



# EL PASO BAR JOURNAL

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An Update of Events and Information

September 2009



JEANNE C. "CEZY" COLLINS,

## Bar Awards 2009

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MARIA AND ED HERNÁNDEZ

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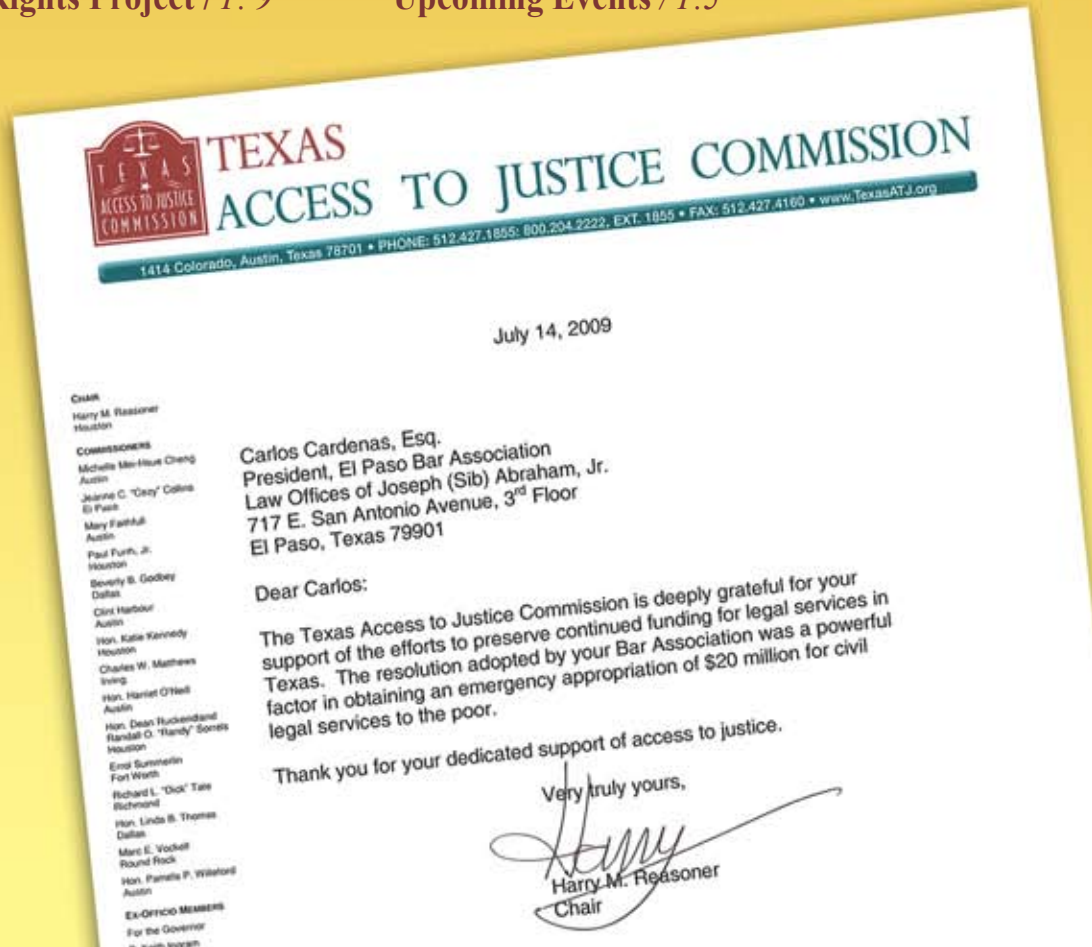
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July 14, 2009

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Carlos Cardenas, Esq.  
President, El Paso Bar Association  
Law Offices of Joseph (Sib) Abraham, Jr.  
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El Paso, Texas 79901

Dear Carlos:

The Texas Access to Justice Commission is deeply grateful for your support of the efforts to preserve continued funding for legal services in Texas. The resolution adopted by your Bar Association was a powerful factor in obtaining an emergency appropriation of \$20 million for civil legal services to the poor.

Thank you for your dedicated support of access to justice.

Very truly yours,

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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

*“Give me your tired, your hungry, your poor,  
Your huddled masses yearning to breathe free.....  
Send these, the homeless, tempest-tossed to me,  
I lift my lamp beside the golden door!”*

**A**s we embark on the 112th year of the first permanent local bar association in Texas, I am honored and ready to serve as President of the El Paso Bar Association. In reviewing the list of legal giants from our community that preceded me in this position, I am humbled yet eager to continue in their dedication and loyalty to this organization and its mission.

In my interview with *Journal* Editor, Clinton Cross, I mention as one of my aspirations for our Bar, the challenge of Access to Justice (ATJ) and the delivery of legal services to the poor. As seen on the cover of this edition, I began focusing on ATJ when I was asked to attend a meeting of the Texas Supreme Court’s Task Force on ATJ in February of this year. The funding for legal services to the under-served was in crisis due to the drop of revenues from attorney IOLTA accounts. When I reported this fact to our Board in March, we acted quickly and passed a resolution which was instrumental in the appropriation of \$20 million for legal services to the poor by the Texas Legislature. I remain grateful to our Immediate Past President, Cori Harbour, for her support in this endeavor.

Unfortunately, this funding only helps to preserve the status quo and by no means allows for the expansion of legal services. Even with this funding the cold facts remain: there are 5.1 million Texans who qualify for legal aid, currently Texas ranks 43rd in the nation in per capita funding for civil legal aid, there is one legal aid lawyer for every 11,512 Texans who qualify for legal aid, and legal aid turns away ½ of all low-income Texans due to lack of resources. In El Paso the numbers are harsher: 28.4% of our population lives below the poverty level (compared to 16.3% statewide) and if El Paso and the rest of the Texas counties on the US/Mexico border were this nation’s 51st state; that state would rank 51st in per capita income, first in poverty, and 5th in unemployment.

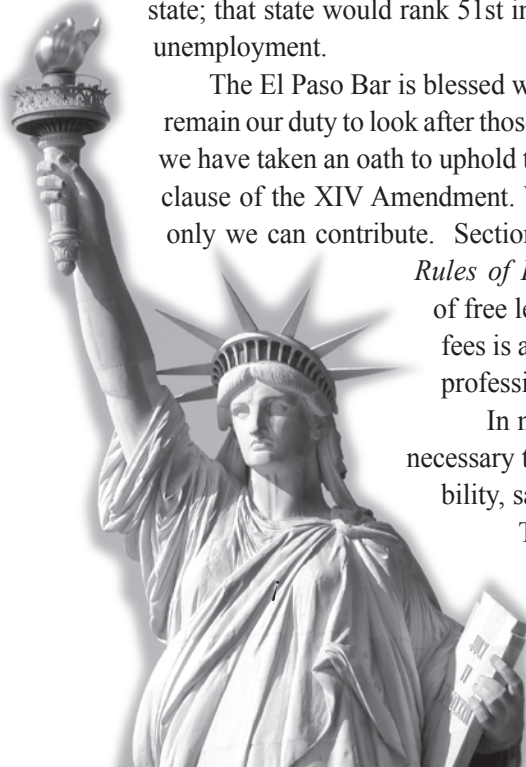
The El Paso Bar is blessed with many talented and good people and it must remain our duty to look after those who need the services we provide. As lawyers we have taken an oath to uphold the Constitution, including the equal protection clause of the XIV Amendment. We possess a special knowledge and skill that only we can contribute. Section 6 of the Preamble to the *Texas Disciplinary*

*Rules of Professional Conduct* states: “The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally”. (Emphasis added)

In many instances access to legal services may be necessary to preserve basic needs including domestic stability, safety, medical care, employment, and housing.

The number of people who desperately need legal services in these challenging economic times has dramatically increased. We must all step up to fill the void legal aid cannot address.

*Continued on page 2*





# EL PASO BAR ASSOCIATION

## September Bar Luncheon

Tuesday, September 8, 2009

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

*Elizabeth Rogers, General Counsel of the State Bar  
of Texas will discuss the Legislative Update*

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

*Door prize donated by Altep, Inc.*

**Please make your reservations by Monday, September 7, 2009 at noon by calling Nancy  
at 532-7052 or via email at [nancy@elpasobar.com](mailto:nancy@elpasobar.com)**



*\*Elizabeth C. Rogers is the general counsel for the State Bar of Texas, and also Sib Abraham's niece. She currently serves as president-elect of the Texas General Counsel Forum and as president-elect of the St. Mary's School of Law Alumni Association. Rogers served as the Attorney Ombudsman and Ethics Advisor under Attorneys General Greg Abbott and John Cornyn. Prior to that, she worked as a partner in the San Antonio and Houston offices of Haynes and Boone, L.L.P., where she co-created the firm's Labor and Employment section. Rogers was named the Outstanding Young Lawyer of San Antonio in 1992 and has been active in a variety of professional and civic organizations in Austin, Houston, and San Antonio. Rogers earned a B.A. in broadcast journalism with high honors from the University of Texas at El Paso and a J.D. with distinction from St. Mary's University School of Law. Her daughter, Sarah Sanchez, graduated from the College of Communications at the University of Texas in May 2007 and is currently the International Coordinator for the Climate Project in Buenos Aires.*

*Continued from page 1*

In this vein, we applaud those who have shown their commitment to this effort and who are recognized in this edition of the *Journal*. This year each issue of the *Journal* will highlight a major legal service provider in El Paso. This month's issue features the good work done by the attorneys and staff of the Paso del Norte Civil Rights Project. In future editions of the *Journal* we will announce new programs and events dedicated to the cause of ATJ in order to insure our increased participation in this effort. Additionally, our October 13, 2009, luncheon will feature a CLE presentation by Texas Supreme Court Justice Harriet O'Neill. Justice O'Neill is the Supreme Court's liaison to the Texas Access to Justice Commission and she devotes endless hours to further its cause.

I ask each of you to join me and the members of the El Paso Bar Association Board of Directors in supporting the State Bar's resolution adopted on September 22, 2000: "BE IT RESOLVED, that each Texas attorney should aspire to render at least 50 hours of legal services to the poor each year, or make an equivalent financial contribution to an organization that provides direct legal services to the poor." For those of you who pledge to meet this aspirational goal in the next twelve months, please submit your pledge to our Executive Director, Nancy Gallego, at [nancy@elpasobar.com](mailto:nancy@elpasobar.com). Once the list of pledges is compiled it is our intention to recognize you in future editions of the *Journal*.

