OCBA Law Day Luncheon

Oklahoma Court of Criminal Appeals Chief Judge
David Lewis Key Note Speaker for 2014

By Curtis Thomas
OCBA Law Day Chair

One of our most cherished national ideals, expressed eloquently by Abraham Lincoln, is “government of the people, by the people, for the people.” It is a principle enshrined in our Nation’s founding documents, from the Declaration of Independence’s assurance that governments derive their powers from the consent of the governed, to the opening three words of the Preamble to the U.S. Constitution, “We the People.”

The right to vote is the very foundation of government by the people. For this reason, striving to establish and protect every citizen’s right to vote has been a central theme of American legal and civic history. Much of the struggle on voting rights began decades ago, but the work is far from complete, and a citizen’s right to cast a ballot remains at risk today.

As we approach the 50th anniversaries of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, the 2014 Law Day theme, American Democracy and the Rule of Law: Why Every Vote Matters, calls on every American to reflect on the importance of a citizen’s right to vote and the challenges we still face in ensuring that all Americans have the opportunity to participate in our democracy.

On Thursday, May 1, 2014, the Chief Judge of the Oklahoma Court of Criminal Appeals will address members of the Oklahoma County Bar Association and the community at the Oklahoma County Bar Association’s Annual Law Day Luncheon. The luncheon will be held at noon at the Skirvin Hotel, 1 Park Avenue, Oklahoma City, Oklahoma 73102.

The Oklahoma County Bar Association is honored to have Judge Lewis provide the keynote address at the luncheon as his career exemplifies the importance of the 2014 Law Day theme.

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The Great Aspen Yard Sale

By Judge Don Deason

Justice in Aspen is not blind. The silver, six foot tall statue of Lady Justice on the facade of the Pitkin County Courthouse is depicted without a blindfold. One explanation is that due to the rampant accusations of bribery and corruption that surrounded its construction in 1890, the county commissioners thought Lady Justice should be able to keep an eye on what was going on around her. For a small, two courtroom courthouse, Pitkin County has a colorful history. When serial killer Ted Bundy was left alone in a second floor courtroom (he was not handcuffed because he was proceeding pro se in 1977 on charges of murdering a young woman near Snowmass), he opened a window, jumped out and was halfway up Aspen Mountain before anyone knew he was gone.

That same year, singer Claudine Longet was tried for murder after shooting and killing her boyfriend, internationally acclaimed skier Spider Sabich. She was ultimately convicted only of a misdemeanor and served three weeks in jail. More recently, Charlie Sheen appeared in court in 2009, charged with several felonies for allegedly holding a knife to his wife’s throat on Christmas Day. He, too, got away with only a misdemeanor conviction.

We toured the courthouse in 2011 on our first Annual OCBA Aspen ski trip. The local District Judge has a perfect view of Aspen Mountain from the bench, and apparently a large black bear had recently spent a few weeks napping high up in a pine tree right
ReMerge
A Diversion Program for Women Providing Hope for the Future

By Judge Patricia Parrish
OCBA President

Oklahoma leads the nation in the number of women incarcerated per capita, incarcerating almost twice as many women as the national average. In Oklahoma County alone, approximately 300 women are sentenced to prison each year. This number equates to an estimated 536 children who are displaced due to their mother’s incarceration. The majority of these women are non-violent offenders, addicted to drugs or alcohol, victims of childhood physical or sexual abuse, and/or victims of adult domestic violence. Surveys estimate that 70 percent of the next generation of inmates is going to be children of men and women who are currently incarcerated.

How do we break this cycle of incarceration and help mothers emerge from this lifestyle and have hope for the future? In 2011, a pilot program, ReMerge, was established in Oklahoma County. ReMerge is a diversion program for females facing incarceration. This program is designed to transform the lives of women, to help them achieve the goal of becoming productive citizens, and to reunite them with their children.

ReMerge admits women who are pregnant, women with children under five, and women with multiple minor children. Once accepted into the ReMerge program, these women face a rigorous four-stage program. The program can last up to two (2) years depending on each individual’s needs. Treatment plans utilize the following tools:

- Health care
- Behavioral health care
- Spiritual counseling
- Education and job placement
- Food, clothing, shelter and transportation
- Domestic violence counseling
- Parenting and family services
- Legal services

ReMerge was initially funded to serve 25 women. In 2013, this number increased to 50 women. ReMerge depends primarily on private funding. This is where OCBA members can help.

ReMerge maintains a website where anyone can donate supplies via the Amazon Wish List link: http://aw.ly/tUXqC. ReMerge also accepts gently used women’s clothing, shoes and accessories. If you wish to make a monetary donation, please contact Terri Woodland, Executive Director of ReMerge at 405.523.3508.

Profiles in History
Fern Holland

By James E. Green, Jr.*

At only 33 years old, Fern Holland sacrificed her life nurturing Iraq’s fledging democracy. A courageous, dedicated lawyer who practiced law in Tulsa, Fern used her training to fight for human rights around the globe. Most recently, she worked tirelessly in Iraq, investigating human rights violations of the Saddam Hussein regime, and then promoting women’s rights. She helped draft portions of the Iraqi Provisional Constitution which protect women’s rights and promise women participation in the interim government. Fern organized women’s conferences and helped set up women’s centers to serve the needs and promote the rights of women. Working as the Program Manager for Women’s Initiatives for the Coalition Provisional Authority, Fern knew she was a target for extremists, but refused to be intimidated. During the last months of her life, she told friends and family that she felt she was making a difference and that many Iraqis were depending on her, so she had to “see it through.” Although Fern knew she might not return from Iraq, she would not be deterred.

On March 9, 2004, while returning from a visit to the Zainab al-Husnara Center for Women’s Rights in Karbala, which she assisted in founding, her vehicle was ambushed by Iraqi police or police imposters. Fern and colleagues Salwa Ali Oumashi and Robert Zangas were killed in a hail of AK-47 bullets in what appears to be a targeted assassination. Fern and her friends were murdered by people who fear freedom, justice, human rights, democracy, and the rule of law; ideals which Fern energetically championed.

