

# AAYLA-LAW

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## Meet Your Secretary-Treasurer Michelle Sibley

Not much has changed since I wrote this article last year, so I guess I will give you a quick refresher. I'm originally an Okie – born and raised in Woodward, Oklahoma. I received my undergraduate degree in elementary education from Oklahoma State University in 1997. While I was completing my student teaching in Stillwater, Oklahoma, I quickly discovered that I did not want to teach young children – ever. After undergrad, I worked in banking for a couple of years, but decided that wasn't for me either.

At the end of 1999, I decided to move to New York and experience life in the big city. I worked as a nanny on Long Island for almost two years, spending every spare minute I had in Manhattan. I love to get back to visit as often as I can. As a matter of fact, as I write this, we are visiting New York right before Christmas, and it is absolutely wonderful!

In 2001 I headed back to Oklahoma

to attend law school at the University of Oklahoma. I graduated from OU in 2004, and then started at Sprouse Shrader Smith right after taking the Texas bar exam. I took the Oklahoma bar exam the next



summer – I guess I'm a glutton for punishment! I am licensed to practice in both Oklahoma and Texas. My practice has been focused mostly on oil and gas transactions, but I also do other trans-

actions.

I met my husband, David Palmer, in 2006, and we were married in April 2007. David is a classical pianist and is the executive director of two nonprofit organizations – Chamber Music Amarillo and the Quartz Mountain Music Festival. In April of this year, we added a member to our family – we adopted a cute little mutt named Jackson from the Animal Rescue Shelter. He is a great, lovable dog, and we thoroughly enjoy him!

“ Depression does not discriminate between the successful or the unsuccessful. . . ”

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“ Now we have to get almost completely undressed and walk barefooted through the scanner. ”

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“ . . . lived off her finite estate via “loans” he gave to himself through a power of attorney. . . ”

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“ Next week you can begin paving hell with them as usual. ”

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# President's Page

Kelly Utsinger

## Happy Holidays?

As one year ends and another begins, we often wax nostalgic if not maudlin—or at least that's our excuse. Mix those sentiments with a shot of economic cataclysm not witnessed since the Great Depression, add a tincture of your prior New Year's resolution failures and pour it all into the caldron of boiling client demands and deadlines. Those ingredients create a dangerous alchemy for depression—a condition we think others may suffer from, but certainly not us.

We ignore those circumstances because we get paid to solve the problems of others and since we do that, we can fix our own. We prefer to turn our heads from the ominous, dark, hovering clouds because we're too smart and too successful for mental illness. Besides, for those of us who traffic in settlements involving mental anguish and emotional distress, we're sufficiently inoculated to be immune from those feelings that preoccupy jurors' deliberations. We rationalize that depression is for the weak and we're strong.

A 1990 John's Hopkins University study concluded that lawyers, of the 105 occupations reviewed, were the most likely to suffer depression. The statistics are startling. According to an ABA Journal Article published in December 2007, about 19% of lawyers experience depression at any given time. The rate for the general population is 6.7%. About 10% of the general population struggle with alcohol problems. The rate for lawyers is 20%.

Despite the pervasiveness of depression in the legal profession, the condition is often ignored. Among the symptoms are:

- persistently sad or irritable mood;
- pronounced changes in sleep, appetite, and energy;
- difficulty thinking, concentrating, and remembering;
- physical slowing or agitation;
- lack of interest in or pleasure from activities that were once enjoyed;
- feelings of guilt, worthlessness, hopelessness, and emptiness;
- recurrent thoughts of death or suicide;
- persistent physical symptoms that do not respond to treatments such as

headaches, digestive disorders, and chronic pain.

Our immediate response to these symptoms is to think of a brother-in-law, ex-wife or an irascible uncle. And let's not forget that most of us have been pretty darn successful despite fleeting moments of anxiety fueled by one or more items off this laundry list. So we choose to ignore these thoughts. But we need to realize when the symptoms persist, for more than 2 weeks and begin affecting our ability to function, it may be time to see a professional. Search the State Bar website using the term "depression" and you will find a Texas Bar Journal Article from 2007 entitled "What to Do When a Colleague is Depressed." It confirms that great lawyers can be depressed and provides a check list for recognizing the symptoms. I would commend the article to all lawyers with a plea to objectively consider its admonitions.

Acknowledging the possible problem is the first step in getting well. If you would like some confidential counseling, call the Texas Lawyers' Assistance Program (TLAP) at 800-343-8527.

Depression does not discriminate between the successful or the unsuccessful; those with or without faith; and the young or old. There is no indignity with seeking help; instead only ignominy in attempting to deal with the condition without assistance.