In furtherance of my service to each of you, please feel free to call me on my cell phone, 915.433.3369, or e-mail at [cardenas@sibabraham](mailto:cardenas@sibabraham)

[mlaw.com](http://mlaw.com) to discuss any comments you may have. In order for our Bar to be relevant to you and your practice we need your membership and your voice in matters of interest.

I close with a quote published by the late Judge Enrique Peña in a recent edition of the TAMS newsletter that relates to this year's ATJ theme: "You cannot live a perfect day without doing something for someone who will never be able to repay you."

Take care of yourselves, your families, and let's take care of each other,

*Carlos Eduardo Cardenas*  
President



# Introducing Carlos Eduardo Cárdenas

## *112th President of the El Paso Bar Association*

■ INTERVIEW BY CLINTON F. CROSS



Carlos Eduardo Cárdenas

**CROSS:** *I want to know where you came from—your roots. What can you tell me?*

**CÁRDENAS:** My father, Tomás Cárdenas, 86, was born in Cd. Juarez, Chihuahua, Mexico making me a first generation American. He became a United States Citizen at the age of 65. As a result, I hold dual citizenship. He worked as an Assistant Manager at Central Finance Company across the street from the Federal Courthouse on Myrtle, for forty-one years. My father did not receive a college degree.

My mother, Rebeca Cárdenas Navarro, was born in El Paso. My mother passed away on March 3, 2008. She lived in El Paso all of her life and received an elementary school education. She was a housewife most of her married life, but did work at the County Tax Office and the Texas Department of Human Services (where she worked with Judge Oscar

Gabaldon), after her three sons completed their grade school educations.

I have two older brothers, Tom and Joe Cárdenas. They are both practicing civil engineers in El Paso.

I am the proud father of Mary Elizabeth “Lizzie” Cárdenas. She is six years old and lives in Austin, with her mother, Mary Hart Humble. They are the primary reason I maintain an Austin law office that is dedicated, principally, to the practice of Administrative Law. (I was Board Certified in Administrative Law from 1989 to 1999...when I moved back to El Paso, I was unable to maintain the requirement that 1/3 of one’s practice had to be in the area of specialization). Having Lizzie is my proudest and greatest achievement. I consider myself very blessed to have Mary Hart and Lizzie in my life.

*Continued on page 6*

## CALENDAR OF EVENTS

### SEPTEMBER 2009

- Tuesday, September 1** *EPBA BOD Meeting*  
**Monday, September 7**  
*EPBA & Courthouse Closed – Labor Day*  
**Tuesday, September 8** *EPBA Monthly Luncheon, State Bar of Texas General Counsel Elizabeth Rogers*  
**Thursday, September 10**  
*EPYLA General Meeting & Happy Hour*  
**Thursday, September 17**  
*EPPA Monthly Meeting*  
**Thursday, September 17**  
*EPYLA Night at Bart Reed’s Comic Strip*



### UPCOMING EVENTS

- OCTOBER, 2009  
**Thursday, October 8** *EPBA Lunch/Learn Seminar*  
**Tuesday, October 13**  
*EPBA Monthly Luncheon Justice Harriet O’Neill*  
**Wednesday, October 21** *EPYLA Tailgate Party*  
**Saturday, October 31** *EPBA Legal Aid Fair*  
 NOVEMBER, 2009  
**Tuesday, November 10** *EPBA Monthly Luncheon Salute to Veterans with Ft. Bliss Commander*  
 FEBRUARY, 2010  
**Friday, February 19 & 20** *Annual Civil Trial Seminar; Wynn Las Vegas, 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 October & November, 2009, please have the information to the Bar Association office by Friday, September 9, 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.

*continued from page 5*

**CROSS:** *What was your educational background?*

**CÁRDENAS:** I attended St. Pius X, for my elementary education, and Burges High School (W.H. Burges being a noted El Paso attorney). I received a B.S. in Business Administration from Georgetown University in 1977, and my J.D. from the University of Texas School of Law in 1980. Of note, Abie Bernal and I were class mates in kindergarten, and high school; and we graduated from law school together. He is literally a life-long friend.

**CROSS:** *Why did you want to be a lawyer?*

**CÁRDENAS:** I cannot tell you that any one person or event prompted my desire to be a lawyer. I had an uncle who was a federal judge in Mexico, but growing up I rarely interacted with him, as he lived in Mexico City. I can say that as long as I can remember, I have always wanted to be a lawyer. Growing up in the 60's, I loved watching Perry Mason episodes every week. In that television series, a lawyer was portrayed as a hero. He was someone who was admired, and responsible for insuring justice was served, because he was able to establish his client's innocence by demonstrating the guilt of another. Unfortunately, today's public perception of a lawyer is much different.

**CROSS:** *How do you envision your role as a lawyer in today's culture?*

**CÁRDENAS:** I envision it somewhat as a Perry Mason, except that it is in the civil litigation arena. It gives me great satisfaction to represent an individual or family of little or no means, on a contingency fee, against a large corporation or major insurance concern. There are many smart and talented lawyers representing corporate institutions and governmental agencies but I believe there remains room for passionate and resourceful litigators to represent clients with lesser access to justice. Justice should not only be for those that can afford it. In every case, both sides deserve the best, and the brightest, in their respective legal representatives.

For the last three years I have been very fortunate in that my very good friend, George Andritsos, has invited me to join him as co-counsel in trials involving employment discrimination and retaliation cases, representing employees. We have tried at least ten cases together. It has been a very gratifying joint venture. I am fortunate to work with George as I pursue my role as a lawyer.

**CROSS:** *What kind of experiences have you had to prepare yourself for your job as Bar President?*

**CÁRDENAS:** It starts and ends with my

parents. My mother and father taught me the importance of hard work, and to not take on any job or task with anything less than 100% effort and dedication. By their example, they taught me to be a good parent; and to do everything with love, without expectation of return, and with unwavering faith in God. When I was contemplating whether or not to pursue a legal education upon college graduation, I told my mother I was having second thoughts because there were already too many lawyers. She responded by agreeing with me, but letting me know there were not enough GOOD lawyers who truly care about what they do and the clients they represent. It is my hope, that in my service to the Bar, I will honor my parents by implementing those life lessons they imparted to me.

**CROSS:** *How do you envision your role as Bar President?*

**CÁRDENAS:** I perceive my role as an ambassador to, and for, every lawyer in El Paso. This office is not about me. If I could, I would have a one-on-one conversation with every attorney in El Paso. I would sit down with each one, and ask them not only what they want, but also what they expect from the Bar Association. I would also ask them what they are going to bring to the table, by way of their participation, to insure that we will be a better Bar.

I hear too many times that lawyers are not members of the El Paso Bar Association because it is not relevant to their practice, or that the Bar is comprised of a certain faction or stereotype. I have seen the face of the Bar change in the seven years I have been on the Board. The Board today is in many ways much more diverse than it was in previous years--in terms of areas of practice, size of firms and solo practitioners, and representation of minorities. My own demographics: small firm, practicing with Sib Abraham, a highly regarded criminal defense lawyer, and my Mexican heritage, is at least some evidence of this changing dynamic.

My job, therefore, is to energize more attorneys (and judges) to get involved with the Bar, and work to represent the needs of their profession and their clients, rather than sit back and ask "what has the Bar done for me lately?"

**CROSS:** *What do you hope to accomplish as Bar President?*

**CÁRDENAS:** I have two primary goals for the upcoming year. The first goes hand in hand with my role as described above regarding the membership of the Bar. In this vein, I want to continue building on the diversification of our membership, as well as our number of members. In 2008-2009, we experienced a drop of almost 100 members from the year before. Only one-

half of El Paso attorneys with active licenses are members of their Bar. My first goal is to have at least 60% of all El Paso attorneys renew their membership, so the Bar, in turn, can provide more benefits and be more attuned to its members. By the way, if you are reading this article and have not renewed your membership, call me or go to [www.elpasobar.com](http://www.elpasobar.com) and click on the "Join" link.

Secondly, I want to turn the topic of conversations among our colleagues to the issue of access to justice and the delivery of legal services to the poor. I will be writing on this subject in my columns in the Journal. In addition, we are working on a unique, first-ever program with our local judiciary to assist those existing legal service providers in the work they do for the disenfranchised of El Paso. We are also in the planning phase of a Legal Aid Fair, in coordination with the American Bar Association's National Pro Bono Celebration, during the week of October 25-31, 2009. There will be much more on this to follow.

With our outstanding and committed Board members, I feel assured we will accomplish these goals.

**CROSS:** *Any other interests?*

**CÁRDENAS:** My main interest outside of work is my daughter, Lizzie. Every opportunity I have, I fly to Austin for a weekend to enjoy quality time with her and her mama.

As for hobbies, if running is a hobby, it is what I enjoy doing for exercise and stress relief. It is not unusual for John Leeper (one of my best friends and a tax lawyer) and me to be seen during the noon hour running from our offices at the Toltec Building, down Myrtle Street, to Piedras and back downtown.

John and I ran the Chicago Marathon in 2001, right after 9/11 as we were not to be deterred after that national tragedy. In 2003, John and I ran the New York Marathon. John completed the race, but I had to bail out after seven miles, as I was trying to run with a stress-fractured tibia, against doctor's orders. One day I'll go back and finish it.

Recent books I have read are *Outliers* by Malcolm Gladwell; and I am currently reading *A Lawyer's Journey*, the inspiring story of famed civil rights attorney, Morris Dees.

For fun and excitement, very little gets me more juiced than sitting in Darrell K. Royal - Texas Memorial Stadium watching the Texas Longhorns on a Saturday, in the fall. I have enjoyed season tickets for the Longhorn games for over twenty years. So, to my colleagues, who chose our profession to make a difference in the world, I say Hook 'Em, God bless, and take care of yourselves.