Fern was born in Miami, Oklahoma, on August 5, 1970, and grew up in nearby Bluejacket with her mother, her two brothers, and her two sisters. She attended Miami High School, where she was both homecoming queen and class salutatorian. She graduated from Oklahoma University with honors in 1992, receiving a B.A. in Psychology. She then traveled for a year overseas, participating in an archaeological dig in Israel and working in children’s hospitals in Siberia and Africa. Her brother, James Holland, relates that Fern had aspired to attend medical school, but changed her mind during her year abroad. She concluded that she could be a more effective force for human rights if she went to law school.

Fern returned home to attend the University of Tulsa College of Law, where she was an honors graduate, receiving two American Jurisprudence Awards in addition to the John Rogers Scholarship, the William H. Bell Award, and Order of the Curule Chair. She graduated eighth in a class of 203. She practiced law in Tulsa at the firm of Barkley & Rodolf, and then with my firm, Conner & Winters. I had the pleasure of working closely with Fern, and soon learned that she was an outstanding litigator, possessing a keen intellect, excellent research and writing skills and the ability to think on her feet. She had an unteachable knack for practical litigation analysis and the ability to relate equally well with clients, witnesses, opposing counsel, and the court. She was dynamic, very competitive, tireless in accomplishing any appointed task, and had the highest standards of personal and professional integrity.

In short, Fern had a brilliant future in civil litigation practice. However, Fern had a different dream. She felt that she had a higher purpose in life; that she could make a difference in more disadvantaged parts of the world. She gave up her successful law practice in May 2000 and joined the Peace Corps, serving in the southwestern African nation of Namibia. There, Fern lived in a hut with a dirt floor while she designed, coordinated, and presented HIV/AIDS educational and training programs for teachers, stu-
By Adam Banner*

The Oklahoma Court of Criminal Appeals (COCA) started 2014 off with a bang. The first case decided this year, State v. Marcum, 2014 OK CR 1, saw COCA address a privacy issue that has not been examined by many, if any, other jurisdictions. As such, the decision could have far-reaching implications, not only in Oklahoma as binding precedent, but also in other jurisdictions for persuasive value. COCA reviewed jurisprudence from various other states and courts before coming to its conclusion, and there is a great possibility that the persuasive value of the Marcum decision could usher in a whole new frontier of constitutional quandaries across the country in relation to one of the most widely used methods of communication these days: the text message.

The Defendant in Marcum was charged with Conspiracy to Defraud the State. Marcum was charged with two co-defendants, and all three individuals moved to suppress evidence related to incriminating text messages retrieved from the service provider/phone company records of only one of the defendants. The District Court granted two of the co-defendants’ motions to suppress (former Assistant District Attorney James Michael Miller and Angela Marie Marcum), and the State appealed.

The text messages in question came about when the District Attorney for Pittsburg County advised Assistant District Attorney Miller that OSHI was in town investigating alleged embezzlement. Shortly after the news, Miller sent Marcum, with whom he was romantically involved, numerous text messages which were described as “salacious and incriminating.” Miller also received numerous texts in response. All of the text messages in question were sent or received on Miller’s personal cell phone as opposed to a state-issued phone.

The prosecution sought to admit records from Miller’s telephone company of texts sent to, and received from, Miller’s cell phone and obtained by search warrant. There were no records retrieved directly from Miller’s actual cell phone, and the prosecution never actually searched the physical phone itself. Miller and Marcum moved to suppress the records of the texts received from the telephone company, arguing that the search warrant was invalid because the affidavit supporting the warrant was insufficient. The District Court held that both Marcum and Miller had an expectation that their texts would be private. It also ruled that Oklahoma had not explicitly adopted the Leon “good faith” exception, so the District Court would not apply it when considering defects in the affidavit supporting the search warrant. The State ultimately appealed only the holding as to Marcum’s case.

Upon review, COCA entertained only the narrow issue of whether Marcum had a Fourth Amendment reasonable expectation of privacy in the telephone-company records of the texts she sent to, and received from, Miller. That issue was distinguished from the separate question of whether Marcum would have an expectation of privacy regarding the contents of text messages from her own phone or business records kept by her phone company. Moreover, COCA made it clear that this was not an issue of standing, but more so merely a question of privacy interests under the Fourth Amendment.

Consequently, the analysis began with the acknowledgement that Marcum needed to prove she had an actual subjective expectation of privacy in the records which society would recognize as reasonable. Although there is no published case from any other court that addresses this precise issue, COCA did note that most of the case law which discusses cell phones is more inclined to find a right to privacy in a personal cell phone as opposed to the records kept by the phone company, especially in the face of a third-party subpoena. Moreover, the closest the United States Supreme Court (SCOTUS) has come to this question (City of Ontario, Ca. v. Quon) merely examined the issue of reasonable expectations of privacy in cell phones regarding records kept on government-issued devices. Even in Quon, SCOTUS declined to specifically answer the issue.

Throughout the Marcum analysis, COCA continued to list various authorities which had previously addressed somewhat related issues of privacy in the context of text messages and cell phones. One such authority, the Court of Appeals for the Tenth Circuit, has noted that an individual does have a reasonable expectation of privacy in a cell phone, even though that interest does not preclude a search of the phone incident to arrest.

Regardless, COCA rationalized that the authorities cited lacked the specific facts of Marcum’s situation: in those other cases, the question revolved around “the reasonable expectation of the person who holds the account, owned the phone, or is personally given the phone for his or her use by his or her employer.” COCA analogized sending a text message with sending a letter or leaving a message with a receptionist. Correspondingly, COCA also referenced the provisions of Oklahoma law which allow for the interception of an electronic communication where the intercepter is a party to the communication or where one of the parties gives prior consent to the communication. Consequently, this notion of third party (the phone company) involvement was where COCA eventually hung its hat.

COCA ultimately adopted the reasoning of other jurisdictions which found no expectation of privacy exists in the text messages or telephone records containing the context of those messages, of another person where the defendant has no possessory interest in the cell phone in question. This was made explicitly true where the warrant in question is directed to a third party.

