obtain help when they are lost, scared, confused and out of options. We believe we are responsible for protecting and assisting many who are in need. We strive to provide a high level of advocacy and legal services to those we serve. We invite private attorneys to assist us in our mission.

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.



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State Bar Of Texas Ethics Opinions

SEPT. 2008-MAY 2009

Dear Colleagues:

In recognition of the highly important role that professional ethics plays in our professional and personal lives, President Cardenas has requested the ethics committee to present articles on a quarterly basis on this subject. What follows is a brief synopsis of recent ethics opinions issued by the Attorney General for the State of Texas. These synopses were compiled by the litigation section of the ScottHulse law firm.

C. JEFF MINOR
Committee Member

SUMMARIES: STATE BAR OF TEXAS ETHICS OPINIONS, SEPT. 2008 - MAY 2009

Opinion No. 587 (May 2009): A lawyer plans to file a matter with a state administrative agency that has decision-making authority over the matter. Before filing the matter, the lawyer proposes to communicate *ex parte* with persons in the agency for the purpose of ultimately obtaining a favorable decision from the agency. The lawyer does not propose to provide copies of written communications or notice of oral communications to other potential parties in the matter. Question presented: Before filing a matter with an administrative agency having decision making authority over the matter, may a lawyer communicate with the administrative agency concerning the matter?

The Ethics Committee held that absent applicable law that permits *ex parte* communications in a particular situation, Rule 3.05 imposes strict limits on *ex parte* communications with an agency's decision maker prior to the filing of a matter with an agency that is expected to act concerning the matter, if the purpose of the communication is to influence the agency's decision. Generally, this prohibition does not cover employees of the agency who are not the decision maker or a member of the applicable decision making body, unless such communications are intended to be indirect *ex parte* communications with the decision maker for the purpose of influencing the outcome of the matter.

Opinion No. 586 (Oct. 2008): A lawyer would like to include a binding arbitration

provision in his engagement agreements with his clients, requiring binding arbitration of fee disputes and malpractice claims. The terms of the particular arbitration provision would not be unfair to a typical client that was willing to agree to arbitration. Question presented: Are binding arbitration clauses in lawyer-client engagement agreements permissible under the Texas Disciplinary Rules of Professional Conduct?

The Ethics Committee held that it is permissible under the Rules of Professional Conduct to include in an engagement agreement with the client a provision, the terms of which would not be unfair to a typical client willing to agree to arbitration, requiring binding arbitration of fee disputes and malpractice claims provided that (1) the client is aware of the significant advantages and disadvantages of arbitration and has sufficient information to permit the client to make an informed decision about whether to agree to the arbitration provision, and (2) the arbitration does not limit the lawyer's liability for malpractice. Specifically, an arbitration clause that merely shifts the malpractice claim from a court of law to a different forum is permissible but an arbitration clause that prohibited the recovery of certain otherwise allowable damages for malpractice would be an impermissible limit on a lawyer's malpractice liability.

Opinion No. 585 (Sept. 2008): Question presented: In a community with only a limited number of lawyers available, may a lawyer counsel his client to retain all of the lawyers in that community for the purpose of denying local representation to the opposing party?

The Ethics Committee held that if there is no substantial purpose other than delaying or burdening the opposing party, then advising a client to retain all of the available local lawyers in the community where a lawsuit is filed would violate Rule 4.04(a), without regard to whether the other person was actually embarrassed, delayed, or burdened. Therefore, the facts of the particular situation concerning the presence or absence of other reasons for hiring all lawyers in a community would determine whether the lawyer's proposed course of conduct would violate Rule 4.04(a).

Opinion No. 584 (Sept. 2008): Client hired Lawyer to represent Client in a child custody

modification proceeding against Client's former spouse, B. After Lawyer was employed by Client, Lawyer learned from another source that C, whom Lawyer had represented in a divorce proceeding, had a relationship with B. Lawyer has no continuing obligations or responsibilities to C other than Lawyer's obligations to C arising from C's status as a former client. Question presented: Is it permissible for a lawyer to continue to represent a client in a proceeding after learning that the conduct of the lawyer's former client may be material to the proceeding?

The Ethics Committee held that under the Rules, a lawyer may continue to represent a client in a proceeding after learning that the conduct of the lawyer's former client may be material to the proceeding if (1) the matter is not adverse to the former client or (2) the matter is adverse to the former client but the representation does not question the lawyer's work for the former client, the representation does not involve a matter that is the same as or substantially related to the matter for which the lawyer represented the former client, and the representation will not in reasonable probability involve a violation of Rule 1.05 with respect to confidential information to the former client. For example, such a probability would normally exist in the circumstances here considered if C admitted drug abuse to Lawyer in the course of Lawyer's earlier representation of C and Client in the subsequent matter sought information of the child custody order based in part on allegations concerning C's character.

Opinion No. 583 (Sept. 2008): A lawyer is hired by the parties in a divorce case to mediate a settlement and prepare all of the documents necessary to effect an agreed divorce if an agreement results from the mediation. Under the proposed arrangement, the lawyer will conduct the mediation and, if an agreement is reached, prepare the decree of divorce and other documents which may include conveyances of real property, various releases, child support provisions, and visitation schedules. The parties to the divorce are not represented at any time by their own separate legal counsel. The lawyer/mediator advises both parties that the lawyer/mediator does not represent either party during the mediation or in the preparation of the documents to implement the agreed terms

of the divorce. The parties agree that the fee of the lawyer/mediator will be paid one-half by each. Question presented: May a lawyer enter into an agreement to serve as both mediator and attorney?

The Ethics Committee held that under the

Rules, a lawyer may not agree to serve both as a mediator between the parties in a divorce and as a lawyer to prepare the divorce decree and other necessary documents to effect an agreement resulting from the mediation. Specifically, under Rule 1.11(b) a lawyer/

mediator may not enter into an agreement with the parties to provide both services. Further, as per Rule 1.06(a), because a divorce is a litigation proceeding, a lawyer is not permitted to represent both parties in preparing documents to effect the terms of an agreed divorce.

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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 I

■ BY BALLARD COLDWELL SHAPLEIGH

At the end of July 2009, the townsfolk awoke to a front-page story headlined “El Paso ranks last in volunteer rate, study says.” As the article put it:

When it comes to volunteering, don't expect El Paso to stand up and be counted. According to a new study released Monday, El Paso ranks last in the rate of volunteerism among midsize American cities. The federal study, conducted by the Corporation for National and Community Service, found that 16.8 percent of El Pasoans performed unpaid volunteer activities during 2008. That volunteer rate placed El Paso last among 75 American cities with populations between 100,000 and 1 million. [*El Paso Times*, Wed., July 29, 2009, 1:4]

Pity the poor lawyers. If this study is to be believed, then El Paso attorneys volunteer their invaluable services, and their far more valuable free time, to a community which finds it highly unnecessary to reciprocate. And much of their volunteering comes as the consequence of an historic, first-in-the-nation court ordered *pro bono publico* program initiated in 1982.

Pro bono begins where *pro se* leaves off. Lawyers know, though the public may not, that the main point of *pro bono* legal activity, originally, was the provision of free legal assistance to poor people. On the civil side, that kind of legal service usually involves counseling and representing indigent people who have solid legal claims or defenses but lack the means to pursue them successfully. On the criminal side, lawyers undertake to defend suspected or accused individuals who cannot afford paid counsel, often times in the few cases that involve the death penalty.

Well before the present debate over socialized medicine and a “public option,” there was a debate over legal assistance. Well, maybe it was not a whole lot before. At the regular meeting of the Bar Association on March 14, 1950, Dr.



Ray Caballero on a hike atop
 Mt. Franklin - May 2007

Bob Homan, “native El Pasoan and prominent physician, spoke on the evils and perils of Socialized Medicine, pointing out that medical research and development in the U.S. have made further advancements than any other country in the world. His talk was well received,” or so the bar minutes tell us. At the same meeting, Joe Calamia and Robert J. Galván (for whom the county law library was later named) were elected to membership, and bar dues were raised from \$3.00 to \$10.00.

When it comes to the filth of lucre, people usually think they may as well as open an oyster without a knife as a lawyer's mouth without a fee. On the question of compensation, Percy Foreman told a Dallas newspaper in 1972 that, “I don't charge by the hour or by the day. I'm not a mechanic. I'm an artist. If you are going to be a bookkeeper, you can't be a trial lawyer.”

The same might have been said of Raymond C. Caballero in the late 20th century. Before being elected mayor, he was one of El Paso's best trial lawyers who had even briefed and argued two cases before the U. S. Supreme Court: *Brown v. Texas*, 443 U.S. 47 (1979); and *Clements v. Fashing*, 457 U.S. 957 (1982).

