



# EL PASO BAR JOURNAL

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*Articles, Events and Information*

December 2011/January 2012

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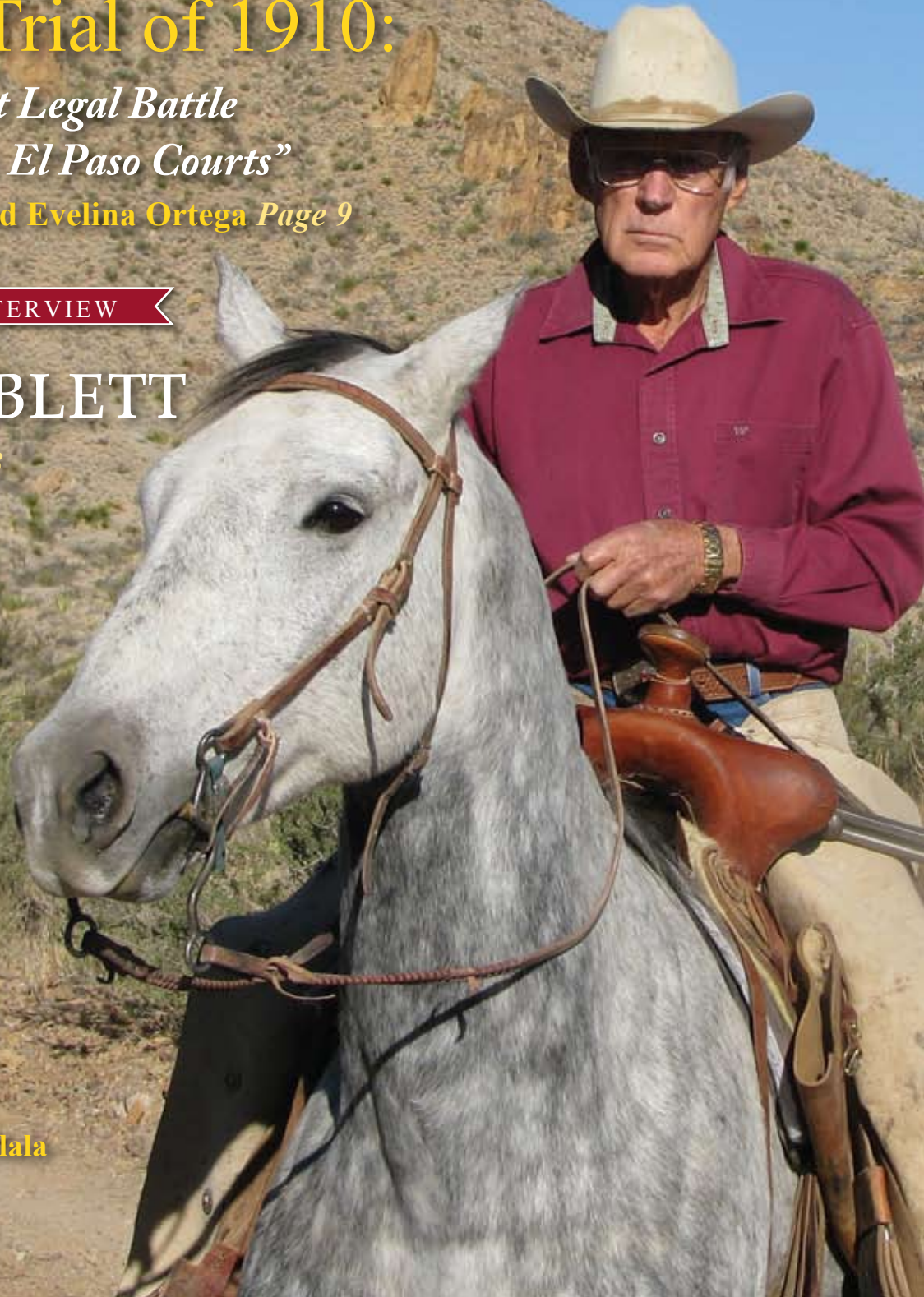
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## THE PRESIDENT'S PAGE



*Lawyers Serve All*

### “The Great Levelers”

In 1925, Dr. Ossian Sweet and his family moved to a white neighborhood in Detroit. Shortly thereafter, a white mob attempted to force the black family to flee their newly-purchased home. Not one to go quietly, Dr. Sweet organized the defense of his home.

During an attack on the Sweet family, a white man was killed. Dr. Sweet and ten others were brought to trial. Clarence Darrow argued to an all white jury: “I insist that there is nothing but prejudice in this case; that if it was reversed and eleven white men had shot and killed a black while protecting their home and their lives against a mob of blacks, nobody would have dreamed of having them indicted. They would have been given medals instead....” The jury deadlocked, and a mistrial was declared. The subsequent retrial of Ossian’s brother resulted in an acquittal, and the charges against the other defendants were dropped.

We each have the opportunity to contribute to a better community in our own way. This was recently shown when 30 local attorneys advised 130 people needing legal services at the Third Annual Access to Justice Fair held on October 29, 2011. Beto Mesta and George Andritsos did outstanding work on this project, which was co-sponsored by the El Paso Bar Association and Texas Rio Grande Legal Aid.

If you missed the Access to Justice Fair, please join us at the El Paso Lawyers for Patriots legal clinic for veterans on Saturday, November 19, at El Paso Community College’s Transmountain Campus. An introductory session on veteran legal issues will take place from 9:00 a.m. to 10:30 a.m. CLE credit (1.5 hours) will be given and its free. Consultations begin at 10:30 a.m. We need both attorneys and non-attorneys to volunteer for this event. Thanks to Don Williams and his committee, as well as TRLA, for organizing this event.

Our Joint Holiday Party will be held at the El Paso Community Foundation (333 N. Oregon, 1st Floor) on December 1. Please join our holiday celebration! Also, make plans to attend the Bar’s Annual Civil Trial Seminar, which will take place in Las Vegas on February 17-18, 2012. The seminar will be held at the Monte Carlo Resort & Casino.

**BRUCE A. KOEHLER**  
President

Cover: Kit Bramblett, 2011

EL PASO BAR ASSOCIATION  
**December Bar Luncheon**

Tuesday, December 13, 2011

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

**Guest Speaker will be**

Wayne Windle who will tell us stories  
of his 50 years in the practice of law.

We will also be honoring our 50-year attorneys.

**Please make your reservations by Monday, December 12, 2011 at noon  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)**

EL PASO BAR ASSOCIATION  
**January Bar Luncheon**

Tuesday, January 10, 2012

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

**Guest Speaker will be**

David Ferrell, Chair of the Technology who will be showing  
us the new El Paso Bar Association Website

**Please make your reservations by Monday, January 9, 2012 at noon  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)**

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# CALENDAR OF EVENTS

*PLEASE NOTE: Please check the Journal for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Journal for your upcoming event or function for the month of February/March, 2012, please have the information to the Bar Association office by Monday, January 9, 2012. 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.*

**DECEMBER, 2011**  
**Thursday, December 1,**  
*Joint Holiday Party*  
**Tuesday, December 6**  
*EPBA BOD Meeting*  
**Tuesday, December 13**  
*EPBA Monthly Luncheon*  
**Thursday, December 15**  
*EPPA Attorney-Paralegal Luncheon*  
**Friday, December 23**  
*EPBA Office Closed*  
*Christmas Eve (observed)*  
**Sunday, December 25**  
*Christmas Day*  
**Monday, December 26**  
*EPBA Office Closed*  
*Christmas Day (observed)*

**Friday, December 30**  
*EPBA Office Closed*  
*New Year's Eve (observed)*

**JANUARY, 2012**  
**Sunday, January 1**  
*New Year's Day*  
**Monday, January 2**  
*EPBA Office Closed*  
*New Year's Day (observed)*  
**Tuesday, January 3**  
*EPBA BOD Meeting*  
**Tuesday, January 10**  
*EPBA Monthly Luncheon*  
**Friday, January 16**  
*EPBA Office Closed*  
*Martin Luther King Day*  
**Thursday, January 19**  
*EPPA Monthly Luncheon*

**Friday, January 27**  
*Estate Planning and Probate Seminar*

**FEBRUARY, 2012**  
**Friday, February 17**  
*16th Annual Civil Trial Seminar*  
*Monte Carlo Resort & Casino*  
*Las Vegas, NV*  
**Saturday, February 18**  
*16th Annual Civil Trial Seminar*  
*Monte Carlo Resort & Casino*  
*Las Vegas, NV*

## EPBA County Holidays

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

Friday, December 23, 2011  
*Christmas Eve (observed)*  
Monday, December 26, 2011  
*Christmas Day (observed)*  
Friday, December 30, 2011  
*New Year's Eve (observed)*  
Monday, January 2, 2012  
*New Year's Day (observed)*  
Monday, January 16, 2012  
*Martin Luther King Jr. Day*

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# ADVANCE SHEET, circa 1296

■ BY CHARLES GAUNCE

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

From the Bills Pleas of the Manors of the Abbey of Bec in the Twenty-fourth year of King Edward I:

William Bigge and William Druladon are convicted by inquest of the court of wrongfully having millstones in their houses and taking toll and multure to the great damage of the lord as regards the suit to his mill. Therefore they be in mercy and it is commanded that the said millstones be seized into the lord's hand.