# Former El Paso attorney recognized by the New York Criminal Bar Association

■ BY CLINTON F. CROSS

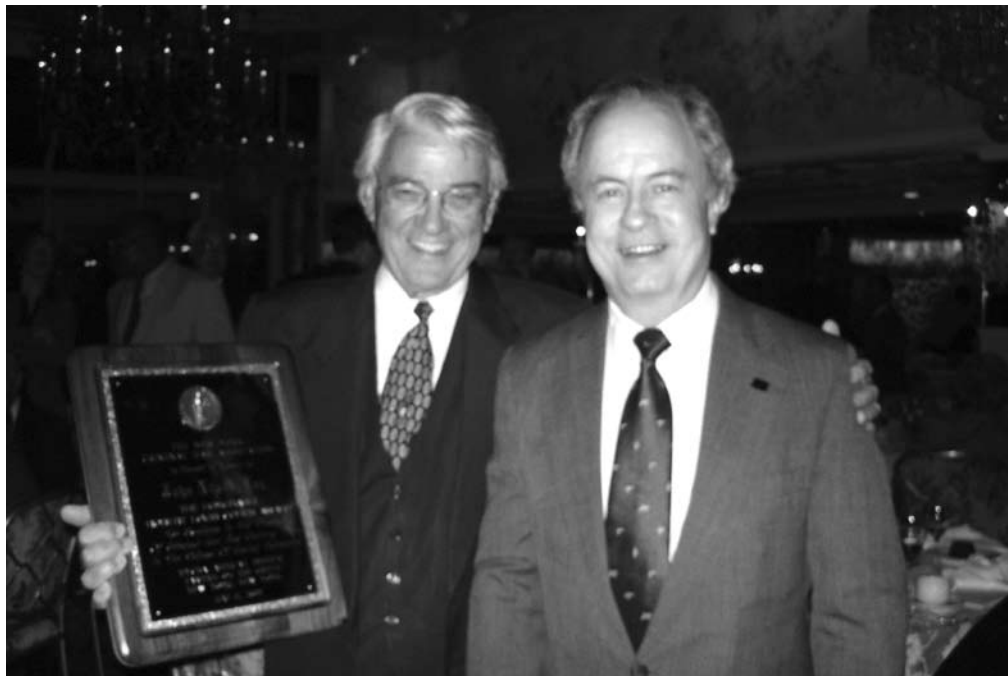
**O**n June 15, at its Annual Dinner, the New York Criminal Bar Association honored former El Paso attorney John Patrick Niland by giving him the Hon. Robert Louis Cohen Distinguished Defense Lawyer of the Year Award.

John graduated from the University of Texas Law School in 1971. He practiced law in El Paso for a number of years, where he was elected President of the El Paso Young Lawyers Association and chosen Outstanding Young Lawyer. He also served on the Board of Directors of the Texas Young Lawyers Association.

In 1992, John moved to Kentucky, where he received the Department of Public Advocacy's Gideon Award. A few years later, he moved back to Texas.

John Niland is presently employed as an Adjunct Lecturer at the University of Texas School of Social Work. He also serves on the faculty at the Santa Clara University School of Law in Santa Clara, California, working at the Death Penalty College at the Santa Clara University School of Law.

Since May of 2000 John Niland has been Director of the Capital Trial Project for Texas Defender Service. He consults with death penalty trial teams and provides resources and training in death penalty defense in Texas and throughout the United States. In 2005 he was named Public Citizen of the Year by the Austin chapter of the



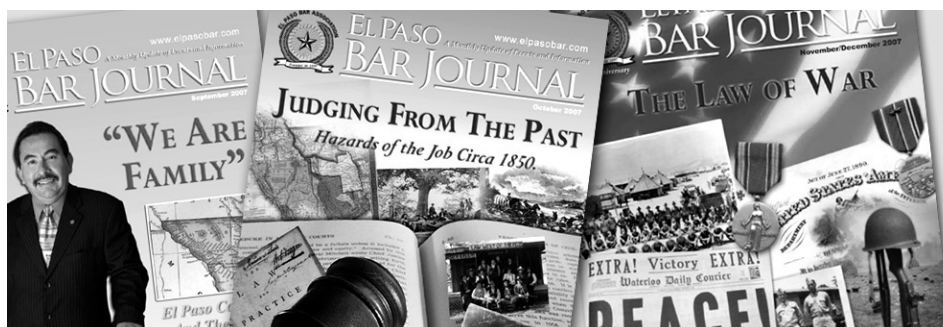
*Judge Patrick E. Higgenbotham and John Niland*

National Association of Social Workers of Texas. In the same year he was recognized as a Super Lawyer in Texas Criminal Law.

Judge Patrick E. Higgenbotham of the Fifth U.S. Circuit Court of Appeals presented the award to John. In his presentation Judge Higgenbotham said, "Not only is the Criminal Defense Bar indebted to the efforts of John Niland, but also our nation. John Niland brings an extraordinary high level of integrity, insight and outstanding professionalism to the capital defense bar."

John Niland is from a well known family of El Paso lawyers. His father, Jack Niland, now deceased, was a very well-liked and respected 50 year attorney in our community. His brother, Tom Niland, a former state representative, practiced law for several years before leaving the practice and founding the Niland Company. His company manufactured numerous products (from streetlamp posts to auto air conditioning ducts) of metal and plastic in El Paso.

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# El Paso Attorneys recognized by Texas Bar Association

■ BY CLINTON F. CROSS

The State Bar of Texas recognized three El Paso attorneys and the father of one El Paso attorney at its annual convention this year.

The State Bar awarded the prestigious Frank J. Scurlock award to Ed Hernández and María Hernández and John Crews (father of Chantel Crews) for their service to the poor.

Frank J. Scurlock was the first chairperson of the State Bar Committee on Legal Services for the Poor in Civil Matters, and advocated for publically funded legal services for the poor at a time when President Reagan was attempting to defund the Legal Services Corporation.

A child of the Segundo Barrio, Ed Hernandez graduated from Yale Law School in 1994. Early in his career, he worked for El Paso Legal Assistance Society (now Texas Rio Grande Legal Aide). In 2006, he and his wife helped form the Paso Del Norte Civil Rights Project, an offshoot of the Texas Civil Rights Project.

María Hernández graduated from the University of Washington School of Law in Seattle, Washington in 1995. Like her husband, she also worked for a time at El Paso Legal Assistance Society.

Texas Lawyer (June 22, 2009) reports that María was impressed with the need to help people when, at the age of 8, she visited her mother's native country of Uruguay, a dictatorship at the time. "I became aware of people going to prison and being tortured for exercising free speech," she said.

The State Bar of Texas also recognized at its convention John Crews, father of Chantel Crews, the third recipient of the Frank J. Scurlock Award. Crews, a partner in Lubbock's Crenshaw, Dupree and Milam, helped establish evening legal clinics for the poor at a Lubbock church. The nomination from the Lubbock County Bar Association noted that Crews had put in hundreds of hours of effort assisting poor people in need of legal help.

Finally, State Bar President Harper Estes gave Presidential Citations to Mark Osborn (for heading the search committee for the State Bar's Executive Director) and Hector Beltran (for his work with Leadership State Bar of Texas), and in so doing expressed his appreciation for their dedicated work.



*Bar President Harper Estes and María and Ed Hernández*



*Bar President Harper Estes and Hector Beltran*



*Bar President Harper Estes and Mark Osborn*



# CIVIL RIGHTS PROJECT

## *History Needs Your Help!*

BY OUISA D. DAVIS,  
*Attorney at Law*

On the “legal-aid landscape” of El Paso, an oasis for the voiceless is housed at 1317 Rio Grande. The Paso Del Norte Civil Rights Project, a subsidiary agency of the Texas Civil Rights Project, is El Paso’s own voice speaking out for the most vulnerable in our midst – those whose civil rights have been violated, the undocumented victims of violence, the disabled barred from society, the imprisoned whose human dignity is threatened.

Unfortunately, civil legal services to the poor are in danger during this time of economic crisis and financial downturn. Access to justice is not available to many low and middle income families. As laws have become more restrictive over the past 13 years, our civil rights and liberties have been systematically attacked by our lawmakers. Those of us with resources and recourse to the courts are able to protect ourselves; not so for the average citizen.

Founded by Jim Harrington and a group of zealous advocates over 20 years ago, the Texas Civil Rights Project strives to foster equality, secure justice, ensure diversity, and strengthen communities throughout Texas. TCRP was founded in 1990 and now has an established presence in South Texas, Austin, El Paso and Midland/Odessa.

As a legal aid clinic promoting racial, social, and economic justice and protecting civil rights provided under the U.S. Constitution, state and federal law, TCRP tirelessly advocates for racial, social and economic equality in Texas through education and litigation. The Project has worked steadfastly to extend rights to farmworkers and residents of the Rio Grande Valley, and to improve their living and working conditions.

No area of civil rights is invisible to TCRP’s vigilant gaze. Achieving substantial gains in ensuring justice for all Texans, TCRP uses education and litigation to create structural change in areas such as voting rights, police and border patrol misconduct, sex discrimination, employment bias, privacy, disability rights, grand jury discrimination, traditional civil



liberties, protections under immigration and education law. Under Harrington’s leadership, TCRP has changed systems throughout Texas.

Because of TCRP, jails in Hidalgo, El Paso, Henderson, Tom Green, Williamson, Travis, Bexar, Dallas, and Brown Counties do more to prevent inmate suicide, provide interpreters for deaf prisoners, protect vulnerable inmates from sexual assault, administer HIV medications, and make jails accessible for inmates with disabilities.

Under the leadership of local attorney, Briana Stone, Paso del Norte Civil Rights Project has inculcated the vision of TCRP into the Border Southwest legal landscape. With a committed staff of six legal para-professionals and a team of pro-bono attorneys, Briana’s quiet and zealous advocacy for those who strive for justice has given them voice to speak out and seek the equality guaranteed under law and the U.S. Constitution.

Over the past 3 years, PDNCRP has actively pursued justice for El Pasoans. It has taken on the task of education and reform, improving access to public and private facilities and programs for the disabled and raising consciousness regarding compliance with the American With Disabilities Act.

Developing a bilingual consumer rights curriculum targeted at colonia residents, PDNCRP’s economic justice project provides community education in home-owner rights and responsibilities and protections against unscrupulous sellers and predatory lending practices. Chris Benoit, the economic justice advocate, reaches out to provide education to West Texans who find themselves at risk of home foreclosure, consumer fraud and other financial stressors.