In 1981, he was president-elect of the El

Paso Bar Association, and Ronald Reagan was president of the country. Facing drastic cut-backs in federal funds for legal aid, the El Paso Legal Assistance Society (EPLAS) announced it was being forced to drop the 1500 or so domestic relations cases that office handled annually. El Paso, along with the rest of the border, has always had fewer lawyers *per capita* than the rest of the state, and many low-income individuals who cannot afford legal help. But this cut-back also came amid a 36 percent increase in the number of people in El Paso County since 1970 who fell at or below the national poverty level.

Caballero was moved into action. As Bar President, he found his agenda in trying to fashion a program to address the problem of what to do with the 1,500 or so domestic cases that EPLAS was dropping. He traveled to Houston, Austin and San Antonio on his own dime. He interviewed key personnel and studied the local *pro bono* plans in those cities. He learned that those plans were voluntary, not mandatory. At best, he found those programs getting just ten percent of the local bar to participate, and many of their resources were consumed by trying to recruit new lawyers. And there was the problem of exemptions.

“In 1981, as I recall, the El Paso bar consisted of about 700 lawyers, and many of those – judges and prosecutors, for example – would be exempt,” Caballero said recently.

Equipped with these facts, Caballero concluded that by not making the program mandatory, *pro bono* participation in El Paso would be about the same as other Texas cities – that is, with a population of about 700 lawyers, only 70 El Paso lawyers could be counted on to pick up the domestic relations slack from the EPLAS annual case load. A participation rate of ten percent would not be adequate to address El Paso's problem. It would also mean that each participating lawyer might be assigned more than 20 *pro bono* cases per year. And Caballero

personally felt that he could do a simple divorce case in less time than it would take to attempt to recruit a lawyer to do the case.

The other pieces of the program began to fall into place. Lawyers would be required to take no more than two cases a year. For the most part, these cases would be simple, uncontested divorces. To have teeth, participation would be court-ordered. Errors and omissions insurance and training would be provided to the attorneys. If necessary, co-counsel would also be furnished.

In July, 1982, Caballero became Bar President and Royal Furgeson (then with Kemp Smith and now a U.S. District Judge sitting in Dallas) became president-elect. Caballero credits Furgeson and the other officers and directors of the Bar Association with getting the project up and running. They included Vice-President Janet Ruesch, Secretary Fred Morton, Treasurer William T. Kirk, and Directors Jose Montes, Jr, Charles Vinson and Terry Wyrick. Gary Reaves was chairman of the Committee on Legal Services.

At a meeting of the Bar Association in September 1982, U.S. District Judge Harry Lee Hudspeth introduced Orrin W. Johnson, State Bar President, who gave a review of *pro bono* programs throughout the state. After Judge Charles R. Schulte introduced and urged adoption of a resolution by the membership creating the program, the *pro bono* plan was “overwhelming approved by a well-attended meeting.” A new office was created under the Bar Association to administer the program; Coordinator Gracie Martinez has been with the program since the beginning. She says there are currently about 1100 lawyers in the El Paso bar, and that between 550 and 600 are eligible and participating in the program today.

Cynics saw the project as an unlikely alliance between a plaintiff’s lawyer and a prominent member of the defense bar, and did not believe it would last. But the program won various awards. It was widely discussed. And it is still in place providing legal representation annually to many people who would not otherwise have a lawyer. El Paso’s project remains the only such *pro bono* program in the state

In a 2006 interview, Caballero explained that “rather than looking at it as mandatory

The El Paso Times Opinion

Page 6-A Thursday, June 21, 1984

Editorials

Legal aid is needed

The officers of El Paso Bar Association are to be commended for their insistence in continuing the *pro bono* program established 20 months ago, until it can bring the program into compliance with state law.

But shame on a few association members who continue to call the plan, which ensures legal help for indigents, slavery. It is those few who are making it difficult for other El Paso lawyers to serve the poor.

Last week, Attorney General Jim Mattox ruled the program was illegal because district judges gave the association power to determine whether an applicant is indigent and to appoint or to excuse counsel. Under Texas law, Mattox said, the judges cannot delegate that power.

But Mattox didn't address the program's constitutionality. The griping lawyers insist the program, which requires each lawyer in El Paso County to be appointed to handle two domestic cases for indigents every year, violates their constitutional right to be free from involuntary servitude.

But what about the poor who need help in domestic cases — from divorce cases to child custody cases to child support cases — but can't afford a lawyer? With proper counsel, these problems can be resolved in court and perhaps help break the chain of poverty and abuse.

And for many El Paso lawyers, handling two cases is a minuscule part of their practice. The legal profession is just that — a profession — that should carry a certain amount of responsibility and caring — not just love for the almighty dollar. Lawyers should want to volunteer a small part of their time and not have to be forced to donate it. It is notable that in its 20 months of existence, the *pro bono* program has accepted more than 1,000 clients and has received kudos from judges and bar associations across the country.

A nine-member bar committee has begun work on the program's appointment process to bring it back into compliance with state law. Then El Paso's poor can be assured much-needed legal aid.

Editorial reaction to the AG opinion

pro bono, I see it as the equal distribution of an ethical obligation. I'm very proud that the lawyers in El Paso, when they were faced with a problem, they faced it in a way that should be a model.” Unfortunately, neither the State Bar nor the Texas Supreme Court saw it as a model, failing even to include ABA Model Rule 6.1 as a rule under the Texas Disciplinary Rules of Professional Conduct.

Model Rule 6.1 provides that “Every lawyer has a professional responsibility to provide legal services to those unable to pay.” The rule now suggests 50 hours of *pro bono* work as an aspirational goal. Therefore, statewide, the subject of public interest legal service is in the same condition as before promulgation of the Rules; it remains a matter of moral choice for each individual attorney everywhere in Texas, that is, everywhere except El Paso.

Thus, Ray Caballero, Royal Ferguson and the El Paso Bar Association made sure that when it came to volunteering, El Paso lawyers would stand up and be counted even if other El Pasoans (as noted by the *El Paso Times* last July) and the rest of the legal profession in Texas did not want to follow.

Justice Lewis Powell of the U.S. Supreme Court took notice. He described the program in one of his opinions most succinctly: “The El Paso, Texas, Bar has adopted a mandatory *pro bono* plan, under which each of its

members must handle two divorce cases for indigents each year.” See, *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 287 (1984) at n. 22; see also, “*Pro Bono Publico: Federal Legal-Aid Cuts Spur the Bar to Increase Free Work for the Poor.*” *Wall Street Journal*, Mar. 30, 1984, pp. 1, 12.

If Justice Powell only knew about the effort it took to get the plan going, he might not have been so approving.

Governments derive their just powers from the consent of the governed, or so it says in the Declaration of Independence. In this instance, some of the “governed,” to-wit: members of the El Paso bar, refused to give their consent to the *pro bono* program. In fact, they objected. Their complaints echoed the kind of arguments made against the imposition of an income tax.

At one meeting, Caballero remembers Sam Sparks of Grambling Mounce (now a federal judge sitting in Austin) interjecting, “I don't want to see any problems. I'll do their divorce cases,” thus offering to take responsibility for the case load of those who did not want to volunteer for the program.

But local furor still grew to the point that the county attorney was constrained to request an opinion from the late Jim Mattox, Attorney General. Mattox found that the order creating the *pro bono* program was void in its entirety, opining that “while we agree with the laudable goal of providing a system of representatives for indigents, we cannot agree that the method selected is authorized by the statutes of the state of Texas.” Just to make sure he understood the issue before saying that the order was void, Mattox re-framed the question this way:

You state that the ten district judges of El Paso County have signed a joint order implementing a *pro bono publico* plan in El Paso County. The order provides that each attorney practicing or employed in El Paso County shall be appointed to handle no more than two domestic matters for indigents each year. The bar association for the county will screen applicants to determine indigency and will notify attorneys of their appointments. You suggest that an attorney appointed under this program would sustain violations of his constitutional rights to be free from involuntary servitude and from the taking of property without due process of law. U.S. Const. Amend. I, V, XIV. [emphasis added] Opinion No. JM-161



Judge Royal Furgeson

Mattox then took pains to reiterate the court's order which created the plan, verbatim, including the underlined portions, as follows:

IN THE DISTRICT COURTS OF
EL PASO COUNTY, TEXAS
IN RE:
EL PASO BAR ASSOCIATION
PRO BONO PUBLICO PROGRAM
ORDER

ON THIS DAY the Courts did consider the motion of the EL PASO BAR ASSOCIATION to implement a pro bono publico plan in El Paso County, Texas. The motion of the EL PASO BAR ASSOCIATION is granted.

The undersigned District Courts of El Paso County, Texas, ORDER the following:

1. Pursuant to Art. 1917 of the Texas Revised Civil Statutes, the undersigned courts do authorize the appointment of all lawyers holding an active Texas law license and who practice or are employed in El Paso County, Texas.

