



EL PASO BAR JOURNAL

www.elpasobar.com

An Update of Events and Information

February/March 2012

SENIOR LAWYER INTERVIEW

TOM DIAMOND

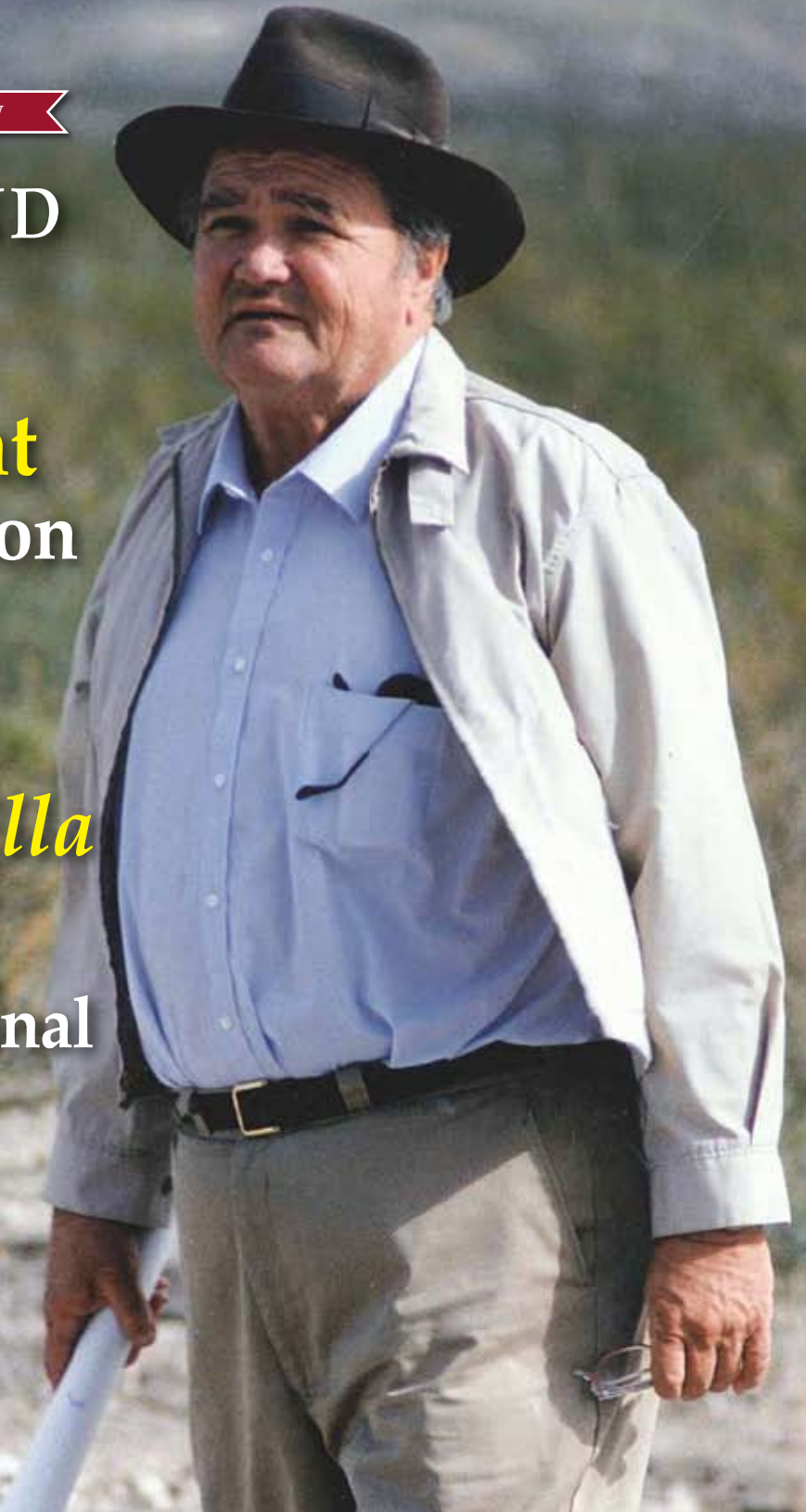
By Clinton F. Cross Page 13

Lawfirm/Client Data Armageddon

by David J. Ferrell Page 19

Satisfying Padilla v. Kentucky: A Guide for Criminal Defense Counsel

by Iliana Holguin Page 18



W. Reed Leverton, P.C.
Attorney at Law • Mediator • Arbitrator
Alternative Dispute Resolution Services

300 EAST MAIN, SUITE 1240
EL PASO, TEXAS 79901
(915) 533-2377 - FAX: 533-2376
on-line calendar at: www.reedleverton.com

Experience: Licensed Texas Attorney; Former District Judge; Over 900 Mediations

Commitment to A.D.R. Processes: Full-Time Mediator / Arbitrator

Commitment to Professionalism: LL.M. in Dispute Resolution

Your mediation referrals are always appreciated.

NEW MEXICO APPEALS

Caren I. Friedman

New Mexico Board Certified
Appellate Specialist

Former Chair, NM Supreme Court Appellate Rules Committee
Former Chair, NM State Bar Appellate Practice Section

505-466-6418
cf@appellatecounsel.info

Let's talk turkey.

HARDIE MEDIATION.COM

See our [website](#)
[calendar](#) and
booking system



Bill Hardie
Mediator/Arbitrator



State Bar of Texas
Award of Merit
1996 – 1997 – 1998 – 1999
2000 – 2001 – 2006-2010
Star of Achievement 2000 - 2008 - 2010
State Bar of Texas
Best Overall Newsletter – 2003, 2007, 2010
Publication Achievement Award
2003 – 2005 – 2006 – 2007 – 2008 - 2010
NABE – LexisNexis Community
& Educational Outreach Award 2007 - 2010

Bruce Koehler, President
Judge Maria Salas-Mendoza,
President-Elect
Randolph Grambling, Vice President
Laura Enriquez, Treasurer
Judge Alejandro Gonzalez, Secretary
Chantel Crews, Immediate Past President

2011-2012 Board Members

Teresa Beltran
Judge Linda Chew
Mark Dore
Judge Eduardo Gamboa
Myer Lipson
Denise Butterworth
Kenneth Krohn
Raymond Martinez
Alberto Mesta
Jennifer Vandenbosch
Yvonne Acosta
George Andritsos
Duane Baker
Judge Kathleen Cardone
Donald L. Williams

EX-OFFICIOS

SBOT Director, District 17
EPYLA, MABA, EPWBA, ABOTA,
FBA, EPPA, El Paso Bar Foundation

Executive Director

Nancy Gallego

Editorial Staff

Clinton Cross, Editor
Stephanie Townsend Allala
Judge Oscar Gabaldon
Donna Snyder

"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



Lawyers Serve All

Honest Abe and the "Chicken Bone Case"

Abraham Lincoln was an attorney who was willing to represent those in need of a trial lawyer, including railroads, criminal defendants, insurance companies, and debtors. His partner, William H. Herndon, recalled that Lincoln was an excellent lawyer, but certainly no scholar. His success stemmed, in part, from his ability to connect with the jurors he appeared before as he rood the circuit with the presiding judge. "[H]is illustrations were often quaint and homely, but always clear and apt, and generally conclusive. . . ." In the "Chicken Bone Case," Lincoln represented two physicians in a medical malpractice case where it was asserted that they had horribly set a broken leg, causing the plaintiff to be crippled. Reading about the case is fascinating as it shows the timelessness of the practice of law: depositions were taken, continuances sought, and witnesses died. At trial, the issue became whether the broken bone did not heal properly because of negligence or because of the aging process. To illustrate this in his closing, Lincoln used two chicken bones, one from a young chicken (soft and supple) and one from an old chicken (hard and brittle). Lincoln argued the plaintiff had bones like the old chicken with "all the starch taken out of them." The jury deadlocked, and the case was later settled after the defendants paid plaintiff's attorneys' fees.

It is interesting that Lincoln was frequently co-counsel and opposing counsel with most of the attorneys with whom he worked. He would even serve as presiding judge (with consent of the parties), when the judge was unavailable to handle a case. Camaraderie is still important for attorneys and the Bar. Attorneys socialize with one another much less than we should. The upcoming 16th Annual Civil Trial Seminar, which will take place in Las Vegas at the Monte Carlo Resort & Casino on February 17-18, is a great opportunity to not only receive some excellent CLE, but to also get to know your fellow attorneys in a fun environment. Please join us!

Finally, as indicated in the Journal, we have unveiled the Bar's new and improved website (elpasobar.com). Please take a look. A special thanks to the Chair of the Technology Committee, David Ferrell, and committee members Judge Kathleen Cardone, Fernando Gireud, Mario Franke and Nancy Gallego. A job well done!

BRUCE A. KOEHLER
President

Cover: Tom Diamond

EL PASO BAR ASSOCIATION
February Bar Luncheon

Tuesday, February 14, 2012

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

*We will have all the candidates for the contested judicial races,
including the candidates for District Attorney*

**Please make your reservations by Monday, February 13, 2012 at 1:00 p.m.
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net**

We anticipate a very large turnout to this luncheon so please RSVP.

EL PASO BAR ASSOCIATION
March Bar Luncheon

Tuesday, March 13, 2012

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

*Guest Speakers will be the candidates for
President-Elect of the State Bar of Texas*

**Please make your reservations by Monday, March 12, 2012 at 1:00 p.m.
at nancy@elpasobar.com or ngallego.epba@sbcglobal.net**

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.

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 April/May, 2012, please have the information to the Bar Association office by Friday, March 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.

FEBRUARY, 2012

Tuesday, February 7
EPBA BOD Meeting

Tuesday, February 14
EPBA Monthly Luncheon

Thursday, February 16
EPPA Monthly Luncheon

Friday, February 17
16th Annual Civil Trial Seminar
Las Vegas, Nevada

Saturday, February 18
16th Annual Civil Trial Seminar
Las Vegas, Nevada

Monday, February 20
EPBA Office Closed
President's Day

MARCH, 2012

Tuesday, March 6
EPBA BOD Meeting

Tuesday, March 13
EPBA Monthly Luncheon

Thursday, January 19
EPPA Monthly Luncheon

Friday, March 30
EPBA Office Closed
Cesar Chavez Day

Allen Pusey named Editor and Publisher of The ABA Journal



Allen Pusey, former reporter for the El Paso Times and the El Paso Journal, was recently named editor and publisher of the ABA Journal. In addition to directing the editorial and business operations of the magazine, Pusey oversees the Journal's email publications and

website. By virtue of his position, Pusey also serves as a member of the ABA's senior management team. If you know Allen Pusey, you might want to go to the American Bar Association's website and send him a congratulatory e-mail message.

There is only ONE choice when it comes to Arbitration and Mediation.

T | A | M | S

Texas Arbitration Mediation Services, Inc.

Voted 2010 "Texas Best"
Best ADR Mediation Firm
- Texas Lawyer

TEXAS LAWYER
Texas' Best 2010

TAMS is a professional firm of retired judges, former judges, experienced litigators and certified mediators committed to resolving your dispute. We are located on the 6th floor of Wells Fargo Plaza in the heart of downtown El Paso. TAMS is within walking distance of the Federal Courthouse, the El Paso County Courthouse, major law firms, hotels and fine restaurants.