PDNCRP delivers legal services to 17 underserved counties for undocumented domestic violence victims, leadership training and community education in immigration rights and protections under state and federal law. Local VAWA coordinator, Elvia Garcia, has brought over 10 years of experience in this type of immigration litigation and is a dedicated advocate for immigrant crime victims. Paulina Baca and Diana Meléndez partner with her in community education and outreach to the far corners of West Texas.

Addressing police misconduct throughout West Texas and Southern New Mexico, PDNCRP resolved cases of excessive force by law enforcement officers, false arrest, racial profiling and warrantless searches of homes, including negotiating a TASER policy with Odessa police to prevent the use of this weapon against the elderly, children and pregnant women.

Supported by funding from the Texas Equal Access to Justice Foundation and the Office of the Texas Attorney General, PDNCRP provides parenting-order legal clinics to educate low-income El Pasoans about their parent-child orders issued by the child-support and family courts. This project, utilizing pro bono attorneys Claudio Flores, James Rey, Daniel Kauffman and Carlos Quiñónez, provides a

forum for participants to ask questions about child-support obligations, rights and duties of separated parents and access and possession schedules. Held on a monthly basis, the workshops have served more than 200 parents over the past year coordinated by legal assistant Sandra Geers.

PDNCRP vigorously protects First Amendment guarantees of free speech and peaceful assembly, defending a San Elizario storeowner against false charges when El Paso Sheriff's deputies retaliated against him for protesting immigration roadblocks and mediating a training program for El Paso Police Department officers after allegations of police assault during a peaceful rally at Montwood High School.

When Otero County deputies allegedly harassed and interrogated residents and searched homes in Chaparral, while trying to find undocumented immigrants in 2007 and 2008 as part of the federally funded Operation Stonegarden, PDNCRP represented the Border Rights Network and 13 other plaintiffs in federal court. The lawsuit was successfully settled for \$100,000 in money damages and changes to the Otero County Sheriff's Department operational

procedures to help eliminate the perception that local law enforcement officers are enforcing federal immigration laws.

TCRP's disability campaign works with people in the disability community to enforce the ADA's requirements. PDNCRP has recently taken on representation of patrons of Cielo Vista Mall who, due to their physical disabilities, are unable to access services. Despite the passage of the Americans with Disabilities Act (ADA) in 1991, countless local businesses and city and state governments continue to deny equal access for people with disabilities.

In these days of economic crisis, legal-aid agencies are suffering. Over the past few years, funding from the interest-bearing trust accounts of Texas attorneys (known as IOLTA accounts) has waned as interest rates have dropped. These IOLTA funds, managed and distributed by the Texas Equal Access to Justice Foundation (TEAJF), are awarded to the highest quality legal-aid programs throughout the state to support legal services to poor and underserved Texas residents.

The federal Legal Services Corporation, traditional funder of civil legal services for the poor, does not support legal-aid agencies

such as TCRP and PDNCRP. All services are supported through TEAJF, private foundations and donations from the community. Civil legal-aid services need your help to survive.

What was it that drove you to law school? Was it a sense of need to serve? Was it a desire to reach out to help the marginalized? Our law professors instilled in us a responsibility to take on the unpopular causes, to represent the voiceless, to help the disadvantaged. Bright and starry-eyed as we were upon graduation (and getting those bar results), perhaps our commitment to pro-bono service waned as the realities of the practice (and loan repayment) dampened our enthusiasm.

Not to fear – opportunities to participate in the critical mission of serving the voiceless still exist. Become a donor to PDNCRP through the TCRP website ([www.texascivilrightsproject.org](http://www.texascivilrightsproject.org)). Dedicate some of your time and talent in litigation, client interviewing or community education. Join the local board of PDNCRP and meet the people who are its clients; join in the work of this wonderful organization.

Become an active part in the work of fostering equality, securing justice, ensuring diversity, and strengthening our border community.

# Do you have ? legal worries ●

Come to our free legal clinics  
and help yourself to peace of mind

**Absolutely no cost to receive legal advice!**

**When:** Wednesday, September 16th, 2009

**Time:** From 5:00 p.m. to 7:00 p.m.

**Topic:** Employment Law

**Place:** 1331 Texas

*(corner of Texas & Newman)*

Individuals are seen on a first come, first serve basis. Legal clinics are made possible by Texas RioGrande Legal Aid, a nonprofit organization that provides free legal services to low-income and disadvantaged clients.

**LSC**

**TRLA**  
Texas RioGrande Legal Aid

**Call 585-5100 or email [receptionistelp@trla.org](mailto:receptionistelp@trla.org) for more info.**

**On the web visit: [www.trla.org/teams/cli.php](http://www.trla.org/teams/cli.php)**



# Fielding Judgment: *Notes From The Sidelines*

■ BY STEPHANIE TOWNSEND-ALLAYA

**E**l Paso attorney Gene Semko has spent most Saturdays the past 13 years “moonlighting” as a judge in an outdoor “courtroom” that may have as many as 100,000 seated jurors, not to mention millions more tuned in on radio and television. He is one of the few judges whose entire record of opinion is open to constant public and supervisory scrutiny.

He wears no robe, and he never sits down. His judging duties require him to be on the sidelines of Big 12 Football Conference games, where he wears the black-and-white stripes of the officiating crew.

His bowl games include the Sun Bowl, two Motor City Bowls, the Cotton Bowl, the Sugar Bowl, a WAC Championship game, three Big 12 Championship games and the 2008 BCS National Championship Game between Ohio State and LSU.

Unlike judges in robes, in this job, he says, you are only as good as your last call. If you look for him down on the field, you’ll see he’s the official with the “S” on his back and he starts every scrimmage play 23 yards down field from the offensive formation on the defensive side of the ball. His primary function is to initially key on the widest receiver on his side of the field but he points out, that is only his initial key. His calls are usually pass interference, holding, blocks in the back, and scoring plays.

Semko attended UTEP where he received his undergraduate degree in Secondary Education. About one year into his life as a lawyer, he yearned for his days of calling games. In the early 1990’s, he began traveling to small colleges, such as Western New Mexico and Sul Ross State University.

His chance to rise to more prestigious and profitable competitions came when the Western Athletic Conference expanded from 12 to 16 teams in 1996. New opportunities for exposure also came along. His prowess during a scrimmage in the Sun Bowl drew an offer to come work the WAC games.

Semko worked three years as a side judge,

then moved to referee. After five years as a WAC referee, he accepted an invitation to the Big 12, where he returned to his old spot as a side judge.

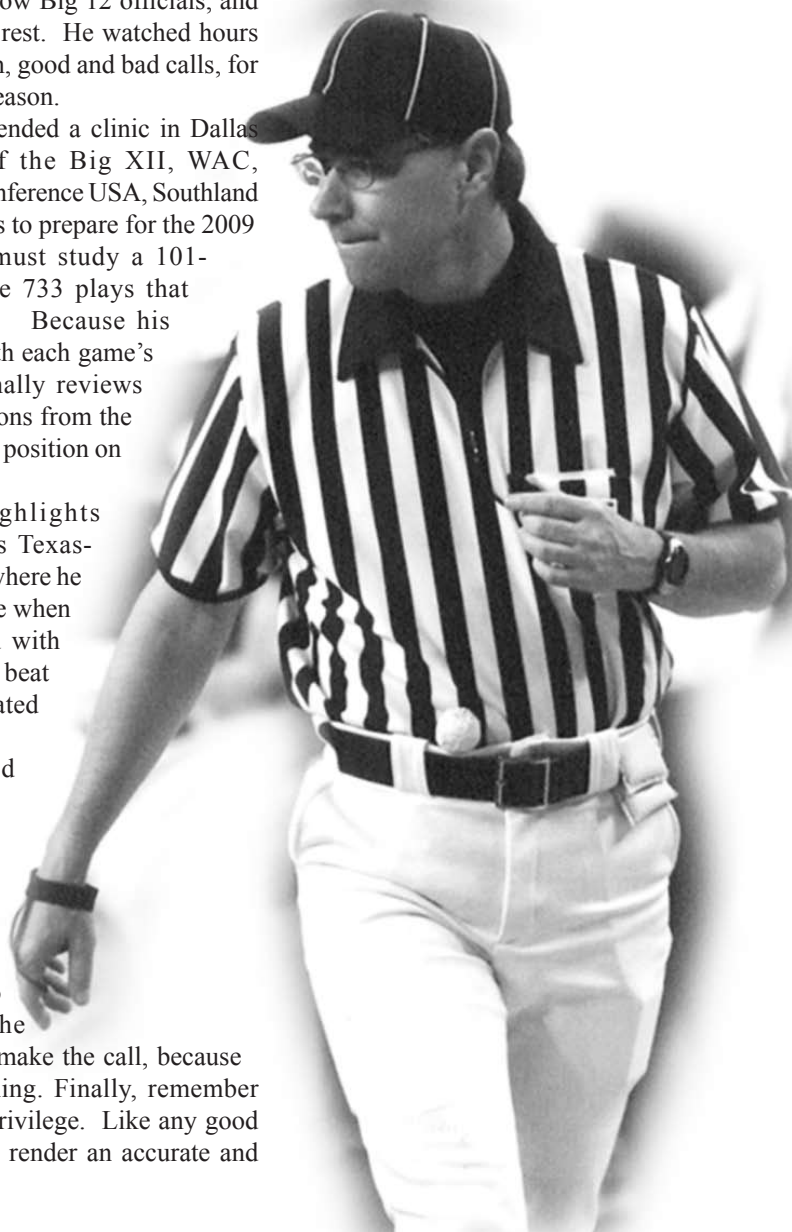
He says the general public may not be aware of the time, the study and the commitment required at Division 1 level. For example, in addition to all the game time, he is required to travel to spring clinics to review games with his fellow Big 12 officials, and put each season to rest. He watched hours of training tape film, good and bad calls, for each game of the season.

Recently, he attended a clinic in Dallas with members of the Big XII, WAC, Mountain West, Conference USA, Southland and SWAC officials to prepare for the 2009 season. He also must study a 101-page script for the 733 plays that were highlighted. Because his job doesn’t end with each game’s whistle, he personally reviews each game’s decisions from the perspective of each position on the field.

His career highlights include last year’s Texas-Texas Tech game, where he was on the goal line when Texas Tech scored with one second left to beat previously undefeated Texas.