A few times while writing these summaries, I have stumbled upon the phrase to be "in mercy." Well, this time I decided to actually figure out what it means. Often a financial penalty is inflicted at the mercy of the king or his justices for various minor offences. When this happens the offender is said to be "in mercy," and the monies paid to the crown to settle the matter is called an "amercement." Thus, "being in mercy" means that the person is liable to punishment, usually financial, at the discretion of the judge.

In the case at hand, the question before the court was whether Bill Bigge and Bill Druladon had actively participated in a scheme to cheat the lord out of monies due him. The act of having a millstone in your possession outside the lord's mill is a lot like having possession of printing plates for currency in our current economy: there simply aren't a lot of defenses to the possession of the item and there isn't much use in claiming it was for

"personal use." Nevertheless, the case against them included proof that they had used the stones for other than personal use by accepting grain from others and grinding it into flour for those others. In many respects, the "taking toll and multure" phrase is a redundancy as the word multure refers to the fee for grinding at a mill, and toll refers to the charging of a fee. But then, redundancy in legal matters is an honored tradition in legal writing. Just reference any deed: "bargain sell, transfer, and convey."

But the lord was not done; he also proved to the satisfaction of the court that the actions of William and William had done him "great damage." I suppose the twin Bills got off lucky: their lack of honesty did not cost them body parts or their lives, it only cost them the millstones and whatever the court determined their actions had cost the lord.

William and William may have received a relatively light sentence, but I can't help but wonder whether or not they felt like they were getting "home-towned" at trial as the inquest was held before a manor court. And we all know who appoints the judges of a manor court. Hint: holding judicial office wasn't as the result of a popular election. If you, as counsel, have never been introduced to the jury by the judge saying, "and representing the defendant is his counsel, whose name I do not know, but he is from out of the county," then you have never been truly "home-towned".

*In this issue of the Bar Journal,  
Kit Bramblett relates how he successfully  
"out-home-towned" Sam Sparks in an  
important family law case. Ed.*

## EL PASO PARALEGAL ASSOCIATION'S ANNUAL ATTORNEY- PARALEGAL LUNCHEON

EPPA's Annual Attorney-Paralegal Luncheon will be held on

**Thursday, December 15, 2011 at 12:00 Noon** at the

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

*Tickets are available by contacting Mary La Rue at 545-4900 or at [larue@windlehood.com](mailto:larue@windlehood.com)*

# Gerald Georges: Public Defender and Consummate Chess Player

■ BY STEPHANIE TOWNSEND-ALLAYA

When one considers the game of chess, the word “aggressive” and “violent” may not come to mind. But for El Paso Attorney Gerald A. Georges, Jr., aggression and violence attract him to the game. Chess replicates the “game” of war, with chess pieces symbolizing elephants, knights, and chariots during the time when the game was invented. The word “chess” comes from the Persian word “Shah” and the words “check mate” come from Persian words meaning “the king is dead.”

“There’s a lot to chess,” claims Gerald. “You’re attacking with wooden or plastic pieces in a way that you can’t attack with guns and knives. It is not acceptable to attack another person that way, even if you would like to do so. Also, I know my opponents would like to humiliate me. I look forward to the fight. I take great pride in participating in the contest of wills.”

Gerald Georges was the Colorado Chess Champion in 1981, long before he became as Deputy Public Defender. During that time, he was also rated as a “Chess Master” by the United States Chess Federation. Today, he plays in a Wednesday night pick-up game with other lawyers and professionals from around El Paso.

The El Paso native and Coronado High School grad learned to play the game from his grandfather. “I was about ten years old. I played against my grandfather. I played against the kids on the block. I played against the kids in school. But when I went to college in 1972 I played in my first tournament, the Southwest Open.”

Georges says there are two things that caused the quality of his game to slip over the years: work and family. “I got married, had a family, and went to law school. My lovely wife Darcy is a famous local actress, and we have two kids—daughter Tegan and son Tony. They both live in Manhattan.”

Gerald still likes to play chess. “We have an informal chess club that meets on Wednesday nights. Clinton Cross has never beaten me. Some players do, but very rarely. Right now there’s a doctor by the name of Mitchell Felder



*Gerald Georges was the Colorado Chess Champion in 1981*

who plays with us. He is a fairly strong player. I usually beat him. He’s beside himself. I like that.”

Gerald also believes chess is more than just a game. “It is a metaphor of life,” he says. “For instance, chess teaches us to think and plan ahead, to execute our plans with care and discipline, and never to give up until it

is clear there is no benefit from continuing to struggle. On the other hand, it also teaches us that sometimes the hardest game to win is the ‘won game.’ Chess also teaches us to be courteous and respectful. We try to follow all these lessons and principles in the courthouse when we practice law. These are lessons we should also try to teach our children.”

# THE LAW WEST OF THE PECOS

BY JUSTICE ANN CRAWFORD McCLURE

On September 21, 2011, the court released its opinion in *Texas Tech University Health Science Center v. Jackson*, No. 08-10-00363-CV, 2011 WL 4396879 (Tex. App.—El Paso Sept. 21, 2011, n.p.h.). Lisa Jackson filed suit in connection with the alleged negligence of an ophthalmologist in treating a penetrating eye injury. TTUHSC filed a plea to the jurisdiction on the ground of sovereign immunity. The trial court denied the plea and an interlocutory appeal followed.

According to the opinion, Jackson suffered a penetrating eye injury while attempting to affix hair extensions on June 1, 2009. She sought care at Sierra Medical Center's emergency room. She reported that the thick string she was using to sew in the hair snapped and hit her in the left eye. The ER physician transferred her to Thomason Hospital via ambulance with a diagnosis of "eye contusion; retinal detachment; corneal abrasion." She was discharged from Thomason with instructions to go immediately to the Health Science Center's Ophthalmology Clinic. There she was seen by Dr. Neil Adams who noted that a rubber band snapped and hit her in the eye. She was diagnosed with a corneal laceration. Dr. Adams discussed with her the risk of corneal scarring should they suture the cornea immediately. He recommended a bandage contact lens to allow natural healing. Because Jackson wanted to return to her home in Nevada as planned, Dr. Adams scheduled an appointment for her with Dr. Kent Wellish for examination and surgery in Las Vegas the next day. Dr. Adams directed that the lens be placed on the eye, ordered strict bed rest, the use of an eye shield, and prescribed pain medication and antibiotic drops to fight infection.

Later that night, Jackson returned to Thomason complaining of decreased vision. For the first time, she mentioned that a needle had punctured her cornea. The ER physician called Dr. Adams and was informed of the upcoming appointment in Las Vegas. Jackson was prescribed Vicodin and Benedryl and discharged.

Jackson returned to Las Vegas the next day, but instead of keeping her appointment with Dr. Wellish, she went to the emergency room at Summerlin Hospital. These medical records reflected that her injury was the result of accidentally sticking a needle in her eye. She was diagnosed with a probable penetrating globe injury. The physician noted pus draining



from the eye and administered antibiotics. He reapplied the eye patch and referred her to Sunrise Medical Center.

Jackson arrived at Sunrise Medical Center by ambulance and was seen by Dr. Edward Yee. He performed a suture repair of the corneal laceration, diagnosed an infection, prescribed antibiotics, and referred her to Retina Consultants of Nevada. There, Jackson was seen by Dr. Roy Loo on June 3. X-rays revealed the presence of a foreign object in the eye. That same day, Dr. Loo performed surgery and treated the infection, but his attempt to remove the foreign object was unsuccessful. During this surgery, the corneal wound was compromised and Dr. Loo had to place additional sutures in the cornea "to ensure a watertight seal."

On June 12, Dr. Yee performed a corneal transplant. His notes identified a needle penetrating the left eye causing an infection in the cornea. He performed a second surgery to remove the needle fragment, but Jackson's vision did not return and eventually her left eye was removed and replaced with a prosthetic.

Jackson brought suit against TTUHSC alleging that Dr. Adams was negligent in applying the bandage contact lens rather than pursuing prompt surgical intervention. She maintained that her claim fell within the limited waiver of sovereign immunity provided in Section 101.021(2) of the Texas Tort Claims Act because Dr. Adams' use of the bandage contact constituted a "use" of tangible personal property resulting in injury.

TTUHSC alleged in a single issue that the trial court erred in denying its plea to the

jurisdiction because Jackson failed to plead or prove facts sufficient to trigger an abdication of sovereign immunity under the Texas Tort Claims Act. First, it complained that Jackson's petition was insufficient to plead a waiver of sovereign immunity. Second, it argued that at best, the pleadings alleged a claim for negligent medical judgment which does not waive sovereign immunity. Finally, it argued that the evidence proved Jackson herself caused the injury.

The court began by recounting that while the failure to use property does not waive sovereign immunity, the use or misuse of property does. Jackson alleged that the bandage contact lens ordered by Dr. Adams constituted the use of tangible property. "That may well be true", said the court, "but there is no allegation, and no evidence, that the use or misuse of the lens caused her injuries." The court concluded that Jackson's pleadings were insufficient to waive immunity. She did not allege that Dr. Adams misused the contact lens, she did not allege that the lens was defective, nor did she plead any facts which linked the application of the contact lens to the eventual removal of her eye. Nothing tied the tangible personal property to the injury. There wasn't even an allegation that the contact lens somehow caused her condition to worsen. Simply stated, her complaint was that Dr. Adams was negligent in his treatment because he recommended a lens and not immediate surgical intervention. Such negligent medical judgment does not fall within the waiver of sovereign immunity. The court reversed and rendered judgment, dismissing the suit with prejudice for want of subject-matter jurisdiction.