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### Contact Us

For more information about your local area bar association or for address changes, contact Jo Ann Holt, Executive Director, at:

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Also visit our website at [www.amarillobar.org](http://www.amarillobar.org) for information and links to both local and state-wide legal resources.



# AAYLA Update



*By John Massoub*

Happy New Year. After the season of sharing, caring, and giving it is now time to plan atonement for our overeating, overdrinking, and all around over indulging. Yes, the New Year's resolutions that take us all the way to St. Patrick's Day or even Martin Luther King, Jr. Day. Along with our personal resolutions it is just as helpful to make out a list of those items in your practice you need to improve upon.

1. I will keep my desk organized this year. This usually lasts through the first week until my secretary has found that I'm stuffing all my files in her office.

2. I will return all phone calls the day they are received. This generally lasts until I get a call from Mark White or Kelly Utsinger to let me know about a "wonderful committee opportunity."

3. I will take a two-week vacation with the family this year. This lasts until the family realizes they like it better when I'm at work.

4. I will get my AMA-LAW article to Hollye Hawkins on time. Well, some resolutions just never get started.

5. I will do more pro bono work. Easy to do if you have family in town.

I would recommend that all lawyers resolve to partake in quality CLE in Vegas this year. Go ahead and take out that new calendar you've been dying to write all over and block off April 3-4 at the Paris Hotel and Casino. There is no better way to give back to the community than to take this trip -- of course, it's the Vegas community, but a community nevertheless.

Again, I wish the entire legal community and Dusty Stockard a happy and prosperous 2008.



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# Young Lawyer of the Month



*Briar Wilcox*

Briar Wilcox was born and raised in Amarillo, Texas. She graduated in 1995 from Amarillo High School and spent two years at the University of North Texas. She then returned to West Texas A&M University where she graduated with a degree in history. After coming to the realization that the history field held few opportunities for employment, she returned to her high school dream of going to law school.

Briar attended Thomas M.

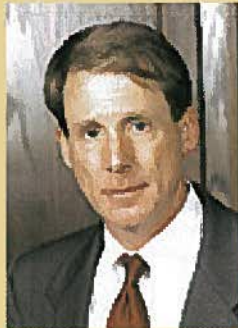
Cooley Law School, and graduated in May 2004. While in law school, Briar was active in Moot Court, representing her school on a National Moot Court Team and serving one year as the Moot Court Board vice president. After graduating, Briar returned home to Amarillo. Briar passed the bar and began her time as an attorney at Legal Aid of North West Texas, working with women who were in domestically violent relationships, and assisting them in their divorces. Currently,

Briar has her own practice which focuses primarily in family law.

In her free time, Briar enjoys aerobics, and was recently licensed to teach. She also enjoys spending time with her husband, Corey; her daughter, Makenzie who is eighteen months old; and her step-son Jordon, who is fifteen years old.

## January AABA Meeting

Robert L. Duncan, member of the Texas Senate and partner in the Lubbock law firm Crenshaw, Dupree & Milam, LLP, will bring our January program, just days before the opening of the Legislature's 2009 session. Come hear this experienced and respected legislator talk about legislation likely to affect your practice and your clients' business.



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# Legal Yarns

## Airport Travel Transportation

**Happy 2009!** I am sure that many of you that bill by the hour are not necessarily excited about January 1. You start counting again from zero on January 2nd (already having lost a day).

With that same defeatist attitude, I am typing this while waiting in an airport on a delayed flight. Amazingly, I am able to transact business (emails and telephone calls) because of numerous technological advances, which lead me to thinking about the ol' days when things were different:

1. Prior to 9/11, the security concerns were vastly different. You could carry a small pocketknife without anyone fearing that you planned to hijack the airplane.

2. We could carry a coke, water, lip balm, etc. with us through security. Now, they want us to trash all of those items and then repurchase them at "airport" prices a few yards after we pass through security. I can only imagine what level of security the items on the other side of security must have endured to get there.

3. Gone are the rows of pay phones and the associated calling cards, which were a mainstay for any lawyer attempting to transact business while traveling.

4. There was a time when we had to prove that our mobile phones were actually "working" phones before we could take them through security. Now, they just get scanned with everything else.

5. Instead of simply "wasted" time

sitting, waiting and becoming more frustrated, the cell phone and laptop allow us to carry on business much like we are sitting in an office. Realizing, of course, that certain work could be accomplished in the good ol' days (dictation with the airport background noise, particularly, with the numerous announcements always presented a challenge for even the best legal secretary).

6. The person standing/sitting next to you and talking into thin air is not talking to you, but rather, that person has an "ear bud" and is talking on the phone (or, alternatively, just talking to themselves and/or pretending to be on the phone). Remember the first time you thought the person was talking to you or vice versa?