He says good game officials never make the calls tentatively. “Don’t be afraid to make a mistake.” Work hard, he says, to be in precisely the proper position to make the call, because angles are everything. Finally, remember that pressure is a privilege. Like any good judge, he works to render an accurate and fair decision.

*Semko worked three years as a side judge, then moved to referee. After five years as a WAC referee, he accepted an invitation to the Big 12, where he returned to his old spot as a side judge.*



# Enforcement of Mediated Settlement Agreements

■ BY WILLIAM HARDIE

With the vast success experienced by attorneys in getting cases resolved by mediation it is often a concern as to how a mediated settlement agreement can be enforced. Unfortunately, a party's desire to renege on the terms of the agreement is becoming more frequent. The opposing party then wonders what options are available in assuring that the agreement will remain in force.

A review of statutory and case authorities will give parties some comfort in their desire to maintain the integrity of the mediated settlement agreement they have spent money and effort to obtain.

## Texas Civil Practice and Remedies Code

Section 154.071 of the Texas Civil Practice and Remedies Code provides:

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.

(b) The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

*Tex. Civ. Prac. & Rem. Code Ann.*, §154.071 (Vernon Supp.1995).

## Texas Rules of Civil Procedure

Rule 11 of the Texas Rules of Civil Procedure provides that "....., no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record."

Thus, it becomes the option of the party desiring enforcement to either proceed with enforcing the agreement by filing another suit or requesting the Court to enter the terms of the agreement as a judgment.



## **What if the only signature found on the agreement is that of a party's counsel?**

The argument has been made that though Rule 11 anticipates the signature of only a party's counsel, Section 154.071 of the Texas Civil Practice and Remedies Code requires the signature of the parties themselves and that therefore the agreement cannot be incorporated as a judgment.

The issue was addressed in *West Beach Marina Ltd. v. Erdeljac*, 94 S.W.3d 248 (Tex. App.-Austin 2002). The appeal was from a final judgment enforcing a mediated settlement agreement in which the agreement was signed only by appellee's counsel.

West Beach argued that the district court erred in declaring that the agreement was an enforceable Rule 11 agreement. Alternatively, West Beach argued that Rule 11 was not applicable because it is superseded by section 154.071 of the Tex. Civ. Prac. & Rem. Code Ann.

In reaching its decision, the Court cited *Padilla v. LaFrance*, 907 S.W.2d 454 (Tex. 1995) ("Although a court cannot render a valid agreed judgment absent consent at the time it is rendered, this does not preclude the court, after proper notice and hearing, from enforcing a settlement agreement complying with Rule 11 even though one side no longer consents to the settlement."), and concluded that counsel's signature was sufficient to satisfy § 154.071. *Id.* at 255.

The Court went further and stated: "It is well settled that a party may clothe his attorney with actual or apparent authority to reach and sign a settlement agreement that binds the client. See *Williams v. Nolan*, 58 Tex. 708, 713-14 (1883); *Ebner*, 27 S.W.3d at 300; *Walden v. Sanger*, 250 S.W.2d 312, 316 (Tex. Civ. App.-Austin 1952, no writ). We have found no indication that the legislature, in codifying alternative-dispute-resolution procedures, intended to limit the common-law rule." *Id.* at 256.

## **What happens if a party withdraws consent before the mediated settlement agreement is filed with the Court for entry as a judgment?**

This issue was also presented in the *Padilla* case, *supra*. In that case the plaintiffs withdrew their consent to the settlement before the settlement agreement was filed with the court and before judgment was rendered on the agreement.

The court of appeals earlier held that the agreement did not comply with Rule 11 because it was not filed until after the Plaintiffs had revoked their consent. In reversing the appellate court's decision, the Supreme Court stated:

"Although Rule 11 requires the writing to be filed in the court record, it does not say when it must be filed. The purpose of the rule--to avoid disputes over the terms of oral settlement agreements--is not furthered by requiring the writing to be filed before consent is withdrawn. As noted by the dissent below, "[t]o require the parties to immediately rush to the courthouse with a signed document in order to quickly comply with the requirements of Rule 11 before the other party reneges on his agreement goes against the grain of the policy in Texas jurisprudence which favors the settlement of lawsuits." 875 S.W.2d at 735. The purpose of the filing requirement, in the language of *Birdwell v. Cox*, is to put the agreement before the court so that "the court can judge of [its] import, and proceed to act upon [it] with safety." 18 Tex. at 537. This purpose is satisfied so long as the agreement is filed before it is sought to be enforced." *Id.* at 461



The Court went on to say that parties should not confuse the requirements for an agreed judgment with those for an enforceable settlement agreement.

“Although a court cannot render a valid agreed judgment absent consent at the time it is rendered, this does not preclude the court, after proper notice and hearing, from enforcing a settlement agreement complying

with Rule 11 even though one side no longer consents to the settlement. The judgment in the latter case is not an agreed judgment, but rather is a judgment enforcing a binding contract.” *Id.* at 461.

**In conclusion .....**

If a party desires to enforce a mediated settlement agreement it may either bring suit

for breach of the agreement or incorporate the agreement into a judgment. The recognized method for enforcement if a party attempts rescission is to file the agreement with the Court, amend pleadings asserting rights under agreement and have a hearing on incorporating the agreement into a judgment

*Mr. Hardie has been the principal of Hardie Mediation since 1997.*

## EPYLA STAR OF THE MONTH

# Carlos M. Quiñonez

Carlos M. Quiñonez is a native son of El Paso, Texas. He and his younger sister Monica Quiñonez (his office manager) were raised by very strict and hard working parents. Carlos graduated from Del Valle High School then moved to Austin Texas where he completed his undergraduate studies at the University of Texas. He attended law school at Texas Wesleyan School of Law and returned to El Paso in 2006.

Upon his return, Carlos married his best friend Sandra and opened the doors to his own law practice. Carlos also took on the responsibility of becoming an officer in the El Paso Young Lawyer’s Association with no hesitation.

In 2008 Carlos expanded his family and his practice.

In June 2008 he and his wife were blessed with their first child, a beautiful baby boy they named Nicolas David and in October of the same year

Carlos was licensed to practice law in the state of New Mexico in order

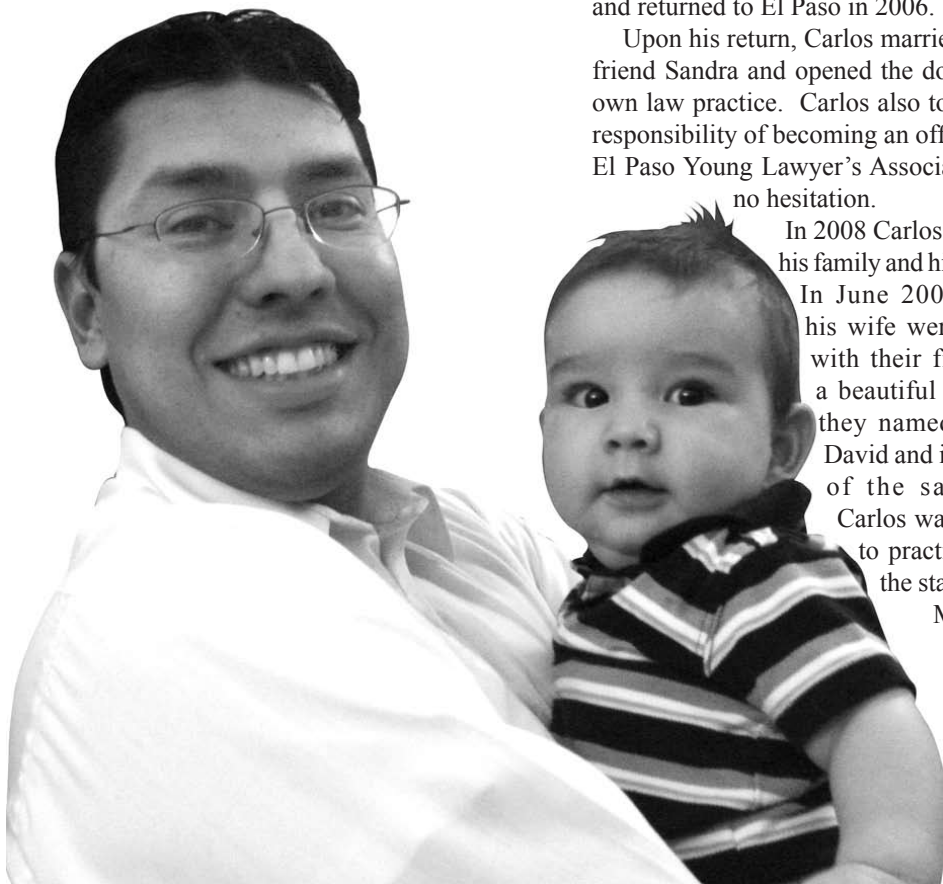
to expand his practice.

Throughout the time that Carlos has been an officer of EPYLA, he has been recognized as an individual who envisions a project from start to finish and sees it through. Carlos has invoked those skills in planning several successful fundraisers for EPYLA.

This year Carlos brought his personal experience as a young attorney raising a family to EPYLA by planning our first annual family day picnic. He expended much effort to provide plenty of food and activities for EPYLA members and their families. The event was held at memorial park and a great time was held by all who attended.

Carlos also planned the revival of the defunct EPYLA Attorney Basketball League which is currently in its second season and heading into playoffs. Always keeping the community in mind, Carlos specifically chose to have the Basketball League in a Community Center Gym in Segundo Barrio. By doing so he has provided local attorneys with an excellent opportunity to interact with the local community while giving financial and moral support to the community center. The event has been a complete success and Carlos is hoping this league will help raise money to improve the community center gym, the only one in the Segundo Barrio.

We honor Carlos M. Quiñonez for his dedication to his family, EPYLA and the El Paso community at large. We know Carlos will continue to be successful in his professional and home life.

