



EL PASO BAR JOURNAL

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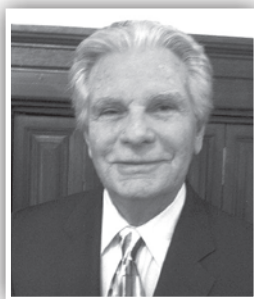
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The El Paso Bar Journal is a bi-monthly publication of the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to the attention of Nancy Gallego. All submissions must be received by the Bar office on or before the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

PRESIDENT'S PAGE



Attorneys are Professionals

Professionalism does not just mean civility and honesty in our professional lives; it necessarily includes our daily interaction with our fellow attorneys, our judges, our clients and the public. Professionalism includes giving back to the community and our profession and leading by example. We don't merely talk the talk, but we walk the walk of professionalism. We all have a role to play in the significance of mentoring in our legal profession.

Giving back to our profession and respect for each other is a tenet of our professional responsibility to each other. The most admired lawyers in our community are those whose character and commitment to the profession are evident as their actions speak louder than their words. They act as role models. Taking time to mentor others is an investment, both personally and for our profession. Mentoring builds a network by promoting our character and values. Mentoring focuses on the future. Professionally, our experience and shared wisdom helps young lawyers work in the profession with dignity and respect for others, while avoiding many rookie errors and mistakes. We all have great knowledge gleaned from our own mistakes and experiences conducting ourselves as professionals.

How many of us take ten minutes of our day to mentor others in our profession? How many of us take time to ask for help from someone with more experience? Imparting our knowledge and experience to young lawyers, particularly manifesting and demonstrating professional qualities such as honesty, integrity, civility, and respect for others creates lawyers with these same attributes.

The opportunities for lawyer mentoring in our community are unlimited. Many large law firms provide in-house mentoring, while other law firms assign young lawyers to shadow their more experienced lawyers. Other young lawyers may just reach out to a more experienced attorney.

I think the greatest thing we give each other is knowledge, understanding, and encouragement. The El Paso Bar Association renewed its mentoring effort this year. Under the guidance of Dan Hernandez and Jeff Ray, the mentoring program began at the Brass Monkey with a Mentorship Mixer on November 19, 2015. It was well attended by El Paso and Juarez attorneys. Many attorneys signed up at the mixer, indicating their interest in acting as a mentor or mentee. If you wish to participate as a mentor or mentee, you may contact Nancy at the El Paso Bar Association office. More events are planned.

Giving back to the community, the El Paso Bar Association conducted a highly successful Access to Justice Program for our community on November 7, 2015. Over 35 attorneys attended, helping many members of our community. I wish to thank our chairs George Andritsos and Laura Enriquez, the Paralegal Association, and many of our El Paso Bar Association's finest for giving back to the community as true professionals.

On Saturday, November 14, 2015, the El Paso Bar Association conducted its semi-annual El Paso Lawyers for Patriots clinic at the El Paso Community College, Transmountain campus. Our patriots need our help. We were pleased that many attorneys gave their valuable time and knowledge to help the many veterans, active duty military and their families obtain valuable legal help. Thank you to Don Williams and Judges Laura Strathmann and Angie Juarez-Barill for making this such a successful and worthwhile program.

Myer Lipson, President.

EL PASO BAR ASSOCIATION
December Bar Luncheon

Tuesday, December 8, 2015

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

Guest Speakers will be
 George Rodriguez, Jr.
 and Stephen Tatem, Jr.
 who will talk about their
 50 years as a lawyer

Door prizes will be given out

Please make your reservations by Monday, December
 7, 2015 at 1:00 p.m. at nancy@elpasobar.com or
ngallego.epba@sbcglobal.net

EL PASO BAR ASSOCIATION
January Bar Luncheon

Tuesday, January 12, 2016

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

Guest Speaker will be
 Bree Buchanan,
 Director of Texas Lawyers
 Assistance Program

Door prizes will be given out

Please make your reservations by Monday, January
 11, 2016 at 1:00 p.m. at nancy@elpasobar.com or
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“A FAIR DAY’S PAY FOR A FAIR DAY’S WORK”

The Evolving Fair Labor Standards Act

Part 3

BY DAVID L. KERN

In the last part of this three part FLSA series we talked about collective action litigation and how it is different from other types of employment litigation. In this, the third and final part of the series, we will look to the future of the FLSA including significant changes to the FLSA’s minimum wage for federal contractors, the coming implementation of major new Department of Labor (“DOL”) regulations governing “white collar exemptions” from FLSA’s overtime pay requirements, and ongoing efforts to raise the minimum wage.

Anyone who watches the news knows that President Obama has championed an increase in the federal minimum wage, but has been largely rebuffed by a majority of Congress in his efforts. However, acting through Executive Order (which does not require Congressional approval) the President was able to implement a significant increase in the minimum wage to \$10.10 an hour for employees of federal contractors. See <http://www.dol.gov/whd/flsa/nprm-eo13658/factsheet.htm> discussing Executive Order 13658, “Establishing a Minimum Wage for Contractors;” and <https://www.federalregister.gov/articles/2014/02/20/2014-03805/establishing-a-minimum-wage-for-contractors>. Given the prevalence of federal contractors in the El Paso region, this is a significant development for lawyers in this area who advise businesses or represent workers.

Executive Order 13658 states that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and accompanying costs, and reduces supervisory costs.” *Id.* On June 17, 2014, the DOL published a Proposed Rule to implement the Executive Order for all new and replacement federal contracts signed on or after January 1, 2015. See <http://www.gpo.gov/fdsys/pkg/FR-2014-06-17/pdf/2014-14130.pdf>. These new minimum wage provisions for federal contractors will cover: (1) procurement contracts for services or construction covered by the Davis-Bacon Act; (2) contracts covered by the Service Contract Act; (3) concession contracts; and (4) contracts that are: (a) entered into with the Federal Government in connection

with Federal property or lands and (b) covered by the Fair Labor Standards Act, Service Contract Act, or Davis-Bacon Act.

Executive Order No. 13658 also expressly applies to tipped workers who work for covered federal contractors. Beginning in January 2015, covered employers must pay tipped workers a minimum hourly wage of \$4.90—a sharp increase from the current federal tipped employee minimum wage rate of \$2.13 an hour. Moreover, if a covered tipped worker’s combined tips and hourly wages do not total at least \$10.10 an hour, the employer will be responsible for contributing the balance. Federal agencies also will add a minimum wage clause in all covered contracts, and a requirement for covered contractors and subcontractors to include the clause in all lower-tiered subcontracts.

While the increase in the minimum wage for federal contractors discussed above will have significant effects, a far more major development that will create sweeping changes across the entire American workplace is currently underway. FLSA section 13(a)(1) provides a minimum wage and overtime exemption for any employee employed in a *bona fide* executive, administrative, professional, outside sales, or computer (EAP) capacity. On March 13, 2014, President Obama issued a Memorandum to the Secretary of Labor directing the Secretary to modernize and streamline existing overtime regulations for EAP employees. The Memorandum asks the Secretary of Labor to consider how the regulations governing section 13(a)(1) (29 CFR Part 541) may be revised to align the intentions of the FLSA with the changing nature of the American workplace. See <http://www.whitehouse.gov/the-press-office/2014/03/13/presidential-memorandum-updating-and-modernizing-overtime-regulations>. DOL issued a Notice of Proposed Rule Making (NPRM) in response to the President’s Memorandum (<https://www.dol.gov/whd/overtime/NPRM2015/OT-NPRM.pdf>) and explained:

The Fair Labor Standards Act (FLSA or Act) guarantees a minimum wage and

overtime pay at a rate of not less than one and one-half times the employee’s regular rate for hours worked over 40 in a workweek. While these protections extend to most workers, the FLSA does provide a number of exemptions. The Department of Labor (Department) proposes to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA’s “EAP” or “white collar” exemption. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption is currently \$455 a week (\$23,660 for a full-year worker) and was last updated in 2004.

The cutoff for public commentary on the NPRM was in September 2015 and in keeping with very high public interest DOL received an unprecedented number of comments.

There are inclusive duties and salary tests which must be met for an EAP employee to be properly classified as exempt under the white collar exemptions. One of these is the salary threshold test which requires exempt EAP employees to earn over a certain amount of annual salary to be classified as exempt. An employee who does not earn that salary threshold or higher, cannot be legally classified as exempt even if they are performing EAP duties. Accordingly, raising the salary threshold means that people who are properly classified as exempt under today’s white collar salary threshold will no longer be exempt under the higher threshold proposed by DOL.

DOL starts from the perspective that today’s white collar salary threshold of \$23,660 per year is an outdated baseline to determine who is a *bona fide* EAP employee in the modern economy. In 2014, a worker earning \$24,000

was considered under the poverty line for a family of four and yet still over the “white collar” salary threshold to be considered a *bona fide* executive, administrative or professional employee. See 80 Fed. Reg. 38,516, 38,521 (July 6, 2015) (NPRM). It is very difficult, if not impossible, to reconcile that glaring dichotomy.

DOL’s 1958 Kantor Report characterized the white collar salary threshold as an “index of the status that sets off the *bona fide* executive from the working squad-leader.” *Report and Recommendations on Proposed Revisions or Regulations, Part 541, Defining the Terms “Executive,” “Administrative,” “Professional,” “Local Retailing Capacity,” [and] “Outside Salesman”* (Washington: U.S. Govt. Print. Off., 1958) at p.4. With that “index of status” in mind, the current salary threshold is so far below the modern equivalent of such an economic index as to be meaningless. Many of today’s salaried workers earning more than this minimal threshold still clearly lack the pay, privileges, and protections that the regulations interpreting Section 13(a)(1) have historically attributed to those so exempted. As a result, a raise in the white collar salary threshold is needed to keep pace with the modern economy.

