

AAYLA-LAW



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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

THE OLD No. 2 ON YOUR TENNESSEE CARPET: THE JACK DANIEL'S VS. BAD SPANIELS TRADEMARK PARODY CASE

“...the Amarillo area legal community enjoys a proud tradition of respect, courtesy, and cooperation among its members.” – Page 2

“But who cares . . . it felt good pursuing what I thought was right even if it comes to naught.” – Page 4



On March 22, 2023, the U.S. Supreme Court heard oral arguments in a case that explores the intersection of trademark law and the First Amendment. The attorney for Jack Daniel’s Properties, Inc. argued, “this case involves a dog toy that copies Jack Daniel’s trademark and trade dress and associates its whiskey with dog poop.” Trademark attorney Chris Stewart will “distill” the history of First Amendment trademark parodies, and “take a shot” at predicting the Supreme Court decision.

Chris Stewart is a trademark and copyright attorney serving clients across the United States. Chris and his team have obtained 700+ U.S. trademark registrations dating back over two decades. Chris actively litigates trademark and copyright infringement lawsuits filed in federal court. Chris also handles litigation in opposition, cancellation and concurrent use proceedings before the Trademark Trial and Appeal Board. He is a partner in the Amarillo firm Morgan Williamson LLP.

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PRESIDENT'S PAGE

By: Liberty Lay

“Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.”

With those words, the Supreme Court of Texas and the Court of Criminal Appeals promulgated and adopted the Texas Lawyer’s Creed on November 7, 1989. Texas was one of the first states to take such a step, aiming to combat both abusive litigation tactics and the public’s negative perception of the legal profession.¹

In the thirty-plus years since its adoption, our high courts, in conjunction with the State Bar of Texas, have consistently urged Texas lawyers to revisit the aspirations set forth in the Creed. This year, they have proclaimed **April 14, 2023**, to be the **Texas Day of Civility in the Law**. On this day, we are encouraged to commemorate the adoption of the Creed and to focus upon the principles of honesty, fairness, and candor that should mark our service as lawyers.

Justice Sandra Day O’Connor said that “civility is hard to codify or legislate, but you know it when you see it. It’s possible to disagree without being disagreeable.” I (and I suspect most of you) can also recognize civility; we can certainly spot its absence. Fortunately, the Amarillo area legal community enjoys a proud tradition of respect, courtesy, and cooperation among its members. Guests of our bar association events have frequently commented on the sense of friendliness and warmth that characterizes our group. I’m proud to be part of a community that exemplifies civility and preserves the dignity of our profession.

As lawyers, we have all taken an oath to conduct ourselves with integrity and civility. This April 14 is the perfect opportunity to re-read the Creed and to reflect on our commitment.

¹See Alicia M. Grant, *Texas Lawyer’s Creed: Exploring Its Origin and Impact over the Past Quarter of a Century*, 6 St. Mary’s J. on Legal Malpractice & Ethics 120 (2016).



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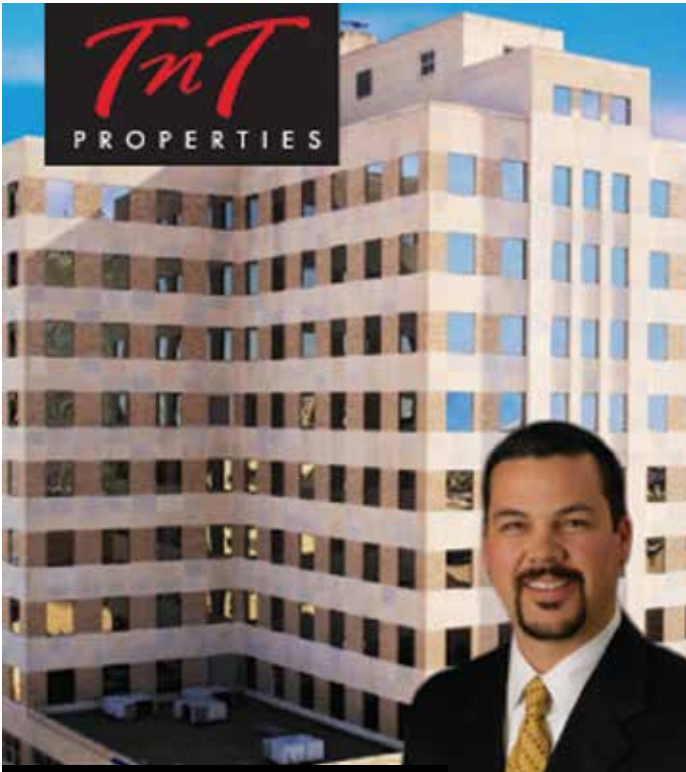
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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

Who among us did not, for at least an instant, think of pursuing the altruistic while in law school? Let's be honest, now . . . the practice of law can push one away from that end. Indeed, years ago when practicing, one of my law partners came in the library and asked if I found authority to support a particular legal position he wanted to urge for a client. My effort failed to uncover anything helpful; rather, I had the "pleasure" of informing him that a plethora (I love that word) of opinions rejected his position. That resulted in him looking at me, turning a bit ruby in face, and saying: "I am tired of your altruistic bullshit." My response was less than appropriate, to say the least. Yet, we remain good friends to this day. And, more importantly, I came to understand his point. Attorneys represent clients, and clients pay for favorable results, not for altruistic pontifications. Thus, in time, we tend toward the jaded or cynical. Nevertheless, I recently had occasion to spark up a bit of altruism, or maybe it was just tilting at windmills.