2. Such lawyers shall be appointed under this program to no more than two domestic matters each fiscal year (October 1 to September 30).

3. The EL PASO BAR ASSOCIATION or its delegate shall screen applicants to the program to determine indigency.

4. Indigency for purposes of this program shall be that defined by Legal Services Corporation guidelines and regulations.

5. The EL PASO BAR ASSOCIATION or its delegate shall notify an attorney of the appointment.

6. A pauper's affidavit shall be executed by the client prior to the making of an appointment.

7. Uncooperative clients shall be dismissed from the pro bono publico program.

8. An attorney may be excused from the program for good cause shown to the appropriate committee of the EL PASO BAR ASSOCIATION.

9. Participating attorneys will be provided with professional liability coverage.

[No item 10 appears on copy of order submitted to us.]

11. The Courts are encouraged to accept simplified pleadings in pro bono cases.

SIGNED AND ORDERED this 24 day of September, 1982. (Emphasis added).

Mattox neglected to mention the ten district judges who signed the order. They were: Edwin G. Berliner (171st); Ward Koehler (168th); Jerry Woodard (34th); Sam Callan (205th); Ralph Scoggins (41st); Sam Paxson (210th); Edward S. Marquez (65th); Woodrow W. Bean, II (243rd); Brunson D. Moore (120th) and Enrique H. Pena (327th).

Buried in the order is the identity of the real boogeyman of "socialized law" – the Legal Services Corporation. The Legal Services Corp. was the organizational descendant of the Office of Economic Opportunity ("OEO"), the

The "Civilization" series is written in appreciation of the request of Bar President Carlos Cardenas and the 112th anniversary of the El Paso Bar Association, with assistance and encouragement from Clinton Cross and 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); Mary Lenz, *Reagan's Cuts Hit Texas-Legal Services Doomed?*, Texas Observer, Vol. 73, No. 6, March 20, 1981; Kenneth Wooden, *Weeping in the Playtime of Others* (McGraw-Hill, 1976); Bob Lloyd, "Future of Justice for All" worries legal aid officials," Ft. Worth Star-Telegram, July 12, 1982; TIME Magazine, Oct. 3, 1983; Leslie Boyle, *Meeting the Demands of the Indigent Population: The Choice Between Mandatory and Voluntary Pro Bono Requirements*, 20 Geo. J. Legal Ethics 415 (2007); <http://www.denvergov.org>; 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.

original mother ship of legal aid. The order also listed the usual ingredients involved in providing free legal services – "indigency," *pro bono publico* ("for the public good") and "lawyers shall be appointed," all contrary to the succinct formulation of a vital legal principle - first charge a retainer, then charge a reminder, next charge a refresher, and then charge a finisher.

When it comes to charging fees, lawyers are damned if they do and damned if they don't. In 1981, the Chief Justice of the Massachusetts Supreme Court was quoted in Time magazine as saying, "The legal fees are outrageous. With the cost of litigation these days, I think clients would be better off if they just met in the halls and threw dice. Certainly it would be cheaper."

How some El Paso lawyers threw the dice to bring legal aid to El Paso, and how a legal aid lawyer later confronted, like David versus Goliath, the wide-spread practice of rolling back odometers in used cars prior to resale, will be examined next among other things – for good and ill.



The El Paso Paralegal Association will host its Annual Attorney-Paralegal Luncheon on Thursday, December 10, 2009 from 12:00-1:30 at the El Paso Club.

This year Robert Bettes will again serve as Master of Ceremonies. EPPA will have some great door prizes and exciting grand prize items will be raffled off. All raffle proceeds will go to the Center Against Family Violence (CAFV). Each guest is encouraged to bring a gift to the luncheon for the center. The center's wish list includes: infant formula, diapers (sizes 3, 4, 5), gift certificates for Payless shoes, backpacks, school supplies, arts & crafts for support groups, clothing, cleaning supplies, linens, food, furnishings, child care necessities and personal care items. Monetary (check/cash) donations are also welcomed.

So come out and enjoy the raffling of great items and door prizes.

EPPA hopes for a spectacular turn out so please mark your calendar and plan to attend.

Price per ticket is \$23.00. Tickets are for sale for advance purchase only and you must present your ticket at the door.

Please contact Ruby Zuñiga at 534.7285 to purchase your tickets or for further information.

SENIOR LAWYER INTERVIEW

BOB NEILL

■ BY CLINTON F. CROSS

CROSS: Bob, tell me about your parents.

NEILL: Both my parents were the children of immigrant parents. My paternal grandparents were from Scotland; my maternal grandparents were from Germany.

My father, Robert Neill, grew up in Rhode Island, and when still a relatively young man married Mildred Ziegler. He spent many years in the army, retiring as a Lt. Colonel.

CROSS: How did you end up in El Paso?

NEILL: My father's executive officer at Fort Chaffee, Arkansas, Bill Stahmann, suggested retiring in El Paso. He took his advice and retired here in 1959, working in the egg business for Stahmann Farms and in the insurance business.

CROSS: What about school?

NEILL: I went to a number of schools in the U.S. and Europe before my Dad retired. After we moved to El Paso, I went to Bel Air High, Austin High, and then Irvin High school, where I graduated first in my class. I went to Colgate University and participated in the Colgate Washington Study Group, a prestigious internship program. I then went to the University of Texas School of Law, graduating in 1970.

CROSS: Then what?

NEILL: I came back to El Paso and got a job with El Paso National Bank, in the Trust Department.

CROSS: What are you doing now?

NEILL: In 1979 I left the bank and opened my own law office. Since then I have been associated with a number of well known lawyers, such as Ron Ederer, later U.S. Attorney for the Western District of Texas; and Odell Holmes, now Municipal Appellate Court judge. As we sit here today, I'm still getting up and going to work. I practice with my son, Alex.

CROSS: Tell me about your family.

NEILL: I met my wife Rosemary Rodriguez



Vivero when I was in law school, and married her in 1968. I brought her to El Paso in 1971, and I think I did El Paso a favor when I did that. She was a graduate of the University of Texas at Austin and one of the first graduates of the new Masters in Public Administration program at UTEP....

CROSS: And she's been civically active here?

NEILL: She was Chairman of the local MH-MR board. She was a member of the Texas MH-MR Board for six years, and was elected Vice Chair. She was also chairperson of the Board of Directors of the Rio Grande Girl Scouts Council, which incidentally was later re-organized into a larger regional structure.

CROSS: You also have two children....

NEILL: My son Alex graduated from St. Mary's law school, where he was editor of the Scholar Law Review. He has a daughter, which makes me a grandfather. My daughter Margaret has a master's degree in library science from Syracuse University and she is a manager of Brannigan Library in Las Cruces.

CROSS: Tell me a little bit about your legal career.

NEILL: I spent ten years working in the trust department of El Paso National Bank. During this period of time, I was mentored by a number of great lawyers—Joe Hammond, Grover Stephens, Bruce Hallmark, Bill Kirk, and Ricky Feuille among others.

After leaving the bank, three friends and I organized the firm of Ederer, Holmes, Neill and Broaddus. Today the firm is Neill, Strelitz, and Moore-Duarte.

CROSS: Any particularly interesting cases?

NEILL: I settled two difficult cases with real estate developers, El Paso Inter-religious Sponsoring Organization (EPISO) members, the State of Texas, and the County of El Paso and as a result the county named a street after me. More important, the county provided residents provided basic utility services which had previously been unavailable to them.

CROSS: I understand you've dabbled in politics a bit.

NEILL: Well, I was Chairman of Texas Youth for Bobby Kennedy in 1967. At one time I was a member of the State Democratic Executive Committee from El Paso. I chaired three Democratic Party County Conventions. I attended the Democratic National Convention in 1986. I'm a member of the El Paso County Democratic Party Hall of Fame. In 2000 I was elected co-chair of the State Democratic Party Finance Committee. And I've done a lot of other stuff, too much to mention here. So I guess I've paid my political dues.

CROSS: Any other public service work?

NEILL: I was a Founding Board member of the El Paso Community Foundation, Chairman of the Board for the Center for Non-Profit Management, a Chairman of the El Paso Probate Bar Association, among other things.

CROSS: Looking back over your career, what do you think have been your most important contributions?

NEILL: I have provided help to individuals and families during some of the most devastating times in their lives.

CROSS: *As lawyers we're frequently called upon to help others who face some kind of crises or perhaps unexpected challenge.*

NEILL: Yes. Sometimes these events can be unexpected, and life changing.

CROSS: *But sometimes we also have to confront our own life changing events.*

NEILL: Yes, you want me to talk about my accident.