The DOL’s proposed change raises the white collar salary threshold to the 40th percentile of weekly earnings which equates to \$49,452 per year using first quarter 2015 figures. See “Deciles of Usual Weekly Earnings of Non-hourly Full-Time Workers by Selected Characteristics, 1st Quarter 2015,” BLS, www.bls.gov/cps/research_nonhourly_earnings_2015q1.htm (last modified Apr. 8, 2015). The Department predicts that, by the time the final rule is announced in 2016, this figure will increase to \$50,440 per year. 80 Fed. Reg. 38,516, 38,517 n.1 (July 6, 2015) (NPRM). When implemented, this change will mean that an employee must be earning more than \$50,000 a year to be properly classified as exempt under the FLSA’s EAP exemptions. As a result, millions of employees who are earning less than that and are currently classified as EAP exempt will become eligible for overtime pay unless they are earning more than \$50,000 a year. In fact, the DOL estimates that in the first year following the increase in the salary threshold 4.6 million workers previously classified as exempt will become eligible for overtime pay protections. <https://www.dol.gov/whd/overtime/NPRM2015/OT-NPRM.pdf> at pp. 113, 115 n. 115.

Similarly, when the DOL created the so-called “highly compensated employee” (HCE) exemption in 2004, it set the qualifying salary

threshold for the HCE exemption at \$100,000. Under the HCE exemption, an employee earning \$100,000 or more per year is automatically presumed to be exempt if they perform any EAP functions. This test is far easier for an employer to meet than the more comprehensive duties test for determining whether a lower paid EAP employee has been properly classified as exempt. In essence, the higher salary level creates a rebuttable presumption that certain employees are properly classified as exempt and are ineligible for overtime pay. The DOL has proposed that the HCE salary threshold be raised from \$100,000 a year to \$122,000 a year. Like the change in the EAP salary threshold, this change also would have the effect of taking any employees earning more than \$100,000 but less than \$122,000 per year out of the HCE exemption. While the impact of this change will be less significant than the salary threshold change, the DOL nevertheless predicts that approximately 36,000 employees will be effected nationwide. *Id.*

DOL also recommends that to maintain alignment with current economic conditions both the EAP and HCE salary thresholds be automatically raised on an annual basis using the Consumer Price Index as a guide. *Id.* at p. 115. Clearly, these sweeping changes to the overtime pay regulations will have significant impacts on FLSA litigation for many years to come.

Paralleling these political efforts to raise the overtime wages of American workers, a well-publicized national movement to raise the FLSA minimum wage to \$15.00 an hour also is underway. This movement began in 2013 when many New York City fast food workers walked off the job demanding an increase in wages to a minimum of \$15.00 an hour. At the time their demands seemed like a long shot to most observers. However, in the intervening two years the workers’ movement, now known as Fast Food Forward, has gained the strong support of the nationwide Service Employees International Union (SEIU) and has steadily gained momentum through a series of increasingly large one-day strikes at fast food chain restaurants. While some have ignored the Fast Food Forward movement, many politicians have not.

Even before Fast Food Forward took root, many large American cities and some states had already raised the minimum wage beyond the current federal minimum of \$7.25 an hour. And when Fast Food Forward began to gain traction and public support with the help of SEIU, that trend towards higher minimum wages

accelerated. For example, In New York City, the minimum wage will increase to \$10.50 by the end of 2015, then increase incrementally each year to reach \$15 an hour by 2018. In the rest of New York, the wage increases will be smaller, but \$15 an hour still will be reached by 2021. These New York wage increases apply only to fast food chains with 30 or more locations in the U.S. See <http://time.com/3969977/minimum-wage/>. However, economists are predicting that wage increases in one low wage sector will become a driver to cause other businesses who employ low wage workers to increase wages as well.

The movement towards a higher minimum wage is also having effects in other major cities across the country. For example, in Seattle the minimum wage was raised to \$11 per hour for all workers employed by businesses with more than 500 employees and that rate will rise to \$15 an hour by 2017. Businesses with fewer than 500 employees will be required to gradually increase their hourly wages to \$15 by 2021. The same kinds of changes are being implemented in San Francisco (which already has a \$12.25 minimum wage that will increase to \$15 an hour by 2018), Los Angeles (which will increase the minimum wage from the current \$9 an hour to \$15 an hour by 2020), and Washington, D.C. (which is in the process of increasing minimum wage from \$10.50 an hour to \$15 an hour by 2020). Increases in the minimum wage are on the political drawing boards in many other American cities and a nationwide trend is beginning to emerge.

Amending the FLSA to increase the federal minimum wage also has become a major talking point in the current Presidential Election campaign. One Democratic candidate has argued that the current federal minimum wage is “starvation pay” and must be increased to a “living wage” of \$15 an hour over the next several years. See [tps://berniesanders.com/issues/a-living-wage/](https://berniesanders.com/issues/a-living-wage/). On the other side of the debate are those who argue that increasing the minimum wage to \$15 an hour would have unforeseen adverse economic consequences. See, e.g., <http://www.forbes.com/sites/timworstall/2015/08/04/the-7-most-dangerous-myths-about-a-15-minimum-wage/2/>. Both sides of the argument are worth reading and thinking about.

Whatever one’s political inclinations, however, it is hard to argue that \$7.25 an hour is an adequate wage in today’s world. Even if a minimum wage worker worked 40 hours a week for 52 weeks a year (and many low wage workers do not have that kind of steady work)

total gross annual wages at \$7.25 an hour would only be \$15,080 per year (\$7.25 x 40 hours = \$290 a week x 52 weeks = \$15,080) – an amount far below the 2015 federal poverty line of \$24,250 for a family of four. Given that the federal poverty guidelines are used to determine eligibility for federal benefits the question could be asked whether we want to make up wage deficiencies from our tax revenues, or whether it makes more sense to require businesses to pay higher wages to reduce the burden on individual taxpayers. But that is a highly debatable topic for another day.

For now suffice it to say, as illustrated by the foregoing discussion, that a many faceted effort towards increasing the minimum wages and overtime pay of American workers is well underway and will have increasing nationwide impacts on wage and hour litigation in years to come.

I appreciate the opportunity to have provided the El Paso Bar with some of my thoughts on FLSA litigation and wage and hour trends during this three part series and wish everyone a very Happy Holidays. Thank you.

DAVID L. KERN received his law degree from the University of Texas Austin in 1983 and has been Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization since 1993. David's fellow lawyers have recognized him in Texas Super Lawyers for ten consecutive years (2006 - 2015). For more than twenty years he has conducted a nation-wide practice in the representation of classes of current and former employees in wage and hour class actions. He can be reached at dkern@kernlawfirm.com.

Spence v. Fenchler

The Case That Ended Legalized Prostitution In Texas

BY KEN JACKSON

GUNTHER R. LESSING

In this issue of the El Paso Bar Journal, El Paso judge Dan Jackson's great grandson Ken Jackson contributes an interesting story about Gunther Lessing's successful fight to end legalized prostitution in El Paso.

A Yale Law School graduate, Lessing practiced law in El Paso before moving to Los Angeles where he became a part of Walt Disney's organization. In the April/May issue of the El Paso Bar Journal, Ballard Coldwell Shapleigh wrote about Gunther's legal career in El Paso. The article, ¡Viva Los Licenciados!, part IV of a series, is reproduced in this issue (and can be found on the internet by searching "El Paso Bar Journal") as it compliments Ken Jackson's article.

Gunther Lessing was probably the most important person in Walt Disney's organization for almost 35 years. He presided at the Disney studio board meetings which chairman of the board Walt Disney infrequently attended, and which Lessing always headed even when Disney's presence was requested.

Lessing had to tackle many of the difficult situations faced by the Disney organization, such as a studio strike in the 1940's and later in the same decade the House Un-American Activities Committee. Along with Samuel Goldwyn, he became a leader of the Society of Independent Motion Picture Producers which fought the monopolistic practices of the major studios. When he retired in 1964, Walt Disney, who almost never attended any retirement parties for his employees, gave high praise to Lessing. Gunther Lessing died at age 80 on September 28, 1965, less than three months before Walt Disney's death. Ed.

PICTURE COURTESY OF UTEP SPECIAL COLLECTIONS



Tillie Howard Parlor

"The shift away from legalized prostitution was the most wrenching and controversial turning point in El Paso's four-hundred-year history." LEON METZ¹

Between 1912 and 1915 many important turning points in world history occurred. The Panama Canal opened, connecting Earth's two great oceans. The First World War, that would claim over 16 million lives and tragically

redraw the boundaries of the Balkans and the Middle East, raged in Europe and Asia Minor. Babe Ruth began his Major League career in Boston. And in El Paso, a lawsuit which was filed in 1912 to enjoin a single brothel, ultimately resulted in a 1915 Texas Supreme Court decision abolishing legalized prostitution throughout the State.

That case was *Spence v. Fenchler and Montell*, 107 Tex. 443, 180 S.W. 597 (1915). Gunther Lessing filed it on behalf of Frank

Spence, an El Paso real estate speculator, to enjoin W.H. Fenchler, a friend of the sporting crowd and the owner of a “parlor house” named The Palace at 214 Broadway St. (originally Utah St, now South Mesa) and Bess Montell, the Madame briefly in charge of the Palace at the time. Bess, who “wasn’t blessed with a head for business,”² left the Palace a few months after the suit was filed, but she remains immortalized in the style of the case that killed the “Red Light Reservation.”

