EL PASO BAR ASSOCIATION
Founded in 1897

EL PASO BAR JOURNAL

An Update of Events and Information

June 2012

Lady Justice returns to El Paso County courthouse

Focus on Children:

SENIOR LAWYER INTERVIEW

SAM SNOODY

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THE PRESIDENT'S PAGE

Lawyers Serve All

The machete murders

During the 2011-2012 bar year, we have attempted to focus on lawyers who serve others. For an attorney, representing an unpopular client or an accused who has already been convicted in the court of public opinion is particularly challenging. During the summer of 1984, I sat through portions of a capital murder trial involving the brutal machete murders of Robert and Naomi Haney. My father, Judge Ward Koehler, was the presiding judge. Gary Weiser was the defense attorney who had the difficult task of representing the defendant in the face of substantial pretrial publicity. William Moody was the prosecutor. The defendant knew the Haneys, and was accused of murdering them during a burglary of their home. Although I was a college student at the time, I was struck by the professionalism of all those taking part in the case. My father was in control of the courtroom. Gary Weiser and Bill Moody were respectful to the Court and each other, but each represented their client zealously. The examination of the lead homicide detective, Curtis Flynn, was fascinating. The legal system was well served during the trial. A writ of *habeas corpus* was granted many years later, yet nothing diminished the job performed by the participants in the trial. Our system cannot function without able counsel representing all sides in such disputes.

The service of many fine attorneys was recognized during our Law Day Banquet on May 5. Congratulations to all of the award winners. Justice Eva Guzman from the Texas Supreme Court joined us and gave an inspiring speech. A special thanks to Yvonne Acosta and her Law Day Committee for working so hard to make this event so successful. I also want to thank the El Paso Lawyers for Patriots Committee, under the leadership of Don Williams, and all those who attended the Veterans Clinic held on May 19 at the Ambrosio Guillen Texas State Veterans Home. I also want to recognize George Andritsos for his fundraising efforts that made the event such a success.

As this is my last President's Page Article, I want to thank the Officers and Directors for their service to the El Paso Bar Association. The Association had a great year, and it is due to their hard work and dedication.

Bruce A. Koehler
President

El Paso Bar Association

June Bar Luncheon

Tuesday, June 12, 2012

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

We will also have the Election and Swearing In of our new slate of Officers and Directors for the 2012-2013 Bar Year

Judge Maria Salas-Mendoza *– President*

Randy Grambling *– President Elect*

Laura Enriquez *– Vice President*

Justice Chris Antcliff *– Secretary*

Myer Lipson *– Treasurer*

Board of Directors (1 year term)
Jessica Vazquez

Board of Directors (3 year term)
Brock Benjamin
Ouisa Davis
Soraya Hanshew
Rene Ordonez
Jeff Ray

Please make your reservations by Monday, June 11, 2012 at noon at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

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

Awards

The following judges and lawyers were recently recognized for their achievements and hard work:

Judge Oscar G. Gabaldón, Jr. CWLS, received the 2011 "Humanitarian Award" by Aliviane, Inc. for Dedicated Leadership and Commitment to the Safety of Children and Families in El Paso County. Judge Gabaldon is an Associate Judge responsible for the oversight of child abuse cases.

Gabriela Edwards received a Community Leadership Award from the FBI for her work with the County Attorney's office in Socorro, Texas. She has worked hard to assist victims of elder abuse, deceptive business practices, and to combat mental health and other community problems.

Elaine Hengen was given the2012 Galen Sparks Award for "Outstanding Public Service by an Assistant City Attorney" by the Board of Texas City Attorneys Association. She has served El Paso for 23 years and has a hand in many major projects such as the transition to the city manager form of government.

Bob Hoy received the Texas Automobile Dealer's Legend Award, the 12th car dealer in Texas to get the award. Hoy was an El Paso attorney for fifteen years before he bought the El Paso Volkswagen dealership in 1973. He was a leader in passage of the Texas Lemon law legislation and in promoting ethical conduct in the automobile industry.

El Paso Bar Association

2012-2013 Membership Dues Statements have been mailed out, please fill out and send to our office.

We have many great things planned for this bar year including FREE CLEs for members, annual Holiday Party, annual Civil Trial Seminar in Las Vegas and much more.

CALENDAR OF EVENTS

PLEASE NOTE: Please check the Journal for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Journal for your upcoming event or function for the month of September,, 2012, please have the information to the Bar Association office by Friday, August 10, 2012. In order to publish your information we must have it in writing. WE WILL MAKE NO EXCEPTIONS. We also reserve the right to make any editorial changes as we deem necessary. Please note that there is no charge for this service: (915) 532-7052; (915) 532-7067-fax; nancy@elpasobar.com - email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this journal together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.

JUNE, 2012

Tuesday, June 5
EPBA BOD Meeting
Friday, June 8 -
7th Annual 384th Adult Drug Court Golf Classic
Tuesday, June 12
EPBA Monthly Luncheon
Swearing in of 2012-2013 Officers & Directors
Friday, June 8
7th Annual 384th Adult Drug Court Golf Classic
Wednesday, June 13
SBOT Annual Meeting
Thursday, June 14
SBOT Annual Meeting
Friday, June 15
SBOT Annual Meeting
Sunday, June 17
Father's Day
Tuesday, June 19
EPBA Office Closed
Juneteenth Day
Thursday, June 21
EPPA Monthly Luncheon

JULY, 2012

Wednesday, July 4
EPBA Office Closed
Independence Day

AUGUST, 2012

Friday, August 10 -
Lawyers for the Arts Seminar "Estate Planning and Contributions to Museums and Cultural Institutions"

7th Annual 384th Adult Drug Court Golf Classic

Friday, June 8, 2012
Registration begins at 7:00 a.m.
with 8:30 a.m. Shotgun Start
Painted Dunes Golf Course
4-person scramble
$80.00 per player
(make checks payable to
WTCSCD-384th Adult Drug Court)

Green Fees, carts, continental breakfast and lunch
Hole Sponsorships $100.00
Plenty of Door Prizes

For more information call Memo Ceballos @ 474-2209 or Jay Nye @ 355-8037

"El Paso Bar Foundation Grants Awarded".

The El Paso Bar Foundation wishes to announce that its 2012 grants were awarded to the UTEP Law School Preparation Institute, the Committee to Bring Lady Justice Home, the El Paso Bar Association: Lawyers Serve All project, Las Americas Immigrant Advocacy Center: Mexican Asylum Project, El Paso Del Norte Civil Rights Project: Theft of Services Project, and the Women's Bar Association: Project FUTURE.

The El Paso Bar Foundation was founded to support programs enhancing the administration of justice, legal assistance to needy, public education on law issues and other legal matters, and is funded through contributions of local attorneys.

The School Age Parenting Center

By Chief Justice Ann Crawford McClure

El Paso Independent School District's School Age Parenting Center (SAPC) is an alternative school which addresses the needs of pregnant teenagers from grades seven through twelve. It is a voluntary program that allows the moms-to-be to continue their education while receiving additional instruction in nutrition, nurturing, and parenting. New mothers generally remain in the program until the end of a school year and then return to their home schools to participate in graduation or to complete their education.

Although the number of students fluctuates, SAPC enrolls between 100 and 200 young women per year. Led by principal Vera Cancellare, the school has thirteen full time teachers. Regular guest speakers include representatives of the County Attorney's Office, the Domestic Relations Office, and the Office of the Attorney General. I teach a program modeled on the *Partners' Program* which was created by the Family Law Section of the American Bar Association and implemented in Texas by the Family Law Section of the State Bar of Texas. While I was the original facilitator of the *Partners' Program* in several EPISD high schools, the SAPC is the only school currently requesting the instruction. The students are taught the risks and consequences of teen marriage and teen pregnancy with a focus on the importance of establishing paternity and obtaining conservatorship and support orders. They learn what courts consider in determining the best interests of children and how their behavior as young mothers can impact custody actions by Child Protective Services, grandparents, or fathers. A strong component of the program focuses on teenage domestic violence, the availability of protective orders, and the availability of community resources. Most importantly, the girls are taught the dynamics of family violence, categories of behavior, and red-flags that can warn them of a partner's violent tendencies. The prevalence of dating violence is both shocking and disturbing. When asked whether she, a family member, or friend have experienced family violence, virtually every girl raises her hand. Many are nervous of asking questions in front of the class, so I visit with them privately and sometimes by telephone. I believe the participants and faculty are making a tremendous difference in the lives of these young women. The statistics stand as proof that the new mothers not only stay in school, but seek college educations. That is reward enough, but it is the thank you notes that are truly heartwarming.