CROSS: *You guessed where I was going.*

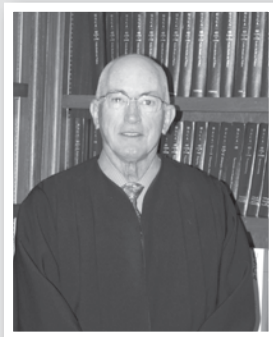
NEILL: Well, this is what happened. One late Saturday afternoon I was getting out of my car in my office parking lot when another car going about thirty miles an hour came out of no-where and hit my car. I was caught between the body of my car and the door frame, and I was flipped over my car onto the concrete, where I landed on my head.

I suffered a shattered hip, broken pelvis, and a broken clavicle. When I was in the emergency room I also suffered two heart attacks, which required a rare septuple by-pass operation.

Five years later I must use a walker to get around, and sometimes I have to use a wheelchair. But I am still practicing law and going to work every day, still helping others the best way I can. Support from my family, partners, friends and Democratic Party Executive Committee, which unanimously passed a Resolution wishing me well, have made this possible. By the way, the Democratic Party almost never does anything unanimously.

I appreciate the years I've had to be with my wife, who has been a pillar of strength for me. I have been fortunate to watch the professional and personal growth of my two children and witness the birth of my first grandchild.

Life is good.



Name: Michael S. McDonald

Years on the bench: Thirteen

Education: BA in History and Political Science from Wichita State University, JD from Texas Tech Law School

Court: United States Federal Magistrate Court

Court Coordinator: Molly Tipton

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

Call the balls and strikes in a manner that folks will believe that you really do care about fairness.

What characteristics and qualities do you believe are important for a judge to possess? I feel that patience is the most important quality that a judge requires.

Describe a day when you, as a lawyer or judge, felt particularly satisfied or proud. When I represented Judge Segal while I was in the Public Defender's office. Bill Maynard was the co-counsel in this case which took almost a month to try. I really did believe that Scott was innocent of the charges and when that jury came back with that NOT GUILTY verdict I literally floated back to my office. The system did seem to work on that occasion as it does most of the time.

ADVANCE SHEET, *circa* 1202

BY CHARLES GAUNCE

Legal Reference Librarian University of Texas at El Paso

From the Pleas on the Octave of Michaelmas in the Fourth Year of the Reign of King John [A.D. 1202]. Comes the following case:

"John the vintner puts in his place Brian the clerk against Ralph the priest touching a plea of debt, etc.

John the vintner demands against Ralph the priest of Elmham thirty-six shillings and four pence; and they make a concord to the effect that Ralph shall give [John] two marks of silver [now], and shall pay him one mark within the octave of S. Edmond, and another [mark] within the octave of mid-lent; and in case he shall not have paid [them], he has put in pledge to [John] all the land which he holds as of lay fee in Suffolk."

While the English monetary system took a great step forward in 1971 when the pound was decimalized, prior to that time there were 20 shillings to a pound and 12 pence to a shilling. The value of a shilling was originally calculated by the Anglo-Saxons as one cow in Kent and one sheep elsewhere. (Oddly enough, today realtors assert that the value of real estate is based on, "Location, location, location." Perhaps now is not the time to suggest to the Federal Reserve that the value of money was once based on this principle.) Thus, Ralph owed the wine producer a flock of sheep and change. The record is silent as to the amount of wine that Ralph had procured on credit, and the uses to which said wine was put, but the willingness of Ralph to pledge his personal

land holdings suggests that he was somewhat embarrassed by the predicament he found himself in. We can only speculate that the vintner wasn't too thrilled to be dragging the parish priest into court to get paid for the wine he had previously provided. My experience is that most people are still embarrassed by their unpaid debts. The new wrinkle in this today is that most corporations don't seem to care much one way or the other.

Does anyone else reading this think that John the vintner was either a very foolish merchant for selling alcoholic products on credit, or he was very shrewd for selling such products on credit to the priest? Would he have offered the same terms to the local nobility?

□

Law West Of The Pecos

■ BY JUSTICE GUADALUPE RIVERA

Stefan Crane and Brenda Crane v. Richardson Bike Mart, Inc., Wilderness Trail Bikes, Inc. a/k/a WTB and Trek Bicycle Corporation, Appellees, 2009 WL 474233 (Tex. App.-El Paso)

Stefan and Brenda Crane appeal from the summary judgment granted to the defendants based on judicial estoppel. At issue was whether the defendants were entitled to the protection of the doctrine of judicial estoppel because of the Cranes' failure to disclose a personal injury claim in their Chapter 7 bankruptcy.

On August 12, 2004, Stefan Crane was airing up a tire on his bicycle when it exploded. Crane alleged that the tire blew off the rim causing permanent hearing loss. In March of 2005, Crane consulted an attorney and discussed the possibility of filing a lawsuit. On September 9, 2005 the Cranes filed a Chapter 7 bankruptcy. On schedule B (Personal Property), part of the official bankruptcy forms regarding assets and liabilities, the Appellants did not disclose their personal injury claim to their creditors and the bankruptcy court. On September 16, 2005, one week after the bankruptcy filing, the Cranes sent the personal injury attorney a written account of the tire explosion and an e-mail indicating they would provide photos, copies of receipts from doctors, hearing aids, prescriptions, etc. On December 14, 2005, the Cranes received a discharge from debts in their bankruptcy proceeding. One month after the Cranes received their discharge a demand letter was sent and sometime in June, 2006 this lawsuit was filed.

Defendants, Trek, Richardson Bike Mart and Wilderness Trail Bikes filed a Motion for Summary Judgment asserting the defense of judicial estoppel because the Cranes did not disclose the personal injury suit in their bankruptcy. The trial court granted summary judgment. The court of appeals found that the Cranes did not have standing to pursue their claim and thus vacated the summary judgment and dismissed the case for want of jurisdiction.

Standing is an implicit part of subject matter jurisdiction. Whether a party has standing to sue is a question of law reviewed de novo. Standing focuses on who may bring an action. As a component of subject matter jurisdiction,



standing cannot be waived and may be raised for the first time on appeal by the parties or the court.

The court considered the pleadings and relevant evidence to resolve the jurisdictional issue and because the case involved a bankruptcy proceeding, federal law was applied. The Bankruptcy Code provides that at the commencement of the bankruptcy case, all of a debtor's assets vest in the bankruptcy estate. Included in the estate are any causes of action for personal injury belonging to the debtor at the commencement of the case. The representative of the bankruptcy estate is the Chapter 7 Bankruptcy Trustee, and is the real party in interest, and the only party with standing to prosecute causes of action belonging to the estate. Once an asset becomes part of the bankruptcy estate, all rights held by the debtor in the asset are extinguished unless the trustee abandons the asset. At the close of a Chapter 7 bankruptcy case, property of the estate that is not abandoned and is not administered in the bankruptcy proceeding, including property that was never scheduled, remains part of the estate. If the asset was not

disclosed as is required under the bankruptcy code, the trustee can reopen the bankruptcy and pursue the claim when the trustee becomes aware of it.

The court concluded that because the cause of action existed at the time of the bankruptcy filing, it belonged to the estate and the trustee was the only party with standing to pursue the cause of action. Finding that the trial court was without jurisdiction to render judgment because the Cranes did not have standing, the court vacated the summary judgment and dismissed the case for want of jurisdiction.

Richard Flores v. The State of Texas, No. 08-07-00330-CR (10-29-09)

Richard Flores also known as "Playboy" was convicted of the murder of Mary Corral, his girlfriend and mother of his three children. He was sentenced to ninety-nine year's imprisonment.

At issue was whether the court erred in admitting his confession because it was obtained in violation of his Sixth Amendment right to counsel and whether the court erred when it allowed his Spanish language video

confession to be admitted and presented without a contemporaneous translation as it was played for the jury. Two other issues complained about the admission of a letter written by Flores and autopsy photos.

On April 29, 2005, Flores was celebrating his birthday at his mother's home. When his invitations to Mary to come to the party were refused, Flores became upset and he stated, "This stupid bitch is giving me attitude." Mary eventually agreed to drop by, unaware that Flores and his friends had a plan to tie her up and slap her around so she would fear a severe beating and not "do stupid things" to Flores again. Flores' friends hid in the closet of his bedroom and at the designated time jumped out, taped her legs, hands, mouth, nose, and face. When Flores inadvertently used the name of one of his accomplices, "Devil," it was agreed Mary had to be killed. Flores hit Mary and bit her nose. They tried to suffocate Mary with a plastic bag and when that failed Flores and "Devil" each pulled on one end of an extension cord and strangled her. After an unsuccessful attempt to dismember her body they wrapped her body in garbage bags and stuffed her in Flores' closet.

