

AAMA-LAW

A Publication of the Amarillo Area Bar Association

www.amarillobar.org

VOLUME 23

DECEMBER 2008

NO. 4

Meet Your Vice-President



By the time this article is actually printed, the Big 12 Championship game may be the only remaining hurdle facing a Big 12 South team's right to play for college football's national championship. Big 12 football has been a hot topic around my house throughout the past few months. I graduated from The University of Texas and my wife Karen graduated from Texas Tech. Karen and I have taken our four children to several games in Austin and in Lubbock over the years. Despite our individual efforts to influence our children, their collegiate loyalties are divided. Ever the diplomats, their allegiance appears to depend on which parent is actually present when asked to divulge a favorite. Nevertheless, Karen and I generally pull for each other's team ... except during one game every year. Unfortunately for me, we attended that one game this year. It was a fun game to attend, and Karen has been very gracious in victory. Nonetheless, it was a scene I don't want to relive anytime soon.

Not only has this year's football season been a hot topic at home, it has generated a lot of discussion around the water cooler at my office (Irwin Merritt Hogue Price & Carthel, P.C.). In 2006, John Irwin, Joel Hogue, Johnny Merritt and I started our law firm. Every one of them graduated from Texas Tech. I have a picture of the four of us in my office that was taken when we opened our doors in 2006. There are three guns and one set of horns in

that picture. Since 2006, Mitch Carthel joined our firm as a Shareholder. Shane Brooks and Jason Rahlfs have also joined us as Associates since then. Mitch and Jason both attended law school at Texas Tech. Shane obtained his undergraduate degree and a joint MBA/JD from Texas Tech. Needless to say, I am outnumbered. There is no telling how many billable hours we have spent this year discussing the intricacies of the BCS system and the exciting moments of this year's football season. Like my wife, all of my colleagues have been very kind in the aftermath of Tech's win over Texas last November. They do, however, desire to talk about it often. Who knew college football would open up all these lines of communication?

Besides a common interest in college sports, Karen and I spend a lot of time during the Fall attending our own children's sporting events. Our oldest daughter Brooke is a senior at Tascosa High School and cheers for the varsity squad. Our oldest son Cody is a sophomore and played junior varsity football at Tascosa as well. Our daughter Abby is in 6th grade. She attends de Zavala middle school and plays volleyball. Our youngest son Curry (age 10) just finished his first season of Kids Inc. tackle football and is already playing in a basketball league. Between the four of them, we are on a field or in a gym somewhere on most days of any week. We love it and wouldn't change a thing.

I was born in Amarillo, and I graduated from high school here. I love Amarillo and its proximity to the mountains. Karen and I try to get our family up to the Rockies as often as possible. Before returning to Amarillo in 1998, I practiced law in San Antonio for a couple of years. Prior to that, I clerked for U.S. District Judge Mary Lou Robinson. My clerkship with Judge Robinson was one of the most rewarding experiences of my legal career. Amarillo enjoys a super legal community and a Bar Association with an exciting history. I am honored to serve the AABA this year as Vice President.

“While most momentous events in Texas occur at high noon, the legislature chose 10:00 a.m. at the request of an influential Federal Express lobbyist.”

- Page 2

“Thanksgiving serves as a training period or pre-season to the endless food and bowl games to follow with the Christmas season.”

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“It being a very hot August night, all of them got down to their skivvies and finally passed out.”

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“If the defendant attempts evasion or takes flight the plaintiff shall lay hand on him.”

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President's Page

Kelly Utsinger

Welcome to the WWW a/k/a the World Wide Web --

Maybe you've received a Friday afternoon frantic call from someone living on the left or right coast who has read the citation's fine print and realized an answer must be filed by 10:00 a.m. on the following Monday. They don't understand why the close of business, 5:00 p.m., won't work and you have to explain that while most momentous events in Texas occur at high noon, the legislature chose 10:00 a.m. at the request of an influential Federal Express lobbyist. Because those logistics will not permit the file to be received and the answer filed on time, the caller often asks how close you are to Houston. When they find out, they explain they'll fax the file. You are prompt to reply, "Don't worry about a fax. We finally got FM radio out here in the colonies. You can just send the file electronically." Greatly relieved, the caller decides to communicate with you through cyberspace. Cyberspace—like a black hole, it seems like all legal communications these days are drawn through it.