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

Bullying in Schools: Where free speech ends and harassing conduct begins

By James C. Harrington

There has been litigation, both within Texas and around the nation, both in limiting First Amendment protection of bullying speech and in allowing claims of violations of the Constitution and Title IX.

I.Harassing speech is not necessarily protected by the First Amendment.

The First Amendment does not necessarily protect bullying and harassing speech. The Supreme Court has explicitly carved out exceptions to protection under the First Amendment for speech made within grade school, suggesting that some educational interests are sufficiently compelling to outweigh free speech protections.[1] At the heart of these decisions lies the idea that disrupting the learning environment of students has a negative impact on their education, thus justifying the restriction of harassing behavior. *See Saxe v. State Coll. Area School Dist.*, 240 F.3d 200 (3d Cir. 2000).

In *Kowalski*, the Fourth Circuit held that a website created to ridicule a fellow classmate was not protected by the First Amendment. *Kowalski v. Berkeley County Schools*, 652 F.3d 565 (4th Cir. 2011). The court reasoned that the school had an interest in maintaining order in school and protecting the well-being and educational rights of students, finding that school administrators must "be able to prevent and punish harassment and bullying in order to provide a safe school environment conducive to learning. *Id.* at 572.[2] Even though the webpage was created while the defendant was out of school, it inevitably impacted the environment within the school by creating "actual or nascent" disruption by the "targeted [and] defamatory" nature of its speech. *Id.* at 573.

Similarly, in *Nuxoll*, Judge Posner recognized that a school policy prohibiting derogatory speech referencing race, ethnicity, religion, gender, sexual orientation, or disability did not itself violate a student's First Amendment rights. *Nuxoll v. Indian Prairie School Dist. #204*, 523 F.3d 668 (7th Cir. 2008). The court found that "mutual respect and forbearance" were important elements of a learning environment. *Id.* at 672. Thus, the court held that if a kind of student speech would "lead to a decline in students' test scores, an upsurge in truancy," or other symptoms of school disruption, the school may prohibit the speech, provided it does so neutrally. *Id.* at 674.

Although the Fifth Circuit does not appear to have any cases on point, it seems that schools are allowed to reasonably circumscribe bullying speech within school grounds without running afoul of the First Amendment.

II. Claims brought under the Fourteenth Amendment have successfully survived motions to dismiss or summary judgment, but their success remains unclear.

A. Due Process

A claim of constitutional violation must be brought under section 1983. A plaintiff "must (1) allege a violation of rights secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law." *Lauderdale v. Tex. Dep't of Criminal Justice*, 512 F.3d 157, 165 (5th Cir. 2007). The Supreme Court has held that the Fourteenth Amendment's Due Process Clause does not require "the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago County, Dep't of Soc. Services.*, 489 U.S. 189, 195 (1989).

However, the Fifth Circuit has held that the Constitution protects schoolchildren's "liberty interest in their bodily integrity." *Doe v. Taylor Indep. School Dist.*, 15 F.3d 443, 450 (5th Cir. 1994) (en banc).[3] It has also held that "allegations of callous indifference" are sufficient to "state a claim of constitutional deprivation under §1983." *Lopez v. Houston Indep. School Dist.*, 817 F.2d 351, 355 (5th Cir. 1987) (overruled on other grounds).

Under this reasoning, the plaintiff in *Estate of Brown* successfully pleaded that the school district deprived the deceased of his constitutional right to bodily integrity by the "inaction and indifference of [defendant school district] school officials." *Estate of Brown v. Ogletree*, No. 11-cv-1491, 2012 U.S. Dist. LEXIS 21968, at *22-23 (S.D. Tex. Feb. 21, 2012). However, the court cautioned that, in order to succeed on the section 1983 claim, the plaintiff must further prove that the school district's "official policy or firmly entrenched custom caused the alleged constitutional violation." *Id.* at *24. This would involve the plaintiff showing that an official policy was in place to prevent harassment, the policy was approved by appropriate policy makers, and the state actor acted with deliberate indifference in refusing to enforce the policy. *Id.* at *25-28.

By contrast, in *Estate of Carmichael*, the court dismissed the plaintiff's section 1983 claim of violation of the Due Process Clause. *Estate of Carmichael*, No. 3:11-CV-0622-D, 2012 U.S. Dist. LEXIS 857, at *11 (N.D. Tex. January 4, 2012). The court found that the plaintiff had not shown "that any state official *caused* [the deceased] bodily harm." *Id. at* *8. Essentially, the court in *Estate of Carmichael* did not acknowledge the rules that guided the court in *Estate of Brown*, which allowed "callous indifference" as a sufficient standard for causing a deprivation of constitutional rights. Instead, it focused on the Fifth Circuit's holding that that "as a general rule, there is no constitutional duty that requires state officials to protect persons from private harms."*Kovacic v. Villarreal*, 628 F.3d 209, 213 (5th Cir. 2010). This disagreement between the districts has yet to be resolved.

There is another potential claim under the "special relationship" test, which is an exception to the general rule of *Deshaney*:

if a "special relationship" exists between the State and citizen, the state does have a duty to protect the victim. *Id.* at 198-200. The relationship between the individual and the state is formed "[w]hen the state, through the affirmative exercise of its powers, acts to restrain an individual's freedom to act on his own behalf through incarceration . . . or other similar restraint of personal liberty." *Kovacic*, 628 F.3d at 213. In finding the existence of a "special relationship," the court may look to how young the student is, his disabilities, and affirmative acts taken by the school that may have led to his injury. *Estate of Lance v. Lewisville Indep. School Dist.*, No. 4:11-CV-00032, 2011 U.S. Dist. LEXIS 103400, at *23 (E.D. Tex. Aug. 23, 2011).[4]

In *Estate of Lance*, the court found that there was sufficient evidence to establish a "special relationship" where a nine-year-old, special education student committed suicide while placed in in-school detention. *Id.* The court found that the student's age and disabilities lowered his "level of social functioning and ability to assess threats to his safety." *Id.* at *20. The court also found that placing the student away from teachers and classmates in suspension amounted to affirmative action that restrained the student's liberty to care for himself.

The other exception to the general rule is that a state may be liable where "the state actor played an affirmative role in creating or exacerbating a dangerous situation that led to the individual's injury." *Kovacic*, at 214. However, although the Fifth Circuit this has discussed "state-created danger" theory, it has yet to adopt it in practice. *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 466 (5th Cir. 2010). Though it seems like the best theory for a bullying claim, all three of the cases from the federal district courts in Texas have refused to apply it, preferring instead to wait for the Fifth Circuit to do so.

Though courts seem sympathetic to Due Process claims, it remains to be seen how difficult it will be to actually succeed on, rather than just avoid dismissal of, such claims.

B. Equal Protection

A claim under the Equal Protection Clause must show that a state actor "intentionally discriminated against the plaintiff because of membership in a protected class." *Estate of Carmichael*, at *12 (quoting *Williams v. Bramer*, 180 F.3d 699, 705 (5th Cir. 1999). The Supreme Court has recognized a violation of the Equal Protection Clause for a "class of one" when a plaintiff alleges that she has been "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). However, if the challenged action "does not appear to classify or distinguish between two or more relevant persons or groups, then the action – even if irrational – does not deny them equal protection of the laws. *Estate of Brown*, at *11 (quoting *Johnson v. Rodriguez*, 110 F.3d 299, 306 (5th Cir. 1997)). A successful claim would thus have to show that the defendants followed the anti-harassment or bullying policies of the school for other students, but not for the plaintiff. *See Estate of Carmichael*, at *14; *see also Estate of Brown,* at *12.

