



EL PASO BAR JOURNAL

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An Update of Events and Information

October/November 2009

Rivers, Borders & Civilization

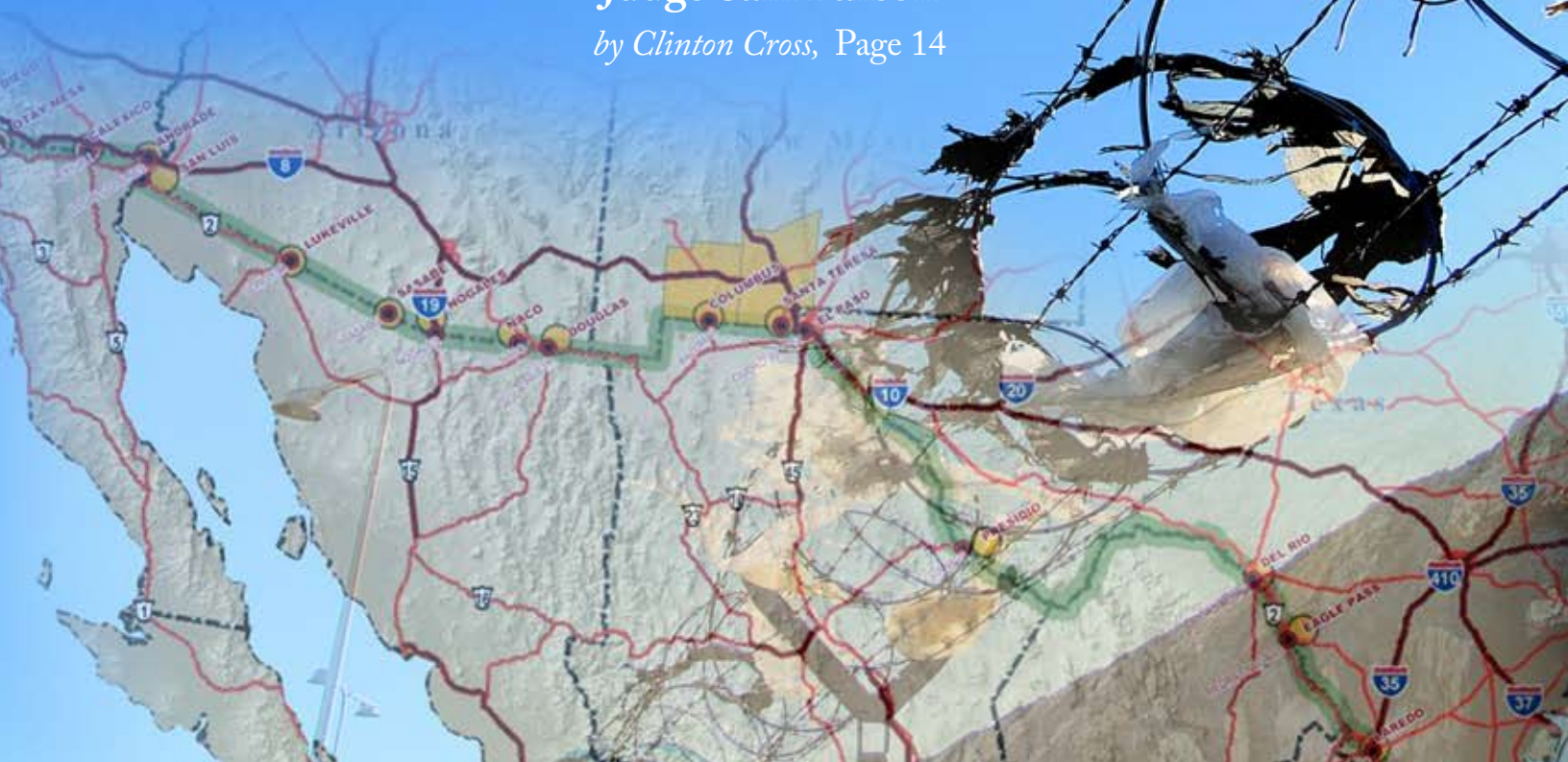
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State Bar of Texas

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Publication Achievement Award

2003 – 2005 – 2006 – 2007 – 2008

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& Educational Outreach Award 2007

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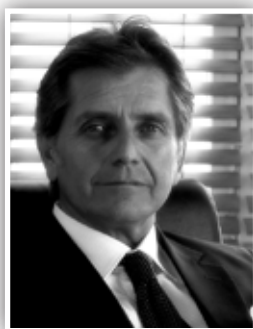
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“The El Paso Bar Journal is a bi-monthly publication of the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to the attention of Nancy Gallego. All submissions must be received by the Bar office on or before the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

THE PRESIDENT’S PAGE

Be a part of history, as we elevate ourselves to a higher level of service...



On October 31, 2009, the El Paso Bar Association will be hosting the first-ever Access to Justice Fair in alliance with established legal service organizations that provide assistance to those in our community who cannot afford legal representation. The ATJ Fair is scheduled in coordination with the American Bar Association’s National *Pro-Bono* Celebration which is set for the week of October 25-31, 2009. (Please see page 23 for more details). The purpose of the national celebration is to showcase the effort and great difference attorneys make to the nation in the delivery of legal services to the poor, to our system of justice, and most of all, to the clients that benefit from these services.

According to the ABA, “This Celebration offers each of us a time to reflect on our Profession’s core value of service.” On a state-wide level these activities are being coordinated by the State Bar of Texas – Texas Lawyers Care, the Texas Access to Justice Commission, and the Texas Access to Justice Foundation.

Locally, the following legal service organizations are participating: Advocacy, Inc., Texas Rio Grande Legal Aid, Diocesan Migrant and Refugee Services, Las Americas, and the Paso del Norte Civil Rights Project. In addition, we have received commitments for participation from José Rodríguez and the County Attorney’s Office, the District Attorney’s Office, the local attorneys and staff of the Texas Attorney General, and the El Paso County Domestic Relations Office.

We are also grateful for the assistance and support of our own Cori Harbour, as President and on behalf of the Texas Young Lawyers Association; the American Board of Trial Advocates by local chapter President George Andritsos; the El Paso Women’s Bar Association President Linda Samples; Laura Mendez, President of the El Paso Paralegal Association; Danny Razo, President of the Mexican-American Bar Association of El Paso; and President Denise Butterworth, El Paso Young Lawyers Association.

The format will consist of videos and half hour clinical presentations by individual or pairs of attorneys in classroom settings on various legal topics of importance to our indigent community including consumer protection, workers’ rights, family, landlord/tenant, immigration, child support enforcement, protective orders, juvenile rights, disability rights, social security, living wills, predatory lending, and unemployment compensation. Additionally, there will be areas designated for participants to consult individually with members of the private bar.

Thus, on behalf of the Board of the El Paso Bar Association I ask that you please join us as we celebrate the achievement of *pro bono* activities, and elevate ourselves to a higher level of service to the community in which we practice, we live, and strive to improve. As officers of the Court and enablers to the justice system, let us insure that marginalized El Pasoans acquire equal access to justice.

Your participation in this event is crucial to its success. Should you wish to assist in any manner, from aiding in registration of participants, being a sponsor, translating, presenting a thirty minute clinic on a specific area of the law, or providing one-on-one consultations please contact any of the following: Nancy Gallego, Executive Director of the El Paso Bar Association at nancy@elpasobar.com; Jaime Sánchez at jsanchez@trla.org; Gracie Martínez at gmartinez@trla.org; or myself at cardenas@sibabrahamlaw.com. I express my sincere gratitude to the many good-hearted persons who have been involved in the organization and scheduling of this event, but most especially to Jaime Sánchez and Gracie Martínez with Texas Rio Grande Legal Aid.

As a final thought, let us be reminded: “To whom much is given, much is expected” - Luke the Evangelist.

Please take care of yourselves, your families, and let’s take care of each other.

Carlos Eduardo Cárdenas, PRESIDENT

EL PASO BAR ASSOCIATION

October Bar Luncheon

Tuesday, October 13, 2009

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

*Justice Harriet O'Neill will be our guest speaker
and will talk about Access to Justice*

Approved for ½ hour of MCLE by the State Bar of Texas

Door Prize will be given

October Luncheon sponsored by Indigo

Please make your reservations by Monday, October 12, 2009 at noon by calling Nancy at 532-7052 or via email at nancy@elpasobar.com



Justice Harriet O'Neill was elected to the Texas Supreme Court in 1998 and re-elected to a second term in 2004. Prior to her election to the Supreme Court, she served as a District Court Judge in Houston and as a justice on the 14th Court of Appeals. In the 1998 Houston Bar Poll she received a 91 percent approval rating for her work on the court of appeals, the highest rating on her nine-member court.

Justice O'Neill is an active member of the Texas Access to Justice Commission, which the Supreme Court created to develop and implement initiatives designed to ensure that the court system is available to meet the basic civil legal needs of low-income Texans. She is also a member of the American Law Institute, the Robert W. Calvert Inns of Court, the National Advisory Council on Violence Against Women, and a Fellow of the Houston and Texas Bar Foundations. She is chair of the Permanent Judicial Commission for Children, Youth and Families.

Justice O'Neill has announced that she will not seek re-election when her present term ends.

Letters to the Editor

Dear Friends:

Tony Silva passed away at home yesterday morning. The main cause of death was procrastination, and I'm not being facetious or irreverent.