# The Leech Trial of 1910:

*“The Hardest Fought Legal Battle in the History of the El Paso Courts”*

## Part I

■ BY MARK CIOC-ORTEGA AND EVELINA ORTEGA

Ernst Kohlberg, one of El Paso’s most prominent Jewish businessmen and civic leaders, was shot to death on Friday, June 17, 1910. The homicide took place inside Kohlberg’s store, *La Internacional Cigar Factory*, at 115 South El Paso Street, in the heart of El Paso’s downtown. His killer was John Stark Leech, the manager of the nearby Southern Hotel. Leech walked into *La Internacional* around 4:30 or 4:45 pm, exchanged words with Kohlberg, and then fired two shots at close range. The second bullet entered Kohlberg from the back, puncturing his heart. Leech fled, but soon surrendered himself and the murder weapon to a pursuing police officer. As Kohlberg bled to death, Leech was whisked to the county jail and booked with murder. Leech never denied firing the fatal shot, saying only “It had to be done.” Why “it had to be done” was not yet clear.<sup>1</sup>

The “Kohlberg assassination”—as the local newspapers sensationally called it—kept the news print flowing for the next four months. Kohlberg’s life seemed straight out of a Horatio Alger novel. Born in Beverungen, Westphalia (Prussia) in 1857, he emigrated from Germany to the United States in 1875 under contract with Solomon Schutz, an El Paso wholesale merchant



*La Internacional Cigar Factory in 1905.*  
Skaggs Collection, Archives of the Big Bend, Bryan Wildenthal Memorial Library, Sul Ross State University, Alpine, Texas.

and fellow Westphalian. Eager to strike it rich, Kohlberg left Schutz’s employment shortly after his indentureship ended and poured his life savings into a Mexican gold mine called Jesus María. When this venture flopped, he headed to San Francisco, California, where he learned the tobacco business. In 1881, he returned to El Paso and began selling cigars. In 1884, he married Olga Bernstein, whom he met while visiting Germany. In 1886, he and

his brother Moritz opened up *La Internacional*, soon to become the largest cigar manufacturing business in the American Southwest.

Kohlberg became wealthy through hard work and savvy investments, and he achieved local prominence through his civic activism. He was elected to the El Paso city council in 1893 as a Republican in a heavily Democratic-leaning city. He co-founded the El Paso Light Company and served as Director of the City National Bank and the Rio Grande Valley Bank. In 1898, he helped establish Temple Mount Sinai, a Reformed Jewish congregation. He was an avid Scottish Rite Mason. He owned and operated the St. Regis, one of El Paso’s finest downtown hotels (which hosted a breakfast banquet for President Howard Taft just prior to his summit meeting with Mexican President Porfirio Díaz on October 16, 1909). He also owned—fatefully as it turned out—the Southern Hotel, at 423 South El Paso Street, which he leased to his future murderer, John Leech. Just months before his death, he moved into a beautiful new house in Sunset Heights, along with his wife Olga and their four children, Walter, Herbert, Else, and Leo.<sup>2</sup> “Too well known to be described” was the coroner’s terse synopsis of Kohlberg’s life in the inquest record.<sup>3</sup>

### Endnotes

1 “Ernst Kohlberg is Killed,” *El Paso Herald* (June 18, 1910).

2 Frank W. Johnson, ed. *A History of Texas and Texans* (Chicago: American Historical Society, 1914), vol. 3, 1195-96; and Walter Kohlberg, ed. *Letters of Ernst Kohlberg 1875-1877* (El Paso: Texas Western Press, 1973), 3-8.

3 *El Paso County: Justices Inquest Record*, vol. 80, p. 669, Special Collections, UTEP Library.

If Kohlberg's life was one of sunny success, John Leech's was beclouded by real misfortunes and imagined enemies. Born in Philadelphia in 1858, he served in the U.S. Army's Sixth Cavalry from 1881 to 1886, before moving to El Paso to work on the G.H. & S.A. and the Santa Fe railroads. He rejoined the army during the Spanish-American War (1898-1902), serving with an engineering corps in the Philippines. After his discharge in January 1902, he went to work for the El Paso & Northeastern, but a train-related accident soon left him with a permanent leg injury. Changing careers, Leech leased the 50-room Southern Hotel from Kohlberg and became its manager. At first, the rent was \$300 per month (\$3600 annually) but in 1908 Kohlberg lowered the rate significantly to \$200 per month during high season and \$150 per month during off-season (\$2100 annually). Leech resided in the hotel with his wife Elizabeth ("Lizzie") and their two young children, John and Mary.<sup>4</sup> At the time of the murder, John Leech was described as being 50 years old, 5' 8" high with brown hair, blue eyes, and a fair complexion.<sup>5</sup>

The Southern Hotel offered Leech enough income to pay his monthly lease and cover his family's needs. But Leech had a gambling habit and his earnings sometimes vanished at the Juárez racetrack across the Rio Grande. Leech was in arrears to Kohlberg off and on during their seven-year business partnership, but it was not until 1910 that his debt spiraled out of control, reaching \$1165 (\$26,500 in today's dollars) by the time of the murder. In early June 1910, Kohlberg asked his real estate agent, Charles B. Stevens, to collect the debt *in toto*. When Leech failed to pay, Kohlberg instructed his attorney, R. C. Walshe, to prepare an eviction notice. A constable delivered the eviction notice to Leech at his residence in the Southern Hotel around 4:15 pm on June 17. According to Lizzie Leech's statement to a reporter immediately after the shooting (she would later change her story), her husband "said nothing when the dispossession notice was given him but later took his hat and said he was going out to see his lawyer about it."<sup>6</sup> Apparently he consulted his Belgian-made .38-caliber dual-action pistol instead because around 20 minutes later Kohlberg was dead.

The trial of *State of Texas vs. John Leech* began on Monday, October 3, in the 34th district court. Judge J. R. Harper was on vacation, so Special Judge Patrick Henry Clarke presided. Clarke's frock coat, witticisms, and rich Irish brogue lent the trial some extra color, but it was his calm demeanor and thorough manner that

most impressed the packed courtroom. District Attorney Walter D. Howe handled the state's case, assisted by some of El Paso's best-known attorneys: William W. Turney, Dan M. Jackson, Thomas A. Falvey, Victor Moore, and Marvin W. Stanton. Leech's defense rested in the hands of John E. Wharton, a prominent New Mexico attorney and former judge who had recently moved to El Paso; and Preston E. Gardner, another El Paso newcomer who would soon become a major real-estate owner and power broker in the community. "The Leech trial promises to be the hardest fought legal battle in the history of the El Paso courts," opined the *El Paso Herald*, after gazing at the courtroom star power.<sup>7</sup>

Jury selection consumed nearly ten days and required four venirees. Altogether the court summoned 335 potential jurors, some from as far away as Sierra Blanca and Van Horn, which at the time still belonged to El Paso County. One reason jury selection took so long was that many of the potential jurors had already made up their minds about Leech's guilt ("So you would convict a man on street rumors and newspaper reports?" the judge asked one potential juror in his sardonic brogue). Another reason was that District Attorney Howe sought to eliminate all potential jurors who had "scruples" about the death penalty. This earned him the nickname "the scruple man" from the judge. A third reason was that the defense team "examined with especial care each talesman [potential juror] who was born north of the Mason and Dixon line." While it was not uncommon for southern attorneys to seek out southern jurors, the defense team was probably being extra vigilant: it wanted a jury sympathetic to "the unwritten law" (justifiable homicide) and to Leech's overt anti-Semitism.<sup>8</sup>

Jury duty was no walk in the park. Once selected, jurors were immediately sequestered in the courthouse under jail-like conditions. They whiled away the time playing cards, reading books (but not newspapers), talking to each other, sleeping on cots, and waiting for friends or family to bring fresh clothes and toiletries. For many of them it also meant an extended time away from work and their children (worst off was a New Mexico rancher, who got snagged into jury duty because he owned a house in El Paso). By the time the jurors were finally escorted into the jury box, many were sporting scraggly beards, and by the end of the trial they were "looking pretty tired."<sup>9</sup>

Testimony began on October 13. The prosecution's star witness was Walter Kohlberg,

the eldest son of Ernst and Olga. Just shy of his 26th birthday, he had been working for his father for the past six years and was present when the homicide occurred. Walter testified that he had seen Leech come into the store; that he had overheard the entire conversation between Leech and his father; and that he had seen Leech pull the trigger. "Leech came in and sat down very deliberately, and said to my father 'I see you have done it'; my father said to Leech 'The matter is in the hands of Charlie Stevens and Walshe, and go and see them about it.'" Leech then stated that he had fallen on hard times and was thus unable to cover his arrears. "My father again said to him to go and see Charlie Stevens and Walshe, that the matter was out of his hands. At that my father got up and started to walk toward his private office, because he had ended the conversation, and at that Leech got up, and I heard the first shot fired, and I saw him fire the second shot which struck my father in the back. Father fell in toward the cashier's window, and he never said another word." Walter later added: "The last words my father said were that the matter was in Stevens' and Walshe's hands, and that Leech had plenty of money to play the races, but not to pay the rent."<sup>10</sup>

