



# EL PASO BAR JOURNAL

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*An Update of Events and Information*

Oct/Nov 2013

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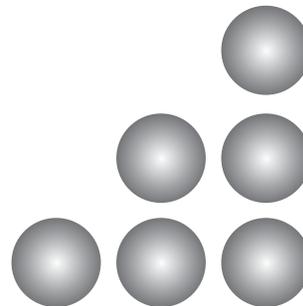
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## PRESIDENT'S PAGE



### Honoring our past and building for the future

Since the last issue of the El Paso Bar Journal, a historic event for the El Paso legal community took place when the United States Court of Appeals for the Fifth Circuit heard oral arguments in El Paso for the first time. Chief Judge Carl E. Stewart, Judge Carolyn Dineen King and Judge Edward C. Prado heard the oral arguments at the Albert Armendariz, Sr. U.S. Courthouse during the week

of September 3, 2013.

The El Paso Bar Association along with the Federal Bar Association had the privilege of co-sponsoring a Welcome Reception in honor of the visiting judges. Kristin Connor Kimmelman and her committee put many hours into planning and coordinating this event. Chief Judge Carl E. Stewart gave praise to the El Paso legal community for its hospitality and generosity.

On September 23, 2013, the El Paso Bar Association presented a check for \$126,300 to El Paso County as a contribution toward funding the legal services provided by lawyers representing indigent persons in criminal matters. The Ethics Committee presented the annual Ethics Seminar on September 26, 2013 at the El Paso County Courthouse. Robert Dinsmoor was the featured speaker.

On October 25, 2013, the El Paso Bar Association, led by George Andritsos, with the support of the Texas RioGrande Legal Aid, will sponsor the Annual Access to Justice Fair at the Valle Verde Campus. The Access to Justice Fair affords El Paso lawyers an opportunity to give back to their community by providing counseling and guidance to fellow El Pasoans on basic legal issues. Members of the El Paso Bar Association are encouraged to contact George Andritsos or Nancy Gallego about helping with this worthwhile annual event. On November 16, 2013, the El Paso Bar Association under the guidance of Don Williams will be putting on the annual El Paso Lawyers for Patriots Conference at the Trans Mountain Campus of the El Paso Community College. Members of the El Paso Bar Association are encouraged to contact Don Williams or Nancy Gallego about helping with this event. Those individuals whom benefit from this special event are former or current members of our Armed Forces. These events have been recognized and received awards both on a national and statewide basis.

Early as it may seem, please hold the dates of February 13, 2014 through February 15, 2014 to attend the El Paso Bar Association's Annual Trial Seminar in San Diego, California. Dan Hernandez and his committee are planning an incredible seminar with great speakers, topics and fun.

In recent years, the El Paso area has seen many young attorneys come to El Paso to practice law. I want to encourage all members of the El Paso Bar Association, if the opportunity arises, to give guidance and encouragement to the young lawyers of El Paso as they constitute are bright future.

**Randolph Grambling, President**

## EL PASO BAR ASSOCIATION

**October Bar Luncheon**

Tuesday, October 8, 2013

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

*Guest Speaker will be Stephanie Karr,*Executive Director of the Center Against Family Violence,  
who will speak on what the Center does and how lawyers can help*Approved for ½ hour of Participatory Ethics***Door prizes will be given out**Please make your reservations by Monday, October 7, 2013 at 1:00 p.m.  
at [nancy@elpasobar.com](mailto:nancy@elpasobar.com) or [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)**Please make sure you RSVP.**

## EL PASO BAR ASSOCIATION

**November Bar Luncheon**

Tuesday, November 12, 2013

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

*This is our annual Salute to Veterans***Door prizes will be given out**Please make your reservations by Monday, November 11, 2013 at 1:00 p.m.  
to Nancy at [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net) or [nancy@elpasobar.com](mailto:nancy@elpasobar.com)**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.

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 can be sanitized to comport with ethical requirements, while at the same time sharing your brilliant work with the larger broader community.

Articles should be submitted by e-mail to **Nancy Gallego** at [nancy@elpasobar.com](mailto: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.

# CALENDAR OF EVENTS

## October, 2013

**Tuesday, October 1**

EPBA BOD

**Friday, October 4**

Frontera Land Alliance Seminar

**Saturday, October 5**

MABA Banquet

**Tuesday, October 8**

EPBA Monthly Luncheon, Stephanie Karr,

ED Center Against Family Violence

**Wednesday, October 9**

EPALP Monthly Luncheon

**Wednesday, October 9,**

EPWBA Luncheon Meeting

**Wednesday, October 9**

EPWBA Fall Fling

**Monday, October 14**

Columbus Day, EPBA Office closed

**Thursday, October 17**

EPPA Monthly Luncheon

**Saturday, October 26**

ATJ Legal Clinic

**November, 2013**

**Monday, November 4**

Veterans Day, EPBA Office closed

**Tuesday, November 5**

EPBA BOD Meeting

**Tuesday, November 12**

EPBA Monthly Luncheon

Salute to Veterans

**Wednesday, November 13**

EPALP Monthly Luncheon

**Wednesday, November 13**

EPWBA Luncheon Meeting

**Saturday, November 16**

EPLP Legal Clinic

**Thursday, November 21**

EPPA Monthly Luncheon

**Thursday, November 28**

Thanksgiving Day

EPBA Office Closed

**Friday, November 29**

Thanksgiving Holiday

EPBA Office Closed

## Access to Justice Legal Fair

**Saturday, October 26, 2013**

9:00 a.m. to 1:00 p.m. in the  
Cafeteria Valle Verde Campus  
of El Paso Community College  
919 Hunter

If you can volunteer for the clinic please contact  
Nancy at [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net)  
or George Andritsos at 566-9995

## El Paso Lawyers for Patriots Legal Clinic

**Saturday, November 16, 2013**

9:00 a.m. to 1:00 p.m.  
Transmountain Campus  
of El Paso Community College

If you can volunteer for the clinic please contact  
Nancy at [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net) or  
Donald L. Williams at [donaldwilliams2@gmail.com](mailto:donaldwilliams2@gmail.com)



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## 18TH ANNUAL CIVIL PRACTICE TRIAL SEMINAR

February 13, 14 & 15, 2014

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more details to follow

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# History In The Making: The United States Court of Appeals for the Fifth Circuit Hears Appeals in El Paso

BY KRISTIN M. KIMMELMAN

For the first time in its 122-year history, the United States Court of Appeals for the Fifth Circuit heard cases in an El Paso district court. The Court normally hears cases in its courthouse in New Orleans, Louisiana. On rare occasions, however, a three-judge panel of the seventeen-member court travels to other venues within the Court's jurisdiction. From September 3rd through 6th, 2013, El Paso benefited from this traveling tradition when the 5th Circuit held court in the Special Proceedings Courtroom on the eighth floor of the Albert Armendariz, Sr. United States Courthouse.

During their week-long stay, Chief Judge Carl E. Stewart, former Chief Judge Carolyn Dineen King, and Judge Edward C. Prado heard sixteen appeals—both civil and criminal—from Texas, Mississippi, and Louisiana. Judges King and Prado are fairly frequent visitors to El Paso. Both traveled to El Paso for the dedication of the courthouse in 2010; Judge Prado—when he was a district judge—helped Senior U.S. District Judge David Briones with the heavy docket over a decade ago. Judge King, chief judge during the construction of the courthouse, helped steer that project to its successful completion. It was thus fitting that they were also part of the first panel to hear cases in El Paso in that very courthouse. Chief Judge Stewart had never been to El Paso before, but—as he made clear during his remarks at the welcome reception with the Bar—he truly enjoyed the opportunity to visit the border and meet El Paso attorneys. All of the judges commented on the extraordinary hospitality of the judges, courthouse staff, and Bar associations.

In addition to the judges, over forty attorneys traveled to El Paso to argue their cases. For many, it was their first visit to our city, and they were pleasantly surprised by our climate, courthouse, and hospitality. An eighth floor conference room was transformed into an attorney lounge complete with local restaurant information, water, coffee, and snacks, and many attorneys took advantage of the view of downtown El Paso to steady their thoughts before their cases were called.

