

AAYLA-LAW



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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

DECEMBER SPEAKER: MARK WHITE



Mark White

Please join us at the Amarillo Club on December 8th for a presentation by Mark White entitled, "Managing Conflicts of Interest with Integrity." Attendees will learn the nuances of Disciplinary Rule 1.06 and learn how the virtue of integrity leads to dependable decision-making for lawyers.

Mark has practiced civil litigation since 1982 in Amarillo, mostly with Sprouse Shrader Smith. He has been heavily involved in State Bar matters,

serving on the Board of Directors and as Chairman of the Texas Commission for Lawyer Discipline. In recent years, his practice focused on lawyer ethics and government law. Mark has been a frequent continuing education presenter for the State Bar. Six years ago he became the in-house counsel for Amarillo College where he also is the Executive Vice-President and Director of Intercollegiate Athletics. He was ordained a Deacon in the Catholic church in August 2020.

“What better time than the holidays to help these families enjoy the precious gift of togetherness.”

– Liberty Lay

“I truly believe the difference between a “good lawyer” and a “great lawyer” is the assistant or paralegal behind the wheels.”

– Alysia Córdoba

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PRESIDENT'S PAGE

By: Liberty Lay

It's here: the most wonderful time of the year. In my family, I'm usually the first to ask Alexa to start playing Christmas tunes, discreetly welcoming back Bing Crosby and Dean Martin sometime around Thanksgiving. (Unlike my teenaged children, Alexa does not judge my taste in music.) But this year, my youngest daughter beat me to the punch and started blasting Mariah Carey's "All I Want for Christmas is You" before the Halloween candy was gone. And, mind you, ours is not a household where Halloween candy lasts too long. Even I thought that was a tad early.

We all have our own ideas about when to usher in the Christmas season. When it comes to shopping, some are checklist-carrying early bird deal-scorers, while others are harried, eleventh hour hunter-gatherers. Whatever your style, I invite you to add one more recipient to your gift list. This month, the AABA, in conjunction with Happy State Bank, is collecting donations for the Ronald McDonald House of Amarillo. The RMHA provides a "home away from home" for families of children receiving medical treatment for serious illnesses. What better time than the holidays to help these families enjoy the precious gift of togetherness. Like any other household, the RMHA needs things like cleaning supplies, kitchen goods, and snacks. Like most other recipients on your shopping list, it also welcomes gift cards and cash donations. You can find a full wish list on

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the RMHA's website.

We'll be collecting contributions at our annual AABA Christmas reception on Thursday, December 8, from 6:00-9:00 p.m. at Happy State Bank downtown. The AABA thanks Happy State Bank for once again hosting and underwriting this event. I hope you'll join us for the festivities.

Whenever your celebration of the season begins, may you find time to reflect and reason to rejoice. Merry Christmas.

AMA-LAW

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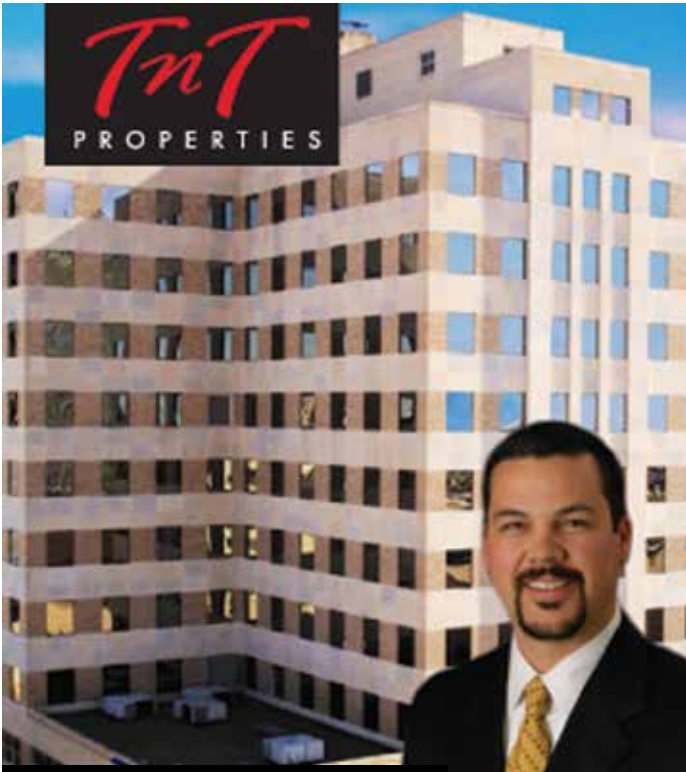
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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

