

JYL NEWS

THE OFFICIAL NEWSLETTER OF THE JACKSON YOUNG LAYERS

President's Corner

by **Jake Bradley**

Happy New Year, Lawyers!

We are off to an exciting year and have more exciting programs to come. Big thanks to Bud Sheppard and Brianna Bailey for crafting this Newsletter, which includes all the great things our members have done, all the things we have to look forward to, and a few articles to update us on developing issues in the law and our work!

So far this year, Greg Alston and Garrett McInnis have already brought us two great speakers: Commissioner Sean Tindell and Solicitor General Scott Stewart, the advocate who argued the landmark abortion case before the United States Supreme Court last month. Greg has lined up Representative Angela Cockerham, House Judiciary Committee Chairwoman, for our January 21, 2022 lunch. (Please RSVP!)

We had a great 2021 Legal Beagle 5K thanks to Nash Gilmore and Russell Dumas. Candice Rucker and Johnny Barnes spearheaded JYL's first pro-bono/public service event of the year, helping the UMMC medical staff that have helped so many. We had a great Christmas party and delivered toys to the Boys and Girls Club, thanks to Maggie Kate Bobo, Madison Keyes, and Suzette Turner. Emily Barr and Caroline Smith are gearing up for JYL's annual Community Outreach Grant. (Submit your application by March 31, 2022!)

As shown above, what makes JYL a success is its dedicated members, and, like any organization, we need more of them.



IN THIS ISSUE

PRESIDENT'S CORNER

OUTREACH GRANT

EVENTS OVERVIEW

THE CRYPTO EFFECT

**LEADERSHIP
ANNOUNCEMENT**

WORK FROM HOME?

SPEAKERS SPOTLIGHT

**MISSISSIPPI V.
TENNESSEE**

President's Corner (cont.)

by Jake Bradley

We are happy to announce that we have created new committee positions this year to help with recruiting new members and growing our footprint. Thank you to Board member Brianna Bailey for finding our two great new Recruitment Committee Chairs: Katelyn Pearson and Natalie McCarty.

And, finally, thank you to the substantive contributors to this Newsletter. Stevie Farrar Rushing (who is also doing a great job making sure you all know of our upcoming events along with Jessica Terrill) has an exciting article on the emerging topic of cryptocurrency. *See* p. 4. Christina Nunez provides us with helpful and interesting insight into remote working before and after COVID. *See* p. 6. Finally, Cindy Denley and Lindsey Nelson explain the important implications of the recent *Mississippi v. Tennessee* Supreme Court decision that was handed down in November 2021. *See* p. 8. Thank you, Stevie, Christina, Cindy, Lindsey, Brianna, and Bud!



Jake Bradley is an attorney at Brunini in Jackson, Mississippi. Jake graduated *summa cum laude* from the University of Mississippi School of Law in 2016.

Save the Date

Membership Meeting with Guest Speaker

Representative Angela Cockerham

Noon on Friday, January 21, 2022

at Char Restaurant

Outreach Grant Alert

by Caroline Smith

JYL's annual Community Outreach Grant helps meet Jackson's public service needs -- even those that are not squarely legal in nature. In an effort to allow JYL to give back to our community, JYL solicits applications from area non-profit organizations. Each year, JYL awards around \$2,000 in grant funds to assist organizations in the Jackson Metro area that provide services to people without financial means and/or people with special needs. The Grant Committee and Executive Committee carefully evaluate the grant applications to identify the proposed project(s) that would make the most meaningful positive impact in our community. Past recipients of the JYL Community Outreach Grants include Refill Cafe, Stewpot, Hope House, and Red Door Jackson. More information about this year's grant application process can be found on JYL's webpage. The deadline to submit an application is March 31, 2022.

Recent Grant Recipients

2021 - Refill Cafe

2020 - Stewpot Community Services

2019 - Hope House of Hospitality

2018 - Red Door Jackson

Student Snack Break

JYL sponsored a final exam snack break for students at Mississippi College School of Law. Tons of snacks were delivered to Career Services for students to pick up while studying hard for final exams. JYL wishes all law students a successful year!