The court was in session from 9:00 a.m. to approximately 12:00 p.m. Tuesday through



*Judge Edward C. Prado, Judge Carolyn Dineen King, Kristin Kimmelman, Randy Grambling, and Chief Judge Carl E. Stewart.*

Thursday and from 9:00 a.m. to approximately 10:30 a.m. on Friday. The judges occasionally referenced their surroundings during the arguments, gesturing to Ciudad Juarez and the U.S.-Mexico border just south of the courthouse as relevant cases and issues arose, and local judges and attorneys took advantage of the opportunity to observe oral argument, stopping by the courtroom as their work schedules allowed. A summary of the cases argued in El Paso is available at <http://www.fedbar.org/Chapters/El-Paso-Chapter/Fifth-Circuit-Oral-Arguments.aspx>.

In addition to holding court and working on cases, the judges took a tour of the border with U.S. Customs and Border Protection, visited the El Paso Intelligence Center, and met with pre-law students at the University of Texas at El Paso. On September 3rd, over eighty attorneys attended the welcome reception hosted by the El Paso Bar Association and the El Paso Chapter of the Federal Bar Association which allowed the judges to meet local attorneys and share some of their experiences and perspectives. Chief Judge Stewart promised that this first visit to El Paso would not be the last, and the Bar associations presented the judges with a photograph of downtown El Paso taken by John P. Calhoun as a memento of the historic week and a gentle reminder to return.

**KRISTIN M. KIMMELMAN** is President of the El Paso Chapter of the Federal Bar Association and a Research and Writing Specialist for the Office of the Federal Public Defender. She is the immediate past President of the El Paso Chapter of the Federal Bar Association.

# Validity and effect of marriage, divorce and annulment under federal immigration law

BY: ILIANA HOLGUIN AND ALBERT ARMENDARIZ, JR.

On any given day, marriage, divorce and annulment proceedings are being conducted at the El Paso County Courthouse. These events are rather commonplace, and so the effects, both negative and positive, are rarely taken into consideration. However, because marriage, divorce and annulment can have an important impact on non-citizens, family law attorneys should be aware of the various provisions of the Immigration and Nationality Act (“INA”) that relate to marriage, divorce and annulment.

## Marriage

There exists no federal law governing marriage. Rather, the law of the jurisdiction where a marriage is formalized is applied in processes governed by the INA. This includes informal (common law) marriages, such as we have in Texas. The United States Citizenship and Immigration Service (“USCIS”) will recognize a marriage that would not be valid in a parties’ state of residence if the state of residence gives full faith and credit to the state where the marriage took place and it is recognized as valid. There are some cases where the USCIS has failed to recognize an incestuous marriage that occurred outside of the United States because the state of residence did not give full faith and credit to the statutes or judicial decision of that other country. If however the state gives full faith and credit to the statutes or judicial decisions of another state, then the marriage will be considered valid even if the applicants’ state of residence would not have recognized the validity of the marriage. For example, if a state forbids marriages between certain blood relatives and a couple marries in another state in an effort to circumvent their own state’s prohibition of the marriage, USCIS will consider the marriage valid if the state of the parties’ residence gives full faith and credit to the out-of-state marriage.<sup>1</sup> The marriage to the first spouse of a polygamist will also be recognized, but not subsequent marriages, unless and until all prior marriages are legally dissolved. However, if the first spouse consented to the subsequent marriages, he/she will be inadmissible to the United States as a practicing polygamist.<sup>2</sup> A



marriage between a post-operative transsexual and an individual now of the opposite sex will be recognized as valid per a 2005 decision of the Board of Immigration Appeals.<sup>3</sup>

Until very recently, same-sex marriages deemed to violate public policy were not recognized, even if valid under the law of the jurisdiction where the marriage occurred. However, following the Supreme Court’s decision in *United States v. Windsor*,<sup>4</sup> which struck down the core provision of the 1996 Defense of Marriage Act, same-sex couples became eligible for more than 1,000 federal benefits available to heterosexual couples, including the right of a U.S. citizen or Lawful Permanent Resident (LPR) to file a family-based immigration petition on behalf of a spouse. In its June 26, 2013 decision, the Supreme Court ruled 5-4 that Congress had exceeded federal authority and violated the constitutional guarantee of equality when it decided to deny federal benefits to same-sex spouses, while continuing to recognize other marriages performed under varying state laws. As a result, on July 2, 2013, then-Secretary of Homeland Security Janet Napolitano issued a statement directing the USCIS to review immigration visa petitions filed on behalf of

same-sex spouses in the same manner as those filed on behalf of opposite-sex spouses. Shortly thereafter, the USCIS approved the first same-sex marriage petition filed by a U.S. citizen on behalf of a spouse.

There are some exceptions to the general proposition that marriages that are deemed valid in the jurisdiction where they occurred are valid for federal immigration purposes. For example, proxy marriages are statutorily barred unless consummated.<sup>5</sup> Additionally, fraudulent or “sham” marriages, even if legally valid, will not be recognized. A fraudulent or “sham” marriage is defined by relevant case law as one in which the parties marry primarily for the purpose of obtaining legal resident status for the non-citizen spouse. In fact, the INA outlines two specific situations in which it will be presumed that marriage fraud has occurred. First, if the marriage is less than two years old when the non-citizen spouse immigrates, and then a divorce or annulment occurs within two years of the non-citizen spouse’s immigration to the US, fraud will be presumed and the non-citizen will be subject to removal.<sup>6</sup> Additionally, an immigrant visa petition based on a marriage that was entered into during the course of removal proceedings may not be approved

until the non-citizen has resided outside of the United States for a two-year period beginning after the date of the marriage. Further, a non-citizen spouse may not adjust status to that of LPR if the marriage was entered into during the pendency of proceedings.<sup>7</sup> However, there is an exception to the bars of INA §§204(g) and 245(e)(1) if it can be established by “clear and convincing evidence” that the marriage was entered into in good faith.<sup>8</sup> Because of the potentially negative consequences of the fraud presumptions contained in the INA, it may be beneficial for couples who meet the informal marriage requirements and have been common-law married for more than two years to file a Declaration of Informal Marriage pursuant to Title I, Subtitle A, Ch. 2, Subchapter E of the Texas Family Code in lieu of undergoing a marriage ceremony and thus avoid the application of the marriage fraud presumptions.

Another common occurrence along the U.S./Mexico border is the performance of marriage ceremonies at the ports of entry. Many individuals have the misconception that it is somehow more beneficial to have a U.S. marriage certificate, as opposed to a foreign marriage certificate, and so arrange to be married at a port of entry. Being married at a port of entry, however, can have potentially very negative consequences on an immigrant spouse who does not have a valid visa or other authorization to be present in the United States. The INA provides that anyone who has been unlawfully present in the U.S. for a period or periods of one year or more in the aggregate, or who has been deported from the U.S. and “who enters or attempts to reenter the United States without being admitted is inadmissible.”<sup>9</sup> The inadmissibility is permanent, and no waiver can be sought to waive this ground of inadmissibility until after the immigrant has remained outside of the U.S. for ten years following the date of his/her last departure from the U.S. Thus, if an immigrant spouse has been unlawfully present for an aggregate period of one year or more, or has been previously deported, and later submits an El Paso County marriage certificate indicating that he/she was married in El Paso County, he/she may be found to have violated INA §212(a)(9)(C), and thus be found inadmissible to the U.S. and ineligible to apply for a waiver of inadmissibility until ten years have elapsed since the date of the individual’s last departure from the U.S.

#### Divorce and annulment

Like marriage, there exists no federal divorce or annulment law, and the law of

the jurisdiction where the decree is issued is applied for purposes of federal immigration law. However, the USCIS will assess a divorce decree’s validity first by examining whether the state which granted it properly assumed jurisdiction over the proceedings. The USCIS applies the principle that a divorce if valid where undertaken will be valid everywhere.

Given the requirement that a marriage not be a sham or fraudulent marriage, a divorce is almost always preferable to an annulment for the immigrant spouse. If, however, the record is clear that any fraud was one-sided and committed by the citizen spouse then an annulment will not give rise to sham or fraudulent marriage considerations. One federal Court of Appeals has held that a finding of marriage fraud by a state court judge in an annulment proceeding is entitled to full faith and credit in a subsequent deportation proceeding in immigration court, and raises the statutory presumption of fraud to a “presumption plus.”<sup>10</sup> If the law of a state makes the marriage void *ab initio*, then for purposes of federal immigration law, the marriage is deemed to have never existed. This would be the case if a Texas court declares a marriage void pursuant to Title I, Subtitle C, Chapter 6, Subchapter C of the Texas Family Code.

