

AAYLA-LAW

amarillobar.org

Volume 31
March 2017
No. 7

A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

“Judge Averitte has announced his intention to retire in June of this year.”

-Page 2

“The Annual AAYLA Easter Egg Hunt at the Potter County Courthouse will be held on Friday, April 14th at 4pm.”

-Page 7

CONTENTS

President's Page	2
Seventh Court of Appeals	4
Young Lawyer of the Month	6
AAYLA Update	7

MARCH SPEAKER: RANDI MCGINN



Randi McGinn

Randi McGinn will present our March program. The title of her program is How a Good Kid Became the World's Most Famous Outlaw. Randi will discuss the legal procedures regarding obtaining pardons using the historical context of Billy the Kid. Randi submitted a petition for a posthumous pardon of Billy the Kid. The efforts were reported in numerous media outlets, including the New York Times, BBC, CNN, Fox News and ABC's Good Morning America. History reports that in 1879, a territorial governor offered Billy the Kid, also known as Henry McCarty and William H. Bonney, a pardon if the outlaw would testify before a grand jury about a killing he had

witnessed. Billy testified but Mr. Wallace never granted the pardon. Billy killed two lawmen after the deal fell through and he escaped from jail.

Randi is the author of "Changing Laws, Saving Lives: How to Take on Corporate Giants and Win." Randi McGinn is the senior partner of McGinn, Carpenter, Montoya and Love, PA in Albuquerque, New Mexico. She is known for her creativity in the courtroom and her use of demonstrative evidence to visualize opening, direct, cross-examination, and closing argument. In a particularly hard-won police shooting case, the local SWAT officers once put her face on their Christmas piñata and took turns whacking it with a big stick. Randi has tried over 100 jury trials in both state and federal court.

Randi has been recognized as one of the Top 25 lawyers in New Mexico by the Southwest Superlawyers of New Mexico. She is the first woman president of the Inner Circle of Advocates (Top 100 plaintiffs lawyers in the US). She is double-listed in criminal and civil litigation in Best Lawyers in America, and is a fellow in the International Academy of Trial Lawyers. She is a former governor of the American Association for Justice, a past president of the New Mexico Trial Lawyers Association, and a former board member of the National Association of Criminal Defense Lawyers. Randi has taught trial practice for the National Institute for Trial Advocacy and the National Criminal Defense College, and has been an adjunct professor for the University of New Mexico.

Please join us for some CLE and what promises to be an interesting and informative presentation.



PRESIDENT'S PAGE

By: Mark Logsdon

MAGISTRATE JUDGE CLINTON E. AVERITTE

After thirty years of dedicated service to the United States District Court for the Northern District of Texas, Amarillo Division, Magistrate Judge Clinton E. Averitte has decided to hang up his gavel. Judge Averitte has announced his intention to retire in June of this year.

Judge Averitte assumed the bench in June of 1987, after having previously served as an Assistant Attorney General for the State of Texas, an Assistant District Attorney for Lubbock County, and an Assistant United States Attorney in both Lubbock and Amarillo. In addition to serving in these roles, Judge Averitte was in private practice with the law firm of Hiersche, Martens & Averitte in Dallas in the late 1970's.

Judge Averitte is the first (and only) full-time Magistrate Judge to serve the Amarillo Division, following in the footsteps of Bob Sanders, who served as our Magistrate Judge on a part-time basis. Judge Averitte graduated from the University of Texas in 1971 and from Southern Methodist University's law school in 1974, Order of the Coif. Throughout his time on the bench, Judge Averitte tirelessly served the Amarillo community in a number of ways, including service as the President of the Amarillo Area Bar Association (2012-2013), as President of the Golden Spread Council for the Boy Scouts of America (2014-2016), and as President of the Downtown Kiwanis Club (2003-2004).

