

AAMA-LAW



A Publication of the Amarillo Area Bar Association

www.amarillobar.org

VOLUME 23

NOVEMBER 2008

NO. 3

NOVEMBER MEETING DATE CHANGED FOR COURT OF CRIMINAL APPEALS VISIT



Our Bar Association's November Lunch meeting will be held Wednesday, November 19, instead of our regular meeting date.

That day, the Amarillo area will have an opportunity to see our State's highest criminal court in action, when the Texas Court of Criminal Appeals holds oral argument at the Santa Fe Building. The Court will hear two cases that morning, with arguments beginning at 9:30, in the auditorium on the 11th floor.

Oral arguments will be open to the public. Amarillo area schools have been invited to bring students to attend the Court's

session. The Court is visiting Amarillo at the invitation of our Bar Association.

The Court also will present the program at our monthly meeting, which will be held at 11:45 at the Amarillo Club. Because of the anticipated large crowd, our meeting will be moved to the 31st floor dining room. Cost for the lunch is \$15 for AABA members and \$20 for non-members and guests. The serving line will be open at 11:30. The Court will have a tight travel schedule after lunch. Please make a special effort to arrive early so the meeting can conclude on time.

"...we put our briefs on – so to speak – at least as well as our counter-parts in the big cities." - Page 2

"If you fail the bar, you don't have to go home, but you can't stay here." - Page 3

"the lawyers in this case did not attend kindergarten-as they never learned how to get along well with others." - Page 5

"As a peacemaker the lawyer has a superior opportunity of becoming a good man." - Page 7

Contents

President's Page	2
AAYLA Update	3
Young Lawyer	4
Legal Yarns	5
7th Court of Appeals	6
The Legal Beagle	7



President's Page

Kelly Utsinger

Preserving a Legacy... Promoting the Profession

I am particularly proud that I am a lawyer in the Texas Panhandle, and I believe you should be too. I am convinced that we put our briefs on – so to speak – at least as well as our counter-parts in the big cities. Panhandle lawyers' work product is as good as any I have seen from lawyers from around the State. Practitioners here are more than just good lawyers, they are good people committed to representing their clients zealously while preserving the integrity of the profession by treating their adversaries with dignity and respect. That's the legacy our lawyers have established over the past 100 years. That legacy is preserved by the Amarillo Area Bar Association. Those who appreciate the quality of practice in this region have an obligation to see that this legacy of quality practice is passed to the next generation.

While oral histories are the stuff from which urban legends are made, the truth is we need to remember our lawyers formally and to promote the education of young lawyers who will continue the legacy of quality for our Bar. The best vehicle for doing so is our very own Amarillo Area Bar Foundation. The Foundation was established in 2003 as a § 501(c)(3) non-profit corporation. To my knowledge, there is no bar foundation like ours in any West Texas community of our size.

So what can the Foundation do to preserve the legacy and promote the profession? With your help, the Foundation can fund events that will preserve our history and celebrate our Bar Association's Centennial Year in 2010. Gifts to the Foundation can also be made to memorialize our lawyers who have blessed their families, this community and the legal profession with exemplary lives of service, or to honor the memory of special loved ones. Such gifts both honor the past and look to the future. For example, the Christopher Coppedge Scholarship Fund, administered by the Foundation, promotes the profession by helping to educate deserving law students to carry on the highest standards of practice.

A vibrant Foundation takes our legal community to the next step. Think about the Foundation in your own estate planning. Recommend it to the lawyers in your firm. The big cities, Houston, Dallas, Fort Worth and San Antonio, have active bar foundations that preserve the legacy of their lawyers and promote the future of the profession. If you agree that we put our briefs as well as they do, join me in making a contribution to the Amarillo Area Bar Foundation.