He told me when he first went into remission that, a couple of years earlier, he was unable to have a colonoscopy because his colon was blocked by diverticulitis. The doctor advised him to have that condition surgically repaired, but Tony procrastinated, as we all do when we let our professional and personal lives take priority over our health. Tony died of colon cancer which probably could have been detected and treated successfully had he followed his doctor's advice.

I had an experience similar to Tony's, but I had the recommended diverticulitis surgery and excision of two pre-cancerous polyps. A subsequent colonoscopy was completely negative. I share this personal information about myself and Tony only because of my concern for the majority of you who are well under 50, the age when doctors recommend everybody get a colonoscopy whether they need it or not. I dodged the bullet. Tony didn't, dying at age 57. In 2001, the same disease overtook my law school classmate, Andy Guevara, at 58.

If you're not already doing so, think about turning 50, keeping in mind that most cancers are treatable, if detected early. Your doctor will tell you what sort of vigilance is necessary, but learn from the examples of Tony, Andy, me, and everybody else willing to evangelize about this subject. We know whereof we speak.

Best regards,
Mike Milligan

Tony Silva is perhaps best remembered for his suit against the FBI in the 1980's, alleging employment discrimination against Hispanics. The case was successfully resolved in his clients' favor. Ed.

Dear Fellow Attorneys:

Please be advised that I, Richard Yetter, will be retiring from active practice of law on December 31, 2009. I want to thank all my fellow attorneys for their cooperation and assistance over the years. Another purpose of this notice is to advise you I have all of S.W. Reporter, S.W. Reporter 2nd and S.W. Reporter 3rd up to the present time for sale. I also have the Texas Statutes which will need to be brought up-to-date. I also have Texas Digest 2nd. Please call my office at 772-8999 and set a time when you can come in and examine the books and give me your best offer of purchase.

Thanking you again for your cooperation over the years, I remain,

Respectfully,
Richard Yetter

CALENDAR OF EVENTS

OCTOBER 2009



Tuesday, October 6, EPBA BOD Meeting
Thursday, October 8, Texas Family Law
Goes to Washington CLE
Friday, October 9, EPYLA Golf Tournament
Tuesday, October 13, EPBA Monthly Luncheon
Justice Harriet O'Neill
Tuesday, October, 13
EPWBA Monthly Meeting
Thursday, October 15,
EPPA Monthly Luncheon
Thursday, October 15,
EPYLA Monthly Meeting/Happy Hour
Wednesday, October 21,
EPYLA Tailgate Party
Wednesday, October 21, FBA U.S. Supreme Court Admissions Luncheon
Saturday, October 31, EPBA Legal Aid Fair

NOVEMBER 2009

Tuesday, November 3, EPBA BOD Meeting
Tuesday, November 10, EPBA Monthly Luncheon
Salute to Veterans with Ft. Bliss Commander
Wednesday, November 11, EPWBA Monthly Meeting
Thursday, November 12, EPYLA Monthly Meeting/Happy Hour
Thursday, November 19, EPPA Monthly Luncheon
Thursday, November 26 & Friday, November 27
Thanksgiving Holiday
EPBA & El Paso County Courthouse Closed

December, 2009

Tuesday, December 1, EPBA BOD Meeting
Thursday, December 3, EPBA Annual Holiday Party
Tuesday, December 8, EPBA Monthly Luncheon

February, 2010

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

PLEASE NOTE: Please check the Journal for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Journal for your upcoming event or function for the month of December, 2009 and January, 2010, please have the information to the Bar Association office by Friday, October 23, 2009. In order to publish your information we must have it in writing. WE WILL MAKE NO EXCEPTIONS. We also reserve the right to make any editorial changes as we deem necessary. Please note that there is no charge for this service: (915) 532-7052; (915) 532-7067-fax; nancy@elpasobar.com - email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this journal together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.

EL PASO BAR ASSOCIATION

November Bar Luncheon

Tuesday, November 10, 2009

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

*We will salute our Veterans with the Commander
 of Ft. Bliss General Blomberg as our guest speaker*

Please make your reservations by Monday, November 9, 2009 at noon by sending your RSVP
 to ngallego.epba@sbcglobal.net or nancy@elpasobar.com



Major General Bromberg is post commander and has overseen the recent expansion of Fort Bliss. After the expansion, total number of troops stationed at Fort Bliss will total approximately 35,000. General Bromberg has served at Fort Bliss on prior occasions when commanding general of 32nd Army Air and Missile Defense and as deputy commander of the Air Defense Artillery Center. He has also been stationed in Washington, D.C., Korea, Germany and Virginia, and has served in Iraq. General Bromberg's decorations include the Distinguished Service Medal, Legion of Merit (with three oak leaf clusters), Bronze Star and Purple Heart.

LAW WEST OF THE PECOS

■ BY JUSTICE ANN McCLURE

Edited by Clinton F. Cross

Justice McClure's unedited summary of these decisions as well as other important decisions recently published by the El Paso Court of Appeals can be found on the El Paso Bar Association Website. Ed.

Zinc National, S.A. v. Bouche Trucking v. Jorge Arrellano, No. 08-07-00314-CV (7/31/09)

Zinc Nacional brought an interlocutory appeal from the denial of a special appearance. At issue was whether a Mexican company that trucks its product into the United States at Laredo for transport to New Mexico may be sued in Texas for negligence in loading the trailer at its facility in Monterrey, Mexico which allegedly caused an accident that injured a Texas driver.

Zinc is a Mexican corporation with its principal place of business in Monterrey, Mexico. The company manufactures paper and paper-related products for worldwide distribution. It does not maintain an office in Texas, employ anyone in Texas, advertise in Texas, or market its products in Texas. American Gypsum, located in Albuquerque, has been a customer of Zinc's grey-back paper products for the past seven years. Zinc ships American Gypsum approximately 300 metric tons of product per month. On average, it ships two to three loads a week. Zinc employees load the trailers at the Monterrey facility. A trucking contractor then hauls the load from Monterrey to the Texas-Mexico border, where a second company pick up the trailer and trucks the load through Texas and into New Mexico. In this instance, the trans-Texas trucking company was Bouche Trucking.

Jorge Arrellano was a long haul truck driver for Bouche. On December 14, 1999, he was instructed to pick up a load containing numerous rolls of grey-back paper for transport to American Gypsum in Albuquerque. During transport, the rolls shifted causing the trailer rig to overturn in Texas on U.S. 55 North. Arellano sued Bouche, alleging it was negligent in: (1) failing to properly load the rolls of paper onto the trailer, (2) failing to properly secure the rolls of paper onto the trailer, and (3) failing to properly hire and/or train its personnel and/or its agents on the proper manner of loading.



Bouche then filed a third party petition against Zinc Nacional seeking indemnity and contribution since Zinc employees actually loaded the paper rolls onto the trailer. Zinc filed a special appearance which the trial court denied. The court of appeals affirmed.

Texas courts may assert *in personam* jurisdiction over a non-resident if (1) the Texas long-arm statute authorizes the jurisdiction, and (2) the exercise of jurisdiction is consistent with federal and state constitutional due process guarantees.

For a court to exercise specific jurisdiction over a non-resident defendant, two requirements must be met: (1) the defendant's contacts with the forum must be purposeful, and (2) the cause of action must arise from or relate to those contacts.

The court concluded that Zinc's contacts with Texas were purposeful. Zinc deliberately structured its business to use Texas ports of entry and Texas roads and highways to transport its products to New Mexico on a regular basis. Zinc purposefully transferred title to its load in the middle of the bridge at Laredo, but every shipment bound for the United States crossed at the Laredo point of entry and was trucked through the State of Texas utilizing Texas ports and highways. Zinc controlled the loading of the shipment and the method of transfer. Zinc picked the Texas port of entry because Laredo, one of 24 Texas ports of entry, is only 150 miles from Monterrey. New Mexico has three ports of entry--Santa Teresa, Columbus, and Antelope Wells. Zinc could have chosen

to truck its product across Mexican highways for entry at Santa Teresa. But it opted for the closest and quickest route across the best roadways. In so doing, it availed itself of Texas benefits.

The court then turned to the second prong of specific jurisdiction. Zinc argued that while a trucking accident might be foreseeable, it had purposefully structured its transactions so as neither to profit from the forum's laws nor be subject to its jurisdiction. In other words, it delivered its truck loads at mid-bridge Laredo to avoid being haled into Texas courts. But an out-of-state company with no physical ties to Texas still has minimum contacts with Texas when it is clear the company purposefully directed its activities toward Texas.

Zinc claimed it had not specifically intended to serve the market in Texas just by shipping its product through Texas. In addressing this issue, the court distinguished product liability cases from negligence cases. Here, there was a negligence claim relating to the improper loading of certain rolls of paper onto a trailer. There was no claim that Zinc improperly or defectively manufactured the grey-back paper, put the paper into the stream of commerce, and then the product somehow caused injury to the plaintiff. Instead, the allegation was that Zinc negligently loaded the product onto a trailer, and that same load--while on its way to a customer in New Mexico--caused an accident in Texas. Zinc did not merely foresee the possibility of its product passing through Texas, it purposefully loaded its product knowing with certainty that the trailer it loaded would pass through Texas. These contacts were sufficient to demonstrate that the alleged tort occurred at least, in part, in Texas.