As far as the District Court’s ruling that the COCA had not adopted the Leon “good faith” exception to the exclusionary rule? That ruling was swatted down as well. COCA used Marcum to reaffirm its recent endorsement of Leon in State v. Sittingdown, 2010 OK CR 22. Sittingdown dealt with drugs found by officers pursuant to their service of a civil writ of execution on an individual. Law enforcement commanded Sittingdown remove the contents of his pockets, and he just so happened to remove a bag containing methamphetamine. The District Court ultimately ruled that the evidence should be suppressed, because even though the officers proceeded in good faith while executing the civil writ, they exceeded their authority by asking the Defendant to empty his pockets without sufficient probable cause at the time.

The Sittingdown analysis began with the assumption that no warrant is required when an officer conducts a seizure pursuant to a civil order or writ. However, COCA was quick to distinguish civil orders and writs from administrative searches and tax levies (which do in fact require search warrants prior to execution). A civil writ or order is distinct, because it is process issuing from a court; the subject of the order or writ has prior notice and an opportunity to be heard, unlike most criminal or administrative searches.

As such, COCA held that the writ of execution was only subject to the “ultimate standard of reasonableness.” In this situation, the seizure was found to be reasonable, since the writ of execution authorized the authorities to assume control and dominion over the contents of Sittingdown’s pockets (the opinion was careful to withhold from characterizing the activity as a search). The writ was executed as it was presented to the officers, and the command to the Defendant to empty his pockets was a valid levy pursuant to the writ of execution.

What is most alarming about this decision however, is that COCA, subsequent to establishing the precedent necessary to affirm the officers’ actions under the “reasonableness” standard it had employed, decided it necessary to expound on the somewhat unrelated “good faith” of the officers’ actions. As if its primary holding were not enough, COCA also ruled that the officers’ actions fell directly in line with the criteria established by Leon.

COCA could have simply stopped when it distinguished between a civil writ or order and a search warrant. Instead, Leon’s logic was extended beyond the confines of previously holdings, thereby effectively establishing the “good faith” exception to the exclusionary rule as applicable in Oklahoma when an officer acts in “objectively reasonable reliance” upon a civil writ, even if the civil writ is subsequently found to be invalid. As is par for the course, none of the purposes of the exclusionary rule would have been served in this situation, as the officers’ search and seizure were conducted in good faith and an objectively reasonable reliance on the writ of execution.

So what to make of these new develop-
By JimCroyn

April 27, 1914

One Hundred Years Ago

[Ex parte Winters, 1914 OK CR 41, 140 P. 164.]

This is an original opinion begun in this court by George E. Winters for the writ of habeas corpus. The petition alleges that an information had been filed in the district court of Osage county by the county attorney of said county, charging petitioners with bribery. The information is as follows:

"Comes now C.K. Templeton, the duly qualified and acting county attorney, in and for the county of Osage, state of Oklahoma, the said defendant, George E. Templeton, and there being a duly and regularly appointed and acting deputy special state enforcement officer of the state of Oklahoma, informs the court that on or about the 14th day of September, 1911, in the said county of Osage, state of Oklahoma, the said defendant, George E. Templeton, was in the county of Osage, state of Oklahoma, and that he, the said W.T. Crabtree, should be permitted to violate the provisions of the prohibited liquor laws of the state of Oklahoma, in that, to wit: To sell, barter, give away, and otherwise furnish intoxicating liquors at a price at which it would be impossible to provide reasonable compensation for the sale of the liquor, and thereby to the public conscience. If one admits the doing of the things that produce these results, shall he escape by saying he had no right to act at all? It would seem passing strange if the consequences of one breach of law might be evaded by showing another."

"In State v. Duncan, 153 Ind. 320, 54 N.E. 1067, the Supreme Court of Indiana, in considering a similar question, said:

"Bribery is an offense against public justice. The essence of it is the prohibition of a public trust, the betrayal of public interests, the debauchment of the public conscience. If one admits the doing of the things that produce these results, shall he escape by saying he had no right to act at all? It would seem passing strange if the consequences of one breach of law might be evaded by showing another.""

"In Price v. State, ante, 137 P. 736, we had under consideration a question involving the principle now under discussion. In that case Price was prosecuted for embezzling money as an attorney. He had moved from another state to Oklahoma, but had not been legally admitted to the bar in Oklahoma. His defense was based on the contention that, not having been legally admitted to the bar, he could not be charged with embezzlement as a lawyer. In determining that question, the Supreme Court said:

"When a lawyer from another state moves into Oklahoma and, without securing admission to the bar of this state, holds himself out to the public as a lawyer, and embezzles money collected by him as a lawyer, he cannot escape punishment upon the ground that he was never legally admitted to the bar of Oklahoma.""

April 4, 1939

Seventy-Five Years Ago

[Excerpted from K. C. Motor Co. v. Miller, 1939 OK 186, 90 P.2d 433.]

Katie Miller, defendant in error, obtained a verdict and judgment in the district court of Custer county against the K. C. Motor Company and C. O. Kemp, plaintiffs in error, for personal injuries arising out of an automobile collision occurring through the negligence of defendants. Defendants pleaded a release. Plaintiff replied that at the time of signing the release she believed she had received no personal injury, and there was no consideration for the release of personal injuries because both plaintiffs and defendants were of the belief that plaintiff had received no personal injuries, and which personal injuries now complained of, and in particular a kidney injury necessitating medical and hospital care, she had not discovered and did not develop until after the execution of the release.

The parties are referred to as they appeared in the trial court.

One day or two after the attack an adjuster with a representative of the motor company appeared at plaintiff's home and commenced negotiations for the settlement of the car accident. These negotiations were later continued at the motor company office. The cost of repair of plaintiff's car had been previously estimated by the motor company at $220, and plaintiff was so informed. The defendant said he would pay that car damage, a $50 doctor bill, and that he would pay a total of $250, the difference for plaintiff's bump and bruises and black eye. This arrangement was made the third day after the accident. The adjuster testified that while the difference was to cover her bumps and bruises and black eye, he knew only of these and did not know of her other injuries. The prepared release was signed by plaintiff on the following day in the absence of the adjuster. Plaintiff then proceeded to visit in Texas and there became sick and returned home in a few days. After returning she endorsed the release check and delivered the same to the motor company to apply on her purchase of a car.