The effects of a divorce or annulment under federal immigration law can be positive, negative or neutral, depending on the circumstances. For example, the son or daughter of a lawful permanent resident who lost their ability to immigrate as a result of a marriage can regain the ability to immigrate if he or she divorces and the LPR parent submits a new family-based petition on their behalf. Likewise, the son or daughter of a U.S. citizen who married and lost their ability to immigrate quickly as an immediate relative can be immediately eligible to immigrate if the divorce occurs and the U.S. citizen parent files a family-based petition prior to their 21st birthday. Additionally, the dissolution of a prior marriage of a U.S. citizen or LPR permits him/her to marry a non-citizen and file an immigrant petition on behalf of the new spouse.

Negative consequences of a divorce include the inability to complete the immigration process if a non-citizen is seeking to immigrate based upon a marriage which is terminated prior to the completion of the immigration process. Additionally, as mentioned previously, if a divorce occurs within two years of the immigration of a non-citizen spouse based upon a marriage which had existed for less than two years prior to the spouse’s immigration, it

will trigger the statutory presumption that the marriage was a sham.

In some cases, a divorce or annulment will have not have any effect on a pending immigration matter, such as when a non-citizen is seeking to immigrate through a family-based category which does not require a particular marital status, such as the category for siblings of U.S. citizens. However, because the spouse of an individual immigrating as a sibling of a U.S. citizen is also eligible to immigrate under that category, if their divorce occurs prior to the completion of the immigration process, the spouse of the sibling of the U.S. citizen will lose the ability to immigrate under that category.

Like sham marriages, there have also been instances of sham divorces which the USCIS has refused to recognize. Such has been the case where the evidence shows that a couple has continued to live together and raise children together, and that the divorce was obtained for the sole purpose of creating an immigration benefit for one spouse.<sup>11</sup>

Because marriage, divorce and annulment can have a tremendous impact on non-citizens, it is advisable that family law attorneys seek the assistance of an immigration attorney prior to counseling their clients regarding any potential consequences of family court actions. Federal immigration law impacts so many other areas of practice and has become more and more complex over the years that it has become prudent to seek the counsel of attorneys specializing in immigration law when representing non-citizens in non-immigration matters.

#### Footnotes

1. See, *Matter of E-*, 4 I&N Dec. 239 (BIA 1951).
2. 8 USC §1182(a)(9)(A).
3. *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005).
4. *United States v. Windsor*, 570 U.S. \_\_\_\_ (2013)
5. INA §101(a)(35).
6. INA §237(a)(1)(G)(i).
7. INA §§204(g), 245(e)(1).
8. INA §245(e)(3); *Matter of Fuentes*, 20 I&N Dec. 227 (BIA 1991).
9. INA §212(a)(9)(C).
10. *Rodriguez v. INS*, 204 F.3d 25, 26 (1st Cir. 2000).
11. *Matter of Aldecoaotalora*, 28 I&N Dec. 430 (BIA 1983)

**ALBERT ARMENDARIZ, JR.** and **ILIANA HOLGUIN** are principals in the firm of Dunbar, Armendariz, Hegeman & Holguin, PLLC, and practice regularly in the area of federal immigration law.

# Health care reform: it affects everyone

BY JOSE "ABE" HOWARD-GONZALEZ

If there is one law that has had or will have an impact on nearly every person in the country, it is the Patient Protection and Affordable Care Act ("ACA")—otherwise known as the health care reform law. The ACA's overarching goal is to have nearly all Americans covered by health insurance. The principal means to achieve that goal is a penalty, or tax, on certain businesses that choose not to offer coverage to their full-time employees and a penalty on individuals who choose not to acquire coverage. These penalties will have the most immediate impact on both businesses and individuals.

For businesses, the penalty is somewhat easy to state: those employers with 50 or more full-time employees will have to provide minimum health insurance to their full-time employees or, if they choose not to do so, will have to pay a penalty. However, even if employers do offer health insurance to their employees through a group plan, if that plan's share of the total allowed costs of benefits provided under the plan is less than 60% of those costs (i.e., it does not provide "minimum value"), or if the employee's premium contribution for self-only coverage is more than 9.5% of the employee's household income (i.e., the coverage is "unaffordable"), then the employer will still have to pay a penalty. Both penalties apply only if the employees—who do not receive coverage or for whom the coverage is unaffordable or does not provide minimum value—receive one of the new tax credits or subsidies under the ACA.

While providing a brief, one paragraph overview of the employer penalty is fairly easy, applying it is a bit more difficult. For instance, employers only have to provide coverage for full-time employees, which are defined as employees who average 30 hours of service per week. But what if the employees averages 25 hours in January and 35 hours in February? Does the employer have to provide coverage in January? Will it have to pay a penalty if it does not? The IRS has attempted to answer these questions by allowing employers to measure employees' hours over a set time frame (between 3-12 months) and use that measurement prospectively for a similar time frame (called a "stability period"). So, an employee who averages 28 hours of service during the measurement period (say, from January through December 2014) can be treated as a part-time employee for the next

3-12 months, the stability period, (say from January through December 2015) regardless of how many hours the employee actually worked during that stability period. This will allow employers to go on about their days without having to keep track of their employee's hours every month.

Explaining this system is far easier than implementing it, especially for certain employers like school districts where teachers and other employees do not work as many hours during the summer.

But employers are not the only ones that have to worry about penalties under the ACA. Nearly all individuals also have to comply with the ACA because nearly all individuals must obtain health insurance coverage or else face a penalty for not doing so. The penalty is not much the first year it begins (approximately \$96 for a single person in 2014), but it does increase each year after that and it becomes increasingly more burdensome. Individuals will have assistance in shopping for insurance through marketplaces called Exchanges, which are supposed to begin open enrollment October 2013. The insurance provided on the Exchanges is supposed to be competitive, in terms of costs, to coverage provided by employers. Regardless, individuals will have to get minimum essential coverage in order to avoid the individual penalty, whether it be through Medicaid, through a spouse's insurance, or through the Exchanges.

But the ACA is not all about penalties. It also has other provisions that affect employers and employees alike. For example, employers with insured plans can no longer discriminate in favor of highly compensated employees. This requirement has existed for self-funded plans for some time but only now applies for insured plans. That means employers will no longer be able to

offer better benefits to their executives if they do not offer those same benefits to their other employees. This nondiscrimination provision provides headaches for some employers but obviously provides some benefits to employees who will now have access to benefits they otherwise would not have had.

Employees also have new whistleblower protections. Employees who receive one of the new tax credits or subsidies under the ACA are now in a protected category. Employers cannot discriminate against them or retaliate against them because they received the tax credit or subsidy. Why would an employer want to do that in the first place one may ask? Well, because the employer penalties apply only if the employees receive the tax credit or subsidy. So, if an employer with more than 50 full-time employees refuses to offer coverage to any of its employees, it will not be subject to the penalties unless one of its employees receives the tax credit or subsidy. If there is only one employee who does so, the employer may think it can just discharge that employee to avoid having to pay the penalty for the rest of its employees. The new whistleblower protection is meant to prevent that from occurring.

There are many other provisions of the health care law and certainly more nuance to the provisions discussed above. But, no matter how you look at it and no matter whether you are an individual or a business, the ACA will affect you in one way or another. And with regulations still to be issued for the thousand-page law, the ACA is a law that will be interpreted and implemented for many years to come.

**JOSE "ABE" HOWARD—GONZALEZ** is an attorney in the El Paso firm KempSmith LLP and specializes in labor and employment law.



## SENIOR LAWYER INTERVIEW

## ODELL S. HOLMES JR.

BY CLINTON F. CROSS

I recently reconnected with Odell Holmes, an old racquetball buddy, and asked him to agree to participate in a Senior Lawyer Interview. He sat down to talk to me in my office but soon left to play racquetball with fellow attorney Jim Baumann, leaving me to wonder whether or not he really is a “senior lawyer.”