In *Nabozny v. Podlesny*, the school boasted a record of enforcing its anti-harassment policies, yet failed to enforce said policies to protect plaintiff from harassment. *Nabozny v. Podlesny*, 92 F.3d 446, 454 (7th Cir. 1996). There was also evidence in the record to suggest that the school treated male-on-female or female-on-female harassment very strictly, whereas when then plaintiff had complained, the defendant had merely responded, "boys will be boys." *Id.* Since the plaintiff had alleged facts that would suggest he had been treated differently, both as an individual student, and as a student of the male gender, the court allowed his equal protection claim to survive summary judgment.

However, in *Estate of Brown*, the complaint showed that the school district generally did not follow its policies against bullying and harassment. *Estate of Brown*, at *12. There were incidents of "allegedly unchecked bullying carried out against both girls and boys." *Id.* This leads to the unfortunate consequence that if a school board ignores harassment entirely, there is no remedy under equal protection.

A claim brought under the Equal Protection Clause must therefore have very particular details with regard to how other students were treated as compared to the plaintiff. It remains to be seen how specific this evidence is to allow the claim to succeed, rather than merely survive summary judgment or dismissal.

Title IX provides some protection to students who are harassed on the basis of sex.

Title IX provides that no person "shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." 20 U.S.C. §1681(a) (2012). Title IX is actionable to prevent gender-based student on student harassment, including same-sex sexual harassment. *Estate of Brown*, at *13; *Sanches v. Carrollton-Farmers Branch Indep. School Dist.*, 647 F.3d 156, 165 (5th Cir. 2011). Thus, a school district that receives federal funding may be liable for student on student harassment where:

(1) the school district has actual knowledge of the harassment;
(2) the harasser is under the school district's control;
(3) the harassment is based on the victim's sex;
(4) the harassment is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit; and,
(5) the school district is deliberately indifferent to the harassment.

Estate of Brown, at *13 (citing *Sanches*, 647 F.3d at 165).

The court in *Estate of Brown* found an actionable Title IX claim. *Estate of Brown*, at *19. For the first element, the court found that a Title IX plaintiff "can establish school district liability by showing that a single school district administrator with authority to take corrective action" responds with deliberate indifference. *Id.* at *14 (citing *Fitzgerald v. Barnstable School Comm.*, 555 U.S. 246, 257 (2009)). The plaintiff's repeated attempts to contact the school district, even when rebuffed by the principal, were sufficient to provide "actual knowledge" for the purpose of the analysis. *Id. at* *15. To the second element, harassment occurring "during school hours and on school grounds" strongly suggests that the school board "exercises significant control over the harasser." *Davis v. Monroe County Bd. of Education*, 526 U.S. 629, 645 (1999). Since the harassment all took place on school grounds, the plaintiff satisfied the second element. *Estate of Brown*, at *16.

With respect to the third element, the court found that harassment of the victim on the "perception that [the victim] was gay" was sufficient to allege harassment on the basis of sex. *Id.* at *17. Harassment based on this perception is in violation of the element, regardless of the victim's actual sexuality. *Id.* It was enough that students had "simulate[d] anal intercourse with the victim, called him "faggot," "gay," "AsherAIDS," and various other such offensive terms. The court also recognized what other courts have viewed "sexually derogatory

slurs and practices" as sufficient to satisfy the requirement that the conduct be "severe, pervasive, and objectively offensive," the fourth element for a Title IX claim. *Id.* The court also found that the conduct deprived the victim of "access to an educational opportunity" because the continued harassment drove the victim to depression and to take his own life. *Id.* There was also an instance where the victim suffered such severe harassment during a test that he "[hid] under his desk and cover[ed] his head with a jacket." *Id.* Taken together, the court found that the harassment the victim suffered was precisely the type of behavior meant to be prevented by Title IX. *Id.*

Finally, to find the board liable, the court had to decide whether the plaintiff could "hold the Board liable for its *own* decisions to remain idle in the face of known student-on-student harassment in its school." *Id. at* *18 (citing *Davis*, 526 U.S. at 641). The court remarked that avoiding Title IX liability was quite easy; a school bard merely had to "respond to known harassment in a manner that is not clearly unreasonable." *Id.* The board in *Estate of Brown* did nothing in response to the plaintiff's complaints besides "rebuff her, attempts to make contact with officials." *Id.* The court held that in the face of harassment, a board may not "do nothing." *Id.* Since the board knew of the harassment, and did nothing to respond, the court held that the plaintiff had pleaded sufficiently that the board manifested deliberate indifference, thus sustaining her cause of action under Title IX. *Id.*

However, in *Estate of Carmichael*, the victim was called names like "fag, queer, homo and douche" and on one occasion, he was "stripped naked, tied up, and stuffed into a trash can," but the court dismissed the plaintiff's Title IX claim. *Estate of Carmichael*, at *13, *21. The court found that the gender-specific name-calling was an isolated incident, since the complaint also named numerous other instances in which the victim was harassed with terms without "sexual overtones. *Id.* at *21. The court thus held that the harassment must "merely tinged" with sexual connotation, which was insufficient to find harassment on the *basis* of sex. *Id.* Since it appeared to the court that he was bullied "regardless of his male gender rather than because of it," it dismissed the plaintiff's Title IX claim.

Thus, it appears that a successful claim must illustrate a persistent pattern of gender-focused harassment, rather than general harassment that includes gender.[5] Though it looks like the courts are headed in the right direction, we will have to wait until decisions on liability are made before we truly know where we stand.

The Texas Civil Rights Project sponsors an anti-bullying Safe Schools Program, http://www.texascivilrightsproject.org/?page_id=484, with resources at https://sites.google.com/site/tcrpsafeschools/.

1 See *Tinker v. Des Moines Indep. Cmty. School Dist.*, 393 U.S. 503 (1969) (providing no protection if the speech "materially and substantially" interferes with operation of the school or "collid[es] with the rights of others."); *Bethel School Dist. No. 403 v. Fraser,* 478 U.S. 675 (1986) (allowing regulation for "vulgar and lewd" speech); Morse v. Frederick, 551 U.S. 393 (2007) (allowing regulation of speech encouraging the use of illegal drugs).

2 *Cf. Lowery v. Euverard,* 497 F.3d 584, 596 (6th Cir. 2007) (cited in Kowalski) (school officials have affirmative duty to not only ameliorate the harmful effects of disruptions, but to prevent them from happening in the first place.)

3 One federal court has found that students have a liberty privacy interest in not having their sexual identity revealed without their consent. See *Wyatt v. Kilgore Indep. School Dist.*2011 WL 6016467 (E.D.Tex. Nov. 30, 2011) (denying qualified immunity to coaches, who disclosed student's identity to her mother without student's consent).

4 *See Doe v. Covington County School Dist.*, 649 F.3d 335 (5th Cir. 2011) (finding a special relationship between school and nine-year-old student raped by a man to whom the school had entrusted her).

5 TCRP helped negotiate a comprehensive settlement of a similar case. Kime Mitchell v. Georgetown Indep. School Dist, No. A-09-CA-568-LY (U.S. Dist. Ct, Austin).

JIM HARRINGTON is Director of the Texas Civil Rights Project. He is also an adjunct professor of law at the University of Texas School of Law
Considerable credit for the preparation of this article goes to **Ji Nin Loh**, University of Texas law student and TCRP intern for her excellent research and superb writing assistance. TCRP has an El Paso: Paso del Norte Civil Rights Project.

Law Day Awards Presented

The Law Day Awards were presented at the Annual Law Day Dinner on Saturday, May 5, 2012, held at the Doubletree Hotel.