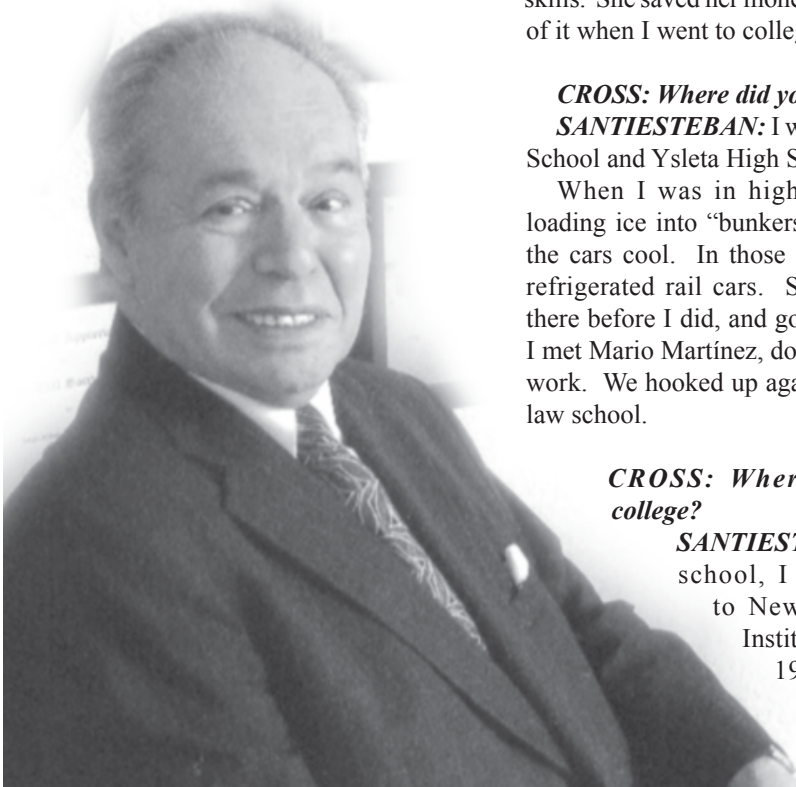


## SENIOR LAWYER INTERVIEW

## H. TATI SANTIESTEBAN

■ BY CLINTON F. CROSS

*I recently sat down at Luby's cafeteria with local attorney and former State Senator H. Tati Santiesteban, and I asked him a few questions about his life.*



**CROSS:** Tell me about your parents.

**SANTIESTEBAN:** My grandfather Ricardo Santiesteban fled from Sonora, Mexico to Texas around 1911. He brought his family with him, including my father who had the same name. Around 1917 he began tenant farming from a Black man by the name of David Gill, who came here from Beaumont. My grandfather lost his tenant farm in about a year, but my father stayed on as Gill's houseboy. Years later when Gill sold his ranch to Marcus Rosen, Rosen hired my father to work for him.

My father never learned to read or write. As a young man he was a cowboy and a rancher but also a professional wrestler, using the name Ricardo Cortez. He wrestled a lot of famous wrestlers in his day, including Yaqui Joe, Gorilla Ramos, and Black Guzman.

My mother was Leyva Baca. She had a sixth grade education, but ended up working as a beautician at the White House Department Store. There she got to know a lot of women from the upper classes, and developed social skills. She saved her money, and gave me some of it when I went to college.

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

**SANTIESTEBAN:** I went to Cooley Grade School and Ysleta High School.

When I was in high school, I worked loading ice into "bunkers" on trains, to keep the cars cool. In those days, there were no refrigerated rail cars. Sam Paxson worked there before I did, and got me the job. There I met Mario Martínez, doing the same kind of work. We hooked up again when we went to law school.

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

**SANTIESTEBAN:** After high school, I got a scholarship to New Mexico Military Institute. I graduated in 1956 with a B.A. in Military Science,

*I was the first Mexican to be chairman of a substantive committee in the Texas legislature. As a result of chairmanship of the Senate Committee on Natural Resources, I got the state to create the largest urban park in the United States: Franklin Mountain State Park.*

and an M.A. in Spanish. I also got a commission in the United State's army. I was the first Mexican to graduate as a Lt. Colonel. I was also vocalist for the school dance band, singing at many weddings.

**CROSS:** After you graduated from New Mexico Military Institute, what did you do?

**SANTIESTEBAN:** I served in the United State's army as an airborne ranger for three to four years.

**CROSS:** And then what?

**SANTIESTEBAN:** I went to the University of Texas School of Law. I was mid-law class president. I was also elected President of the student Bar association. I studied with Lee Chagra every day for three years, and with his help graduated in 1962 with honors.

**CROSS:** Your family?

**SANTIESTEBAN:** From my first wife, I have three children: Lori, who lives in Austin; Stacy, who lives in Newport Beach, California; and Ricardo, who lives in Sheraton, Wyoming.

**CROSS:** Tell me about your legal career.

**SANTIESTEBAN:** When I graduated from law school, I returned to El Paso but I couldn't get a job with any of the law firms here. So I started my own law firm with my old friend from the second grade Sam Paxson. At first the firm was known as Paxson and Santiesteban. After Sam Paxson became a judge, it became Santiesteban, Kennedy, and Martin.



**CROSS: Any interesting cases?**

**SANTIESTEBAN:** During that period of time, I tried three capital murder cases.

**CROSS: Did you win any of them?**

**SANTIESTEBAN:** My clients never received the death penalty. Given the facts, I thought I'd won.

**CROSS: Tell me about your political career.**

**SANTIESTEBAN:** I ran for a seat in the Texas House of Representative in 1966. After serving three terms, I ran for the Senate seat. I won a hotly contested race, defeating Wayne Windle, Frank Owen, Tom Niland, and Paul Moreno.

**CROSS: What do you consider your major accomplishments in the Senate?**

**SANTIESTEBAN:** I was the first Mexican to be chairman of a substantive committee in the Texas legislature. As a result of chairmanship of the Senate Committee on Natural Resources, I got the state to create the largest urban park in the United States: Franklin Mountain State Park. Upon graduation from law school Carlos Cardenas served as Legal Counsel to the Senate Committee on Natural Resources, and he helped me with this project. Carlos also helped me politically. He was the person who thought up the slogan "Tati to Texas."

After the Texas Department of Agriculture was abolished as a result of the "sunset" process, I sponsored legislation to re-establish

the agency which was adopted.

In 1973 I was also chairman of a subcommittee on criminal justice and we re-wrote the Texas Penal Code and the Texas Code of Criminal Procedure which was adopted, and which with some changes remains the law today. Micky Solis was my clerk at that time.

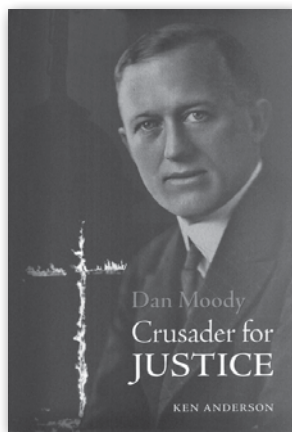
**CROSS: So you gave a "hand up" to Carlos Cardenas and Micky Solis? Anyone else?**

**SANTIESTEBAN:** Yes. Mario Trillanes, Frank Macias, Steve Peters, Greg Pine, Mario Gonzales, Mannie Kalman, Eduardo Cadena and Kurt Paxson also worked with me when I was a State Senator. I hired them all, each one for a different reason.

## The Book Review

**B**latant corruption. Corrosive politics of personal greed. Sprinkle in the psychosis of the Ku Klux Klan's blatant hate and you've got the Texas of the 1920's. However, we didn't have Eliot Ness... and J. Edgar Hoover, well...he just didn't care 'bout us down here in Texas. But we had Dan Moody.

*Crusader for Justice* written by Ken Anderson chronicles one of our true Texas heroes and we have many, mostly unsung. This short book details his climb in politics starting as a district attorney, successfully prosecuting the Klan, and then going on to be elected state Attorney General. Using the office of Attorney General in a way that has rarely been done since, he took on the corruption of the Ferguson administration. Pa' Ferguson went to prison. Thereafter, Ma' Ferguson ran for governor on the slogan "Two governors for the price of one." She promised to restore the family's reputation but instead could've written the book on self-dealing Texas style. Busting open the seediness of the corrupt Ferguson administration, Dan Moody then was elected the state's youngest governor, handily



## Dan Moody: Crusader for Justice

By Ken Anderson

Reviewed by Janet I. Monteros, MBA, JD

defeating incumbent Ma' Ferguson.

Ken Anderson paints a very precise chronology of Dan Moody's fight as you would expect from any such veteran as author as Ken Anderson who is a former district attorney of

Williamson County and presently a state district judge. A short read, and highly recommended, you could stand to learn a bit more about our Texas history and it wouldn't be a bad idea to stick it in your kid's backpack too.

*Readers are invited to submit book reviews for publication in the El Paso Bar Journal.*

*Books reviewed should available for checkout in the Robert J. Galvan Law Library.*

*Readers are invited to contribute books to the library, or recommend their purchase.*

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# From a Legislative Year to One of Open Debate on the Disclosure of Malpractice Coverage

■ BY JEANNE C. "CEZY" COLLINS,  
District Director, District 17,  
State Bar of Texas

It has been my honor to serve as your District Director to the State Bar of Texas for the past bar year. The economic downturn and the legislative year occupied a great deal of the State Bar's efforts this past year. Measures passed during the 81st legislative session affecting the access to justice included: a "one time" \$20 million appropriation for the biennium dedicated to civil legal services; a filing fee increase in Justice Courts and County Courts and the direction of a part of civil fines collected by the Attorney General as sources of revenue for legal services to the poor; the enactment of a statutory power of attorney for the caregiver of a minor child; the establishment of state court judicial review of final administrative decisions concerning the granting, payment, denial or

withdrawal of Temporary Assistance for Needy Families (TANF); and the appointment of counsel in certain eviction appeals. Of course, there were many other legislative measure passed affecting our profession. You can find a comprehensive list of these measures affecting our profession in the September Texas Bar Journal. You can also view legislative updates at [www.texasbar.com/fridayupdate](http://www.texasbar.com/fridayupdate) and subscribe to receive updates for next year.