After her return from Texas, plaintiff worked for a week or ten days and then had a telephone consultation with a doctor. She was examined and treated at her home by another doctor, and after two days, her condition becoming worse, she was thereafter moved to and treated at a hospital.

Plaintiff testified that immediately after the accident she had no medical attention and went on to work, and that the only injury she then knew she had received was a black eye and some slight knee bruises, and that the first time she knew she had back bruises was when the doctor examined her after her return from Texas and shortly prior to her removal to the hospital.

Two days after the accident she was examined by a doctor who treated her for kidney and bladder infections, and kidney stones, and that such kidney conditions are not immediately manifest after such injuries, but develop in varying periods. Medical testimony to the contrary was also received.

We consider first defendant's contention (a) that plaintiff is bound by the release. The defense of misrepresentation was eliminated by the trial court upon the close of plaintiff's evidence. The material defense against the release is that of mutual mistake of fact.

This court has recognized the validity of such defense in St. Louis-San Francisco Ry. Co. v. Cauhett, 112 Okla. 256, 24 A. 655. It is declared in the third syllabus that:

"Mutual mistake of fact should justify the rescission of a release executed under the belief that injuries are trivial and temporary. The fact is that they are serious and permanent in their nature, where it appears that the purpose of the release was to compensate for apparent injuries, known injuries, and that serious or permanent injuries were not contemplated by the parties at the time of the execution of the agreement or release, although in its terms the agreement or release is broad enough to cover all injuries resulting from the particular incident."

In the instant case, neither plaintiff nor the adjuster was aware of plaintiff's back injury. Which, subsequent to plaintiff's execution of the release, developed into a kidney affection. The plaintiff testified she was not aware of that injury. The adjuster declared he was paying the difference of $25 between the car damage and the total paid for plaintiff's black eye and bruises. No doctor had been then consulted by plaintiff. Plaintiff's injury here involved was not known at the execution of the release.

In substance, it is the contention of plaintiff that no release was intended except of those superficial injuries known, and that no release from damages for the injuries from which she later suffered and for which she sought recovery in this action has ever been executed, and that said release pleaded is therefore not a bar to this action.

Upon our review of the entire record, we are of the opinion that there was sufficient proof of such a misapprehension of fact to justify avoidance of the release in question. A fair construction of the evidence is that the release was made under the belief by both parties that there were no other injuries than those mentioned, and that the known injuries were not deemed serious.

Whether the release was executed under such a mutual mistake of fact was a question properly submitted to the jury. Defendants further assert (b) that plaintiff is bound by the release by accepting and endorsing the settlement

And the Court Said

An Olio of Court Thinking

See OLIO, PAGE 18
Tech-savvy or Old Dogs and New Tricks

By Rex Travis

I was hurt deeply at our last Briefcase Committee Meeting. We have one each month to figure out what will be in your Briefcase for the coming month.

I’m permitted to submit a “Quote of the Month.” Hopefully, you have noticed, although nobody ever mentions it. I occasionally write something else, when the editor catches me and shames me into it.

It happens I am also a “cutter.” No, I don’t mean I cut my skin. I think teenage kids do that for some reason. My favorite part of reading the daily newspaper is reading the cartoons. When I enjoy one and think someone I know would likewise enjoy it, I often clip cut out the comic and show it to them.

Well, there was a “Shoe” cartoon. You may or may not be familiar with that cartoon. It features a bunch of birds who, among other things, run a newspaper. The cartoon that caused all the grief involved the editor, a somewhat autocratic old bird, like our editor. He was talking about proofreading and did a little play on words about what proof of whiskey ought to be about right for proofing a piece of the reporter’s writing. I clipped it to show to our editor.

At the Briefcase meeting, I showed him the cartoon. I’m learning editors, sort of like judges, are not known for having a sense of humor. Perhaps I should note, the editor is also a judge. He seemed to find it, at best, mildly amusing.

On the other hand, an attractive, young female lawyer who writes for the Briefcase, was more impressed. Sort of. She shrieked: “LOOK, HE READS PRINT!” Apparently, this is something of an anomaly among young, tech-savvy people.

There have been signs of this sort of denouncement for a long time. A few years ago, someone at the office got me an I-Phone something or other. My daughter, who is - as you might guess - of a different generation than my own, asked: “Dad, can you do something or other which sounds technical, with your I-phone.” I replied: “Of course, that’s an I-phone something or other, it will do almost anything.” No, she said, I’m not asking if the phone can do that, I’m asking if you can do that with the phone.” I muttered something to the effect that I would ask her 10-year-old son to show me and heard no more of the subject.

I had felt pretty secure about my tech status. I do emails, I know lawyers whose use of emails is that their secretary retrieves and prints the email and then the lawyer tells the secretary what response to make, usually a day or two later. I feel pretty smug comparing myself with those guys.

I also text, but do not sext, whatever that is. I really am not big into FaceBook, Twitter, and whatever has come out since I started writing this article 15 minutes ago.

But I realized there was a whole generation of people much more skilled at tech matters than me. But I had another scare besides the awful revelation that I “read print.”

I was having lunch with my banker and some other friends. He is even older than I. (Yes, that really is possible!) He has “emeritus” after his name on his card and letterhead. We were discussing a stock in which we both had some interest. Suddenly, he whipped out a smart phone and began to punch keys. He soon was showing us all, with charts, the latest information on the stock the rest of us had only read about.

I realized I was sandwiched. It was not only the young techies who were passing me by but an older generation as well. This is serious!

But, I’m trying to stay up. My latest tech education project is to learn “dragon dictate.” Contrary to what you may think from the current news (or whatever people read now) this has nothing to do with Russian oligarchs. Rather, it permits you to talk into a microphone which connects to a computer, which then types what you have dictated. I’ll catch up yet!
Fern from PAGE 2
dents, and community members. She organized a legal education program, based on the rights of women and children, and still sometimes found time to teach English and computer skills to middle school children.