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

Advertisement Rates

	Single Issue
Business Card	\$50
Quarter-Page	\$75
Half-Page	\$150
Full Page	\$300

Discounted rates are available for multiple issues. Publication of an advertisement does not imply endorsement of any product or service. AABA reserves the right to select and edit materials to be published. Advertisements are limited to those products and services that are substantially related to improving the legal profession and the legal community in the northernmost twenty-six counties of the Panhandle of Texas. Contact Jo Ann Holt, Executive Director, at 371-7226 or director@amarillobar.org for more information about advertising in AMA-LAW.

Contact Us

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

Amarillo Area Bar Association
Eagle Center
112 West 8th Avenue, Suite 615
Amarillo, Texas 79101
e-mail: director@amarillobar.org

Phone: 806-371-7226

Also visit our website at www.amarillobar.org for information and links to both local and state-wide legal resources.



AAYLA Update



By John Massoub

The leaves are changing, the temperatures are dropping, and the new lawyers around town are walking as if dead—must be November. Yes, bar result season is upon us. That time of year when the Texas Board of Law Examiners website is permanently imprinted on every monitor of every new lawyer. The sounds of click, click, click to continuously refresh the website are heard throughout the office. This is the time when every new lawyer's only distraction is to count how many times they've been told that no one in the firm has ever failed the bar or hear how before these fancy computer thingies, the results were sent by stagecoach or announced by town crier. Finally, the time of the year they hear the refrain, "If you

fail the bar, you don't have to go home, but you can't stay here."

In an effort to assist you in dealing with your new associates, friends, or just some prospective new lawyer you met at last month's bar luncheon, I have compiled the top five comments to avoid sharing with those waiting on bar results:

1. "Last year the results came out two weeks early." (This only lends to additional wasted time of clicking on the TBLE website)
2. "You know, the smartest person in our class failed the bar."
3. "They say it's easier the second time anyway."
4. "Paralegals make pretty good money too." And,

5. "You can always fall back on that political science degree."

In all seriousness, congratulations to all the new lawyers. I would like to extend an invitation to all lawyers to participate in welcoming the new lawyers to the bar. The Amarillo Area Young Lawyers Association will hold its annual swearing-in ceremony and reception on November 13, 2008. All lawyers are invited to take part in a reception welcoming the new lawyers at the Amarillo Club at 5:00 p.m.

This month's column is dedicated to Dusty "Show me the Money" Stockard who encourages you to SAVE THE DATE for the 10th Annual Las Vegas CLE to be held on April 4, 2009 at the Las Vegas Paris Hotel and Casino.

Chris, Bruce, Carl, Amy and Melanie
invite you to an

Open House for

Law Office of
CHRIS STEWART, P.C.SM

November 13, 2008
4:00 p.m. to 6:00 p.m.

301 S. Polk, Suite 700
(Amarillo Building) Downtown Amarillo,
southeast corner of 3rd and Polk,
7th floor

Trademark
Copyright
Trade Secret
Litigation
Computer Law

Law Office of
CHRIS STEWART, P.C.SM

SECURING YOUR SPACE IN THE
GLOBAL MARKETPLACETM

Young Lawyer of the Month

"November's Young Lawyer of the Month is Jonathan Curth. You might ask, "How did Jonathan achieve this honor"? Well, he sort of nominated himself, since he serves on the board of the Amarillo Area Young Lawyers Association. He is the type who will milk any free publicity he can get his hands on.

Jonathan is a second-year associate at Brown & Fortunato, P.C., where he focuses his practice on oil and gas, real estate, and general business transactions. In May 2004, Jonathan earned a B.A. in History from Baylor University. While at Baylor, he devoted an entire semester to the study of 16th century Spanish conquistadors. After quickly realizing that the odds of becoming a 21st century con-

quistador were not great, Jonathan decided to enter into law school, figuring that being an attorney would run a close second. In May 2007, Jonathan earned his J.D. from The University of Texas at Austin.