This bar year, the State Bar Board of Directors has been asked by the Supreme Court of Texas to consider whether attorneys should be required to disclose whether or not they carry attorney malpractice insurance. In 2008, the State Bar Board of Directors voted to forward to the Supreme Court of Texas the recommendations of a task force that had been asked to consider whether Texas lawyers should be required to disclose whether they carry professional liability insurance (and, if so, how they should be required

to disclose that information). By a narrow vote, the task force recommended that disclosure not be required of Texas lawyers. The Supreme Court has now asked the Board of Directors to study the task force's report and make a formal recommendation by February 2010. The State Bar will be seeking a thorough and open debate on this issue and we are now asking to meet with and solicit feedback from attorneys throughout the state. The Bar will gather information through an organized process from September through December in preparation for a vote by the Board of Directors at its January meeting. The outcome of that vote and the information collected will be forwarded to the Supreme Court of Texas. If you have an opinion you would like to share on this significant issue, please write or contact me so I can make efforts to assure your voice is heard. I may be reached at [jcollins@kempsmith.com](mailto:jcollins@kempsmith.com), (915) 533-4424, or Kemp Smith LLP, 221 N. Kansas, Suite 1700, El Paso, TX 79901.

## 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 [14<sup>th</sup> 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); *Traban v. County of El Paso*, 91 F.3d 139 (5<sup>th</sup> 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  
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[mickeymilliganlaw@elp.rr.com](mailto:mickeymilliganlaw@elp.rr.com)



# iPhone3GS or Palm Pre - Which?

■ BY DAVID J. FERRELL

[dferrellepaso@gmail.com](mailto:dferrellepaso@gmail.com)

This summer we have seen the greatest evolution of mobile technology in world history and the greatest competition is between the iPhone 3GS and the Palm Pre. Both are cell phones BUT they are much more. They are hand-held gateways to the almost infinite knowledge/data that is archived on the internet. Besides bestowing very useful, informative and fun applications, the cell phone revolution has spawned a very mobile communication system that boggles the mind of those who bought those BRICKS, i.e. the first handheld cell phones. Today, teens text at 75 words a minute, their parents do the same at 8 words a minute. You can email an astronaut in space as you drive through a school zone, if you know her e-mail address, at least before September 1, 2009 when that behavior will get you a ticket (see Texas Transportation Code Sec. 545.425). And she

can respond at the speed of light; don't worry, Texas has no jurisdiction in space.

Well, now which cell phone should you get if your old contract is about to expire? The iPhone 3GS is a marvelous device. It has access to nearly 50,000 applications, it is sleek and powerful. I will not articulate a thorough evaluation here but I will point out the main difference between the two heavy weight competitors for mobile technology dollars.

I chose to purchase a Palm Pre on June 6, 2009 (first day available). Some people will joke that I was the first nerd in line at Best Buy. That's not true!! I was the second. Anyway, I bought the Palm Pre and almost took it back three times. Then, as the haze of 3G technology lifted and I began to understand the miracle of 4G I saw the genius of WebOS and knew I would not go backwards in my quest for the best mobile technology currently on the market.

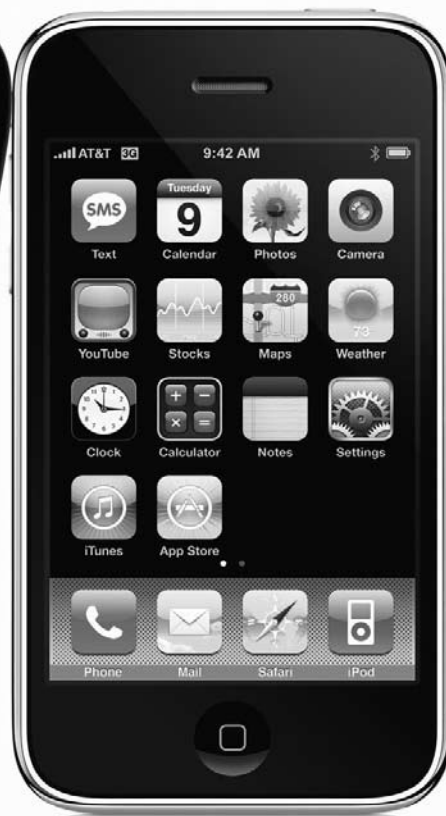
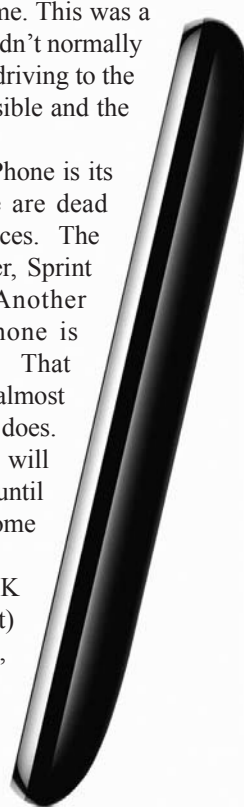
The iPhone can run one application at a time, the Palm Pre multitasks, I have been running my calendar, my GPS, my contact list and memo pad as I was sending an email and an instant message while listening to a music stream from Pandora, all at the same time. This was a test I was conducting I wouldn't normally do all that especially while driving to the courthouse. BUT, it is possible and the implications are enormous.

A big drawback to the iPhone is its only carrier, AT&T. There are dead spots in many different places. The Palm Pre's exclusive carrier, Sprint has its problems too. Another big problem with the iPhone is the word PROPRIETARY. That means Apple has its hand in almost everything that the iPhone does. Here is where the Palm Pre will excel, and if you can wait until early 2010, Verizon will become a Palm Pre carrier.

The Palm Pre Mojo SDK (Software Development Kit) enables anybody to create, install, and debug locally hosted Web applications. This SDK puts the Palm Pre into FREE Developer Mode, which opens Pre's Linux developers to remote login. Once your

genius kid in India or El Paso gets in the Pre's command shell, they will discover how robust and open the Linux OS at WebOS' base really is. I predict WebOS will be used on netbooks, notebooks, and desktop computers and even on the CPU (computer) in your refrigerator and other appliances in your house of the future.

Once Pre developers get into the SDK, they will exploit the easy access and use of the command line, shell script, and C. There isn't another mainstream mobile phone that is as effectively rooted at the factory. So, even though there are few applications for the Palm Pre right now, as compared to the iPhone, get ready, I predict a tsunami of Palm Pre NONPROPRIETARY applications will emerge AND, they will be free or cheap. Imagine this, you will be able to hire a geek kid somewhere to write an application for you that does what you want EXACTLY and you might spend fifty bucks for the programming. The program (application) is yours! Then share or sell that application to others who want that application but didn't think about it until YOU did.



# Drug Courts Revisited

■ BY DAVID GUADERRAMA  
*Judge, 243 District Court*

In late 2000, our District Attorney, Jaime Esparza, approached me about hosting a new treatment program he had heard about at a training he had attended. That conversation set in motion the formation of a Drug Court team, an application for federal training funds, Drug Court training sessions in Oakland, Dallas, and Buffalo, and the launch of the first adult Drug Court program in El Paso County in September, 2001.

Drug Court is a concept based upon the idea espoused by the medical community that therapeutic treatment is more effective than incarceration and the other tools of traditional courts. Drug Courts should not be confused for their counterparts in the battle against drug abuse, the Drug Impact Court. A Drug Impact court targets major drug dealers. A Drug Court targets addicts and abusers.

The Drug Court concept requires a change in the Court's and Prosecution's attitude toward the Defendant. This is a change based upon the premise that all drug addicts have the potential to rehabilitate and relapse can and does occur on the road to recovery.

A traditional court acknowledges the defendant's potential to rehabilitate and gives the defendant the chance to do it. The failure of the defendant to immediately take advantage of this opportunity is seen as a failure of will. On relapse, a defendant may often be subjected to a revocation of probation and long term incarceration.

Drug Court thinking adopts the medical mentality that relapse is part of recovery. The Court and Prosecution are much more tolerant of relapse and a slow recovery. Drug use is viewed as a medical problem and not a moral problem and relapse is met with short jail therapy (three days) and continuation in the program and on probation.

## The Drug Court Team

The Drug Court team is composed of the Judge, a Prosecutor, a Public Defender, two Probation officers, a Sheriff's Deputy, a Police Officer, two Compliance/Surveillance Officers, Treatment Providers, and when we can afford it, a Program Evaluator.

The Drug Court Team meets Thursday



*The Drug Court concept requires a change in the Court's and Prosecution's attitude toward the Defendant. This is a change based upon the premise that all drug addicts have the potential to rehabilitate and relapse can and does occur on the road to recovery.*

mornings and afternoons to discuss the cases that will be heard that day. After input from all team members, the team reaches a consensus on what to do to best address the defendant's needs. We then convene a court proceeding where we present our latest information to the defendant along with our decision on how to proceed. We give the defendant an opportunity to address our facts, findings and decisions as well as any other matter the defendant may want to discuss. In the majority of the cases, the recommendation of the Team is effectuated. However, on rare occasion the Court will deviate from the recommendation based upon something the defendant has articulated.

## How Do You Get In

At the onset, the question of when a defendant is admitted into Drug Court has to be addressed. The issue as to when, pre or post plea, is important to both the prosecution and the Court as it affects the defendant's incentive to complete the program and the prosecution's ability to prove their case.

Admission pre-plea gives the Defendant a big incentive to succeed as his or her success could result in the dismissal of the charges prior

to taking a felony conviction. The downside is that if the Defendant is unsuccessful in Drug Court, and is terminated from the program, the case might become stale making it much harder to prove.

Admission post-plea carries less of an incentive to the defendant but avoids the problem of having the case getting stale. In our jurisdiction we decided to have a post-plea program.

In order to be admitted into our Drug Court program a defendant must pass a legal and severity screening. First, a defendant's legal eligibility must be assessed by Karen Larose at the District Attorney's Office. Ms. Larose considers conditions that are established by the National Drug Court Council, which impact our Federal Funds and core characteristics as well as other issues which are important to the District Attorney's Office. A potential Drug Court defendant cannot have:

- More than 4 previous DWIs
- Immigration issues that would interfere with reporting
- Evidence of drug dealing



**A history of violence**

If a defendant passes the legal screening, the Probation Department then screens for severity of addiction using standardized tests: the SASE and ASI. If eligible, the Defendant then pleads guilty and is assessed probation, deferred or straight, with Drug Court as a condition.

**Once In System:**

Court plays a parenting/monitoring role; the proceedings are no longer adversarial.

Defendant is set for court review hearings and meetings with a probation officer-once per week.

Defendant attends treatment twice per week.

Defendant is randomly visited by law enforcement and surveillance officers.

Weekly hearings:

Gives the Court an opportunity to get to

know defendant more personally.