Periodically, I route memes to family and friends in the morning. A recent one consisted a red pair of channel locks perched in a bird cage. The caption underneath said: “I’m done with alcohol. Look at this parrot I bought last night.” It’s all about perception at any particular time under any particular circumstance.

Some perception concerns love and marriage. Judge Les Hatch ran into that a while back. One Friday afternoon, he was in his office when a tall cowboy appeared in his doorway with an arm wrapped around a woman’s shoulder. His other hand was used to prop himself up to prevent stumbling, as he was obviously drunk. He slurred that he needed a waiver of the 72 hours because he and his fiancée were in love! Hatch asked when they met and the cowboy said, “Last night in the bar parking lot at closing.” The woman said nothing. That led the judge to ask, “You say y’all love each other but I haven’t heard from your fiancée; in fact, I don’t even know her name. What is her name?” The cowboy stared a bit, turned toward her, and said, “Dang, what is your name?” Hatch’s perception of their love apparently differed from theirs as he denied the waiver.

Other perceptions involve tangibles, like who really owns the realty you think is yours. Take adverse possession, for instance. Both *Brumley* and *McDuff* thought they owned it. *McDuff* had deeds tracing back to patents from Texas. *Brumley* had a deed from people who acquired it from their parents. After acquisition, *Brumley* engaged in activities performed by typical property owners, like improving the property. And, more than ten years later, the ownership dispute culminated in a lawsuit and jury trial. The interjection of perception first came in the guise of jurors trying to untangle contradicting stories to find “the truth” and whether it satisfied the elements of adverse possession. Ultimately, they held for *Brumley*. Different perceptions continued on appeal when panel members interpreted the circumstances differently, resulting in a dissenting

opinion. Several items of note spring from *McDuff v. Brumley*, No. 07-17-00248-CV, 2022 Tex. App. LEXIS 5658 (Tex. App.—Amarillo Aug. 8, 2022, pet. filed) (mem. op. on remand). First, our perception of “the truth” is irrelevant. We, as appellate court judges, do not try the facts. Instead, we rely on the factfinder . . . simple as that. Yet, this observation appears in most every opinion we write implicating the sufficiency of the evidence. We repeat it regularly since parties normally attack a jury verdict by focusing not on the evidence that favors it but on that favoring them. Their perception of an appellate court’s authority differs from our reality.

Another “takeaway” from *Brumley* is that the quantum of proof needed to win an adverse possession case is no different than the amount in most every other civil case, i.e., a preponderance of the evidence. The evidence need not be “clear and satisfactory,” as argued by *McDuff*. And, finally, if your client believes he owns land because he grazed livestock on it for years, well, he better have built fencing, too, as noted by the majority.

A parrot that makes no noise and fixes pipes, I can perceive that as beneficial in many ways, especially when considered with a bit of Christmas “cheer.” I wonder if Snap-on sells them. Until next month, and Merry Christmas!





AAYLA UPDATE

By Alysia Córdova

Happy Holidays! I say that with more enthusiasm than I generally feel towards winter because I will likely be in Mexico at the time this circulates. Naturally, that is what inspired this month's theme: rest. As a lawyer, it is easy to overlook the importance of mental breaks. This year, we have had many excellent bar lunch speakers and CLEs geared toward improving attorney wellness, so I won't dive too much into the research and psychology behind it all. But I do want to encourage lawyers, especially young, to make an effort to take a substantive break from our profession on an annual basis.