221 N. Kansas Suite 609 * El Paso, TX 79901
915-533-8267 * www.eptams.com

CONFLICTS? RESOLUTIONS!

Solving Problems--Closing Cases

Patricia Palafox

*Bilingual Attorney
Mediator-Arbitrator*



**Celebrating 13 years
of Professional
mediation & Arbitration;
28 years of Legal
Representation**

TEXAS and NEW MEXICO
State & Federal Civil Cases
Employment • Personal Injury
Medical Malpractice
Family Law • School Law
Construction Contracts
General Business Law



Mediation, Negotiation
and Arbitration Training

Harvard Law School

The Attorney-Mediators Institute

Texas Wesleyan University
School of Law

The National Mediation Academy, Inc.

28 Years of Legal Representation



*Thank you for your support
and trust over the last thirteen years*

8001-E North Mesa, PMB 345
El Paso, TX 79932
Phone: 915-833-6198
Fax: 915-833-7305
palafoxpatricia@sbcglobal.net

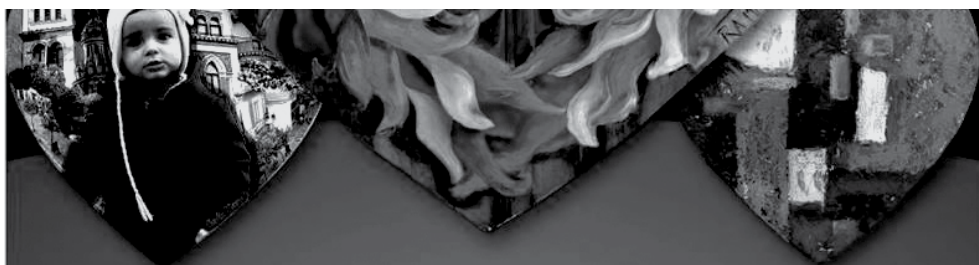
Our new website

BY BRUCE A. KOEHLER

The El Paso Bar Association is pleased to present its improved and updated website (elpasobar.com). It is designed to provide useful information in an easy to use format. For example, our CLE programs soon will be available online, the Bar's calendar will be updated and available for use by the other local bar associations, dues and other payments can be made online, and attorney referrals (through our Lawyer Referral Service) can be made to the public. Members can change their contact information directly and certain legal resources (including access to free CLE programs) will only be available to our members. The Technology Committee, led by

Chair David Ferrell, has created a design that will be easy for the Bar to update and improve. David Ferrell, Committee Member Fernando Gireud, and web designer Brandon Silverstein from Impulse Development unveiled the website at the Bar's January luncheon. The Technology Committee, which also includes Judge Kathleen Cardone, Mario Franke and Nancy Gallego, has created an exciting and useful tool for the public and El Paso attorneys.

BRUCE A. KOEHLER is an El Paso attorney with Mounce, Green, Myers, Safi, Paxson, and Galatzan. He is board certified by the Texas Board of Legal Specialization in Labor and Employment law.



Please join AVANCE for the 11th Annual Toma Mi Corazon Heart Auction

Wednesday, February 8, 2012 • 6pm
Camino Real Hotel • 101 S. El Paso

Tickets are \$25 and may be purchased online
or by calling 915-351-2419 • www.avance-el Paso.org

This year's event will include a live auction with a number of packages, to include:

LEAVING ON A JET PLANE

Private plan service for 4 from El Paso to Horseshoe Bay, Texas. Enjoy a weekend getaway at the beautiful Horseshoe Bay Resort, 4 rounds of golf at Horseshoe Bay Golf Course (named one of America's Best Golf Resorts by Golf Magazine), and a relaxation package at the Bayside Spa & Fitness Center.

BALI BACATION

8 days and 7 nights at the Jepun Bali Villas in Bali, Indonesia. Stay includes transportation to and from the international airport, a full day of island sightseeing (including car and driver), American or Balinese style breakfast each day, scuba diving sessions, and a special Balinese dinner served poolside.

DINNER FOR FOUR IS NEVER A BORE

Dinner for 4, once a month for 12 months, at local restaurants to include Café Central, Ardovino's Desert Crossing, Dane's Steakhouse, Garufa, NoFish, Thyme Matters, Great American Land & Cattle Company, Thyme Matters, The Garden, The Magic Pan, Geo Geske, & RIPE.



Hearts shown above generously donated by:
Judy Crumley, Rob Mack, Candy Mayer, Charlie Mayer, Rhonda Doré

Avance: Unlocking America's (and El Paso's) Potential

BY TRACY C. ALMANZÁN

The American Dream is alive and well in El Paso, Texas. Just ask Lourdes Rivera. In 1997, Lourdes was unemployed, a mother and wife with no high school diploma. She could not speak English. With Avance's help, Lourdes has been able to transform her life. Today she is a student at UTEP. She is setting an example for her children. She is also giving back, not only as a mother to her own children, but as a teacher in the Avance program.

Avance is a program that provides innovative education and family support services to predominantly Hispanic families in low-income, at-risk communities. Avance works in conjunction with local public schools in at-risk communities by providing after-school learning activities. Avance strives to fulfill the hopes of President John Fitzgerald Kennedy's declaration that "children are the world's most valuable resource and its best hope for the future." Today's children today are our future colleagues. They are the keys to our tomorrow, ensuring that El Paso continues to grow and prosper.

In order to fully empower a child with education, you must also help to empower the family in the home. Avance encapsulates that ideal. The famous psychologist Erich Fromm once asked, "Why should society feel responsible only for the education of children, and not for the education of all adults of every age?" By lifting up the parents, Avance lifts up the entire family and, perhaps most important for the future of our community, the youngest members of that family.

Avance's holistic approach is actually a national model for early childhood education. The Avance Parent-Child Education Program is a free, nine-month curriculum and consists of weekly parent education classes with special topics focusing on the importance of reading, effective discipline, and balanced nutrition. A unique element of the program, educational toy making, promotes teaching through play and encourages personal connections among participants. This activity reduces stress, which often impedes effective parenting, while promoting self-sufficiency to parents. Home visits, nutritious meals, and transportation are other significant model components which play an integral role in the program's overall success.



Lourdes Rivera receiving a Texas School Ready certificate. Joining her are Avance-El Paso Executive Director, Taylor Moreno (far right), Assistant Executive Director Margarita Sanchez (second from left), and former Avance-El Paso employee Angie Gallegos. Texas School Ready certification is a three year program aimed at preparing teachers to increase school readiness for at-risk preschool aged children.

In addition, the Avance Parent-Child Education Program provides parents with the opportunity to participate in adult literacy classes which better prepare them for obtaining their General Educational Development Diploma (GED), English as a Second Language (ESL) classes, or attend college.

I was first introduced to Avance more than four years ago. I received an email asking for book donations for the children. Quickly, I gathered my co-workers to help collect hundreds of books for the children in the Avance program. After witnessing and experiencing the love and enthusiasm that each member of the Avance team had for what they do, I felt like I had to do more. I began volunteering for the program and eventually became a board member. My involvement is driven by seeing myself in the eyes of these children. Despite my mother's lack of education, having no high school education, she understood the value of education, read to me every day, and instilled in me a love for books. I can only imagine the doors that would have opened for my mother had she been given access to resources in a program like Avance.

Luckily, some families in El Paso have the opportunity to participate in Avance and their futures, for both the parents and the children,

are exponentially growing with possibilities. Unfortunately, Avance is not in every school, yet! It is the goal of Avance to be able to offer its services to all parents who need it. We need the community's support to accomplish this goal.

Avance sponsors several events throughout the year that offers the community an opportunity to come together to support educating El Paso families. One such event is the Avance *Toma Mi Corazon* Heart Auction. This year the event takes place on Wednesday, February 8th at 6:30 p.m. at the Camino Real Hotel. The auction will feature dozens of hearts painted by local artists and various travel packages. You can learn more about Avance, its' mission, and this great event at www.avance-elpaso.org or by calling (915) 351-2419.

We must see supporting programs like Avance as an investment in El Paso's future. It is an investment in the mothers and children who will become our teachers, bankers, accountants, doctors, and legal colleagues.

TRACY ALMANZAN is an Assistant County Attorney responsible for prosecuting child abuse and neglect cases. She is married to Alejandro Almanzan, an assistant Federal Public Defender.

THE LAW WEST OF THE PECOS

BY CHIEF JUSTICE ANN CRAWFORD McCLURE

On January 11, 2012, the court issued its opinion in *M. W. Sullivan, as Trustee of the Sullivan Crosby Trust v. Brokers Logistics, Ltd., and Foxworth-Galbraith Lumber Co.*, No. 08-10-00267-CV which involved the ramifications of the great flood of August 2006. Sullivan, acting in his capacity as trustee of the Trust, filed suit against Brokers and Foxworth, alleging that they proximately caused temporary injury to Trust commercial property in El Paso and seeking damages and injunctive relief. Sullivan premised his lawsuit on negligence, trespass, nuisance, and violations of Texas Water Code section 11.086(a). Brokers and Foxworth filed traditional motions for summary judgment, arguing that Sullivan's claims were barred by the two-year statute of limitations because the circumstances giving rise to the claims had existed for at least ten years. Sullivan filed written responses to the motions for summary judgment, arguing that the injuries were temporary in character as opposed to permanent and that, under Texas law, damages may be recovered for injuries sustained within two years prior to filing suit.

The evidence focused on testimony from the property manager. Mr. Foster had managed the Trust property in El Paso for approximately 30 years. In 2006, he began investigating what could be done about drainage onto the Trust property from the Brokers and Foxworth properties. "Part of the genesis" of his efforts in that regard was "August-September '06 and the large amount of drainage that was coming down" at that time. Before 2006, there had been some silt buildup and Foster occasionally hired people to remove some sand and silt from the railroad spur on the property. But during 2006, things changed. As the court recounted, "[s]omething happened – an event of such magnitude that commentators described it as a 100-year or 500-year event."

The court then framed the issue as whether the injury was permanent or temporary. To be entitled to summary judgment, Brokers and Foxworth had the burden of conclusively proving that any injury to the Trust property was a permanent injury that occurred more than two years before Sullivan filed suit. All parties pointed to *Schneider Nat. Carriers, Inc. v. Bates*, 147 S.W.3d 264, 279 (Tex. 2004) as the lodestar for answering that question.



The *Schneider* opinion characterized a nuisance as permanent if it is constant and continuous and if injury constantly and regularly occurs. A temporary nuisance, on the other hand, is of limited duration. A nuisance may be temporary if it is "occasional, intermittent or recurrent," or "sporadic and contingent upon some irregular force such as rain." If future harm is reasonably predictable, said the court, then the nuisance is a permanent one. "But if future harm is anyone's guess, the nuisance is a temporary one. . ."

In analyzing *Schneider*, the 8th Court focused on the following language:

Even if a nuisance causes annoyance only during certain weather conditions or certain months, annual experience should provide a sufficient basis for evaluating the nuisance. **Absent evidence that current experiences are unrepresentative** or about to change, such nuisances should be considered "permanent" as a matter of law.