The court next addressed whether the assertion of personal jurisdiction comports with traditional notions of fair play and substantial justice. The court stressed that not every truck loaded in Mexico and transported through Texas by a Mexican company faces the risk of *in personam* jurisdiction. Such an analysis is inherently fact specific. Arellano was a Texas resident who worked for a Texas company. The accident occurred in Texas on a Texas highway. Zinc regularly and purposefully shipped its products through Texas to New Mexico. Despite the specifications on the purchase order that the shipping terms were "F.O.B. Mid-Bridge Laredo," Zinc's general manager pointedly testified that the load at issue

was delivered to the customs broker in Laredo, Texas and not in Nuevo Laredo, Mexico. Thus, the court concluded that the exercise of jurisdiction over Zinc by a Texas court does not offend traditional notions of fair play and substantial justice.

Woodall v. State, No. 08-07-00015-CR (09/09/09)

Woodall was found guilty of engaging in organized criminal activity in connection with her ownership of the Naked Harem. She was sentenced to sixteen years' confinement. Several managers, dancers, and former patrons testified that prostitution routinely occurred at the club and that Woodall was not only aware of it, she promoted it. The determinative issue in the appeal was the admission of grand jury testimony given by a then-fifteen-year-old girl who admitted to participating in acts of prostitution at the club.

The witness testified that she had been in an automobile accident at the age of 18 and suffered memory loss as a result. The prosecutor

attempted to re-call the witness but she did not appear. The prosecutor then proposed to read her previous grand jury testimony to the jury as a past recollection recorded. The defense objected on two grounds. First, counsel argued that the State failed to establish a predicate for admission under Rule 803(5), and second, counsel argued that he would not be able to cross-examine the witness about her grand-jury testimony, thus violating Woodall's right of confrontation. The trial court overruled the objection and the State read into the record fifty-seven pages of grand jury testimony.

The court reviewed the Confrontation Clause and the United States Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36, 42, 124 S.Ct. 1354, 1359, 158 L.Ed.2d 177 (2004). The threshold question is whether the statements at issue are testimonial or non-testimonial in nature. Testimony before a grand jury and statements derived from police interrogations are indisputably testimonial. Having concluded that admission of the evidence was error, the court turned to a harm analysis.

Confrontation Clause error is subject to a harm analysis under Tex.R.App. 44.2(a). The court must reverse unless it finds beyond a reasonable doubt that the error did not contribute to conviction or punishment. The court concluded beyond a reasonable doubt that the grand jury testimony did not contribute to Woodall's conviction. This witness was just one of many former dancers who testified to the same end. Given the testimony of Woodall herself, the evidence of guilt was overwhelming. But the same could not be said for the punishment phase. The details of alleged acts of child prostitution contained in the fifty-seven page grand jury testimony were explosive testimony that likely had significant impact on the minds of the jurors during the punishment phase. No other child witness testified at trial, and the State sought a harsher punishment because the Appellant never apologized for allowing child prostitution to occur at her club. Woodall was eligible for probation, but was sentenced to sixteen years of confinement. The case was reversed for a new punishment hearing.

Jaime Sánchez: A Man Of Passion For Those In Need

■ BY JUDGE OSCAR G. GABALDÓN, JR.

El Paso Bar Board member Jaime Sánchez was born in 1959 in El Paso, Texas, but spent the first few years of his life in Ciudad Juárez, México. His mother moved to El Paso when he was five, where she obtained housing in the "Diablo" public housing complex which was near the Cordoba international bridge. He later moved to the Segundo Barrio.

Jaime took his school work seriously. He graduated from Riverside Junior High School, and then studied for the Catholic priesthood at St. Charles Seminary High School. He continued his seminary preparation at the Immaculate Heart of Mary Seminary in Santa Fe, New Mexico. He received his B.A., *magna cum laude*, in Religion Studies from the College of Santa Fe, and he was certified in secondary education with minors in English and Spanish.

Jaime joined El Paso's work force when he accepted a position at St. Patrick's Elementary School in El Paso, where he taught Spanish and also served as the school's music teacher.

Although Jaime found this experience rewarding, he ultimately decided to pursue a career in law when his first-cousin Judge Oscar Gabaldón (who at the time was a law student at



South Texas College of Law) encouraged him to pursue a legal career. "He was one of my influences in going to law school. I would also have to say that my upbringing in the seminary... had a great deal to do with my decision to pursue a career where I could help others."

Jaime graduated from Texas Southern University's Thurgood Marshall School of Law in 1986. He moved to El Paso in 1987, and in that year joined the staff of El Paso Legal Assistance Society. He eventually became the program's Executive Director. "I was in charge of the program charged with providing free civil legal services to the poor of El Paso and Hudspeth

counties," recalls Jaime. "The responsibility was an awesome one."

The Mexican-American Bar Association will recognize Jaime this year at its annual banquet by conferring upon him the Community Advocate Award for 2009. Jaime has also served on various boards and organizations, including the board of Las Americas Immigrant-Advocacy Center, the Seminary Board of the Catholic Diocese of El Paso, the Lawyer's Referral Committee, the Law Library Committee, and the El Paso Chapter of the National Kidney Foundation.

Jaime is presently helping to organize the El Paso Bar Association's Access to Justice Day event, which is scheduled for October 31, 2009. According to Jaime, this event "helps pull together many of the resources that our community has to offer to assist the poor, including the legal community, the business community, and the academic community."

Asked what advice he would give to potential bar association board members, Jaime said "Service is a gift, and your term on the board will expire before you realize it. Try to start making a contribution as soon as you can. It is all about service."

Jaime Sánchez is married to Irma A. Sánchez. They have two children, Cassandra and Jaime.

Non-Profit Celebrates *Pro Bono* Successes

■ BY ILIANA HOLGUIN

Diocesan Migrant & Refugee Services, Inc. (“DMRS”), the largest provider of free and low-cost immigration related legal services in West Texas, will celebrate the successes of several El Paso attorneys who have taken cases of detained immigrants on a *pro bono* basis in its inaugural newsletter, which is scheduled to be published during the Fall of 2009. The newsletter will thereafter be published on a quarterly basis, and each edition will include a “*Pro Bono* Successes” section, which will highlight the work of local attorneys providing *pro bono* representation to clients referred by DMRS.

In addition to providing legal assistance with family-based petitions, citizenship applications, services to immigrant victims of domestic violence, human trafficking and other violent crimes, and resettlement services to refugees arriving in El Paso from all over the world, DMRS staff attorneys provide representation before the Immigration Court to hundreds of detained immigrants, both adults and children, each year. The El Paso area is home to two adult immigration detention facilities, with the capacity of housing a total of 1,900 men and women, and to three facilities for unaccompanied immigrant children under the age of 18, with the capacity of housing a total of 175 children on any given day. The immigrants housed within these facilities are awaiting the completion of civil removal proceedings (formerly known as “deportation” proceedings) before the Immigration Court. Although they have a right to an attorney, an attorney is not provided to them at government expense as is the case in criminal proceedings. Thus, if a detained immigrant cannot afford to hire an attorney, he or she will have to proceed *pro se*—with all its concomitant risks.

Immigrants detained within one of the area adult facilities are detained for a variety of reasons, and can be eligible for a variety of forms of relief from removal. Undocumented immigrants are frequently detained as a result of traffic violations and the commission of other minor offenses, which often lead to the immigrant being turned over to U.S. immigration



Every year, thousands of immigrant children are detained by U.S. Border Patrol coming into the United States without a parent or legal guardian. These children come to the U.S. for a variety of reasons.

authorities to face removal proceedings. Even documented immigrants, however, can be detained and placed into removal proceedings, usually for violating the terms of their status in the U.S. Many long-time lawful permanent residents, for example, find themselves facing removal proceedings after having been convicted of certain deportable offenses, including controlled substance violations, firearms offenses, theft offenses, certain crimes of violence, and crimes involving moral turpitude. Some immigrant detainees have fled to the U.S. seeking protection in the form of asylum from the explosion of crime and violence in Cd. Juarez, but were unaware that as a result of presenting themselves to U.S. authorities at our ports of entry, they would be taken into custody and subjected to mandatory detention while the Immigration Court rules in their case, which can frequently take more than one year to complete. Other immigrant detainees have been victims of

human trafficking, domestic violence and other violent crimes, and are eligible for specialized protections and benefits under the immigration laws. Still other detainees are in fact U.S. citizens by virtue of having unknowingly derived or acquired citizenship from a U.S. citizen parent, and should not be subject to detention or removal proceedings at all. Every year, over 300 individuals with potential derivative citizenship claims are identified in immigration detention facilities throughout the country. Without counsel, however, many of these detained immigrants will be unable to avail themselves of the benefits and forms of relief for which they may be eligible.