President Teddy Roosevelt is (according to my brief google search) credited with the phrase: "Speak softly and carry a big stick; you will go far." Regardless of who

first coined that famous phrase, I think it applies nicely to Judge Averitte. Although he has a well-earned and long job title ("United States Magistrate Judge, United States District Court, Northern District of Texas, Amarillo Division"), most of us know Judge Averitte simply as "Clint," and that is the way that he has always wanted it. I have had the privilege to come to know Clint in a personal way while we both served as elders for the First Presbyterian Church in recent years; and, I can genuinely say that I haven't met a better man. Clint certainly will be missed.

I do not know when or if a reception will be held to honor Judge Averitte at his retirement, but I am sure there will be one. I hope that all of you will plan to attend. In the meantime, I also hope that you will reach out to Judge Averitte to thank him for his long service to our community over the last thirty-plus years, not only while clad in his black robe but in many other ways, only a few of which are mentioned above.

FEDERAL CRIMINAL DEFENSE

Christy L. Drake

Attorney at Law

801 S. Fillmore, Suite 710

Amarillo, TX 79101

806.410.2030

Former Federal Prosecutor

chrisdrakelaw@gmail.com

HISTORY IN THE MAKING

DOWNTOWN AMARILLO'S ORIGINAL HIGH-RISE
FOR OVER 90 YEARS



The Historic Amarillo Building, built in 1925, proudly stands as Amarillo's oldest high-rise.

Restored to its Art-Deco grandeur by owners Kevin and Ginger Nelson, Amarillo's history permeates throughout as Amarillo's most respected businesses, accounting and law firms continue to make their mark.



For Leasing Information, kindly call Kevin or Ginger Nelson
806.342.4700 • 301 South Polk Street

images courtesy The Amarillo Public Library

**America's Newest and Best
Economy Extended Stay Hotels™**



**TRY Breakfast
IN BED**



AMARILLO, TX

(806) 803-9501

2208 Cinema Drive
Amarillo, TX 79124
amarillo@legacymgmt.org



LUBBOCK, TX

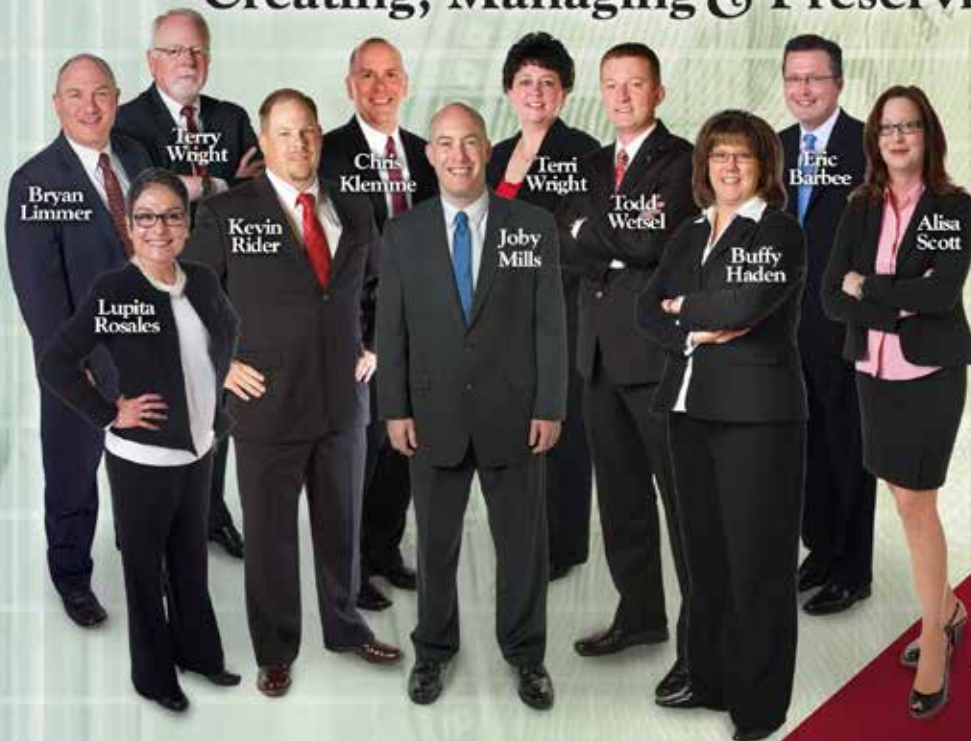
(806) 701-4196

6219 62nd Street
Lubbock, TX 79424
lubbock@legacymgmt.org

myplacehotels.com • 855-200-5685 • Each franchise is independently owned and operated.