The following were honored:

Outstanding Young Lawyer ~ ***Carlos Quinonez***
Outstanding Senior Lawyer ~ ***Carl Green***
Outstanding Jurist ~ ***Honorable Kathleen Anderson***
Outstanding Lawyer ~ ***Leonard Morales***
Outstanding Pre-Law Student ~ ***Jacob Barde***
Liberty Bell Award ~ ***Aurrora Tafoya***
Professionalism Award ~ ***Mario J. Martinez***
Pro Bono Award ~ ***Danny Razo***
Mediator of the Year ~ ***Hector Zavaleta***
Outstanding Federal Attorney ~ ***Steve Garcia***
Outstanding State Attorney ~ ***Kitty Schild***
President's Award ~ ***Dr. William Weaver***

Albert Armendariz Award ~ ***Honorable David Briones***

I am not Solomon! A judge's reflection on child protection court cases

by Judge Oscar G. Gabaldón, Jr., CWLS

Renowned Australian science lecturer and naturalist, Herbert Ward (1877-1955), declared that "Child abuse casts a shadow the length of a lifetime." How regrettably and painfully true! While Ward's declaration has unquestionable merit, there is another aspect that must be considered: It is morally incumbent upon us to act on and work to change that sad reality which Ward talks about. That is, we are called, as members of the human race, to do whatever we can do to turn the cumbersome shadow of abuse into nothing more than the remnants of an aging ghost. We must take proactive, deliberate, and strategically-effective steps to counteract and dissipate the feelings of the despair, the loneliness, the pain, the suffering, and the hopelessness which daily overshadow the lives of so many children victimized by abuse and neglect. This requires steadfast commitment to the quest of protecting children from both the abuse itself, as well as the effects of the abuse, which can linger on for a lifetime.

Many outstanding organizations, both private and public, work day in and day out to tackle all the chaos and afflictions brought on by abuse and neglect. Organizations and individuals, such as child protection departments, court appointed special advocates, social service agencies, legislatures and other governing bodies, corporate and non-corporate entities, law enforcement groups, and so many other caring institutions and private citizens engage daily in all sorts of activities to help curtail, and preferably eradicate, the abuse and neglect of children. Among the many stakeholders that champion the protection of children in our communities, the Courts play a very critical and unique role.

The Courts are critical gatekeepers, for they are often times the ultimate arbitrators and administrators of justice, both for the victims of the abuse and neglect, as well as for those that perpetrate the abuse and neglect. Among their many responsibilities, the Courts should assure that court-ordered services are quickly identified and put in place to assist families and children that find themselves in the midst of a child welfare case. Moreover, while a judge must hold individuals accountable for their choices and actions which place children at risk, the judge has a moral obligation to encourage and uplift those individuals, so that they may better navigate the journey they are on in order to salvage the family unit and to improve the quality of life for the family as a whole, especially as it relates to better assuring the safety and well-being of the children. In their role, judges must carry the task of deciding, always in accordance with the law, the most equitable, reasonable, legally appropriate, and wisest possible outcomes, consistently assuring that the best interests of the children are at the heart of the judicial renditions.

Judge Oscar Gabaldón

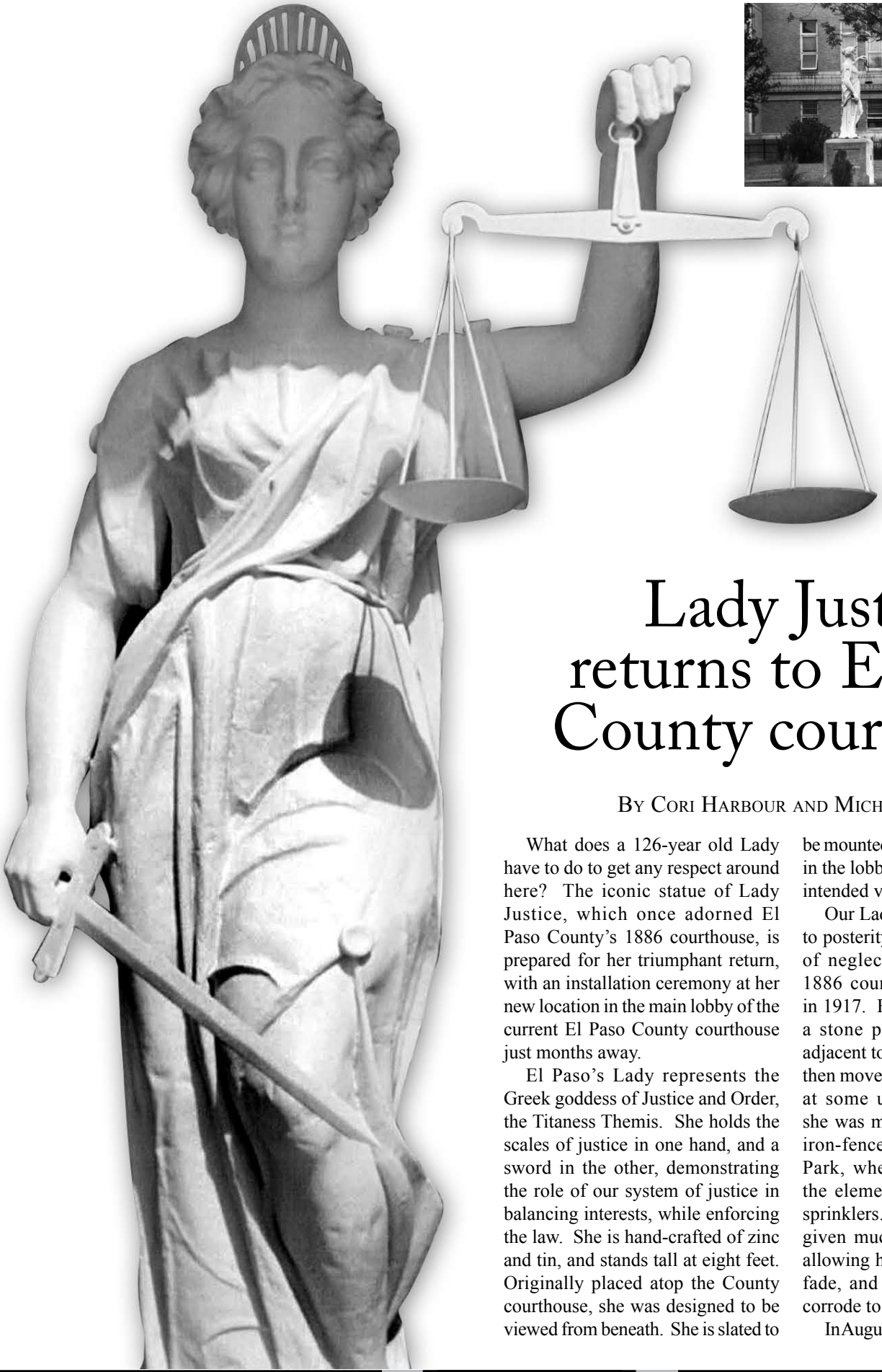
We, the judges, are expected by some to be like the biblical Solomon, guided by a divine hand as we go about deciding cases coming before us; but, we are not Solomon! We are simply human beings trying to do the best we can to decide the child protection cases, using rational analysis coupled with solid common sense, caring hearts, and the law. The best results usually prevail when a judge not only acts with high respect and passion for the law, but also with high respect and passion for the well-being of those coming to the Court. In essence, what judges do is first, and foremost, about people. People are the most sacred focus of what happens in Court. Nothing more precious exists in the world than the human being. That is why, a child that is abused, neglected, or both, is of unparalleled importance to a judge; especially since, in most instances, children are limited in their ability to defend, protect, and fend for themselves.

How many times have I seen those endearing "Puss-N-Boots" eyes in children that come to meet with me! Their little eyes, sometimes glittering with tears, reveal their inner sadness and sense of emptiness. Sometimes, the first bedtime story they hear is told to them by a foster parent. Some children have never heard their mother or their father tell them "I love you." They may come to hear those words, for the first time, from a stranger. The feeling of not being important to anyone, of having little, if any, value, often times is imbedded deep into the psyche of these children. Enough! This must change!