The truth is Amarillo area lawyers are pretty adept at navigating the internet and their Bar Association reflects that sophistication. With its own website – a service that many comparable bar associations do not have—the AABA has created a window to let the World Wide Web know about our Bar and our lawyers. You can find it at <http://www.amarillobar.org>. I'm afraid, however, too many of our lawyers have overlooked the terrific opportunity presented by this cutting-edge communication tool. Okay, I'm guilty too. But we need not be ignorant any longer.

The AABA website furnishes links to the courts and to the clerks, it contains announcements concerning local CLE and it publishes the AABA monthly newsletter. Probably the greatest benefit the website provides for AABA members is the ability to create one's very own profile. No, I'm not talking about some My Space bio with too much information about your zodiac sign and favorite music. Because it is searchable, the website allows lawyers to identify their practice areas, provide their picture and publish information like board certifications. We plan to be making improvements to the site during the next few months. In the mean time, surf the site, so that the next time you get that Friday afternoon call, you can direct the caller to your web bio to make sure they know you're high tech.



AMA-LAW is published monthly from September through May by the Amarillo Area Bar Association.

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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 for information and links to both local and state-wide legal resources.



AAYLA Update

HO HO HO. Merry Christmas. I hope everyone has recovered from the gluttony of food, football, and family togetherness over the Thanksgiving holiday. Thanksgiving serves as a training period or pre-season to the endless food and bowl games to follow with the Christmas season. As this is being written prior to the Tech-OU game, I just hope that by the time you read this, the Texas Longhorns have backdoored their way in the National Championship game.

Congratulations to all of our new

Courthouse Security Update

Potter County Sheriff-elect Brian Thomas plans to make security at the county's courthouses a priority when he takes office in January.

"Courthouse security is a concern of mine. We will be looking at ways to implement staff and equipment to improve the security situation over there," Thomas said.

Last month, interim sheriff Ron Boyter assigned a deputy to provide security at the Potter County Courts Building, the first full-time security officer that has been placed there. Deputy Paul Lanius, a 25-year veteran of the department, was selected to fill the post. The deputy providing security at the County Courthouse has been temporarily assigned to the Santa Fe building while the courthouse undergoes restoration.

Thomas hopes to increase the number of security officers and wants to install metal detectors that were purchased for the Courts Building last year by the 7th Court of Appeals. "The security of county employees and the public is important to me," Thomas said. "I plan to beef it up."

lawyers who were sworn in last month and welcome to the Amarillo legal community. Just remember to respect your elders and Dusty Stockard. Dusty can be a little crotchety at times so watch out.

The time is drawing near for the Young Lawyers 10th Annual Las Vegas CLE to be held at the Paris Hotel and Casino on April 4, 2009. Registration information will follow in next month's AMA-LAW. Give yourself the gift that keeps on giving and go ahead and book your flight for this once-in-a-lifetime (if you have never gone before and all life ends before we do this again next year) event. There is a rumor that we will have a Texas Supreme Court Justice provide a Supreme



By John Massonb

Court update and that the immortal Dan Schapp will be making a long awaited return to the Las Vegas speakers circuit.

On a serious note, please take time this holiday season to reflect on how blessed each of you are to work in a profession that, although seldom appreciated by those outside the legal field, can and does make a difference. On behalf of the Amarillo Area Young Lawyers Association and our plump and jolly friend Mark Logsdon, I wish each of you a Merry Christmas and a wonderful holiday season.

BOARD OF DIRECTOR'S REPORT

by Kyle Lewis

I would like to give you a report of the Board of Directors meeting in Midland held on October 3, 2008. A good deal of the meeting consisted of what I would call housekeeping matters. I will not go into those. I will try to focus on matters that I think are important to you.

John Edwards, the Executive Director of the State Bar, has resigned. An Executive Director Selection Committee was formed to recommend a new executive director to the Board. The Committee decided to first consider the Deputy Executive Director, Michelle Hunter.

It is my understanding that Michelle was considered when John Edwards was hired and lost out to John by one vote. After extensively interviewing Michelle, the Committee decided to recommend her for the position. After discussion by the Board, the Board hired Michelle. John will stay on for a few more months to help with the transition. I think this was a good choice.

Over the last several years the classes

of the Board of Directors have become unequal. The third year class has five elected directors, the second year class has the correct number of ten, and my class has fifteen. Ten should come on and ten should rotate off each year. In 2006, the Supreme Court revised the rules to allow the Board to

adopt procedures to equalize the size of the classes. The Supreme Court will issue an administrative order shortly to extend the terms of five elected directors allowing these five to serve four years instead of the usual three. This will correct the imbalance.