Like adult immigrant detainees, unaccompanied immigrant children are also not provided legal counsel at government expense, even though they are expected to navigate the Immigration Court process the same as an adult. Every year, thousands of immigrant children are detained by U.S. Border Patrol coming

into the United States without a parent or legal guardian. These children come to the U.S. for a variety of reasons. Some are fleeing extreme poverty and violence in their home countries, others are searching for parents and/or family members that migrated to the United States years before, and others are being smuggled into the United States for illicit purposes, such as for sexual and labor exploitation. Once these children encounter the Border Patrol, they are taken to juvenile shelters for immigrant children, placed into removal proceedings and expected to be able to contest the charges of removability lodged against them and to articulate to the Immigration Court the legal basis under which they should be allowed to remain in the United States. Children housed within the three El Paso area facilities currently range in age from 4 to 17, and have been as young as 24 months old, have never been in a judicial or courtroom setting, and are unable to represent themselves *pro se*. Many of these children are eligible for a variety of forms of relief from removal, including asylum based upon persecution suffered in their home country, T visas for victims of human trafficking, and Special Immigrant Juvenile Status, which allows children who have been found by a Family Court to have been abused, abandoned or neglected to remain in the U.S. and apply for lawful permanent resident status. Without the assistance of counsel, however, many of these children will be unable to defend themselves against removal, and will be forced to return to the same horrific conditions which forced them to attempt to come to the U.S. in the first place.

DMRS staff, including its 7 attorneys, provide a wide range of services to adults and children detained at the various El Paso area facilities, including providing know-your-rights presentations to explain to detainees why they

are being held in detention, their rights while in detention, the Immigration Court process, and the various forms of relief from removal that might be available to them. Additionally, DMRS staff meet with detainees individually to determine if they are in fact eligible for any relief from removal, and if so, refer the detainee for potential representation or refer the detainee to a self-help workshop conducted by DMRS staff designed to assist *pro se* detainees with the preparation of their applications for relief. DMRS staff also conduct role-playing exercises with detainees in an effort to prepare them to appear in Immigration Court and argue their cases. Although DMRS staff attorneys do accept a large number of cases of adults and children in detention for full legal representation before the Immigration Court, DMRS' limited staff are not able to accept every meritorious case for representation. As a result, DMRS staff have begun to seek the assistance of local attorneys willing to accept detained cases on a *pro bono* basis.

In an effort to recruit *pro bono* attorneys, DMRS has begun offering free Continuing Legal Education seminars to attorneys willing to commit to taking at least one *pro bono* case. The CLE seminars are offered once per year, and provide an overview of immigration law, the Immigration Court process, and the most common forms of relief available to immigrant detainees. Once a case is accepted by a *pro bono* attorney, DMRS staff attorneys provide mentorship and guidance to the *pro bono* attorney, from answering general questions regarding Immigration Court practice and procedure to strategizing on the best manner in which to proceed with the case. *Pro bono* attorneys have had success with a wide variety of cases, including: obtaining termination of removal proceedings for long-time lawful

permanent residents whom the government erroneously attempted to remove; obtaining lawful permanent resident status for an undocumented worker married to a United States citizen; obtaining bond for a detained immigrant so that he could be reunited with his family; and obtaining a family court order finding that an unaccompanied minor had been abused and neglected by his parents and that it was not in his best interest to return to his home country, which subsequently allowed the minor to apply for lawful permanent resident status.

Currently, DMRS has a variety of cases available to interested *pro bono* attorneys, including cases of detainees seeking political asylum as a result of speaking out against their government and of unaccompanied immigrant children in need of family court representation so that they can obtain a finding of abuse, abandonment or neglect and move forward with their application for lawful permanent residence. Attorneys interested in learning more about DMRS' *pro bono* program and yearly free CLE may contact staff attorneys Melissa López for adult detainee cases and Michelle Martínez for unaccompanied minors' cases at 915-532-3975.

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How CIVILIZATION CAME TO EL PASO



Judge Spieczny's Swearing-In and his Family of Lawyers

In the 12th floor chambers and courtroom: L to R – Karla Diaz and daughter, John Podesta, (J.D., Georgetown, '76, Molly Spieczny (J.D., U.T. '08), Nancy Spieczny (J.D., Northeastern University, 1976); Mary Podesta (J.D., Georgetown, '76); Dr. Mary Spalding, M.D., Nancy Spieczny, Sam Spalding, Joe Spieczny, Judge Tom Spieczny, Molly Spieczny, Kitty S. Spieczny, Mary S. Podesta, John Podesta, Todge and Cindi Spieczny, at the Judge's ceremony in 2006.

DOWN BY THE RIVER

Illegal Entry and the Spirit of Journalism

■ BY BALLARD COLDWELL SHAPLEIGH

“Why are these journalists so special? If the pope came to America, the pope would not have the same privileges as these journalists,” said state Rep. Debbie Riddle (R-Houston) during the debate over the controversial journalist shield law in the 81st Legislature last spring. Texas newspaper and television people were claiming that they needed an evidentiary privilege to protect “whistle blowers” and their confidential sources. The bill passed.

When two American journalists, *Current TV* reporters Laura Ling, age 32 and Euna Lee, age 36, were rescued during the first week of August by former President Bill Clinton and John Podesta after 140 days as North Korean prisoners, other commentators were moved to express basically the same sentiment – albeit in a different context - what makes these journalists so special?

Podesta's role in the rescue mission was described as that of a stealth player. “Studious and unobtrusive,” the account states, “John Podesta is the consummate inside player, a marathoner known for his discipline -- and his cooking,” and someone who added gravitas and heft and gave some quasi-official standing to what the Obama White House described as a “solely private mission.” He reportedly attended both of Clinton's meetings with Kim

Jong-il, about whom he remarked, “I would basically say that the discussions were pretty straightforward and he was fully engaged.” Ever diplomatic, he would not elaborate.

If El Paso lawyers know about anything, they know about borders, rivers and fences. So, it appears, does Laura Ling. And she is no stranger to the U.S.- Mexico border or El Paso.

Laura Ling's TV documentary *Narco War Next Door* - filmed during the summer and fall of 2008 - opens by showing her driving over the Bridge of Americas into Cd. Juárez. She calls it “Mexico's most violent city.” Later, when a Juárez university journalism student asks Ling to identify her “worst risk doing journalism around the world,” she says, “To tell you the truth, I was really nervous about coming here to Juárez.” Ling conducts extensive interviews with Juárez mayor, Jose Reyes Ferriz, but neither of them disclose what all El Paso and Juárez know - that he is commuting to work from El Paso.

Ling eventually finds her way down to the banks of our river. She calls it the “Rio Bravo.” She is on the Mexican side below UTEP. She reports that on that particular day, over a period of four hours, she visited three sites where five of that day's eleven murders had taken place in Juárez. Later, she visits with El Paso gun

dealers about the illegal smuggling of weapons into Mexico. She includes footage of the El Paso Gun Exchange, Kirk's Gun Shop and a gun shop on Mesa.

She concludes by citing the alarming report issued by the U.S. Joint Forces Command in January 2009 that “two large and important states bear consideration for a rapid and sudden collapse: Pakistan and Mexico.”

Ling followed-up with short pieces entitled “A Jail in Juárez” and “Journalist Beheaded in Mexico's Drug Wars.” The latter is a misleading reference to what were actually two separate incidents taking place during one week in November 2008 when morning commuters awoke to a decapitated body dangling by the armpits from the Puente Rotario - the head was found at the base of the paperboy statue in Juárez' Plaza of the Journalist.

A few days later, Armando “El Choco” Rodríguez was murdered. A reporter for *El Diario de Juárez*, Rodríguez was shot multiple times as he sat in his white company-issued car outside his Juárez home as he was getting ready to take his daughter to school.

But this work might be forgotten because a few weeks after her drug war documentary aired in February 2009, Laura Ling was arrested in North Korea.

El Paso novelist Benjamin Alire Saenz recently commented that borders have not always mattered as much as we imagine they have. Maybe not, but the local landscape along the Rio Grande is littered more and more every day with highly publicized events like the Ramos and Compean story, kidnappings, murder, mutilations, decapitations, and mass executions in drug rehab centers, endless tales of human trafficking and narcotics smuggling, and a county hospital periodically converted into a fortress to treat the victims of the epic violence in Juárez.

Forty years before Sylvester Reyes' Operation Hold the Line, those of a certain age who grew up in El Paso remember how the string of military-green watch towers—similar to the fire watchtowers in the Lincoln National forest—stretched along the Rio Grande. Then there was Nixon's Operation Intercept in the late '60s.

And the circumstances in which American journalists Laura Ling and Euna Lee found themselves on March 17, 2009 at the Chinese border with North Korea—which also happened to be a river, only frozen—was no figment of their imagination either. Like the untold thousands of people—from 122,000 in 2005 to slightly more than 30,000 in 2008—who are arrested crossing the river in the El Paso sector, Ling and Lee were arrested by the North Koreans for illegal entry. They were also jailed for spying.

According to the more sensational accounts of prisoner treatment in North Korea, Ling and Lee faced the possibility of backbreaking labor doing mountain logging, coal mining and stone quarrying for 10 to 15 hours a day. They might draw a variety of punishments for bad conduct. Attempting or abetting escape could earn torture with hot coals while being hung from a ceiling. Getting pregnant could bring forced abortion. Forgetting the words to "patriotic songs" might result in beatings, forced exercise or public humiliation; and those who engaged in unauthorized communications might have to endure beatings with iron pipes or wooden sticks.

Their Korean-Chinese guide, Kim Seongchol, and a third American, Current TV cameraman Mitch Koss, reportedly escaped arrest. Koss was detained by Chinese border guards. News accounts reported that there was a strong suspicion that it was all a trap and that the guide was heavily involved.