The challenges posed by child abuse and neglect are many, and they must be dealt with head on. This calls for serious resolve on behalf of those wanting to take on the challenges that present themselves towards enhancing the lives of victim children. Furthermore, these challenges call for concerted efforts in order to improve the existing systems of child protection, so that they may more effectively deal with the needs of families and children that find themselves in the child welfare system.

Carol Bellamy, who has been Director of the Peace Corps, Executive Director of UNICEF, as well as President and CEO of World Learning, encourages a togetherness in the effort to serve the best interest of children by calling for the building of a "…global alliance…secure in the knowledge that in serving the best interests of children, we serve the best interests of all humanity." In these respects, Bellamy also makes an excellence observation in support of the idea that everyone has an obligation to act. She states, "When the lives and the rights of children are at stake, there must be no silent witness." Let us, therefore, shout it out. Say NO to child abuse!!!

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



Lady Justice returns to El Paso County courthouse

By Cori Harbour and Michael R. Wyatt

What does a 126-year old Lady have to do to get any respect around here? The iconic statue of Lady Justice, which once adorned El Paso County's 1886 courthouse, is prepared for her triumphant return, with an installation ceremony at her new location in the main lobby of the current El Paso County courthouse just months away.

El Paso's Lady represents the Greek goddess of Justice and Order, the Titaness Themis. She holds the scales of justice in one hand, and a sword in the other, demonstrating the role of our system of justice in balancing interests, while enforcing the law. She is hand-crafted of zinc and tin, and stands tall at eight feet. Originally placed atop the County courthouse, she was designed to be viewed from beneath. She is slated to be mounted atop a 5-foot tall pedestal in the lobby, in order to simulate the intended viewing angle.

Our Lady Justice was almost lost to posterity through the many years of neglect she endured after the 1886 courthouse was demolished in 1917. For a time, she stood atop a stone pedestal in a small yard adjacent to the old Liberty Hall, and then moved indoors. Unfortunately, at some uncertain point in time, she was moved to a small wrought iron-fenced enclosure at Ascarate Park, where she was battered by the elements, and watered by the sprinklers. No one seems to have given much thought to her needs, allowing her paint to chip, peel and fade, and the underlying metal to corrode to lace.

In August 2007, the Commissioners

Court approved a request from the El Paso Bar Association to restore the Lady to her former glory. During the last week of April, 2012, she returned to El Paso from the professional conservation laboratory where she had undergone a thorough restoration.

The El Paso Bar Association has been instrumental in returning Lady Justice to her rightful place. Not only did the Bar actively promote the rehabilitation effort, but its Foundation has contributed funds toward the construction and installation of the pedestal and a museum-quality display to honor her history. But more is needed.

The El Paso Community Foundation has joined forces with the Bar Association, and together they are kicking off a fundraising campaign to raise the $100,000 needed to display Lady Justice appropriately in the courthouse lobby. El Paso architect Frederic Dalbin has designed a historically suitable base, and a professional design firm is in charge of the historical exhibits. The Bar and the Community Foundation have been working for months with County officials, the El Paso County Historical Commission, and the judiciary, in order to prepare the courthouse for the installation.

El Paso lawyers can be expecting to find a fundraising request landing in their mailboxes in due course. Donors will be recognized by name on the display surrounding the Lady Justice pedestal. The Bar Association hopes its membership will honor the Lady with their support.

CORI HARBOUR
is an El Paso attorney. She is former President of the El Paso Bar Association and the Texas Young Lawyers Association
MICHAEL WYATT
is an Assistant El Paso County Attorney responsible for prosecuting and defending civil litigation cases.

Senior Lawyer Interview

Sam Snoddy

By Clinton F. Cross

I recently interviewed El Paso attorney Sam Snoddy at his law office at 1518 Montana, a house designed by Henry Trost and built in 1906.

CROSS: Tell me about your childhood.

SNODDY: I was born March 24, 1940. Around that time, my father went into the army. My first memory of my father was about five years later when I saw him coming down the street with a duffle bag on his shoulder.

My father participated in the Normandy invasion. He was a member of the original landing force. On its way to the shore his landing craft was struck by enemy fire and destroyed. He survived and had the good fortune of being rescued and sent to a hospital. A few weeks later, he was sent back to the 90th Division, commanded by General Patton and sent back to the front lines. He was assigned to a unit that helped relieve the 101st Airborne Division in the Battle of the Bulge. He received a Purple Heart as a result of his injuries in the first attempted landing.

My mother, like many other women during World War II, went to work outside the home. She got a job at Tinker Air Base in Oklahoma where she inspected B-17 bombers.

I have a younger sister, who now lives in the Los Angeles metropolitan area.

CROSS: Where did you go to school?

SNODDY: I went to four different high schools: Stuttgart American High School in Germany; Palmer High School in Colorado Springs; Putnam High School in Oklahoma City; and Austin High School in El Paso. I worked for El Paso Natural Gas as a mail runner for nine months; then went to Texas Western, majoring in business with a minor in economics. Finally, I went to the University of Texas Law School, graduating in 1967.

CROSS: Do you now have a wife, and perhaps children?

Sam Snoody

SNODDY: My wife of 21 years died of cancer a few years ago. I have two children, Kymberly Coleman and Sam Shoddy, Jr. Kymberly is a pediatric emergency physician in Austin. Sam is a teacher in Cloudcroft. He was twice selected a "Teacher of the Year" in two different schools here in El Paso.

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

SNODDY: I wanted to return to El Paso. I got a job with Orba Lee Malone. He served on the school board and did a tremendous job for the district. He was a very religious person, and a great public servant. We were together until 1983 when I opened my own practice. As a solo practitioner, I did medical malpractice, personal injury, insurance litigation, and some product liability work.

In 2001 I got involved in a case that changed the focus of my practice. I was having lunch with an Eagle Scout who had just graduated from the Coast Guard Academy. He seemed a little depressed. When I asked him what was wrong, he told me he had been at a friend's home for a Christmas party. One of the guests had gotten a little out of hand, and the police were called. My friend was arrested. The husband of the hostess, a physician, was also arrested by the police and beaten. I filed a civil suit against the city and the police, and ultimately the case settled. Today my Eagle Scout friend is stationed at the Coast Guard headquarters in Washington, DC and is working on the development of coast guard cutters. He is having a great career.

Since 2001, I have been trying more and more civil rights cases.

CROSS: Any recent cases of interest?

SNODDY: In 2008 Angie Lugo and I represented an army couple who suffered from a police home invasion and extreme humiliation based on a void warrant for their son. The police showed up looking for the son, who at the time was already in jail because he had been turned in by his parents.

When the police arrived, the mother of the young man was taking a shower. The police pounded on the door. When she looked through the peep hole in the door she saw who they were and asked what they wanted. They demanded entry. She asked for time to put on some clothes. When they threatened to batter down the door, she cracked open the door a little bit. They then barged in, confronting her.

The husband, who at the time was in the back yard, was detained by two officers with "guns at the ready" and taken into the house. There he saw his wife, who was naked and shaking. She had urinated on herself. After being repeatedly told that their son was in jail, the police finally checked with jail records and confirmed the couple's story. They left without any apologies.

The case ultimately settled.

CROSS: When you are not practicing law, how do you spend your time?

SNODDY: I really enjoy visiting my children and my one grandson. We don't always agree, but we have great discussions about almost everything except political races. For instance, my daughter is somewhat disillusioned about the business of medical

practice. She has problems about how the legal and medical professions interact, and I also have some concerns about my profession.

CROSS: Any other activities?

SNODDY: Well, let me tell you about the Boy Scouts. I have been involved with scouting for fifty-seven years, beginning when I was eleven years old at Ft. Knox, Kentucky. During my childhood I participated in numerous scout units because my father was in the army.

As a Scout Master I have taken scouts to Korea, Australia, New Zealand, Alaska, Canada, Hawaii, Chili, Great Britain, and all over the United States. Under my supervision, I have helped 130 scouts earn the Eagle Award.