Defendants’ counsel were a “Who’s Who” of the El Paso Bar. They included such major El Paso historical figures as Will Burges, Joseph U. Sweeny, Ballard Coldwell, Maury Kemp, T.A. Falvey and W.W. Turney. This remarkable array of legal talent probably had less to do with the *bona fides* of Mr. Fenchler and Miss Montell, and more to do with Mayor C.E. Kelly’s City Government’s desire to preserve the status quo of the Reservation for financial and other reasons.

The Plaintiffs sued to enjoin The Palace from operating what was, the Defendants conceded, in the words of the relevant statute, “a bawdy or disorderly house.” The Palace (previously known as the Marlborough Club when it was built for El Paso’s legendary Madame, Tillie Howard) was a majestic venue of assignation.

A description of the Marlborough Club survives: “The roof was of solid copper. The finest hardwood was used throughout. The bathrooms were the last word. Oriental rugs and velvet drapes flattered the eye, expensive art objects were displayed here and there, and good pictures hung on the wall. Four parlors occupied the ground floor, and in each Tillie had a special chair where she sat in silks and diamonds when her girls were on display and where Aunt Sally, the motherly colored maid, helped the butler to serve drinks.”³

Its 1899 Grand Opening was grand indeed. As reported by an eyewitness: “We were all served champagne until it was coming out of our ears. Fine cigars were passed out by liveried butlers. [Tillie’s] girls were the most beautiful I’ve ever seen, all dressed up in really fine evening dresses...we danced in a ballroom to an orchestra [imported from San Francisco]...It was the finest night El Paso had ever, or ever will see.”⁴ A decade and a half later, it was gone.

The activities of establishments like the Marlborough Club/Palace had, of course, long contravened the Texas Penal Code, which outlawed prostitution everywhere in Texas. However, El Paso overcame this inconvenience, by an 1890 City Ordinance enacted under the authority of



Gunther Lessing

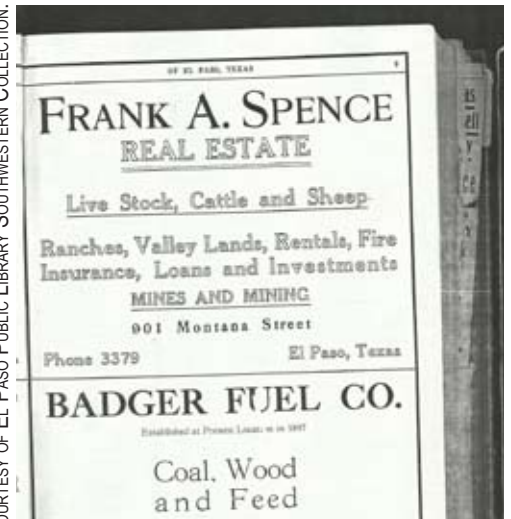
its City Charter, which permitted those activities within a specified zone, or “Reservation.” Although the Reservation’s boundaries changed some over the years, the original boundaries were: South side of East Overland from Oregon to Utah streets; thence South down Utah St. to Third street, to an alley; thence West along Third St to Oregon St; thence North along Oregon St. to point of beginning on East Overland St. including east half of Utah St.⁵

Since the 1880’s, prostitution had been subject to a system of monthly “fines.” In 1894, City Attorney Will Burges (the lawyer who, 21 years later, unsuccessfully argued for the Reservation before the Supreme Court) admitted to the City Council, these fines were *de facto*, license fees.⁶

The fines were collected for the benefit of the City coffers, and especially, for the benefit of the police, who usually collected them.⁷ This system of “fines” and permission prevailed in El Paso and other large Texas cities at that time. As Plaintiffs’ lawyer Lessing later recalled: “the streets of El Paso were paved from the license fees collected under the guise of fines from prostitutes.”⁸

But by 1912, when Lessing sued, El Paso was no longer a frontier town of the Wild West where anything went. Families had arrived. Churches had been built. Legitimate businessmen had opened legitimate businesses near the debauchery of Utah Street. A Reform movement had been born.

Reformers tried to pressure city officials to clean up El Paso with petitions, marches and newspaper editorials. When those efforts failed, they offered their own candidates for election. In an important reform victory, Tom Lea, Sr. was elected Mayor in 1915 and



Spence ad (on top) from the El Paso Directory

eliminated “fining” prostitutes saying the city would no longer collect “the blood money of these unfortunate women.”⁹

But even Mayor Lea could not see a way to close the Reservation. The world’s oldest profession was not going to disappear, and it seemed more practical to know where it was than to have it scattered throughout the habitat of Polite Society. In short, a political solution to the issue was just too hard for the politicians.

Enter the Texas State Legislature, which in 1907 passed an injunction statute, revised in 1911, [Articles 4689, 4690 R.S. 1911] allowing private citizens to bring suit to enjoin “bawdy and disorderly houses.” Enter a Texas Supreme Court already expressing objections to the moral indiscretions of “The Old West.” And finally, enter Frank Spence, a real estate speculator with a profit motive, and Gunther Lessing, a young lawyer who had already represented Pancho Villa and Francisco Madero during the Mexican Revolution. See Ballard Shapleigh’s article *i Viva Los Licenciados!* on page 11.

The injunction statute allowed private Plaintiffs to sue to enjoin brothels, unless those brothels operated within the boundaries of a large city’s designated tolerance zone, established by ordinance under the authority of a city’s charter. The Palace sat in such a zone, and was therefore immune from Mr. Spence’s suit. So what happened?

Like many historical questions concerning the States of the old Confederacy, the answer begins with the Civil War and Reconstruction. Until 1873, Article I, Sec 28 of the Texas Constitution read: “No power of suspending laws of this State shall be exercised except by the Legislature, or its authority” (emphasis supplied).

PICTURE COURTESY OF EL PASO PUBLIC LIBRARY SOUTHWESTERN COLLECTION.

In 1871, E.J. Davis, the Republican Governor, elected during the Reconstruction era, asked for and received from the Republican Legislature the power to impose martial law, even though President Grant had ended Reconstruction in Texas the previous year. When Democrats took over the Legislature in 1873, they not only rescinded those special powers of the Governor, they also took the additional precaution of amending Section 28 to remove the words “or its authority,” to prevent similar abuses in the future.¹⁰ (As an historical footnote, the Legislature passed El Paso’s Charter, delegating to the City the right to create a Reservation, a few months before Section 28 was amended, so the El Paso Charter’s delegation was constitutional at the time it was made).

Amended Section 28 was decisive in *Brown Cracker Co. v. Dallas*, 104 Tex.290, 137 S.W. 342 (1911). The city of Dallas was preparing to pass an ordinance similar to El Paso’s to create a reservation adjacent to Brown Cracker Company. The Supreme Court ruled against Dallas because the ordinance was in conflict with the Texas Penal Code and it was passed, not by the legislature, but under the legislature’s authority via the City Charter. It therefore fell afoul of amended Section 28.

This was the state of the law when Spence and Lessing filed to enjoin the Palace on July 30, 1912. Two weeks later, El Paso’s City Council addressed the situation by amending its Reservation Ordinance to try to circumvent the *Brown Cracker* decision to prevent Spence and Lessing from enjoining the Palace and thereby dismantling the Reservation.

The new Ordinance, approved on August 15, 1912, reaffirmed the boundaries and restrictions of the Reservation from the previous ordinances, but added a new, incongruous Section 7: “nothing in this ordinance shall be so construed as to authorize any lewd woman to occupy any house in any portion of the City of El Paso, and that nothing in this ordinance shall be so construed, and it shall not in any manner interfere or prohibit the prosecution and punishment of any person for violation or the penal laws of the State of Texas or any portion of the said City of El Paso.”¹¹

The idea of Section 7 was, presumably, that the new Ordinance could not, by definition, conflict with the Texas Penal Code, and therefore, *Brown Cracker* didn’t apply. The new ordinance was passed in an expedited procedure suspending the required second reading because, “a great public emergency existed.” That emergency was, “The injunction prayed for against [Fenchler and Montell] will come

up for a hearing in September.”¹²

Perhaps the Defendants’ counsel had nothing to do with the drafting and passage of the new Ordinance. But they were happy to raise it at the trial court.

Predictably, Lessing went berserk. He argued: “the existence and passage of which Ordinance is not admitted, but specifically denied.” But, “if same was passed, on or about the 15th day of August, 1912, while this case was filed...on the 30th day of July, 1912, and therefore if the said Ordinance, if same exists, and was duly passed, is *ex post facto* to this case, and therefore cannot be urged in this case.”¹³ In a later Supreme Court filing, he called the Section 7 “a ridiculous anomaly.”¹⁴

At the trial court, battle lines were drawn around the Ordinance. From September 7-9, 1912, Judge A.M. Walthall heard arguments, read the Ordinance, and agreed with the Defendants. He found the Ordinance was duly passed and “at the time of the hearing (emphasis supplied) was an Ordinance of El Paso.” He therefore held that the new Ordinance “as a matter of law destroys the Plaintiffs’ right to have the injunction.”¹⁵ The Judge then left town without recording his findings of fact and conclusions of law with the Court Clerk (a prerequisite for the Plaintiffs’ appeal). His Honor did not return until after the 15 day period for perfecting an appeal had expired.¹⁶ Lessing eventually overcame this obstacle by petitioning the appeals court.

The El Paso Court of Civil Appeals -- having just celebrated its first year’s anniversary-- affirmed the trial court’s ruling on November 21, 1912. In its opinion, the Court completely ignored the question of the constitutionality of the Ordinance, despite Lessing’s relentless Article I, Section 28, and other constitutional attacks in his 73 page brief and his 33 page Application for Re-hearing. Instead the Court simply held that the Legislature had the right, under the Constitution, to limit the extent of the bawdyhouse injunction statute by exempting those houses situated within a designated district of larger cities, such as El Paso, with ample police power to regulate and control such places. *Spence v. Fenchler*, 151 S.W. 1094 (Tex. Civ. App.-El Paso 1912, writ granted), rev’d 107 Tex. 443 (Tex. 1915).