Jonathan was born in San Antonio, Texas. He recently married Meghan, a children's counselor at Panhandle Assessment Center, in March 2008. Meghan is from Lubbock, Texas, and she graduated from Baylor University in May 2004. Jonathan and Meghan met while living next door to each other during their senior year at Baylor, and they somehow stuck it out through Jonathan's years in Austin and Meghan's years at The University of North Texas where she earned her master's degree in Counseling Psychology.



Jonathan Curth

If you ask Jonathan which team he supports more, Baylor or UT, you might receive a surprising answer. For whatever reason, he was unable to train his hand to convert from the infamous bear claw to the longhorn position. He for sure has not become a Texas Tech fan yet, but Meghan is relentlessly working to change that fact. Most of Jonathan's free time is spent with his wife, friends, and two pug dogs—Peanut, a one-year old fawn pug, and Ladybug, a sixteen-week old black pug. Jonathan also enjoys golf, basketball, reading, hunting, and listening to The Clark Howard Show on the radio."

Texas Education Agency Seeking Attorneys

The Texas Education Agency is seeking qualified attorneys to act as independent hearing examiners in local school district employment hearings. These examiners will preside over hearings involving the nonrenewal or termination of educator employment contracts. The examiner will prepare a recommendation for the district's board of trustees to consider.

Hearings are assigned on a regional basis. Examiners are paid by the school district and may charge \$125 an hour up to \$8000 plus allowable expenses. One training session per year in Austin is required and examiners are required to complete specific legal education requirements during the year. Upon selection, examiners will be required to submit to a criminal history check and fingerprinting as a condition of continued certification.

Additional information will be available on their website, <http://www.tea.state.tx.us>. A copy of the application form is available in the Amarillo Area Bar Association office. The application must be filed no later than December 1, 2008.

TNT
PROPERTIES

Downtown Amarillo's
Premier Office Space and Commercial Condos
Call Jeffrey Tidmore @ 806-372-9160

Legal Yarns

Submitted by James Wester

I occasionally run across articles that make me appreciate the fact that I practice law in Amarillo. While we all have our share of disputes with opposing counsel, the following article should make us all stop and think about having a little objectivity and professionalism.

U.S. District Judge Sam Sparks, fed up with petty squabbling among the lawyers, let loose with a barrage that began by expressing doubt as to whether the lawyers had ever attended kindergarten and ended by telling them to "Get a life." Check out this gem of an order:

When the undersigned accepted the appointment from the President of the United States of the position now held, he was ready to face the daily practice of law in federal courts with presumably competent lawyers. No one warned the undersigned that in many instances his responsibility would be the same as a person who supervised

"GET A LIFE"

kindergarten. Frankly, the undersigned would guess the lawyers in this case did not attend kindergarten as they never learned how to get along well with others. Notwithstanding the history of filings and antagonistic motions full of personal insults and requiring multiple discovery hearings, earning the disgust of this Court, the lawyers continue ad infinitum.

[Court recounts current dispute in which, despite the court's order allowing a pleading to be filed on July 23, 2004, defendants' counsel filed a motion for reconsideration, claiming the pleading should have been filed July 19.]

The Court simply wants to scream to these lawyers, "Get a life" or "Do you have any other cases?" or "When is the last time you registered for anger management classes?"

Neither the world's problems nor this case will be determined by a ... [pleading] which is four days later, even



James Wester

with the approval of the presiding judge.

If the lawyers in this case do not change, immediately, their manner of practice and start conducting themselves as competent to practice in the federal court, the Court will contemplate and may enter an order requiring the parties to obtain new counsel.

Judge Sparks wrapped up by saying that if it wasn't already clear from the tone of the order, the motion for reconsideration was denied. I think it was pretty clear.

— Klein-Becker, LLC and Basic Research, LLC v. William Stanley and Bodyworx.com, Inc., Case No. A-03-CA-871-SS, U.S. Dist. Ct., Western Dist. of Tex. (Austin Division), July 21, 2004. Reprinted from Strange Judicial Opinions on lawhaha.com.

