



AAYLA-LAW



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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

SEPTEMBER SPEAKER: BRENT TURMAN



Brent Turman

Our September bar luncheon speaker will be Brent Turman, a partner at Bell Nunnally in Dallas. Brent will be sharing “What Kanye Can Teach Us About Litigation.” Over the past decade, Kanye West has run the gamut when it comes to civil lawsuits. From copyright and trademark infringement to class action litigation, Kanye has seen it all. In this presentation, Brent will analyze Kanye’s “greatest hits” in the courtroom and share lessons that other attorneys can learn from his experiences.

Brent has a commercial litigation practice covering a variety of matters including business disputes, intellectual property, real estate, arbitration, and civil RICO actions. He represents clients ranging from startups to high-net-worth individuals to Fortune 50 companies. For the past five years, he has been recognized as a Super Lawyers “Rising Star” for business litigation.

A graduate of Southern Methodist University and SMU Dedman School of Law, Brent worked as an associate operations producer for ESPN/ABC College Football before turning to a career in law. He has produced commercials, industrial videos, in-arena entertainment, and music videos for clients throughout North America. Brent uses this experience to assist clients in the entertainment, media, and sports industry by preparing and reviewing contracts and navigating business disputes. Outside the office, Brent produces short films and recently worked as a remote producer for the XFL’s re-launch in 2020.

Please join us at the Amarillo Club for this LIVE—and lively—presentation.

“We remain positive that we will be able to get off the canvas and treat COVID the same way Buster Douglas treated ole Iron Mike in Tokyo 31 years ago. It just will not be this round.”

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“Just know, if safe and practicable, we plan on bringing the events back that the community knows and loves”

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PRESIDENT'S PAGE

By: Matt Sherwood

Rolling with the Punches

As the great poet of our time, Mike Tyson, once said, "Everybody's got a plan until they get punched in the mouth." I do not know of a more appropriate quote to describe the last 18 months for all of us. Professionally, we had plans for jury trials, in-person client meetings, and out-of-town CLEs. Personally, we all likely had plans for vacations, family gatherings, and normal school for our children.

As your Executive Committee, we have had plans for two Spring Institutes, in-person monthly luncheons, and in-person CLEs. Most recently, we had plans for a never-before-seen Fall Institute as a means to get all of us together for some quality speakers, "quality" golf, and a means to raise funds for our local bar association.

Unfortunately, COVID-19 has punched all those plans right in the mouth. Just weeks after announcing the Fall Institute and sending out sponsorship information (thank you to the firms that had already sent in checks), the Executive Committee made the difficult decision to cancel the Fall Institute due to the rising numbers of the Delta Variant and the increased threat level put out by our local officials.

We remain positive that we will be able to get off the canvas and treat COVID the same way Buster Douglas treated ole Iron Mike in Tokyo 31 years ago. It just will not be this round.

This will be an exciting bar year for us. Before getting into the details on that, however, I would be remiss if I did not mention the wonderful job by the AABA's previous President, Jennie Knapp, did in this position. Jennie was given the unenviable task of leading our association through a year of Zoom lunches, canceled CLEs, and the most unpredictable circumstances in recent memory. Jennie handled the situation with her trademark class and poise. Jennie, we all appreciate the magnificent job you did for our association.

As for this year, we are still planning on holding our first in-person luncheon in over 18 months, and we are excited to announce the AABA's return to the Amarillo Club. Barring any setbacks, we plan to host each luncheon at the Amarillo Club. We are excited to be able to bring our area's lawyers back together in one place, and it will be a blessing to be able to see some of our colleagues that we may not have seen in over a year. Please make plans to join us at our luncheons as often as you are able.

Finally, I would like to dedicate this column, and all future

columns, to John Atkins. You see, it was John who drove me to become President of the AABA. When John was on the AAYLA board in 2010, he led the charge to pass a resolution that I could never be Young Lawyer of Month—this may or may not have been deserved because of my complaining about not being selected. I knew that in order to finally get my picture in the AMA-LAW, I would have to make it all the way to President. So, John, this one is for you. I finally made it...albeit with a few more gray hairs.

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Travis Shane Knox

If anyone has information regarding a Will for Travis Shane Knox, please contact Leah Davis at 806-358-8116 or ldavis@bmwb-law.com.