T. S. Kerr, an eyewitness, then testified that he was outside the Kohlberg store when he heard gun fire and a few seconds thereafter "saw a man come out of the Kohlberg's store and go down the street, towards the river, South, and he was walking rather fast.... He turned and went in behind the building there, the Eastern Grill or some building that they were tearing down." (At the time of the murder, the Gem Saloon, Happy Hour Theater, and Eastern Grill were being demolished to make room for West San Antonio, a new cross street linking El Paso and Santa Fe streets.) G. E. Fletcher, a police officer, then identified Leech as the man he arrested in the rear of the old Eastern Grill with a weapon in his possession. Then Charles Stevens, Kohlberg's real-estate manager, stated that Leech owed "about \$1150 in arrears" (roughly six months back rent) and that he had spoken with Leech about the need to pay off the entire debt or face eviction. Stevens further testified (as did A. R. Coleman, a former employee of Stevens' agency) that Leech had threatened to "kill Mr. Kohlberg" and "kill the damn Jew" at least three times in the past three years, always when the possibility of an eviction loomed. Finally, G. B. Calnan, the attending physician, explained that Kohlberg had died from a bullet that had entered from the back below the shoulder blade and passed

through the body on the right side of the spinal cord, lodging near the right breast. The bullet “went nearly straight through” and it “fractured the fourth rib behind and the third rib in front.” It clipped Kohlberg’s aorta, causing him to bleed to death within a few minutes.<sup>11</sup>

The prosecution had presented a strong case: an eye witness; motive and opportunity; premeditation; corroborating testimony; and a murder weapon. *To be continued in the next issue.*

#### Endnotes

- 4 “State of Texas vs. John Leech, in the District Court of El Paso County, Texas, 34<sup>th</sup> Judicial District, September Term, 1910, No. 5250,” in El Paso County Criminal Files (“Old Criminal”), Media and Microfilms, UTEP Library, MF524, Roll 35, 0723-30.
- 5 *El Paso County Jail Register 1910*, p. 192, Special Collections, UTEP Library.

- 6 “E. Kohlberg Shot Down by Leech,” *El Paso Herald* (June 18, 1910).
- 7 “Leech’s Trial Starts,” *El Paso Herald* (October 3, 1910).
- 8 *El Paso Times* (October 12, 1910); *El Paso Herald* (October 5, 1910); and *El Paso Times* (October 5, 1910).
- 9 “Jury Will Get the Case Monday,” *El Paso Herald* (October 15, 1910).

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# Judges should embrace, not fear, their humanity!

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

“To become truly great, one has to stand with people, not above them.” The French politician and philosopher, Charles de Montesquieu (1698-1755), spoke these words centuries ago to impress upon us the idea that our nobility is based on our willingness to embrace our fellow men and women as equals; that we are making our journey on earth in communion with others, and with the recognition that the greatest beauty in life is when people find their ultimate purpose in the service of others.

During the years that I have been gifted with the opportunity to serve as the judge of the child protection court and preservation family drug court, my eyes have seen and my ears have heard desperation and hope, sadness and exhilaration, sarcasm and humility, tears and smiles, laughter and silence. My heart, my mind, and my soul at its core have sighed so often, sometimes in joy, but at other times in sorrow. Life is what it is. Life entails a rainbow of human experiences with varied dimensions. Each of us is part of that reality, willingly or not. I often ponder these things. I wonder whether I even touch, much less make a dent, in the hearts of others. Do I even reach my own heart, or do I put a wall around it so as to block not only myself, but also the reach of others? Is my focus me, myself, and I? If so, that is such a sad state of affairs. There is perhaps nothing more pathetic than self-indulgence. There is perhaps nothing nobler than the desire to pursue the best interests of others before oneself. These may be pleasant and maybe even poetic words, but that is all they are. It is action that brings life to those words. It is the actual living according to those ideals that makes our human nobility real, one with substance.

I remember times during my judicial tenure when I have been afforded opportunities to humanize my judicial disposition without in any way taking away from the respect and solemnity of the judicial office. I recall one morning in particular. I was presiding over what is referred to as an adversarial hearing. The hearing was to determine whether or not I would grant the state the temporary custody of a child alleged to have been abused. After hearing the evidence, I found the state’s request to be meritorious, and I granted its request. I proceeded to speak with the child’s mother in open court. I let her know that she was accountable for her choices and the consequences that flowed from that. She was the sole owner of those decisions. I also wanted her to know, as I tell other parents in similar circumstances, that she is a good person and that she has the power to change her circumstances, but that in her humanity, she has stumbled as we all do. Her body language clearly indicated to me that she regarded herself not worthy of any trust, and that she was a failure as a human being and as a mother. No matter how I re-directed my comments to give her hope for a better tomorrow, it was not working. She did not seem to believe how much I believed in her. Then I remembered something. I had forgotten to wear my socks that morning. So, I got off the bench and walked up to this mother, who was seated with her attorney at counsel table, and I raised my robe to expose my bare leg to her, and I told her: “Ma’am, I forgot to wear my socks. This morning, I rushed out of my home with my tie and coat and everything but my socks. I made a mistake.” Now, I had eye contact from this mother. Now I could see hope in her eyes. Yes, I had to make a quick decision.

I had to decide whether I would risk becoming the bud of jokes among lawyers and others in the courthouse. But, it was not about me. It was about this woman, who had more goodness in her than she gave herself credit for.

I also remember that court hearing, known as a Permanency Hearing, when a kindly therapist was testifying on the witness stand. He was stressed so much by the behavior of some parents that would frequently promise the world to their three young children, only to fail in their promises over and over again, devastating their children’s tiny little hearts. He talked about how the parents had recently promised their children that they would be going back home within a few days. The children, on the day promised to them by their parents to be delivered from their foster care placement, happily went about gathering their small belongings, their stuff little teddy bears, toys, and other trinkets. After all, they were going home. Alas, this joy quickly turned into emotional and mental tragedy when the children had to be told by their foster parent that going home was not to be.

“God send me a teaching moment!” I looked at the clock in the back of the court room and noticed it was about 11:30 a.m., and all of the sudden I realized that I had to do something very important. I had to make a telephone call. Excusing myself from the bench, I went to my chambers to place that important telephone call. Upon my return to the bench, I told everyone in the court room that I wanted to come clean about the interruption of the hearing. I told everyone in the court room that I had stopped the court hearing momentarily in order to call in a pizza for my daughter and her friends at their high

school. I explained to those present in the court room that early in the morning, before I left my home, I had “promised” my daughter that I would not forget to call in the pizza. I had to keep my word to her. I had to keep the promise. Failing to keep the promise would have a hurtful impact on my relationship with my daughter, and it would also have a negative impact on her relationship with her friends, who were also relying on her promise to them that she would make the arrangements to have the pizza brought to the school at lunch time. Breaking the promise would risk breaking the trust that existed in the relationships between my daughter and I, as well as between my daughter and her friends; breaking the promise may even result in several young girls losing out on their lunch altogether. The parents listened attentively to my words. I then proceeded to speak with them about their false promises to their young children and the hurtful and negative fallout that comes with broken promises.

We must sometimes be willing to sacrifice our “egos” for the sake of others. Yes, it is very hard to do at times. After all, we are human. We are proud. We care a lot about our image. Still, because we are human, we are also endowed with the ability to rise above our human frailties and shortcomings. I remember being tested once with a situation that challenged my pride in court. A foster mother was testifying about a foster youth’s problem with “peeing on the bed.”

The youth, a high school boy, was present, and yes, extremely embarrassed in the mist of such testimony. Adding to his distress was the presence of others, including other high school youth. The foster mother described the “large pee stains” on the sheets, that this was a daily problem which entailed a lot of washing of sheets and clothes, and so on and on. The boy had his head held down, and he dared not look up. Upon the foster parent finishing her testimony, I felt I had some duty or some kind of responsibility to not let this boy’s court room experience remain unaltered. Should I just have the child protective services prosecutor call the next witness? What should I do? What is the right thing to do? God, please give me something!

I told the boy in open court that when I was a fourth and a fifth grade student at Cooley Elementary, I “peed” in my pants. I told my story to him, and about how the other kids snickered and made fun of me as I was led out of the classroom with my pee-stained pants. As I shared this experience with him, and I guess with everyone in the court room, I also realized that this boy probably was thinking, “Yeah Judge, thanks for trying to help me here, but a fourth or fifth grader may get away with an experience like this, but it’s a different story for a high school kid to pee in his pants.” I paused. I took a deep breath, and then I said, “You know, I peed in my clothes three months into my marriage. I was a newlywed, and I had

a dream that I was urinating in a urinal. The dream was so real, that I was actually urinating in the bed. I remember I could not find the words to let my bride know that her husband, a grown man, had wet the bed “big time!” I kept stalling, telling her that we should relax. After all, it was a Saturday, and we had some free time to lounge around. I did not know how to get out of bed and expose my dilemma and the “pee pee” lake on the bed. As I looked at the boy in the court room, I saw the boy seating up straight, apparently no longer embarrassed. I then told him, “I bet you that many of these people in this court room have probably experience something similar as you and I. We just don’t know about it.” I could sense in the air that some in the court room wanted to raise their hands and say, “You know, I too had something like that happen to me.”

