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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

MARCH SPEAKER: ERIC EISSENSTAT “MANAGING YOUR TEAM IN A TIME OF CRISIS”

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-Page 2

“But there are two bills receiving considerable attention that have the potential to affect local practitioners.”

- Page 5



Eric Eissenstat

Our March 2021 speaker is Eric Eissenstat. Eric is Senior Vice President, General Counsel, Chief Risk Officer, Secretary, and an Executive Committee Member of Continental Resources, Inc., an oil and natural gas exploration and production company with revenues of more than \$4 billion per year. Before joining Continental in 2010, Eric was a Director, Executive Committee Member, Shareholder, and award-winning trial lawyer at a litigation law firm. Eric is licensed to practice before the United States Supreme Court, 9th and 10th Circuits, 8 U.S. District Courts across Arizona, California, Montana, Missouri,

Oklahoma, and Washington, and the State of Oklahoma. Eric is an honors graduate from the University of Oklahoma School of Law.

Eric’s presentation is “Managing Your Team in a Time of Crisis.” As the Senior Vice President for a publicly traded oil and gas company, whose job it is to manage and lead a legal department, Eric has had significant experience dealing with COVID-related issues and oil and gas industry issues in 2020. Eric brings his trial lawyer’s perspective to risk management. Eric has tried over 50 cases to verdict, with over 15 appellate arguments and SCOTUS filings, and other litigation in federal and state courts – including landmark, novel, and impact litigation. He leverages his ability to anticipate how judges, juries, and regulators think in deal-making, dispute resolution, and iron-clad, high-level SEC work to address difficult situations.

Throughout his career, Eric has maintained a relentless devotion to his profession, community, and family. He has served on 40+ bar association, business, leadership, and civic boards and committees, and has been recognized with dozens of service awards. We look forward to having Eric at our March luncheon via zoom on Thursday, March 11th at noon.

CONTENTS

President’s Page	2
Seventh Court of Appeals	4
AAYLA Update	5
Young Lawyer of the Month	5



PRESIDENT'S PAGE

By: Jennie Knapp

It is not easy to write a column every month, especially in a year like this one where not much is happening. I've thought of taking a note from Mr. Smith Goes to Washington and reciting the Preamble to the Constitution. It's also crossed my mind to find some good photos, which are, after all, worth more than a thousand words. But I've mustered up something quasi-substantive instead.

The last "Normal Day" was our March meeting last year. A speaker flew in from Austin. Two state bar president-elect candidates spoke about their platforms – in person. After the meeting, we walked around to various firms and introduced them to the lawyers in town, who were working in their offices. The next day, the world changed. We voted to cancel the April meeting. Soon after that, we postponed the Spring Institute, with plans for a "Summer Institute." That soon turned into a "Fall Institute." And then was just not talked about again.

A lot has been said about how our profession has changed in the last year. No doubt it has. But in many ways, it stays the same. The wheels of justice continue

to move forward. Lawyers remain essential. We have learned to adapt to the way things are and to maintain our core functions and congeniality. This is still the best state, and the best part of the state, to be a lawyer. Our members are among the best and nicest in the country. Thank you for remaining kind, caring, and human in these times that sometimes seem inhumane. Thank you for the grace you have shown to me, other members, and the community. These proofs of character have been evident in the last year as a bedrock of our profession.

Fair warning: since I've spent my penultimate column on reflection, don't be surprised to see the Bill of Rights next month.

Search for Will and Estate Planning Files

If anyone has information regarding the attorney who took over the will and estate planning files of Robinson and Fotheringham, please contact John Atkins at 806-379-0376 or john.atkins@uwlaw.com.

John B. Atkins

LAW OFFICE BUILDING FOR SALE

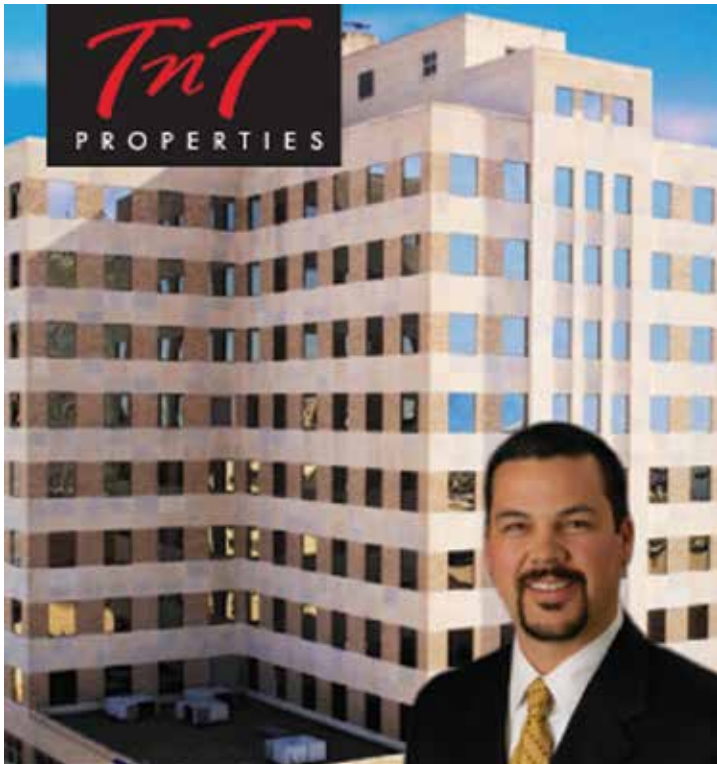
After 45 years of private practice in Amarillo, Yvonne and I will be retiring in May and moving to the McKinney area to be closer to grandbabies. We have officed at 1211 SW 10th for 35 years in a nicely landscaped brick building with plenty of room for three attorneys and support staff, desks, furniture, file cabinets and tv's and chairs in each room and large conference room with built in shelving and a large conference table.