In 1963, half a century later, Lessing, still aggrieved, wrote “I personally carried this redlight district case to the highest courts, having lost it because of the power of the political ring in every court until I got to the Supreme Court.”¹⁷

Throughout the trial and first appeal of the

case, most arguments for both sides focused on mundane legal issues like property law, procedural rules, and the constitutional authority of the Legislature to delegate powers to cities. But occasionally, the issues of public morality, and who has the right to impose their views of morality upon the public surfaced.

Lessing argued that the “immoral contamination and wrongful influences of the habitués and inhabitants...and their immoral conduct and revels...irreparably damage to the property of these plaintiffs.”¹⁸ Such a legislative diminution of property value is “indeed a cause to mourn.”¹⁹

The Defendants’ counsel countered: “the only fault that appellants can find with the legislature is that in cities like El Paso, the law-makers did not see fit to take the great moral and social questions out of the hands of the constituted authorities and entrust them to plaintiffs and that the legislature entrusted to the criminal law and to the authorities of El Paso the management of a question that has perplexed the wisest during all human history, and did not furnish appellants with a club with which to demonstrate their own superior morality instead of doing so by the ‘sweetness and light’ of their daily lives.”²⁰

The lower courts took no notice of this rhetoric. If one believes Lessing’s *post mortem* allegation, the “fix” was already in. But when the case reached the Supreme Court, the gloves, at least Lessing’s gloves, were off. The transcript of Lessing’s oral argument is preserved in the Texas State Archives. Unfortunately, Will Burges’ argument for the Defendants is not.

First, Lessing attacked the Court of Appeals’ reference to El Paso’s ample police power to regulate the Reservation: The Court “unthinkingly implied that a few policemen are capable of regulating the most heinous crime of society today...This commercialized spot...with which El Paso maintains its incestuous marriage is incapable of being regulated, even if our boss ridden city were to maintain one million policemen.”²¹

Then he attacked the City Government: The city has formed a co-partnership with the White Slaver by furnishing him with a market for his wares by legalizing houses of licensed prostitutes where he can display his chattel. The best way to defeat White Slavery, to “kill this many headed adder is to impale the heart of the reptile by striking out the market place.”²²

In the Supreme Court, the case was assigned to Justice William E. Hawkins. This may have been lucky for Lessing. Justice Hawkins’ father, Samuel, had been a distinguished minister and

an editor of the *Texas Christian Advocate*.²³

The Court, with Justice Hawkins writing, reversed the Appeals Court, holding that ordinances creating reservations, such as El Paso's, were void throughout Texas under Article I, Section 28, because they were inconsistent with the Texas Penal Code which outlawed prostitution everywhere in the State. (Citing *Brown Cracker Co. v. Dallas*). Therefore, the Court held that the proviso in the injunction statute, which exempted bawdyhouses inside those reservations from injunction, was also void.

The Court went on to hold, to the total exasperation of Defendants' counsel in their application for re-hearing, that the rest of the injunction statute was nevertheless still valid and enforceable. Therefore, the Plaintiffs were entitled to an injunction which closed The Palace; closed the El Paso Reservation; and, with it, closed all of the reservations in Texas. *Spence v. Fenchler*, 107 Tex. 443 (Tex. 1915).

Whether or not his final holding was legally correct, Justice Hawkins was apparently on

a mission. Perhaps following Lessing's oral argument, or perhaps channeling his late father, he wrote that upholding the remainder of the injunction statute was justified "to release and direct against bawdyhouses...the lightning which rests in the bosom of equity, in order that its swift and effective processes may aid, unquestioned, in the suppression of an evil which our criminal law had long denounced, but not eradicated."²⁴

The Supreme Court issued its decision on December 8, 1915. El Paso's City Council repealed the notorious Ordinance on January 13, 1916. The Reservation closed March 1st.²⁵

Leon Metz observed that the closure of the "Reservation sacrificed much of El Paso's color, character and identification. The town would never again be the same."²⁶ Even Lessing, much later, remembered that the Reservation "was a very picturesque situation."²⁷

Immediately after the *Spence* decision, and the formal closure of the Reservation, Mayor Lea and the City Council authorized an infor-

mal arrangement whereby the police would not enforce the law in the tenements north of the canal on Eighth Street and west of Chihuahua Street.²⁸

Of course, prostitution has continued in El Paso. Various city governments have either ignored or suppressed it. But prostitution has never again enjoyed the legal protection of a city ordinance. And, therefore, the era of the grand Utah Street parlor houses ended with *Spence*. And for some, at least, it was indeed a cause to mourn.

Epilogue

After *Spence*, the Marlborough Club/Palace building was a hotel called Mesa Apartments until it was demolished in 1958 to make way for a parking lot.²⁹

KEN JACKSON is a retired lawyer. Gunther Lessing was his great-uncle-in-law.

Endnotes

1. Leon C. Metz, *Turning Points in El Paso Texas* (El Paso: Mangan Books, 1985), 78-79.
2. H. Gordon Frost, *The Gentlemen's Club: The Story of Prostitution in El Paso* (El Paso: Mangan Books, 1983) 173.
3. C.L. Sonnichsen, *Pass of the North: Four Centuries on the Rio Grande* (El Paso: Texas Western Press, 1968), 300.
4. Frost, *The Gentlemen's Club*, 112-113.
5. El Paso City Council Minutes Book F, 212, (1890).
6. "The City Council: Business Transacted Although the Aldermen Almost Melt Under the Fetid Heat," *El Paso Daily Herald*, 29 June 1894, 4.
7. Frost, *The Gentlemen's Club*, 35-35. And Leon C. Metz, *El Paso: Guided Through Time* (El Paso: Mangan Books, 1999), 123-124.
8. Gunther R. Lessing, *My Adventures During the Madero-Villa Mexican Revolution* (Unpublished Manuscript, Walt Disney Archives Burbank, CA, 1963), 2.
9. "No More Fines From 'District,'" *El Paso Herald*, 5 May 1915, 9.
10. George D. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* (Austin: Texas State Constitution Commission, 1977), 83-84 (Digitized by Texas State Law Library <http://www.sll.texas.gov>).
11. "Reservation Will Not Be Moved," *El Paso Herald*, 15 August, 1912, 1.
12. *Ibid.*
13. Supplemental Petition of the Plaintiffs to the 41st District Court, 7 September 1912, Texas State Library and Archives Commission, Austin, (Archive Box 201-5440). (TSLAC).

14. Application for Writ of Error to the Supreme Court of Texas by Plaintiff in Error, filed 16 January 1913 (page 30), TSLAC.
15. Findings of Fact and Conclusions of Law of the 41st District Court, recorded 31 October 1912, TSLAC.
16. Appellants Application for Postponement filed in the Texas Court of Civil Appeals, 31 January 1912, TSLAC.
17. Lessing, *My Adventures*, 2.
18. Petition of the Plaintiffs to the 41st District Court, filed 30 July 1912 (page 7), TSLAC.
19. Appellants Brief to the Texas Court of Civil Appeals, filed 23 September 1912 (page 7), TSLAC.
20. Appellees Brief to the Texas Court of Civil Appeals, filed 7 November 1912 (page 9), TSLAC.
21. Transcript of Gunther Lessing's oral argument before the Supreme Court of Texas, undated, TSLAC.
22. *Ibid.*
23. J.H. Davenport, *The History of Supreme Court of the State of Texas* (Austin: Southern Law Book Publishers, 1917), 273.
24. *Spence v. Fenchler*, 107 Tex. at 468-469.
25. "Council Abolishes Restricted Line," *El Paso Times*, 14 January 1916, 11. And "Redlight Women Hunt New Homes," *El Paso Morning Times*, 29 February 1916, 3.
26. Metz, *Turning Points*, 78-79.
27. Lessing, *My Adventures*, 2.
28. "Council Abolishes Restricted Line," *El Paso Times*, 14 January 1916, 11.
29. "Last Parlor House Comes Down," *El Paso Herald-Post*, 25 June 1958, 13.

Upcoming Holidays:

- Thursday, December 24, 2015
– Christmas Eve
- Friday, December 25, 2015
– Christmas Day
- Monday, December 28, 2015
– Day after Christmas
- Thursday, December 31, 2015
– New Year's Eve
- Friday, January 1, 2016
– New Year's Day
- Monday, January 4, 2016
– Day after New Year's
- Monday, January 18, 2016
– Martin Luther King Day

*El Paso Bar Association
wish you a merry Christmas
and a happy New Year*



How Civilization Came To El Paso

¡VIVA LOS LICENCIADOS! EL PASO LAWYERS IN THE SAGEBRUSH AND CHAPARRAL DAYS OF THE MEXICAN REVOLUTION

Part IV

BY BALLARD COLDWELL SHAPLEIGH

First published in the April-May 2011 issue of the El Paso Bar Journal

Revolution in Mexico did little to dampen the social scene in El Paso. In fact, it probably added a little spice. An item in the “society” pages of the *El Paso Herald* on Saturday, May 20, 1911, ten days after the Battle of Juárez, reported that “a number of the younger social set” was entertained at a dance held a night earlier in a private home on Magoffin St. The guests included Raul Madero and one of his sisters (the siblings of Francisco I. Madero), Col. Giuseppe Garibaldi, and young, single ‘twenty-something’ lawyers like Robert L. Holliday, Ballard Coldwell and Gunther R. Lessing.