Christmas and Cornhole

by **Madison Keyes**

On Thursday, December 9, 2021, The Jackson Young Lawyers held its annual Holiday Party at Fondren Public in Jackson. This fun event was well attended and provided the perfect opportunity to catch up with one another as we close out another year! Pizza, cornhole, and philanthropy were at the center of this night. Thanks to those who attended and donated toys and funds to the Boys and Girls Clubs of Central Mississippi. Because of your contributions, we delivered close to 40 Christmas gifts to children at the Boys and Girls Club. As always, we greatly appreciate your donations.



We know your time and money are valuable, especially around the holidays, so we thank you for helping spread Christmas cheer! Social Chairs Suzette Turner and Madison Keyes are planning our spring social event. Please stay tuned for more information!

Halloween Legal Beagle

by **Russell Dumas**

Jackson Young Lawyers held the 21st Annual Legal Beagle on October 30, 2021. The race marked a return to an in-person event after a delayed virtual 2020 race that was held in March 2021. Due to a great turnout and generous sponsor support, the Legal Beagle raised a significant amount of money for the Mississippi Volunteer Lawyers Project. For the first time, JYL partnered with Mississippi Race Timing to assist with promoting, race set up, registration, awards ceremony, and results. Age group winners and results can be found on Mississippi Race Timing's website at:

<https://msracetiming.com/2021-results-files-2#d713358e-18f9-4013-ad8b-f2e4341b90d9>.

JYL recently ordered a second run of Legal Beagle t-shirts and will be working to distribute those over the next few weeks. Please contact Nash Gilmore (nash.gilmore@phelps.com) or Russell Dumas (rdumas@balch.com) if you have not yet received your t-shirt. It was a great event, and we look forward to next year!



<https://jacksonyounglawyers.com/>



jacksonyounglawyers@gmail.com



Stay connected on Facebook

The Crypto Effect

by **Stevie Farrar Rushing**

It's hard to make it through a news cycle without hearing something about crypto assets. Whether it's the man who accidentally threw away \$280 million worth of bitcoin[1] or the seller who "fat fingered" the price of his NFT[2], crypto assets are steadily infiltrating more and more aspects of our everyday lives. Even churches[3] and ATM machines[4] are shifting to accommodate the rise in crypto-asset use. Yet, no one quite knows what to do with crypto assets from a legal standpoint. Even the Securities and Exchange Commission (SEC) is divided, as evidenced by a recent meeting.[5] What's one to do in the face of such discourse and ambiguity? Call the lawyers.

It comes as no surprise that the increased use of crypto assets has spiked demand for securities litigators, primarily to defend against actions and investigations by the SEC. Many, if not most, people and entities that previously dealt with crypto assets did not consider them a security and, based on that thinking, did not ensure compliance with the numerous state and federal securities regulations. Perhaps they thought new laws needed to be enacted before crypto assets could be regulated. But then the SEC began fitting crypto assets into the existing definition of "security", for purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934. The SEC often utilizes the "Howey test," set forth by the United States Supreme Court in *SEC v. W.J. Howey Co.*, to achieve this fit. The Howey test is four-prong: (1) an investment of money, (2) in a common enterprise, (3) with the expectation of profit (4) to be derived from the efforts of others. For example, in a lawsuit against Ripple Labs, Inc. and two of its executives, the SEC claims that cryptocurrency XRP is a security because it was used to finance Ripple's platform, which facilitates money transfers for retailers. If the crypto asset meets the Howey test, it is a "security" and subject to regulation by the SEC as such.

Crypto assets are also keeping tax lawyers busy. In IRS Notice 2014-21, the Internal Revenue Service (IRS) issued guidance regarding the tax consequences of using crypto assets. If the crypto asset can be converted into traditional currency, it's property for tax purposes, and a taxpayer can have a gain or loss on the sale or exchange of a virtual currency, depending on the taxpayer's purchase cost. While this may seem simple enough, the cost of getting the analysis wrong can lead to civil and/or criminal proceedings. Thus, many companies are seeking attorneys' guidance to ensure proper planning and compliance. This effort is worth the time and expense, as the IRS has indicated it can, and will, closely monitor the crypto market and ensure participants comply with applicable tax laws. Currently, this effort begins with a request for "John Doe" administrative tax summonses. These summonses, issued by federal district courts, are used by the IRS to gather information regarding crypto transactions. For example, in May 2021, a federal court in the Northern District of California authorized the IRS to serve a John Doe summons on Payward Ventures Inc., and Subsidiaries d/b/a Kraken, seeking information about U.S. taxpayers who conducted at least the equivalent of \$20,000 in transactions in cryptocurrency during the years 2016 to 2020.[6] Once this information is obtained, the IRS is likely to mine that information and use the data to pursue audits, investigations, and prosecutions of individuals and entities who have not complied with relevant laws.