The Board received a report regarding a statewide mentoring program for new lawyers based on a program started by the Dallas Bar Association. All reports received indicate the Dallas program has been a success. A similar program will be implemented statewide. This will be a voluntary program. It is scheduled to commence in January, 2010.

The Board then received a report from the Court Administration Task Force. The Task Force was created after S.B. 1204 failed to pass in the last legislative session. You will recall S.B. 1204 dealt with a structural reorganization of our courts system. The Task Force tackled the same issues and issued an extensive report. Justice Pirtle and Tom Riney were on the Task Force. The report is too lengthy for me to adequately summarize here. However, I would be happy to e-mail the report to anyone who would like to see it. If you want a copy contact me at klewis@arn.net.

After extensive debate over the wording of the motion, (way too extensive), the Board voted to accept and publish the Task Force's report as a resource to interested parties without approval or consideration of the substantive issues contained in it.

If you want more information on any of these matters, please let me know. It is a pleasure for me to serve you as your Bar Director.

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Young Lawyer of the Month



Travis Odom

Travis Odom, or to those in the know, T.O., is a third-year associate at Sprouse Shrader Smith, P.C., where he focuses his practice on employment law, commercial litigation and appellate law. Travis received his B.A. from Baylor University in May 2002 and J.D. with honors from Baylor Law School in April 2006.

If you ask Travis he might claim to be from Texas, but he's not. Travis got his humble start in life when he was born in Columbus, Mississippi. He did get to Texas just as fast as he could and by age three he was living Tyler, Texas. Travis spent the next fifteen years in Tyler.

Travis met his incredible wife, Libby, a third-year associate at Mullin

Hoard & Brown, L.L.P., during the summer of 2000 in an English literature class at Baylor. She thinks he forgot a pencil for the first exam and had to borrow one but it really all just a part of his strategy to ask her out. It must have worked because two years later they got married. Unable to stay away from the beauty that is Waco, Texas, (or realizing that graduate school is required if you want to be employed with an English degree) Travis and Libby returned to Baylor to attend law school. Travis clerked for Justice Wanda McKee Fowler Fourteenth Court of Appeals in Houston, Texas after graduation. After having lived in the piney woods of East Texas and the Gulf Coast, Travis and Libby decided to try something new and moved to Amarillo in August 2007.

Travis and Libby are expecting their first child, a daughter named Grace Elizabeth, in January 2009. Until then Travis is trying to stock up on sleep and enjoy what remnants of freedom he has left. In his spare time Travis enjoys road biking, tennis, reading and spending time with his wonderful wife.

Editor's note: Typically, each time a young lawyer is bestowed with the honor of "Young Lawyer of the Month," their first (and only) obligation is to author a self-congratulatory autobiography. However, Travis will be surprised to open this month's AmaLaw and learn that he holds this month's honor—Travis' wife, Libby wrote the preceding article.

December AABA Meeting

Do you think of arbitration as involving only dry commercial disputes between parties to contracts? Houston lawyer K.B. Battaglini is a favorite speaker at State Bar programs on the subject of arbitration. At our December lunch meeting, he will help us understand how and why many kinds of disputes, even personal injury cases, may be resolved these days by an arbitrator instead of a judge and jury. His topic is "Arbitration in Texas: History and Enforceability."



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Legal Yarns

The Value of Cross-Examination

Submitted by Walter Wolfram
Banana Slim [his actual nickname] of Littlefield, Texas, was the chief witness in the prosecution of Cliff [last name not important] for an August evening burglary of a filling station during the depression of the 1930's. Andy Bills was the defense attorney and Herbert Martin was the District Attorney.

On the Friday before the Monday morning trial, Andy Bills called the District Attorney and told him that Banana Slim had lied to the grand jury that indicted Cliff for burglary and destruction of a pay telephone at the station to cover up his own negligence and misuse of the filling station. Andy informed the District Attorney that what really happened on the Saturday night of the so-called burglary - Cliff and two other of Banana's buddies went down to the filling station at closing time with a tub full of iced down beer. Banana closed up the filling station and all four proceeded to get skunk drunk. It being a very hot August night, all of them got down to their skivvies and finally passed out. Cliff awoke about 3:00 A.M. disoriented, jumped up and pulled the pay telephone off the wall and started running down the middle of the street crying out "Hello Central" with the phone tightly in his hand and up to his ear. Banana concerned for Cliff's safety, picked up a small towel and chased Cliff down the street (both in their skivvies) popping Cliff on the butt trying to "snap him out of it."