7. Franchises are now in airports. You can enjoy your favorite fast food without every leaving the airport (at "airport" prices, of course). I have wondered what clients would say if we told them that our hourly rate was triple its normal amount because we were working at the airport.

8. For those of you who smoke, you really have seen some changes over the years. First, you could no longer smoke on the airplane (many people appreciate that fact). Then, you could not smoke in the airport except in designated areas. Now, you have to go outside IF you can get there and are willing to endure security screening more than once. I have even seen some signs that enforce a smoking ban within a certain distance from the entrance to the building.

9. If you use the term "stewardess," you will receive an abrupt reprimand that the correct term in "flight attendant." I never really understood why or when that



James Wester

change happened. If it relates to more men being flight attendants, I would have thought we would have been asked to refer to them as "stewards."

10. Instead of electrical outlets, we now have "recharge zones" for all of those electronic gadgets. We also have "wifi" or "hot spots" so we can "link to the net" (at "airport" prices).

11. There was a time when we could wear our shoes and jackets as we passed through security. Now we have to get almost completely undressed and walk barefooted through the scanner. If you still can't pass the test, they are kind enough to "wand" you.

12. Southwest Airlines allowed us to compete for a boarding position - resulting in people standing, sitting and laying in the boarding line. Like many other areas, we are now simply reduced to a number. I recently experienced the fact that I could not board the airplane with my wife because she had number 30 and I had number 31. I was informed to step over to the front of the second wave and wait until my number was called. My objection to the Boarding Nazi fell on deaf ears. Continuing to argue my point was quickly escalating to the potential of being further delayed while I discussed the issue with security. As the thought of being strip searched and missing my flight passed through my thought process, I unhappily complied.

Even with all of the good and not so good changes in airport traveling, there is still one thing that has remained as a constant throughout the years - it continues to be frustrating!

If you have some airport yarns or would like to share some stories or memorable changes, please feel free to email me at James.Wester@uwlaw.com.

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# 7th Court of Appeals Update

by Justice Brian Quinn



We heard it before: “no harm, no foul.” Well, that is a nutshell description of the harmless error rule. And, whether a mistake is harmful depends on many things including the timing of the error, the quantum of evidence establishing guilt, the obviousness of the mistake, and the likelihood that affirming would be viewed as an invitation to act similarly in the future. Our applying those criteria in *Wells v. State*, No. 07-07-0471-CR, 2008 Tex. App. LEXIS 8866 (Tex. App. – Amarillo November 25, 2008) did not bode well for the State. Thus, the decision to admit a resolution by the American Optometric Association regarding the accuracy of a test used in assessing one’s intoxication was both a harmful and reversible foul.

Who can be a guardian? That depends, in many cases, upon the existence of an adverse interest. While some may

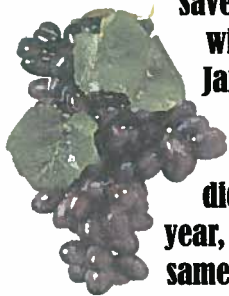
suggest that simply owing a potential ward money may not create such an interest, the son who petitioned to be his mother’s guardian in *In re Guardianship of Olivares*, No. 07-07-0275-CV, 2008 Tex. App. LEXIS 9232 (Tex. App. – Amarillo December 12, 2008) lived off her finite estate via “loans” he gave to himself through a power of attorney while failing to maintain accurate records of those loans. The power of attorney also contained a provision that forgave the indebtedness upon his mother’s death. We held that those circumstances depicted an adverse interest precluding the son from acting as guardian or even participating in the guardian proceeding.

Who is a good faith purchaser under § 2.403(a)(2) of the Business and Commerce Code? That was the subject of our opinion in *Carter v. Cookie Coleman Cattle Co.*, 07-06-0436-CV, 2008 Tex.

App. LEXIS 8795 (Tex. App. – Amarillo November 24, 2008). There, Carter bought cattle from someone who bought them with a bad check. Because the price for the cattle was dependant upon their weight, Carter paid for them in full before they were shipped, received and weighed, and the intermediary he used normally required a down payment, we were unable to deem him a good faith purchaser as a matter of law.

And what of promissory estoppel? That theory was raised in *Garcia v. Gomez*, No. 07-06-0403-CV, 2008 Tex. App. LEXIS 8897 (Tex. App. – Amarillo November 26, 2008). But, merely “expecting” to be the beneficiary of a promise that someone was “suppose” to keep (the promise being the conveyance of land) did not entitle Garcia to the benefits of the theory.