Legal Briefs

*The Texas Bar Results are Expected on November 7th!
Support the New Attorneys in the Amarillo Area by Attending the:*

2008 Swearing-In Ceremony and Reception

Co-Sponsored by:

Amarillo Area Young Lawyers Association Brown & Fortunato, P.C.
Sanders Baker PC Sprouse Shrader Smith P.C.

When: Thursday, November 13, 2008

Time: Ceremony begins at 4:00 p.m. at the Seventh District Court of Appeals
Reception from 5:00 – 7:00 at the Amarillo Club, 31st Floor, Chase Tower

- All area attorneys and judges are invited to attend the ceremony and the reception.
- If you know of anyone who is awaiting his/her bar results and would like to participate in this special event, please contact Laura Burke at lburke@bf-law.com or 345-6349.

Mitchell Ehrlich and Jessics McCallie are pleased to announce the formation of a partnership for the practice of law under the name of Ehrlich & McCallie LLC, Specializing in Oil and Gas, Farm and Ranch, Real Estate, Probate and Trust Law, 304 South Main, Perryton, Texas 79070.

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

7th Court of Appeals Update

by Justice Brian Quinn



In *Neugebauer v. State*, No. 07-07-0214-CR (Tex. App.-Amarillo August 27, 2008), we had occasion to delve into the area of jurisdiction. More than two years after Neugebauer had been convicted, he petitioned for shock probation. It was granted to him only to have it revoked later. In appealing from the revocation order, we concluded that the trial court lacked the jurisdiction to grant such probation in the first place. So, both the orders granting and revoking it were void. Yet, neither party raised that argument. Nonetheless, we had to broach it *sua sponte* given that it was jurisdictional in nature. The lesson to be learned is not so much that the trial court lacked jurisdiction to do what it did. Rather, the parties should remember to always check-out jurisdiction while preparing the appeal and issues. We may not catch it next time.

In *re Marriage of Collins*, No. 07-06-0314-CV, 2008 WL 3930559 (Tex. App.-Amarillo August 27, 2008, no pet. h.) dealt with an appellant who was challenging (from the confines of his cell) the trial court's default judgment terminating his marriage and dividing the marital es-

tate. Questioning the validity of the property division on appeal, the ex-husband attached various documents to his brief that allegedly supported his argument. Yet, those documents were not made part of the trial court's record; so we could not consider them. Nor did he preserve any complaint about the sufficiency of the notice informing him of the hearing date.

A change in the law that permitted the use of prior convictions older than 10 years to enhance punishment does not violate *ex post facto* prohibitions. We so held in *Sepeda v. State*, No. 07-0315-CR (Tex. App.-Amarillo October 15, 2008). There, the accused objected to the State's use of two prior convictions arising in 1991 and 1993 to enhance his misdemeanor DWI to a felony. Because the prior convictions were affecting the punishment applicable to the current crime for which Sepeda was being prosecuted by showing him to be a repeat offender, *ex post facto* limitations were not implicated.

What effect do the words "with prejudice" have upon the denial of a claim that was not actually considered on the merits. Well, if they appear in a final judgment they may bar one

from later suing on other grounds arising from the same transaction. In *Rodriguez v. Icon*, No. 07-07-0039-CV (Tex. App. - Amarillo October 15, 2008), the claims involved in the first suit were disposed of, but not on the merits. Nonetheless, the trial court dismissed them "with prejudice." Though including those words in the judgement was wrong, the appellant did not ask that the mistake be corrected. So, the defense of *res judicata* barred the plaintiff from later suing on other claims involving the same operative facts. In short, make sure that the judgment omits those words if your claims were dismissed or otherwise disposed of via a procedure considered less than a trial on the merits.

In *Rodriguez v. State*, No. 07-06-0170-CR (Tex. App. - Amarillo August 27, 2008), we had an opportunity to address preservation of error. Remember, not only must the party object to the purported wrong but also secure a ruling on their objection to preserve the issue for appellate review. Sometimes, though, the second criteria can be satisfied through an implicit ruling, as occurred here.