Because *Schneider* did not involve a 100-year desert flooding event, the court addressed the unprecedented magnitude of the great flood

of 2006, quoting the following sources:

USA Today, Aug. 7, 2006 (AP)

http://www.usatoday.com/weather/stormcenter/2006-08-06-ElPaso-floods_x.htm.

More than 15 inches of rain — nearly twice the annual average for the desert city — has fallen in El Paso since July 27, City Manager Joyce Wilson said. The deluge sent mud and rocks cascading into some parts of the city, destroying as many as 300 homes and causing an estimated \$100 million in damage, Wilson said.

* * * * *

"The infrastructure of this community performed well, it has performed well under devastating conditions," said Wilson, who added that **storms of this magnitude likely only hit the city once every 500 years or so.** (Emphasis added).

The Weather Channel

Dr. Greg Forbes, Severe Weather Analyst,
Aug. 4, 2006

http://www.weather.com/blog/weather/8_10120.html

On Tuesday the official El Paso rainfall, from the airport on the east side of the city, was 2.84 inches, and the highest hourly rate was 0.41 inches. **Now that was the third highest daily rainfall in El Paso history, with records going back to 1880, and the most daily rain since 1881!** Still, such significant flooding doesn't typically happen with total rainfalls and rates that low. (Emphasis added).

Places on the west side of the city got up to 6 inches of rain measured at one location, and perhaps even more in some spots. These are much more typical of amounts that give major flood events. Further, 4 to 5 inches of rain fell on the Franklin Mountains there and ran rapidly down the slopes, sending basically a surge of water and mud across Mesa Street and adjacent areas.

Texas Almanac

E. Alvarez (ed.), *Texas Almanac 2010-2011*, p. 141
(Tex. State Hist. Ass'n 2010)
(emphasis in original).

Aug. 1, 2006: Thunderstorms. El Paso. Storms in a saturated atmosphere repeatedly developed and moved over mainly the northwest third of El Paso County, concentrating in an area near the Franklin Mountains. Rainfall reports

varied from 4-6 inches within 15 hours, with an isolated report of about 8 inches on the western slope of the mountain range. Antecedent conditions from 4 days of heavy rains, combined with terrain effects of the mountains, led to excessive runoff and flooding not seen on such a large scale in the El Paso area in more than 100 years. Property damage was estimated at \$180 million.

National Weather Digest

Volume 33, No. 1, Aug. 2009, p. 87-88

Meteorological Aspects of the 2006 El Paso Texas Metropolitan Area Floods

J. Rogash, M. Hardiman, D. Novlan, T. Brice, V. MacBlain
NOAA/National Weather Service
Weather Forecast Office
Santa Teresa, New México/El Paso, Texas

The worst flooding in recorded history for the EPMA occurred on 1 August 2006 when 3 to almost 10 inches of rain fell over portions of the region.

Note that the northwestern portions of the city had the heaviest amounts, nearly 10 inches (250 mm), while 4 to 7 inches of rain fell across the north and northeastern sections of the city. Prolonged and occasionally heavy rainfalls forced arroyos and streams to rapidly overflow,

causing streets to become raging torrents of water. The floodwaters severely damaged or destroyed homes, businesses and other properties and overturned or carried away motor vehicles. Many roads were closed, including Interstate 10, leaving the EPMA literally isolated for several hours. In the city of El Paso, water rescues were required in some neighborhoods. Just north of El Paso, the entire village of Vinton, Texas was evacuated as arroyos overflowed, streets flooded, and water rose to a depth of almost five feet in some neighborhoods. Extensive flooding also damaged or destroyed much of Canutillo where high waters inundated homes and closed roads. Later in the summer, public safety officials declared portions of Canutillo permanently uninhabitable as a result of the floods.

Schneider directed that a nuisance should be deemed temporary only if it is so irregular or intermittent over the period leading up to filing and trial that future injury cannot be estimated with reasonable certainty. Conversely, a nuisance should be deemed permanent if it is sufficiently constant or regular (no matter how long between occurrences) that future impact can be reasonably evaluated. Jurors should be asked to settle the question only to the extent there is a dispute regarding what interference has occurred or whether it is likely to continue. In reversing the summary judgment, the 8th Court found that such a factual dispute existed.

ANN CRAWFORD MCCLURE is Chief Justice of the 8th Court of Appeals.

U.S. District Judge Royal Furgeson named Dean Of University of North Texas Law School



U.S. District Judge Royal Furgeson has been appointed the founding Dean of the UNT Dallas College of Law, effective April 2013. Judge Furgeson has ridden the federal circuit in Texas for 17 years, first in El Paso, then Midland-Odessa, then San Antonio and most recently Dallas. Prior to taking the bench, he was a shareholder in Kemp, Smith, Duncan and Hammond, where during his 24

years with the firm, he headed the commercial litigation section and remained committed to the *pro bono* efforts of the firm.

"Several colleagues have asked me why I would give up a lifetime appointment to take on a start-up law school during these tough economic times, when tuition is rising and demand for lawyers is declining," Judge Furgeson said. "But the prospect of pioneering a new law

school that addresses these issues head-on was too challenging and exciting to pass up."

UNT Dallas College of Law will be the only public law school in North Texas, and will provide the region with an affordable alternative to private law schools, attracting a high percentage of minority students and easing the debt on all students. The school expects to accept its first class in August 2014.

The Leech Trial of 1910:

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

Part II

BY MARK CIOC-ORTEGA AND EVELINA ORTEGA

A brief summary of Last Month’s Article

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.

The prosecution presented a strong case: an eye witness; motive and opportunity; premeditation; corroborating testimony; and a murder weapon.

This Month the Story Continues as Follows

After the prosecution rested, the defense team began to cast doubt on the prosecution’s case. The defense relied primarily on the “unwritten law,” that is, the right of persons to protect themselves and their loved ones from harm. In doing so, it relied on overt and covert messaging. Overtly, the defense presented an alternative explanation for the homicide: Kohlberg had been trying to convince Lizzie Leech to become his mistress and when John Leech found out about Kohlberg’s lewd intentions he was gripped by an uncontrollable desire for vengeance. As John Wharton, Leech’s lead attorney, told the jury in his opening salvo: “We will show by testimony that Leech said to Kohlberg, ‘My wife has told me all. This matter must be fixed,’ and that Kohlberg turned and scorned him and his wife with an insulting remark. We will show that Kohlberg made a remark in a foreign tongue to his son, and that with something in his hand, both turned on Leech and that he was controlled and impelled to do what he did, and that he did not

know what he was doing until Kohlberg lay shot at his feet.”²¹ Covertly, the defense embellished its narrative with common anti-Semitic stereotypes: Jews were cheapskates and swindlers, who got rich off the labor of others; they lusted after virtuous Christian (later Aryan) women and therefore deserved whatever misfortunes befell them.

The defense’s principal witness was John Leech himself. Leech testified that he had met Kohlberg in 1886, when he first moved to El Paso and that all of their interactions had been “very friendly” until January 1909, after a fire at the D. W. Payne Wholesale Store (located on the first floor of the Southern Hotel) caused some collateral damage to the upstairs rooms. According to Leech, Kohlberg applied lamp-black and gasoline to the upstairs walls to make them look more damaged than they were, thereby swindling the insurance company. Leech further claimed that Kohlberg had promised him \$200 for going along with the fraud, but Kohlberg then cheated Leech too and gave him only \$100. Money disputes, mostly over the rent, continued to disturb their relationship from that point on. “At the time of the homicide on the 17th of June last, I owed him \$765, and he sent down a bill or statement for \$1165,” he testified. “It looked to me like he was trying to rob me out of so much money.”²²

Under questioning, Leech flatly denied that he had been upset by the eviction notice (“Laugh and the world laughs with you,” he reportedly told his wife with resignation, “cry and you cry alone”). He claimed, however, that he became outraged when his wife Lizzie suddenly confessed to him that for the past year Kohlberg had been demanding that she become his mistress. Kohlberg allegedly told Lizzie to “get shed of that old man” (“dump” in modern parlance). “You are a fine looking young lady,” Kohlberg supposedly said to her, “and you are foolish---you have [a] nice appearance, and you are always nice and neatly dressed, and I like your looks, and I like your ways. My wife is getting old, and she is not any good any more.” Lizzie subsequently affirmed her husband’s

testimony, adding that Kohlberg had said of her husband: “He has lost all his money; he has nothing; he never will have anything; I have plenty; I can take care of you.”²³

The defense team also mounted a forceful attack on Walter Kohlberg’s testimony. John Leech testified that the cigar store was semi-dark, not light and open as Walter claimed. Leech said he engaged Ernst Kohlberg in a protracted conversation, not a short and abrupt one as Walter remembered it. Leech was certain that Ernst had uttered something to Walter in a foreign language (according to the *El Paso Times*, Leech stated “Hebrew or some language I did not understand,” but the trial transcript has him saying only “it was not Mexican, and it was not American”). Leech claimed that the eviction notice was a trifling part of the conversation, and that the topic of gambling never came up. He testified that he had gone to the cigar store for the sole purpose of confronting Kohlberg about his lewd intentions regarding his wife. He presented himself to Kohlberg as a down-on-his luck “cripple,” who just needed some extra time to pay off his debt. He told him that Lizzie was not doing well either: “My wife is in a critical condition, and she will have to go to a hospital.” Kohlberg, however, allegedly retorted “Damn you and your wife,” showing no pity. “Then I saw those two men coming towards me,” Leech told the jury: “I took it for granted that they had something, old man Kohlberg had something in his hand, in his right hand, but in the semi-darkness I couldn’t tell what it was. They both rushed at me in such a way that I thought that they were going to do some bodily harm.” He tried to justify the homicide by adding: “I certainly fired in self-defense, and I fired to kill” and “I shot him because he was trying to break up my home and break up my family.”²⁴

The defense used John and Lizzie Leech’s testimony to construct a powerful counter-narrative. If it resonated with the jury, it would not only explain away John’s homicidal behavior but also cast him in a more sympathetic light as the victim of a crooked and lustful Jew.