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

**HOLMES:** My father, Odell Holmes, Sr., worked for the U. S Postal Service for over 40 years. My mother was born in Waco and became a nurse, who dedicated her life to the service of others. She lived to be almost 100 years of age. In her memory, our family established the Mary B. Holmes Nursing Scholarship at UTEP to continue her legacy of helping others.

I have one sister, Sharon Duncan. She has been a teacher and principal in a number of schools here in both the Ysleta and the Gadsden school districts.

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

**HOLMES:** I attended Austin High School, and then Texas Western College. I went to Baylor University School of Law, graduating in 1968.

**CROSS: After graduation, what did you do?**

**HOLMES:** I returned to El Paso and with Judge William Ward’s help got a job with District Attorney Bart Boling. After Bart left, I worked for George Rodriguez, Sr. Eddie Marquez, later judge of the 65th District Court, was the first assistant. At that time, there were only six lawyers in the office. In one year, I got to try about 50 to 52 felony trials.

In 1969, I went to work for Collins, Langford, and Pine. I remained in that firm until 1973 when I opened my own law office.

**CROSS: Your family?**

**HOLMES:** I have an incredible family. I married Annette Jordan in 1976, and we had twin daughters, Amanda and Courtney and a son, James. My twin daughters are nurse practitioners in El Paso and my son is a middle school teacher in San Diego, California. My



Odell S. Holmes Jr.

son has two children, Gavin and Bella. My daughter Amanda has one child, Maddie. My other daughter Courtney is expecting her first child in January.

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

**HOLMES:** After I started my own practice, I was hired as a city prosecutor serving in the Municipal Courts. In 1979, I was elected a Municipal Court Judge, and ultimately served as a presiding judge of those courts. In 1985, I was appointed by City Council as Judge of the newly created Municipal Court of Appeals and I have served in that capacity since that time.

**CROSS: Why did the city council create the Municipal Court of Appeals?**

**HOLMES:** Prior to 1979, defendants had a right of appeal to the county courts on a *de novo* basis but the *de novo* hearing would never get set. To address this problem, the Texas legislature passed a Court of Record statute which eliminated *de novo* appeals and provided for appeals based on the municipal court record to the county courts at law. Once again, the County Court at Law judges were overwhelmed by their own dockets--misdemeanor dockets compounded

by newly acquired civil case jurisdiction. After only one year, they were faced with a backlog of over 1500 cases., County Court at Law Judge John Fashing conceived of the idea of creating a Municipal Court of Appeals with sole jurisdiction over municipal court cases. Acting on his recommendation, Senator Jack Vowell sponsored Texas legislation to create the El Paso Municipal Court of Appeals. As far as I know, this court is unique in the State of Texas.

**CROSS: Where can we find this legislation in our statutes?**

**HOLMES:** The court of record statute is Chapter 30 of the Government Code. I also recommend that attorneys interested in working in this area consult Chapter 45 of the Code of Criminal Procedure relating to procedures in municipal courts.

**CROSS: How does someone appeal a case to the El Paso Municipal Court of Appeals?**

**HOLMES:** A defendant must file an appeal bond and pay a \$25.00 docketing fee within ten days of the date of conviction. Forms are on the Court of Appeals’ website.

**CROSS: How can an attorney research Municipal Court of Appeals cases?**

**HOLMES:** The Court has a subject index of its most significant decisions which can be accessed on the City of El Paso’s website linking to the municipal clerk’s office and then to the Court of Appeals which also contains a segment of “Frequently Asked Questions” with answers which may prove helpful.

**CROSS: Anything else you’d like to add?**

**HOLMES:** I find it almost impossible to believe that what only seems like yesterday, I was President of the Young Lawyers Association. Now I am being interviewed as a Senior Lawyer, which reminds me that we are all on “this lightning train of life.”

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

# The College of the State Bar of Texas

BY J. MORGAN BROADDUS III

**A**s Chair of the State Bar College, I am often asked a number of questions about the College. In this article, I hope to address these questions, encourage your membership, and relate why I have been a proud and involved member since 1991 and honored to serve as its current chair.

## What is the State Bar College?

The State Bar College is an honorary society of lawyers created by the Texas Supreme Court in 1981. It is an elite group of lawyers and judges that voluntarily commit to at least twice the required CLE each year. This commitment improves the quality of legal service to the public and the public perception of lawyers. Membership is approximately 4,000 out of the 93,000 lawyers in Texas.

## What do Members of the College do?

Members value and abide by high ethical standards. We seek to raise the bar of the Bar in the State of Texas and promote professionalism through education. We encourage the continuing education of Texas lawyers so that they render more efficient and effective legal services to Texans. Members acknowledge there is always room for improvement and that more legal education makes better lawyers. College members are lawyers and judges who believe that legal education does not end with law school or the minimum required CLE. It is a dynamic, continuous and ongoing process.

## Why should you join?

Membership enhances your professional skills and our profession. College members earn numerous professional honors and it is not mere coincidence that State Bar College members excel and advance within our profession. The College sponsors and assists in significant educational activities for lawyers and the public. Specifically, the College provides occasional grants to assist local bars with CLE programs throughout the state. Members set a positive example for fellow lawyers and the public. Last year all the justices of the Supreme Court of Texas chose membership in the State Bar College. Membership signifies dedication to your profession.

In recent years the College has undertaken service projects. In 2011, we provided



backpacks and school supplies for children whose families suffered through Hurricane Ike and its devastating consequences. Members also gave presentations to these children on the U. S. Constitution. We assisted the Texas Supreme Court in its remodeling of the Court, of which all Texas attorneys can be proud. In 2012, we provided written resource materials and presentations to benefit parents and teachers of children with special needs. This year we assisted the AIDS Coalition of Costal Texas with their "Summer Survival" project. Members devote time, talents, and resources to help such worthy causes. ‘

The College promotes and recognizes professionalism. Each year we recognize an outstanding Texas attorney with the Jim Bowmer Professionalism Award for outstanding contributions to the profession and the Franklin Jones CLE Article Award to the author of an outstanding CLE article presented during the year. Many of these award winning legal articles are posted on our website. We also recognize the new member who earns the most CLE hours by awarding him/her the Steve Condos Award.

## How will membership be a benefit to me?

Aside from the prestige in belonging to this honor society of attorneys, there are other benefits:

- Online Library. Instant unlimited access to more than 16,000 CLE course articles. The cost of the online library is \$295. You get this with your \$60 annual membership.

- Bulletin. The College publishes an excellent bulletin with news for members and legal articles. The current editor is Justice Jim Moseley of the Fifth District Court of Appeals

in Dallas, Texas.

- Seminar Discounts. The discount for our Summer School seminar alone is \$120. Summer School has consistently been one of the best CLE programs in Texas. State Bar College members regularly receive \$25 discounts for Texas Bar legal seminars.

- Website. The State Bar College website lists the College's history, mission, committees, board, member directory, applications, CLE courses, past issues of our bulletin, , award recipients, nomination forms, and the annual award winning legal articles since 2000. See [www.texasbarcollege.com](http://www.texasbarcollege.com).

- College Logo. Members have the distinct privilege of using the State Bar College logo on letterhead, business cards, advertisements, and website.

- Public acknowledgment. Members receive a certificate suitable for framing and a State Bar College portfolio.

My involvement has allowed me to gain more skill, efficiency, and confidence as an attorney. I have participated in service projects that greatly assisted children and the less fortunate. I have had the opportunity to meet and network with some of the best legal minds in Texas, forming friendships with lawyers and judges I otherwise never would have met.

I encourage you to join as a new member, stay involved as a maintaining member, and get other outstanding lawyers to join. Please contact me if you are interested in joining or would like to learn more. Your membership and involvement make a difference.

## J. MORGAN BROADDUS III

is a shareholder in Gordon Davis Johnson and Shane P.C., Chair of the College of the State Bar of Texas, and board certified in civil appellate law.

# Judges as public servants

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

Throughout the years, I have had the opportunity to get to know judges, lawyers, and other men and women that began their professional pursuits with an amazing and enticing passion for wanting to do great things. They wanted to engage in the pursuit of unselfish and noble undertakings geared towards the well-being of others. As I would sit and chat with some of these people, they would speak with enthusiasm about the things they wanted to do for others. In particular, I remember my chats with those seeking judicial office. They would tell me that they wanted to be judges that would never deviate from consistently maintaining a balanced temperament on and off the bench nor permit themselves to engage in rude behaviors towards their staff, the lawyers, and those coming to their courts; that they would be considerate of the lawyers' time and schedules; and resist the temptations to seek deference, status, and power once on the bench.