I was the worst when it came to this. I never made effort to rearrange my litigation schedule or stock up enough billable hours to feel entitled to an entire week off. So, while I am advising you to do so, I only have one actual tip to accomplish this and that is to surround yourself with people who make it easier for you to hit the beach (even if figuratively speaking). For me personally, that means friends who help with airport rides and pet-sitting and professionally, that means support staff and

fellow attorneys that step in during your absence.

On that note, and since Thanksgiving is on the horizon, I would like to give thanks to a few individuals that have put in the extra effort. First, I could never be more thankful for great support staff. I truly believe the difference between a "good lawyer" and a "great lawyer" is the assistant or paralegal behind the wheels. Secondly, I would like to take a moment to brag about this year's AAYLA Board of Directors. Presidency is far more time consuming than I imagined but this board's enthusiasm and attendance has made it easier to manage. I want to give an extra shout out to my executive board and recognize Matthew Merriott, John Hinders, and Hannah Rivera, who eagerly volunteered when I've solicited help on a project. Notably, though Hannah just joined our ranks, she immediately stepped up in planning an excellent swearing-in ceremony.

In closing, I wish all of you a wonderful holiday season and hope you take the time to appreciate those who make handling other people's stress for a living, a little less stressful.

In Memorium

Richard N. "Dick" Countiss, 86 years old, passed away peacefully in Houston, Texas, on October 28th at 6:20pm surrounded by family.

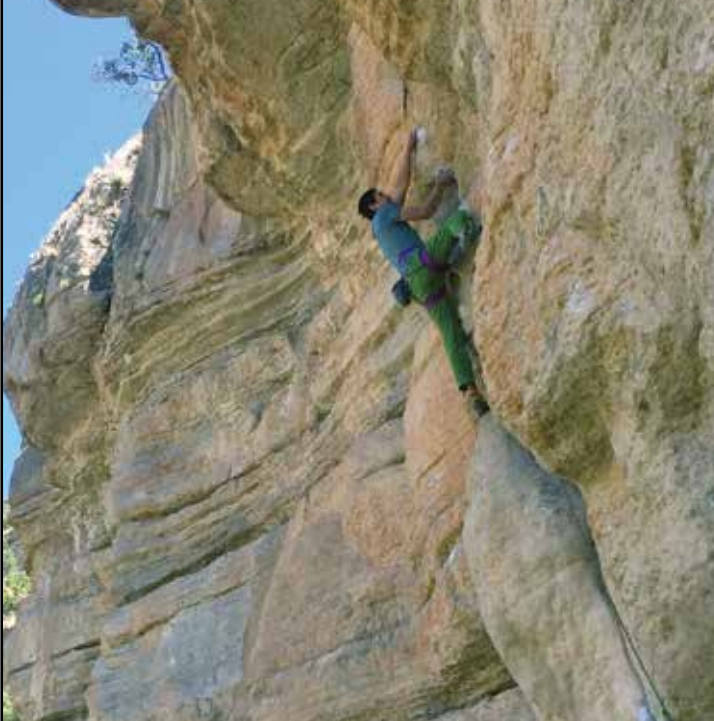
Dick was born in Midland Texas July 1st, 1936. He graduated from Midland High School, McMurry University in Abilene Texas and SMU Law School, where he was editor of the SMU Law Review. After graduating law school with honors and discharging his military obligation with the 49th Armored Division, Dick was accepted into the U.S. Justice Department's Honor Graduate Program and assigned to the Land and Natural Resources Division. His boss, Ramsey Clark, recognized his skills and used him on several special projects, including the integration of the University of Alabama.