Robert Holliday, a 1909 graduate of the law department at the University of Texas, eventually became a member of the U.T. Board of Regents as well as a president of the El Paso Bar Association. Holliday Hall at UTEP, sitting adjacent to Kidd Field and presently housing the offices for the track and field team, bears his name. It also served as the basketball gym and as a venue for school dances.

Revolutionary history remembers Gunther R. Lessing, if at all, as the attorney who represented Pancho Villa in negotiations with Frank Thayer and the Mutual Film Corporation for a movie about Villa’s life. The parties signed the contract in Lessing’s fifth floor office in the Caples Building on January 5, 1914, an event presaging Lessing’s later career as an entertainment lawyer with a national reputation.

In 1929, after the Revolution, in the early days of Mickey Mouse, Walt Disney and his brother Roy hired Gunther Lessing to protect their film rights in cartoons like the Silly Symphony series, The Skeleton Dance and Mickey Mouse from an unscrupulous, predatory New York distributor. When deciding to hire Lessing, Walt Disney reportedly exclaimed, “If he could help Pancho Villa, he’s just the man we need!”

Lessing eventually ascended to general counsel, vice-president and vice-chairman of the board of Walt Disney Productions. Until his retirement, corporate observers often described him as the third most powerful individual in



Gunther R. Lessing (second from left), with Walt Disney (seated) and executives from General Electric taken in Walt Disney’s office in 1939 - ©Disney.

the Disney organization behind only Walt and Roy Disney.

Studio insiders credit Lessing with suggesting to Walt Disney that he trademark his name to create a brand. Disney also demonstrated his trust in Lessing by naming him as a co-executor of his will in 1951, together with Disney’s wife Lillian and brother Roy. Disney, who encouraged a laid-back atmosphere, used to say that, “The only ‘Mister’ we have at the studio is our lawyer, Mr. Lessing.” A window above the Disneyana Shop on Main Street U.S.A at Disneyland bears the name, “Gunther R. Lessing, Esq.”

Disney, it was rumored, sometimes referred to Lessing as the “Old Red-Headed Bastard,” as might be inferred from a gift Disney gave to Lessing. It was a 1939 manuscript recording the development of the film *Pinocchio*, bearing Walt Disney’s handwritten inscription reading: “To Gunther Lessing, Old R.H.B. himself.” The moniker was a reference to the low opinion of Lessing held by many Disney employees, particularly the artists, because of his repeated attempts to bust their trade unions.

Lessing died in Los Angeles on September 28, 1965, at the age of 80. He is buried at Forest Lawn-Hollywood Hills.

However, as a young, twenty-five-year-old lawyer in El Paso, Lessing attended many banquets and gatherings with Francisco Madero. This was at the outset of the Mexican

Revolution, before Lenin’s Russia and Mao’s China.

On Thursday, June 1, 1911, a little more than ten days after the dance on Magoffin Street, the *El Paso Herald* ran a headline — “Victor and Vanquished Toasted” — which referred not to anyone’s state of sobriety, but to the banquet at the Toltec Club the night before. The banquet was held in celebration of Madero’s victory in the fight for Cd. Juárez. The “victor,” Francisco I. Madero, did not imbibe. His *compadres*, Pancho Villa and Pascual Orozco, were not invited. And the “vanquished,” Gen. Juan J. Navarro, though paroled to El Paso, was still Mr. Madero’s prisoner. Lessing noted a recurring pattern, “that while Madero raised a glass of champagne in order to respond to toasts, the glass never found his lips.” Pancho Villa did not drink either. During one celebration in Chihuahua, amidst five magnums of champagne, Lessing observed a bottle of Welch’s grape juice where Villa had been sitting at the table.

Lessing first met Francisco Madero at Madero’s camp several weeks before the Battle of Juárez. Madero had summoned him to the adobe hut to discuss the ramifications of American law on the ongoing negotiations for peace with representatives of Porfirio Díaz. He remembers also being introduced to brothers Raul, Julio and Gustavo Madero, Pascual Orozco, as well as Pancho Villa who had not

yet achieved notoriety. Lessing had earned Madero's confidence by defending several cases alleging violations of U.S. neutrality laws.

In his first case, U. S. authorities arrested an elderly Mexican colonel possessed of a rifle, two pistols and two bandoliers of ammunition, and charged him with mounting an expedition on U.S. soil against a sovereign nation (Mexico) which was at peace with the U.S. The man confessed. He was enroute to Mexico to join the revolution, but Lessing successfully defended his client on the ground that a military expedition had to consist of a minimum of three people. The next case involved three men accused of smuggling a wagonload of bread into Mexico. Lessing defended again, successfully, on the basis that a supply of bread was not an "expedition."

Lessing described his early days as an El Paso lawyer, when he was living at 1016 Brown Street (near the old Turney mansion on Montana Ave., now housing the International Museum of Art) and the day that the Battle of Juárez broke out this way:

I was getting quite a kick out of this kind of litigation, but it was not very good for my pocketbook. ...One morning I was awakened by gunfire which had started up in Juárez and the insurrectos were attacking and all hell broke loose. I put a mattress up between me and the noise and dressed myself and immediately went to the roof of the Caples Building. I could see some of the fighting through binoculars.

Prior to Madero's departure for Mexico City after the fight for Juárez, Gustavo Madero met with Lessing to ask how much Lessing was owed for his legal services. Lessing replied that all services had been rendered with an understanding that the revolutionary junta had no money, as communicated to him by Abraham Gonzalez, so nothing was owed. Gustavo wrote out a check to Lessing for \$10,000 and invited him to accompany the Madero family on the special train to Mexico City via Eagle Pass and Piedras Negras, which departed from El Paso's Union Station on Friday, June 2, the morning following Madero's ball at the Juárez Customs House.

Despite the objections of his sister and brother-in-law, Lessing accepted the offer. He shared a "stateroom" with Eusebio Calzado in the rail coach next to Francisco Madero's. Calzado owned coal mines near Piedras Negras. Their coach was followed by two cars



Gunther R. Lessing in 1959 ©Disney.

of soldiers and a car transporting the press, including David Lawrence of the *New York Times*, James Redding of the *El Paso Herald* and perhaps Damon Runyon. Other passengers on the train included Madero sisters, Angelita and Mercedes, and brothers Gustavo, Raul and Julio, Eduardo Hay and Guiseppa Garibaldi.

In Mexico City, Lessing spent most of his time at the Madero residence, which he remembers as being located at Berlin No. 12. Lessing claims to have been standing only a few feet behind Francisco Madero when he delivered his speech from the presidential balcony in the National Palace at the Zócalo. He also remembers that Madero gave him a book on the "science of yogi" when Lessing tried to excuse himself from a Madero meeting. Madero told him to stay saying, "You won't understand us anyway."

Gunther Rudolph Lessing was born in Waco, Texas on July 20, 1885, three years after his sister, Hannah. His father, Rudolph Lessing, came from the state of Hessen in Germany. Rudolph was a prominent merchant and cotton factor in Waco doing business with three partners under the name of Lessing, Solomon and Rosenthal.

Rudolph Lessing was a charter member of the Temple Rodef Sholom congregation founded in Waco in 1879, and reputed to be the oldest Jewish reform congregation in central Texas. He was also that congregation's first president.

Rudolph died when Gunther was age 10. Gunther's mother, Bertha Bouger, was also a native of Hessen but nine years younger than her spouse. She died in El Paso in 1911 and was apparently interred briefly at Evergreen Alameda Cemetery.

Gunther's sister Hannah married Dan

Marion Jackson in 1900. Dan M. Jackson (whose portrait is one of nine presently hanging over the jury box in the 34th District Court, beginning with that of T.A. Falvey and ending with Jerry Woodard) had graduated from the University of Texas law department between 1895 and 1899.* He began his legal career as the city attorney for Marlin, Texas.

In 1903, the Jackson and Lessing families were still living in Waco. A news brief in the *Marlin Daily Democrat* on July 3, 1902 reported that "Gunther Lessing who has been visiting Mr. and Mrs. Dan Jackson has returned to his home in Waco." They moved to El Paso sometime prior to early 1905. Both families found room and board at 500 E. Rio Grande.

Dan M. Jackson opened a solo practice on the fourth floor of the new Trust Building (constructed in 1902 and now the Gateway Hotel.) His brother-in-law, Gunther Lessing, nine years younger at age 19 or 20, found employment with the law firm of Turney and Burges as a stenographer. Jackson later entered into a law partnership with Tom C. Lea, Jr.

Tom C. Lea, Jr. had graduated from the Kansas City Law School in 1898. In 1902, at age 25, Lea, Jr. moved to El Paso and took a job as a bookkeeper for Powell Stackhouse, Jr., another coal mine operator and one of the founders of the Toltec Club. His father, Tom Lea, Sr., apparently lived in El Paso at that time as well.

Lea, Jr. was born in Independence, Missouri, into a family accustomed to the possession and exercise of political influence. His grandfather was a physician for whom Lee's Summit is named, though misspelled due to a railroad worker's inattention. His father, who died in 1910, had been a commissioner in Jackson County, Missouri and knew Harry Truman, who was actually six-and-a-half years younger than his son. President Truman later appointed another of his son's law partners, R.E. Thomason, to the U.S. District Court bench in El Paso.

In 1877, his father's younger brother, Captain Joseph Calloway Lea, spearheaded the family's purchase of most of the land in and around Roswell, NM. Captain Lea had been an officer in the Confederate army during the Civil War. Lea, Jr.'s uncle was also Roswell's first mayor and is considered the father of the New Mexico Military Institute. He died in Roswell in 1904, and is the individual for whom Lea County, N.M. is named.