PRIVATE TRUSTS • INVESTMENT MANAGEMENT • RETIREMENT • ESTATES

Creating, Managing & Preserving Wealth



**happytrust.com
806-356-TRUST**



**HAPPY
TRUST COMPANY**
CREATING, MANAGING & PRESERVING WEALTH



7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

You all know that the Fourth Amendment of the U.S. Constitution requires law enforcement authorities to have either reasonable suspicion to believe crime is afoot or probable cause to believe a crime is occurring or has occurred before they can detain someone. But do you remember from your first year criminal law class that reasonable suspicion or probable cause is not required for every encounter with the police? Encounters may be consensual, such as when a policeman just walks up and starts talking to you. And, whether it is depends on whether a reasonable person under the circumstances would feel free to simply walk away. In *Gilbert v. State*, No. 07-16-00158-CR, 2016 Tex. App. LEXIS 12530 (Tex. App.—Amarillo Nov. 22, 2016, no pet.), the officer saw a car parked in a church parking lot shortly before midnight. The area was a “high crime area” according to the officer (hum . . . I wonder what that really means) and it was cold and dark outside. So, the officer pulled within twenty feet of the car, momentarily engaged his emergency lights, walked over to the car, and asked the driver if everything was alright and for her identification. We concluded that the trial court had before it sufficient data to find that a reasonable person would have felt free to leave. Now, just between you and me, all of you who think you would feel free to just walk away when a policeman asks for your driver’s license, raise your hand

Preserve, preserve, and preserve your claim of error. In *In re Marriage of Bradley*, No. 07-16-00051-CV, 2016 Tex. App. LEXIS 12828 (Tex. App.—Amarillo Dec. 1, 2016, no pet.), the wife complained on appeal that she did not receive the requisite forty-five day notice of the first trial setting. Yet, that objection was not mentioned to the trial court when she moved for a continuance. Because it was not, she failed to preserve that complaint on appeal. Again, preserve, preserve, preserve your error.

Finally, one more on the Fourth Amendment. As I said earlier, either reasonable suspicion or probable cause is needed before a policeman can detain someone. The standard does not require proof of an actual crime, though. The detention may be legitimate even though the officer was mistaken. However, the mistake has to be reasonable, and it may involve either a mistake of fact or mistake of law. In *State v. Cortez*, No. 07-15-00196-CR, 2017 Tex. App. LEXIS 999 (Tex. App.—Amarillo, Feb. 3, 2017), the Court of Criminal

Appeals “invited” us (yeah, I’m being nice) to consider whether the trooper committed a reasonable mistake of law when he thought that momentarily touching the fog or white line next to the shoulder of a road constituted driving on an improved shoulder. After failing to find any precedent suggesting that a mere touch constitutes driving on the shoulder, finding precedent suggesting that it was not, and looking at the intent underlying the pertinent statute (§ 545.058(a) of the Texas Transportation Code), we held that the mistake was not reasonable. I think someone puts magnets in those fog lines. Neither I nor any driver around me is able to avoid them. Go on, just try.

Those documents can only stack so high.. Let us lend a hand!