During the aftermath of September 11, Fern felt a strong desire to be back in the United States to grieve with her nation. For a short time she came back to work with us at American Refugee Committee in Washington, D.C., but after a while her interest in anti-terrorism work never diminished, and she soon entered Georgetown Law Center to work on an L.L.M. in International Law, while also working at two Washington, D.C. law firms.

Wherever she was, Fern had a zeal for helping others, even in the face of personal danger. A Washington law colleague, Kolly Etherington, recalls one day when the two of them were walking back to their hotel from the courthouse in Cleveland. They saw a group of five or six boys attacking a teenage girl. Fern handed Molly her briefcase, cell phone, and purse, and hurled herself into the fracas, physically pulling the boys off of the girl and admonishing them to stop. Though Fern was quite petite, the larger boys yielded. When the incident was over, her friend questioned whether Fern had a death wish. “No, I don’t,” Fern replied, “but that woman needed my help.”

Others needed her help, as well. Fern interrupted her studies and work to take several assignments for the American Refugee Committee in Guinea, West Africa. In April 2002, she conducted a thirteen day investigation of the condition and legal status of Liberian and Sierra Leonean refugees. She returned for an additional two weeks in November 2002 to do further investigation, and then drafted a proposal for a solution. She was sent back to Namib, more, in Guinea, in February 2003 for a month, when she designed and implemented a legal aid clinic protecting the rights of refugee women and children. She also drafted proposed legislative revisions to the Guinean penal code to criminalize sexual violence and exploitation of refugee women and children. Willis S. Livingstone, manager of the clinic, started by Fern, wrote in a memo to her upon learning of her death: “Fern... was someone whose courage, farsightedness and great dream made Gender Justice a reality for the first time in the lives of refugee women and children because the response system she helped to establish far surpassed all others that have been used in the past and it has worked successsfully.

To be more concise, the clinic which was set up by Fern worked assiduously within the framework she designed and we handled 118 cases of GBV [gender based violence] including rape, sexual assaults, forced prostitution, threats, paternity, beatings, family abandonment, sexual exploitation, forced disappearances, sexual violence, threats, rape, paternity, pimping, and child custody, all in the first year of 2003. We have used the Intake and follow up forms designed by Fern and follow all of the protocol established by her without modification up to now.

Oh Fern! Because of your intelligence the refugee women and children had a voice for the first time in history. Camp Kola and Camp Laine upon hearing about your untimely demise came and told us to add their voices to this tribute as exactly quoted below –

‘Yesterday we were beaten, raped, condemned for prostitution, sexually exploited, without security and always in tears without a voice. Today through the great work that you did, the women and children of refugee status in Guinea can now say thank God the injustice is over. Justice has finally come for us. The fundamental rights of refugee women and children are now being recognized by the society. Because of this experience, the cries of the refugee women and children in Kissidougou have also been heard and a clinic is being planted there all because of you, Fern.”

The clinic has been renamed the Fern Holland Legal Aid Clinic of Nзерoke.

Together with Professor John Norton Moore, Director of the Center for National Security Law, University of Virginia, Fern co-authored a proposal for a democracy and rule of law educational and training program for African governmental officials, students, and civil organizations. Fern fervently believed that our democratic tradition of the rule of law serves as the best protection for human rights, and that education about the rule of law is the best way to arm people with the tools necessary to make democracy work. She was very excited about the prospects of implementing this educational project in Africa, where it could create a climate for lasting democracies and a foundation for protecting basic human rights. Fern made several presentations for grant proposals for this program and had high hopes that the program would be funded. The Iraq War, however, intervened.

Already experienced in investigating and documenting human rights violations, Fern went to Iraq in July 2003 to investigate atrocities of the Saddam Hussein regime. She was hired by the United States Agency for International Development as part of its Abuse Prevention Unit that protects human rights in emergencies or conflict. She recorded interviews with witnesses and survivors of mass executions, two of which were literally left for dead but crawled out of mass graves and survived to tell their stories. Her contributions are part of a USAID report entitled, “Iraq’s Legacy of Terror – Mass Graves.” It is estimated that up to 400,000 Iraqis and foreigners are buried in about 270 mass graves. The report can be found at www.usaid.gov/iraq/iraqlegacy-ofterror.html. Fern collaborated with Joel Starr of USAID, who relates that Fern wrote about 90 percent of the report, which was recently distributed to every member of Congress. The report tells a chilling tale of atrocities perpetrated on the Iraqi people during Saddam Hussein’s regime. Documenting such atrocities is crucial work, and Fern’s role was pivotal.

Promoting women’s rights, however, was the keystone of Fern’s work in Iraq. She transitioned to a staff position at the Coalition Provisional Authority, under the authority of the Defense Department, to work with Iraqis in establishing a democratic government. She immersed herself in Iraqi culture, listening to the people and learning their needs and wants. She identified former Baath Party buildings which could be rehabilitated for women’s centers, and then assisted in forming those women’s centers in numerous Iraqi cities. The centers provide medical and educational services and promote women’s political empowerment. Fern worked to educate women to discuss how they want to take part in Iraq’s new government. Fern was also an organizer of a major women’s conference entitled “The Heartland of Iraq Women’s Conference” at the University of Babylon in Hilla, Iraq, in October, 2003. This conference attracted over 150, mostly professional Iraqi women: doctors, lawyers, teachers, and engineers. The conference facilitated discussion of the women’s aspirations for Iraq’s new government, inspired them to pursue those goals, and helped them develop strategies to accomplish their objectives. The report of the conference, which can be viewed at www.iraqfoundation.org/news/2003/known/hilla.pdf, documented that Saddam Hussein’s regime severely oppressed women. For instance, a Saddam decree dated February 28, 1990 codified so-called “honor killings”: “No person shall be liable to penal prosecution if he kills or commits the premeditated killing of his mother, daughter, sister, and niece to wash out dishonesty.”