If neither securities litigation nor tax law is your forte, don't worry; it's only a matter of time before the crypto effect reaches your legal specialty. Investor-led lawsuits seem to be on the rise; just this month, investors sued Kim Kardashian and Floyd Mayweather Jr., alleging they misled investors in their promotion of a cryptocurrency token.[7] Stockholder litigation seems to be imminent:

The Crypto Effect (cont.)

by **Stevie Farrar Rushing**

As companies begin to accept and invest in crypto assets, the volatile nature of crypto assets raises questions about whether such decisions adhere to applicable fiduciary duties. And given the inherent nature of crypto assets, intellectual-property disputes are a given.

But the crypto effect goes beyond the courtroom and the drafting table. What if a client wants to pay this month's bill with bitcoin? Or settle a case by transferring ownership of an NFT? If you haven't been faced with these or similar questions, it's only a matter of time. So while the names are weird (Polkadot? Seriously?) and the whole process is a bit wild, it's worth your time to do a little bit (or a lot) of research, so that you're ready when the crypto effect reaches your practice (or when there's a lull in conversation at the next JYL happy hour).

[1] <https://www.cnn.com/2021/01/15/uk-man-makes-last-ditch-effort-to-recover-lost-bitcoin-hard-drive.html>

[2] <https://www.cnn.com/2021/12/14/bored-ape-nft-accidentally-sells-for-3000-instead-of-300000.html>

[3] <https://www.wlox.com/2021/10/10/south-mississippi-church-adopts-cryptocurrency-another-method-give/>

[4] <https://www.al.com/news/2021/11/cryptocurrency-atm-machine-coming-to-mississippi-scarlet-pearl-casino.html>

[5] <https://www.investmentnews.com/sec-tensions-over-crypto-regulation-emerge-at-meeting-214755>

[6] <https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used-1>

[7] <https://www.cnn.com/2022/01/12/business/kim-kardashian-floyd-mayweather-crypto-lawsuit/index.html>



Stevie Farrar Rushing is an attorney at Bradley in Jackson, Mississippi. Stevie graduated *summa cum laude* from Mississippi College School of Law in May 2017.

Leadership Announcement

2021 - 2022 JYL Recruitment Committee Chairs



Katelyn Pearson

Recruitment

KPearson@twpdllaw.com

MC Law Class of 2021



Natalie McCarty

Recruitment

Natalie.McCarty@att.net

Ole Miss Class of 2020

Work from Home or Work from the Office? That is the Question

by **Christina Nunez**

Pre-pandemic “work from home” was a concept reserved for sick days and delivery appointments. Today, most workplaces have adopted informal and formal telework, remote work, or hybrid policies. The pandemic is ongoing, so remote work may be here to stay. Now that the workforce has past experiences to reflect on, we can begin to analyze the advantages and disadvantages of remote work.

Most workers in the legal community were fortunate to have job responsibilities that were adaptable to a telework model. The transition to remote work is certainly smoothed with adequate technology, equipment, and workspace. The Pew Research Center found in a 2020 survey of over 10,000 U.S. adults that six-in-ten employees who transitioned to remote work reported no change in job productivity or job security and had the same opportunities for advancement.[1] Flexibility in work hours and the ability to balance work with family responsibilities are advantages of remote work. Time spent commuting to work could be used instead for other responsibilities. For some, a workspace at home without interruptions from co-workers could increase productivity. A third of the workers remote working all or most of the time said that they were working more hours than pre-pandemic.[2] If contact with co-workers is desired, the numerous video conferencing services and messaging services could substitute for in-person contact. Lest we forget that an old-fashioned phone call is always an option. A YPulse survey found that 55% of 20-38-year-olds surveyed planned to work from home post-COVID.[3] As with any change, remote work arguably presented challenges.



Christina Nunez is an attorney at the Balch & Bingham Jackson, Mississippi office. Christina graduated *summa cum laude* from Mississippi College School of Law in May 2020.