- Document Copying & Printing
- Scan To Disc
- Bates Numbering
- Courtroom Display Posters
- Photo Printing
- Blow Backs
- Same Day Turnarounds
- Competitive Rates
- Free Pick Up/Delivery (Amarillo)

- Black & white copies as low as \$0.12 each
- Color copies as low as \$0.49 each
- Scanning as low as \$0.16 each
- 2x3 Trial Exhibit Boards as low as \$40.00 each

Only litigation copying center in the Texas Panhandle with over 23 years experience



Sir Speedy®

PRINT / SIGNS / MARKETING

416 SW 8th • Amarillo, TX • 806.342.0606

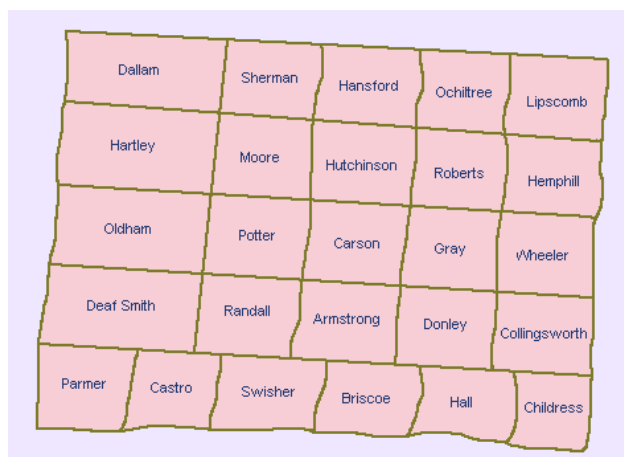
www.sirspeedy.com/amarillo

**Announcing the 2017-2018
AMARILLO AREA BAR FOUNDATION
SCHOLARSHIPS**

The Amarillo Area Bar Foundation is awarding four \$2,500 scholarships to students attending law school during fall 2017 and spring 2018.

Eligibility:

- 1) Applicants must currently be enrolled in or accepted for admittance to a law school accredited by the American Bar Association.
- 2) Applicants must have been born in, raised in, or currently reside in one of the 26 counties of the Texas Panhandle (the area covered by the Amarillo Area Bar Association):



Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher or Wheeler Counties

Disbursement of Funds

Scholarship funds will be disbursed one-half for the fall semester and one-half for the spring semester. However, disbursement of the spring semester funds is conditioned on completion of 12 hours during the fall semester with a minimum grade point average of 3.0 (or its equivalent). Failure to meet the minimum requirements may result in forfeiture of the remaining balance of the scholarship.

Application Access and Deadline

The scholarship announcement and application are available at www.amarillobar.org. Click the Amarillo Area Bar Foundation tab on the home page to access documents. Completed applications must be received no later than 5:00 p.m. on April 3, 2017, either by emailing to director@amarillobar.org or by mail to Amarillo Area Bar Foundation, 112 West 8th Street, #615, Amarillo, Texas 79101.