Leah Davis

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**AMARILLO ATTORNEY ALEX L. YARBROUGH
SELECTED AS A 2021-2022 NOMINATING CHAIR
BY TEXAS BAR FOUNDATION**

Mr. Alex L. Yarbrough with Riney & Mayfield, LLP has been selected to serve as a 2021-2022 Texas Bar Foundation Nominating Chair for District 13. Nominating Chairs for each of the 17 State Bar of Texas districts identify elite nominees to join the Foundation as Fellows. Nominating Chairs of the Foundation are selected for their outstanding professional achievements and their demonstrated commitment to the Texas Bar Foundation. Selection is a mark of distinction and recognition of Mr. Yarbrough's contributions to the legal profession.

Mr. Yarbrough is a civil litigator who has served as a Nominating Chair since 2018. He regularly represents cities, counties, and law enforcement in all manners of disputes. His practice focuses on all aspects of civil litigation from pre-lawsuit resolution through the appeal of a judgment rendered by a trial court. He also handles a variety of real estate litigation, trucking and automobile litigation, commercial litigation, and premises liability.

Selection as a Fellow of the Texas Bar Foundation is restricted to members of the State Bar of Texas. Each year one-third of one percent of Texas attorneys are invited to become Fellows. Once nominees are selected, they must be elected by the Texas Bar Foundation Board of Trustees. Membership has grown from an initial 255 Charter Members in 1965 to more than 10,000 Fellows throughout Texas today. If you are a Fellow and have a recommendation for a new member, please contact your District Nominating Chair.

Founded by attorneys determined to assist the public and improve the profession of law, the Texas Bar Foundation has maintained its mission of using the financial contributions of its membership to enhance the rule of law and the system of justice in Texas. To date, the Texas Bar Foundation has distributed more than \$22 million throughout Texas to assist nonprofit organizations with a wide range of justice-related programs and services. More than \$1 million is projected to be distributed for grants this fiscal year. For more information, please visit www.txbf.org.

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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

It's almost like Groundhog Day, the movie, not the occasion. Back for another round of musing. Let's start with an admission.

We get it wrong too, sometimes. The Supreme Court disagreed with our conclusion that a district court has jurisdiction to entertain a defamation suit against the Lubbock Catholic Diocese. If you recall, that was the one where the church accused, in the media, an ex-deacon of engaging in sexual abuse of a minor. Well, the purported abused did not involve someone the general public would deem a "minor" but, rather, an adult with mental issues. Furthermore, church doctrine purportedly included such adults within the definition of a minor. So, according to the Supreme Court, permitting the suit to continue would place the trial court in the position of evaluating or interpreting canon law. The ecclesiastical abstention doctrine prohibited that. According to the Supreme Court at *In re Diocese of Lubbock*, 624 S.W.3d 506 (Tex. June 11, 2021) (orig. proceeding), if the substance of a plaintiff's claims implicate ecclesiastical matters, civil courts lack jurisdiction over them, even if the church aired the matter in public for all to see. The late Charlie Reynolds told me years ago that with the higher courts, "it's just a difference of opinion; being reversed doesn't mean we're wrong." Thanks, Charlie, I can respect that. All of us lower court judges can take that bit of wisdom to heart. Heck, I remember the late Brad Underwood once said of our opinions: "You can make me follow it, but you can't make me read it." Tru dat!

Now to less ethereal matters. How about when someone pulls a gun, shoots at cops chasing him, and even strikes one. Those circumstances may subject the accused to felony charges of attempted capital murder and aggravated assault. But, can he have the trial court ask the jury if he was guilty only of engaging in deadly conduct, a misdemeanor? The appellant in *Newcomer v. State*, No. 07-20-00004-CR, 2021 Tex. App. LEXIS 2922 (Tex. App.—Amarillo Apr. 19, 2020, no pet.) (mem. op., not designated for publication), thought so. He said he wasn't shooting at the police when his gun went off when trying to throw it over a fence. You know, deadly conduct can be a lesser-included offense of capital murder and even aggravated assault. But whether the defendant

can get the lesser charge depends on the words the State chooses to put in its indictment. And, if the State accuses the person of "using," as opposed to "exhibiting" a deadly weapon, then he just may be entitled to it. But, what kept him from getting it here was his description of how his acts were careless (negligent) as opposed to reckless (consciously disregarding a known risk). Deadly conduct requires a mens rea of recklessness.