Unfortunately for the defense, John Leech could barely answer the benign questions his own attorneys posed, let alone handle the rattling fire of Howe's cross examination (Lizzie fared much better, but she was only on the witness stand briefly). At first, John could not remember whether his wife actually used the word "mistress" or whether she fully understood Kohlberg's lascivious intentions. Later, he was certain she did use that word and she did understand its implications. Still later he could not be certain. The fire-insurance story twisted him up like a pretzel. He was supposed to testify (as follow-up questioning revealed) that Kohlberg offered him a \$200 rent rebate to compensate for actual smoke damage to the hotel, but then only paid him \$100. But he somehow veered off track and ended up implicating himself (under oath) in the alleged insurance scam. His explanation for how he happened to have a gun in his pocket—his own gun, which he had purchased from a local policeman—lacked credibility: it involved two friends named Shorty, one of whom conveniently handed him the gun just minutes before the shooting (hence no premeditation) and then just as conveniently disappeared into Mexico a short time later (hence no corroborating testimony). Nor could he explain why the bullet hit Kohlberg in the back, if Kohlberg was rushing toward him. "He must have turned," was his lame excuse. Leech's biggest misstep came when he tried to explain his state of mind just prior to the homicide. When questioned by his own attorneys, he was careful to testify that he was in the grip of passion and could not restrain himself. But under cross-examination, he admitted "I didn't lose my mind," "I didn't lose my head," and "I knew why I was doing it, and understood the consequences of such an action."⁵

Jury deliberations began on October 19 and lasted less than 24 hours. Balloting on the first evening suggested that the defense had made a significant dent in the prosecution's case. Nine voted for conviction and three for acquittal; and among the nine who voted for conviction, just seven felt the crime warranted the death penalty. The next morning everyone agreed to take the death penalty off the table. The next ballot resulted in ten votes for first-degree murder and two for manslaughter. The following ballot garnered eleven votes for first-degree murder with a life sentence and one vote for murder without a life sentence. Then the last holdout, a farmer from Clint, agreed to switch his vote, and the jury came back with a unanimous verdict for murder in the first degree with a life sentence. "The Jews have got the country so let

the bastards have it," Leech bellowed, after the verdict was read in court: "If I had had my way I would have told them to hang me instead of sending me to the penitentiary."⁶ Self-reflection was not one of Leech's strengths.

John Leech was sent to the Texas State Penitentiary in Huntsville in November 1911, after an appellate court upheld his conviction. Lizzie Leech stood steadfastly by her husband during the trial, no doubt perjuring herself in the process. But her loyalty had its limits. In April 1912, she divorced him on grounds of cruelty, alleging in her petition that he "frequently abused her, and one time beat her so that she was confined to a hospital for several weeks." Shortly after her divorce, she married Emery A. Smith, a co-owner of the El Paso Carriage and Auto Painting Company, who had once worked as a clerk in the Southern Hotel.⁷

Ernst Kohlberg was buried in a family plot in the Jewish section of Concordia Cemetery. His widow, Olga Kohlberg, graciously allowed Lizzie Leech and her children to live rent free in the Southern Hotel until Lizzie was able to find employment at the nearby Palace Hotel. Olga stayed in the family residence on Sunset Heights until her death in 1935, leaving behind a legacy of civic activism that vastly overshadowed that of her late husband. Walter ran the family cigar business until 1924, when it became a victim of America's new fascination with cigarettes. The murder site at 115 South El Paso Street was razed in 1911 to make room for the El Paso del Norte Hotel (now the El Camino Real). The Ernst Kohlberg Conference Room on the hotel's second floor marks the approximate spot where his cigar factory once stood.

The Leech trial illuminated many of the strengths, and some of the oddities, of the El Paso judicial system at the beginning of the 20th century. The judge was an Irish Catholic, the murder victim a German Jew, the attorneys mostly Anglo Protestants. The town was half Hispanic (and half female), but the jury was all white (and all male). El Pasoans seemed blissfully unaware of Texas's potential as the execution capital of America: it took the prosecution ten days to find twelve jurors who had no "scruples" about the death penalty! Despite El Paso's supposed reputation as a shoot-'em-up western town, its citizens were genuinely shocked by the "Kohlberg assassination" and equally relieved that Leech was convicted. The prosecution achieved its main goal—a first-degree murder conviction—but not its secondary one—the death penalty. The defense team fell far short of its preferred outcome—justifiable homicide or manslaughter—but it did manage

to save Leech from the hangman's noose. In 1915, Leech wrote a letter to the *El Paso Herald* that said in part: "I always blamed your paper for getting the sentence that I got. Now to right a wrong that you did me I am going to ask you to do me a favor and try and get me out of here." The *El Paso Herald* did not come to his rescue, but Leech was set free in February 1918, ten months after he received a conditional pardon from Governor James ("Pa") Ferguson.⁸ He was 59 years old and had served less than 8 years of his life sentence.

Perhaps Ernst Kohlberg is best seen as an early victim of the anti-Semitic bacillus that was lodging itself in the minds of certain Europeans and Americans in the early 20th century and the resulting trial as a harbinger of El Paso's tumultuous 1920s. In 1923, Preston E. Gardner, one of Leech's defense attorneys, would attempt (unsuccessfully) to ride the Klan's anti-Black, anti-Catholic, anti-Semitic sloganeering into the El Paso mayor's office. Among the Klan's greatest opponents were William F. Fryer, the court stenographer during the Leech trial, who went on to become one of El Paso's most prominent attorneys; Walter Howe, the District Attorney during the Leech trial, who later became Judge of the 34th district court; and Victor Moore, who assisted Howe during the Leech trial and was now the City Attorney. They were joined by many other El Pasoans, including friends and business associates of the Kohlberg family. It is a tribute to El Paso's long tradition of ethnic and religious tolerance that its citizenry and its legal community proved largely immune to the Leech-Gardner virus.

Endnotes

- ¹ *El Paso Herald* (October 13, 1910).
- ² State of Texas vs. John Leech, MF 524, 0714-15, 0733-35, and 0782.
- ³ *Ibid.*, 0716-18, 0739-41, and 0752.
- ⁴ *Ibid.*, 0718-22 and 0743-47.
- ⁵ *Ibid.*, 0748-49.
- ⁶ "Leech Receives Life Verdict with Bravado," *El Paso Herald* (October 21, 1910).
- ⁷ "Leech Wants Out," *El Paso Herald* (June 19, 1915); "Wife of Life Term Prisoner Says Leech Beat Her Badly," *El Paso Herald* (April 30, 1912); and "Licensed to Wed," *El Paso Herald* (June 11, 1912).
- ⁸ Letter from Governor James Ferguson to John Leech (April 17, 1917), Texas State Library and Archives, Austin, Texas.

MARK CIOC-ORTEGA is a Professor of History at the University of California, Santa Cruz.

EVELINA ORTEGA is an El Paso attorney. She is board certified in personal injury trial law by the Texas Board of Legal Specialization.

El Paso's Child Welfare Law Specialists Dream Team

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.” This sentiment by 2001 Noble Peace Prize winner, Kofi Annan, is precisely at the heart of what motivated four attorneys and one judge in El Paso, Texas, to become certified as Child Welfare Law Specialists.

The five individuals represent all the critical legal roles involved in a typical child protective services court case: Lyda Ness, Mark Briggs, and his sister, Alison Gutierrez, are among the most competent, proactive, and involved parent and child attorneys in El Paso. Additionally, Mark Briggs is also a highly respected child protective services Mediator. Assistant County Attorney Richard Deck is a prominent child protective services prosecutor, and I am the Associate Judge of the El Paso 65th Judicial District Child Protection Court and Preservation Family Drug Court. On occasion, one can find all five of us involved in the same court case. When that happens, a sense of magic seems to fill the court room.

Richard Deck, as prosecutor, begins the presentation of his case with true class. Always a true gentleman and one to keep abreast of the latest developments in child welfare law, he helps to create an intellectual, yet down to earth, ambience in the court room. Richard Deck is a “prosecutor par excellence,” an ideal example of a person wholly dedicated to justice and fair play in all respects. As the other CWLS attorneys begin to present their sides in the case, they too help to sustain this level of first-rate advocacy on behalf of their clients. Mark Briggs, a wise and reflective thinker with a healthy dose of solid common sense, and who encourages others to think outside the box, enters the presentation of his case with a persuasive and confident, yet cautious, demeanor. Lyda Ness, truly an equal to the rest in her admirable skills as a lawyer, she very firmly, clearly, and in a very knowledgeable manner makes her case. Admired for her ability to articulate so well and think fast on her feet, Lyda Ness takes her



stance. Next comes Alison Gutierrez, well known for her intuitive and discerning abilities. She brings to the child welfare court arena a heart of gold, an unwavering commitment to professionalism, and one of the finest legal brains in our community.

As I behold from the bench the caliber of child welfare law practitioners before me, I sigh with a smile and think, “Wow, this is a dream team!” I have the privilege to be part of a child welfare court experience, where all the parties and the children are represented by the cream of the crop, the best of the best---the Child Welfare Law Specialists!

It has been my observation that all of us, the five Child Welfare Law Specialists, though very unique in style and approach to our child protective services work, are in solidarity and of one mind when it comes to our unwavering commitment and passion for child welfare law. We are in love with our calling to serve the needs of children, who often times are the most vulnerable members of our community. Serving them and their families is a privilege and an honor for us. We believe that the practice of child welfare law is perhaps the noblest area in the practice of law, for there is nothing more precious than contributing to the future of mankind by making a positive impact on

our children, whose lives will then impact other lives.

I, for one, feel so fortunate to walk side-by-side with my child welfare law specialist colleagues as we go about serving our child welfare families every day. I know that our community is the recipient of a level of child welfare law expertise and experience that not all jurisdictions enjoy.

The five of us adhere to the belief that we have a moral duty to be vigilant in the protection of our children and to be committed to the uplifting of our families. After all, it is helping to bring well-being to the families we serve that is at the core of what we do, for in doing this, the best interests of children are served. It is the healthy family that best nurtures its children. It seems Winston Churchill recognized the importance of this when he said, “There is no doubt that it is around the family and the home that all the greatest virtues, the most dominating virtues of human society, are created, strengthened and maintained.”

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

SENIOR LAWYER INTERVIEW

TOM DIAMOND

■ BY CLINTON F. CROSS

I recently interviewed Tom Diamond in his beautiful home in the El Country Club area. Like the last Senior Lawyer interviewed, Kit Bramblett, his career began with the help of former El Paso County Judge Woodrow Bean. Ed.

CROSS: Tell me about your family and your childhood.

DIAMOND: I was born in Long Beach, California, March 28, 1923. My father was a building contractor my mother was his secretary. I also had a younger brother. During World War II my father built a lot of military installations for the government.

CROSS: Where did you go to school?

DIAMOND: I went to Dorsey High, graduating in February of 1942. During this time I worked for my father in construction. After I graduated, I went to UCLA as an engineering major. After one semester I wanted to join the Marines, but I was too young and I could not join unless my father agreed and he would not agree. He finally said he would let me go in the army if I tried out for OCS. I made that commitment, dropped out of school, and enlisted in the army.

CROSS: So I guess we are going to talk about your military career before we get back to your education.

DIAMOND: I guess so, since I joined the army and cut my education short.

CROSS: Where did you serve?

DIAMOND: I went to basic training at Camp McQuade in California. I tried out for OCS and was accepted. I went to Fortress Monroe in Virginia, which was an artillery base. It was called a fortress because it had a moat around it. After I graduated I went to radar school. Then the army sent me to Australia and then New Guinea where we set up radar stations. On January 9, 1945 I went to Lozan, an island in the Philippines. For a week before we landed, we were under constant kamikaze and submarine attack. After that we were very happy to get off the ship. However, after we got on shore and dug foxholes we got hit with a lot of artillery. That was not much fun either.



Ysleta del Sur Pueblo War Captain Javier Loera and Tribal Attorney Tom Diamond Ysleta Mission, January 18, 2012

About a week later, after we secured the beachhead, Sgt. Fultz and I took off to Turlock to attend a bazaar. We were taking back roads because the main road was washed out. We came to a bridge across a small ravine and we were stopped by a Filipino guerilla. He wanted to know where we were going. He was soon joined by two more guerillas, one of whom was obviously in charge. The head man wanted to know if we had any ammunition. I concluded the men were Huk-ba-luks, guerrillas who basically opposed everyone.