In 1905, Tom C. Lea, Jr. opened a law office in suite 404 of the Trust Building. Dan Jackson was down the hall in suite 427. In 1906, Lea,

Jr. and Jackson formed a law partnership that lasted for five years. The partnership included lawyers named Victor Moore and W. B. Ware. W.B. Ware later served as city attorney when Lea was elected mayor in April, 1915.

Another attorney who was toiling in the legal vineyards around town at the time, coincidentally, was forty-year-old Elfego Baca who was born in Socorro, NM in 1865. He had an office at 211½ San Antonio Ave. Baca had practiced law in El Paso since 1902 or '03, living at 709 Wyoming Ave. His name would be made famous by a 1958 anthology television series called *The Nine Lives of Elfego Baca*, produced for "Walt Disney Presents" and later "Walt Disney's Wonderful World of Color," a Western based loosely on Baca's life as a self-made lawman in the 1880's in the area of present day Reserve, NM. The series was also made into a 1962 feature film entitled "Elfego Baca: Six Gun Law," starring Annette Funicello.

In 1906, Gunther Lessing enrolled in the law school at Yale. When he graduated in June, 1908 with a Bachelor of Laws, the *Yale Law Journal* noted that, "Gunther R. Lessing has been admitted to the bar of Texas. The examination extended over a period of seven days. Mr. Lessing stood highest in the examination."

After graduating and taking the bar exam, Lessing and his mother returned to El Paso. They resumed residence with the Dan M. Jackson family at 1016 Brown Street. Lessing's mother died in El Paso in 1910 and in 1913, he took a room at the YMCA at Mesa and Missouri. Two years later, he moved to 315 ½ Mills Ave. where he lived for the next three years. In 1918, he moved to 2601 Grant Ave. A year after that he was living in a house at 3009 Tularosa near the Five Points area, in what was then the far eastside of town.

His first law office was in the Trust Building after his brother-in-law Dan M. Jackson had taken him into partnership. He practiced law there for almost five years. When Jackson was elected to the judgeship of the 41st District Court in 1912, Lessing moved his office another block west to the fifth floor of the Caples Building, suite 514-16, in 1913.

Lessing shared the floor with, among others, another young lawyer named Ballard Coldwell who had also earned his law license in 1908



Dan Marion Jackson, ca. 1912 – 1916, this Stout-Feldman portrait hangs in the 34th District Court. Jackson died in 1939 and is buried in Arlington National Cemetery.

from the University of Texas and who spent his free time coaching the El Paso High School football team. The team sometimes played their games at Cowboy Park in Juárez, a battleground during the Revolution. The *Morning Times* reported on June 5, 1908 that, "the young man has the distinction of being the first young man born in El Paso to graduate from the law class of the state university."

It was in Lessing's fifth floor office of the Caples Building, on January 5, 1914, that Lessing executed the contract with the Mutual Film Corporation on behalf of Pancho Villa for the exclusive right to make a film about the campaign of Villa's army on its way to Mexico City. The result was *The Life of General Villa*, a movie that one film historian describes as "one of the oddest episodes in film history."

Lessing says he entered into the contract in his own name and arranged to employ Homer Scott as the main cinematographer. Lessing confirms the oft-told story that Pancho Villa delayed the beginning of one battle to permit the camera operators to set up their equipment. He also relates that in another battle, Villa agreed to commence the attack from the south, instead of the north, because of favorable lighting for the camera work.

According to Lessing, the movie produced no profits for Villa. When the situation was explained to the commanding general of *la*

División del Norte, says Lessing, Villa threw Homer Scott in jail and only released him on payment of \$5000.

An ammunition contract was also taken out in Lessing's name. Lessing protested, so Villa had the contract assigned to his financial agent. World War I had just broken out and, according to Lessing's belief, the financial agent, Lazaro de la Garza, sold the contract for millions to the Germans or the French on his own account and absconded to Los Angeles. This enraged Villa. Lessing writes that de la Garza used the money to build the Mediterranean-style Pantages mansion, but according to the *Los Angeles Times*, de la Garza bought the 1906 mansion for \$100,000 and installed sophisticated fortifications. Lessing encountered de la Garza several years later. He appeared as if "he were a very, very sick and frightened man."

In 1915, Lessing moved down to the fourth floor of the Caples Building. For the next three years, he went into partnership with attorney Oscar L. Bowen. During this period, Lessing was representing a downtown landlord named Frank Spence and others who had sued to restrain another nearby landlord named W.H. Fenchler from renting the premises at 214 Broadway (now Mesa St.) to Bess Montell for the purpose of maintaining "a bawdyhouse." The defendants were represented by Beall, Kemp & Parker, Joseph U. Sweeney, Turney & Burges (Lessing's old bosses), and T.A. Falvey.

Lessing's clients argued that the nearby brothel was a nuisance that seriously damaged and depreciated the value of their buildings and rendered the property "unfitted for occupancy by respectable people." Lessing reflected on his early days as a young El Paso lawyer, using a layover here to refresh his memory about this lawsuit and other experiences, as follows:

[Let's] start with a description of one of the El Paso sandstorms when the dust seeps through all the crannies and cracks and visibility is approximately fifty yards. ... I could see the old redlight district from my window, with the old parlor houses and the place where the girls in cribs would accost the passerby and call them "Blondie" or "Come on in, baby." I could see the roof of Salvini's old saloon in this red-light district. It had been a tough place by any standard. The street was called Utah Street in those days, but subsequently, when the red-light district was abolished, they renamed it Broadway. I personally carried this red-light district case to the highest courts, having

* The University of Texas has yet to confirm the dates of Dan Jackson's matriculation, though this information was requested in early October, 2010. He is said to have attended UT, though the dates are unknown. See, J. Morgan Broaddus, *The Legal Heritage of El Paso* (El Paso: Texas Western Press, 1963). In contrast, Yale University furnished the date of Gunther Lessing's graduation, June 1908, within 24 hours of the request.

lost it because of the power of the political ring in every court until I got to the Supreme Court. It was frequently said in a jocular manner – but true – that the streets of El Paso were paved from license fees collected under the guise of fines from prostitutes. However, as I look back on it now, it was a very picturesque situation.

When I was a kid, I remember how they had gambling right on the streets, in every saloon and in many other places. There was the old Coney Island saloon run by McCoy where many shootings occurred. Manny Clements, the constable in El Paso in those days, who himself was a bad man, and at one time had been a member of the Hardy gang of cattle rustlers and bandits, was killed by Joe Brown (a bartender) in the Coney Island saloon. We defended Joe Brown. Prior to that, we defended Manny Clements for killing an Army sergeant in the Coney Island Saloon.

...Then I passed by City Hall. In the grass plot which adjoins City Hall – an old yellow building, there are two cannons. These pieces of artillery have a history. ...

Next I went to the Caples Building to the fifth floor where my office had been and the tenant very kindly permitted me to sit there awhile.My memory took me back to that day when I first occupied that office. My brother-in-law, Dan M. Jackson, who to my way of thinking, was one of the greatest trial lawyers of criminal cases before juries I have ever come into contact with, took me into partnership. I had just taken my bar examination which I passed with flying colors. I was immediately involved in some very important lawsuits and learned about the law and trial of cases the hard way and faster than is usual with young lawyers.

The case that Lessing carried to the Texas Supreme Court, *Spence, et.al. v. Fenchler, et.al.*, 107 Tex. 443, 180 S.W. 597 (1915), found its way to Austin through a brand new Eighth Court of Civil Appeals created by the 32nd Legislature in 1911, the product of intense lobbying by El Paso's mayor and city council in the winter and spring of that year.

As the Morning Times reported, Mayor Kelly made the same shopworn argument to Governor Colquitt which is being heard in the corridors of the Capitol during this year's 82nd Legislature: "I called attention to the fact that at present it cost members of the El Paso bar twice as much time and money to get to a court of appeal as it costs the attorneys of any other town in the state on

account of this city's remoteness from the higher courts of the state." The Times also reported on February 4, 1911, that "while the returning delegation would not discuss the matter, there is no doubt but that Judge W. M. Coldwell [father of Ballard Coldwell] will be one of the judges named by the governor to the new court of appeals." That didn't happen.

On April 11, 1911, the Times ran an article headlined, "Judges of New Court Named by Governor – All Three are Young Lawyers of Learning and Ability." Gov. Colquitt appointed W.M. Peticolas of El Paso, age 37, E.F. Higgins of Alpine, age 35, and J. F. McKenzie of Pecos, about age 40, as judges of the El Paso court of civil appeals. The article reported that the court would probably organize in June, but not hold its first session until October.

In 1918, Lessing moved into offices on the sixth floor of the Martin Building, returning to a partnership with Dan M. Jackson (who would again resign, this time to join the Judge Advocate Corps in Washington, D.C.) and S.J. Issacks, the latter having arrived in El Paso in 1917 after having served as a state representative, mayor of Midland and judge of the 70th District Court.

By May 1925, the State Bar of California had granted Gunther Lessing a license to practice law in that state. He attracted more notoriety by representing Mexican actress Dolores del Rio in various matters and later suing her under her married name for unpaid fees - see, *Lessing v. Gibbons*, 6 Cal. App.2d 598 (1935) – at the same time that he obtained a publicized divorce from Lolla Lessing. She accused him of being a poor sport at bridge, of throwing a glass of cold water in her face and of grabbing her ear to lead her out of a room of card-playing guests, all because he was angry at losing.