A month earlier, an American missionary who was detained by Chinese police was warned that the North Koreans were hunting for a "foreign prize," meaning that they were trying to capture

a foreign journalist. News reports said the Chinese were going after missionaries and NGO activists who were helping refugees. In one instance, Chinese and North Koreans cooperated in a joint search for Korean refugees and their accomplices in the Chinese city of Yanji and the North Korean city of Tumen. Dozens of people were sent back to Tumen.

The suspicion has some credibility. In July, political scientist Han Park of the University of Georgia, who was just back from a five day visit to North Korea, said the regime was "seriously interested" in releasing the two American journalists. They had already been convicted, but he noted that Ling and Lee had yet to be sent to prison and said that they were being kept in a "decent, luxurious" guesthouse.

Laura Ling and Euna Lee were reporting on an underground railroad that had helped thousands of people escape from North Korea. According to news accounts, an individual who helped them plan their trip to China said they were planning to interview North Korean defectors living in border areas who had fled poverty and repression. This refrain—that these people were just looking for a better life—is very familiar to the judges in the El Paso Division of the Western District of Texas.

The basic elements of the journalists' story, as told in their own words in a September 1, 2009 article in the *Los Angeles Times*, are also familiar to El Paso prosecutors and defense attorneys who handle these kinds of cases every day:

We arrived at the frozen river separating China and North Korea at 5 o'clock on the morning of March 17. The air was crisp and still, and there was no one else in sight. As the sun appeared over the horizon, our guide stepped onto the ice. We followed him.

We had traveled to the area to document a grim story of human trafficking for Current TV. During the previous week, we had met and interviewed several North Korean defectors, women who had fled poverty and repression in their homeland, only to find themselves living in a bleak limbo in China. Some had, out of desperation, found work in the online sex industry; others had been forced into arranged marriages. Now our guide, a Korean Chinese man who often worked for foreign journalists, had brought us to the Tumen River to document a well-used trafficking route and chronicle how the smuggling operations worked.

There were no signs marking the international border, no fences, no barbed wire. But we knew our guide was taking us closer to the North Korean side of the river. As he walked, he began making deep, low hooting sounds, which we

assumed was his way of making contact with North Korean border guards he knew. The previous night, he had called his associates in North Korea on a black cell phone he kept for that purpose, trying to arrange an interview for us. He was unsuccessful, but he could, he assured us, show us the no-man's land along the river, where smugglers pay off guards to move human traffic from one country to another.

When we set out, we had no intention of leaving China, but when our guide beckoned for us to follow him beyond the middle of the river, we did, eventually arriving at the riverbank on the North Korean side. He pointed out a small village in the distance where he told us that North Koreans waited in safe houses to be smuggled into China via a well-established network that has escorted tens of thousands across the porous border.

Feeling nervous about where we were, we quickly turned back toward China. Midway across the ice, we heard yelling. We looked back and saw two North Korean soldiers with rifles running toward us. Instinctively, we ran.

We were firmly back inside China when the soldiers apprehended us. Producer Mitch Koss and our guide were both able to outrun the border guards. We were not. We tried with all our might to cling to bushes, ground, anything that would keep us on Chinese soil, but we were no match for the determined soldiers. They violently dragged us back across the ice to North Korea and marched us to a nearby army base, where we were detained. Over the next 140 days, we were moved to Pyongyang, isolated from one another, repeatedly interrogated and eventually put on trial and sentenced to 12 years of hard labor. ... The outcome of our three-day trial was never in doubt. In the end, we were convicted and sentenced to two years for trespassing and 10 years for "hostile acts."

At the annual YWCA Women's Benefit luncheon at the El Paso convention center held on April 16, 2009, the featured keynote speaker Lisa Ling began her remarks by pleading, "Please don't ask me anything about my sister. We are hoping for a diplomatic solution."

By early June, after Laura Ling and Euna Lee were sentenced by North Korea's highest Central Court for "illegal entry and hostilities against the Korean nation," Secretary of State Hillary Clinton said that their imprisonment, trial and sentencing should be viewed as a humanitarian matter, that the charges were "absolutely without merit or foundation," and that the regime should simply deport them.

By August, the U.S. approach had changed: "The young women themselves have, apparently, admitted that they probably did trespass, so they



AP/Korean Central News Agency via Korea News Service

The Aug. '09 rescue mission – Podesta standing third from left behind Clinton and Kim Jong-il



AP/Korean Central News Agency via Korea News Service

Kim Jong-il addressing John Podesta and former President Bill Clinton



Back from Pyongyang to resume a family vacation – L-R: Judge Tom Spieczny (far left), Kitty Spieczny and Mary Podesta (center) and John Podesta (kneeling) with the Podesta's children and grandchildren on Aug. 8, 2009.

are deeply regretful and we are very sorry it's happened," Clinton said in an interview with ABC News.

When it comes to borders, rivers and fences, China and the United States have something in common. China started building massive barbed wire and concrete fences along parts of its 880-mile border with North Korea, marked by the Yalu and Tumen Rivers, in projects that began in 2003. Some say the fence signaled a noticeable change in China's approach to North Korea.

After the Korean War, China left her border lightly guarded, concentrating most of her forces in the northeast toward her enemy, the Soviet Union. But the North Korean border became a security concern for the Chinese as North Korea's economy collapsed. Tens of thousands of North Korean refugees began trickling across the border into northeast China, fording the Yalu and Tumen rivers or walking across the ice in winter.

Experts thought that not only were the fences mainly aimed at North Korean "defectors," but also that Beijing wanted to firmly mark its border with the North along the two rivers. Although the Tumen is heavily patrolled by armed guards, the river is considered the preferred way to cross into China. The Yalu River is swift and deep and runs along most of the border between the two countries; the Tumen is shallow and

narrow. "It is easily crossed in spots on foot or by swimming," according to a 2006 article in The New York Times.

Crossing the Chinese/North Korean border marked by the Tumen River on foot across the winter ice is what Laura Ling and Euna Lee did on March 17, 2009 with help from the guide. He had said that the North Korean border guards were approachable, easy to talk to and would provide a unique insight into their subject matter.

The rescue mission swung into action on Monday, August 3.

Former president Bill Clinton (J.D., Yale '73) and John Podesta (J.D., Georgetown '76) and others flew from Los Angeles to Pyongyang, North Korea on a private jet owned by movie producer Steve Bing. After they landed in North Korea, the plan was to meet with the two American journalists. Finally, they were brought into a room, together, where Clinton was waiting to meet them. They ran up to him. As Ling and Lee put it, "One moment, we were preparing to be sent to a labor camp, fearing that we would disappear and never be heard from again; the next we were escorted into a room with President Clinton, who greeted us and told us we were going home."

That night – the only night of this 24-hour visit – the North Koreans hosted a "state" dinner. Former President Clinton was seated facing Kim Jong-il who sat

This "Civilization" article is written in appreciation of the 112th anniversary of the El Paso Bar Association, with assistance and encouragement from Clinton Cross and the poet, Edgar Rincón Luna, the idea for which grew out of an Aug. 10, 2009 conversation over coffee with Thomas A. Spieczny, Judge of the County Court at Law No. 7, who had just returned from a family vacation. To view Laura Ling's documentary "Narco War Next Door," go to Current.com and search for the title. The following resources have also been drawn upon: Laura Ling and Euna Lee, "Hostages of the Hermit Kingdom," *Los Angeles Times*, Sept. 1, 2009; "Reporters Laura Ling, Euna Lee, held in North Korea, say they were 'firmly' on Chinese soil when nabbed," *New York Daily News*, September 2, 2009; Jesse McKinley, "For Laura Ling and Euna Lee, Two Paths to Same Fate in North Korea," *New York Times*, June 9, 2009; James Gordon Meek, "Jailed in North Korea, Laura Ling and Euna Lee face 'hell on earth' in camps," *New York Daily News*, June 9, 2009; Johanna Neuman, "John Podesta: Stealth player in North Korean release?" *latimesblogs*, Aug. 5, 2009; Jay Solomon, "North Korea Asked for Bill Clinton," *Wall Street Journal*, Aug. 5, 2009; Josh Gerstein, "Podesta joins Bill Clinton in N. Korea," *Politico*, Aug. 4, 2009; Lynn Sweet, "Clinton-Gore team up again. Imprisoned journalists Ling, Lee back in U.S." *Chicago Sun-Times*, Aug. 5, 2009; Michael Sheridan, "Pyongyang lures US reporters into trap," *TimesOnline*, Aug. 9, 2009; Ng Han Guan, "China Erects Fence along N. Korea border," *USA Today*, Oct. 16, 2006; Norimitsu Onishi, "Tension, Desperation: The China/North Korean Border," *New York Times*, Oct. 22, 2006; "North Korea Holds U.S. Reporters," *BBC News*, March 19, 2009; Alejandro Bringas, "My Life, My Work – Juarez Photography," *Reutersblog*, Sept. 14, 2009. This presentation includes the creative work of others. This property is being used by permission or under a claim of "fair use" pursuant to 17 U.S.C. §107, and was created pursuant to fair use guidelines and further use is prohibited.

thirty feet away. At Clinton's side was the North Korean chief deputy. At the side of Kim Jong-il was John Podesta.

According to Andrea Mitchell of MSNBC, Podesta also appeared in court the next morning on behalf of the journalists where a North Korean judge read aloud a proclamation of clemency or a "special pardon."