CROSS: Why does this matter?

SNODDY: When young men hit puberty, they begin to look to their peers for approval and guidance. Parental influence may still be important, but at some point children need to cut the "psychological umbilical cord." If you want your children to incorporate positive values, become self-disciplined, responsible, and learn team work, then you should guide them to peer group communities that are dedicated to these goals.

Scouts strive to be recognized as Eagle Scouts, and are very proud of the honor when they achieve it. For example, the first man on the moon, Neil Armstrong, is to this day very proud of being recognized as an Eagle Scout.

As a result of scouting, I have met many outstanding people. Bruce Koehler and his two brothers are all my Eagle Scouts. I also passed David Hassler, with ScottHulse, on his swimming and life saving merit badges.

I have been enriched by having made Scouting friends all over the world.

CROSS: You mentioned a few minutes ago that you had some concerns about the practice of law. What are some of your primary concerns?

SNODDY: I have many concerns. For instance, I am troubled about the need to deliver legal services to the public at affordable prices. As a general rule, it costs most people and businesses too much money to resolve disputes. This problem has been evolving for many years, and there are numerous negative consequences. The Pledge of Allegiance promises all Americans "justice for all," but it fails to mention the cost in time and money. When folks realize the cost is prohibitive, they blame lawyers and think there is no real justice. A perhaps unintended consequence of the cost of litigation is the courts approval of arbitration clauses. This deprives litigants of their right to jury trials and the right to appeal—a result that reduces the cost of dispute resolution, but also diminishes due process rights.

Sam Snoddy in Alaska

This problem is, of course, connected to the lawyers need to earn a living. The cost of law school, the cost of continuing legal education, and the desire to live the American dream requires lots of money.

CROSS: So what can we do about this problem?

SNODDY: I believe mediation has merit. I am not sure what else might help, but lawyers, law professors, and Bar Associations need to confront this problem with serious thought and courage.

CROSS: Any other concerns?

SNODDY: I have some concerns about election of judges. There are two major problems. First, good government depends on an informed electorate. The general public has little understanding regarding the kinds of qualifications a person should have to be a judge. Even if they did, it would be almost impossible for them to figure out whether or not the candidate is qualified and has the proper judicial temperament. It is sometimes easy but at other times very difficult to learn much about a candidate's values. Adding to the problem, lawyers are discouraged from criticizing judges by the Canons of Ethics and if we were not prohibited by the Canons from doing so we still might not do so as we might have to appear in that particular judge's court in the future. In short, it is almost impossible to wage a meaningful political campaign for a judicial position.

Voltaire once said "Democracy replaces appointment by the corrupt few with election by the uniformed many." We can improve our democracy by informing the "many."

CROSS: So how do we do that?

SNODDY: The El Paso Times has recently put together a committee to question and evaluate judicial candidates. I have the story right here on my desk. It says that committee members include Enrique Moreno, Laura Enriquez, Denise Butterworth, Lynne Coyle, El Link Beck, Heather Ronconi, John Mobbs, Juan Carlos Garay, Ruben Robles, Mary Stillinger and Luis Gutierrez. That is an incredibly impressive group of lawyers! Let's see who they recommend, and let's see if the public listens!

In addition, our Bar Associations—all of them—should conduct Bar polls. The results should be published on one web site on the Internet. We should run public interest spots on radio and television publicizing the availability of the website.

The public has a right to meaningful information concerning the candidates running for office. We must elect good judges if we want a just legal system.

CROSS: Any advice for young lawyers?

SNODDY: Don't think you are superior to everyone else in the "justice" business just because you have a law degree. There is no substitute for "on-the-job" training. Secretaries and clerks often know more they you do.

I often recall Abraham Lincoln's words, "I not only use all the brains God gave me, but all the brains I can borrow." Get the most experienced legal secretary you can find, and listen to him or her. Encourage your secretary to question your work, to be a partner in your work; not just a typist or clerk. Success is a team effort.

CROSS: Do you have any facts or examples to support your argument?

SNODDY: When I went to work for Orba Lee Malone, I had to draft a petition. I had never learned to draft pleadings in law school. Peggy Rossen was one my secretaries. I dictated my pleading and handed the cassette tape to Peggy to type. She came back, held up the document, and recommended I make a few changes to certain sections of the petition.

Some months later, I had to draft a contract. I dictated a multi-page contract and then went to court. When I got back, Peggy had typed the contract. She put four gold stars at the top of the contract, and laid it in my chair. I knew I had arrived.

Governor Mark White later appointed Peggy to the Texas Public Utility Commission; she was later elected to the Texas Senate. She was smart; she worked hard; and she deserved both jobs.

You should also treat court personnel with respect. They probably know a lot of things about the practice of law that you do not know. Do not be ashamed to ask for help. I may be a "senior lawyer," but I learn something new every day from people who have not passed the Texas bar exam.

CROSS: Anything else?

SNODDY: Yes. A new law school graduate must be very careful about how to begin the practice. You should get a job where you can learn from an older, experienced attorney who also has a reputation for integrity. If you want to practice solo, you will also need lots of money in the bank. Most young lawyers fail because they do not know how to market themselves, how to manage an office, and how to run a business. Do not set yourself up to fail after you have worked so very hard for the chance to succeed.

It is very important to work with ethical attorneys. There is truth in the saying, you are judged by the company you keep. Adding to the challenge, it is sometimes hard to know who is ethical and who is not. "Successful" lawyers are not always ethical lawyers.

CROSS: So what did you do in order to try to get the right start?

SNODDY: I asked Dr. Russell Deter, a prominent civil leader and a friend who I knew and trusted, who I should work for. He mentioned Orba Lee Malone. Orba Lee Malone was a good lawyer and an ethical lawyer, and I was lucky enough to get a job with him.

As I practiced, I grew to respect John Grambling, Bill Duncan, Gerald Shifrin, and Joe Calamia. These lawyers set an example for the rest of the El Paso Bar. We need to nurture, and honor these lawyers, lawyers who set a high moral standard for our profession.

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

School Ticketing, Classroom Removals Come with a Cost

By Deborah Fowler

***M.L.**, a 16-yr-old boy with autism, was ticketed at school for Assault by Contact for kissing another special needs student on the cheek and on the mouth. As a result, a student with the emotional age of a seven-year-old found himself adult court.*

***K.T.** and her mother are both indigent. They owe the court $774 for unpaid school-issued tickets, which includes a $300 fine for truancy. K.T. turns 17 in 18 months and, if these fines are not paid by then, she risks arrest and jail.*

***R.A** received a Class C misdemeanor ticket (Criminal Mischief) this school year for "stealing" an extra bag of free potato chips offered to students after taking the TAKS test.*

Behavior that used to be handled in a trip to the principal's office is increasingly leading to classroom removals and Class C misdemeanor ticketing by school police officers—measures that introduce thousands of Texas students to the justice system every year. The enormous human costs have been widely documented by state and national juvenile justice expects—and only recently, with the release of a new Texas Appleseed report, has the huge cost to taxpayers been better understood.

Across the state, whole dockets in adult municipal and justice of the peace courts are devoted to hearing school ticketing cases. In these court settings, students lack the legal protections afforded by juvenile courts. There are no court-appointed attorneys, and most families opt not to pay for legal counsel. Students are frequently ticketed by police officers who did not witness the event. Not all youth are advised of their legal rights—and in one major Texas city, ticketed students do not even see a judge unless they opt to plead "not guilty."

Most ticketed students are fined up to $500, ordered to complete community service, and risk a criminal record. Even more disturbing are research findings released last year by the Council of State Governments, which compared school discipline and juvenile justice records of *nearly a million Texas students* for a six-year period. Texas Appleseed contributed to their work, which found that suspending or expelling students for more minor, non-violent offenses carried these major human costs:

Tripled the likelihood of these students coming into contact with the juvenile justice system within the subsequent school year;

Disproportionately impacted minority and students with emotional disabilities at rates double or more their representation in the overall student population; and

Dramatically impacted educational achievement: 31% of students with one or more suspensions or expulsions repeated their grade level at least once and nearly 10% with one disciplinary contact dropped out of school (five times the rate of other students).