In the backseat we had two duffle bags and under the bags two machine guns and ammunition. I lied, and told them we did not have any ammunition. I crossed the bridge, with the Huk-ba-luks following on foot. I then saw a figure on the ground next to an open fire and stopped the jeep. Sgt. Fultz and I went over to see what was going on. We saw a Japanese Captain spread eagled on the ground with bamboo stakes driven through his arms and legs with a large stake driven through his stomach. He was still alive; moaning. I asked the Huk-ba-luk leader what was going on. He said, "He 'high up' Japanese Captain. We caught him stealing chickens. He no steal chickens anymore." One of the guerrillas said, "You want to see him cry." He stuck him with a bamboo spear. The man turned his head

and moaned as blood came out of his mouth. Then he died.

The Sergeant and I went back to the jeep. I asked, "Should we take them out?" The Sergeant said, "We'd better take them all out on the first try or we might get the same treatment that the Japanese Captain got." I decided the risk was too great and drove off.

On August 17, 1945, I was having breakfast with some pilots who told me they were going to Manila as escort for the Japanese surrender team to sign a cease fire agreement. I agreed to go along. We got to Manila Bay and the pilot decided to celebrate by buzzing a destroyer. The airplane "red-lined" at 280 miles an hour when the engine cut out. We hit the water. We thought we were sinking. The escape hatch was jammed. With a lot of physical effort, we popped the hinges to get out. I had seventeen fractures in my left leg, but at the time I did not know it

It turned out we had crashed in a swamp. When I stood up I realized I had been hurt. In addition to the fractures, I had ripped open my left ankle and severed an artery.

Some Filipino fisherman showed up and carried us to a road. By the time I got to a hospital, my ankle had swollen up and was infected. The army ordered me to fly home but I was so traumatized by my flight experience that I refused to obey. I talked to a psychiatrist who agreed with me. I finally went home on a hospital ship. I still won't fly, unless I have absolutely no choice.

After I returned to the States, I went to William Beaumont hospital. Thereafter, I was sent to Madigan General Hospital at Ft. Lewis, Washington, for convalescence. I was discharged from the army as a Captain in 1946, when I was 23 years old. I retained my commission in the reserves.

CROSS: Did you then go back to school?

DIAMOND: Yes, I went to Stanford and majored in civil engineering. When I graduated in 1949 my father was very proud. But I didn't have much of a chance to get started with my career as an engineer because I got called back to duty due to the Korean War.

I was sent to Ft. Bliss where I attended guided missile school. After I graduated, I joined

the faculty and became an instructor. I was discharged in 1953.

CROSS: What next?

DIAMOND: I went to Oklahoma to work as a land man in an oil patch. A land man seeks and obtains leasing rights wherever geologists think there might be oil. That's when I decided I wanted to be a lawyer.

CROSS: Did you then go to law school?

DIAMOND: I went to Baylor Law School. At that time I had a wife and a small child so I had to work. I worked at the Texas Highway Department where I started the "right of way" program for the Waco District. I graduated in 1957 but stayed with the highway department as a "right of way" engineer in Waco for another two years. I was transferred to El Paso in 1959 where I started the "right of way" program here and handled the "right of way" acquisition for I-10.

CROSS: When did you make your career change from engineering to law practice?

DIAMOND: In 1959 County Judge Woodrow Bean offered me a job as his administrative assistant. He wanted me to work on the Trans Mountain Road and the Sun Bowl. We succeeded in both projects.

Woodrow Bean opened the door for me to politics. In 1960 my wife and I worked as advance people for Lyndon Johnson. Kennedy was running for President and Lyndon was his Vice Presidential nominee.

As you may know, Kennedy and Johnson fought it out at the convention for the presidential nomination. After Kennedy defeated Johnson, he offered Johnson the opportunity to be on the ticket as the Vice Presidential nominee. Johnson was reluctant to accept the nomination as he was at that time majority leader of the Senate. However, contrary to all the other Johnson supporters, Woodrow Bean urged Johnson to accept the nomination. "You will be a heart-beat away from the Presidency," he argued. It is possible that Johnson listened to Woodrow. In any event, Johnson agreed to be on the ticket.

After Kennedy's first political trip to El Paso, at the end of the day, Kennedy, Ted Sorenson, Bean and I were at the Cortez Hotel celebrating Kennedy's visit and the enthusiastic reception he had received from many voters. We all had a few drinks. We quickly bonded with each other not only because we were on the same political team but because we were all veterans of the Pacific theater with the same military rank.

Woodrow suggested we should all visit Irma's in Juarez; a bordelo with valet parking.

With Woodrow in the lead we were heading to the elevator when Kennedy suddenly stopped. I bumped into Kennedy and fell down. Sorenson fell over me.

Woodrow came back and wanted to know what was going on. Kennedy said he could not go; after all, he was running for President. Woodrow said "Don't worry, we have a local rule here: after midnight everyone in Juarez is invisible." Kennedy said, "The national press does not know your local rule. I can't be seen in a Mexican whorehouse while I am running for President of the United States."

So we all went back to Kennedy's suite, had a nightcap, and went to bed.

CROSS: After the election was over, what did you do?

DIAMOND: After the election, I succeeded Dick White as El Paso County Democratic Party Chairman, and I started a law firm.

CROSS: Who did you practice with?

DIAMOND: Ed Hughes, Don Thorne, Larry Schwartz, Bob Earp, Larry Baskind, Don Leslie, Norman Gordan, Alan Rash, Nelson Smith, Ron Jackson, John Batoon, Russell Leachman, Jesus Samaniego, Bob Truhill, Janette James, Brenda Norton, John Foxworth, John Searles, Mike Spurlock, Hank Hosford, Josette Flores, and others.

CROSS: What kind of practice did you have?

DIAMOND: General practice. But we were the first firm in El Paso to do bond work and municipal financing and the first firm in El Paso to be listed in the Red Book as qualified to approve bonds.

CROSS: Any interesting cases?

DIAMOND: Thirty years ago I tried two cases before the Indians' Claim Commission for the Tiguas and the Alabama Coushatta tribes. I won both cases but they were dismissed on jurisdictional grounds as we had not filed timely with the Indian Claims Commission. We had not been given notice of the claims, so did not timely file. Senator Yarborough's son, who was on the Claims Commission, gave us favorable findings on merits but dismissed both cases on a jurisdictional basis.

With the help of Congressmen Charlie Wilson and John Breaux, I was able to obtain a Congressional Reference Act for the Alabama Coushatta tribe. The Act waived sovereign immunity of the federal government and instructed the Court of Claims to hear the case

and report back to Congress on the validity of the claim and the recommended value of the claim. We tried the lawsuit in Austin and Washington. That judge ruled against us. We appealed to the full Commission. The Commission reversed the judge and entered judgment in favor of the tribe in the amount of \$274 million dollars. That was twenty years ago.

We still had to collect. In order to do that, we had to get a bill through Congress. Congressman Brady, who succeeded Charlie Wilson, refused to introduce a bill authorizing payment unless the Alabama Coushatta Indians gave up their possessory rights to seventeen counties in East Texas. The Alabama Coushattas will not give up their claims. So we haven't gotten the money. But we are still trying.

CROSS: Major accomplishments?

DIAMOND: On July 4, 1965, I attended a political rally for school teachers. Congressman Dick White and I were on the program. White mentioned Oñate reaching El Paso in 1598. After the meeting, I was riding back to El Paso with Jack Salem, News Director for Channel 4. We were talking about Oñate. Jack said, maybe you are the right lawyer to help the Indians here. I said, "What Indians?" Jack had worked with former mayor Jack Seitsinger and Wood Crumbo, Art Director at the Museum of Art who had tried in the past to get the Tiguas federal help; with no luck. So I agreed to try to help them.

I knew Alex Calendaria at the tax office, who had Tigua ancestry. He set up a meeting with Pablo Silvas, Lt. Governor of the tribe. We met with Pablo and his wife Hermenia, Alex, and me. No-one else showed up; Pablo said it was because everyone was tired of white man's empty promises. We scheduled another meeting. The next time the Governor and others attended the meeting. From their appearance and conduct, I was convinced these folk were in fact Native Americans.

After that meeting, I began a campaign for recognition of the tribe. I was Democratic Party Chairman; John Connelly was Governor; and Ralph Yarborough was the senior Senator. Lyndon Johnson was President. Although Connelly and Yarborough were political opponents, I was as County Chair able to work with them. I had also worked with Attorney General Crawford Martin, who turned out to be an important player in the events about to occur. Of course I had been one of Johnson's advance men, so I knew him. Another player, Stuart Udall, was Secretary of the Interior. I had invited Udall to speak here at a bar-b-queue and had a good relationship with him. With the help of these five politicians we

got the tribe recognized.

It wasn't easy. At the time, federal policy was to terminate tribes, not to recognize them. Our campaign involved a two step process. Crawford Martin developed the plan. First, the State of Texas had to agree to accept trust responsibility subject to a transfer of that responsibility from the United States to Texas. We got the bill through the Texas legislature, and Governor Connelly signed it.

Then we had to get a bill through the federal legislature recognizing the tribe, and transferring responsibility to Texas. The bill got held up in the Senate for two months. Yarborough told me that he finally figured out what the problem was after he visited Senator Clinton Anderson from New Mexico, chairman of the Senate committee responsible with oversight responsibility for the Department of Interior, with a bottle of bourbon in hand. Anderson was holding up the bill. After many drinks late into the night, Anderson told Yarborough that the tribes in New Mexico had urged him to oppose recognition to the Tiguas because in 1681 the Tiguas had sold out to the

Spaniards. After some more discussion under more sobering conditions, Yarborough got Anderson to change his position. When the bill finally came up for a vote, it passed.

CROSS: Your family?

DIAMOND: I met my wife, Carolyn Culbertson, on a blind date when I was attending Stanford. We had dated for several months before I decided to take her to a fraternity party at UCLA. On our way to the party, I took a "right" turn and ended up in Las Vegas, Nevada where we got married. We have been married 63 years. We have one son, Jack, who runs our ranch in New Mexico. He also runs an elk hunting business on the ranch. I have three grandchildren, Rene Diamond, a lawyer in Albuquerque; John, who works for his father; and Cammy, who is a student.

I just finished a trial with my grand-daughter Rene. She was lead counsel, and I was local counsel. The case was a milestone in my career. Incidentally, Randy Grambling was one of the lawyers on the other side.

CROSS: I consider your life a success. Why do you think you have been successful?

DIAMOND: Four important events during my lifetime shaped my career and my life.

First, the great depression taught me the importance of a work ethic and to conserve resources.

Second, World War Two taught me the importance of working together with others; to emphasize interests shared and minimize differences.

Third, my wife has been the "wind under my sails" and a "stout sea anchor in a storm." Because of her, we have had a wonderful life together.

Fourth, Baylor Law School opened the door for me to a legal career which I have enjoyed very much; with mucho gusto.