Fern raged against such injustice. Her work began a process of rights recognition, laws, and of establishing democratic principles that protect the rights of all members of Iraqi society. In November, 2003, Fern organized and accompanied a delegation of Iraqi women to Washington, D.C., where they met with President Bush.

Fern’s vision was that human rights, particularly women’s rights, could best be protected by supporting Shiites moderates and helping them learn the principles of the rule of law, democratic government, and techniques of running for elective offices. She also believed that giving women a strong voice would provide the best assurance that Iraq will be able to develop and sustain a true democratic government which protects the rights of minorities. A colleague of Fern’s in Iraq, Chris O’Donnell, said that she was successful in starting the women’s centers and convincing a women’s movement in central and southern Iraq because she convinced the Iraqi women that she would continue to help them by regularly returning to each center to continue the education process. This was concrete proof to these women of America’s commitment to human rights and democracy. It was on one of these many trips that she lost her life.

Fern was credited by Professor Noah Feldman of NYU Law School and the CPA’s former constitutional advisor, with maintaining the pressure on the CPA and on Iraqis to recognize and protect women’s rights. She drafted portions of the Interim Constitution in March 8, 2004. Specifically, she drafted portions that expressly guarantee women’s basic human rights, as well as a statement that: “The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly...” Law of Administration for the State of Iraq For The Transitional Period, 8 March 2004. Article 30(c). Not even America has a law codifying such a lofty democratic objective.

Fern’s sister, Vi, relates that Fern worked on the constitutional provisions while home for a short visit at Christmas. Vi remembered Fern negotiating for a 60 percent participation because women make up 60 percent of Iraq’s population; however, Fern realized that obtaining 25 percent was a major victory. Fern also lobbied, albeit unsuccessfully, for the provisional constitution being secular, a position many in Iraq found unacceptable. Fern’s work in advocating for these controversial positions made her highly visible. That Fern appreciated the danger is clear. On January 21, 2004 she e-mailed a close friend, Stephen Rodolf:

“I love the work and if I die, know that I’m doing precisely what I want to be doing... It’s a terrible race. Wish us luck. Wish the Iraqis luck.”

- Dr. Rajaat Khazai, a member of the Iraqi Governing Council

Fern was an angel – she worked very hard for women. She died while working for and helping Iraqi women. She knew how much they suffered.
BRIEFCASE 7

iBar Definitive Playlists

By Chris Deason and Judge Don Deason

On a Thursday night in February the ACM@UCO (Academy of Contemporary Music at the University of Central Oklahoma) hosted what they call a “master class” at their Performance Lab located at 329 E. Sheridan Avenue. We had noticed ads for the classes in recent years but we never read the small print. Our loss. We missed out on several informal interviews with artists, both old and new, that covered experiences such as their songwriting processes, failures, record labels, successes, personal lives and tour experiences. The missed interviews were with Nile Rogers, DAWES, Ben Folds, and members of Mumford and Sons. If you are younger than forty years old, don’t stop reading when we tell you that February’s guest artist was Rock and Roll Hall of Fame inductee John Oates of Hall & Oates. The rest of you, try to keep the hooks of She’s Gone or Rich Girl from haunting the rest of your day. We thoroughly enjoyed the easy back and forth banter between John Oates and Scott Booker (the school’s founder and headmaster) as they covered the Philadelphia beginnings of John Oates and his long time partner Daryl Hall through the decades together and up to the present day. Oates relayed stories of 1970s singer songwriters, 1980s video stars, and recent collaborations with the likes of Vince Gill, Hot Chelle Rae, and Oklahoma’s own Ryan Tedder of OneRepublic. The Performance Lab provided quality acoustics for Oates’ three song set and there was a mic set up for questions from the audience. The most memorable questions came from a tall blonde haired twenty-something who claimed to have been in a Hall & Oates cover band. He had played the slight-in-stature dark haired Oates (which was laughable) but they had disbanded so he is now billed as “Just Oates.” The venue was packed, so arrive early if you have an opportunity to attend future master classes. There was no cover charge even though there should have been.

John Gile: John grew up in a Kansas town populated by 350 people. Landing a prom date is tough when the senior class has only 22 students. His first job was shoveling manure (it should be obvious where this story is headed). He selected OU for undergraduate studies because of the nuclear science department. Just kidding. It was because of the football team. John eventually graduated from OU College of Law in 1979, along with several outstanding classmates like Don Deason. He claims that, “after slinging B.S. around Oklahoma for the last 34 years,” he joined the firm Hall Estill where he gets to work with his son. John considers this to be a wonderful reward. He listens to music on Pandora and has customized Billy Joel and George Straight stations.

Matthew R. Gile: Matt graduated from OU College of Law in 2009, and since that time has managed to impress his mom with his lawyer skills. Much like John, Matt is grateful to be able to practice at Hall Estill with his father. Most people hire him for family law cases, but he will do almost anything else. Matt and his wife are expecting their first child next month. Their plan is to supply the Oklahoma Bar Association with Giles for generations to come. Matt has only a few minutes to submit a playlist because he was covering for his uncle, Merle Gile, who stood up the Deasons. Any complaints about his playlist should be directed to them. Matt listens to music on Spotify, Sirius-XM, iPod, CD, and vinyl (i.e. pretty much whatever). He also wins the prize this year for best guilty pleasure.