With increased pushback from parents and advocacy groups, state lawmakers are focusing more attention on discipline in schools.

Latest State Laws: School Discipline

Texas lawmakers have taken some steps to address over-reaching school disciplinary practices, and will be asked to do more in 2013. In 2009, legislation passed to allow schools to take a student's intent and disability into account when meting out discipline; a

separate bill prohibits expulsions from school-operated Disciplinary Alternative Education Programs (DAEPs) to justice system-operated Juvenile Justice Alternative Education Programs (JJAEPs) for minor Student Code of Conduct violations.

While more far-reaching school ticketing legislation failed to pass in 2011, the Legislature did enact a law to prohibit school police officers from issuing Class C misdemeanor tickets for Disruption of Class or Transportation to students in kindergarten through 6th grade.

Unfortunately, young schoolchildren are still ticketed in Texas schools for Disorderly Conduct and other minor misbehavior. Also, state lawmakers stopped short of limiting ticketing of middle and high school students, who historically receive the majority of citations.

While Texas Appleseed conservatively estimates that at least 275,000 Class C tickets are issued to Texas public school students each year, school districts and school police officers are not required to keep this data—either by total number of tickets issued and arrests made or broken down to reflect the students' age, race, or special education status. Some school districts are keeping this data, most districts do not, and some are beginning to collect the data in response to increased legislative and media scrutiny.

Any future legislated changes to student discipline in Texas will largely depend on an awareness of, not only the considerable human costs associated with these "get tough" policies but, the financial costs as well.

Removing Students from School Costs Taxpayers

Texas Appleseed is issuing a series of first-of-their-kind reports this year documenting the cost to taxpayers of removing students from the classroom through suspension and expulsion. Our first analysis focused on Dallas ISD, which conservatively spent ***$11.3 million*** in 2010-11 to make about 22,800 referrals to out-of-school suspension, send 2,500 students—including 300 elementary-age children to disciplinary alternative schools (DAEPs), and pay to educate hundreds of youth expelled to the JJAEP at the discretion of the school district.

The pushback from the Texas Organizing Project (TOP) and their community supporters reflects a growing frustration with a disciplinary system that does not appropriately match the disciplinary response to the seriousness of the offense—contributing to a "school-to-prison pipeline" for too many students.

Texas Appleseed and TOP are recommending that Dallas ISD stop referring elementary students to DAEPs and to commit to keeping young children at their home campus. Austin ISD is already contemplating dramatically reducing its reliance on its DAEP next school year by keeping more students on their home campuses and targeting them for additional services.

We are also recommending that school suspension only be limited to students who pose a risk to student and school safety. Fortunately, there are evidence-based alternatives—such as Positive Behavioral Interventions and Supports—that have been shown to reduce disciplinary referrals, improve school climate, and improve teacher satisfaction. Schools in Texas and across the country that have implemented PBIS have reported positive results.

In Summary

The intersection of school discipline, the juvenile justice system, and adult prison is long overdue for a stop light. Reducing the short-term financial cost of failed approaches to student discipline addresses only part of the challenge. Most critical is the need to shift toward a disciplinary policy that keeps students in school and out of the juvenile justice system, supports our teachers, and defines the role of school police as "peace keepers," not disciplinarians.

DEBORAH FOWLER is Deputy Director of public interest law center Texas Appleseed. She is primary author of three reports on Texas' school-to-prison pipeline and recipient of the 2011 Excellence in Public Interest Award for her contributions to public interest law.

Teen Court

By Laura Christopherson

Teen Court is a community based intervention/diversion program designed for first-time non-violent, Class C misdemeanor juvenile offenders. In September 2000, the El Paso County Attorney's Office in partnership with the Socorro Independent School District (SISD) created the El Paso County Teen Court, the first of its kind in El Paso County. In 2008, a similar partnership was created with the El Paso Independent School District (EPISD). The objectives of the program are to hold youth accountable for their behavior and deter the juvenile from further involvement in the system.

The program is directed by a teen court administrator who recruits students from the respective school districts to serve as teen court attorneys and bailiffs. Licensed attorneys are recruited to volunteer to serve as judges presiding over the caseload. The teen court events are held in schools in their respective districts with the assistance of a school administrator or teacher. The events resemble a regular court proceeding with the youth defendant being represented by a student defense attorney and the state represented by a student prosecuting attorney. The jury is composed of teens, either volunteers from the schools or prior youth defendants. Unlike a regular proceeding, the only issue in question is the sentence as the juvenile has previously accepted responsibility for the charge in the referring court. The jury who determines the sentence is given guidelines previously determined and agreed upon by the school district outlining the community service hour range and the jury term service range. Also, the jury may require the youth to attend life skills classes and other like consequences.

The benefits of the program are multi-fold. Initially when the case appears in either Justice of the Peace Court or Municipal Court, the family, if the youth is a first-offender, has the option to select Teen Court. If Teen Court is selected the family is required to pay only $20. If Teen Court is not selected the family may be required to pay up to $70 in court costs and a possible fine of up to $500. In addition, when the youth completes Teen Court the charge is dismissed, no conviction is recorded. The community benefits from these referrals because Teen Court sentencing includes community service in the community where the juvenile resides.

Statistics show that Teen Court is an effective way of deterring teens from future unlawful conduct. The recidivism rate for teens that qualified for the 2011 term but did not participate in teen court was 10% while, the recidivism rate for those who did participate was 3%. Overall, Teen Court holds participating youth responsible for their behavior while providing an understanding of the court system, and providing the community with much needed community service hours.

If you would like to participate in the Teen Court program as a volunteer judge, please contact Juana Padilla at the El Paso County Attorney's office and notify her of your interest in the program.

LAURA CHRISTOPHERSON
is an Assistant El Paso County Attorney responsible for managing the Juvenile Unite and prosecuting juvenile cases

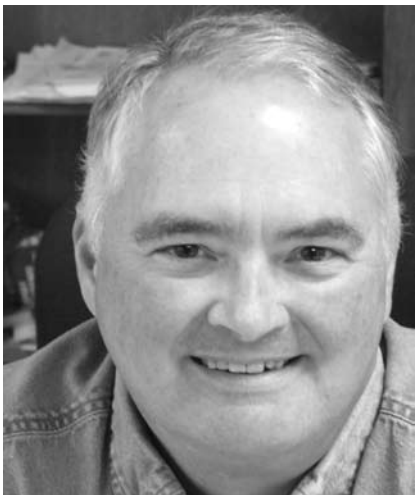
Blake Barrow: Lawyer with a Heart of Gold!

by Judge Oscar G. Gabaldón, Jr., CWLS

"Compassion is sometimes the fatal capacity for feeling what it is like to live inside somebody else's skin. It is the knowledge that there can never really be any peace and joy for me until there is peace and joy finally for you too." This description of compassion by American author, Frederick Buechner (b. 1926), in large part describes attorney Blake Barrow. A family man of faith and compassion, Blake Barrow brings hope and good will to many in our community. In spite of a successful law practice, Blake eventually found that his calling was to be found outside the practice of law. However, even then, he finds his law license quite handy when serving others in his present calling.

Years ago, Blake was inspired by his father to enter the practice of law. After WWII, Blake's father started a law firm in Houston, Texas. The Barrow, Bland, Rhemet & Lee law firm, which at one point was comprised of 50 lawyers, enjoyed a formidable presence in the Houston community as one of the city's more prominent law firms. In his later years, Blake's father taught Oil & Gas Law and Professional Responsibility at the prestigious Texas private law school, South Texas College of Law.

Still madly in love, Blake states "I have been married to the same woman for 31 years and have provided no business for family law courts." Also precious to him are his lovely daughters, one that is pursuing her Master of Science degree in Animal Studies at Texas A & M University in Kingsville, and a younger daughter that is studying Architecture at Northeastern University in Boston.