I will be taking guardianship and ad litem appointments in McKinney but will not open a new office.

This has been a comfortable business home for many years and I hope one of my colleagues will continue to use it as a law office.

If interested, please call between 11 :00 a.m. to noon or 2:00 to 5 :00 each weekday afternoon. We'll be glad to show it to you.

Mike Moore
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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

“Wasted days and wasted nights” seems to be an appropriate label for the month of March. It’s recognized as one of the least productive months at work, unless you are in the gambling or brewing industry. But, I bet Mr. Fender had his share of green beer and basketball as he wasted days and nights as so many of us do in March Madness while honoring good ole Saint Pat.

And speaking of wasting time, think twice about complaining on appeal about an order that never was entered by the trial court. Your complaints may well be moot, as they were in *Lubbock County v. Reyna*, No. 07-19-00330-CV, 2021 Tex. App. LEXIS 33 (Tex. App.—Amarillo Jan. 5, 2021, no pet. h.) (mem. op.). Lubbock County did not like the trial court’s decision to award Reyna attorney’s fees and attacked it on appeal. Though the appellate record contained a final judgment, it lacked a written order awarding the fees though the topic was alluded to in that judgment. Because “[w]e cannot reverse an order not entered by the trial court,” the County’s complaints were deemed moot. I’ll leave it there and not waste day or night, at this time, about whether Reyna is wondering where his attorney’s fees are.

Another waste of effort may be relying, to prove your case, on the contents of a document you asked the trial court to take judicial notice of without actually offering the document into evidence. That happened in *Thatcher v. State*, No. 07-20-00230-CV, 2020 Tex. App. LEXIS 9484 (Tex. App.—Amarillo Dec. 4, 2020, no pet.) (mem. op.). The State wanted to use the contents of a doctor’s certificate as evidence supporting its request to involuntarily administer psychoactive drugs to Thatcher. And though the trial court accepted the State’s request to take judicial notice that the certificate was filed with the county clerk, the certificate itself was not offered or admitted into evidence. So, its content could not be considered on appeal when Thatcher attacked the order permitting administration of the drugs as lacking sufficient evidentiary support. In short, taking judicial notice of a document’s existence does not mean the

court did or can judicially note the truthfulness of what that document says.

An instance of not wasting time came when Justice John Thomas Boyd winked at me right before my first oral argument in front of the Amarillo Court of Appeals. My being a newbie lawyer and nervous apparently was sensed by Justice John T. So, he took the time to look my way, smile, and wink. That second of consideration on his part settled me instantly, and I never will forget his courtesy in showing me that being a judge means you’re still part of the legal gang comprised of all lawyers. Thanks, John. I, we, miss you.

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AAYLA UPDATE

By Richard Biggs

If you're reading this column, you've recently endured a plague, a historic blizzard, a public utilities crisis, and more. Congratulations, reader, you are truly a survivor!

The Amarillo Young Lawyer's Association continues to social distance, meaning your author has little local news to report. However, politics are a-brewin' down in Austin. The Texas Legislature is in session, and elections for State Bar positions are underway.

Recently, Lt. Gov. Dan Patrick announced his 31 legislative priorities. Many of these bills address political hot topics, which means that interested readers will have ample opportunity to hear about them elsewhere. The Amarillo Area Young Lawyer's Association is a non-partisan and politically agnostic organization, after all. But there are two bills receiving considerable attention that have the potential to affect local practitioners.