Several studies suggest that younger workers, namely JYL members, may have different views on and experiences with remote work than their co-workers. The Pew Research Center survey also found that 42% of workers ages 18 to 49 said teleworking or work-from-home has been difficult for them compared with 20% of workers 50 and older. Lack of motivation for workers ages 18 to 49 was an impediment for telework, according to 53% surveyed. Onboarding during the pandemic proved difficult for many young workers, likely including some new young lawyers, who started their careers mid-pandemic. A New York Times opinion article suggests these new employees struggled with feelings of isolation and lacked on-the-job skills training.[4] Advantages of going into the office include in-person interactions with colleagues that could be crucial for the business development of young lawyers. Simply being physically at a workplace could also give a new lawyer a sense of camaraderie and company culture. Despite the grim headline, the article was optimistic that the drawbacks of remote work could be easily remedied with intentional structure.

Work from Home or Work from the Office? (cont.)

by **Christina Nunez**

As the second-year anniversary of the proclamation declaring the COVID-19 outbreak a national emergency approaches, there is an opportunity for the legal community to assess the future of the work environment. As young lawyers and future leaders within the legal community, it is important to be part of those conversations and determine what work environments will best support our generation's unique needs. The decisions made today could set a precedent for the future generations of Jackson Young Lawyers.

[1] Kim Parker, et. al., *How the Coronavirus Outbreak Has-and Hasn't-Changed the Way Americans Work*, Pew Research Center, Dec. 9, 2020, <https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/> (last visited Jan. 16, 2022).

[2] *Id.*

[3] YPulse, *Over Half of Millennials Are Working From Home-Will They Go Back to the Office?*, Jun. 9, 2021, <https://www.ypulse.com/article/2021/06/09/over-half-of-millennials-are-working-from-home-will-they-go-back-to-the-office/> (last visited Jan. 16, 2022).

[4] Anne Helen Peterson & Charlie Warzel, *Remote Work is Failing Young Employees*, N.Y. Times, Nov. 22, 2021, <https://www.nytimes.com/2021/11/22/opinion/remote-work-gen-z.html> (last visited Jan. 16, 2022).

Speakers Spotlight

by **Gregory Alston**

The Jackson Young Lawyers Association was fortunate to have inspiring speakers join our membership luncheons held at Char this fall.

In September, Sean Tindell, Commissioner of the Mississippi Department of Public Safety, provided an overview of the changes implemented at the Department of Public Safety and discussed how those changes would impact the legal system in the state of Mississippi.



In November, Scott Stewart, Solicitor General of the State of Mississippi, shared insight into his multi-faceted role at the Attorney General's Office and his preparations for the December 2021 oral argument before the United States Supreme Court in *Dobbs v. Jackson Women's Health Organization*.

We invite you to attend our next luncheon on Friday, January 21, 2022, to hear from Angela Cockerham, who serves District 96 in the Mississippi House of Representatives and serves as House Judiciary Committee Chairwoman. Representative Cockerham will give a legislative update and speak about balancing her time as a legislator and an attorney. The Jackson Young Lawyers Speakers Committee appreciates all members who take time to attend the lunches that JYL organizes.

Mississippi v. Tennessee: The Sovereign Water

by Cindy Denley and Lindsey Nelson

Water is the driving force behind all life, including lawsuits. For example, in June 2014, Mississippi filed an original action in the United States Supreme Court against Tennessee, the City of Memphis, and Memphis Light, Gas & Water for allegedly stealing groundwater underneath Mississippi for its municipal supply. Although the water is in Mississippi, it connects to a much larger aquifer system spanning at least eight states.

Mississippi's claims seem easy enough – they claim that Tennessee has stolen and continues to steal its water. Typically, a state resolves surface-water issues in one of two ways. First, the injured state could request equitable apportionment of the resource from the Supreme Court. This doctrine, developed to apportion surface-level streams, recognizes that neighboring states have real and substantial interests in interstate waters. Notably, this Court has extended this doctrine to apply to other shared natural resources like fish. A state will seek reconciliation and apportionment from the Court when affected by another state's use but must demonstrate that the actions harm them by clear and convincing evidence.

Second, a state can enter a congressionally approved interstate compact that allocates water rights.