Blake Barrow

Blake playfully states that he "…stayed in college for 13 years because I enjoyed watching Baylor play football and I didn't want to get a job." All the same, Blake has quite an accomplished educational background. He holds several degrees, including a B.A. in Theology and English (Baylor, 1980), an M.A. in American Studies (Baylor, 1983), a Master of Theological Studies (Emory University, 1987), and a J.D. (Baylor, 1988).

Blake now calls El Paso home. He came to El Paso when he was hired by the law firm of Scott & Hulse. Once in El Paso, he soon felt right at home. He reflects back and says, "I loved the El Paso people, climate, food, and golf courses." Lucky for El Paso, Blake's contributions to the betterment of the El Paso community have been outstanding. This is especially the case with his leadership efforts in serving many who are in dire need of assistance in our community. He has been the Executive Director of the Rescue Mission since 1997, an organization that is dedicated to uplifting, assisting, and empowering some of the most vulnerable members of our fair city, namely, the poor and the homeless.

In speaking with Blake, he shared some of his fascinating stories about the people and situations he has encountered while at the Rescue Mission. These amazing and thought-provoking real life stories are part of a book Blake has been writing. The book will be entitled *Stories from the Shelter: A Lawyer's Observations of Homelessness, or Lessons from a Slow Learner*. Having read some of the book chapters, it is evident to me that anyone reading the stories will gain new perspectives about people and life. Readers will be inspired and come to better appreciate the beauty of diversity and the goodness of people; the stories will encourage and touch the hearts of many.

Blake will undoubtedly continue to leave his mark in our great community. He is the kind of man that is always ready and willing to give a helping hand. When I recall the words of American civil rights leader Reverend Jesse Jackson, "Never look down on anybody unless you're helping them up," I cannot help but think of Blake Barrow.

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

ADVANCE SHEET, *circa 1546*

By Charles Gaunce

Common Pleas, 1546
Gell, Mich. 38 Hen. VIII, fo. 45.

> "My Lord Montague, Chief Justice of the Common Bench, said in the case of a rescue returned that if a capias is awarded out of the Common Bench without any original, and a rescue is made against the sheriff, the person who made this rescue shall be awarded to the Fleet and make a fine, even though this process went out without warrant. The reason is the king's process ought to be obeyed in all cases."

The reported case is the stuff that Hollywood blockbusters are made of today: or at least B movies starring Errol Flynn. While the comment of Lord Montague is reported as an off-the-cuff remark, it clearly had an impact on someone. As we have seen in prior cases, the English were rather formal sticklers for procedure, and as anyone who survived their Criminal Law course can attest, the English courts were readily capable of drawing fine distinctions when they wanted to. After all, most of those fine distinctions drawn in the criminal law were so that the judges would not have to sentence someone to death if they did not want to. In the case under consideration - not so much. After all, it is the Court's authority we are talking about.

So what happened? First, the Common Bench (and without expressly stating so in the reported facts, probably by the very same Lord Montague) ordered the sheriff to take some hapless soul into custody. The only problem is that the Court never issued the proper paperwork to the sheriff. Nevertheless, the sheriff went about his business and took the person the sheriff knew to be wanted by the Court into his custody, only to be thwarted by our unnamed defendant, who affected a rescue of the detained person.

Thus, the sheriff had no written authority to detain, and the defendant asserted this as a defense to the charge of rescuing the detained person from the sheriff's custody. While it seems rather straight-forward that taking someone from the sheriff's custody would probably get you into legal difficulty, the position that the sheriff can only act upon written orders of the Court does not seem entirely improbable as a defense in English jurisprudence.

Lord Montague would simply have none of it. If he ordered someone detained, that person should be detained, and written authority to do so was not important. He was speaking for the king and "the king's process ought to be obeyed in all cases." So for interfering with the process ordered by the Court and executed by the sheriff, even in the absence of evidence that the process had been ordered, the person interfering with the sheriff was subjected to a fine (amount unstated), and consigned to Naval service. It is interesting to note that no length of service in the Navy is stated. Probably for the reason that no one was expected to survive such service for long enough that it was even an issue.

And that is the back-story to our tale of high-seas adventure already in progress….

CHARLES GAUNCE is the Legal Reference Librarian at the University of Texas at El Paso

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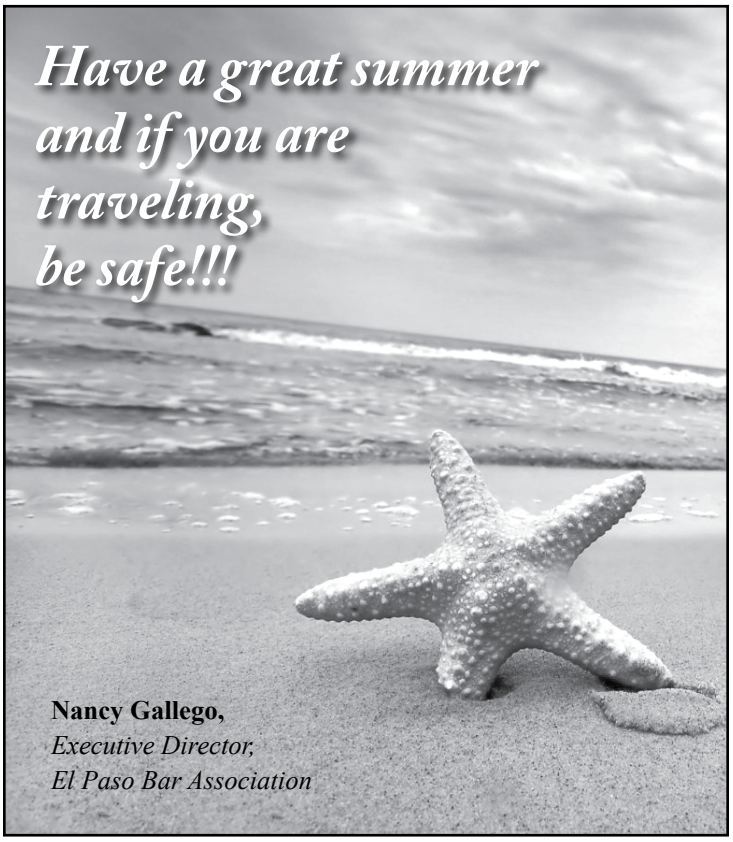

HELP!

The editors of the El Paso Bar Journal solicit your contributions dealing with substantive legal subjects or issues. We believe the interests of El Paso lawyers and law firms will be advanced by the publication of at least one or two articles in every Journal issue dealing with legal subjects and issues, such as the article by Janet Monteros published in the Journal's April/May, 2012 issue.

Good articles, of course, take time, thorough research and clear writing. In some instances, however, the research may be a product of your daily legal work-- researching an issue or writing a brief. We invite you to share your work with the legal community in El Paso and wherever the internet may travel. If issues of confidentiality are involved, the work usually can be sanitized to comport with ethical requirements, while at the same time sharing your hopefully brilliant work with the larger broader community.

Articles should be submitted by e-mail to **Nancy Gallego, Executive Director of the El Paso Bar Association**, at ***nancy@elpasobar.com.*** They must be submitted at least one month prior to the proposed publication date, and they should not exceed 2,500 words unless the article is to be published in more than one issue.

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Free Guided Tour of the El Paso Museum of Art &

Reception to Follow

El Paso Lawyers for the Arts is proud to sponsor Lawrence Katzenstein's presentation on "Estate Planning and Contributions to Museums and Cultural Institutions." Mr. Katzenstein is a national expert in tax and estate planning and is a nationally recog-nized expert in the area of art donations to museums and cultural institutions. Mr. Katzenstein's presentation will be followed by a panel discussion on contributions of art to charitable institutions and non-profit entities.

- 2 Hours of Free CLE
- Free Guided Tour of the Museum
- Free Happy Hour / Reception to follow

El Paso Museum of Art

Please contact Nancy Gallego regarding this event.
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