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FEBRUARY SPEAKER: STEVE HAYES



Steve Hayes

AABA's February program speaker is Steve Hayes, whose presentation will be How to Avoid Error Preservation Ambushes. Steve is a 1977 graduate of Austin College and a 1980 graduate of the Harvard Law School. He practices out of Fort Worth in the Law Office of Steven K. Hayes. Steve is licensed by the State Bar of Texas, United States Supreme Court, United States Fifth Circuit Court of Appeals, and all United States District Courts in Texas.

Steve has spent the majority of his 40-year legal career practicing appellate law. He was the Chair of the Appellate Law Section for the State Bar of Texas in 2016-2017, has served on the Planning

Committee for the Advanced Civil Appellate Law Seminar multiple times, and is a Life Fellow of the Texas Bar Foundation. In his practice, he has over two dozen reported appellate opinions.

Steve's presentation to the AABA will focus on the major error preservation issues in civil jury trials. He will discuss the complaints that your opponent can raise for the first time on appeal and will provide a checklist of such items you can use to proactively identify and fix such complaints while still in the trial court.

Please join us via Zoom on Thursday, February 11th to hear this interesting presentation.

“When these things are melded together, change can happen, and, as Dr. King put it, we can “walk in the light of creative altruism” instead of the “darkness of destructive selfishness.” ”

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“Once a party has done so, social media and e-mail are now explicitly enumerated as methods of service.” ”

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PRESIDENT'S PAGE

By: Jennie Knapp

I am writing this column in January, after returning from Martin Luther King Jr. Day festivities. As Justice Pirtle wrote in this column last month, we are forging new avenues of investigation and dialogue in an effort to understand and address bias, prejudice, and racism in our legal system. We started off by participating in the Martin Luther King Jr. Day events today, themed "Be the change."

How do we become change? I choose to take guidance from Micah 6:8: "He has shown you, O mortal, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God." (NIV) As a lawyer, it is easy for me to strive for "justice" but forget that justice should be melded together with mercy and that neither one can be truly accomplished without walking in humility with God. That is what grounds (or should ground) me. When these things are melded together, change can happen, and, as Dr. King put it, we can "walk in the light of creative altruism" instead of the "darkness of destructive selfishness."

We have spent nearly a year in relative isolation. It could have been a perfect breeding ground for "the darkness of destructive selfishness." But while times certainly were dark, and may be for a while longer, we have witnessed many creatively altruistic acts. Some are grand civic gestures, and others seem smaller. All are important. Lawyers have assisted clients in getting loans, individuals facing eviction, businesses in dilemmas due to government shutdowns, those accused of crimes, and people needing wills.

And lawyers have given funds to help charities who really needed it. Thanks to you, we raised over \$7,500 for the Amarillo Children's Home during our Christmas drive (thank you to Happy State Bank for their matching donation of \$3,500!). This was a huge deal to them - thank you all. That made a change.

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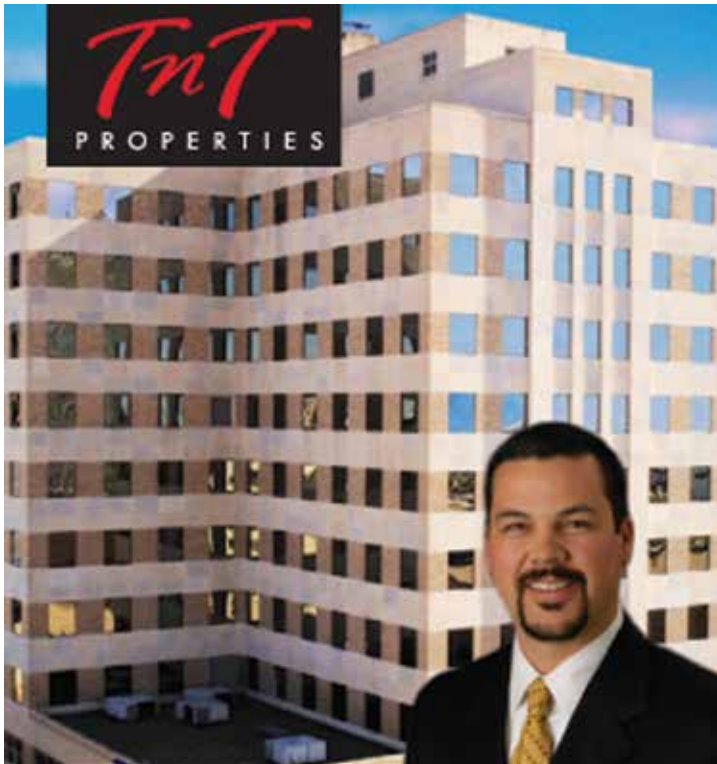
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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

As the COVID-19 vaccine circulates, there is one bug you don't want to rid yourself of (yeah, poor grammar). It affects your heart and February 14th serves as a reminder of it. You know you have it "when the world seems to shine like you've had too much wine." It's "amore" and the "King of Cool," Dino Martin, described it best.

But amore too can fade, as it did with the two parties in *Seekatz v. Beaty*, No. 07-20-00231-CV, 2020 Tex. App. LEXIS 9513 (Tex. App.—Amarillo Dec. 7, 2020, no pet. h.) (mem. op.). They were left fighting over who kept their golden retriever. Beaty obtained a temporary injunction directing its return to him. Missing from the order granting it was a trial date, though. That omission rendered the order and injunction void. So, make sure the order complies with TRCP 683 or it, like puppy love, may leave you in a heartbeat.