Confident that Cliff and his defense counsel were trying a last ditch effort to avoid Cliff being convicted, the District Attorney immediately called Banana Slim. Banana held tough to his prior grand jury testimony. Furthermore, Banana told the District Attorney that if Andy's and Cliff's story were true, he would lose his job and he really needed it. Even more confident of his chief witness' story, the District Attorney was ready for trial.

On Monday, Banana took the stand before an all male jury and a courtroom full of spectators. During his recounting his grand jury testimony, Banana apologized to Cliff and stated that he hoped Cliff would understand that he simply had "to tell the whole truth."

Time for cross-examination came. Andy Bills [the defense attorney] took out

a cigarette, tapped it down on the counsel table, lit it and took a long deep drag and blew the smoke straight up into the sky and then jumped directly into his cross-examination by asking Banana one simple question: "Banana, what really happened?" The answer came from Banana:

"Well, it was Saturday night and nothing was going on after closing, so Cliff and two of our buddies brought a tub full of iced down beer to the station. We all got skunk drunk, got down to our skivvies because of the heat and passed out. Cliff woke up about 3:00 A.M. and got confused. He jerked the phone off the wall and started running down the middle of the street hollering, "Hello Central." I got worried that he would get run over or something so I got a towel and started running after him, popping him on the butt trying to snap him out of it."

Of course the jury was falling all over themselves in laughter—as was courtroom



James Wester

full of spectators. The Judge dismissed the case against Cliff and it was over.

The stunned and embarrassed District Attorney took hold of Banana Slim and told him that he was going to beat him up in front of everybody. The District Attorney took Banana out onto the courthouse lawn where he ran him up against a tree and in a very loud voice – so that the crowd could hear -- shouted: "Why did you tell that cock-a-mamie story today?" In another very loud voice, Banana Slim answered: "To tell you the truth, Andy Bills just broke me down on cross-examination!"

In Proverbs, it states that a man's story seems true until he is cross-examined.

Legal Briefs

Congratulations to the following new lawyers who were sworn in to the Bar on November 13th at the Court of Appeals. The firms they have joined are noted in parenthesis:

James Austin, Harley Caudle, Brad Hickman, and Andrew Sefzik

(Sprouse Shrader Smith)

Allison Stephens and Conrad Hester

(Brown & Fortunato)

Kelln Zimmer and Matt Sherwood

(Sanders Baker)

Joanna Kimbell

(Burdett, Morgan, Williamson, & Boykin)

For the past several years, the local Child Welfare Board has sponsored a Christmas Dinner and Giving celebration for youth who have aged out of the foster care system and are receiving case management through Family Support Services PAL program. However, budget cuts have drastically affected this program.

Family Support Services is reaching out to groups who might be interested in adopting this initiative for our youth. They



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.

already have the funding for the dinner but we need the funding for the gift cards that are given to each youth as a present. If you are interested in donating to this event, send the donations to Janet Byars at Family Support Services, with a notation of ICM.

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

7th Court of Appeals Update

by Justice Brian Quinn



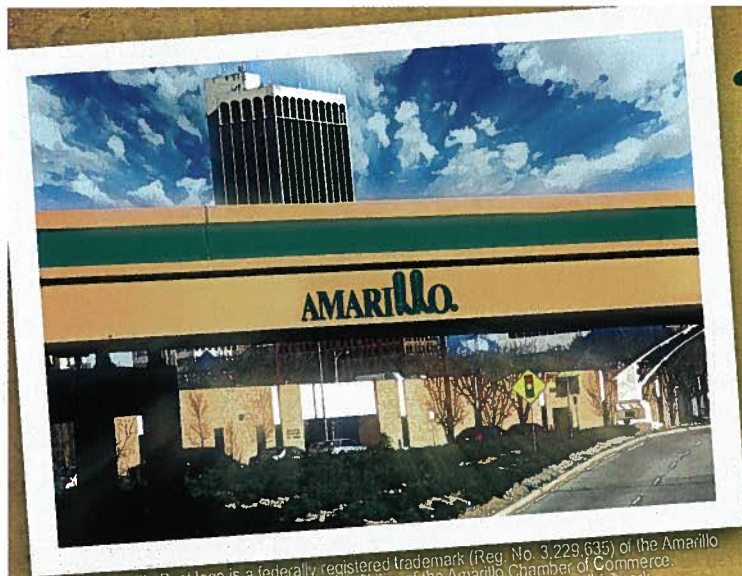
Though a trial court's plenary power over a final judgment may have expired, it still has some authority to act. It encompasses the ability to enforce the terms of the instrument it signed. That does not mean, however, that it can make substantive changes to the judgment or the obligations imposed by it. And, that is what happened in *State v. Chapman Children's Trust*, No. 07-08-0050-CV, 2008 Tex. App. LEXIS 7556 (Tex. App. – Amarillo October 8, 2008), when the trial court ordered the State to undertake street improvements in line with an agreement between the trust and the city of Amarillo. That agreement was non-existent when the judgment was entered.