Yet, once in office, and once having tasted the luring poison of false power, prestige, and

feelings of entitlement, a few of these good people sometimes succumbed to a less than noble state in their manner of living out their professional and personal lives. They began to lose sight of their role as "public servants." They began to see themselves as individuals entitled to be served by others rather than as individuals that should serve others.

However, all is not lost. So long as we breathe, we have the opportunity to change. With every passing second, we are given another chance to get off our "high horses" and mount truly majestic and noble stallions as we proceed to administer justice through servant-leadership. Moreover, we are called to seize opportunities that allow us to champion the cause of justice in a spirit of humility and charity, and in the humble service of others. We can still recapture those sentiments and honorable objectives, values, and principles we once had at the core of our hearts and souls when seeking judicial office. Only then can we honestly be a little more worthy of the title "Honorable" Judge.

As judges, I believe we need to always

maintain focus on the most sacred of all that exists – the human being, the most sacred of all things. If we do not care about others, we are disadvantaged in our service of others. When we have no love for others, we risk losing our humanity, risk being forced into a black hole of hell known as "me, myself, and I."

Let us, therefore, be passionate about our ethical behaviors and humble in our service to others so that we may promote the common good for everyone who comes before our courts of law and justice. As a judge, I strive to remember each and every day why I sought this position in the first place: To serve others with sensitivity, compassion, and humility. If I have on occasion failed, I hope I will be forgiven.

**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). He was recently recognized for his work in eliminating racism, disproportionality and disparities in the Texas foster care system.

## Whatever happened to John Jones?

A decade or two ago, John Jones practiced law in El Paso, Texas; first with Kemp Smith, LLP and then with Delgado, Acosta, Braden and Jones. He also served as President of the Board of Directors of the El Paso Legal Assistance Society. Thereafter, he moved to Houston, Texas. During that time, the Delgado firm morphed into Bickerstaff, Heath, Delgado, and Acosta. John continued his public service work by serving as chair of the State Bar of Texas standing Committee for Legal Services to the Poor in Civil Matters and also by assisting the Supreme Court of Texas as chairman of the Texas Access to Justice Commission.

Recently, John decided to open his own practice in Houston. Shortly thereafter, a

virus struck his heart, reducing its function to about 15% of its normal functional level.



*John Jones*

A veteran, he was rushed to a veterans hospital where his life was saved. John received an internal defibrillator and pacemaker while he now awaits approval for a heart transplant. In the meantime, his ability to earn a living has been severely compromised.

A fund has been created to assist John Jones and his family. If you would like to assist, you may send a contribution to: Friends of John Jones, c/o Chris Sims, 3711

S. MoPac Expy., Building One, Suite 300, Austin, Texas 78746. The fund is operated by his former partner at the Bickerstaff, Heath, Delgado and Acosta law firm, Denise Cheney, who may be contacted at (512) 472-8021.

### APPOINTMENT TO TRLA BOARD

The El Paso Bar Association nominates a representative to serve on the Board of Directors of the Texas RioGrande Legal Aid Board. The person appointed must: 1) Be licensed in the State of Texas; 2) Be familiar with and supportive of the purposed of legal services programs; 3) Be reflective of the interests and characteristics of the El Paso community; and 4) Be a member of the El Paso Bar Association. The TRLA Board meets quarterly in San Antonio and board members are reimbursed for reasonable and necessary travel expenses that are incurred in carrying out board duties. The term is a 2-year term beginning January 2014 and ending December 2015. Interested members should submit a letter of interest and any relevant information to Nancy Gallego at [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net) by October 31, 2013. The Legal Aid/Lawyer Referral Committee will make its recommendation to the EPBA Board of Directors at the December meeting.

# What Chuck Berry can teach us about life, aging, and going out in style

BY TERRY W. HAMMOND

**A**pologetically, he said, “I wrote all these songs, and half the time I can’t remember the first line.” These were the brutally honest words of Chuck Berry, the Father of Rock and Roll, who had just turned 85 when I saw him at Blueberry Hill in St. Louis, Missouri. When his band reminded him of the name of a song, or words to the song, or the key for the song, it would come back to him for a few glorious moments – perhaps even a few minutes.

“Roll Over Beethoven,” “Sweet Little Sixteen,” “School Days,” “Wee Wee Hours,” “Johnny B. Goode,” and “Reelin’ and Rockin.” He played all of them, and more, sometimes asking the crowd, “Call out the name of one of my songs” as an innocent but necessary prompt. When someone yelled out “Maybelline,” Mr. Berry sort of groaned, saying, “that’s another one of them fast numbers.” But, even so, he dutifully broke into the opening riff the best he could, and made it through the song.

I recently decided I need to see the early founders and architects of rock and roll while I still can. I saw Chuck Berry at the Duck Room at Blueberry Hill in St. Louis, Missouri. I really didn’t know what to expect – I had read that he collapsed of exhaustion at a show in January, 2011, and I figured he would not be the same spectacular artist I had admired since my childhood (and to me, he was old, even then when he was in his forties).

I was right. Mr. Berry was often off on the guitar, but when he hit the chords right, it was spectacular. He had to be reminded of words on many of the songs he had written, but when he hit a groove he was the Chuck Berry of old. He even made it through the entire lyrics of a few songs. But boy, was he having fun. On the finale, “Reelin’ and Rockin’”, he called for about a dozen women from the audience to come up on stage and dance while he was playing. And Mr. Berry was a young man again for a few minutes. He exited stage left, unassisted, still playing his Gibson hollow body guitar, with the ladies dancing and the band still playing.

In my guardianship and elder law practice,



we work with families who are adjusting to helping their parents or loved ones in their declining years. It is not unusual for children to overreact to this situation, and to try to take mom or dad “off the stage” prematurely. Or, sometimes, they may wait too long, and let mom or dad fall off the stage, having not intervened soon enough. It is a fine line and a tough call, watching and waiting, and trying to figure out when more needs to be done to protect an aging loved one.

Here, with Mr. Berry, was his son, Charles Berry Jr., on the stage, playing rhythm guitar while his father was playing lead, but mostly stepping in when necessary, and when his father faltered. Charles Berry, Jr. would take the lead when his dad asked him to, and sometimes when his father didn’t realize he needed the help. There was Charles Berry Jr., reminding his father of song titles and lyrics when necessary. It was a tragic, yet beautiful thing to see. There, on the stage, was life being lived as it should be lived – an aging father going out in style, gently, and with love, and under the watchful eye of his family and those who love him.

I am certain Chuck Berry did things in his youth I’d just as soon not know about – I know he spent some time in jail and wasn’t always the nicest guy. But here, on this night, whatever transgressions Mr. Berry may have had in the past – as a father, as a husband, or as an artist – were forgiven. It was all good.

As I listened to Mr. Berry’s lyrics, I realized that he is true Americana – more so than any other early rock and roll artist. He wrote about us and our country – our cars, our schools, and our places – within the context of rock and roll. Remember...

*They’re really rockin Boston  
In Pittsburgh, P. A.  
Deep in the heart of Texas  
And ‘round the Frisco Bay  
All over St. Louis  
Way down in New Orleans  
All the Cats wanna dance with  
Sweet Little Sixteen*

I don’t know how much longer Chuck Berry will be able to perform – I checked the Blueberry Hill website and he’s still performing there. But on this October night in 2011, Mr. Berry, his son, and his band taught me a lot. It was nice to see Mr. Berry still on the stage, not at risk but performing and backed by those who love and protect him. After all, who’s to stop Chuck Berry when he can still do the Duck Walk – at 87?

Hail, Hail, Rock and Roll! And thanks to Chuck for taking us back to school and teaching us a wonderful lesson about life, aging, and going out in style.

**TERRY W. HAMMOND** is in the El Paso firm Terry W. Hammond and Associates and specializes in Probate and Elder Law.

# Meet You Board Leaders

Each issue the Journal will feature several members of the Bar's Board of Directors so that members will know their leaders and representatives.