It is what it is. We are all going through a temporal experience, a journey if you will, in our earthly lives. When it comes to serving others with charity, time is of the essence, for people truly are the most important realities in our lives. Nothing more important and sacred exists than the human being. It is humility above everything else that allows us to embrace and not fear our humanity. Thomas Merton (1915-1968), the American and Trappist Monk of Our Lady of Gethsemani Abbey in Trappist, Kentucky, most definitely saw the raw truth in this when he observed, “Pride makes us artificial and humility makes us real.”

## LIFE ALERT: SAVE A LAWYER

*Lawyers are three times as likely to suffer depression as any other profession*

*Suicide is the third leading cause of death among lawyers*

*The rate of death by suicide for lawyers is two to six times that of the general populations*

*Don't take a chance... get prepared now and be ready to use your advocacy skill and take action.*

*Get training from suicide prevention organizations in your community. For a list of training programs, go to the Best Practice Registry for Suicide Prevention at [www.sprc.org/bpr/index](http://www.sprc.org/bpr/index) or call TLAP at 800-343-8527 for suggestions training.*

### **Action Step One**

**Know the signals alerting that a conversation about suicide may be needed.**

#### Verbal

hopeless  
end of my rope or trapped  
tough time  
no purpose or meaning to my life

#### Behavioral

isolation  
dramatic mood change

unusual behavior or more reckless behavior  
excessive irritability, anger, or rage  
perceived public embarrassment/humiliation  
increased or excessive use of drugs or alcohol  
possession of or acquiring a weapon  
increased anxiety, including panic, insomnia,  
and agitation



**Consider the totality of the situation and trust your intuition**

## SENIOR LAWYER INTERVIEW

## KIT BRAMBLETT

■ BY CLINTON F. CROSS

**T**his month I traveled to Sierra Blanca then turned off on a gravel road and drove another hour to reach Kit Bramblett's home, located on his 10,000 acre ranch at the West end of the Eagle Mountains, where I chatted with him about his life's experiences. The ranch is crawling with horses, cattle, deer, mountain sheep, mountain lions, bob cats, raccoons, badgers, coyotes (both animal and human), and all kinds of birds including hawks and quail.

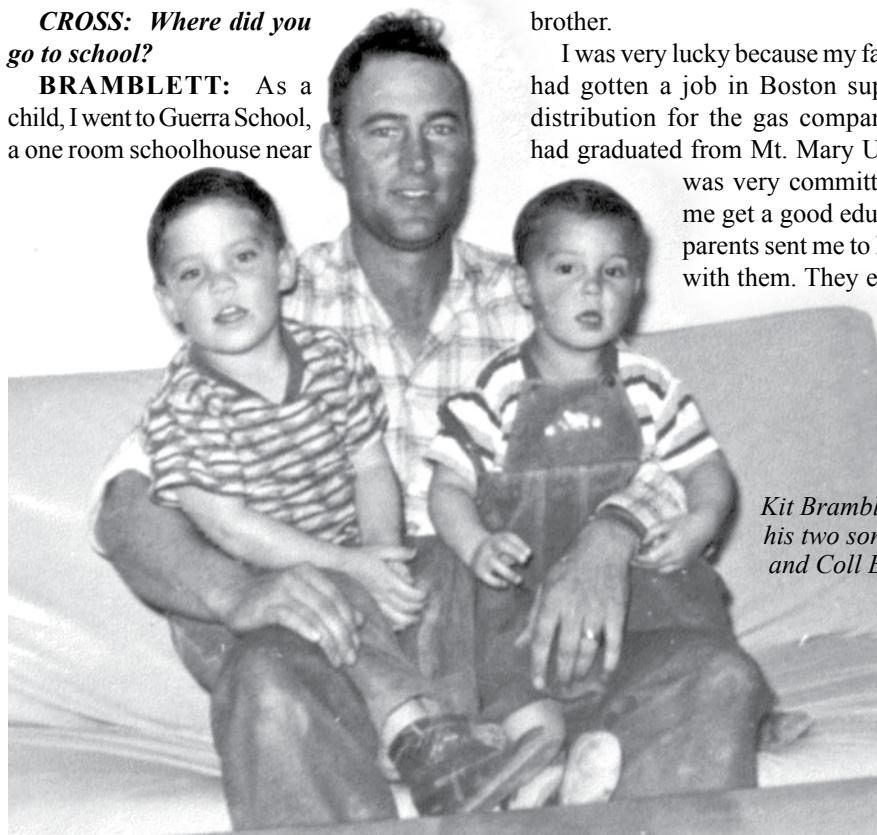
Kit personifies a breed of West Texas cowboy lawyers that is passing from the cultural scene. His personality type is still sometimes portrayed in movies. Kit is the real thing.

**CROSS:** Tell me about your family and your childhood.

**BRAMBLETT:** My mother was Mildred May Gunn; my father was John D. Bramblett. His father was Coll Bramblett and he was a rancher. His father, Richard Bramblett, my great grandfather, came from Macon, Georgia, and owned 200 slaves. I grew up with my parents and we lived in my grandfather's house.

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

**BRAMBLETT:** As a child, I went to Guerra School, a one room schoolhouse near



Kit Bramblett with his two sons, Russell and Coll Bramblett.

A team wouldn't be a team unless there was some player called "Tex." The Durfee squad has such a player. He really is a Texas, "right off the horses back." Tex keeps the boys smiling with his jokes and his Texas accent. We mean Tex Bramblett. He has another first name but we won't divulge that information. The boys have given him an appellation which suits him to a T—"The galloping Texan."

DURFEE HALL OF FAME – 1947  
STATE FOOTBALL CHAMPIONS

the Rio Grande River. I had the same teacher from the first grade through the eighth grade. I rode to school on a horse every day, ten miles each way. I had an older brother and a younger brother, and we all went to the same school. When our teacher, Thelma Lee Davis, died she left her inheritance to me and my younger brother.

I was very lucky because my father's brother had gotten a job in Boston supervising gas distribution for the gas company. His wife had graduated from Mt. Mary University and was very committed to helping me get a good education, so my parents sent me to Boston to live with them. They enrolled me in

BMC Durfee High School. At first I had some difficulty with the very rigorous academic schedule, which included Latin (which I had to take all four years), Spanish (all four years), English (all four years), Chemistry, Algebra, Government, Social Studies, American History, World History, Plain Geometry, Solid Geometry, Trigonometry, Calculus, Physics and Biology.

Because I was struggling in my classes, the Headmaster wanted to set me back to a lower grade. I didn't like that because if I went to a Junior High I couldn't play football. So I made a deal with the Headmaster: I could stay and play football, but if I didn't make my grades I had to drop back. I ran track, played football and I made my grades. As a matter of fact, I ended up winning the 100 yard dash in the state track meet, and playing on two football teams that played in two state championship football games—winning one of the two games. I then had offers of "academic" scholarships from Harvard, Cornell, Dartmouth, and Rutgers—probably because I could run and play football.

**CROSS:** So of course you went to Harvard?

**BRAMBLETT:** I talked it over with my Dad. He said "Son, you come home and go to A & M." So in the fall of 1950 I went to Texas A & M. I dropped out when I met and married Jerry McAdoo. We had our first child, Vivian Russell, in 1953, and our second child, Coll, in 1954. I ranched, farmed, and drilled wells until 1972 when I went back to college so I could go to law school. I went to St. Mary's School of Law in 1973 and graduated in 2 ½ years.

**CROSS:** Did you have any interesting experiences as a rancher?

**BRAMBLETT:** Several, but I know you have space limitations so I'll just tell you about how I almost got killed in Mexico.

One evening in 1952, a few days after Thanksgiving, I was at the old family ranch house on the river. There was a full moon that night. A person who we thought was a friend by the name of Lupe de La O rode up and told us there had been a roundup of cattle in a

colonia in Mexico. He said that some Mexicans claimed that a calf with a cow that belonged to my dad belonged to them. My dad said, "Lupe, go get the cow and the calf and I will pay you." Lupe said, "I can't get the calf alone. If you will all come with me I am sure that together we can get the cow and the calf."

My dad was reluctant to go after the cow and the calf but my brother and I decided we would go get them. We followed Lupe into Mexico. We didn't take any guns, not anticipating any problems. There were no cattle, and there was no round-up. After we got about two miles into Mexico riding on a nice flat trail Lupe turned us up into a rocky canyon. What we didn't know was that Mexicans were waiting in the canyon to kidnap us.

After getting up some distance into the rocky canyon, we came upon four armed gentlemen sporting badges who claimed to be Mexican police. They said they were members of the *Cordada*, an organization similar to those of the original Texas Rangers. They accused us of illegally smuggling cattle in Mexico, and they said they were arresting us. They tied our hands behind our backs.

At first I tried to reason with them. I said, "There are no cattle here." This approach did not work. One of the men responded by hitting me on the side of head with the butt of a gun, knocking me down.

My brother didn't want to make a deal, so they stuck a needle under his thumb nail--all the way up to the moon on his nail.

We decided to negotiate.

They said the fine was \$5,000 pesos. We could choose to be tried in Chihuahua and sent to the penitentiary for five years, or we could elect to be tried on the spot and if found guilty pay the fine.

My dad and I were friends of the State Attorney General. I told the leader we'd love to go to Chihuahua and see Attorney General Roberto Renal and then we'd see who went to the pen. Once again my efforts at reason failed. The same fellow who knocked me down before knocked me down again. The Mexicans decided to try us on the spot. As this took place, Lupe watched, supposedly under arrest but not tied up.

