

AABA-LAW

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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

“I do encourage those of you who play your first round of golf for the year at our bar tournament to get out in the yard in the coming weeks. Wear shorts. Get some sun. Your fellow golfers will appreciate not having to wear sunglasses to avoid the glare of those shiny toothpicks while trying to putt for bogey.”

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ADVENTURES IN ERROR PRESERVATION



Scott Stolley

The Amarillo Area Bar Association is pleased to announce that Scott Stolley will speak at our lunch meeting on March 10, 2016, on preservation of error. Scott is a partner at the law firm of Cherry Petersen Landry Albert, LLP, in Dallas where he serves as the firm's appellate partner. Scott was previously a partner at the renowned Dallas firms, Thompson & Knight, LLP, and Thompson, Coe, Cousins & Irons, LLP.

Scott is an appellate specialist who has been board certified in Civil

Appellate Law since 1994 and a Fellow of the prestigious American Academy of Appellate Lawyers since 2010. Scott has long been a leader in appellate organizations, including the Dallas Bar Association Appellate Section and the DRI Appellate Advocacy Committee. The Texas Supreme Court has honored Scott by appointing him to the Texas Supreme Court Advisory Committee (2012-2017). In addition to this honor, Scott has enjoyed overwhelming success in cases he has handled before the Texas Supreme Court in which the Court has issued a written opinion. When he is not busy writing appellate briefs or attending oral arguments, Scott devotes much of his time to trial support, including handling dispositive and significant motions, and participating in case analysis, drafting jury charges, attending charge conferences, and preserving error at trial.

As you might expect, Scott is also a talented speaker, so please plan to join us at the AABA lunch meeting on March 10th at the Amarillo Club to hear Scott present "Adventures in Error Preservation."



PRESIDENT'S PAGE

By: Dusty Stockard

The winds of March are upon us. Brace your fences, bring in your decorative flags, and put rocks in your children's pockets before sending them off to school. Two more pieces of advice for this month: 1) watch your back on the 15th (this is an Ides of March reference for those of you who were wondering); and 2) wear green on the 17th to avoid the pinchers of the world (wear green on the 17th, feel green on the 18th).

I contemplated writing this article while at the AAYLA CLE in Vegas. Bad idea. Not only should what happens there stay there, but I had to leave my computer with the casino for collateral along with the rest of my worldly possessions. Thanks to all the young lawyers who made this happen. As always, it was a wonderful event.

We are very excited for this year's Spring Institute. Chris Jensen has lined up some great speakers this year. The CLE was moved to Friday morning last year and we will do it again based on the positive response. Most of you are worthless Friday morning anyway getting ready for golf that afternoon. Of course, moving the CLE to Friday morning requires Tom Morris to show up to the office at 9:00pm the night before so he can bill a full 12 hours before CLE and golf (still the hardest working lawyer in Amarillo – sorry, John Lovell, Tom is still the winner). Please make an effort this year to sign up early. I know this violates the Lawyer's Creed of waiting until the last minute for everything—which includes the writing of this article every month.

I do encourage those of you who play your first round of golf for the year at our bar tournament to get out in the yard in the coming weeks. Wear shorts. Get some sun. Your fellow golfers will appreciate not having to wear sunglasses to avoid the glare of those shiny toothpicks while trying to putt for bogey.

Don't forget our monthly bar meeting. Mark Logsdon has scheduled Scott Stolley as our speaker on the March 10. Please refer back to the front page of this publication for a write-up on Mr. Stolley, the topic of the CLE, and what I'm sure is a lovely head shot in a suit and tie.

Last month I poked a little fun at the political signage that now covers every vacant property, sidewalk, yard, and billboard in Amarillo. I don't know what happens to these signs after the election, but maybe they could be used in some sort of collage to cover the plywood that has been on the Barfield Building since at least 2002. Just a thought. You are welcome, Center City. I'm sure we could use taxpayer money and city commissioners' time debating the pros and cons for the next two years. Not to mention the Amarillo Globe News editorial space this could fill for infinity.

I hope each of our members has a great Spring.

LEGAL BRIEFS

Fishbowl Drawing

\$25	Chris Hoffman
\$50	Bobby Edwards
\$75	Shawn Twing

No one was present to win

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.

AMA-LAW

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

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



LANWT REQUESTS YOUR ASSISTANCE

Legal Aid of NorthWest Texas (LANWT) in Amarillo needs your assistance. We are looking for law firms and solo attorneys to sponsor our monthly General Legal Clinics. These clinics are "advice only" clinics, meaning that attorneys give advice to people after they have been screened for eligibility.

So far this year, Robin Malone and the Legal Society group of Amarillo College are sponsoring the April clinic. Most of the cases that come through the clinics are family matters. We do, however, see applicants who need advice on wills, landlord/tenant matters, and guardianships. These applicants are then provided with basic legal information and advice relevant to their issue.