The next morning Flores' mother returned home to find Flores, "Devil," and Gordo, another accomplice, asleep. She left to have coffee with her sister and when she returned the three were gone. She became concerned when she learned that Flores was not at school. She asked her niece to come to the house and eventually the police were called. The responding officer suggested that as her son was an adult, she could remove his belonging. She took the advice, and eventually discovered Mary's dead body wrapped in a sheet and garbage bags in Flores' closet. Flores' fingerprints were found on the garbage bag and on the sticky side of the roll of duct tape.

Flores fled to Mexico but was later extradited back. Flores confessed to murdering Mary by strangling her. The police also obtained a letter from Raphaela Guillen, in which Flores describes the drug and alcohol use leading up to Mary's murder. He also details the murder and how the decision to murder Mary was determined by a roll of the dice.

Flores first argues that the waiver of counsel at his confession, was invalid because his Sixth Amendment rights had attached with the representation by a Mexican lawyer appointed in Mexico to assist in the extradition proceedings and that once an accused is provided counsel based on the Sixth Amendment right the police can not initiate any questioning and any attempt

to induce a waiver of the right to counsel for that police interrogation is invalid. *Michigan v. Jackson*, 475 U.S. 625, 635-636, 106 S.Ct. 1404, 1410-1411, 89 L.Ed.2d 631

In *Montejo v. Louisiana* - - -U.S. - - -, 129 S.Ct. 2079 (2009) the United States Supreme Court recently abandoned the bright-line rule articulated in *Jackson* and held that "it would be completely unjustified to presume that a defendant's consent to police-initiated interrogation was involuntary or coerced simply because [the defendant] had previously been appointed a lawyer." The court held that after the right to counsel has attached, a defendant who does not want to speak to the police without counsel present need only say as much when he is first approached and given Miranda warnings. At that point, not only must the immediate contact end, but badgering by later requests is prohibited. The Court held that a court can no longer presume that a waiver of a right to counsel executed after the right to counsel has attached is invalid and that an accused must make a clear assertion of the right to counsel when officers initiate interrogation and then no interrogation should take place.

The court noted that Flores did not invoke his right to counsel at the interrogation and in light of *Montejo*, found his waiver valid.

Flores next argued that his video taped confession primarily in Spanish, should have been contemporaneously translated by an interpreter as it was played for the jury because the non-Spanish speaking jurors would only be reading the translation as the tape was played and they would be unable to correlate the English translation with Flores' statements and the context in which they were made. At different times during the confession, Flores is seen smiling and laughing. Flores relied on *Leal v. State*, 782 S.W. 2d 844 (Tex. Crim. App. 1989) to argue a contemporaneous translation was required. The court found this case distinguishable from *Leal*. Unlike *Leal*, in this case the sworn interpreter testified as to the accuracy of the translation and was subject to cross examination. In *Leal* there was no testimony as to who actually translated the conversation, or that the interpreter was ever sworn and no one was called to the stand to testify as to the accuracy of the translation. The court found that the transcribed translation provided for the jury to view as the videotape was played was adequate and met the requirements of Article 38.30, Texas Code of Criminal Procedure. The court noted that while playing the video of the confession enabled the jury to assess Flores' non-verbal

behavior which was particularly important in evaluating the testimony, playing the audio in Spanish for the jury was unnecessary because it was the interpreter's rendition of the confession that created the only permanent record of what was said at trial. It is as if the non-English language was never spoken before the jury and the interpreter stood in place of the witness. The court noted that there was in fact no requirement or means available at trial to preserve the original foreign language spoken in court. It was the translation presented by the interpreter that created the record and that ultimately served as the basis for any potential appeal. All jurors should have focused on the written translation, and not on the Spanish audio.

Evidence may be authenticated by the testimony of a witness with knowledge that a matter is what its proponent claims it to be; expert opinion as to genuineness of handwriting based upon familiarity not acquired for the purposes of the litigation; or other distinctive characteristics. Tex. R. Evid. 901(b)(1),(2),(4)

Detective Ruiz testified that the letter was the same one he intercepted from the jail mail and later retrieved from Guillen. The court found that because Guillen had personal knowledge that it was the same letter retrieved from Flores' jail mail, it was properly authenticated.

In his last issue Flores complains of the admission of autopsy photos. Two photos show Mary's neck with the skin peeled off and two others show her eyes with medical instruments holding each eye open.

Photographs showing mutilations by the medical examiner may be admissible when the photographs show bruising or other damage that is attributable to an accused's actions but is not visible externally. *Ripkowski v. State*, 61 S.W.3d 378, 392-93 (Tex. Crim. App. 2001), cert. denied, 539 U.S. 916, 123 S.Ct. 2274, 156 L.Ed.2d 133 (2003). The medical examiner testified that all four pictures were helpful and necessary in demonstrating that strangulation was the cause of death. Two pictures demonstrated hemorrhaging around the iris consistent with hemorrhaging that occurs during strangulation. The other two pictures showed the hemorrhaging caused by compressing the deceased's neck which assisted in explaining her injury and the cause of death. Flores asserted that the pictures were not relevant because the cause of death was not contested. The court found the pictures relevant to show the cause of death-strangulation.

The District Court's judgment was affirmed.

Recent Honors and Awards For El Paso Judges And Attorneys

■ BY CLINTON F. CROSS

Many El Paso lawyers were either promoted or recognized for significant professional achievements since publication of the September issue of the Journal. Recognizing these lawyers should never be construed as support for any one of them as political candidates. However, we do wish to congratulate all of our fellow attorneys for their successes--regardless of form or forum.—Editors

The Texas Democratic delegation and the White House staff recently recommended Judge Javier Alvarez for nomination to the federal bench. He must now be formally nominated by President Barack Obama, and then confirmed by the United State's Senate.

The Texas Association of Drug Court Professionals elected Judge Robert Anchondo Vice President of the Association. The members also elected Public Defender Jay Nye to the Board of Directors. The Association awarded El Paso the opportunity to host the state convention in El Paso in September, 2010.

El Paso County Attorney José R. Rodríguez was selected by Texas Lawyer magazine as one of 25 "Extraordinary Minorities in Texas law" for his many community achievements, including winning water, sewer and other infrastructure development for low-income unincorporated border communities known as colonias.

The Texas Access to Justice Commission recently recognized Scott Vogelmeir with the "Cy Pres: Impact for Justice Award" for his generous *cy pres* contribution to Texas Rio Grande Legal Services (TRLA). Texas Supreme Court Justice Harriet O'Neill presented the award at the October 13, 2009 El Paso Bar Association luncheon. For more information, go to Scott's website at: svoglaw.com.

The Texas Chapters of the American Board of Trial Advocates named Wayne Windle "Texas Trial Lawyer of the Year" (the first time a lawyer from El Paso has received this honor). Windle was selected based on criteria that included being an excellent advocate, having a distinguished career, "a superb reputation of high ethics and fair play" and for outstanding results in the courtroom.



(L-R) US District Judge Kathleen Cardone, US Supreme Clerk William Suter, US District Judge David Briones and US Magistrate Judge Richard Mesa



Jo Anne Bernal

President Barack Obama signed legislation on October 20, 2009 naming the new federal courthouse in El Paso the "Albert Armendariz U.S. Courthouse."

County Judge Anthony Cobos appointed Stuart Leeds chairperson of the recently organized County Ethics Commission. The Commission is composed of ten members. Five members are appointed by members of Commissioner's court and five are appointed by local entities. The El Paso Bar Association's representative on the Commission is Terry Pasquelone.

The El Paso chapter of the Federal Bar Association presented Selena N. Solis a plaque at a luncheon featuring a speech by William Suter, U.S. Supreme Court Clerk, in appreciation for her service as President of the

local chapter in 2007-2008 and for her services as past President in 2008-2009.

On October 30th, Judge Oscar Gabaldón was the keynote speaker at a conference sponsored by the International Social Service—United States of America and the University of Maryland School of Law and School of Social Work. In his speech, Judge Gabaldon addressed the nexus of social work and law in international child welfare.

In January, an article by Judge Oscar Gabaldon, Jr. entitled *Fathers are a Necessary Piece in a Child's Puzzle of Life* was published in *Connections*, a magazine which is published by national CASA.

On November 1st, George McAlmon was inducted into the El Paso Historical Society's Hall of Honor for building "a legacy of social justice whose effects altered the political landscape of the city."

McAlmon graduated from El Paso High School, attended Princeton University and the Universidad de México. He earned his law degree at the University of Texas. At various times, he shared office space with Malcolm McGregor, Mark Howell, and Mario Martinez. He opened the first law office in south El Paso (at 550 E. Paisano), where he practiced with Alex Duran, Danny Mena, Ed Hughes, Danny Anchondo and many others. He was Democratic Party Chairman from 1968 to 1972 and a personal friend of many powerful politicians, such as John Kennedy, Ted Kennedy, Robert Kennedy, Morris Udall, Fred Harris and many others.