How about those situations where evidence can be admitted but only for

limited purposes. When they arise, it is appropriate to seek and receive an instruction directing the jury to consider it only for those specific purposes. The catch is, though, that the instruction must be requested at the time the evidence is first presented. If one delays, such as until the court is charging the jury after both sides have closed, then it is too late. And, that was the circumstance in *Navarro v. State*, No. 07-08-0127-CR, 2008 Tex. App. LEXIS 8033 (Tex. App. – Amarillo October 22, 2008). Because of the delay there, the jurors were free to consider the evidence without restriction.

So your client wants a chance to buy a particular tract of land in the future. Well, there are at least two ways that can be done. One is through a right of first

refusal. Another is through an option to purchase. And, though both can lead to the same result, they are two different birds altogether, as the appellant in *Dion's of Tex., Inc. v. Shamrock Econ. Dev. Corp.*, No. 07-07-0373-CV, 2008 Tex. App. LEXIS 8270 (Tex. App. – Amarillo October 31, 2008) discovered. A right of first refusal is triggered when the owner decides to sell the property and usually cannot be invoked until then. But, one who has an option to buy normally can exercise it whenever he wants and irrespective of the land owner's interest in selling. So, Dion's effort to buy the land went for naught since it only had a right of first refusal and the city of Shamrock did not want to sell it at the time.



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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.aba@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.

🐾 This month, a Legal Beagle history lesson in Ancient Greek Law:

Twelve Tablets (*Duodecim Tabularum*). Tradition tells us that the code was composed by a commission, first of ten and then of twelve men, in 451-450 B.C., was ratified by the Centuriate Assembly in 449 B.C., was engraved on twelve tablets (whence the title), which were attached to the Rostra before the Curia in the Forum of Rome. You can see many similarities between the following tablet and the civil procedure we use today.

Table I. Proceedings Preliminary to Trial

1. If the plaintiff summons the defendant to court the defendant shall go. If the defendant does not go the plaintiff shall call a witness thereto. Only then the plaintiff shall seize the defendant.
2. If the defendant attempts evasion or takes flight the plaintiff shall lay hand on him.
3. If sickness or age is an impediment he who summons the defendant to court shall grant him a vehicle. If he a does not wish he shall not spread a carriage with cushions.
4. For a freeholder' a freeholder shall be surety; for a proletery anyone who wishes shall be surety.
5. There shall be the same right of bond and of conveyance with the Roman people for a steadfast person and for a person restored to allegiance.
6. When the parties agree on the matter the magistrate shall announce it.
7. If they agree not on terms the parties shall state their case before the assembly in the meeting place or before the magistrate in the market place before noon. Both parties being present shall plead the case throughout together.
8. If one of the parties does not appear the magistrate shall adjudge the case, after noon, in favor of the one present.
9. If both parties are present sunset shall be the time limit of the proceedings.
10. "... sureties "... subsureties "... with platter and loincloth ...

http://avalon.law.yale.edu/ancient/twelve_tables.asp Source: Yale Law School's Lillian Goldman Law Library

Quote of the Month: Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it. Ronald Reagan

A Picture is Worth. . .

Correctly identify this self proclaimed "handsome devil" to legalbeagle.aba@sbcglobal.net. and win a travel brief case generously provided by Thomson West Publishers.



Mac Whittenburg was the first to correctly identify the younger face of Judge Ana Estavez back in her days as a cowgirl.

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

- \$25.....**Randall Sims** (he was present!!!)
- \$50.....**Chris Wright** (not present)
- \$75.....**Elsie Brown Silverman** (not present)




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

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