I'm gonna end with returning to another Hon. John Forbis rule. "Work. Control your docket and keep it moving. Try your old dogs instead of worrying about them." Admittedly, he intended that for judges. But, if you think about it, it applies to all of us.

It's time to set the alarm and see whether tomorrow brings today all over again. Take care and be safe.

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AAYLA UPDATE

By Brittany K. Hinton

As President of Amarillo Area Young Lawyers Association for the 2021-2022 bar year, I want to first thank Richard Biggs, our fearless leader for the 2020-2021 bar year, for sustaining AAYLA through a year with very few opportunities to host events (or even see fellow attorneys in person). Richard waded through the waters admirably.

Looking forward, after a full bar year of social distancing and becoming acquainted with coworkers' dogs and opposing counsels' family members, it appeared life may be getting back to "normal" for the 2021-2022 bar year. However, with Amarillo back at Level Red, and the local hospital capacities stressed, it appears as though the 2021-2022 bar year will also require attorneys to revert back to the new normal.

The Board of Directors of the AAYLA has returned to conducting in-person meetings, though the meetings will be socially distanced as much as possible and Board members will also have the opportunity to appear via Zoom. As the bar year progresses, AAYLA hopes to have the opportunity to bring back the events that enable us to mingle and meet new young lawyers in the area.

With this hope in mind, please keep your eye out for

an email regarding an event taking place on Tuesday, September 21, 2021. AAYLA, sponsored by Happy State Bank, will give local young lawyers a reason to celebrate. Hint, hint: Did you know National Drink Beer Day is in September?

An announcement was made on August 18, 2021, that coronavirus booster shots will begin being offered to all Americans starting on September 20, 2021. Hopefully, once citizens of the Texas Panhandle have access to the booster shot, the local COVID-19 numbers will decrease again. Without knowing what the future will hold for the region (or the country or world, for that matter), I cannot give you any more tantalizing hints about what future events may unfold for AAYLA members. Just know, if safe and practicable, we plan on bringing the events back that the community knows and loves.

This bar year is a bar year in which AAYLA typically hosts its annual CLE in Las Vegas, Nevada. We hope to give the local bar the opportunity to gain knowledge about the law in Fabulous Las Vegas in February or March.

YOUNG LAWYER OF THE MONTH: MARK GLAWE

Although not a native of Amarillo, Mark Glawe has called Amarillo home since fourth grade. After graduating from Randall High School, Mark attended West Texas A&M University where he received his Master's in Professional Accounting.

While at WT, Mark briefly "played" football for the Buffs before trading in his helmet for a lawn chair at the Phi Delta Theta tailgate. For the next few years Mark became heavily involved with Phi Delta Theta, serving as Philanthropy Chair and eventually President. When not attending class, a common occurrence during Mark's undergrad years, Mark enjoyed intramurals, ski trips to Taos, and hiking at Palo Duro Canyon. During his Junior year, Mark asked his middle school sweetheart, Caroline, to marry him. She surprisingly said yes, and the two were married in June 2012. Mark eventually graduated in 2014 with his Master's in Professional Accounting.

After a couple of years working in the accounting field, Mark decided to try his hand at law school and enrolled

at the University of Oklahoma College of Law. Although academics and job prospects were important considerations, Mark admits that he chose to attend OU over other law schools, in part, so he could root for a winning football team—sorry Tech fans. During his 3L year, Mark and Caroline welcomed their first child to the world, a daughter named Everette Anne. Mark graduated from OU in 2019 and moved back to Amarillo to begin his legal career, which thrilled Caroline as a native Amarilloan.

The year 2020 brought much joy to Mark and Caroline, well some joy. In September of the pandemic year, their second child, Reid Scott, was born. Now, Mark is an associate at Mullin Hoard & Brown. In his free time, Mark enjoys golfing, watching OU football, dinners with Caroline, and wrangling the most active 3-year old and 1-year old known to man.



Mark Glawe

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Do Texas Lawyers Still Need to be Members of the State Bar of Texas?