However, Mississippi sought to distinguish its stolen groundwater from standard surface-water remedies and advanced a territorial property rights theory.

Instead of relying on the equitable apportionment doctrine or an interstate compact, Mississippi claimed it owned all the groundwater that would have remained under Mississippi. Accordingly, they sought an injunction, monetary damages, and a declaratory judgment “establishing Mississippi's

sovereign right, title and exclusive interest in the groundwater stored naturally in the Sparta Sand formation,” or restitution based on claims of trespass, conversion, and tortious interference with protected interests in personal property.

Interstate Groundwater?

Mississippi v. Tennessee hinges on whether the groundwater is an interstate resource that falls within the federal common law equitable apportionment jurisprudence normally applicable to surface water. Mississippi acknowledged that the aquifer extends across multiple states but claimed that because Tennessee could only access the groundwater by pumping it out of Mississippi, they have “sole authority” over the water located within its borders. As a result, the groundwater “is neither interstate water nor a naturally shared resource,” and equitable apportionment cannot apply.

The Supreme Court appointed a Special Master to oversee the case, and he recommended the Supreme Court deem the groundwater an interstate resource after a lengthy evidentiary hearing. He found that the aquifer is a “continuous, interconnected hydrogeological unit beneath several states.”

Furthermore, the groundwater flows across the border and is connected to interstate surface water.

Because the water is an interstate resource, the Special Master rejected Mississippi's “sole authority” argument stressing that the Court has never allowed one state's sovereignty to incorporate an entire interstate resource. Therefore, the Special Master recommended that the Supreme Court dismiss Mississippi's complaint with leave to amend because the complaint failed to request the proper relief – an apportionment of the aquifer among the overlying states.

Mississippi v. Tennessee (cont.)

by **Cindy Denley and Lindsey Nelson**

Oral Arguments

Unhappy with the Special Master’s decision, Mississippi and Tennessee both requested exceptions, and oral arguments took place before the Supreme Court on October 4, 2021. Arguing for Mississippi, Mississippi Deputy Solicitor General emphasized the extraterritorial effect of Tennessee’s pumping and the invasion of their sovereign territory. Additionally, Mississippi argued that the equitable apportionment doctrine was inappropriate and urged the Court to apply the principle only when the groundwater connects to disputed surface water. Tennessee argued that because Mississippi was not injured, the Court should dismiss the case. Lastly, on behalf of the United States, the assistant to the U.S. solicitor general argued that equitable apportionment should be extended to interstate groundwater just as it applies to interstate surface water.

The Supreme Court challenged Mississippi’s novel claim that it holds sole authority over the water in the aquifer during oral arguments. The justices appeared eager to analogize the groundwater-sharing question to surface water management. However, some justices showed concern regarding the potential breadth of the equitable apportionment doctrine, specifically focusing on how the Supreme Court may have an increasing role in interstate disputes over natural resources. The Supreme Court’s line of questioning signifies a simple dismissal. Still, if the justices decide to participate in the state sovereignty issues and their concerns about the scope of equitable apportionment, the decision will change how states manage disputes over interstate natural resources.

Implications

The outcome of this case is significant as most states

have underground, yet connecting, aquifers. The U.S. Supreme Court decided *Mississippi v. Tennessee* in November 2021, holding that water in an underground aquifer that flows across State lines is subject to equitable apportionment between the related States. Despite “never consider[ing] whether equitable apportionment applies to interstate aquifers,” the Supreme Court held the aquifer in this case, like an interstate stream, “contains water that flows naturally between the States.” Ultimately, the Supreme Court held that Mississippi did not have absolute ownership of groundwater in the aquifer within its boundaries, but instead that the water is subject to equitable apportionment between the States that share such an aquifer. Since Mississippi had not asserted a claim for equitable apportionment, the Court unanimously dismissed the case.



Cindy Denley (left) of Ridgeland, MS, graduated from Mississippi College School of Law in December 2021. Cindy is preparing for the February 2022 Mississippi Bar Examination. After the bar, Cindy will practice at Hagwood and Tipton.

Lindsey Nelson (right) is the Technical Editor of the Mississippi College Law Review set to graduate in May 2022. Thank you to the Mississippi College Law Review for submitting this adapted article from its online blog. Visit mclawreview.org for more scholarly articles!