## Myer Lipson

Myer Lipson is the vice-president of the Board, having served as secretary and treasurer previously. Next year he will be president-elect and will take the helm as President in 2015. Mr. Lipson is an attorney with Lipson & Dallas, P.C. practicing primarily in real estate, corporate and business areas, business litigation, and transactional work. While the firm has had various iterations, Mr. Lipson has remained through all of them for the last 39 years. From 1972 through 1974, Mr. Lipson was an Assistant District Attorney trying felony criminal cases. At the University of Texas at Austin, Mr. Lipson earned a bachelor's degree in business administration in 1968 and his J.D. from the law school in 1972. A member of the Phi Delta Phi International Legal Fraternity, Mr. Lipson also received Certificates of Merit for Trial and Moot Court Advocacy. "[Serving on the] El Paso Bar Association Board of Directors affords me the opportunity to give back to the legal community," says Mr. Lipson, adding, "The Board has the ability to provide public outreach to the entire community, foster legal clinics and programs, and enhance the image of our profession." Among his goals this year, Mr. Lipson wants to help the Bar promote civility and professionalism among the members of our legal community. In addition, Mr. Lipson seeks to help implement the mission of the Bar Association's Strategic Plan by enhancing the practice of law and raising the image of our profession. He explains, "The practice of law is a profession, not merely a business, which requires professionalism among its members and outreach to the community." Mr. Lipson has been married to his lovely wife, Beth, for over 43 years. They have two children, Shane Lipson and Shelby Rubin, and four active grandsons: Marshall, Ross, Asher, and Micah. In his spare time, he plays as much tennis as possible.



## Jessica Vazquez

Board Member Jessica Vazquez is an Assistant with the District Attorney's Office. She was previously an associate with Hicks and Llamas, LLC practicing in the area of medical malpractice and insurance defense. Ms. Vazquez graduated from Trinity University in San Antonio, Texas, earning a dual degree in History and International Studies. She then attended Northeastern University School of Law in Boston, Massachusetts, and was licensed in Massachusetts in 2009 and Texas in 2010. Ms. Vazquez is served on the Board of Directors in 2012-13 filling an unexpired term and this year she is also filling an unexpired term which ends 2014. She enjoys serving on the Board and helping set the direction of the Association as well being involved in its various projects, such as the Mentorship Program. She also believes that her service provides a "great way to stay connected and in the know." Having served on the Board for a year, Ms. Vazquez wants to continue helping on the ongoing projects of the Association and this year is initiating a Domestic Violence Awareness project scheduled in October. Ms. Vazquez is an active member of the El Paso Women's Bar Association as well as Federal Bar. She recently rescued a black Labrador, Dakota, from "doggy death row," and completed her first triathlon. She enjoys biking and yoga, but doesn't do it as much as she'd like.



## Soraya Hanshew

Soraya Hanshew began a solo practice this year with a focus on Labor & Employment work and civil litigation. Additionally, she is still working part-time as the manager for the statewide Employment Discrimination Team for Texas RioGrande Legal Aid, where she has worked since 2004. Ms. Hanshew began her career as a commercial litigation associate with the law firm Thelen, Reid & Priest in San Francisco, California and also worked early in her career as an Assistant District Attorney before moving into the Labor and Employment field in 2004. Ms. Hanshew attended Stanford University and received a dual major in English and Political Science in 1997. During a one year break before law returned to El Paso for one year following graduation and worked as a Spanish teacher for 7,8,9 graders at St. Clements School. Thereafter, I returned to Stanford for my law degree. I graduated from Stanford Law School in 2001. Says Ms. Hanshew about her reason for serving on the Board: The Board and our Bar as a whole does important and much needed work in developing our connection as a legal community and our outreach to El Paso as a whole. I'm proud to be part of that commitment and such efforts. Ms. Hanshew's goals as a member serving the second year of her term are to continue to support the Bar's outreach and public service efforts. Ms. Hanshew is married to Erik Hanshew, a Deputy Federal Public Defender, who she met when they were both Stanford students and moved from his home state of California to relocate to El Paso with her. They have "a beautiful, funny near 3 year-old" daughter, Alea.

## BE OUR COVER:

The El Paso Bar Journal is accepting submissions of photos or other art by its members to serve as the cover of the Bar Journal. This is an exciting opportunity for El Paso lawyers to exhibit their artwork and is designed to inspire and expose the talents of El Paso Bar members. To have your art considered, please send your submission to Nancy Gallego, 500 E. San Antonio, L 112, El Paso, Texas 79901 or by e-mail to [nancy@elpasobar.com](mailto:nancy@elpasobar.com), no later than the 10th day of the month preceding publication.



## Upcoming Holidays

The El Paso Bar Association office will be closed on the following holidays:

**Monday, October 14, 2013 -**

Columbus Day

**Monday, November 11, 2013 -**

Veterans Day

**Thursday, November 28, 2013 -**

Thanksgiving Day

**Friday, November 29, 2013 - Day**

after Thanksgiving

Please note that the El Paso County Courthouse will also be closed.

# El Paso Ethics Commission Appointment

The El Paso Bar Association seeks to nominate one of its members for service on the County of El Paso Ethics Commission. The nominee selected will serve from February 1, 2014- January 31, 2016 and may serve more than one term.

The Commission is composed of ten members, five of which are selected from nominations made by outside entities, including the El Paso Bar Association. To be eligible for nomination per Sec. 161.056, a person must be at least 18 years old, be a property taxpayer in the county, and have resided in the county for the two years immediately preceding the

date on which the person's term will begin. A person is not eligible for appointment to the commission if they are: an elected officer; a county employee; a county affiliate (defined as a person whose goods or services are purchased under a purchase order or contractual agreement with the county, and any other person doing business with the county as determined by the county); a person employed as a lobbyist; a person convicted of a misdemeanor involving moral turpitude or a felony; delinquent in payment of local, state, or federal taxes; or a person who serves in a capacity that would be a conflict of interest.

Any interested member of the El Paso Bar Association should submit their letter of interest and the El Paso Ethics Commission Application [<http://epcounty.com/ethicscom/default.asp>] Form to Nancy Gallego, c/o El Paso Bar Association, 500 E. San Antonio, LL106, El Paso, Texas 79901 or via e-mail to [ngallego.epba@sbcglobal.net](mailto:ngallego.epba@sbcglobal.net). The deadline for applications is October 30, 2013 at 5pm. Applications will be forwarded to the Ethics Committee for its review and recommendation to the Board of the El Paso Bar Association, which must finalize its nomination before December 20, 2013.

## How to stay safe on PUBLIC Wi-Fi Who Is Lookin' at Your Stuff

BY DAVID J. FERRELL  
[DJF@ELPASOLAW.COM](mailto:DJF@ELPASOLAW.COM)

Public Wi-Fi is what most of us use at the courthouse on our laptops, tablets and cell phones if we aren't using a 3g or 4g network. Wi-Fi is normally much faster than cell networks but it can be dangerous — if it is “PUBLIC.”

Public Wi-Fi is great when you're trying a case and you need to access the enormous capabilities of the Internet. Most of us do not have ethernet (wired) connections except maybe at home or at our office. Public Wi-Fi is great when traveling or just lounging in a restaurant or tavern. Web surfing is great on a mobile gadget without using your data plan--that means FREE.

So, let's look at why Public Wi-Fi is dangerous. Public Wi-Fi is a two way street. You can acquire internet data but hackers can snoop on your email, social network, banking and private data that can become PUBLIC if you allow it.

Airports are now going PUBLIC on their free wireless networks, and that is a great place for hackers to see and record what you are doing on your device(s). So, here are some simple rules:

1. Save sensitive surfing for your home network. Do you want to do your banking or shopping? Wait until you get home. While it isn't easy for a hacker to snag your log-in or obtain credit card information from Public Wi-

Fi, it isn't impossible. Don't even give them a chance.

2. Remember to secure your home/work Wi-Fi network.

3. If you're using a smart phone, use the cellular connection instead of Wi-Fi. That's much harder for hackers to intercept and crack.

4. When banking, use your bank's official app and sign up for any extra security that your bank offers.

5. For social networks, use the network's official app.

6. On laptops, make sure any site hosting your information is encrypted. Most sensitive sites use SSL (Secure Socket Layer) encryption. This appears as “HTTPS” in the address. Your browser's address bar will also show a padlock. Stay vigilant, though. Encryption kicks in at different stages on different sites. If a log-in page isn't encrypted, a hacker could intercept your information with little trouble.