On November 5, 2009, Assistant County Attorney Richard Deck was elected President of the El Paso National Alliance for the Mentally Ill. The Alliance assists individuals and families coping with brain disorders.

On November 16, 2009 the El Paso County Commissioner's Court appointed Jo Anne Bernal to succeed José R. Rodríguez as El Paso County Attorney. At the time of her appointment, Jo Anne Bernal was a sixteen-year veteran of the office and First Assistant to José Rodríguez.

Jo Anne Bernal is the first female to serve as the County Attorney for El Paso County, Texas.

“...AND JUSTICE FOR ALL.”

Judge William Wayne Justice (1920-2009)

■ BY CLINTON F. CROSS

Judge Justice was controversial. During his lifetime, he received many death threats. Repair people refused to work on his home. Bumper stickers were printed calling him the “most hated man in Texas.”



Ruth Kern



Chesley Karr, plaintiff - *Karr v. Schmidt*, 460 F.2nd 609 (5th Cir. 1972), cert. den., 401 US 989 (1972).

Judge William Wayne Justice died October 13, 2009 at the age of 89. His life proves that a judge doesn't have to serve on the highest court of the land to change culture. His rulings reached all across Texas, reforming correctional institutions, integrating schools, and opening classrooms to the children of undocumented immigrants.

Judge Justice was controversial. During his lifetime, he received many death threats. Repair people refused to work on his home. Bumper stickers were printed calling him the “most hated man in Texas.” In Tyler where he presided as a federal judge for more than thirty years, more than 10,000 of the 65,000 residents signed a petition to have him impeached.

Today the memory of his work affects the “vetting process” of almost every federal court appointee.

William Wayne Justice attended undergraduate school at the University of Texas and graduated from its law school in 1942. He served in the army during World War II, and was discharged as a first lieutenant. He practiced law with his father during the 1940s and 1950s. He married in 1947, and had one child.

While practicing law he became a part-time city attorney in Athens, Texas. He also got involved in politics, and became friends with Ralph W. Yarborough, a life-long member of the El Paso Bar Association who began the practice of law in 1927 as an associate with the law firm of Turney, Burges, Culwell and Pollard (now ScottHulse, P.C.) and who was elected to the United States Senate in 1957.

In 1961 William Wayne Justice was appointed U.S. attorney for the Eastern District of Texas. He was reappointed in 1966.

Recommended by Senator Yarborough, Justice was thereafter nominated for a federal district court position. Following Senate confirmation in 1968, he was sworn in as a U.S. district judge in Tyler, Texas.

Shortly after being appointed to the bench, Judge Justice was confronted with an issue very similar to one also being litigated in El Paso. Tyler Junior College required male students to have short hair, trimmed mustaches and no beards to ensure a peaceful campus. Perhaps as a harbinger of future rulings, Judge Justice ruled for the Tyler

Junior College students.

In El Paso, a gym teacher in 1970 ordered a 16-year-old Coronado High School student, Chesley Karr, to cut off his long hair. Representing Chesley were El Paso attorneys Ruth Kern (mother of El Paso attorney David Kern) and Clarence Moyers, who challenged the constitutionality of the regulation. Harold L. Sims and Morris A. Galatzan represented the school district.

The case was tried before District Judge D.W. Suttle, the first federal judge within the jurisdiction of the 5th Circuit Court of Appeals to rule against a public school district's dress code regarding hair length. His decision was unpopular with the public and he was made aware of it through letters, telephone calls and other forms of harassment. Shortly thereafter, Judge Suttle transferred to San Antonio.

During a visit to El Paso years later, Judge Suttle introduced attorneys Sims and Galatzan to Judge Sessions' law clerk, and jokingly described them as the “lawyers who ran me out of El Paso” as a result of *Karr v. Schmidt*. Ultimately both the Tyler students and Chesley Karr lost--the appellate courts ruling that in their particular cases the schools had a right to enforce their dress code regulations, though Justice Douglas would have granted *certiorari* to the high court .

Shortly thereafter, the United States Justice Department filed suit in Judge Justice's court, seeking to end racial segregation in all Texas Schools. The case, *United States v. Texas*, was filed sixteen years after the U.S. Supreme Court had banned segregated schools in *Brown v. Board of Education*.

One year later, in 1971, Fred Weldon, first director of the El Paso Legal Assistance Society, filed *Alvarado v. El Paso Independent School District*, seeking integration of the schools in that district. When Weldon withdrew as counsel of record, Albert Armendariz, Sr. assumed responsibility for prosecuting the case.

Judge Justice ruled for the United States. The Fifth Circuit ultimately ruled for *Alvarado*. It did not take long for reform advocates to begin finding their way to Judge Justice's courtroom.

In El Paso, Steve Bercu, a legal aid lawyer, began representing juveniles who had been sent to a correctional facility without the benefit of legal representation and a hearing. At the time,

the juvenile process was considered “civil,” so parents of “incorrigible” children could sign “agreed orders” with findings that their children were delinquent. The orders would then sentence the children to time at a correctional facility under the supervision of the Texas Youth Council.

Bercu interviewed children serving time in Gatesville, and found that the problem was a state-wide one. Perhaps not by accident, he agreed to represent some children from East Texas. Thereafter, he filed a class action suit in Judge Justice’s court, alleging not only illegal commitments, but inhumane treatment, beatings and the use of Mace on youths, unsupervised and poorly trained guards and punitive practices. Bercu got support from the National Youth Law Center in San Francisco, California, a non-profit support center funded by the Legal Services Corporation. (Judge Enrique Peña was later appointed Chairman of the Youth Law Center’s Board of Directors.)

After years of litigation in *Morales v. Turman*, the judge found the conditions of the youth facilities unconstitutional. He forced the state to make significant changes in the administration of the agency.

In 1972, a state prison inmate from Austin,

armed robber David Ruiz, filed a 15-page handwritten petition in Justice’s court. The judge consolidated it with filings from other inmates into a class action suit against the Texas Prison system known as *Ruiz v. Estelle*. Several El Paso attorneys defended the State. In the late 1970’s and the 1980’s, Barton W. Boling, former District Attorney, former head of Attorney General John Hill’s El Paso Regional Office, and thereafter Chief of Attorney General Mark White’s Law Enforcement Division, was responsible for representing the state Department of Corrections.

After Bart Boling left as Chief of the Division and returned to El Paso to once again head the Attorney General’s El Paso Regional Office, Jo Anne Bernal (who was at that time an Assistant Attorney General in the Austin office) continued to work on the case. Today Jo Anne Bernal is El Paso’s County Attorney.

By the time *Estelle* was finally settled in 2002, Judge Justice had forced the State to make many sweeping changes to the state prison system.

In 1977, Judge Justice heard another case that significantly impacted the El Paso community in *Plyler v. Doe*. The state had outlawed free education for noncitizens in

1975. The Tyler school district refused to admit children of undocumented immigrants unless they paid \$1,000 in tuition, an impossible feat for immigrant families who earned an average of only \$4,000 a year at that time in Texas. Justice ruled, in the first federal opinion of its kind, that undocumented children and young adults have the same right as U.S. citizens to attend school in Texas. The U.S. Supreme Court upheld his decision.

In 2004, the University of Texas Law School honored him by creating the William Wayne Justice Center for Public Interest Law, promoting the importance of *pro bono* work, public service and public interest law while encouraging students to try to increase access to justice for all.

“Judge William Wayne Justice has been and is one of the great and courageous judges of our time,” then UT Law Dean William Powers, Jr. (now president of the University of Texas) said when the center was renamed.

But if a prospective federal judge is asked to comment about Judge William Wayne Justice’s judicial decisions, the nominee might be well advised to choose his or her words carefully. The judge’s sense of justice remains very controversial.

LITTLE YELLOW BOOKS ARE HERE!!!! EPCLSA 2009 Legal Directories

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Monday – Friday.

If you have any questions, please call
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“Registration Form
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Sending HUGE Files Over the Internet

BY DAVID J. FERRELL

dferrellepaso@gmail.com

What did we do before e-mail? What did we do before cell phones? How did we live without texting, instant messaging, VOIP (Voice Over Internet Protocol), online meetings and online document collaboration? It's hard to imagine the practice of law before these cyber tools, but, now we see these utilities have become the standard and maybe we are expecting them to do far more than was originally intended.

Let's limit this article to e-mail with huge attachments and alternatives. While it's not time to talk about "the death of e-mail," it is clear we are starting to look at many alternatives such as instant messaging, Adobe Acrobat collaboration, extranets, WEBOS, wikis, CLOUD computing and many more applications to address e-mail's shortcomings.

The best example of how the utility of e-mail is breaking down is in the area of transferring and providing access to large files. This is also an area where simple low-cost and no-cost changes can alleviate big file hassles.