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<th>Song Title</th>
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<td>Reason To Believe</td>
<td>Rod Stewart (favorite ’70s)</td>
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<td>I Go To Extremes</td>
<td>Billy Joel (his theme song)</td>
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<td>We Went Out Last Night</td>
<td>Kenny Chesney (favorite country song)</td>
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<td>You and I</td>
<td>Ingrid Michaelson</td>
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<td>Jackson</td>
<td>Johnny Cash and June Carter (favorite song his daughter sings)</td>
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<td>Paradise By The Dashboard Lights</td>
<td>Meatloaf (guilty pleasure)</td>
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<td>I Just Want To Dance With You</td>
<td>George Strait (favorite two stepping song)</td>
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<td>Come Pick Me Up</td>
<td>Ryan Adams</td>
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<td>Racing In the Street</td>
<td>Bruce Springsteen</td>
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<td>All the Time In the World</td>
<td>John Fullbright (local hero)</td>
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<td>Lay Low</td>
<td>My Morning Jacket</td>
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<td>Sunshine</td>
<td>Ryan Bingham</td>
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<td>Forever Young</td>
<td>Bob Dylan</td>
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<tr>
<td>Man! I Feel Like A Woman</td>
<td>Shania Twain (guilty pleasure)</td>
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Witnessing Emergence from Atrocity
Personal Recollections on the Twentieth Anniversary of the Genocide of the Tutsis in Rwanda

By Matt Kane

It has been two decades this month since the start of the genocide of Tutsi in Rwanda. Over the course of a hundred days, an estimated 800,000 people, mostly Tutsi and some moderate Hutu, were murdered by their friends and neighbors throughout the country. I am surprised that it has been thirteen years since I boarded a plane from Oklahoma City bound for Arusha, Tanzania, the seat of the International Criminal Tribunal for Rwanda, a court established by the United Nations Security Council to try those most responsible for the atrocities. Despite generally having a terrible memory, there are certain things I can recall as though it were yesterday.

I distinctly remember the overwhelming stench of death. I encountered it twice during my time in the Office of the Prosecutor at the ICTR. On one occasion, a Rwandan friend took me to the Murambi Technical School massacre site. Approximately 45,000 men, women and children had been slaughtered there over the course of several days. These garment squares would allow family members to confirm their loved ones had been wearing particular items of clothing the last time they had been seen alive. At the appropriate time during a witness’ testimony, the ice chest would be opened and the relevant scrap passed from counsel to witness, judges and other participants. The smell would absolutely consume the room – it would take hours before all traces of the odor would dissipate.

But my memories are not limited to the smell alone. Extraordinary legal proceedings were a daily event. I watched as the ICTR’s Appeals Chamber handed down its first final judgment as to defendants Jean-Paul Akeyesu, Clément Kayishema and Obed Ruzindana, confirming that all three were guilty of genocide. Steven Kay, a renowned international lawyer, introduced me to his client Alfred Musema. Musema was small and reserved but extremely polite, thanking me for my interest in his case. It was hard to believe he had been convicted of genocide and would spend the rest of his life in prison.

The conditions in Arusha were challenging for everyone involved. I recall desperately trying to find ink and paper to print out filings, often printing drafts on paper that had already been used for other projects. I poured over pages and pages of witness statements to prepare motions, amended indictments and other filings. I drafted and helped present an arrest warrant for an accused, who was eventually captured and convicted of genocide.

I will never forget the flight into Kigali, the capital of Rwanda, from Arusha, where the ICTR held court. The U.N. pilots utilizing a “high threat” protocol when approaching the Kigali airport, maintaining a high altitude until the last moment before diving toward the runway in the small twin engine prop plane – an apparent effort to avoid any potential hostile fire. Needless to say, it did not inspire much confidence in the safety of ICTR personnel in Kigali.

I saw towns in Rwanda with their share of burnt out buildings. Hundreds of prisoners, dressed in pink uniforms, performed community service on the very grounds where they had shed so much blood. And I distinctly remember the sound of a machete being used to butcher a cow – how similar it must have been to that of a slicing blow to a neighbor a few years earlier.

But my experiences were already profoundly affected by the passage of time. Seven years post-genocide meant that most of the bodies had been buried or at least relocated, and new construction was in progress. Machetes were used for work, not death. Children played in the streets. Dala dala shuttled people from city to city, from home to work or school.

Today, Rwanda is, in many ways, a remarkable symbol of what can be accomplished. The country is experiencing economic prosperity the likes of which have never been seen in the region. Young peo-
OLFC: Awards, Bourbon and the Law

By Alisa White

You may be one of the over 1,000 attorneys volunteering for Oklahoma Lawyers for Children (OLFC). If so, this article is written for you as an update. If you aren’t, you should still read this article to find out what you are missing... and it’s not just awards, bourbon or the law.

Awards

The Oklahoma CASA Association recently named Lauren Barghols Hanna “2014 Attorney of the Year”. Hanna is an OLFC volunteer attorney and has represented fourteen children since 2008. CASA chose Hanna because she represents her clients vehemently and with integrity and consistency.

In an email to Tsinena Bruno-Thompson, OLFC President and CEO, Hanna told of a particularly inspiring case. Hanna represented a young boy in a case that was ultimately scheduled for a parental termination jury trial. After being bumped multiple times, the trial finally got set two months after Hanna had her own first child. Not wanting her client’s life to be put on hold, Hanna asked a family member to watch her newborn. Hanna told Bruno-Thompson that she showed up the morning of the pre-trial to learn that the parents’ attorney was asking to once again bump the trial date because an interpreter hadn’t been secured. Hanna’s client told Hanna he was starting to lose hope in the system due to all the delays that had already occurred. Hanna called OLFC to see if there was anything that OLFC could do on such short notice. OLFC immediately secured an interpreter and offered to use OLFC funds to pay for the service. The ADA said that the trial would have to be delayed if the court asked the State to cover the interpreter fees.

Hanna stated, “It was such a great feeling to know that OLFC was fully supporting the effort to efficiently resolve my client’s case, which had been open, in some form or fashion, for more than 10 years at that point. Over the past few years, [my client] has gone from being a confused little kid in a truly terrible home environment to a generally happy, confident and rambunctious young man who makes the school honor roll, plays basketball and football, raises chickens and sells the eggs for pocket money, plants ambitious gardens and plays with miniature horses and rabbits on his adoptive parents' farm. Although it took a long time to secure this permanence, it is pretty incredible to see how he has flourished in his parents’ home!” Hanna said she plans to continue to volunteer because all children deserve to be loved.