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

Help from the Texas Lawyers' Assistance Program, State Bar of Texas

BY SUSAN LOUISE GODWIN

We live in extremely stressful times. Stress affects our profession on a daily basis. Lawyers are three times more likely to suffer from depression than any other profession. Suicide is the third leading cause of death among lawyers. There is help. The State Bar of Texas has addressed this problem through the Texas Lawyers' Assistance Program. What is TLAP? Texas Lawyers' Assistance Program (TLAP) is a confidential program to assist lawyers with substance abuse, stress, anxiety, and depression.

1. How does a lawyer get in touch with TLAP? A confidential telephone call to 1-800-343-8527 will start the process. Lawyers are provided many referrals for help and even limited financial benefits for medical and therapeutic services, if they qualify.

2. What is the most important strength of this program? Confidentiality, confidentiality, confidentiality.

The Texas Lawyers' Assistance Program is a confidential crisis counseling, peer assistance

and referral program that helps Texas law students, lawyers and judges challenged by substance abuse and other mental health issues, including depression, anxiety and stress.

TLAP staff, TLAP Committee members and TLAP volunteers are able to help by providing discreet and respectful personal outreach, appropriate referrals and ideas for concrete solutions. TLAP can help save lives and careers.

One of the foundations supporting TLAP is its STATUTORY CONFIDENTIALITY under the Texas Health and Safety Code, Chapter 467. In spite of that, many in the legal community fail to seek help or make referrals because of the mistaken belief that "someone will find out" or "calling TLAP will get the lawyer in trouble." Not so. By statute all communications with TLAP are confidential. TLAP staff, TLAP Committee members and TLAP volunteers sign a confidentiality acknowledgement that details both the policy and statutory requirements concerning TLAP and confidentiality. As most

lawyers know, there are limited exceptions to this confidentiality, such as when an individual is a danger to himself or others, but in 99.9% the cases, the information remains confidential.

In addition to statutory confidentiality, TLAP staff, Committee members and volunteers personally pledge to keep all information confidential. A TLAP volunteer best summed it up by saying, "We never talk."

The Texas Lawyers' Assistance Program is confidential. Really, it is! You can reach TLAP at 800-343-8527 (Lawyers' Hotline) or 800-219-6474 (Judges' Hotline). You can reach Susan Louise Godwin at (915) 351-3666.

Each of us has known, may know, or will know an attorney who may need help. Resources are available to provide assistance for attorneys so that we may continue to maintain a high standard of professionalism in these stressful times.

SUSAN LOUISE GODWIN is an El Paso attorney engaged in the general practice of law, and an Adjunct Instructor at El Paso Community College,

Anatomy of a family abduction in the most dangerous city of the world

BY GUSTAVO MONROY

Recently my firm, a private intelligence agency, accepted a parental abduction case. The United States Department of Justice defines family or parental abduction as the taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member. This case illustrates the risk of parental abduction in El Paso, and also the importance of immediately seeking and obtaining the right resources to assist in resolving the problem.

Our story begins with a couple who fell in love while attending school in El Paso. One of the couples was born and raised in the United States; the other was born and raised in Mexico. These two people from contrasting cultures brought together in a romantic relationship led to a marriage and later the birth of a baby girl. During the pregnancy, the mother developed a debilitating condition which eventually affected her ability to care for the child. The father became the primary care giver for both his wife and daughter.

For reasons not important to our story, this relationship ended in a bitter divorce. As is typical, the mother received primary custody of the child. The court awarded the father substantial visitation rights.

Shortly thereafter, the father had an opportunity to spend approximately one month with his daughter. The mother became distraught and called the father, wanting "her" daughter back. The father kept the child for the remainder of time allotted in the divorce decree, and then returned the child to the mother. When the father declined to return the child to the mother in accordance with her telephone request, she began to make plans to flee with "her" child at the first opportunity.

When the father went to pick up his daughter at the next designated time for visitation, the mother and daughter were nowhere to be found. The mother had left a note for the landlord regarding where she and her daughter might be found. But the information that she left behind was misleading.



After exhaustive efforts to find his child, the father came to my firm hoping we could help him find "his" daughter. Behind eyes welled with tears one sensed depression, anger, hope, desperation and fear of the unspeakable. Countless government officials had advised him to hire a professional. He finally decided to do so.

Unfortunately, parental abduction is a common occurrence in the United States. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) publishes periodic studies entitled National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMA). The most recent study found that over 200,000 children were the victims of parental abduction in just one year. To put this in perspective, approximately 16,500 children are abducted every month, 3,800 per week, 500 per day or 23 children per hour. These facts are staggering.

Statistics regarding international child abduction are also upsetting. A 2009 report published by the Department of State entitled Report on Compliance with the

Hague Convention on the Civil Aspects of International Child Abduction states that 1,082 cases were reported in 2008. Only 436 children were successfully returned; a return rate of only 40%. Of those 436 children, 82 children were abducted and taken to Mexico. Of those 82 children, only 13 children were successfully found and returned; a dismal return rate of only 16%. According to the Department of State report, "Mexican law enforcement historically has a low rate of success in locating children who have been abducted to, or wrongfully retained in, Mexico. The majority of the longstanding unresolved return applications in Mexico remain pending because of an inability on the part of law enforcement to locate missing children."

There is a realistic risk that a disproportionate number of parental abductions in El Paso will become international abductions. Based on Mexico's poor return statistics, it is important to use every resource available to reunite parent and child, such as the State Department, the Federal Bureau of Investigation, and many other agencies. A good private investigator

can also provide important assistance in this effort.

In this case, after a detailed interview of our client and a concentrated analysis of developed and proprietary information, my firm was able to find the probable “weak link” to the mother and child through a relative. Surveillance coupled with more data collection was done. Off the shelf sensory-enhancing technology was incorporated to get a more precise idea of the relative’s pattern of life. Our field agents were able to ascertain that the relative, during the holidays, went to Juarez, Mexico. We concluded that the relative was probably visiting with the missing mother and daughter. Agents, experienced in conducting operations in imminent danger zones, were deployed. Precautions were taken. The residence where the mother and child were believed to be hiding was pinpointed. A vehicle, known to be owned and operated by the mother, was found. Photographic evidence was obtained without detection. Upon completion and without

hesitation, our investigators exfiltrated the country using tactics and techniques common in the world of security and made their way to safe territory.

When an attorney or their client considers hiring a private investigation firm in a case such as this, what questions should be asked to make sure the right firm is chosen? If the case involves an imminent danger zone, such as Juarez, one would want to know whether the firm has any experience working in such challenging environments. If so, what type of work was done in those locales? Expect a genuine basic overview of the firm’s experience in that locale. Does the firm have the technology to help them locate the child? Do they have the experience to deploy it correctly; i.e., covertly, in order not to raise the suspicions of corrupt officials or nefarious characters? Will the technology be used ethically and legally so that there will be no negative consequences later in the case? Lastly, what familiarity does the investigator assigned to the case have with the

country and its language and culture? Can he blend in with his attire and gestures? It will be difficult to pass unnoticed if one cannot blend in with the local inhabitants.

Victims of international kidnapping should employ a seasoned attorney since only an attorney can navigate the difficult process of a child’s legal return. An experienced private investigator, however, can also play an important role in identifying of the child’s location and perhaps even assist in the physical return of the child to the proper custodian.

*The story you just read is true. Inconsequential details have been changed to protect living persons.

GUSTAVO MONROY is the founder of The Steel Cloud Company—a private intelligence agency (www.steelcloud.US). He is a seasoned private investigator in both Texas and California; security consultant and former USMC Intelligence Agent. **Lee Gaudreau-Vargas** assisted in writing this article. She is a writer and marketing consultant.



Kathleen Anderson

Name:

Kathleen Anderson

Court:

Associate Family Court Judge

Years on the bench:

I was hired by the Council of Judges in February, 1997. Since then, the system for hiring and supervising associate judges has changed. I now work for Judge Mike Herrera. I along with Magistrate Carter and Judge Gabaldon are the longest serving associate judges in the courthouse.

Education:

I graduated from the University of Texas in 1975 and from U.T. Law in 1979. I practiced family law before I became an associate family court judge. I was board certified in Family Law in 1985.

What motivated you to become a judge?

I was attracted to public service. As a family court judge I thought I could help families in crises.

Important characteristics and qualities for a judge:

A judge must be an active listener, and patient. A judge should also rule promptly. When a judge takes a matter under advise-

ment, the passage of time might seem to make the problem easier to decide but in fact may increase the likelihood of error as facts, arguments and issues fade from memory. Also, delay is not fair to the parties involved. As Justice Learned Hand once said, “Justice delayed is justice denied.” Finally, in cases where parties return to court for repeated hearings it is useful to have a good memory.

Any concerns about the practice of law in your court at this time?

Some of us on the bench feel that there has been an erosion of respect for the courts and other attorneys. For instance, lawyers too often fail to show up for hearings, without prior notice to the court or opposing counsel. In an attempt to address this problem, we family court associate judges (Gary Aboud, Jesus Rodriguez, Michele Locke, and Tony Rodriguez) host for family lawyer practitioners quarterly breakfast meetings. We hope these meetings will promote camaraderie and respect among family practitioners for the courts and for each other.

How do you spend your free time?

On a weekly basis, I go the gym to exercise before work with my friend and fellow at-



Kathleen Anderson

torney Patricia Palafox. I also like travel, for instance to watch birds in the Bosque Del Apache National Wildlife Refuge in Socorro County, New Mexico. I also volunteer with a local food pantry on a weekly basis and am active at my church, Trinity First United Methodist Church. I am a widow, but I have two sons, Matt, who lives in Austin, and Robert, who is studying musicology in Oxford, England. When I have more time, I enjoy visiting with them or traveling to other parts of the world.

Satisfying *Padilla v. Kentucky*: A Guide for Criminal Defense Counsel

BY ILIANA HOLGUIN,

On March 31, 2010, the Supreme Court rendered a decision in the case of *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), holding that criminal defense counsel have a Constitutional duty to address the immigration consequences facing an immigrant client, and that a failure to perform this duty constitutes ineffective assistance of counsel under the Sixth Amendment. Almost two years later, there is still much hesitation and confusion among criminal defense attorneys as to the scope of their duty to immigrant clients under *Padilla*. This article seeks to clarify an attorney's duty to his or her immigrant clients, as well as suggest some possible collaborative efforts that might be undertaken within the El Paso legal community to ensure local compliance with *Padilla*.

When defending an immigrant client, i.e., a client who is not a citizen of the United States, criminal defense counsel MUST do the following:

Investigate the facts of the case: In every case in which the defendant is not a U.S. citizen, defense counsel must investigate the immigration status of the defendant, as well as other relevant facts, such as family ties, manner of entry into the U.S., etc. Additionally, defense counsel must obtain the full and complete criminal history of the defendant in order to accurately determine any potential immigration consequences. Sometimes, the current charge that the client is facing in and of itself won't render the client deportable, but may do so in combination with prior offenses (for example, two or more crimes involving moral turpitude).