Of all things, the opportunity arose in the realm of business and lien priorities. One creditor (Agrifund) loaned a farmer money to grow his 2017 crop and retained a perfected security interest in those crops. The farmer defaulted and began searching for another lender to finance his 2018 efforts. First State came forward, loaned him money, and retained a perfected security interest in all crops grown or to be grown. This time, Mother Nature favored the farmer with a much better harvest. It was sold, and dispute arose as to which lenders security interest had priority. Agrifund invoked the old rule of first in time, first in right. The Bank argued that it had a superior purchase money security interest. The latter, if applicable, normally would be superior. Believe it or not, this was a case of first impression in Texas. And the majority in Agrifund, LLC v. First State Bank of Shallowater, No. 07-22-00025-CV, 2022 Tex. App. LEXIS 9010 (Tex. App.—Amarillo Dec. 9, 2022, no pet.), went with the first in time rule. It did so because First State's loan was actually used to buy the seeds and chemicals resulting in the 2018 crop, not the crop itself. Nor were the seeds equivalent to the crops to be grown. Moreover, authority from

neighboring states supported that application of the Uniform Commercial Code. I, instead, turned to the words of a particular provision of our own Business and Commerce Code. That led me to dissent. There is no need to explain my position for that is not the point of this writing. Instead, I noted then, and do so now, that our high court would most likely go with the majority. So, in the end, my efforts could be viewed as more of that altruistic B.S. Sorry, David. But who cares . . . it felt good pursuing what I thought was right even if it comes to naught.

Occasionally tilting at windmills is reviving. As Don Quixote said: "Perhaps to be too practical is madness."

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AAYLA UPDATE

By Alysia Córdova

As I sign off as your president for the last time, I admittedly expected to feel the relief of less responsibility; instead, it's bittersweet. In addition to mourning the loss of "young" lawyer status, I'll miss serving AAYLA and will cherish the memories (and probably awake from nightmares in which I forgot to submit my AMA-Law article on time) for a lifetime.

Taking a walk down memory lane, I'm remembering why I wanted to become a lawyer. As a child, my teacher, a former attorney, thought that a fourth-grade mock trial was a worthwhile exercise. Though I suspect our performance was naturally chaotic, being assigned the "attorney" role drastically altered my life. As an adult, my parents found my first opening statement that Ms. Monahan edited and, albeit misspelled and sloppy, the lesson contained in her edits remains true. I wrote, "Ladies and Gentlemen of the Jury, my clint is innasent and I today I will tri to will prove that to you in court." Ms. Monahan crossed out "tri to" and told me to be confident, a lesson I often remind myself of today. As young lawyers, especially female, we often lack the confidence we deserve, and I am happy to know my strengths and weaknesses as I enter the next part of my career. So, I'll leave you with a thought: what advice would your younger self provide?

Finally, after months of anticipation, I'm excited to share details for our upcoming happy hour! "Golden Hour"

will occur on May 18th at Metropolitan Speakeasy's Indigo Room. Networking begins at 5 p.m. At 5:30, we'll feature State Bar TYLA President-Elect Candidate Cali Franks from Dallas. Be assured, Cali's presentation, "Stuck on You: How to Add Value and Acquire Clients Using Your Connections," offers more than just an hour of CLE. While you sip and schmooze, local photographers will provide complimentary professional headshots. Since photography space is limited, please pre-register for headshots at: goldenhour.RSVPify.com. Thank you to our generous co-sponsors for the free food, drink, and photography. I look forward to closing out the year with y'all in picturesque fashion. Stay tuned next month for AAYLA's "Old" and "Young" Lawyers of the Year!



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YOUNG LAWYER OF THE MONTH: JOSHUA RILEY



Joshua Riley

Joshua Riley was born and raised in the Texas Panhandle, where he and his family are involved in farming and ranching operations. After graduating from Canyon High School, Joshua attended Texas Tech University, where he graduated with a B.S. in Mechanical Engineering. He then went on to attend (virtually or otherwise) and graduate the Texas Tech University School of Law, summa cum laude. While in law school at Texas Tech, Josh was a founding member of the Journal of the Energy Law Practitioner (a new and exciting publication focusing on a practical approach to oil, gas, solar, wind, and all things energy) and served as

Treasurer of that publication.

Joshua is very excited to be back in the Amarillo area working for a small, close-knit firm such as Simmons Smith Brown, PLLC, where he clerked throughout his time at law school. Joshua focuses his attention mainly on real estate transactional matters, probate, and renewable energy.

When not working with his clients, Joshua enjoys spending time fly fishing, hunting, and being outdoors. He also loves to spend time with his friends and his very patient wife, Brittney.

SLATE OF AABA OFFICERS AND DIRECTORS 2023–2024

The AABA Nominating Committee will present the following slate of officers and directors for election at the next membership luncheon on April 13, 2023:

President: Tyler Topper

President-Elect: Hon. Alex Yarbrough

Vice President: Alysia Cordova

Secretary-Treasurer: Tim Williams

Directors (terms expire 2025): Richard Biggs, Jarrett Johnston, Patrick Weir

Additional nominations may be made by submission of a petition to the Secretary-Treasurer at least five days prior to the election. Such petition shall be signed by five or more regular members of the AABA and shall designate the name and office of one or more regular members to be placed among the list of nominees.



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Courtney Miller **Stephanie James**

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Michael Alexander, AMA-LAW Editor

YOUR BAR EVENTS - APRIL 2023

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