Audie Sciumbato

Yes, the vast majority of us do. This has not been a very controversial question until recently. However, on July 2 of this year, the 5th U.S. Circuit Court of Appeals at Louisiana ruled for three lawyers who challenged the mandatory state bar in Texas. Those lawyers alleged in *McDonald v. Longley*, No. 20-50448 (5th Cir. 2021) that the mandatory bar violates lawyers' First Amendment rights because of its political and ideological activities. They also argued that State Bar procedures that allow members to object to those activities are inadequate.

The court upheld most of the challenged State Bar programs and activities in its panel opinion. However, it also found that the bar could not spend mandatory dues on lobbying activities that are not germane to lawyer regulation or improving the quality of legal services. Improving diversity in the legal profession, offering CLE, aiding pro bono work, publishing the Texas Bar Journal, and hosting an annual convention were identified as germane activities. Lobbying to amend the legal definition of marriage, creating civil unions, and promoting changes to state law intended to benefit low-income citizens were cited as nongermane.

The panel also determined that the bar's existing procedures for members to challenge bar expenditures are inadequate. Currently, members of the Texas bar who object to a proposed expenditure can file objections and attempt to obtain pro rata refunds of their membership fees. Objecting lawyers must register complaints with committees or sections drafting proposals or lodge complaints at the annual hearing on the proposed budget. The bar's executive director has the authority to rule on objections and to decide whether refunds are available. If this process sounds foreign to you, you are not alone; the court noted in its opinion that only one member of the bar has used the procedure since its adoption in 2005.

So which Texas lawyers are exempt from State Bar of Texas membership? Per the 5th U.S. Circuit Court of Appeals, the three plaintiffs in the *McDonald* case, and those three only. In the meantime, State Bar of Texas leaders are evaluating the bar's advocacy policies after the July 2 ruling. Procedures for bar members to object to proposed expenditures are under review as well.

TEXAS BAR FOUNDATION GRANTS FUNDS TO AMARILLO CHARITIES

By Tom Riney

Texas Bar Foundation recently granted \$22,000 to the Amarillo College Foundation for its Special Education Advocacy Certificate and Legal Clinic. This project will train legal study students to effectively assist and advocate for parents and their children when navigating the complexities of special education in the public school system.

The TBF also granted \$27,000 to Catholic Charities of the Texas Panhandle for expansion of legal and education services for underserved immigrants and refugees. This project will provide refugee and immigration legal services, citizenship classes, and youth mentoring programs in the Texas Panhandle.

Since its inception, the TBF has awarded more than \$22,000,000 in grants to non-profits across the state. Funding for these grants comes from the contributions of its Fellows. Election to the Fellows of the TBF is one of the highest honors that can be bestowed upon a member of the State Bar of Texas. The TBF makes significant contributions to build a strong justice system for all Texans. Nominations of Fellows are based on outstanding contributions to the legal profession and commitment to the community. Those elected as Fellows join a network of distinguished attorneys in Texas who support professional integrity and the promotion of the cause of justice in Texas. Only one-third of one percent of licensed Texas attorneys are invited each year to join the Fellows.

The only obligation of becoming a Fellow is a pledge of \$2,500, payable \$250 a year for ten consecutive years. Upon payment in full of the \$2,500, one becomes a Life Fellow with no further financial commitment, but one can become a Sustaining Life Fellow by contributing \$250 each year thereafter or by contributing a lump sum of \$2,750. Sustaining Life Fellows allow the Foundation to do even more to further its mission. All sustaining gifts are used directly for the Grants Program. If you would like to nominate a Fellow, please contact one of our district nominating chairs: Andrew Evans, andrew.evans@sprouselaw.com, (806) 468-3340 or Alex Yarbrough, ayarbrough@rineymayfield.com, (806) 468-3202.

It has been a privilege to serve as a trustee of the Texas Bar Foundation. My term as trustee concluded in June, but former District 13 State Bar Director Scott Sherwood of Panhandle began a three-year term on the Board of Trustees in June. I am sure Scott will be communicating with us about future activities of the TBF.

AABA History Quiz

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YOUR BAR EVENTS - SEPTEMBER 2021

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11	12	13	14	15	16	17
					Trust, Probate & Guardianship Law Course sponsored by Happy State Bank - Amarillo Club	18
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