We dealt with a more somber situation in *Sharp v. State*, No. 07-19-00227-CR, 2020 Tex. App. LEXIS 9025 (Tex. App.—Amarillo Nov. 17, 2020, pet. filed) (mem. op., not designated for publication), wherein Sharp was convicted of sexually assaulting a disabled young lady. The assault apparently resulted in a pregnancy and abortion. Sharp sought to suppress the DNA evidence taken from the aborted fetus, which evidence confirmed him to be the father. According to Sharp, the abortion was illegal because the victim's mother (and legal guardian) lacked authority to consent to it. We affirmed the trial court's decision to deny the motion after concluding that "there [was] no evidence of record that either [he] or his property were the subject of the search and seizure." In other words, he lacked standing to complain about aborting the fetus which resulted from his criminal conduct.

Shifting gears a bit . . . you know that the Texas legislature is in session. You may not know that two bills have been filed to redistrict the Texas Courts of Appeals, H.B. 339 and S.B.11. They say little and have been characterized as "shell bills" filed to save a spot for early consideration of the topic during this session. Word on the street is that movers and shakers in Austin want to shrink the number of courts from 14 to 7 or less. Your Seventh Court has been in the gunshots of redistricting for many years. That remains true today. The plans being discussed below the radar have it being joined with one or more other courts including Eastland, Fort Worth and El Paso. What the outcome will be is anyone's guess, but I have been told that the move "has legs" (political speak meaning viability). I'll reserve my personal views here (don't wanna make this column political) but am willing to discuss them in a

different setting.

Finally, while Judge Hatch was empanelling a grand jury, he discovered, through reviewing a criminal history report, that one prospective member had a murder conviction. That person said nothing of it, though. So during a break, the concerned judge asked him to stay and if he was the same person described in the history. The gentleman "paused, looked at the ceiling, rubbed his chin, then looked back at me and the prosecutor, smiled and said: 'Oh yeah, that was me . . . a long time ago. It was no big deal.'" I wonder what would be a "big deal" in his estimation?

As you take your significant other out on February 14th, or any other day, and are asked, "Do I look alright?", steal from Mr. Clapton and say, "Yes, you look wonderful tonight." The resulting smile will melt your heart again, just like it did the first time.

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AAYLA UPDATE

By Richard Biggs

The Young Lawyer's Association held a swearing-in ceremony for Jared Barton and Jared Starr on January 19, 2021. Both new lawyers are employed by Brown & Fortunato. This event was only possible due to the indispensable Justice Quinn and the Court's Clerk/Briefing Attorney, Bobby Ramirez. Although the courtroom was limited to a minimum number of attendees, the Zoom broadcast was well-attended, and the Amarillo Young Lawyer's Association welcomes the newest members to the Bar. Congratulations, Jareds!

In other business: we have a new year with new rules. I don't have space to discuss all the changes here, but the litigators and litigation-adjacent practitioners should know:

1. Discovery rules are moving closer to the Federal Rules. Previously, initial disclosures were sought via a discovery instrument. Now these disclosures are mandatory and are due 30 days after an answer is filed. The new initial disclosures also require additional detail: each party must disclose its computation of each category of its claimed damages and produce supporting documents. Following the Federal lead, discovery now opens when the disclosures are due rather than upon

the filing of a petition. Gone are the days of opening a case with both a petition and an oppressive set of discovery requests.

2. In another move in the Federal direction, Texas litigants must now make pretrial disclosures. These lists of expected witnesses and exhibits must be exchanged 30 days before trial.

3. Service via social media (Facebook, etc.) is now permitted as a method of substituted service. A party still needs leave of the trial court after a showing that traditional methods of service were unsuccessful. Once a party has done so, social media and e-mail are now explicitly enumerated as methods of service.

4. Expedited actions are supposed to be expeditious. In expedited actions (where the amount in controversy is now \$250,000 or less), litigants must be set for a trial date within 90 days after the end of the discovery period (which is 180 days long). An expedited action trial can be continued only twice, up to a total of 60 days. I'm not sure what happens when the Court doesn't have a trial date open, but I'll let you know when I find out.



Matthew Earl

YOUNG LAWYER OF THE MONTH: MATTHEW EARL

Matthew Earl joined Brown & Fortunato as member of the Health Care Group in October 2020. Matthew was born and raised in Utah and is thrilled to now come to Amarillo.

Prior to joining the firm, Matthew worked in the Civil Litigation Division of the Utah Attorney General's Office where he defended state agencies and employees in civil rights, torts, and employment litigation matters.

Matthew attended Utah State University on a music scholarship. He was recruited to Utah State to start the university's bagpipe band, the Utah State Scotsmen Pipe

& Drum Corps. He graduated from Utah State in 2016 with a Bachelor of Science in Law and Constitutional Studies.

In 2019, Matthew received his Juris Doctor from the J. Reuben Clark Law School at Brigham Young University. While in law school, Matthew was a member of the Trial Advocacy team and worked part-time for the Utah Attorney General's Office.

Matthew and his wife, Hayden, are avid sports fans and enjoy playing tennis and golf together.

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YOUR BAR EVENTS - FEBRUARY 2021

S	M	T	W	T	F	S
	1	2	3	4 Advanced Personal Injury CLE, Eagle Center	5	6
7	8	9	10	AABA Zoom Meeting 11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
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