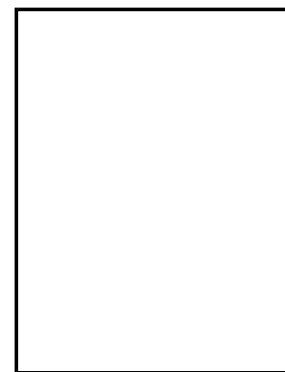
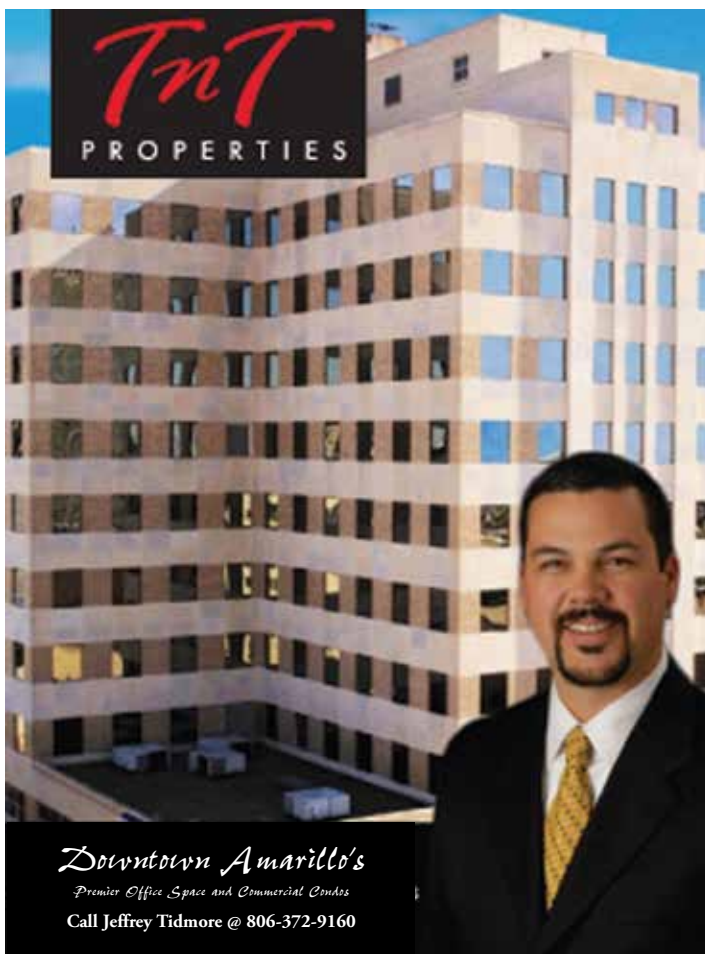
Questions may be directed to Janet Byars at (806) 371-7226.

YOUNG LAWYER OF THE MONTH: BLAKE NEWTON

Growing up in West Texas, Blake Newton failed to realize one of life's biggest truths: you can't leave West Texas, at least not for long.

Blake was born and raised in Midland, Texas and when that fateful day came when he could leave for college, he chose the sprawling metropolis that is Lubbock, Texas. Blake had two paths in front of him when he first stepped foot on the Texas Tech campus: petroleum engineering or law school. As it would be sacrilegious to be born in Midland and not become a petroleum engineer, Blake began his path towards an engineering degree. Luckily one failed, and I mean single digit grade failed, chemistry test later, Blake jumped ship and took the path through Business Finance to law school.

The silver lining of Blake's romp through his undergrad was that he met the beautiful Emily Mountain from Amarillo, Texas, and despite her best efforts to the contrary, he convinced her to marry him. What Emily failed to realize



Blake Newton

was that she would then have to support Blake through law school as he avoided the job market by taking unpaid internships and editing Oil and Gas Law, 6th Edition with Dr. Christopher Kulander.

After graduating and successfully passing the bar, Blake took a job with Anderson, Smith, Null & Stofer, LLP in Victoria, Texas where he worked as a Banking Litigation Associate. But wait, you may ask yourself, Victoria is on the other side of Texas from West Texas, didn't he break free from West Texas? You would be wrong. Blake likes to joke that Emily began job hunting within the first six months of arriving in Victoria, but Emily will swear that it didn't begin until it rained 43 inches their first year there. Either way, Blake and Emily lasted two and a half years before West Texas pulled them back to Amarillo, Texas with a great opportunity to work with Perdue, Brandon, Field, Collins & Mott LLP.

Blake and Emily currently have two daughters, a three-year-old named Kenzlie and a one-year-old named Scarlett, with a little boy due in April. With almost 8 months under his belt in Amarillo, Blake has slowly started refamiliarizing himself with life in West Texas and only hopes he never tries to leave again.

AABA History Quiz WIN A ROLLING BRIEFCASE!

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

Question: Who was the author of the December 2006 Legal Yarns article My First Day in Amarillo?