"It was quite emotional for both Laura Ling and Euna Lee but it was quite emotional for us as well," Podesta told a small group of reporters at a healthcare breakfast back in the States. "It was quite an amazing experience." Podesta said he was struck by the eerie quiet of North Korea's capital city – there were few cars, even few bicycles.

"The one thing I noticed was the lack of vehicles," Podesta said. "Everybody was walking around." In another interview, he said that one thing that was "interesting" about North Korea was the fact of no internet and that his T-Mobile Blackberry service did not work there. Whatever role Podesta played, his trip apparently came as a surprise to staffers at the Center for American Progress where he is President and CEO. They believed he was on vacation in Truckee, Calif.

If stories are the currency of human contact, one can imagine the thrill of hearing about this experience right after it happened. Podesta returned immediately to California to resume a long-planned family vacation during the first

week in August with Judge Tom Spieczny (J.D., Vanderbilt '71) and his wife Kitty.

While most everyone in El Paso knows that Tom Spieczny is the judge of the County Court at Law No. 7 and best friends with Nolan Richardson, few know that John Podesta, who has also been described as "the most influential unofficial official" in Washington, D.C., is married to Judge Spieczny's sister, Mary.

It is a good thing that someone heard the story while it was still fresh. During an unguarded moment while they were in detention, Ling and Lee said they swallowed their notes, damaged their videotapes and made other efforts to protect the identities of their sources. *Es obligado* - North Korea has no journalist shield law.

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SENIOR LAWYER INTERVIEW

JUDGE SAM PAXSON

■ BY CLINTON F. CROSS

This month I sat down with Judge Sam Paxson in his small office on the tenth floor of the El Paso County Courthouse and talked with him about his life, his judicial career, and the legal profession.



All-District Tackle, 1951

CROSS: Judge, please tell me about your parents.

PAXSON: My dad was born in Washington, D.C. His mother and father died when he was still a child, and he became a ward of the Lutheran Church in Baltimore.

My mother was from Baltimore. She met my Dad at church. When they married, my mother was nineteen. My dad was 20.

My father contracted tuberculosis, so he moved with his family to Albuquerque. For a time his health improved, and so did his business. When in 1943 he relapsed, we moved to El Paso, where at the time his brother was living. In September, I started the fourth grade at Cooley Elementary School. Tati Santiesteban and Wesley Martin were in school with me at that time. Many years later they both became my law partners.

My Dad died in 1947.

In 1952 my mother married Henry Geyer. After that, she spent more time pursuing artistic interests. She won many awards for her work, and did quite well selling her work around the country.

CROSS: What about the rest of your academic experience?

PAXSON: After grade school, I went to Ysleta High School. I graduated in 1952.

I went to college at Texas Western. I started law school in 1954 at the University of Texas, and graduated in 1957.

CROSS: What did you do after you graduated?

PAXSON: I had an ROTC commission and went into the army. I was commanding officer of the 4th Army Military Police Platoon (the honor guard for the 4th Army Headquarters). Upon discharge in 1959, I picked up my law license. I didn't have to take the Bar exam because I was exempt--having graduated from the University of Texas Law School and having entered the army before the exam was to be given.

In those days, there were more trials but very little mediation, and no arbitration. Judges often had to preside over forty or fifty jury trials a year.

CROSS: So you had your license. Where did you start practice?

PAXSON: I came back to El Paso and was very fortunate to share office space with Judge Charles Windberg in the old El Paso National Bank Building, located on the Southwest corner of Stanton and Texas Streets.

CROSS: How did you and your fourth grade friends end up together?

PAXSON: Tati got out of law school in 1961 and came to office with me. Robert Kennedy, Wesley Martin, José Juárez, Mickey Solis, and Marshal Yaker joined us. All of us were equal partners, but we felt the name "The Law Offices of Paxson and Santiesteban" was enough of a mouthful so the other partners' names were not included in the firm's name.

José Juárez and Tati did most of the criminal work. Of course, Tati also became a State Representative and then a State Senator. Robert Kennedy and Micky Solis handled the personal injury cases. Wesley Martin and Marshall Yaker concentrated on business litigation. I focused on probate and real estate matters. At the time most of the younger lawyers concentrated on personal injury and criminal work, and so I got many probate referrals.

CROSS: How did you get to be a judge?

PAXSON: Governor Dolph Briscoe called me in June, 1973 and offered me a position as judge of the newly created 210th District Court. He called Sam Callan at about the same time

and offered him a position as judge of the also newly created 205th District Court. I was thereafter elected judge of the 210th District Court in 1974, 1978, 1982, 1986, 1990, 1994, and 1998.

CROSS: *Did you ever hold any other judicial positions?*

PAXSON: Governor Mark White appointed me to be the Presiding Judge of the Sixth Judicial Administrative Region (an area between El Paso and Kerrville, all South of the freeway), and I held that additional position for four years. During that time, I appointed Mike Thompson to be a Child Support Master, the first Title IV Child Support Master in the State.

CROSS: *How has the practice of law changed since you mounted the bench?*

PAXSON: It has changed in many ways. There have been changes in the culture, the law, and the legal system itself.

When I became a lawyer, there were only three women lawyers practicing in El Paso. When I became a judge, there weren't many more.

Also, when I began practice, the courts strictly enforced a dress code. Male attorneys were required to wear dark suits and ties, and women lawyers had to wear skirts and hose.

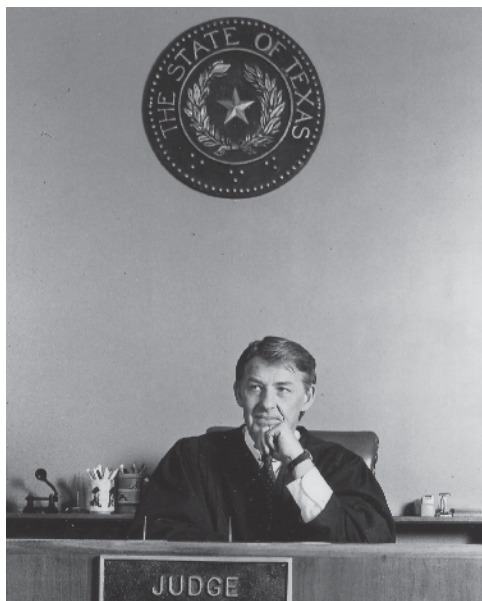
Jurors also had to abide by a dress code. Judge Robert Cunningham of the 65th District Court once put a juror in jail because he showed up for jury duty without a coat and a tie. The juror then became one of my clients. After I filed a writ of habeas corpus, the judge released the juror.

Although dress codes were strict, some behaviors that today we find inappropriate were permitted. Most attorneys smoked in the courtroom. There were ash trays on the counsel tables. Many judges kept bottles of liquor in chambers. In a spirit of camaraderie the judge would offer attorneys drinks during jury deliberations. The attorneys bought the beer.

The practice of law has changed in many ways since I started.

In the family law arena, there were no "no-fault" grounds for divorce. Illegitimate children did not have a right to child support. Child support, when it was awarded, was difficult to collect. The courts tried to control family violence with "peace bonds." Only private attorneys could collect child support from delinquent parents.

Today we have a Family Code that provides



for paternity actions and reciprocal child support. Public as well as private attorneys file and enforce "protective orders." Public lawyers as well as private attorneys try to collect child support for "managing conservators."

When I became an attorney, the court could appoint lawyers to represent indigent parties, but the government did not compensate them for time or expenses. There was no public defender program.

I've seen the growth of the probation department from a ten to fifteen person office paid only by the county to a significant state-funded program employing hundreds of case workers.

When I became a judge, the District Attorney refused to engage in plea bargaining. As a result, docket management was often a challenge.

My former law partner Senator Tati Santiesteban stewarded through the Texas legislature a reformed Code of Criminal Procedure. Before passage of the current code, juries pondered "guilt" or "innocence" and punishment at the same time. Today, we have bi-furcated criminal trials.

And by the way, today the District Attorney permits plea bargaining.

In the tort area, contributory negligence could bar any recovery, no matter how slight. Also, special issue submission was very technical. Today, broader special issue submission is permitted, and we no longer require parties to submit inferential rebuttal issues.

In those days, there were more trials but very little mediation, and no arbitration. Judges often had to preside over forty or fifty jury trials a year.

There are today fewer trials than a decade or so ago, but pre-trial discovery practice has exploded, which has increased the cost of dispute resolution. Perhaps as a consequence, mediation and arbitration now have become popular tools for the resolution of disputes.

There have also been many systemic changes in the court system. In the first place, courts had few support staff employees. A judge had only one employee. There was no such thing as a court co-coordinator. The county employed one interpreter for all the district courts and county courts at law.

When I became a judge, county courts and district court jurisdiction had different responsibilities. Today, county courts and district courts often have virtually concurrent civil jurisdiction.

At that time most courts were courts of general jurisdiction. Since then, specialized courts have proliferated. Judge Henry Peña had one of the first specialized courts in the county, with his court responsible for handling domestic, juvenile, and criminal cases. Judge Peña worked hard, and eventually became known as one of the leading experts in the nation in the field of juvenile law.

I could go on and on: legal aid, mandatory CLE, drug courts who knows what the future will bring.