In 1970, Dick returned to Texas where he joined a small law firm, Lynn, Helms and Countiss, in Spearman, Texas and engaged in a broad general practice while also holding leadership positions in his community and statewide with the State Bar of Texas. In 1972, Dick was elected District Attorney of his three-county district. Then in 1974, Governor Dolph Briscoe appointed Dick to serve as Presiding Judge of the 84th Judicial District Court, seated in Spearman, Texas.

In 1979, a rare opportunity to be appointed to the Court of Appeals for the 7th District of Texas in Amarillo arose and Dick accepted. A lifelong Democrat, it took the backing of many Republican attorneys in Amarillo, Texas, led by Dick's younger brother, Bill Countiss, to persuade Republican Governor Bill Clements to approve Dick's appointment to the appellate bench. This is one of many examples of the bi-partisan respect Dick earned throughout his career. His time on the appellate court in Amarillo was Dick's favorite position and he was widely regarded as an excellent justice, which set him up for a return to practicing as a lawyer in the 1990s, specializing in appeals. In his resignation letter when leaving the judiciary, Dick told the governor he was tired of being the lowest paid lawyer in the courtroom. That line was picked up by the news media and used by the judiciary to obtain a significant increase in compensation and benefits from the legislature. Dick initially joined Windle Turley in Dallas, Texas, as their appellate lawyer. While there, he taught several courses as an adjunct professor at his alma mater, SMU Law School. Then, he joined the Houston firm Burrow, Countiss and Berry and spent the last years of private practice as appellate counsel to Williams Bailey Law Firm. During this time, Dick caught at the University of Houston Law Center where his Trial and Appellate Procedure class was a student favorite.

In 2007, Dick served as District Attorney of San Jacinto County when the D.A. passed away right before the election. This was Dick's final term in public office and brought his lifetime of public service full-circle.

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YOUNG LAWYER OF THE MONTH: COLLEEN BYROM



Colleen Byrom

Colleen Byrom is a health care regulatory attorney at Brown & Fortunato, P.C. Colleen received her undergraduate degree at Louisiana State University (Geaux Tigers!) and her law degree at Texas Tech University.

Colleen originally hails from Anaheim, California, which is the source of her love of Disney and the beach. However, she spent her childhood in many different places. When she was 7 years old her family moved to a different type of beach town, Corpus Christi, Texas. Then just before her freshman year of high school, she moved again, this time to Lake Charles, Louisiana, which would never be confused for a beach town. After high school she decided to stay a little while in Louisiana to attend LSU.

While her time in Louisiana was filled with great food, music, people and memories, she was ready to live somewhere that did not have a hurricane season. Since her family was back in Texas she decided to trade the coast for the desert and attend law school at Texas Tech University (a mere 9 hours to her parent's house). Little did she know that while at Tech she would meet her future husband, John Byrom. After law school she worked as an in-house attorney for a renewable energy company in Lubbock and during the weekends split her time between Lubbock and Amarillo. In 2017, she moved up to Amarillo and joined B&F in 2019.

In her free time, Colleen enjoys traveling with her husband to concerts or music festivals, watching her LSU Tigers, cooking and running.

IN-HOUSE COUNSEL

for multiple privately owned companies in White Deer, Texas. Approximately 19 diverse entities operate out of this headquarters; some on job locations throughout the continental U.S.

Knowledge of the following areas of practice is helpful: business law; corporate organization, sale, and acquisition; dispute negotiation and resolution; contracts including MSA's and EPC agreements, vehicle and equipment leasing; real estate development, purchase, sales, and leasing; oil and gas, commercial, and residential construction; multi-state labor and employment; safety program requirements; taxation; insurance; working with outside immigration and litigation counsel; knowledge of aviation law is a plus but not required.

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YOUR BAR EVENTS - DECEMBER 2022

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4	5	6	7	AABA Luncheon, Amarillo Club Christmas Reception, 6:00 pm- 9:00 pm, Happy State Bank	8	9	10
11	12	13	14	15	16	17	
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25	26	27	28	29	30	31	