Number 11 on the Lt. Governor's list of priorities is "Appellate Court Reorganization." As written, the two reorganization bills on file as of this journal's submission deadline merely eliminate overlapping appellate court jurisdiction in four small counties. However, a number of Austin tea leaf-readers believe that the bills are placeholders for amendments that would substantially cut the number of appellate courts. Some folks downstate have expressed a desire to reduce the number of Texas appellate courts from 14 to 5. One proposal eliminates

the Amarillo, El Paso, and Eastland appellate courts, giving the Fort Worth Court of Appeals jurisdiction over all of West Texas. Another proposal eliminates the Amarillo and Eastland Courts of Appeals, which would also leave the Panhandle in Fort Worth's jurisdiction. A third proposal leaves Texas with 7 appellate courts, but still sends Amarillo and Eastland appellants to the Fort Worth court. Whether any these proposals become state law is yet to be seen.

Number 21 on the Lt. Governor's list of priorities is "Bail Reform." As most readers know, Texas relies heavily on a cash bail system which is typically facilitated by bondsmen. This system has been criticized from all ends of the political spectrum, with some saying that it favors the wealthy, while others contend that it allows dangerous criminals to bail out too easily. Bail reform is now an issue of particular urgency, as a federal court recently ruled that Harris County's bail schedule did not meet constitutional muster. Which direction the legislature decides to take us is anyone's guess.

My granddaddy said that some folks would "be like a blister and show up after the workin' is all done." So don't be a blister. If either of these bills would affect your practice, now is the time to speak up!



John Headrick

YOUNG LAWYER OF THE MONTH: JOHN HEADRICK

John graduated from Texas State University in 2008 with a B.A. in Political Science then attended Baylor Law School. In law school, John was a member of the Baylor Law Review and active participant in Baylor's moot court program. In addition to clerkships as a law student, John served as a legal intern for the Texas Senate's Committee on Higher Education and Sen. Judith Zaffirini during the 2011 legislative session.

After graduating from Baylor in 2012, John started his career in Houston as in-house counsel for a national commercial real estate company. Then, at Ben Doyle's persuasion, John moved to Amarillo in 2015 to practice law.

Outside of the office, you can find John and his wife, Jessica, trying to corral their two-year old son, playing tennis, or attempting to swing a golf club.

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PAYING OUR DUES

By James Wester, State Bar of Texas District 13 Director



James Wester

First and foremost, this article is NOT about a proposed dues increase. Further, this article is NOT being written because a dues increase is being contemplated. To the contrary, the State Bar of Texas takes pride in continuing to add to its streak of years of not increasing our dues.

I have written a number of articles in the last year about the numerous State Bar programs, resources and benefits available to us, many at no cost. During our January Board meeting, a compliment was given that the State Bar has not increased dues in many years. I struggled to remember the last time we had a dues increase. As such, I decided to investigate that issue. This topic has been included as part of an article the Executive Director's page in the Texas Bar Journal in the last 2-3 years, but I wanted to call an astonishing statistic to your attention.

We as Texas lawyers have had the same annual dues—up to \$235 depending on years of practice—since 1991. Said another way, our dues have not increased in 30 years! I cannot think of anything that costs the same today as it did in 1991. As former State Bar President Frank Stevenson said a couple of years ago, Texas lawyers are being sworn in today who weren't alive the last time there was a dues increase. It is not surprising that Texas bar dues are among the lowest of all state bars in the country that operate in a similar structure (a unified bar that performs regulatory functions).

According to the Bureau of Labor Statistics consumer price index, today's prices are 1.91 times higher than average prices in 1991. Said another way, a dollar today only buys 52.29% of what it could buy in 1991. If you apply that formula to our dues, our dues should be about \$215 higher or about \$450 per year. Again, this is simply statistical data to make a point and there is no proposal to increase dues.

I have some perspective on the State Bar in the early 1990s as I was active in the State Bar back then and served as President of the Texas Young Lawyers Association in 1995-96. While I have no way to accurately compare today's State Bar's programs, resources and benefits to those in the early 1990s, it is clear to me that more are available.

While the number of Texas licensed attorneys has

increased from 54,355 in 1991 to 106,591 now, I don't believe that explains the absence of a dues increase as the Bar provides services to that increased membership. Having witnessed the time and effort devoted to sound fiscal policy and the preparation of the annual budget, my impression is that we have avoided a dues increase for 30 years because of wise fiscal management by current and former Board Members, Officers, Executive Leadership and the State Bar Staff. I applaud those that continue to devote time on the proposed 2021-22 budget, which once again does not include a dues increase.

If you want a better understanding about how your dues are spent, I encourage you to take time to review the State Bar's proposed 2021-22 annual budget that is being published in the March 2021 edition of the Texas Bar Journal.

If I can be of assistance, please feel free to contact me at James.Wester@uwlaw.com or 806-379-0354.

AABA History Quiz

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When was the Potter County Courthouse listed on the National Register of Historic Places?



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YOUR BAR EVENTS - MARCH 2021

S	M	T	W	T	F	S
	1	2	3	4	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 Building Blocks of Wills, Estates & Probate, Eagle Center Training Room	27
28	29	30	31			