At that point, we decided we should plead guilty to the alleged crime and pay the \$5,000.00 pesos.

We all talked about how we were going to deliver the money. I wanted to send my brother to get it from my father, hoping to remove any incentive they might have to kill us. The Mexicans wanted to send Lupe alone.

I convinced Lupe that he shouldn't go by himself. I told him my father had a double barreled shot gun behind the kitchen door and that when he asked for money without either one of us being there he would get killed. My dad had a reputation for being a good shot and a mean s.o.b. I told Lupe that to protect himself he needed to take my brother along when he went to see my father. After listening to this argument, Lupe refused to go see my dad without my brother tagging along.

I knew that we had \$5,000 pesos at the house. My brother spoke up and asked for assurance that if he brought the \$5,000 pesos they would let us go. The head of the gang told him he meant \$5,000 pesos for each one of us, not just a mere \$5,000 pesos. So my brother asked, "For \$10,000 pesos you will let my brother and me go?" The leader of the group said, "No, \$5,000 pesos for you, \$5,000 for your brother, and \$5,000 pesos for Lupe: \$15,000 pesos! Not \$5,000 or \$10,000 pesos!"

I told my brother, "Just shut up and go get the money." He shut up and he and Lupe got on their horses and left to get the \$15,000 pesos.

The Mexicans took my boots and my pants off and one of them who had a brother killed stealing cattle decided to castrate me. At that moment I made the best argument I ever made in my life, including all the arguments I ever made as a lawyer. The fellow cut a wart off my leg. I bled a lot, but I am happy to report that he did not castrate me.

Shortly thereafter, my brother, my father, and Lupe returned. My father was armed with two double barreled shotguns. Lupe was tied to his horse. They threw down the money, and the Mexicans told me to count it. I refused unless they let me put my boots and pants back on, and they did. I figured I had to count out \$15,000 pesos whether it was there or not. My count came to a little over \$15,000 pesos. My brother and father were still mounted, I then got on my horse and we returned to Texas.

When we got back to our house, my brother and I planned to go back to Mexico and kill everyone in the gang. My mother and my wife insisted that we stay home. We all finally decided that my father should report the crime, and then go see Attorney General Renal.

I was able to identify two of the suspects, and shortly thereafter the Mexican state police caught them all together in a hotel room in Juarez with the money. At that point, of course, the suspects in reality lost all the money that they had in their possession, which turned out to be \$12,080 pesos.

In fact I had miscounted the money. When

I was counting the money, I knew I had to get \$15,000 pesos or possibly get shot. Some of the money was American currency. I don't think the Mexicans knew the exchange rate between American and Mexican currency at the time and probably that is how I was able to fool them.

Two months later the suspects were all tried in Chihuahua City. During the court recesses, the defendants and the witnesses were placed in a room together. When during one recess the guard who watched us excused himself to go to the bathroom, I saw my opportunity to take my revenge on the fellow who twice had knocked me down with the rifle butt. I stood up, told my brother to watch my back. I hit the fellow over the head with a chair, knocked him on the floor, and gouged out his left eye with my thumb. When the guard returned he made me stop and told me to stick the fellow's eye back in his head. I got the eye back in his head but he couldn't see out of it anymore ever.

**CROSS:** *Tell me about your legal career here in El Paso.*

**BRAMBLETT:** After I graduated from St. Mary's Law School at age 42, I came back to practice law in El Paso. I wanted to work for District Attorney Steve Simmons but he wouldn't hire me. I went to work for Woodrow Bean II, Hector Zavaleta, and David Rosado. Woodrow Bean, Sr. was married to Fay, my wife's oldest sister. Fay was the mother of Woodrow Bean II and the grandmother of the Woodrow Bean III who currently practices law in El Paso. Woodrow Bean, Sr. was a good friend of Judges Jerry Woodard and Sam Callan. Woodrow Bean, Sr. took me over to Judge Woodard's court and Judge Callan's court and they appointed me to at least 50 cases, including several murder cases. I was off to a good start.

I worked for Bean II, Zavaleta, and Rosado for over six months. I got \$750 a month, and I got to keep 1/3 of the money I brought in. I finally decided I could make more money on my own and I opened my own practice.

**CROSS:** *There may be some young local lawyers who never knew Woodrow Bean, Sr. Who was he?*

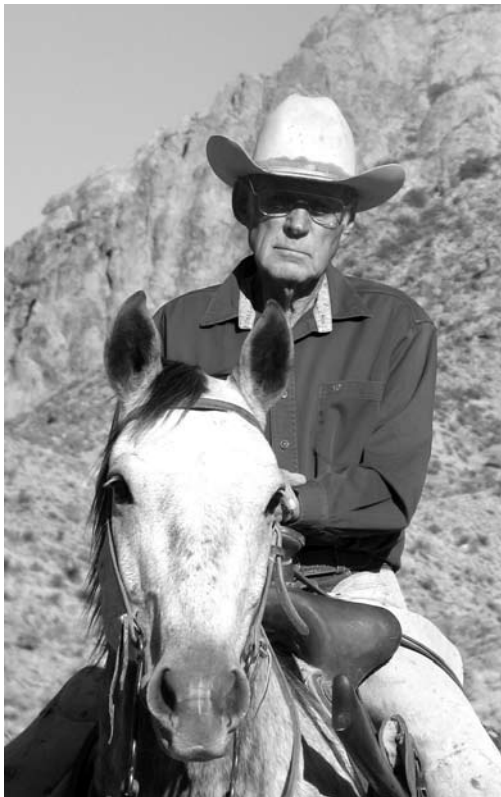
**BRAMBLETT:** As a young man, Woodrow Bean, Sr. served in the Marine Corps. When he was twenty-two years old, he was elected to the Texas legislature and served three terms. At that time he got to know Lyndon Johnson. After the war, he went to law school, graduated and came back to El Paso to practice law. In his early practice, Woodrow represented Johnny Cash

who came back from Mexico with a pocket full of pills. They remained friends all his life. Thereafter, he served as El Paso County Judge, Democratic Party Chair, and as a member of the State Board of Education. He spear-headed efforts to build the Sun Bowl stadium, the Bridge of Americas, expand Thomason General Hospital, Civic Center, Spaghetti Bowl, North South Freeway and Trans-Mountain Road. As head of the Housing Authority, he constructed housing projects throughout the city. He did a lot for El Paso.

**CROSS:** *Tell me about one interesting case that you handled.*

**BRAMBLETT:** Again, I could tell you lots of stories, and good ones. When you showed up at my ranch yesterday, you met a fellow whose uncle killed the fellow's father. I represented the uncle and the jury found him "not guilty." But I don't have time to tell you more than one story, so I'll tell you about an interesting divorce case.

I represented Thomas Bass, a retired Air Force Colonel. He married Mary West, heir to the founder of the town of George West and a multi-million dollar estate. She owned a big ranch in Hudspeth County. She had one daughter, Mary Nan West. She filed for divorce because Thomas wouldn't go to Africa with her. After he went with her, she never served him with the papers. Two years later she got mad at him again because he wouldn't go to Alaska and she had him served but never finalized it because he decided to go ahead and go to Alaska. She told her husband not to worry, and that she would dismiss it. Finally, she got mad once again because he wouldn't go on another Alaska trip. This time she decided she had been through enough pain with her inconsiderate husband, went to court with her lawyer Sam Sparks and finalized the divorce in Sierra Blanca, Texas. The clerk notified Thomas Bass by postcard regarding the default divorce. He went to Pat Maloney, Sr. in San Antonio and was advised to file a motion for new trial. He then talked to Mary, who said he shouldn't worry and that she would have the divorce dismissed. To reassure him she wrote him a check for a million dollars which he could cash if she didn't set aside the divorce. Unfortunately for Thomas, before she could get it done she had a heart attack and died. There was a funeral, time ran out on the time for the judge to grant the motion for new trial, and the divorce became final. Of course, the Executrix, Mary Nan West, dishonored the million dollar check.



*Kit Bramblett*

Thomas went back to Pat Maloney, Sr. who filed an appeal. He lost the appeal. Pat then filed a Bill of Review in the 205th District Court and hired me as local counsel. Mary Nan West, Mary West's daughter, hired James Branton, former President of the Texas Trial Lawyers Association. Branton hired Sam Sparks as local counsel. We went to trial in Sierra Blanca.

Sam Sparks and I picked the jury. Pat and I got a good jury. In fact, I'd helped out a couple of the jurors with problems they had in the past.

**CROSS:** *Didn't the other lawyer ask the folks on the panel whether or not any of them knew you?*

**BRAMBLETT:** Yes, but everyone on the panel raised their hands. So I guess Sam Sparks missed rooting out some of the folks who may have been predisposed to helping me.

**CROSS:** *O.K. Go ahead with your story.*

**BRAMBLETT:** After we picked the jury, Pat Maloney and James Branton took over representation for their clients. They discovered that our client had fathered a child by another woman while married to Mary. We filed a Motion in Limine to keep that fact out of evidence. Judge Sam Callan granted the motion.

From time to time as the trial progressed

Pat would make evidentiary objections. When Judge Callan over-ruled his objections Pat would comment, "Judge, you are wallowing in a sea of reversible error. Therefore, I move for a mistrial."