CROSS: *What are you doing now?*

PAXSON: Today as a Senior Visiting District Judge, I continue to try cases. Last year, I tried six murder trials. I also have the criminal competency docket. I do the criminal competency trials for most of the District and County courts. The court's responsibility is to determine whether or not the Defendant is competent to go to trial; if not, the Defendant must be sent to a hospital, whether or not she is a danger to herself or others.

CROSS: *Tell me about your family.*

PAXSON: My wife Gloria teaches history at the University of Texas at El Paso, and at El Paso Community College.

I have five children: Peyton, Kurt, Christian, Tita, and Marc. Kurt practices with the Mounce, Green, Meyer, Safi, Paxson, Galatzin firm. Peyton is also an attorney, but he does not practice law. Aside from his JD degree, he also has a PhD in American Studies and a couple of master's degrees and teaches graduate level courses in the Boston area. He has authored several books related to American and popular culture. Christian is in business. Tita and Marc are still going to school.

EPYLA STAR OF THE MONTH

Ellic Sahualla III

■ BY PATSY LÓPEZ

Many members of the criminal defense bar in town have probably run across the EPLYA star of the month in a courtroom. However, it is my pleasure to introduce the remainder of the Bar membership to Ellic Sahualla III and to tell those of you who are familiar with Ellic a little more about him.

Ellic is originally from Houston, Texas and comes from a blue collar, middle class background. His father, who has been working for the local phone company forty years, and his mother, a stay at home mom, raised Ellic and his younger twin sisters with very strong moral values. There was an emphasis on the importance of hard work, education, common sense, and above all integrity.

Ellic implemented those values even throughout high school. Between being the band drum major and a theatre actor, volunteering in various mentorship programs, and working his afterschool job, he was always busy. In college he double majored in sociology and political science, worked as a layout editor for Jones McClure Publishing, and spent many hours evaluating the concept of justice and its real-world application. As such, it was a natural progression for Ellic to pursue the study of law after graduating from college.



In 2004 Ellic started his first year at the University of Texas at Austin School of Law. Ellic excelled at law school and attained one of the few and highly coveted positions on the Texas Law Review. Somehow he still found time to participate in programs like the Juvenile Justice Clinic where he worked as a student-attorney with the Travis County

Juvenile Public Defender's Office. After law school Ellic accepted a position with the El Paso District Attorney's Office working in general misdemeanors.

After only a few months at the DA's office Ellic was moved to the specialized family violence unit where he is still defending the rights of domestic violence victims. Soon after arriving in El Paso Ellic also became involved with the El Paso Young Lawyer's Association where he has been an active member for over a year. Last year, Ellic took a particular interest in the annual mock trial competition and spent many long evenings coaching the Austin High School team. The Austin team performed extremely well at competition and Ellic plans to be a mock trial coach again this year.

When Ellic isn't working hard to do the best job he can at anything work or EPLYA throws at him, he enjoys reading classic literature, philosophy, and nonfiction novels, catching the latest movie to hit the big screen, and spending time with his girlfriend, City Attorney Audrey Hare. If you know Ellic you know he is extremely cordial, down to earth, and easily gets along with anyone he comes across. If you don't know Ellic I encourage you to stop and say hello if you see him around the County Courthouse. EPLYA looks forward to seeing this month's star continue to rise within the organization and the community.

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& Public Health - El Paso

POSTING NUMBER: 10-0037

JOB TITLE: Assistant Attorney General II

MONTHLY SALARY: \$4,250.00

LOCATION: 401 Franklin, Suite 530, El Paso,
Texas 79901

DESCRIPTION: Analyzes complex factual and legal issues and develops evidence for filing of Deceptive Trade Practices Act and other consumer protection civil enforcement cases; performs all phases of civil litigation of consumer protection cases including the drafting of petitions, motions, pleadings, orders, briefs, discovery and memoranda. See Full Description and Application Information at: <http://www.oag.state.tx.us/agency/jobs/10-0037.htm>



Nancy Gallego, Executive Director of the El Paso Bar Association receiving the Organization of the Year 2009 award from the RioGrande Council of Governments on Friday, September 11, 2009.

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MICHAEL R. "MICKEY" MILLIGAN MEDIATOR

I have practiced civil law for 40 years. This civil practice has included litigation in personal injury, medical malpractice, legal malpractice, libel, real estate litigation, family law, employee overtime, and unusual aspects of the law such as the election code. It is my hope to share this experience with my profession in resolving lawsuits.

Although it is not necessary for a Mediator to have appellate experience, it could be helpful, and provides the Mediator with another tool to resolve a matter. Examples of some of the appeals in which I have been involved are *Harrington v. Schuble* 608 SW 2d 253 (Tex.Civ.App.-Houston [14th Dist.] 1980, no writ; *Roosevelt v. Roosevelt*, 699 SW 2d 372 (Tex.Civ.App-El Paso, 1985, writ dismissed w.o.j.); *Odom v. Meraz*, 810 SW2d 241 (Tex.Civ.App.-El Paso, 1991, writ dismissed); *Trahan v. County of El Paso*, 91 F.3d 139 (5th Cir. 1996); and *Osterberg v. Peca*, 12 SW 3d 31 (Tex.2000), cert. denied, 2000 U.S. Lexus 4195.

I invite your inquiry for mediation of your case.



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El Paso, Texas 79912
915/584-9899 FAX 915/581-7934
mickeymilliganlaw@elp.rr.com

Cloud Computing

Free Document Translation

■ BY DAVID J. FERRELL
dferrellepaso@gmail.com

Cloud computing is a general term for anything that involves delivering online services over the Internet. These services are broadly divided into three categories: Infrastructure-as-a-Service (IaaS), Platform-as-a-Service (PaaS) and Software-as-a-Service (SaaS).

A “cloud” service has three distinct characteristics that differentiate it from traditional hosting. It is provided on demand; it is elastic -- a user can have as much or as little of a service as they want at any given time; and the service is fully managed by the provider (the consumer needs nothing but a personal computer and Internet access). Significant innovations in virtualization and distributed computing, as well as improved access to high-speed Internet and a weak economy, have accelerated interest in cloud computing.

A good example of (FREE) CLOUD COMPUTING are the many Google applications available online. I think everyone has used the Google search engine for finding stuff on the Internet. Google has added numerous other applications and today we will discuss one of the best.

Google has a word processing application that is pretty good, but it won't take the place of Microsoft Word or Corel WordPerfect, at least not yet.

Google Documents (Google Docs for short) has many features that the commercial word processing programs have but our staffs are not going to leave their comfort zone of document preparation in their preferred and well utilized programs. But, they can be schooled to use some of the attributes of Google Docs.

Google has now integrated its translation technology into Google Docs, allowing users to convert their documents into any one of 42 languages with the click of a button. You can go from Spanish to English OR English to Spanish in about ½ second for the average sized document. This is true with the others languages also. While the official Google blog highlighted a usage case of a child translating her document for her family, the enterprise

The screenshot shows the Google Translate interface. At the top, there's a navigation bar with 'Text and Web', 'Search Results', and 'Dictionary'. The main heading is 'Word Find'. Below it, there's a search bar with 'frankly' entered and a 'Find' button. To the right, there's a 'Dictionary:' dropdown menu showing various language pairs, with 'English-German BETA' selected. Below the search bar, the word 'frankly' is displayed, followed by its translation: '1. frei heraus, frank und frei'.

Google has a word processing application that is pretty good, but it won't take the place of Microsoft Word or Corel WordPerfect, at least not yet.

blog post shows a different usage, one for enterprises that need to translate documents for the multilingual teams that operate in a global business landscape. This is particularly useful in Texas where English/Spanish/English is not a luxury, it is a necessity. There is a minor problem with the tool: translations are close but not 100%. The translation utility is not suited to any application for which absolute accuracy is critical. That makes it fine for casual use, but not for legal document preparation.

Using the translate tool is pretty simple. Go to <http://www.Google.com>, go to the menu bar, click on more, scroll down to Documents, click on New, then click on Document. Then type in your text and click on Tools then click on Translate document, click on the language you want you text translated to and see what happens. Better yet copy something in a non-English document you have in your computer's document files and paste it in a new Google Doc page and translate it into English. Below is a short excerpt from the El Diario El Paso newspaper published on September 1, 2009.

Cut and paste it into your new Google Doc and translate it using the above instructions.

Examinarán sangre sin orden judicial por DWI

01 Septiembre 2009

Actualizado: 01:05 AM hora de Cd. Juárez

Lorena Figueroa

El Diario de El Paso

A partir de este martes, 1 de septiembre, entran en vigor una serie de leyes de tránsito en Texas, que aunque para las autoridades están enfocadas a salvar vidas, han provocado la inconformidad de algunos sectores de la población.

If your translation is going to be used professionally, you might want to do so with a healthy dose of care when it comes to accuracy. My test of translation accuracy found it was good but not perfect.

While you are trying this translation application take some time to try out some of the other Google Apps, you will be surprised. The CLOUD is coming.

ADVANCE SHEET, circa 1369

BY CHARLES GAUNCE

Legal Reference Librarian University of Texas at El Paso

“The more things change, the more they stay the same.” Or, if you prefer the French version of this adage: *la plus ça change, la plus men chose.*

Today, the nightly local news will frequently carry a story or two about somebody disposing of unwanted stuff by surreptitiously dumping it in an out of the way location. It seems as though this kind of self-help remedy has been around for a long time.