There are two major problems regarding e-mail attachments. First, people are now sending attachments more than ever, and second, attachments are often HUGE. On an average day, a lawyer might send or receive large Word files, PowerPoint presentations, Pinnacle movies, Excel spreadsheets, digital photos and scans of documents and graphics etc.

The use of large attachments causes several problems, including:

1. Internet Service Providers and e-mail systems of law firms and/or clients etc may not accept or allow you to send attachments larger than 10 megabytes, some allow 20 megabytes.

2. Many organizations, including law firms, limit the size of employees' in-boxes. A recipient might have to spend time archiving or deleting e-mails to clear space.

3. Delays or cost increases occur when people only have access over mobile phones or through an anachronistic dial-up account, or have limited data plans.

There are two easy ways to deal with large attachments that you send, and you may suggest

them to clients/opposing/collaborating lawyers who send you large attachments: Shrink file sizes and/or transfer files outside of e-mails.

Shrink

Many people do not realize how easy it is to shrink large attachments:

1. Save Word documents in Rich Text Format (RTF) which will drastically reducing file size.

2. Large PowerPoint files often contain uncompressed images. Spend a few minutes in the PowerPoint Help menu and you will find out how to compress the images.

3. Perhaps the easiest way to reduce file sizes is to save documents as PDFs with a PDF-creation program. Anyone who knows me, knows I am an Adobe Acrobat aficionado. I've seen file sizes reduced by 90 percent this way. Adobe Acrobat users can shrink files in two easy ways. First, in your PDF creation program, set default settings to save your documents using the Smallest File Size setting. Second, use the Reduce File Size feature. The Help menus have details.

4. Using old school technology you can "zip" or compress files before you send them. Use a program like WinZip or the compression tools built into Windows.

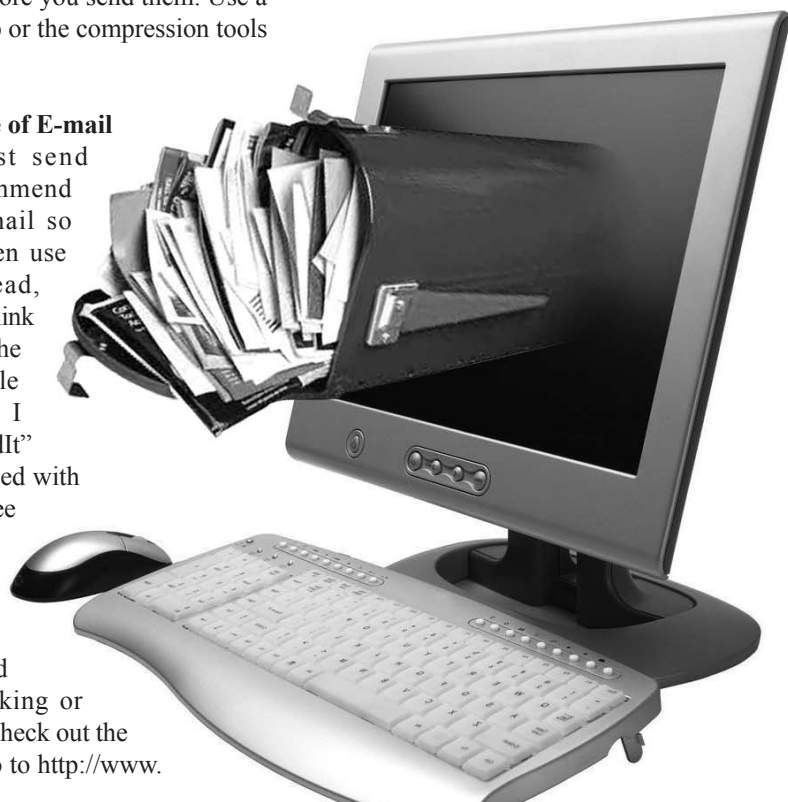
Transfer Outside of E-mail

When you must send large files, I recommend alternatives to e-mail so that you do not even use attachments. Instead, send an e-mail with a link to a website where the document is available to be downloaded. I have used "YouSendIt" and have been satisfied with its utility and it is free unless you want Premium Delivery, Password-Protected Secure Delivery, Certified Delivery with Tracking or Return Receipt. To check out the service and prices go to <http://www.yousendit.com>.

There are other simple, often free, websites that allow you to upload large documents and send links for downloading the file. These services are attractive for small firms or for anyone who wants to quickly and easily transfer large files. Google "large file transfer over internet free" and I promise you will see more sites than you can visit in your lifetime. Check out the top choices. When you are deciding which service to use, make sure you investigate the security provided by that service.

Some firms use extranets for clients where documents can be uploaded to a secure private website. Some collaboration "CLOUD" websites such as Google Docs allow you to place a document on the site and invite your recipient to share it, either to access it and/or work on it. Be careful about security here also.

I am sure once you try moving the transfer of large files outside your e-mail system you will agree it has been a positive change. This is an example of inexpensive technology improvements that have a great benefit on the practice of law.



ANNA PÉREZ:

One Of A Kind Trailblazer

■ BY JUDGE OSCAR G. GABALDÓN, JR.

El Paso Bar Board member Anna Pérez, who took office as El Paso County Commissioner for Precinct 1 on January 1, 2009, was born and reared as an only child in Chicago, Illinois. An earnest and applied student, Anna attended a Catholic parochial grammar school and Notre Dame High School for Girls, a private girl's academy in Chicago. During her senior year, the family moved to El Paso, where Anna graduated from Hanks High School. In 1989, Anna received her B.S. degree in Criminal Justice from UTEP, and her law degree in 1993 from Texas Tech University School of Law. She is also a 1996 graduate of the MALDEF Leadership Institute.

Anna's legal experience is both solid and noteworthy. Her first job after law school was as a criminal prosecutor assigned to the Rape and Child Abuse Unit of the El Paso District Attorney's Office. Afterwards, she worked for one year with the firm of Gay & Gutierrez, which concentrated on insurance defense and personal injury defense. Anna also worked in the Office of the El Paso County Attorney from 1997 to 2008. In 2000, she was promoted to Chief of the Civil Litigation Unit and the Domestic Violence Unit, and she also supervised the Mental Health and Elder Protection Units. Anna represented El Paso County, all county departments, county elected officials and county employees. "But it is through working with José Rodríguez, our



former County Attorney, that I learned the true meaning of public service and accountability to one's community," states Anna.

Anna truly embodies the philosophy expounded by the Indian philosopher Mahatma Gandhi: "The best way to find yourself is to lose yourself in the service of others." Her passion for serving the community is evidenced by her numerous contributions of both time and talent, including being a member of the Life Management Center Mental Health Task Force (2001), chairman (2002-2003); board member (2000-2005) of

the El Paso Hispanic Leadership Institute; founding member of Woman's Political Action Committee; Public Utilities Regulation board member (2002-2004); member of the City of El Paso Committee on Border Relations (2006-2007); member of the El Paso Airport Advisory Board (2005-2008); president of the Mexican American Bar Association of El Paso (1999-2000 and 2006-2007); board member of the El Paso Bar Association (2007-2010); and being a member, in a variety of capacities, of many other illustrious professional groups and organizations.

The recipient of many recognitions, Anna is especially proud of an award given to her by the National Alliance for the Mentally Ill, El Paso Chapter, in 2003. She asserts that "Serving as an advocate for improved mental health care, working with consumers and their families, and joining others in the fight for recognition of this vulnerable sector of our community has been a privilege."

Anna has also mentioned the importance to her of the El Paso Bar Association, which she says has allowed her to meet attorneys who practice in other areas of law, to learn from the experiences and mentoring of other fine attorneys, and to be connected in a special way to the law profession. Anna has found a wonderful sense of camaraderie in the bar association, and she believes it is a valuable resource for her and others.

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Clerk of the U.S. Supreme Court,
and honoring Selena Solis"*



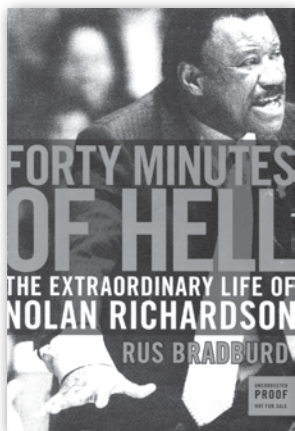
The Book Review

Nolan Richardson is arguably the greatest athlete ever to come from El Paso. After his athletic career at UTEP, he was drafted by teams in three different sports: basketball for the Dallas Chaparrals (now the Mavericks), football for the San Diego Chargers, and baseball for the Houston Colt 45's (now the Astros). *Forty Minutes of Hell*, however, is not about Nolan Richardson the athlete.