Analyze the immigration consequences of key defense decisions and advise the client accordingly: When considering a plea for an immigrant client, defense counsel should investigate the specific immigration consequences that the plea would impose. It is important to remember that counsel must consider both avoiding potential deportability, as well as maintaining eligibility for possible relief from removal if deportation proceedings cannot be avoided. The Court in *Padilla* specifically held that failing to provide advice on immigration



consequences by remaining silent is ineffective assistance of counsel. This analysis and advice shouldn't only take place when considering plea offers, but also when a defendant is deciding whether to go to trial, entering a diversion or drug treatment program, responding to a charge of violating the terms of probation or of a protective order, admitting an addiction, or appearing for sentencing. Likewise, criminal defense counsel should also notify immigrant clients as to the possibility of being taken into Immigration and Customs Enforcement ("ICE") custody upon their release from criminal custody, after posting bond, for example, even if the criminal case has not been concluded.

Determine the importance of immigration status to the client: Frequently, an immigrant client may have to prioritize between obtaining a positive immigration result versus obtaining a lesser criminal penalty. Some defendants are only concerned with obtaining the shortest criminal sentence possible, while others are willing to be more flexible if it means avoiding removal and being able to remain in the U.S. with their families. These defendants may be willing to plead to a more serious offense, take additional jail time, or go to trial and risk a higher sentence, and can only make these crucial decisions if they truly understand the potential immigration consequences.

Defend the case pursuant to the client's wishes: If an immigrant defendant decides that the immigration consequences of a criminal conviction are the most important factors in

this case, the defense should be conducted accordingly. Defense counsel should always remember that the defense goals may be quite different in such a case than if just criminal penalties were at stake. For example, certain misdemeanors may carry very severe immigration consequences, but properly plead felony pleas may be safer. It is also important for criminal defense attorneys to remind prosecutors that the Court also indicated in *Padilla* that they too should take immigration consequences into account in order to be able to reach agreements that better satisfy the interests of both parties.

Two years after the decision was rendered, criminal defense attorneys are still frequently asking themselves how they are going to meet their obligations under *Padilla*. Fortunately, there are many online and print resources available for criminal defense counsel, as well as the possibility of local collaborations amongst local non-profit organizations specializing in immigration removal defense and local bar associations, public defenders' offices, etc.

Two excellent resources for criminal defense attorneys representing immigrant clients can be found online at www.defendingimmigrants.org and www.immigrantdefenseproject.org. These websites contain resources such as state-specific analyses of the immigration consequences of commonly-charged crimes, manuals explaining immigration consequences of criminal convictions, information on how to obtain in-depth guides and sourcebooks on the subject, power points used for training throughout the country, as well as information about upcoming in-person trainings open to criminal defense practitioners.

In addition to consulting print resources and attending trainings, criminal defense counsel should also consider the possibility of obtaining expert consultation on individual cases. In some parts of the country, non-profit organizations specializing in immigration defense have partnered up with local bar associations, who provide some funding to the organization so that the bar association's membership can obtain individualized assistance with determining the potential immigration consequences of criminal convictions. In other jurisdictions, public

defenders' offices have obtained grant funding to be able to dedicate an attorney on staff to become an in-house expert on immigration consequences. In indigent cases, some criminal defense attorneys are able to request that the court fund an immigration expert on a particular case, whereas in private offices, the immigrant client is often required to pay for an immigration consultation as part of the defense work.

Here in El Paso, there have already been many efforts to educate the legal community as to their obligations to immigrant clients under *Padilla*, as well as to find ways to work

together to ensure that immigrant clients are properly advised and defended. Diocesan Migrant & Refugee Services, the largest non-profit provider of immigration-related legal services in West Texas, has recently conducted various trainings to local attorneys on the duties outlined in *Padilla*, including a training to the Public Defenders' office in November and to the Women's Bar Association membership in December. Additionally, with support from the Texas Bar Foundation and the Litigation Section of the State Bar of Texas, DMRS has been able to establish a process by which attorneys from

the local public defenders' office can request a case-specific consultation prior to accepting a plea on an immigrant client's behalf. Hopefully, collaborations such as these can continue to be developed so as to be able to ensure the best representation possible to immigrant defendants in the El Paso area. For more information on these and other *Padilla*-related efforts, please contact DMRS at 915-532-3975, ext. 213.

ILIANA HOLGUIN is Executive Director of the Diocesan Migrant & Refugee Service, and an El Paso attorney specializing in immigration law

Lawfirm/Client Data Armageddon

BY DAVID J. FERRELL
djf@elpasolaw.com

From April 2005 to January 10, 2012, five hundred forty two thousand, nine hundred eighty six, and ninety six (542,986,096) RECORDS HAVE BEEN BREACHED according to The Privacy Rights Clearinghouse (PRC) <http://www.privacyrights.org/databreach#2>. Probably the most recent relevant data breach of interest to El Paso is the El Paso Independent School District Breach Made Public September 1, 2011, *ie.* Records Breached: 72,000 (26 confirmed cases).

"Hackers accessed the EPISD server and were able to collect the personal information of students, teachers and other employees. There were names, Social Security numbers, and addresses from approximately 63,000 students and 9,000 teachers on the district's internal network (myepisid.org). EPISD was not aware of the breach until a computer security company noticed hackers bragging about breaking into EPISD's system. Names, ethnicity codes, and student ID numbers for 26 students were posted by hackers named Sy5t3mF41lur3 & t3hblackhatter of H05t_Bu5t0rz."

The new target of data/security breach predators is the "Smart Phone." In the article I wrote in the June 2011 *El Paso Bar Journal* "You Have a Spy in Your Pocket Purse" we received a glimpse of the problem. Now we are

learning that things are worse than we thought. Few Smart Phone owners are protecting the data that resides in and/or flows to and from their Smart Phone.

Would this make an interesting article in the Privacy Rights Clearinghouse PUBLIC database?

"Hackers accessed the El Paso Law Firm XYZ, PLLC's server through devious ways including by obtaining the server's password through Attorney ABC's Iphone/IPad/Android Phone/Android Tablet data which was not protected from hacker penetration. The hackers were able to collect the personal information of lawyers, staff and CLIENTS. There were names, Social Security numbers, and addresses from approximately 30 lawyers and 9,000 CLIENTS on the law firm's internal network (XYZ, PLLC lawfirm.org). The firm's word processing data bases were also invaded and confidential documents are no longer confidential. Billing records were also gathered and posted on the LAW SUIT ABUSE BLOG. XYZ, PLLC law firm was not aware of the breach until a computer security company noticed hackers bragging about breaking into XYZ, PLLC law firm's system."

Every law firm should be very much concerned about data breach/security issues and

the best web site I have found dealing with these issues is the non-profit consumer advocacy group THE PRIVACY RIGHTS CLEARING HOUSE. Their home base web address is <http://www.privacyrights.org/>. The BREACH data base site is referenced above.

This data breach/security issue is becoming the top tier subject in many computer technology circles. The January 2012 *Texas Bar Journal* (pages 18 & 19) has an excellent article *Your Law Firm's Duty to Protect Sensitive Personal Information* by Paula S. deWitte, J.D., PH.D., PE.

I would suggest that we all read this article ASAP which points out three bad security examples, *ie.*:

* Client documents sent to personal or unencrypted email accounts to facilitate work from home;

* Stolen or unattended laptops;

* Weak passwords (e.g., a pet's name); and Discarded CDs or USB thumb drives containing Sensitive Personal Information."

"The real danger is the gradual erosion of individual liberties (PRIVACY) through the automation, integration, and interconnection of many small, separate recordkeeping systems, each of which alone may seem innocuous, even benevolent, and wholly justifiable." *U.S. Privacy Protection Study Commission, 1977.*

DAVID FERRELL is an El Paso attorney specializing in probate and criminal law. He also assists law firms in development of their computer trial and law office technology. He serves on the WEB Services Committee of the State Bar of Texas.

EPYLA SPOTLIGHT

BY PATSY LÓPEZ

Kristin Romero

The El Paso Young Lawyer's Association is happy to profile Miss. Kristin Romero. Many of you in the Criminal Defense Bar will recognize Kristin as an Assistant District Attorney, where she is currently prosecuting large drug cases as a member of the Drug Task Force.

Kristin is originally from Van Nuys, California. Growing up, Kristin lived in Santa Fe, New Mexico, with her parents and younger brother. She received her law degree from the University of Kansas School of Law and is an enormous Jay Hawks' fan as a result!

Kristin names her parents as her role models. Through their example, Kristin was taught that everything worth wanting is worth working for, a value that she strives to live by. In

her work, Kristin has always been most fulfilled by the opportunities she has had to help other people. She has worked in disaster relief for numerous years helping people obtain funding for homes that were destroyed by natural disasters, for a Fort Worth based oil and gas firm for a short amount of time, and has been employed as an ADA at the El Paso District Attorney's Office for over 3 years.

In her off time Kristin loves to hang out with friends, visit local institutions such as Chopes for their great chili rellenos, spend time with her dog Scout at the Westside dog park, and above all travel at every opportunity. She has visited various countries, including, Peru, Hong Kong, England, Ireland, Scotland, Germany, and France and is hoping to continue adding to that

list. However, Kristin also spends her personal time volunteering for very worthy causes.

In 2008 and 2009 Kristin helped coach the Austin mock trial team, which in 2009 became the 2nd team from El Paso to advance to the state mock trial competition. Kristin has also been a member of the El Paso Young Lawyers Association for the past three years and is currently a part of the EPLYA board of directors. This spring Kristin will be organizing a bowling fundraiser for EPLYA that we hope to see many local members at. Kristin is an asset to EPLYA and we look forward to seeing her grow in her career and EPLYA.

PATRICIA LÓPEZ is an Assistant County Attorney responsible for prosecuting juvenile cases.



Blanco Ordoñez & Wallace, P.C., is pleased to announce the formation of **Blanco Ordoñez Mata & Wallace, P.C.**, as Rodolfo Mata joins the Firm as Shareholder and Chair of the Business and Real Estate Practice Group. Prior to joining the Firm, Mr. Mata was President and founding shareholder of the law firm of Rodolfo Mata, P.C.

A native El Pasoan and graduate of Riverside High School, Mr. Mata received his Juris Doctor from Boston College Law School, Master in City Planning from the Massachusetts Institute of Technology and Bachelor of Arts from Princeton University, where he majored in architecture. Mr. Mata was a Law Clerk to US District Court Judge David Briones in the Western District of Texas.

Mr. Mata has a wide-ranging business law practice that encompasses commercial real estate transactions, commercial lending, secured transactions, business entity matters, contracts, transborder transactions and certain immigration matters.



Printing priced right.

Save on Inkjet & Laser Toner Cartridges



- Free Delivery
- Printing Priced Right
- Satisfaction Guaranteed



Smart Savings Coupon

10% OFF

(new customers only)

Call (915) 599-0013

elpaso355@rapidrefillink.net

www.rapidrefill.com

Coupon expires 6-30-2012. Certain restrictions may apply. Limit one per customer. Not valid with other offers. Offer good on in-stock, Rapid Refill brand products at this location only. Min. \$50 order for free delivery.