## Legal Briefs



**Save the date for a wine dinner on January 30, 2009 at the Amarillo Club. If you didn't attend last year, don't make the same mistake twice.**

**B&W Pantex seeks an Attorney to support operations at the Pantex Plant.** Job duties include: Providing specialized proactive and strategic legal services related to the Plant and its business in environmental, health, safety, labor and employment law, Federal and commercial contracts, federal procurement regulations, and other areas of regulatory law. Providing legal ad-

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For more information or to submit a resume, contact Connie Olson, at B&W Pantex, at [colson@pantex.com](mailto:colson@pantex.com).

**Legal Aid of Northwest Texas has announced their schedule for legal clinics.**

Luisa Vigil, EJVP Coordinator, said the clinics will be held on the 3rd Tuesday of every month beginning in January and continuing through October, 2009. The clinics will alternate between the Wesley Community

Center and the Polk Street United Methodist Church .

The clinic in January will be held at the Wesley Community Center , located at 1615 Roberts Street . The Underwood Law Firm is sponsoring this clinic.

Other firms or individual attorneys wishing to sponsor a clinic or volunteer can contact Luisa Vigil at [vigil@lanwt](mailto:vigil@lanwt) or 806-373-6808.

**If you have news, we want to hear from you. Send your information to the AABA: email [director@amarillobar.org](mailto:director@amarillobar.org), fax 379-9259, or call 371-7226.**

## THE LEGAL BEAGLE



*Abby is a miniature Beagle who is a hound for obscure, interesting, and/or outrageous legal treats. Her briefs are meant to educate and entertain. If you have any Legal Beagle-worthy tidbits, please e-mail Abby at [legalbeagle.aaba@sbcglobal.net](mailto:legalbeagle.aaba@sbcglobal.net). Submissions will be published in this column and attributed to the sender. Abby is a stickler for Shepardizing, so please cite your source.*

**🐾** From the Ask Abby mailbag—items of legal interest from the canine community:

**Dear Abby, If I am adopted from an animal shelter, is my new owner legally required to have me neutered? Fixin' to be Fixed Fox Terrier**

**Dear Fixin':** Yes. If the facility does not "sterilize" your new friend, you will have to sign a letter indicating that it will be done, and failure to have the procedure performed will allow the animal shelter to reclaim your friend and should you "prevent, obstruct, or interfere" with the reclamation, your interference will be a class C misdemeanor. See generally § 828.001-010 of the Health and Safety Code.

**Dear Abby, What is the historical basis for legally valuing a lost pet?**

**Wondering my Worth Weimaraner**

**Dear Wondering:** One must return to 1891 to the case of *Heiligmann v. Roze*, 81 Tex. 222, 16 S.W. 931 (1891), where the court set out certain principles that are still true today, regarding damages for the loss of a dog, which are (1) the market value, if any, and (2) the special value to the owner referencing the usefulness or service of the dog to its master, which special value is limited, being strictly an economic value derived from usefulness and service, which is not related to companionship or sentiment.

**🐾 Quotes of the Month:** New Year's Day... now is the accepted time to make your regular annual good resolutions. Next week you can begin paving hell with them as usual.  
**Mark Twain**

Now there are more overweight people in America than average-weight people. So overweight people are now average... which means, you have met your New Year's resolution.  
**Jay Leno**

## A Picture is Worth. . .

Correctly identify this person who chose a picture of himself when he "still had a full head of hair" to [legalbeagle.aaba@sbcglobal.net](mailto:legalbeagle.aaba@sbcglobal.net). and win a travel brief case generously provided by Thomson West Publishers.



**Joe L. Lovell** correctly guessed **Doug Woodburn** as last month's picture. "[The] photo appears to me to be the husband of our Potter County District Clerk, Caroline Woodburn, aka Judge-elect Douglas," Lovell said. As usual, Lovell gave a creative answer to a fairly direct question.

The following names were drawn from the fishbowl at the December Bar luncheon:

\$25....**Mark Baskett** (not present)

\$50....**Courtney Goodman-Morris** (not present)

\$75....**Steven L Hoard** ( present!!!!)

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# Your Bar Events - January 2009

S	M	T	W	T	F	S
				1	2	3
4	5	6	7 AAYLA Board Meeting, 12:00 p.m. Sprouse Law Firm	8 AABA Board Meeting, 11:45 a.m. Amarillo Club	9 Bar Luncheon, 11:45 a.m., Amarillo Club, 30th Floor	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Hollye H. Hawkins, *Editor of AMA-LAW*

Jo Ann Holt, *Executive Director*

John Massouh, *AAYLA President*

Brian R. Heinrich, *James W. Wester*

Andrew R. Evans, *Dusty Stockard*

Cynthia J. Barela, *Sonya Letson*

**Terms Expire 2009**      **Terms Expire 2010**

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