Clinics are offered every third Tuesday of the month from 5 pm to 7 pm. The February 16th clinic will be at the Polk Street United Methodist Church. On March 15th, the clinic will be at the Wesley Community Center. Future clinic dates at the Polk Street United Methodist Church will be June 21st; August 16th; and October 18th). In addition to the March clinic, future clinic dates at the Wesley Community Center May 17th; July 19; and September 20th). We do not hold clinics during the months of November and December.

Our pro se divorce clinics also need volunteers. These cases are simple divorces with no children; no real property; and no retirement accounts. LANWT prepares the documents for each case, and the volunteer attorney reviews the documents and then meets with the client at the clinic to go over the documents and provide advice and one-time instructions on the next steps. The attorney will not have an open file to deal with and the attorney will not accept cases for representation. Any document revisions that need to be made will be done by LANWT staff at the clinic.

We appreciate all of our volunteers who provide their advice and counsel to those who need help but cannot afford to hire an attorney on their own. Our volunteers report a high level of personal satisfaction through the work that they do for LANWT on behalf of our clients. Won't you join them? For more information or to volunteer, please contact Luisa Vigil, Equal Justice Volunteer Program Coordinator, at 806/373-6808 ext. 6503.

Sincerely yours,
EJVP Coordinator
Legal Aid of NorthWest Texas

IN MEMORIAM OF JOHN T. FORBIS



John T. Forbis, former judge of the 100th District Court and mentor to many Texas judges, died December 28, 2015.

Judge Forbis was born in Childress on May 24, 1926. He graduated from Wellington High School and received his undergraduate and law degrees from Southern Methodist University. He returned to Childress, where he practiced with the firm of Williams, Broughton and Forbis, and served also as Childress City Attorney. He later was elected District Attorney and then District Judge for the 100th district, comprising Childress, Collingsworth, Hall, Donley and Carson Counties.

His wit and wisdom made him a favorite instructor at the annual Texas College for New Judges, where a generation of newly-elected Texas trial judges benefitted from his instruction. Especially well-known were his rules for respectful treatment of juries and his insistence on punctuality in court.

After his retirement from the active bench in 1993, Judge Forbis served for many years as a visiting judge, assigned to preside over cases throughout the Panhandle and South Plains. According to Regional Presiding Judge Kelly Moore, during those years Judge Forbis was among the most requested judges in the region. In 2000, he received the Samuel Pessara Outstanding Jurist Award from the Texas Bar Foundation.

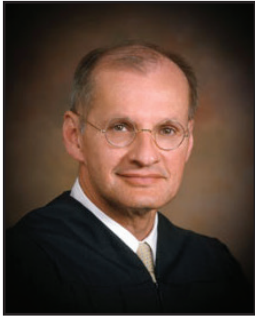
Seventh Court of Appeals Justice Mackey Hancock remembers that Judge Forbis sat as a visiting judge on his Lubbock district court bench when Judge Hancock was deployed overseas with the U.S. Army Reserve. He recalls he "never had to retry any case that Judge Forbis tried."

Justice Hancock also recalls Judge Forbis's "humorous, and somewhat telling, reply" to the news that Hancock was going to be appointed to the court of appeals. "So you are going to be one of the ones that goes out on the battlefield, after the battle has been fought, and bayonets the survivors." A bit taken aback at first, Hancock quickly realized the remark came from a life of trying lawsuits as lawyer and trial judge. "Besides," he notes, "John Forbis could never be unkind, although he could be wickedly humorous."

Judge Forbis was a life-long and devoted Methodist, and was known for his love for children. He enjoyed woodworking, over the years making hundreds of wooden toys which he gave to children at Christmas and on other occasions. Seventh Court Justice Pat Pirtle recalls that Judge Forbis once gave his children a handmade wooden firetruck with removable ladders.

AABF SCHOLARSHIP ANNOUNCEMENT

The Amarillo Area Bar Foundation will be awarding four \$2,500 scholarships for the 2016-17 academic year to qualified law students during the 2016 Spring Institute Dinner. Applicants must be enrolled in or admitted to an ABA accredited law school. Once recipients of the scholarships are selected by the scholarship committee of the Foundation, the applications of those recipients are provided to the Coppedge family for review and a determination on who should receive the scholarship designated as the Chris Coppedge Memorial Scholarship. For more information on eligibility and an application, visit amarillobar.org and click on the Amarillo Area Bar Foundation tab or call Jo Ann Holt at (806) 371-7226. The deadline to apply is April 1, 2016, 5:00 p.m.