Before his legal career took him to California, Lessing was asked by Venustiano Carranza after Madero's assassination to remain as legal advisor for Pancho Villa's División del Norte. As a result, Lessing found himself involved in a variety of new legal situations such as, for example, the drafting of contracts for the purchase of munitions, the prosecution of counterfeiters of Revolutionary money, and the handling of injunctions against shipments of cattle and iron ore by rail. In one case, *Ives v. Lessing*, 168 P. 506 (Az. Sup. Ct. 1917), Lessing hired an Arizona attorney to represent two men charged with smuggling six bars of bullion across the border into Arizona, to recover the gold and to defend against a forfeiture action by the government, only to have the Arizona lawyer bring a suit against him for more attorney's fees.

Villa also named Lessing as general counsel

to the railroads. Lessing used this position to escort members of the press to the battle zones. On one of those occasions, Lessing persuaded Villa to grant an interview to a New York reporter named Jane Dixon. She asked Villa about Theodore Roosevelt's derogatory comments about him appearing in a national publication to which, as Lessing remembers, Villa replied more or less as follows:

Well perhaps Mr. Roosevelt is right. Maybe I am a bandit, but I was never given an education. I am trying to carry out the principles of Francisco Madero. Mr. Roosevelt, on the other hand, did something that I would never do. He went to Africa and killed a lot of animals when he wasn't hungry and he didn't need those animals in order to eat. I would never have done that.

According to Lessing, Villa remained "very patient and was quite amused" throughout the long interview. Before he sat down with the reporter, Villa entertained Lessing and all the reporters by leading a tour of his private rail car, formerly belonging to the president of the railroads. Lessing related that Villa was most proud of the bathroom. He was enchanted with the chain-operated toilet in particular, flushing it over and over again.

Years later, the business agent for the Brotherhood of Painters, Decorators and Paperhangers, Herbert Sorrell, testified before a Congressional subcommittee on labor relations in the movie industry that:

Gunther Lessing was Mr. Disney's attorney, and all of the dealings I had had were with Gunther Lessing. I had never met Disney but once. Gunther Lessing was a red-headed attorney who bragged that he was counsel for Pancho Villa. I told him, of course, I never had heard of Pancho Villa ever winning a legal victory. I thought it was the other kind, and I did not see where he got any glory out it, but he still brought it up to everyone who met with him.

Lessing had reason to brag. He knew his client well. He was probably proud that Pancho Villa could display more couth than, say, another fabled leader like LBJ. Villa never received visitors while sitting on a toilet. He merely showed them how the apparatus worked.

CREDITS: See part V of the series *!Viva Los Licenciados!* in the June 2011 issue of El Paso Bar Journal and republished on the internet

CALENDAR OF EVENTS

DECEMBER 2015

Tuesday, December 1

EPBA BOD Meeting

Wednesday, December 2

EPPA Attorney/Paralegal Luncheon

Friday, December 4

Las Americas Immigration Seminar

Tuesday, December 8

EPBA Monthly Luncheon

50-Year Attorneys

Wednesday, December 9

EPALP Monthly Meeting

Thursday, December 10

EPBA Joint Holiday Party

Saturday, December 19

EPYLA Christmas of Hope

Thursday, December 24

EPBA Office Closed – Christmas Eve

Friday, December 25

EPBA Office Closed – Christmas Day

Monday, December 28

EPBA Office Closed – Day after Christmas

Thursday, December 31

EPBA Office Closed – New Year's Eve

JANUARY 2016

Friday, January 1

EPBA Office Closed – New Year's Day

Monday, January 4

EPBA Office Closed – Day after New Year's

Tuesday, January 5

EPBA BOD Meeting

Tuesday, January 12

EPBA Monthly Luncheon

Bree Buchanan - TLAP

Wednesday, January 13

EPALP Monthly Meeting

Monday, January 18

EPBA Office Closed – MLK Day

Thursday, January 21

EPPA Monthly Luncheon

UPCOMING EVENTS:

FEBRUARY 2016

Thursday, February 11

20th Annual Civil Trial Practice Seminar
Las Vegas, NV

Friday, February 12

20th Annual Civil Trial Practice Seminar
Las Vegas, NV

Saturday, February 13

20th Annual Civil Trial Practice Seminar

Charity in the Practice of Law: The Virtue of True Greatness

BY OSCAR G. GABALDÓN, JR., CWLS

"The life of a man consists not in seeing visions and in dreaming dreams, but in active charity and in willing service"

HENRY WADSWORTH LONGFELLOW

Charity is commonly regarded to be an altruistic gesture that exemplifies the unselfish rendering of assistance to the needy and less fortunate. While this is true, it is also true that charity is much more than that. It is the ultimate virtue upon which all other virtues derive their life. That is why charity is often considered an interchangeable word for the term love. Love denotes charity, and charity denotes love.

When a lawyer consistently acts in a spirit of genuine charity towards his or her clients, fellow lawyers, the judiciary, and others coming into contact with the law profession, more likely than not, that lawyer is one that also adheres to the canon of ethics and the disciplinary rules. The canons and the rules are designed to furnish a road map that will assist the lawyer

in providing, among other things, ethical and helpful legal services. If a lawyer is loyal to the substance and the spirit of the canons of ethics and the disciplinary rules, a venue for acts of charity to emanate from such loyal adherence will naturally flow. Charitable outcomes can be a natural consequence of applying such ethical and professional behavioral standards.

However, what elevates the conduct of the lawyer to the level of charity in its purest form is not necessarily the conduct that is in line with the canons and the rules; instead, it is the motivation or intent of the conduct that qualifies the conduct as indubitably charitable. A lawyer can act ethically, but without charity. However, a lawyer that acts out of charity tends to act ethically as a matter of natural consequence. In other words, what motivates a lawyer to do what others may perceive to be an authentic kindness or act of charity does not necessarily make it so. A lawyer, for example, may strictly abide by the canon of ethics for fear that a violation may result in some kind of disciplinary action or adverse aftereffect.

This kind of motivation behind adherence to the canons and rules is lacking in nobility and purity. It is not motivation based on a bona-fide concern for the well-being and betterment of others. That is, it is not based on charity but rather, it is based on self-preservation and other self-focused motivations.

The El Paso bar distinguishes itself with many lawyers that epitomize charity in the practice of law and beyond. They are honorable men and women who seek to go beyond the basic tenets of the practice of law. They work diligently with access to justice initiatives, with improving the law, and with assuring that quality of service is the norm. They take on pro bono cases when they might not be required to do so. They volunteer of their time towards increasing awareness about the community's legal needs. They tirelessly partake in educational efforts by speaking at schools, businesses, and other community forums. They mentor young lawyers and help build confidence and hope to fellow lawyers that may be experiencing personal and

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professional challenges, such as in the case of addiction, burnout, and stress. They address a variety of audiences on legal issues and the profession, and they encourage other lawyers to do the same. They donate of their time and effort in helping to bring community awareness to the legal needs of many in the community. They do not lose sight of their critical roles as counselors at law, providing their clients with patient and active listening, honest guidance, and their accessibility – all with a welcoming demeanor. They do all these things with a heart and a mind infused with true charity for their fellowmen and not for self-glorification or other opportunistic reasons, but because they recognize the priceless value of each human life and the dignity and respect every human being is entitled to.

Alas, as is the case in any corner of the legal profession, there are those lawyers that have not yet reached a mature or defined state of charitable altruism. They do not want to budge from their comfort zone and instead choose to maintain an Ebenezer Scrooge persona when called upon to practice their profession with a disinterested and selfless concern for the welfare of others. This small contingency of lawyers will find comfort and security by

remaining snuggled inside their shell of self-indulgence. To this reality, we are reminded of the fact that “Every man must decide whether he will walk in the light of creative altruism or in the darkness of destructive selfishness.”

Some lawyers are at least struggling and making a champion’s effort to break out of their shell to reach out to others in a spirit of charity, not for the sake of convenience or self-advantage, but because of a desire to heal injustices, to guide others in a course of righteousness, and to lift the spirits of the down trodden and hopeless. These good people are on their way to a more fulfilling personal and professional life, for it is in charity that a person’s human greatness is born. These lawyers are discovering the writing on the wall, “We make a living by what we get; but we make a life by what we give”.

OSCAR GABALDÓN is an assistant City Attorney and former 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).

SPOTLIGHT ON AN EL PASO LAWYER

TAFFY BAGLEY

BY CLINTON F. CROSS

CROSS: Tell me about childhood.

BAGLEY: I was born in Breckenridge, Texas. My family moved to Northeast El Paso when I was four. My mother, Ruth, was a full time housewife. My father, Bill, worked for El Paso Natural Gas Company. I was the oldest child, with one brother who was eight years younger, and a sister who was nine years younger. My brother is a special education teacher in a middle school in Arlington, Texas. My sister is a physical therapist in Granbury, Texas.

CROSS: Where did you go to school?

BAGLEY: I graduated from Irvin High School in 1967 and then went to the University of Texas at Austin, graduating with a Bachelor of Arts degree in English and Political Science. After I graduated, I obtained a teaching certificate

and taught at Ramona School in El Paso for three years. Looking for a change in my life, I took the LSAT and was accepted at the University of Texas School of Law, graduating in 1977.

CROSS: After law school, then what?

BAGLEY: I joined Kemp Smith in August 1977 as an associate.

CROSS: What kind of work?

BAGLEY: Real estate, transactional work, financing transactions, acquisitions, buying and selling and financing property.

CROSS: Sounds exciting.

BAGLEY: It was. In addition to the work, there were other benefits. I traveled a lot—all over the country. I also volunteered to help Royal Furgeson with civil litigation when he

needed the help and I had the time, so I got some exposure to that kind of work. Royal was a wonderful mentor!

CROSS: Tell me about your family.

BAGLEY: I never married, but I have four adopted children. They are the center of my life!