February Answer:
February 23, 1979

February Winner:
Luisa Vigil



AAYLA UPDATE

By Shane Brooks



Attention! The Annual AAYLA Bunny Hop 5K will be held on April 15th at Thompson Park. Registration will start at 8:15 and the hopping will commence at 9:00 a.m. sharp. If you think the Turkey Trot at Thanksgiving is important for burning off all the turkey you eat later that day, just think how much more you need to run the Bunny Hop before

you put yourself into a sugar coma from eating all of your kids' and grandkids' Easter chocolate. Another great reason to come out is that this year's race will benefit our local Legal Aid, and we all know how great of a cause that is. So, take a break from calculating Monday's tax payment, come burn off some pre-Easter calories and help us raise some money. You'll receive a complementary set of bunny ears and have a chance at taking pictures with an Easter Bunny in a headband that will surely take away any Tax Day blues. It is a fun event for the entire family so bring your whole crew and any others who might be interested. Be looking for early signup information to be circulated soon.

Also, the Annual AAYLA Easter Egg Hunt at the Potter County Courthouse will be held on Friday, April 14th at 4pm. Remember we have an annual Bunny Contest benefitting AAYLA where you can donate funds in the name of the lawyer you'd most like to see dressed

up as the bunny for the egg hunt. Kick the weekend off right and bring the kids out to hunt for eggs and get their picture with the lucky winner of the Bunny Contest. Lots of candy and refreshments are guaranteed, so make plans now to attend.

Lastly, we are planning a March Madness happy hour, and by the time you are getting this newsletter, is likely right around the corner. Be looking forward to details on that to come very soon, because no one has a bad time at an AAYLA happy hour.

If you have any questions or want to learn more about AAYLA, please contact me anytime at shane.brooks@sprouselaw.com or 806.349.4717.



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 Janet Byars, Executive Director, at 371-7226 or director@amarillo-bar.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 Janet Byars, 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.amarillo-bar.org for information and links to both local and state-wide legal resources.



Notice to AABA Members

The Amarillo Area Bar Association is in the process of updating the on-line directory of its members, which can be found on the Attorney Locator page of the AABA website, amarillobar.org. The AABA refers all calls seeking an attorney referral to this page and to the State Bar referral line.

We have reached an agreement with Davy Knapp Photography to take the head shots for each attorney. Mr. Knapp has agreed to provide a professional portrait at a greatly discounted rate. The cost of the studio session and one (1) high resolution electronic portrait will be \$30 (regularly \$275.00). The information submitted with each Membership Registration form is included on the Attorney Locator page, as well as photographs of members who have submitted them previously. For AABA members who do not have a photograph on the Attorney Locator page and those who would like to have an updated photograph with their information, contact Davy Knapp at 806-371-9210 to schedule your portrait sitting.

The information contained on the website, including photographs, will be utilized in the publication of a printed AABA Membership Directory to be published later in 2017. In order to have your photograph included in the printed directory, you will need to have your photograph taken at Davy Knapp Photography Studio, 1703 Tyler, Amarillo, TX, no later than May 1, 2017.

The option of an enhanced page on the Attorney Locator page is available for a minimal fee: \$20.00 for the set-up fee, and \$10.00 for each year thereafter. The enhanced page contains a link to a website, e-mail address, office hours, law school attended, three practice areas, civic and charitable involvement, and a short description of legal practice. This information is invaluable to individuals seeking attorney representation.

Please direct questions to Janet Byars, AABA Executive Director, at 806-371-7226, or director@amarillobar.org.



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

Presorted
Standard
US Postage
PAID
Amarillo, TX
Permit No. 227

Return Service Requested

Mark Logsdon, President
Chris Jensen, President-Elect
Brad Howard, Vice President
Joby Mills, Secretary-Treasurer
Dusty Stockard, Immediate Past President

EXECUTIVE COMMITTEE

Terms Expire 2017

Chris Stewart
Briar Wilcox
Rhett Hubbard

Terms Expire 2018

Christy Drake
Jennie Knapp
Brian Farabough

J. Shane Brooks, AAYLA President
Janet Byars, Executive Director
Jonathan Sterling, Editor of AMA-LAW Newsletter

YOUR BAR EVENTS - MARCH 2017

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