Rus Bradburd, the author, makes the case that Mr. Richardson may be the most significant coach in the history of basketball. At El Paso's Bowie High School his record was 190-80 even though there were many years when Mr. Richardson did not have a single player over 5'10". In three years coaching at Western Texas Community College in Snyder, Texas, he took his team to three JUCO Final Fours and finished with an undefeated national JUCO championship team. That earned him the position of head basketball coach at Tulsa where his team won the NIT, went to four NCAA tournaments, and had a record against in-state rivals Oklahoma, Oklahoma State and Oral Roberts of 17-1. Finally, at Arkansas, he took the Razorbacks to fourteen NCAA tournaments, three Final Fours, and won a national championship.

Considering that Mr. Richardson never coached transcendent players like Michael Jordan, Bill Russell, or Kareem Abdul Jabbar, can anyone even argue that Dean Smith, Red Auerbach, or John Wooden would have performed better if they had been limited to these "opportunities" because of the color of their skin? And yet this book is not about Nolan Richardson the coach.

Rather, this book is about America. Rus Bradburd shows some of the racists, some of



Forty Minutes of Hell The Extraordinary Life of Nolan Richardson

By Rus Bradburd

Reviewed by Judge Tom Spieczny

the heroes, and some of the angels that Mr. Richardson touched as he kicked down doors and developed deep and meaningful friendships throughout his remarkable journey.

The United States has changed dramatically in the last half century. When Nolan Richardson was at El Paso's segregated Douglas School before *Brown v. Board of Education* allowed him to become the first African-American at Bowie, no one could have imagined President Barack Obama. This book shows how Mr. Richardson who was the first black coach when he took the jobs in the EPISD, at Snyder, and at the University of Tulsa was a catalyst for much of that change. Mr. Bradburd covers some great but sadly obscure pioneer coaches in predominantly black schools in the South, such men as John McLendon, Clarence "Big House" Gaines, and Lucias Mitchell, and presents Mr. Richardson as a bridge from that generation to the coaches who are receiving

real opportunities today.

All of Richardson's past is prologue for Arkansas, where Mr. Richardson became the first black coach of any NCAA team at any big conference school in the old Confederacy. *Forty Minutes of Hell* chronicles how, despite incredible success, he was undermined and ultimately terminated by an athletic director who simply could never get comfortable with not being able to keep Nolan Richardson in his "place."

Sports have played a very significant role in America's ongoing effort to achieve racial equality. Most people are familiar with the struggles and accomplishments of Jackie Robinson, Wilma Rudolph, Althea Gibson, Arthur Ashe, and Muhammad Ali. Mr. Bradburd makes a compelling argument that Nolan Richardson – whom he describes as the most important coach in America – belongs in this conversation.

*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.*

THE EL PASO BAR ASSOCIATION'S JOINT
Holiday Party
December 3, 2009,
5:30 pm to 7:30 pm
International Museum of Art,
1211 Montana



Legal Literati

This month the El Paso Bar Journal literary page presents a poem by Justice Ann McClure

LIMBO

when the veil of darkness descends upon the earth . . .
 when the moon is masked by the rendezvous of clouds . . .
 when the sun plays hide-and-seek with the last of the evening stars . . .
 when the day dawns,
 and when the night falls,
 i think of you.
 more and more often i find myself withdrawing into oblivion.
 while the limbo of loss transcends all rays of hope,
 the barren wilderness of your death remains.
 the snow hurls downward, icing the earth like frosting on a cake,
 sending chills down the spine of anyone who dares look it in the face.
 the sun has fled, denying the desperate the vital warmth of its rays.
 there is no mercy.
 still seasons change
 and the sun beats down, broiling the earth like an egg in a skillet,
 sending fever down the spine of anyone who dares look it in the face.
 the clouds have fled, denying the desperate the vital protection of their screen.
 and there is no mercy.

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@ca.epcounty.com.**

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Courthouse Schedule
Offices Closed as follows:

Thursday, December 24, 2009

CHRISTMAS EVE

Friday, December 25, 2009

CHRISTMAS DAY

Thursday, December 31, 2009

NEW YEAR'S EVE

Friday, January 1, 2010

NEW YEAR'S DAY

Monday, January 18, 2010

MARTIN LUTHER KING DAY



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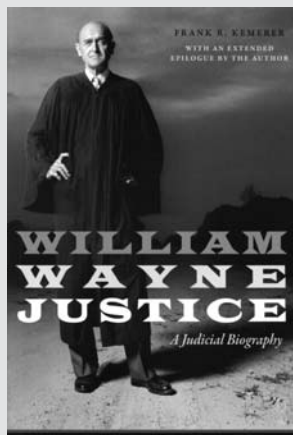
HON. ROBERT J. GALVAN COUNTY LAW LIBRARY NEWS

BY LYNN SANCHEZ

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

Kemerer, Frank R.

William Wayne Justice: A Judicial Biography
(University of Texas Press, Austin, 2008)



Bradburd, Rus

Forty Minutes of Hell: The Extraordinary Life of Nolan Richardson
(Amistad-Harper Collins Publishers, 2010) -Available for checkout in January, 2010

Greenburgh, Jan Crawford

Supreme Conflict
(The Penguin Press, 2007)

This book reveals a great deal about the political struggle for control of the Supreme Court after the resignation of Sandra Day O’Conner.

Warren, Earl

The Memoirs of Earl Warren
(Doubleday & Co., Inc. New York, 1977)

Above the Law



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



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▶▶▶ ASSOCIATION NEWS

El Paso Women's Bar Association

♦Join the El Paso Women's Bar Association for a Mediation Best Practices CLE featuring Bill Hardie, Reed Leverton and Patricia Palafox., on Wednesday, December 9, 2009 at 12:00 noon at the Original Jaxon's on North Mesa.

El Paso Paralegal Association

♦The El Paso Paralegal Association holds its Annual Attorney/Paralegal Luncheon on Thursday, December 10, 2009 at the El Paso Club.

Federal Bar Association

♦The Federal Bar Association will hold a Brown Bag Seminar on Thursday, January 21, 2010 at 12:00 noon in Courtroom #1, 4th Floor of the Federal Courthouse. 1.0 hours of MCLE has been requested. The topic will be "CM/ECF Walk Through and Federal Rules of Civil Procedure Update"

MEMORIAL SERVICE for Judge Enrique Peña

**Friday, December 4,
2009. 11:00 a.m.**

Sacred Heart Church,
602 S. Oregon

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following the service
at Shiraz Persian Cuisine,
400 Montana Ave.

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Pending Approval by the State Bar of Nevada

TENTATIVE AGENDA AND MAY BE SUBJECT TO CHANGE AT THE TIME OF THE SEMINAR

Friday, February 19, 2010

- 10:00 – 10:05 a.m. **Introduction** – Carlos Cardenas, President,
El Paso Bar Association
- 10:05 – 10:15 a.m. **Welcome** – The Honorable Oscar Goodman,
Mayor of Las Vegas
- 10:15 – 11:00 a.m. **Jury Consulting** – Johathan Leach, Trial Lab,
LLC, Dallas, Texas
- 11:00 – 11:40 a.m. **Developments in Transportation Law** –
Carlos Rincon, Rincon Law Group,
El Paso, Texas
- 11:40 – 12:30 p.m. **Court's Charge in Construction Cases** –
E. Link Beck, Beck & Hall, P.C.,
El Paso, Texas
- 12:30 – 1:30 p.m. Lunch on your own
- 1:30 – 3:00 p.m. **Evidence Jeopardy** – Honorable Linda Yee
Chew, District Judge, 327th Judicial District,
El Paso, Texas
- 3:00 – 3:45 p.m. **Legal Malpractice** – Steven C. James,
Attorney at Law, El Paso, Texas
- 3:45 – 4:00 p.m. Afternoon Break
- 4:00 – 5:00 p.m. **Supreme Court Update** – Speaker Pending
- 5:00 – 5:45 p.m. **Twombly – Iqbal and New Pleading
Standards** – Speaker Pending

Saturday, February 20, 2010

- 7:30 – 8:30 a.m. Breakfast
- 8:30 – 9:15 a.m. **Family Law & Issues for Military Families** –
Donald Williams, Attorney at Law, El Paso,
Texas
- 9:15 – 10:30 a.m. **Ethics – Schmethics Trival Pursuit** –
Hon. Linda Yee Chew, District Judge, 327th
Judicial District Court, El Paso, Texas
- 10:30 – 10:45 a.m. Morning Break
- 10:45 – 11:30 a.m. **Love & Collections in the Time of Recession** –
Scott Vogelmeier, Attorney at Law,
El Paso, Texas
- 11:30 – 12:30 p.m. **Immigration Issues in Civil Practice** –
Hon. Chief Justice David Wellington Chew,
8th Court of Appeals, El Paso, Texas
- 12:30 – 1:15 p.m. **Advertising in the Social Network Era** –
Eugene Majors, State Bar of Texas,
Austin, Texas

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