7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

You ever wanted to sell a piece of furniture and took it to a consignment store? Many people have because someone else actually markets the item for them. And, if it sells, both usually get paid. In *Mendoza v. Louisiana Stone LLC.*, No. 07-15-00133-CV, 2015 Tex. App. LEXIS 12924 (Tex. App.—Amarillo, December 22, 2015), we had to decide if such a business arrangement can be considered a joint venture or joint enterprise. There, a business selling granite consigned some of its product to a local retailer. An employee of the retailer was killed when a slab fell on him while he and others attempted to move it. Both the employer and consignor were sued for damages under the theories, among others, of joint enterprise and venture. We discussed the elements of both and concluded, under the particular facts involved, that no such business relationship arose. One factor we found determinative was the absence of evidence illustrating that the consignor and consignee actually shared profits and losses from the sale. It was not

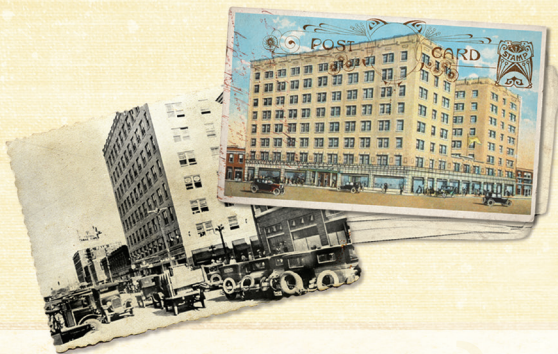
enough to simply show that both received some financial gain from the transaction. This does not mean that a consignment can never be a joint venture or enterprise; it just depends on the details of the relationship.

Attorneys may not think it, but there are still worker's comp cases out there . . . or remnants of them. In *Mendoza v. Indem. Ins. Co. of N. Am.*, No. 07-14-00244-CV, 2015 Tex. App. LEXIS 12923 (Tex. App.—Amarillo December 22, 2015), we had to decide if an attempt to belatedly change an improvement/impairment rating was effective. Such a change may be made if there is compelling medical evidence of 1) a clearly mistaken diagnosis or a previously undiagnosed medical condition, or 2) improper or inadequate treatment of the injury prior to the rating. Of import in the case was who had the burden to prove those elements once the cause was appealed to the trial court. Because the hearing examiner and the appeals panel ruled against *Mendoza*, we held she did.

Sometimes jurors talk. Sometimes they talk to the bailiff. And, sometimes the bailiff says things that he later regrets. In *Hayes v. State*, No. 07-15-00069-CR, 2016 Tex. App. LEXIS 787 (Tex. App.—Amarillo January 26, 2016), the bailiff wanted to explain why it was taking a bit of time to reconvene the trial. He told them that the parties were talking "plea bargain." Neither the litigants nor the court found out this happened until after the jury convicted *Hayes*. He eventually moved for a new trial under Texas Rule of Appellate Procedure 21.3(f) because the jury received other evidence after retiring to deliberate. We reversed the trial court's decision to deny a new trial. Mentioning the possibility of a plea bargain could be viewed as providing the jurors information affecting the appellant's guilt or innocence, and the trial court had no opportunity to instruct the jurors to disregard the comment. We have all been there . . . but we can't un-ring a rung bell.

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AAYLA UPDATE

By Blair Oscarsson

On February 3, Judge Robinson took senior status and “semi-retired.” Her paralegal Melba F. Fenwick was quick to point out that, though she is not handling criminal matters for the time being, she IS still working.

We all know that Judge Robinson has served the Panhandle as a judge for over 60 years. She started as a judge at only 28 years old. That was in 1955 when women could not serve on juries. Can you even imagine what the less enlightened members of the community and the Bar were saying about her appointment to the Potter County Court at Law? For goodness sake, it wasn't until 1967 that a married women

could own property, get a bank loan, or start a business without her husband's consent!

Judge Robinson was one of two women in her law school class at the University of Texas. She was the first woman judge of a court of record in Amarillo, the first woman appellate judge in Texas, and only the second woman to be appointed as a U.S. District Court judge in Texas. To say she is a trailblazer is to put it mildly.

The question of whether a woman can be a mother and a lawyer is still asked every day, but now it has been answered by women like Judge Robinson.



Today, half of law students are women. Roughly 25–30% of the lawyers in Amarillo are women. By the time I was deciding what I wanted to be when I grew up, “lawyer” was clearly an option for girls like me.

To Judge Robinson and the other women lawyers who went before me, thank you. To the women I work with today who are excellent lawyers, mothers, and friends, thank you, too.

AAWBA UPDATE

By Joni Kleinschmidt

It's hard to believe the Amarillo Area Women's Bar Association is entering its second year of existence. We have worked hard to hold some unique events to pique a wide spectrum of interests for our members. Those have included, most recently, a luncheon focused on

women's heart health. Heart disease is the number one killer of women according to the American Heart Association. The month of February has been designated Heart Health Month, and AAWBA was honored to have local cardiologist Dr. Suresh Neelagaru speak



to us about healthy lifestyle habits and risk factors for heart disease.