Events & Weddings

806.373.6613
1.800.657.8827

SecretGardenFireFlowers.com

Parie Villyard should be your florist.

TX LICENSE# A14660

BARCLAY INVESTIGATIONS

SERVING ALL YOUR INVESTIGATIVE NEEDS!!

DIVORCE CERTIFIED PROCESS SERVER
CHILD CUSTODY PROMPT SERVICE
SURVEILLANCE, BACKGROUNDS AND MORE!!!!
GREAT PRICES!!!
CALL
806-351-0299 OR 682-667-2058
www.barclayinvestigations.com

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. Submissions will be published in this column and attributed to the sender. Abby is a stickler for Shepardizing, so please cite your source.

🐾 In an effort to compete with Oprah (but certainly unwilling to formally endorse any presidential candidate), AmaLaw introduces **Abby's Book Club**.

This month's selection is **Lincoln the Lawyer**, by Frederick Trevor Hill. This book is a little hard to find, but worth the effort. The following are excerpts taken from a facsimile of the 1906 edition published by The Century Co., New York, as produced in 1996 by The Legal Classics Library, Division of Gryphon Editions, New York.

- "I don't know who my grandfather was," he remarked; "and am much more concerned to know what his grandson will be." P. 3.
- He never surrendered his conscience to a code; his sense of justice was never cowed by the tyranny of "leading cases"; and the decision of the highest court in the world never succeeded in convincing him that wrong was right. P. 43.
- "Discourage litigation," was his advice to lawyers. "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of becoming a good man. There will always be enough business. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it." P. 102-103.
- On one occasion when he was defending a case of assault and battery it was proved that the plaintiff had been the aggressor, but the opposing counsel argued that the defendant might have protected himself without inflicting injuries on his assailant.

"That reminds me of the man who was attacked by a farmer's dog, which he killed with a pitchfork," commented Lincoln.

"What made you kill my dog?" demanded the farmer.

"What made him try to bite me?" retorted the offender.
"But why didn't you go at him with the other end of your pitchfork?" persisted the farmer.
"Well, why didn't he come at me with his other end?" was the retort." P. 218.

- "The matter of fees is important, far beyond the mere question of bread and butter involved," he wrote in his notes for a law lecture. "Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be charged. As a general rule, never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case as if something was still in prospect for you as well as for your client." P. 241 - 242.

A Picture is Worth. . .

Correctly identify this young person to legalbeagle.aaba@sbcglobal.net and win a travel brief case generously provided by Thomson West Publishers.

No one correctly identified last month's picture of Roger Cox as a youngster. Since Roger "stumped the bar," he gets the travel brief case prize.



Also, none of the following, whose name was drawn from the fishbowl at last month's bar luncheon, was present to collect.

\$25 Brian R Smith
\$50 James Gray Baker, Perryton
\$75 Phil N Vanderpool

THOMSON
WEST™

LEGAL LINKS LIBRARY

YOUR LAW LIBRARY ON THE WEB

LEGALLINKSLIB.BLOGSPOT.COM



112 West 8th Ave., #615
Amarillo, Texas 79101

PRSR STD
U.S. POSTAGE
PAID
Permit No. 195
Amarillo, Texas

Return Service Requested

A Publication of the Amarillo Area Bar Association

Kelly Utsinger, *President*
Hon. James T. Campbell, *President-Elect*
Walter T. "Four" Price, *Vice President*
Michelle Sibley, *Secretary-Treasurer*
Michele Fortunato, *Immediate Past President*

EXECUTIVE COMMITTEE

Terms Expire 2009	Terms Expire 2010
Cynthia J. Barela	Sonya Letson
Andrew R. Evans	Dusty Stockard
Brian P. Heinrich	James W. Wester

John Massouh, *AAYLA President*
Jo Ann Holt, *Executive Director*
Hollye H. Hawkins, *Editor of AMA-LAW*



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

Your Bar Events - November 2008