From the Beverly, England, Town Documents comes the following:

“10 July, A.D. 1369, came into the Gild Hall Katharine Spink, Robert Williamson and wife, Thomas of Stork and wife, and many more of Stork and Sandholme impleaded and convicted of putting flax in the common ditch

there, and asked pardon, and it is now granted on condition that if any of them be found doing it again, they pay to the community 3s. 4p.”

One can only assume that 3 shillings and 4 pence was then considered a fair amount of money. Perhaps the Town of Beverly was in a charitable mood game – who knows. The point remains that illegal dumping has a long tradition and will probably continue into the unforeseeable future.

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

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SAVE THE DATE

El Paso Bar Association *Access to Justice Legal Fair*

Saturday, October 31, 2009

9:00 a.m. – 2:00 p.m.

El Paso Community College,
Valle Verde Campus

“see page 23 for complete details”

**FEDERAL BAR ASSOCIATION
EL PASO CHAPTER**

Join the Bar of the United State Supreme Court!

**U.S. Supreme Court
Admissions Luncheon and Ceremony**

**Wednesday, October 21, 2009. El Paso Club
Noon to 1:30 p.m.**

The Federal Bar Association – El Paso Chapter is honored to have U.S. Supreme Court Clerk William Suter who will visit El Paso. Clerk Suter will provide an overview of the history of the Supreme Court and then conduct an admissions ceremony for attorneys who have applied to become members to the highest court. Don't miss the chance to join the bar of the Supreme Court. It's an experience you will never forget!

Please contact Selena Solis selena_solis@fd.org for specific instructions on application materials. For general information on application process, visit www.supremecourts.gov/bar/baradmissions



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Judicial Spotlight

Name:

Jesús Rodríguez

Court:

Family Law Associate
Judge – 383rd, 388th,
171st and 65th District
Courts

Years on the bench:

2 ½ years

Education:

Bel Air High School
Bachelor of Arts –
McMurry University
JD – Texas Tech
University 1991



Court Coordinator:

– I wish. Each court that I work with is responsible for coordinating the docket that I handle for them. The closest thing I have to a court coordinator is my bailiff, Howard Capshaw.

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

The court is the guarantor of the rights of all its citizens by providing fair and impartial trials regardless of an individual's socioeconomic background, race, religion, or sexual orientation.

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

It is my opinion that anyone who sits in judgment of any type of case, whether it be civil, criminal, state or federal, should be patient and above all other qualities, humble. We have been given a tremendous amount of responsibility and power with our role in the judicial system and it would be easy to let pride get in our way, but at the end of the day we must realize we are all merely one thing, public servants.

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

I feel very satisfied with the work I did during my time at the El Paso Legal Assistance Society, but especially my first contested custody jury trial. My client was undocumented, unemployed and married to a postal worker who was manipulative and emotionally and physically abusive. My client and I were able to convince twelve individuals that money was not the answer to the child's future needs and best interest, but rather, that the best interest of the child required the undying devotion and unconditional love of a parent. At the beginning of our trial my client told me she was placing her child in my hands and fully expected me to hand him back at the end. I am glad to say that I was able to do just that.

HON. ROBERT J. GALVAN COUNTY LAW LIBRARY NEWS

By LYNN SANCHEZ

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

Hunt, John Gabriel, editor

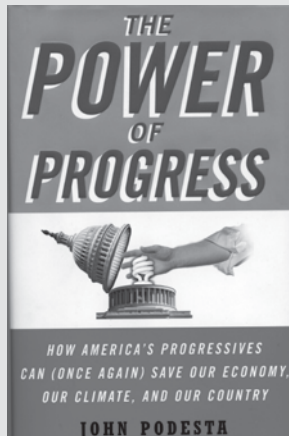
The Essential Theodore Roosevelt
(Random House, 1994)

Podesta, John

The Power of Progress
(Center for American Progress, 2008)

"John Podesta is somehow able to merge the intellectual curiosity of a law school professor (which he is) with the political savvy of a Chicago ward heeler (which he could have become) to give us a valuable progressive blueprint for addressing the most profound economic, environmental, and security challenges of our times."

—*Elena Kagan*, Dean of Harvard Law School.



Above the Law



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

EL PASO BAR ASSOCIATION presents

*"Texas Family Law Goes to Washington:
The U.S. Supreme Court Considers the Texas
Right-to-Counsel Scheme in Parental
Rights Termination Suits"*

Presented by Dallas Appellate Attorney
Chad Baruch

Approved for 1.0 hours of MCLE
by the State Bar of Texas

Thursday, October 8, 2009
12:00 – 1:00 p.m.

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Ceremonial Courtroom, 12th Floor

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EPBA Membership Dues

The 2009-2010 EPBA Membership Dues Statement have gone out. Please fill out your dues statement and return to our office as soon as possible.

If you have any questions, please contact the Bar Office at ngallego@epba@sbcglobal.net or nancy@elpasobar.com

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ASSOCIATION NEWS

El Paso Women's Bar Association

- ◆ With the exception of the October meeting the El Paso Women's Bar Association meets on the 2nd Wednesday of each month. Please join us:
- ◆ October 13th : Financial Planning Basics Presentation by Michael Graham at 12:00 noon at the El Paso Club.
- ◆ November 11th: The Secrets of our Success CLE at 5:30 p.m. at Ruli's International Kitchen.
- ◆ Download our calendar for the 2009-2010 Bar Year at <http://elpasowba.com/membership.aspx>

El Paso Paralegal Association

- ◆ The El Paso Paralegal Association holds their monthly meeting on the 3rd Thursday of each month at 12:00 noon at the El Paso Club. Contact Laura Mendez at 546-5289 for more information.

El Paso Young Lawyers Association

- ◆ The EPYLA will host a Golf Tournament on Friday, October 9th at Painted Dunes starting at 1:00 p.m. Please contact Alyssa Perez at AlPerez@epcounty.com to sign up.
 - ◆ EPYLA General Meeting/Happy Hour on October 15th at 5:30 p.m. at Soho Cocktail Lounge, 500 N. Oregon, sponsored by Anthony Gonzalez-Investors Capital.
 - ◆ EPYLA will sponsor a tailgate party on October 21st at 3:00 p.m. on Glory Field for the UTEP vs. Tulsa Game. Game starts at 6:00 p.m.
 - ◆ EPYLA November General Meeting/Happy Hours on November 12th at 5:30 p.m. at El Pisto Food and Drink, 212 W. Overland. Sponsored by El Pisto Food and drink.
- For more information on any of these events, please contact Denise Butterworth at dbutterworth@epcounty.com or 546-2059.

Federal Bar Association

- ◆ The Federal Bar Association will hold the U.S. Supreme Court Admissions Luncheon and Ceremony on Wednesday, October 21, 2009 at the El Paso Club from 12:00 noon to 1:30 p.m. U.S. Supreme Court Clerk, William Suter will give an overview of the history of the Supreme Court and then conduct the Admissions Ceremony.

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ACCESS TO JUSTICE FAIR

October 31, 2009

The American Bar Association has designated October 25-31, 2009 as the First National *Pro Bono* Week Celebration in an effort to recognize the valuable *pro bono* contributions made by lawyers throughout the year, and to increase *pro bono* participation across the county.

The El Paso Bar Association is proud to announce and is putting together an **Access to Justice Fair on October 31, 2009** in an effort to promote and support the American Bar Association's National *Pro Bono* Week Celebration.

The event is scheduled to take place at the El Paso Community College, Valle Verde Campus, at 919 Hunter, El Paso, Texas 79915 on Saturday, October 31, 2009, from 9:00 a.m. to 2:00 p.m.

Information tables will be available to the public from those government agencies and non-profit agencies that provide free legal services to the El Paso community and those who are indigent in the border region.

The event will also feature attorney speakers on many topics such as *Mortgage Fraud, Employment Law, Bankruptcy Law, Family Law, Child Support Enforcement, Protective Orders, Crime Victims Compensation, Public Benefits, Student's and JP Court, Juvenile Law, Expunctions, Consumer Law, Housing Law, Homeless Issues, Special Education Law* and others to name a few.

During the event and throughout the day attorneys will be available to provide free consultations to the public. Texas Young Lawyers Association videos will be running all day on topics such as:

“Justice 101: The Client’s Guide to Litigation”

“Kids in the Crossfire: Helping Parents Understand the Impact of Divorce”

“You’re Hired! Now What? Knowing Your Legal Rights on You’re First Job”

“Vote America: Honor the Fight, Exercise your Right”

“Crossing the Line: Your Rights and Responsibilities”

“Healing the Wounds: Navigating the Legal System after Surviving Domestic Abuse”

To volunteer in any manner, from helping to register participants for the event, being a sponsor, presenting a thirty minute clinic on a specific area of the law, translating, or providing one-on-one consultations, please contact any of the following: **Carlos E. Cárdenas** at 544-7860 or cardenas@sibabrahamlaw.com, **Jaime Sánchez** at 585-5100 or jsanchez@trla.org, **Graciela Martínez** at 585-5100 or gmartinez@trla.org, **Nancy Gallego** at 532-7052 or ngallego.epba@sbsglobal.net



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Save the Date!

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Holiday Party

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International Museum of Art, 1211 Montana