When I was 40, I adopted a baby girl, Kimberly. She taught me how to have fun and enjoy every minute.

When I was 42, I adopted a baby boy, Bill. Kimberly, Bill and I enjoyed a life centered around happy meals and weekend afternoons in the park. At the time, I was still working at Kemp Smith. I decided I needed more flexibility in order to spend more time with my two children. I left Kemp Smith in 1996 and joined the firm of Fields and Healy.

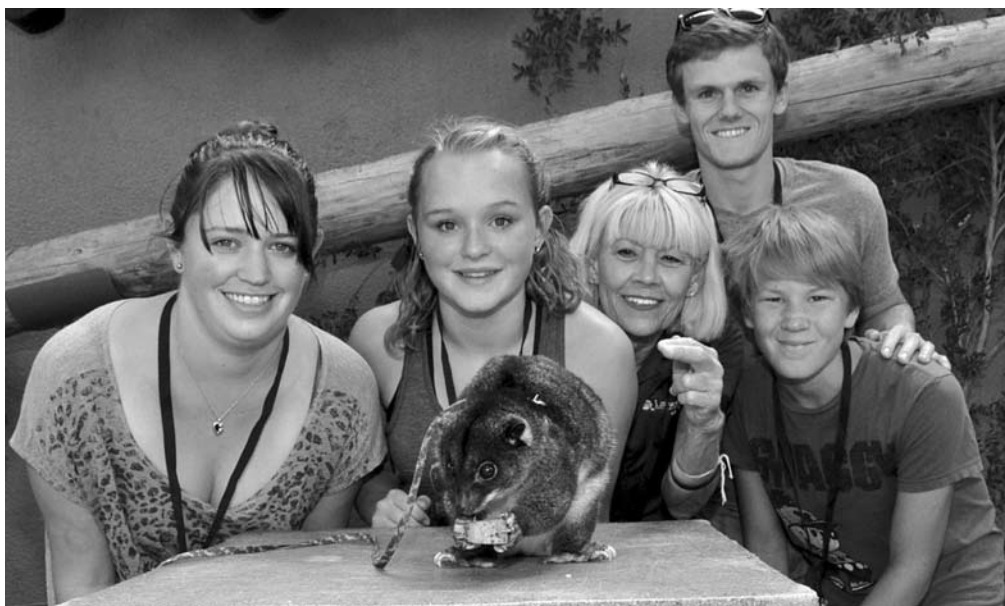
I enjoyed my children so much and realized they were growing up quickly. I decided to adopt another baby, and then decided to make it two, so they could grow up together. In 2001, Kimberly, Bill and I went to Russia, adopted a boy, Brit Leighton Bagley, and a girl, Bow Leighton Bagley. I named the children "Leighton" in honor of Kemp Smith attorney Leighton Green. Like everyone who knew him, I admired Leighton Green's intelligence, integrity and compassion.

The second set of adoptions was difficult. The estimated fees were a far cry from the actual fees I had to pay to the Russians. While in Russia with four children, two of them being infants, I would receive phone calls in the middle of the night; the judge wanted money. I was there with seven American families. We would pool our resources and come up with the funds to keep the judge happy. My family was in Russia a month in a small Russian hotel in Vladivostok, before I was able to get passports for Bow and Brit. When the Delta Airline touched down at JFK Airport in New York, I breathed a sigh of relief to be back in the greatest country on earth.

Bow had many medical issues. Most of them resulted from the fact that she had been neglected. She qualified for the Early Childhood Intervention Program in Texas. The program provided occupational, speech and physical therapists to address some of her issues. Fortunately, she was only eleven months old when I adopted her. She is now 15 years old, fully recovered, and a vivacious teenager.

CROSS: How did you balance your new responsibilities with your law practice?

BAGLEY: It wasn't easy. I opened my



From left to right: Kimberly, Bow, Taffy, Bill (in the back) and Brit

own solo practice to afford myself maximum flexibility.

CROSS: How are your children doing today?

BAGLEY: Kimberly is 25, a micro-biology major at Auburn University, in Alabama, and working in a veterinarian lab. She is also a gourmet cook.

Bill is 23 and attending the University of Nevada Las Vegas, majoring in hospitality. He would like to be a firefighter. He is also a tri-athlete. He won his last competition at Edwards Air Force Base in California. My other children and I cheered him to victory in cowboy gear. Bill competes under the name the "Cardio Cowboy."

Brit is a sophomore at El Paso High. He is interested in theater and has worked with Kids n' Co., a children's theater group in El Paso, and the UTEP Dinner Theater. He is an actor, sings and dances, as well as a talented skateboarder.

Bow is a sophomore and presently being home schooled to accommodate her figure skating training. She spends about 50% of her time training in Monument, Colorado. Her coach is Kori Aid, who coached Jason Brown in the 2014 Olympics. Bow hopes to skate in Disney on Ice.

CROSS: What are you doing today?

BAGLEY: I have a real estate practice, and I am a fee attorney for Lone Star Title Company. I office at Chase National Bank downtown.

CROSS: Any interesting cases or experiences?

BAGLEY: When I started at Kemp Smith in 1977, young associates had to handle criminal appointments. I had to try one to a jury. It was my first jury trial. I tried to act like I knew what I was doing even though I didn't, not just because of the judge or the jury, but because I wanted the client to trust me. I adopted as my own a few war stories I'd heard from other lawyers and shared them with my client. When I got a hung jury, a lawyer in the courtroom rushed up to me and said, "For your first trial, a hung jury is a victory!" I'm sure the lawyer meant no harm, but I think you can imagine why I was mortified.

When I was at Kemp Smith, I volunteered to do a *pro bono* divorce. Many years later, my client called me and told me she had figured out how to pay me. She had a job working for a developer that provided her with the opportunity to suggest names for streets. She said she had suggested that the city name a street after me. Taffy Bagley Street intersects George Dieter. The street name is my all time favorite fee.

Also when I was at Kemp Smith I had big real estate closing in Utah. It was a tradition to have an elaborate dinner after the closing in celebration at a private club in Salt Lake City. Because I was a woman, I was not allowed to enter the private club, so I had to be smuggled into the dinner through a back door.

CLINTON F. CROSS is a retired Assistant El Paso County Attorney.

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Chris Antcliff, *Moderator*

Daniel Hernandez, *Seminar Course Director*

SCHEDULE

(PLEASE NOTE THAT THE SCHEDULE MAY CHANGE)

THURSDAY, FEBRUARY 11, 2016		
6:00 – 8:00 p.m.	Legal Legends, Live Interview by Charles Ruhmann David Jeans, Ray, McChristian & Jeans, P.C. and Kitty Schild (Cocktails and Hors d'oeuvres)	4:00 – 5:00 pm
	FRIDAY, FEBRUARY 12, 2016	
7:00 – 7:45 am	Registration	5:00 – 6:30 pm
7:45 – 8:00 am	Welcome Chris Antcliff, Antcliff Mediation, President-Elect of El Paso Bar Association	7:00 – 8:00 am
8:00 – 8:45 am	Update on Federal Rules Changes Gerald "Gerry" Howard, Kemp Smith LLP, El Paso	8:00 – 9:00 am
8:45 – 10:15 am	Texas Supreme Court Update Justice Steven Hughes and Jeff Alley, 8th Court of Appeals, El Paso	9:00 – 9:15 am
10:15 – 10:30 am	Morning Break	9:15 – 10:45 am
10:30 – 11:15 am	Probate Law Lauren Serrano, Scott Hulse, P.C., El Paso	
11:15 – 12:00 pm	Probate and Fiduciary Litigation Rene Ordonez, Blanco, Ordonez, Mata & Wallace, P.C., El Paso	10:45 – 12:00 pm
12:00 – 1:00 pm	Luncheon Program – Texas Lawyers' Assistance Program Bree Buchanan, Director, Texas Lawyers Assistance Program, Austin	
1:00 – 2:00 pm	Family Law Case Law Update Hon. Laura Strathmann, 388th District Court Judge, El Paso	12:00 noon
2:00 – 2:45 pm	Immigration Issues Danny Razo, Law Office of Danny Razo, El Paso	
2:45 – 3:00 pm	Afternoon Break	
3:00 – 4:00 pm	New Mexico Law Every Lawyer Should Know in View of the New Reciprocity Rule Jeff Ray, Ray, McChristian & Jeans, P.C., El Paso	
		Deena Buchanan, Ray, McChristian & Jeans, P.C., Albuquerque Robert Trenchard, Trenchard & Hoskins, P.C., El Paso Arbitration in the Employment Law Context Rosemary Morales Marin, Scott Hulse, P.C., El Paso Sponsorship Happy Hour SATURDAY, FEBRUARY 13, 2016 Breakfast Government Liability Joseph L. Hood, Jr. and Eric Brittan, Windle, Hood, Alley, Norton, Brittan & Jay, El Paso Manuel Romero, El Paso County Attorney's Office, El Paso Morning Break Implications of <i>Nabors Well Ser vs., Ltd. v Romero</i> regarding Seatbelt Use Evidence and Biomechanical Analysis Carlos Rincon, Rincon Law Group, P.C., El Paso Dean K. Stolworthy, Ph.D, Rimkus Senior Consultant, Houston Judge's Panel: Dos and Don'ts in the Courtroom Hon. Frank Montalvo, Federal Court Judge, Western District, El Paso Hon. Anne T. Berton, U.S. Magistrate Judge, Western District, El Paso Hon. Laura Strathmann, 388th District Court, El Paso End of Seminar

Door Prizes will be given throughout the seminar

Course Materials will be in the form of a flash drive

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Brothers David A. Hall and Teo D. Hall, ages 22 and 24



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