7. Make sure your email program, Facebook and Twitter accounts are also configured to take advantage of secure HTTPS browsing. The browser add-on HTTPS Everywhere does it for you automatically.

8. Turn off “sharing.” If you use a laptop, you might have it set to share files and folders with other computers at work or home. You

don't want these settings on when you're using a PUBLIC network. Windows Vista, 7 and 8, make it simple to automate your sharing settings. When connecting to a public hotspot for the first time, Windows asks for a location type. Make sure you set it to “PUBLIC.” This will automatically modify sharing settings for maximum safety. On a Mac, go to “System Preferences>>Sharing” and make sure all the sharing boxes are unchecked. You'll have to turn on the controls again when you want to share files on your home or work network.

9. Don't automatically connect to Wi-Fi networks. It's handy when your smart phone, tablet and laptop automatically connect to your home and work networks. However, that can lead to trouble when you're out in the PUBLIC world. Hackers set up their routers near PUBLIC spaces. They'll give it a generic name, such as FREEWIFI, Coffee Shop, Linksys or AT&T Wireless. Unlike most PUBLIC hotspots, however, it won't be encrypted. Your gadget will want to connect automatically, but you've fallen into a trap: the hacker can see everything you're doing over the connection.

10. Tweak your gadgets' settings for “MANUAL” joining in “PUBLIC.” Then verify with a tavern/store employee that you are connecting to the correct network.

11. Use security software. Your laptop/tablet/smart phone should have the same antivirus, anti-spyware, and firewall protection that your home computer does. The firewall is particularly important when on a PUBLIC network. Its entire purpose is to keep snoops out of your system. You can find excellent free security software, including firewalls (search with Google).

There are many Internet articles that will extend the scope of this article, just Google "dangers of PUBLIC networks." I have included some helpful links below to show some safe paths towards Wi-Fi hotspots. They are safe, at least for now.

**Wi-Fi Links**

*Wi-Fi Free Spot:* This large directory categorizes hotspots by state and city. There are also lists for airports, hotels, RV parks, campgrounds and more.

You'll find addresses that you can enter into Google Maps and some entries link to a company web site.

*JiWire:* This is an extensive directory of Wi-Fi hotspots all over the world. It logs both free and for-pay hotspots. Free locations are clearly marked, ut in a pinch, a for-pay hotspot could be useful.

*Hotspotr:* This site maps hotspot locations in many major metropolitan areas. All locations are marked on a map. Free hotspots are marked in green. Users can add new locations. You can identify your favorite local hotspots.

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

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## STATE AWARDS



*The Deborah G. Hankinson Access to Justice Award for the El Paso Bar's El Paso Lawyers for Patriots and local Access to Justice Programs*



*Randy Grambling delivers State Bar of Texas award to Ed Hernandez for "Best Feature Story" (Affirmative Action Revisited) in a local Bar Journal.*

EL PASO BAR  
FOUNDATION

The El Paso Bar Foundation would like to thank the following individuals for their generous donation to the Foundation to be used for the purpose of supporting its Mission to enhance the administration of justice in our community:

Richard H. Feuille  
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## Water, Wildlife and Natural Resources and How They Can Help Your Clients

You are invited to get up-to-the-minute information on various ways to conserve water, wildlife and natural resources that may benefit your clients. Guest speaker, David Braun, of Braun & Gresham, PLLC, will share the many conservation tools that are available. Topics include: Estate Planning; Conservation Easements 101; Farm and Ranch Properties: Family Legacy or Liability; What Landowners Need to Know about Intrusion on Surface Use—Oil and Gas, Pipelines, Power Lines and Condemnation; Wildlife Management for Property **Friday, October 4, 2013, El Paso, Texas, Double Tree Hotel from 8 a.m. to 4 p.m.** To RSVP Contact: [Janae@FronteraLandAlliance.org](mailto:Janae@FronteraLandAlliance.org) or call 915-351-8352.

### **Continuing-Education Credits for \$100.00!**

- Attorneys (via State Bar of Texas) 6.5 hours
- Realtors (via Texas Real Estate Commission) 6.5 hours
- Certified Financial Planners (via Certified Financial Planner Board of Standards) – 2.75 hours (Segments: Estate Planning & What Landowners Need to Know)
- General Public: \$40.00 (includes venue & materials)

# ADVANCE SHEET,

## *circa 1312 - 1313 A.D.*

BY CHARLES GAUNCE

From Pleas of Michaelmas Term in the Sixth Year of King Edward the Son of

### Neuille v. Wrattone

Entry, where an infant within age was prayed in aid and had his age.

In a writ of entry brought against a tenant by the curtesy of England, he prayed aid of an infant within age, who was heir etc. The infant came into Court and joined, and said that he was within age and his mother died seised, and prayed his age.

Scrope. It is not the case in which he should have his age, for he cannot say that he entered after his ancestor's death as his heir etc. and another is tenant of the freehold, and he has never been seised etc.

In spite of this he had his age.

King Edward.

Is it any wonder non-attorneys view practitioners of the dark legal arts as speaking in tongues? The present case is essentially the minutes of the judicial proceeding whereby a child seeks to recover possession of a parcel of land held by his mother at her death. The device chosen to recover possession was a writ of entry, whereby the infant sought to acquire possession as against the current tenant, who was not alleged to have failed to pay the rents as they fell due, committed waste upon the premises, or otherwise failed in any duty owed to the landlord as a result of the tenancy. Rather, the petitioner/claimant/demandant asserts that he should have the possession because he is a minor and can make better use of the land to

secure his future well being.

Judge Scrope was having none of it. Because the child was not seised of the property (infants did not, after all, actually hold title, but their guardians held the title until the infants came of age), the plaintiff/claimant/demandant could not claim to acquire a possessory interest in the property as the heir. Judgment for the tenant.

In the normal course of events, this would probably be a win for the tenant as the tenant got to retain possession of the property. But the wily judge notes at the end of his note that this win for the tenant is not necessarily a win at all. "In spite of this he had his age." This comment is the judge's way of telling the tenant that as soon as the child reaches the age of 21, notwithstanding and possessory right the tenant currently holds, the newly minted adult heir of the deceased freeholder will be entitled to possession as a matter of right.

One can only speculate what is really going on here. But to me, a big clue appears in the first line of the judge's notes. "[A]n infant within age was prayed in aid and had his age." The "prayed in aid" is the key. This action was brought on behalf of the infant, ostensibly by the infant's guardian, but the guardian apparently wanted to remain somewhat quiet about his involvement. Was there some dispute between the guardian and the tenant having nothing to do with the possession of the property? Was the guardian seeking to use the infant's position as future heir to coerce the tenant into granting an advantage to the guardian? We simply do not know, as the judge did not delve into such matters. We can surmise that the judge knew exactly what was going on and acted to protect the future rights of the infant without getting drawn into the actual dispute of the litigants.

As any family practice attorney can attest, the dispute presented to the court for

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

## Association News

### El Paso Association of Legal Professionals

■ The El Paso Association of Legal Professionals will hold its October Education meeting on Wednesday, October 9, 2013 at noon at the El Paso Club, 201 E. Main, 18th Floor. Guest Speaker will be Fire Chief Samuel Pena of the El Paso Fire Dept. who will speak on Arson Investigation. Please RSVP to Carol Gutierrez at [cgut@scotthulse.com](mailto:cgut@scotthulse.com) or call 533-2493 x 471.

■ The El Paso Association of Legal Professionals will hold its November Education meeting on Wednesday, November 13, 2013 at noon at the El Paso Club, 201 E. Main, 18th Floor. Guest Speaker will be Jeff Ray who will speak on Commercial Defense Litigation. Please RSVP to Carol Gutierrez at [cgut@scotthulse.com](mailto:cgut@scotthulse.com) or call 533-2493 x 471.