On the third morning of the trial, Judge Callan was sick with the flu and he instructed the bailiff to take the jury out of the courtroom. He said to Pat Maloney, "Mr. Maloney you can see from the way the jurors are nodding their heads that you are winning this case. If you keep on making that objection about me "wallowing in a sea of reversible error" I am going to grant that mistrial that you are asking for and you are going to lose this jury. And Mr. Branton if you keep trying to get that bastard child into this case I am going to put you in jail and you are going to stay there for the duration of the case. We are going to take a recess, and you all decide what you are going to do."

We went back to our desks, and Pat said to me, "From now on, you are going to try the case." Apparently, Mr. Branton decided to tell Sam Sparks the same thing because after that Sam took over the trial for Mary Nan West.

The case lasted another eight days. The jury found in our favor. After the jury verdict, Judge Callan approached me and said, "You have done one thing that I have never seen done before and I never expected to see it done: you just married a dead person to a live person." [The case was appealed. See, *Bobbitt, v. Bass*, 713 S.W. 2d 217 (Tex. App.—El Paso 1986, reh. denied, 1986). Ed.]

**CROSS:** *I understand that after you became a lawyer you were also a victim of a crime.*

**BRAMBLETT:** Probably more than once, but because of your space limitations I will only tell you about one incident and what I did about it.

My family and I had attended a high school basketball game. My granddaughter was one of the players. After the game we went to a Whataburger and went inside to eat. I accidentally dropped my keys on the ground when I got out of my wife's new Lincoln car. Three older gentlemen found the keys, opened the car, and stole my briefcase. Before they could leave and take the car, we came out of the restaurant. The three older guys fled. We couldn't find the keys, but my wife had another set so we got in the car and drove home.

After we went to bed, someone called and offered to bring me my briefcase. I told the caller to bring the briefcase to my law office the

next day and that I would give him a reward.

The next day someone showed up about 4 o'clock in the afternoon with my briefcase. I was unhappy that it had been broken into but I was happy to get it back. I then drove home.

After dinner, I went outside to put a sticker on my car that had come in the mail. As I started to leave the house, I saw a teenager open my car with my missing keys and begin to get in the car. I grabbed a gun that was in my pickup parked next to the Lincoln, ran up the kid, put a gun at his head, and told him to stop. He didn't stop. He kept backing up the car.

I decided I shouldn't kill him but I shot through the glass, causing him to run the car into a ditch. He kept going and drove the car out of the ditch. I tried to shoot out a tire. I missed the tire, but I keep hitting the car causing it considerable damage.

My wife showed up and told me to shoot the kid. For the first time in my life I did not do what my wife told me to do.

We got in my pickup, I reloaded my gun, and we followed the car. The driver ran the

car through an open field, into a pecan field, and then into a tree. At that point, the air bags exploded. The kid got the airbag that was in his face out of his face and headed back to the highway.

My wife and I proceeded up the highway, but the car thief turned and we lost him. He crossed into Mexico where, because of the condition of the car, the Mexican police arrested him along with another juvenile he had apparently picked up in the course of his flight from this country.

The next day the police called me. They told me that the Mexican government planned to deport the juveniles back to the United States.

I went across the river, found out where the suspects were being held, and talked to the Commandant. I told him I wanted the offenders prosecuted in Mexico. I gave him \$500 and told him I'd be back in six months and if the suspects were still there I'd give him another \$500. After six months, I went back and the suspects were still there, so I gave the Commandant another \$500. After they'd been in jail in Mexico for a

year, I quit paying. I don't know what happened to them after that.

By the way, my daughter-in-law Judge Mary Ann Bramblett thanked me for not shooting and killing the kid who stole my wife's new Lincoln automobile.

Since it was a total loss my wife's insurance company paid for the car.

**CROSS: What are you doing now?**

**BRAMBLETT:** I am the County Attorney for Hudspeth County. I also have a private practice, and maintain an office in El Paso.

**CROSS: As County Attorney, I understand you have crusaded against public corruption in your county.**

**BRAMBLETT:** I have removed one county treasurer, one county auditor, two county clerks, and one county commissioner--most of them for stealing.



## Guadalupe Rivera

**Name:** Guadalupe Rivera

**Court:** 8th Court of Appeals

**Years on the bench:** I have served on the bench a total of twenty-seven years, the first six as an Associate Judge in Family Law. During the mid-1980s there were only two Associate Judges and no specialty courts, so I presided over one-half of all family law matters in El Paso County. In 1990 I was elected to the 168th District Court, a court of general jurisdiction. I presided over that court for 18 years. In a few weeks, I will celebrate the completion of my third year on the 8th Court of Appeals.

**Education:** I am a graduate of Loretto Academy and The University of Texas at El Paso. My law degree is from the University of Texas School of Law.

**View of the role of the court system in our society:** To protect citizens' constitutional rights and enforce civil and criminal laws. Courts provide a forum for the speedy resolution of disputes where bias and prejudice should have no role.

**Important characteristics and qualities for a judge:** First and foremost, a judge must be a student of the law. This must be accompanied by a disciplined work ethic in the trial of cases

and constant vigilance over the docket. There can be no justice if cases do not get to trial--justice delayed is justice denied.

**What motivated you to become a lawyer?**

I recognized early on that knowledge of the law was a powerful tool and that a license to practice law was the key to achieving justice.

**What motivated you to become a judge?**

I was encouraged to do so by many of the judges I appeared before during my time as assistant district attorney.

**A day when I felt particularly satisfied:** As assistant district attorney, I primarily prosecuted murder cases. In a disturbing number of the cases, the victim was a female who died at the hands of her partner and had, at some point, reached out for help from the legal system. I discovered that statutorily required procedural steps in responding to domestic violence calls were not in place or not enforced by our local law enforcement. I convened a public round table discussion at City Hall of representatives of law enforcement agencies, such as the District Attorney, County Attorney, Police Chief, Sheriff, and the judiciary. The end result was the implementation of statutorily required procedures by both the Sheriff's Department and Police Department. The County Attorney



Justice Lupe Rivera

was convinced to designate an attorney for the prosecution of protective orders. Sometime later, as an Associate Judge, I presided over the first application for protective order filed in El Paso.

**What is your favorite way to spend free time?** I come from a large and very close family. So, family events and celebrations occupy a great deal of our time. Additionally, Wiley and I have six children and seven grandchildren. Participating in their lives is a priority that brings us immense pleasure.



# Revolution - CREDIT CARDS, The Next Step

BY DAVID J. FERRELL  
djf@elpasolaw.com

“Sir,” the bank teller urgently reports to the bank president, “the depositors are revolting!”

“They do have an offensive smell!” the bank president responds.

So, is there any justification for the Occupy Wall Street/Corporate/Banking protests? Perhaps Banks are backing off from their “additional fees” for banking services because they may perceive accountability to their depositors.

Let’s analyze this, Bank of America reported 2011 third quarter gains of \$6.2 billion. The boost in profits came largely from an accounting gain and the pretax benefits from the sale of its stake in a Chinese bank.

The increase in profits comes after Bank of America abruptly offended its customers by announcing that it will start charging them \$5 per month to use their debit cards for purchases in 2012. Shortly after the bank announced the fee, Bank of America CEO Brian Moynihan defended it, saying that the bank “has a right to make a profit.” After the immediate backlash, BOA has cancelled the debit card fee.

Bank of America is not the only bank trying to add new fees. Wells Fargo announced in August that it would test a \$3 debit card fee this fall, while Citibank said earlier that it would start charging “certain customers” a \$20 fee for low account balances.

So what can WE do to join the rebellion? How about eliminating multiple credit card fees for those of us who depend on some credit card payments for legal services?

In 2004 I wrote an article for the El Paso Bar Bulletin about QuickBooks software that included the following:

I have added a credit card reader (card-swiper) to my QuickBooks system, it was plugged into my computer’s PS2 port and was automatically recognized by the QuickBooks software. I am pleased with how easily it checks on clients’ credit availability and then places the money into my bank account and into my books. The money is



available the next day (normally). If I swipe the clients’ card using the credit card reader that I purchased for \$89.00 (a bit more for shipping and tax) the processing fee is 1.89%. I have been paying up to 2.58% on my other credit card system that also charged me a monthly rental fee of about \$50.00 for their credit card reader (swiper). I also pay for a dedicated telephone line for the old credit card reader.

With QuickBooks you can process payments away from the office by using “Virtual Terminal Plus” which allows you to receive credit card payments at any computer terminal with internet access.

The application/setup fee is \$39.00; the monthly fee is \$17.95; the Visa/MasterCard discount rates are 1.89% if you use the card reader and 2.39% if you enter the data with the keyboard; the per transaction authorization fee is 25 cents; as already mentioned, there is no rental fee for the credit card reader; and finally, you pay no fee for a separate dedicated telephone line.

Now less expensive and MOBILE credit card options are available. I just downloaded an Android APP that works on my HTC EVO

smart phone and on my XOOM Android Pad. The APP and the hardware are both FREE. The hardware and app are also available for Apple iPhones and for the iPad, provided by Square, Inc. ([www.squareup.com](http://www.squareup.com)).

On the Internet, go to the above link to setup your account. Put in your email address, create and confirm a password and you will be directed to a web page that explains and helps you set up your system. You will need your bank routing number and your bank account number, both available on your checks. I send all my credit card transactions to my trust account. SQUARE will mail you within three to five days a small credit card reader that plugs into your Apple or Android device. Then you can download the free SQUARE APP.