STORE HOURS
Mon-Fri 9:00am-5:00pm
Sat Closed
Sun Closed

Adoption: Not the Immigration Fix it Used to Be

BY KRISTIN M. CONNOR

A client calls your office because she wants to adopt her 11-year-old nephew. You begin the adoption case and notice that the child has a Mexican birth certificate and does not have a social security number. You assume that the client will be able to fix her nephew's immigration status once he becomes her adoptive son, right? Not necessarily.

Prior to April 1, 2008, your client (assuming she was a U.S. citizen or lawful permanent resident) could have adopted her nephew and petitioned for him to obtain lawful permanent residency, or his green card, after two years in her legal and physical custody.

Adoptions finalized on or after April 1, 2008, though, are a different story. If your client or her husband is a U.S. citizen, she could still adopt her nephew, but she could not petition to legalize his immigration status. This, of course, would leave the nephew in the unsatisfactory position of building a life with his new mom in the United States and not having a path to employment authorization, lawful residency, or citizenship.

The immigration adoption process changed because the United States ratified the Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption ("Hague Convention"). The Hague Convention applies to adoptions on or after April 1, 2008, in which a U.S. citizen adopts a child immigrating to the United States who is a "habitual resident" of a Hague Convention signatory country.¹ Ironically, "habitual residence" has nothing to do with where the child habitually resides. Immigration regulations presume that a child is a "habitual resident" of his or her country of citizenship.² This presumption is difficult to overcome.³

Since Mexico is a Hague Convention signatory country, the Hague Convention applies to adoptions of Mexican children, even if the children are residing in the United States.⁴ As a result, Mexican children can no longer obtain lawful immigration status by being adopted in the United States by a U.S. citizen.

Rather than ignore the possible immigration consequences of an adoption, it is now vital that adoption attorneys understand and advise clients on these consequences or refer clients

to an immigration attorney. One possible immigration remedy for the child might be to obtain special immigrant juvenile status (SIJS).⁵ Eligibility for SIJS would depend on the child's relationship with his biological parents and whether he was abandoned, abused, or neglected by them. If SIJS seems like an option, the adoption attorney should collaborate with an immigration attorney familiar with SIJS to obtain a family court order making the necessary findings and should petition for SIJS and lawful permanent residency before finalizing the adoption. Getting SIJS after the adoption is finalized is not always feasible for many reasons, including the adoption decree findings and the child's age.

Hopefully, one day the process will become easier for Mexican children living in the United States to be adopted here.⁶ Until then, adoption attorneys are tasked with screening for the immigration consequences of adoptions in order for the newly formed family to be able to stay together in the United States.

Endnotes

1. 8 U.S.C. § 1101(b)(1)(G). Two other immigration adoption processes exist that are not discussed here: the orphan process and the non-Hague Convention process. See 8 U.S.C. § 1101(b)(1)(E), (F).
2. 8 C.F.R. § 204.303(b).
3. Only a determination by an authority of the child's country of citizenship that the United States can have jurisdiction over the adoption overcomes the regulatory presumption of habitual residence. 8 C.F.R. § 204.303(b). Practitioners have had little to no success obtaining such determinations from the Mexican Central Authority.
4. Guatemala and El Salvador are signatory countries; Honduras is not. For a complete list of Hague Convention signatory countries, see http://adoption.state.gov/hague_convention/countries.php.
5. See 8 U.S.C. 1101(a)(27)(J).
6. For example, the regulations defining habitual residency could be amended to recognize that a child's habitual residence is where he physically resides, not where he is born, or Mexico could begin issuing determinations that recognize U.S. adoptions of Mexican children.

KRISTIN CONNER is an Equal Justice Works Fellow at the Diocesan Migrant & Refugee Service, and an El Paso attorney specializing in immigration law.



Amy A. Nichols is now Board Certified by the Texas Board of Legal Specialization in Family Law. Her areas of practice are in family, consumer, contract, probate and criminal law. She is University of Texas at El Paso alumnus and, in 2003, graduated from the University of Texas Tech School of Law and joined as an Associate of Kubinski & Associates, P.C..

OFFICE SPACE AVAILABLE

**Two (2) approximately
1400 square feet offices**

Newly Renovated

Near Sunland Park Mall

**661 S. Mesa Hills Drive,
El Paso, Texas**

**Please call for
more information
Phone: (915) 533-4511**



STEVEN C. JAMES

**RESOLVING DISPUTES THROUGH
MEDIATION OR ARBITRATION**

Board Certified in both Civil Trial Law and
Consumer and Commercial Law by the Texas Board
of Legal Specialization

521 Texas Ave. El Paso, Texas 79901 (915) 543-3234
(915) 543-3237 – Fax sjamatty@aol.com

CLASSIFIEDS

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.



Law office located in Historic District 4 blocks from the county courthouse. Property was completely remodeled in 2007 which features hardwood floors throughout, refrigerated air. There is a reception area, 3 offices, conference room, kitchenette and bathroom. The building has a finished basement that is not included in SF. Secured parking in back with remote controlled gate

Price \$149,900

square footage 1850 + finished basement

**Please call Timothy Cantrell at (915) 204-8441
or tcantrel@elp.rr.com for more information**

EL PASO BAR ASSOCIATION

Presents

16th Annual Civil Trial Seminar***February 17 & 18, 2012**

Monte Carlo Resort and Casino, Las Vegas, Nevada

Approved for 10.75 hours of MCLE/

1.5 hours of Ethics by the SBOT

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 #XEPBA12 or you can go to 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– 10:45 a.m.	Trial Technology Issues <i>David Jeans, Ray, Valdez, McChristian & Jeans, P.C., El Paso</i>
10:45 – 11:30 a.m.	E-Discovery – How to Use It/ How It Can Hurt You <i>Yvonne Acosta, Scott & Hulse, Joe Hood, Windle, Hood, Alley, Norton, Brittain & Jay, LLC & Judy Torres, Altep, Inc.</i>
11:30 – 12:00 p.m.	Accident Reconstruction <i>Jason C. Viggato, Ph.D., Rimkus Consulting Group</i>
12:00 – 1:00 p.m.	Lunch (provided)
1:00 – 1:45 p.m.	“Trying a Champagne Case on a Beer Budget” <i>Ben Langford, Law Office of Ben Langford & Daniel Hernandez, Ray, Valdez, McChristian & Jeans, P.C., El Paso</i>
1:45 – 2:30 p.m.	Ethical Considerations in Settlement Negotiations <i>Evelina Ortega, El Paso; Keith Myers, Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C. & William Hardie, Hardie Mediation, El Paso</i>
2:30 – 3:00 p.m.	Technology and Civil Practice <i>Don Minton, El Paso & Brock Benjamin, El Paso</i>
3:00 – 3:15 p.m.	Afternoon Break

3:15 – 4:00 p.m.	White Collar Crime <i>Duane Baker, El Paso</i>
4:00 – 5:00 p.m.	Criminal Law Every Civil Lawyer Should Know <i>Jim Darnell, Jim Darnell, P.C., El Paso</i> Civil Law Every Criminal Lawyer Should Know <i>Cori A. Harbour, Harbour Law Firm, P.C., El Paso</i>
5:00 – 5:30 p.m.	18-Wheel Mayhem <i>Darryl S. Vereen, Mounce, Green, Myers, Safi, Paxson, & Galatzan, P.C., El Paso</i>

Saturday, February 18, 2012

8:00 – 9:00 a.m.	Breakfast
9:00 – 10:00 a.m.	Views from the Bench <i>Judge Philip Martinez, U.S. District Court, El Paso; Judge Carlos Villa, County Court at Law #5, El Paso; Judge Maria Salas-Mendoza, 120th District Court, El Paso; Justice Chris Antcliff, 8th Court of Appeals, El Paso</i>
10:00 – 11:00 a.m.	Deposition, Techniques & Strategies <i>Jeff Ray, Ray, Valdez, McChristian & Jeans, P.C., El Paso</i>
11:00 – 12:00 p.m.	Jury Selection/Challenges <i>George Andritsos, El Paso; Laura Enriquez, Mounce, Green Myers, Safi, Paxson & Galatzan, P.C., El Paso</i>
12:00 – 12:45 a.m.	Legislative Update <i>State Senator Jose Rodriguez, El Paso</i>
12:45 – 1:30 p.m.	Labor & Employment Update <i>Diana Valdez, Scott & Hulse, P.C., El Paso</i>

REGISTRATION FORM

Name: _____
 Address: _____
 Telephone: _____ Fax: _____
 E-mail: _____ SBN: _____

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
 *Add \$5.00 transaction fee
 for credit cards

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 or send an email to nancy@elpasobar.com



EL PASO BAR ASSOCIATION
500 E. San Antonio L-112
El Paso, Texas 79901
(915) 532-7052
(Address Service Requested)

PRESORTED
STANDARD
U. S. POSTAGE
PAID
EL PASO, TEXAS
PERMIT NO. 2516

JOINT BAR ASSOCIATION HOLIDAY PARTY 2011
A Special Thank You to all our Sponsors

- El Paso Bar Association ■ Federal Bar Association
- Mexican American Bar Association ■ Rimkus Consulting Group
- El Paso Young Lawyers Association ■ Justice Christopher Antcliff
- Humberto Enriquez

A Special Thank You to all the Sponsors of the Silent Auction

- ◆ Mr. A's
- ◆ Law Office of Joseph (Sib) Abraham, Jr.
- ◆ Yvonne Acosta
- ◆ Aimee
- ◆ George Andritsos
- ◆ Judge Angie Juarez Barill
- ◆ Law Office of Brock Benjamin
- ◆ Designs by Norma Burns
 - ◆ Charlotte's
 - ◆ Judge Linda Chew
 - ◆ Judge Patricia Chew
 - ◆ Dane's Steakhouse
 - ◆ Robert Diaz, CPA
 - ◆ J. Edwards
- ◆ El Paso Young Lawyers Association
- ◆ The English Artist
- ◆ Estate and New Jewelry
- ◆ Maureen Franco & Office of Federal Public Defender
 - ◆ Freaky Enterprises
 - ◆ Grace the Psychic Lady
 - ◆ Glorietta's Gift Gallery
- ◆ Law Office of Luis Gutierrez
- ◆ The Harbour Law Firm
 - ◆ Judge Bill Hicks
 - ◆ Hicks & Llamas
 - ◆ Sandy Hughes
- ◆ Kemp Smith Law Firm
 - ◆ Dolores Lasalde
 - ◆ Alyssa Long
- ◆ Denise McCoy Designs
 - ◆ Mesa Street Grill
 - ◆ Metta Massage
- ◆ Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
- ◆ Pizza Properties
- ◆ Jeff Ray @ Ray, Valdez, McChristian & Jeans
- ◆ Law Office of Danny Razo
 - ◆ Reyes Construction
 - ◆ Rincon Law Group
 - ◆ Ripe Eatery
 - ◆ Rohde Designs
 - ◆ Dr. Brian Salome
 - ◆ Salopek 6U Farms
 - ◆ Simren Enterprises
- ◆ Law Office of Kathleen (Kamie) Salome Smith
 - ◆ The View Restaurant
 - ◆ Vintage Trunk Show
- ◆ Wyatt, Underwood & Myers
 - ◆ Westend Hair Salon
 - ◆ Western Refining