### El Paso Paralegal Association

■ The El Paso Paralegal Association will be celebrating "Texas Paralegal Day" (officially recognized by Senate Proclamation No. 1144 on October 23 each year) at its general meeting on Thursday, October 17, 2013, noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker: Frank Kinson of El Paso Electric Co. Topic: Attorney Client and Attorney Core Work Product Privileges. The cost for lunch, which is optional, is: \$16.00 buffet or \$10.50 salad bar. Please RSVP for the luncheon with Mariann Porter at 915-760-6880 or [mporter@goldmanlawtx.com](mailto:mporter@goldmanlawtx.com)

■ The El Paso Paralegal Association will hold its November general meeting on Thursday, November 21, 2013 from 12:00 noon to 1:00 p.m. at the El Paso Club, Chase Tower, 201 E. Main St., 18th floor. Speaker: Kathleen Walker or Ed Rios of Cox Smith. Topic: Recent Developments in Immigration Law. The cost for lunch, which is optional, is: \$16.00 buffet or \$10.50 salad bar. Please RSVP for the luncheon with Mariann Porter at 915-760-6880 or [mporter@goldmanlawtx.com](mailto:mporter@goldmanlawtx.com)

■ The El Paso Paralegal Association will hold its Annual Attorney Paralegal Luncheon on Thursday, December 12, 2013, at noon at the El Paso Club, Chase Tower, 201 E. Main Drive, 18th Floor. Special Guest Speaker: Texas State Bar President Lisa Tatum. The cost is \$24.00 per person. Limited Seating – tickets must be purchased by December 6, 2013. Contact Kim Ramirez for tickets or for more information at (915) 546-5329 or [orkram@kempsmith.com](mailto:orkram@kempsmith.com).

### El Paso Women's Bar Association

■ Upcoming Meetings: October 9th, noon, Courthouse Rm LL106

and November 13th, noon, Location TBA

■ Social Event: Fall Fling! October 9, 2013, 6:00pm Contact Alexandria Zant at [azant@waynewright.com](mailto:azant@waynewright.com) or Jessica Vazquez at [jessicayvm@gmail.com](mailto:jessicayvm@gmail.com) if you are not on the current mailing list and would like more details.

# 21ST ANNUAL EL PASO CRIMINAL LAW SEMINAR

**LOCATION:** The Inn of the Mountain Gods  
Ruidoso, New Mexico

(www.innofthemountaingods.com)

**DATE:** November 1 and 2, 2013

**MCLE:** 12.0 Hours Texas and NM MCLE

Credits (applied for), includes 2 Hours Ethics

**COST:** \$300.00 for attorneys licensed 3 years or  
more, as of the date of seminar;

\$250.00 all others

No charge for full-time judges hearing criminal  
cases

**COURSE DIRECTORS:** Judge Julie Gonzalez,  
Clara Hernandez, Mike Gibson, Greg Anderson,  
Maureen Franco, and Judge Yahara Lisa  
Gutierrez

**ACCOMMODATIONS:** A block of rooms has been reserved for October 31, November 1 & 2, 2013, at the Inn of the Mountain Gods, 1-800-545-9011, Ext. 7660. Room prices are \$99.99 plus tax if you inform the reservation desk that you are with the El Paso Criminal Law Seminar. To assure a stay at the Inn, make your reservations on or before 3:00 P.M. October 2, 2013. Your room will not be guaranteed until payment is received. For more information call M. Clara Hernandez at (915)546-8185, Greg Anderson at (915)595-1380, Judge Julie Gonzalez at (915)546-2145, Mike Gibson at (915)532-2977, Judge Yahara Lisa Gutierrez at (915)546-2102, or Maureen Franco at (915)534-6525.

**REFUND POLICY:** A full refund of your seminar registration fee will be provided until October 25, 2013, after that you will receive a flash drive containing all seminar materials but no refund.

**MATERIALS:** Only pre-paid registrants will be assured materials at the seminar. "At the door registrants" will be provided materials on a "first come first served" basis only while materials are available. "At the door registrants" who do not receive materials at the seminar will have a flash drive, containing the materials, mailed to them within two weeks after the seminar.

Tentative schedule of events		Topic	Speaker	Time
<b>Friday, November 1</b>				
<b>Topic</b>	<b>Speaker</b>	<b>Time</b>		
Registration	IOTMG Convention Center Coffee, Cokes, & Water	8:30-9:00 A.M.	Nuts & Bolts Of Jury Selection Ignition Interlock	Greg Anderson, Attorney, El Paso Penny Hamilton, Asst. D.A., El Paso Judge Robert Anchondo County Criminal Court No. 2, El Paso Mike Gibson
Opening Remarks	<b>Mike Gibson, Moderator</b> Attorney, El Paso	8:55-9:00	Adjourn	3:45-4:45 4:45-5:45 5:45
Recent Decisions	<b>Louis E. Lopez</b> Attorney, El Paso	9:00-10:00	Social Ethics	<b>Saturday, November 2</b> Coffee, Cokes, And Water <b>David Kimmelman</b> Assistant Federal Public Defender, El Paso
Eighth Court Of Appeals	<b>Senator Jose Rodriguez</b> Texas District 29, El Paso	10:00-11:00	Significant Decisions: Scotus And Fifth Circuit	8:00 A.M. 8:00-10:00 10:00-11:00
Legislative Update	<b>Judge Barbara Hervey 1</b> Texas Court Of Criminal Appeals Austin	11:00-11:10 1:10-12:10	Break Forensic Issues	<b>Kristin Kimmelman</b> Legal Research And Writing Attorney Federal Defender' Office-El Paso Coffee, Cokes, And Water <b>Joe Spencer</b> Attorney, El Paso
Break	<b>Shane McMahon</b> Assistant Federal Public Defender El Paso	12:10-1:30 P.M.	Current Issues: *Death Penalty	11:00-11:30 11:30-12:30 12:30-1:30 P.M.
Criminal Law Updates	<b>Matthew Dekoatz</b> Attorney, El Paso	2:30-3:30	*Administrative License Revocation	<b>Juan Melendez ,</b> Former Death Row Inmate, Albuquerque <b>David Ferrell</b> Attorney, El Paso
Court Of Criminal Appeals	Coffee, Cokes, And Water	3:30-3:45	Closing remarks	1:30 Mike Gibson
Lunch	On Your Own			
Federal Sentencing Update				
Collateral Consequences Of Criminal Convictions				
Break				

## Seminar Registration Form

Name: \_\_\_\_\_ Phone number ( ) \_\_\_\_\_

Fax: \_\_\_\_\_ e-mail address: \_\_\_\_\_

Mailing address: \_\_\_\_\_

\$250.00 \_\_\_ Attorney licensed less than 3 years

\$300.00 \_\_\_ Attorney licensed 3 or more years

No Charge \_\_\_ Full Time Judge who hears criminal cases

## Make Check Payable To:

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To ensure credit on opening day of the seminar,  
please return payment and registration form no  
later than **October 29, 2013** to:

El Paso Criminal Law Group, Inc.  
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El Paso, Texas 79901



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**“Shattering Barriers”**

**Saturday, October 5, 2013**  
El Paso Country Club  
6:00 p.m. ~ Cocktail Hour  
7:00 p.m. ~ Dinner  
Cocktail Attire



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We will be honoring the founding members of  
MABA-El Paso, as well as the following individuals:

*Outstanding Attorney* ~ Oscar Mendez, Jr., Scherr Legate

*Outstanding Jurist* ~ Hon. Robert S. Anchondo, County  
Criminal Court at Law No. 2

*Outstanding MABA Member* ~ Laura M. Enriquez, Mounce,  
Green, Myers, Safi, Paxson & Galatzan, P.C.

*Albert Armendariz, Jr. Lifetime Achievement Award* ~ Hon.  
Javier Alvarez, County Court at Law No. 3

*Outstanding Community Advocate* ~ The Most Reverend  
Mark J. Seitz, Bishop of El Paso

“Shattering Barriers” Awards will be given to the following  
individuals who have worked diligently to change the lives  
of El Paso citizens, shattering barriers in the process:

Hon. Kathleen Cardone, United States District Court for  
the Western District of Texas

Jeanne “Cezy” Collins, Kemp Smith LLP, Women’s Bar  
Association

Felix Castanon, El Paso County Public Defender’s Office  
Antonio Aun, District Attorney’s Office, 34th Judicial  
District

George Ybarra, El Paso County Democratic Party

Hon. Jose Rodriguez, Texas State Senator, District 29