Prior to that, AAWBA held a holiday happy hour reception at B.L. Bistro. It was a great opportunity to socialize, but more importantly, AAWBA collected substantial donations for the Angel Tree. We were able to provide several items of clothing, shoes, socks and two bicycles for children whose holiday otherwise would have been lacking.

Looking forward into 2016, we are working out the details for a fun early summer event, perhaps outdoors, that will be fun for families and summer clerks. We will provide more information as soon as it is available.

If you are interested in becoming a member or serving AAWBA as a director, please contact Malerie Anderson at malerie.anderson@sprouselaw.com.

SAVE THE DATE

AMARILLO AREA ESTATE PLANNING COUNCIL
TWENTY-FIFTH ANNUAL INSTITUTE
ON ESTATE PLANNING

Thursday & Friday
May 12 and 13, 2016

See Next Month's AMALAW for speakers and topics!

YOUNG LAWYER OF THE MONTH: THOMAS McMILLIAN



Thomas McMillian

Thomas hails from a little wide spot in the road in south Texas between San Antonio and Laredo called Dilley. While he's always had an interest in aviation and had every intention of becoming a commercial airline pilot right up through high school, his parents encouraged him to become an attorney. This was due in no small part to his argumentative nature and insistence on always having the last word!

Thomas' father is a dyed in the wool Aggie and expected that his son would follow in his footsteps. However, being the contrarian that he is, Thomas was not about to do what his father (or anyone for that matter) expected him to do! Due to his independent nature, he wanted to get as

far away from Dilley as possible but still wanted to attend a large State school. This led him to Texas Tech. Thomas fit right in and will tell you to this very day that Texas Tech was the best decision he ever made! He's still a die-hard Red Raider football fan. He was an alternate in the Goin' Band from Raiderland his freshman year. He joined the Alpha Kappa Psi professional fraternity and served in several leadership positions, including President his junior year. Thomas graduated from Texas Tech University and received a Bachelor of Business Administration with majors in Economics and General Business in December of 2004. Thomas then returned to south Texas where he embarked on his legal education at St. Mary's University School of Law. While at St. Mary's Thomas participated in mock trial, moot court and negotiations competitions. He was also a member of the 2007 International Moot Court Team and participated in the Philip C. Jessup International Moot Court Competition.

After graduating from St. Mary's in 2008, Thomas was sick and tired of the miserably hot south Texas climate and wanted to return to a place that actually experienced winter. Since he had a Texas law license, that meant he was headed back to west Texas where he accepted a position as a prosecutor at the Potter County Attorney's Office in December of 2008. He then moved over to the 47th District Attorney's Office where he worked as an Assistant District Attorney from April of 2010 to October of 2015. During his time as a prosecutor Thomas became involved with the Texas District and County Attorney's Association and served on the faculty of the Prosecutor Trial Skills Course (a.k.a. Baby Prosecutor School). Thomas is now a Staff Attorney at the 7th Court of Appeals here in Amarillo.

Thomas' number one hobby is travel. His favorite destinations are Germany and Austria. He is also an avid history buff with particular interest in the Cold War era. Thomas still maintains his interest in commercial aviation. He enjoys plane spotting and touring any type of airplane museum whenever he gets the chance.



AABF WINE DINNER—A HUGE SUCCESS!

The Amarillo Area Bar Foundation Board wants to thank everyone who attended the Wine Dinner & Auction on January 22, 2016. The event was a huge success thanks to generous donations by both attorneys and members of the community and was attended by 155 people. A special thanks to Spanky and Amy Assiter and Assiter Auctioneers for their part in making the live auction the

most memorable auction of any Wine Dinner & Auction to date. Due to the great participation at this year's event, the Bar Foundation will increase the number of scholarships to be awarded for the 2016 2017 law school year. This past year, the Bar Foundation awarded three scholarships in the amount of \$2,000 each. For the upcoming year, the Bar Foundation will be awarding

four scholarships in the amount of \$2,500 each. If you know a student attending or planning to attend law school this fall who was born, raised, or currently resides in the Texas Panhandle, please encourage them to apply for one of these scholarships. In the next few weeks, applications will be available on the AABA website under the AABF link.

AABA History Quiz WIN A ROLLING BRIEFCASE!

Be the first to correctly answer the question below and send your answer to magnew@bf-law.com and you will win a rolling briefcase provided by the State Bar of Texas.

Question: Who is the immediate past president of the Amarillo Area Bar Association?

February's Answer and Winner: 1996 and Michele Tran



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YOUR BAR EVENTS - MARCH 2016

S	M	T	W	T	F	S
		1	2	AABA Board Meeting, Petroleum Room, Amarillio Club 3	4	5
6	7	8	9	AABA Bar Luncheon, Sunburst Room, Amarillo Club 10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27 EASTER	28	29	30	31		