Gives the Defendant an opportunity to express his or her needs directly to court.

Drug Court Committee works to solve the Defendant's life problems as well as his or her drug problems.

A Defendant's behavior is addressed with the goal of modifying behavior by means of a variety of Incentives and Sanctions.

**Some Sanctions**

Relapses are 3 days of jail therapy

Missing meetings with Probation Officer are 3 days of jail therapy

Missing court or meetings with treatment provider can be 1-3 days of jail therapy

Curfew violations are 1 day jail therapy

Lying doubles your jail therapy

**Praises And Incentives**

Applause and recognition

Curfew extension

Out of town travel permits

Movie Passes

Game tickets

Restaurant coupons

**Drug Courts Work**

Drug Courts are not successful in every case but are successful in many cases. Drug Courts work because of the incredible cooperation between the team members who step out of their traditional courtroom roles and work in concert towards the goal of breaking the defendant's addiction. They work because we care about the defendants as people. They work because we help defendants re-establish their self-esteem. The result is positive: defendants begin to care about themselves and their future. Many begin to work hard to overcome their addictions, and

# ADVANCE SHEET, circa 1308

BY CHARLES GAUNCE

*Legal Reference Librarian University of Texas at El Paso*

One thing that every lawyer learns very fast is that the rules are always changing. Just when you think you know how things will proceed, you discover that the rules have changed. Sometimes the changes are cosmetic in nature, and at other times the changes are substantial. An example: Is your response timely or not? Perhaps you should take another look at Rule 6 of the F.R.Civ.P. if you are in Federal Court on a civil action.

From the Pleas of Michaelmas Term, 3 Edward II. (A.D. 1309) comes the following rule:

"When a man is nonsuited after appearance in a writ of naifty, he is debarred from action.

And if the demandant be an abbot or prior, or of similar condition, who cannot charge [his house] beyond his own time, he is barred for his whole time; but the nonsuit will not be prejudicial to his successors if they have right."

The essence of this rule is that when a person seeks to reacquire the possession and services of a person held to serfdom, if the claim is dismissed by the court, the serf cannot be forced to return to bondage, unless the person who was making the claim was a religious officer. Then the claim cannot be made again by the same religious officer but his successors are free to prosecute the claim later.

This rule seemed to make perfect sense as the claim of a secular man is limited to a single

bite at the apple, but the claim of a religious person may actually be made on behalf of an institution that may have a right to services that could not be proved by the person who made the claim. In other words, the failure of proof by the representative of the church is not binding on the church. This is a good result if the bondage was personal to the religious representative, and it doesn't prohibit the church from later regaining the services it is owed. On the other hand, the resulting situation may force the serf into fleeing the vicinity if he actually managed to defeat the claim of the abbot and fears that at a later date (after the abbot dies) the church will try to force him back into servitude.

All of which only tends to point out that in every contract the parties are treated equally until someone decides that things just aren't fair.

**SAVE THE DATE**

## El Paso Bar Association *Access to Justice Legal Fair*

Saturday, October 31, 2009

8:00 a.m. – 5:00 p.m.

El Paso Community College,  
Valle Verde Campus



# Legal Literati

This month the El Paso Bar Journal literary page presents a Edward Hernández poem

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If there ever comes a time  
You find yourself arrested  
Heed the lessons of this Rhyme  
For they're time worn and tested.

Keep your mouth shut. It's your right.  
Don't try to clear your name  
For your words, however slight,  
Will hurt you just the same.

Never let them search your car  
Nor let them in your house.  
If you do, you've gone too far  
You'll feel just like a louse.

Don't agree to walk a line.  
Don't blow into a tube.  
Don't sign on a dotted line.  
If you do then you're a boob.

Never look into a light  
And never make a statement.  
If you waive your Fourth Amendment right,  
To prison you'll be state sent.

Legal Literati call for submissions: The practice of law requires the ability to use the written or spoken word to provoke or prompt an intended result. Consequently, throughout history, lawyers have been known for creativity in the arts as well as in formulating arguments. The El Paso Bar Association wants to celebrate this aspect of the legal profession, and to encourage its members to recognize and cultivate their own creative impulses. We ask members or other law related professionals to provide their poems, lyrics, very short stories, or other creative expression. **Please submit your work for consideration to Poetry Editor Donna J. Snyder via email to [donna.snyder@epcounty.com](mailto:donna.snyder@epcounty.com).**



**Name:** Chris Antcliff

**Court:** 168th District Court

**Years on the bench:** 1 year, 8 months

**Education:** Austin High School, El Paso, Texas 1981; Texas Tech University, Bachelor of Arts, 1992; Texas Tech University School of Law, JD, 1995

**Court Coordinator:** Dolores LaSalde

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

Courts are institutions created to settle disputes between individuals, entities and governments by way of a legal process. They act as a check against the arbitrary use of power, and guarantee that the rights enumerated in the constitution have meaning even today. State courts have a central role in implementing the Due Process requirements of the Bill of Rights through the 14th Amendment.

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

Judges must be fair, accurate, trustworthy, knowledgeable and good listeners. They should be patient, wise, courageous and compassionate. Judges have to be honest and incorruptible. It also helps to have a good dose of common sense.

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

Our society takes a step forward each time justice is served, regardless of the dispute. I am honored to be a small part of such a unique system – whether as an attorney or as a judge.

**What's the most recent book you've read?**

*The Lost City of Z*, by David Grann.



# 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:

**Bowen, Catherine Drinker.,**

*The Lion and the Throne: The Life and Times of Sir Edward Coke*  
(Little, Brown, and Company, Canada, 1957)  
(This book contains a fascinating chapter about the trial of Sir Walter Raleigh)

**Collier, Christopher; and Collier, James**

*Decision in Philadelphia: The Constitutional Convention of 1787*  
(Ballentine Books, New York, Lawrence, Kansas, 1987).

**Kennedy, John F.**

*Profiles in Courage*  
(Black Dog & Leventhal Publishers, New York, 1963).

## SAVE THE DATE

*“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.

El Paso County Courthouse  
Ceremonial Courtroom, 12th Floor

If you have any questions please send your email  
to [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)

## Above the Law



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

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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](mailto:ngallego@epba@sbcglobal.net) or [nancy@elpasobar.com](mailto:nancy@elpasobar.com)

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## ▶▶▶ ASSOCIATION NEWS

### El Paso Young Lawyers Association

♦Thursday, September 10, 2009 at 5:30pm: EPYLA 1st General Meeting/Happy Hour, sponsored by Butterworth and Macias, P.C., a certified public accounting firm. Young Lawyers will be meeting on the patio of O2 Lounge at 2700 N. Mesa. There will be a brief presentation about accounting services that are available to both attorneys and their clients. All attorneys are welcome to attend.

♦Thursday, September 17, 2009 at 7:00pm: EPLYA night at Bart Reeds Comic Strip at 9515 Gateway West. Tickets are \$10.00. For more information, please contact Denise Butterworth @ 546-2059 or dbutterworth@epcounty.com.

♦The El Paso Women's Bar Association is proud to announce its 2009-2010 officers:

**President:** Linda Samples, **President-Elect:** Yvonne Acosta, **Vice President:** Andrea Cortinas, **Secretary:** Sarah Snook, **Treasurer:** Charlie Madrid

♦EPYLA Wednesday, October 21, 2009: Make plans to tailgate with EPYLA on Glory Field Wednesday afternoon for the Tulsa game. Game time starts at 6pm. Go Miners!

### El Paso Paralegal Association

♦The September meeting will be held on Thursday, September 17, 2009 at the El Paso Club at 12:00 noon.

## 110TH ANNIVERSARY DVD'S FOR SALE

*We have a limited number of 110th Anniversary DVD's for sale at \$20 each.*

*Please call 532-7052 or send an email to [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net) to reserve your copy.*

*You will need to stop by our office to pick up your copy.*

*Our office is located in the County Courthouse in Room L-112.*

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## FEDERAL BAR ASSOCIATION EL PASO CHAPTER

### SAVE THE DATE

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](mailto:selena_solis@fd.org) for specific instructions on application materials. For general information on application process, visit [www.supremecourts.gov/bar/baradmissions](http://www.supremecourts.gov/bar/baradmissions)

**COMPLETED APPLICATIONS due to Selena Solis  
NO LATER THAN AUGUST 21, 2009.**

### *In Memoriam...*

## JOHN ALLEN GRAMBLING

July 21, 1920 – February 24, 2009

PARTNER, GRAMBLING & MOUNCE  
PAST PRESIDENT, EL PASO BAR ASSOCIATION

CHARTER MEMBER, EL PASO BAR FOUNDATION  
MEMBER, AMERICAN COLLEGE OF TRIAL LAWYERS



John Grambling exemplified the best qualities of a consummate trial lawyer: tenacity and professionalism. His success was measured not by his victories in the courtroom (of which there were too many to count) but through the just results he achieved in the best interests of his clients. He always treated judges, lawyers and witnesses fairly and respectfully. Among his closest friends were the very attorneys and other professionals that he opposed on a daily basis. His pride in his law firm was especially evident in the care he took regularly to guide the younger members toward the proper course of action.

*John Grambling was a father, a leader and lawyer's lawyer. We honor his many accomplishments and revere the example he set for us all.*

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# 30<sup>TH</sup> ANNIVERSARY BANQUET

## *A New Beginning...*

**Date:** *Saturday, October 10, 2009*

**6:00 p.m. Cocktail Hour**    **7:00 p.m. Dinner Program**

**Location:** *Doubletree Hotel, Downtown El Paso, Texas*

### SPONSORSHIP LEVELS:

**Platinum Sponsors \$2,500.00**

Platinum Sponsors will receive a table reserved for ten and a double truck advertisement in the MABA Program.

**Gold Sponsors \$1,250.00**

Gold Sponsors will receive a table reserved for ten and full page advertisement in the MABA Program.

**Silver Sponsors \$1,000.00**

Silver Sponsors will receive a table reserved for ten, and a 1/2 page advertisement in the MABA Program.

**Table Sponsors \$750.00**

Table Sponsors will receive a table reserved for ten, and mention in the Program.

**Individual tickets** are \$75.00

*For more information, please contact any MABA board member, or call:  
Danny Razo, President-Elect 915.532.7296    Cynthia Canales 915.875.0155*