All you pay is 2.75% for each transaction. No monthly fee, no additional transaction fee, no machine rental fee, nor merchant service fee and no dedicated telephone line fee, etc. I just learned that SQUARE guarantees that the money will be available in one (1) day. The system takes Visa, MasterCard, American Express and Discover, ALL for the same 2.75% so you can figure out immediately how much of the money is yours and how much the bank and service provider keeps.

It is also convenient to have the system with you if you are meeting clients away from a brick and mortar law office.

I have tested the system showing everyone in my building how easily it works, charging multiple \$1 transactions on my own credit card. Nobody would volunteer their cards. Anyway, you get an email on each transaction. Also, when you conduct the transaction, the payor signs his/her name (or initials etc) on your phone and if you have GPS running on your phone it posts the coordinates of where the transaction occurred. Lastly, you can take a picture of the payor during the transaction that links together with the other above-mentioned data (this diminishes the potential claim of identity theft).

I did show my wife how it works when I went home the day I set up the SQUARE System, AND I used her credit card for the \$1.00 transaction. She informs me I owe her \$2.00 - - - isn’t that usury?

## Estate Planning and Probate Seminar

The El Paso Bar Association is sponsoring the "Estate Planning and Probate Seminar" on **Friday, January 27, 2012 from 8:30 a.m. to 4:30 p.m.** in the El Paso County Courthouse. Contact Nancy for exact location.

Cost of the seminar is **\$250** for EPBA members and **\$275** for nonmembers.

*Approved for 6.5 hours of MCLE including 3.0 hours of Ethics.*

*Please send in your check to: El Paso Bar Association, 500 E. San Antonio, Room L-112, El Paso, Texas 79901.*

*For additional information, contact Nancy at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)*

## LITTLE YELLOW BOOKS ARE HERE!!!!

### EPCLSA 2011 Legal Directories

You may pick up your 2011 Legal Directories at **Kemp Smith LLP, 221 N. Kansas, 17th Floor,** El Paso, Texas, 79901 between the hours of 8:00 to 5:00 Monday - Friday.

*If you have any questions, please call Jerri Boone at 546-5342.*

Directory cost remains \$10 each and you may pay by cash or check (made payable to EPCLSA).



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## CLASSIFIEDS

**The Eighth Court of Appeals is now taking applications for a Staff Attorney (Attorney III)** in the chambers of Justice Chris Antcliff. Those interested in the Staff Attorney position must have a Texas law license, minimum of five years legal experience with a strong background in appellate procedure, legal research and writing, preferred.

The position involves extensive legal research and writing. Duties may include administrative matters. Applicants must have the ability to work independently.

This is a full-time position.

Applicants should send a State Application for Employment, resume, references, and writing sample to Denise Pacheco, Clerk of the Court, 500 E. San Antonio, El Paso, Texas, 79901.

**Experienced Attorney desires office sharing,** work overflow, arrangement with small or medium size law firm. Have general practice experience, civil litigation, family law, bankruptcy, and federal agency law. If interested, contact Attorney JJ at 915/203-0006.

**Central Office Space for Lease:** Office Space available, receptionist, runner, conference rooms, parking, etc. No lease or deposit required Call Bob Earp or Larry Schwartz at 542-1533.

**Brilliant Research Attorney-** top grad from UT Law- seeks contract work. Sharp, fast, efficient. Very reasonable prices, able to provide quick turn-around. Especially proficient in Probate, Public Benefits, Trusts and Estate Planning

Send requests to [info@elpasoelderlaw.com](mailto:info@elpasoelderlaw.com)

**Luxury Executive Office for rent.** \$1,000.00 per month. Located downtown within walking distance from Federal and District Courts. Rent includes use of conference rooms, kitchen and reception area. Receptionist and all utilities are included. Other expenses such as Telephone, Internet, Runner, and mileage are prorated. Call Adriana at 792-9401.

**Office space for rent.** \$475.00 per month. Located downtown within walking distance from Federal and District Courts. Rent includes use of conference rooms, kitchen and reception area. Receptionist and all utilities are included. Other expenses such as Telephone, Internet, Runner, and mileage are prorated. Call Adriana at 792-9401.

EL PASO BAR ASSOCIATION  
Presents  
**16<sup>th</sup> Annual Civil Trial Seminar\***  
February 17 & 18, 2012

Monte Carlo Resort and Casino, Las Vegas, Nevada  
Pending Approval by the State Bar of Texas  
10.25 hours of MCLE/1.5 hours of Ethics  
Judge Maria Salas Mendoza, Moderator  
Judge Linda Chew, Course Director  
Join us for a Weekend of Fun & Education

Door prizes will be given throughout the Seminar  
Course Materials will be in the form of a flash drive  
\$300.00 – Members of EPBA ~ \$350.00 – Non-Members  
\$225.00 – Legal Assistants/Paralegals

\*\* Make your reservations directly to the Monte Carlo Resort and Casino, 800/311-8999 and tell them you are with the El Paso Bar Association, Group Code #XEPBA121 or you can go to [www.montecarlo.com](http://www.montecarlo.com) and enter the Group Code and it will take you directly to the El Paso Bar Association page. Hotel Room Rates are \$55 on 2/16, \$119 on 2/17 and \$119 on 2/18. There is a two (2) night minimum stay.

**SCHEDULE (Subject to change)**

**Friday, February 17, 2012**

9:00 a.m. **Registration begins**  
9:55 - 10:00 a.m. **Welcome**  
10:00- 11:00 a.m. **Trial Technology Issues**  
*David Jeans, Ray, Valdez, McChristian & Jeans, P.C., El Paso*  
11:00 – 11:45 a.m. **E-Discovery – How to Use It/How It Can Hurt You**  
*Yvonne Acosta, Scott & Hulse, Joe Hood, Windle, Hood, Alley, Norton, Brittain & Jay, LLC & Representative from Altep, Inc.*  
11:45 – 12:00 p.m. **Presentation by Rimkus Consulting Group**  
12:00 – 1:00 p.m. **Lunch (provided)**  
1:00 – 1:45 p.m. **“Trying a Champagne Case on a Beer Budget”**  
*Ben Langford, Law Office of Ben Langford & Daniel Hernandez Ray, Valdez, McChristian & Jeans, P.C., El Paso*  
1:45 – 2:30 p.m. **Ethical Considerations in Settlement Negotiations**  
*Evelina Ortega, El Paso; Keith Myers, Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C. & William Hardie, Hardie Mediation, El Paso*  
2:30 – 3:00 p.m. **Technology and Civil Practice**  
*Don Minton, El Paso & Brock Benjamin, El Paso*  
3:00 – 3:15 p.m. **Afternoon Break**  
3:15 – 4:00 p.m. **White Collar Crime**  
*Duane Baker, El Paso*

4:00 – 5:00 p.m.

**Criminal Law Every Civil Lawyer Should Know**

*Jim Darnell, Jim Darnell, P.C., El Paso*  
**Civil Law Every Criminal Lawyer Should Know**  
*Cori A. Harbour, Harbour Law Firm, P.C., El Paso*

5:00 – 5:30 p.m.

**18-Wheel Mayhem**

*Darryl S. Vereen, Mounce, Green, Myers, Safi, Paxson, & Galatzan, P.C., El Paso*

**Saturday, February 18, 2012**

8:00 – 9:00 a.m.

**Breakfast**

9:00 – 10:00 a.m.

**Deposition, Techniques & Strategies**

*Jeff Ray, Ray, Valdez, McChristian & Jeans, P.C., El Paso*

10:00 – 11:00 a.m.

**Jury Selection/Challenges**

*George Andritsos, El Paso; Laura Enriquez, Mounce, Green Myers, Safi, Paxson & Galatzan, P.C., El Paso*

11:00 – 11:45 a.m.

**Legislative Update**

*State Senator Jose Rodriguez, El Paso*

11:45 – 12:30 p.m.

**Labor & Employment Update**

*Diana Valdez, Scott & Hulse, P.C., El Paso*

12:30 – 1:30 p.m.

**Views From the Bench**

*Judge Phillip Martinez, U.S. District Court, El Paso Judge Carlos Villa, County Court at Law #5, El Paso Bar, Judge Maria Salas-Mendoza, 120<sup>th</sup> District Court, El Paso Bar, Justice Chris Antcliff, 8<sup>th</sup> Court of Appeals, El Paso*

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If paying by credit card:

Credit Card #: \_\_\_\_\_ Type: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Send your registration form and check to:

**El Paso Bar Association**  
500 E. San Antonio, L-112  
El Paso, Texas 79901  
\$300 – EPBA Members  
\$350 – Nonmembers  
\$225 – Legal Assistants  
Paralegals

If you have any questions, comments or would like to be a sponsor, please contact the Bar Association Office at (915) 532-7052, (915) 532-7067 - FAX or go to our website, [www.elpasobar.com](http://www.elpasobar.com) or send an email to [nancy@elpasobar.com](mailto:nancy@elpasobar.com)



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Rates will be \$55 on Thursday, 2/16, \$119  
on Friday, 2/17 & \$119 on Saturday, 2/18.

You can call the Monte Carlo directly at 800/311-8999 and tell them you are with the El Paso Bar Association, Group Code #XEPBA12 to get our room rate. You can also go online to [www.montecarlo.com](http://www.montecarlo.com) and enter the Group Code and it will take you directly to the El Paso Bar Association page.

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

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