Another honor associated with OLFC involves a different kind of love. The United States Tennis Association (USTA) recently named the Greens Country Club David A Kline Junior Open Benefiting OLFC the “2013 USTA Missouri Valley/Oklahoma Regions Best Junior’s Tournament”. According to the USTA website, “Each year the USTA Missouri Valley honors the volunteers, organizations, programs and members who have done an outstanding job on the court and off to help promote the great sport of tennis”.

For the third time last year, the Greens held the USTA sanctioned tournament for young tennis players. Bruno-Thompson, an avid tennis player, states, “The Junior Tournament is a way for area youth to test their game, get out on the court, and compete at any level while bringing awareness for children in custody.”

During the same week of the tournament, the Greens and OLFC hosted a free tennis clinic for foster children and/or children in protective custody. John Hermes, OLFC Chairman of the Board of Directors notes, “The clinic is a great way for deprived children to learn a lifelong skill, gain confidence, and have fun. It’s also a great outlet for stress and aggression and gives the kids an immediate feeling of satisfaction when they hit the ball just right.”

The first year OLFC held the clinic, around 80 children participated. The second year over 140 children attended and last year, 167 children came. “We always have a lot of new kids but we definitely have some of the same kids return each year. In fact, we had a boy that got adopted last year and he was worried he wouldn’t be able to return. He was so relieved when we told him he would always be welcome,” said Bruno-Thompson. When asked why she chose to host a tennis clinic, Bruno-Thompson stated, “It’s easier to learn, not as expensive as and more accessible than golf. Kids can play most anywhere or just hit the ball against the side of a house.”

This year the 4th Annual David A Kline Junior Open Benefiting Oklahoma Lawyers for Children will be June 23rd through the 29th. Bruno-Thompson said sponsors are still needed. If interested, go to OLFC.org or call Bruno-Thompson at 405-232-4453.

Bourbon

The OLFC Associate Board will host a Bourbon Tasting in April with Master of Whiskey Teresa Menendez-Myers. Six Bulleit and George Dickel bourbons will be featured as well as hors d’oeuvres provided by Mickey Mantle’s Steakhouse, served by Hooter Girls. Live music will be on hand and all proceeds will benefit OLFC. Last year, the Bricktown Rotary Club held a scotch tasting featuring various world-class scotches and raised over $10,000 for OLFC.

The Law

On March 28th, 267 attorneys, judges and non-lawyer volunteers attended the 2nd Annual Juvenile Law Symposium sponsored by the Juvenile Law Section, OLFC, the Oklahoma County Public Defender’s Office and The Oklahoma County Criminal Defense Lawyers Association.

The morning began with updates as to the changes in juvenile court. Felice Hamilton from the Administrative Office of the Courts said, “Sometimes change is just change. The goal for all the upcoming changes is to strive for excellence in the juvenile court system.” Sue Tate, from the same office, stated Oklahoma County alone has more kids in out-of-home care than 17 other states in the country. In early 2014, 11,000 children were in care and half of those children are under the age of five. The speakers outlined some of the proposed changes, including uniform orders, juvenile court case managers, DHS and service providers report guidelines and the use of technology to videoconference with interpreters, experts, court reporters and incarcerated parents. At times, the discussion promoted a spirited response from attendees. Harmon County Associate District Judge Mike Warren
By Roscoe X. Pound

Dear Roscoe:

The other day during an FSDocket, a disgruntled tenant was heard to say the proceeding was a kangaroo court. The judge, to her credit, warned him about contempt rather than hold him in contempt on the spot as I might have done. It got me to wondering though: “why kangaroo?”

A.P., MWC, OK

Dear A.P.: Why indeed? One might assume that the term might have originated “Down Under,” and one would be wrong. The earliest use of the phrase (in print, anyway) came from right here in the good old U.S. of A. in the early 1850s, reporting that a certain “Judge G.” was elected to the “mexing[sic] or kangaroo court.” Assuming the writer meant “mustang,” you could easily see how a court which went about its business in a wild or unrestrained manner could fit such an image. Some folks offer more literal interpretations. Some posit that the term came into use during the Gold Rush days dealing rough justice to claim jumpers. Get the connection?

Unfortunately, we find the term used in general interpretations. Some posit that the term came over as if to hit me up for a loan. I walked seamlessly into the urban landscape, so ordinary as to become invisible. I walked past a small, tattered form resting against the lawn in someone’s yard. I walked up to that apartment. Two goons dashed over and stood in front of the store. I walked over and stood in front of the store. Digger Mike, affecting a geriatric shuffle, came over as if to hit me up for a loan.

“What’s the deal?” I asked.

He hoisted his cup like a trophy. “Not bad. Panhandle’d $4.50 waiting for ya.”

“I glared. I wasn’t in the mood.

“Got up to that apartment. Two goons working over the little girl. They already tossed the place real good. I let them notice me. They started to pull, I took em.”

“And then?”

“Then I went over to the girl. She’d fainted. Called 911 and got out.”

“Anyone see you?”

It was his turn for the look.

“Both dead?”

The look again.

“They was getting ready to use a can opener on ‘er, Roscoe. That Junior’s girl?”

I nodded.

“Nice,” he said. “Hope he brings her around when this over. Kinda a bit hippy, huh?”

“Be nice to know who those guys were. In that sense, it’s too bad they’re dead. Did they strike you as pros?”

“Yep. But not as pro as me.”

“Motha?”

The old mercenary shrugged. “I’d say military.”

“Sure’d be nice to know where they came from.”

“Oh, maybe these will help.”

He pulled 2 laminated cards from his pocket. Drivers’ licenses.

“Idaho?” I said. “Who imports hitters from Idaho and into Jersey?”

“That’s why you get your name on the door,” he said with a shrug.

“Okay, look. I want you to get up to Crenshaw’s and keep an eye on things there. I’m going to the ER to check on Sylvia and see what I can find out.”

Daddy Mike shuffled off. I called John Crenshaw to let him know what happened, and assured him Sylvia was alright. I cautioned him to be on his guard. I also cautioned him about Daddy Mike. As a horror film aficionado, I didn’t want him to judge the Daddy by his resemblance to the title character in The Leprechaun movie franchise. Then I called Rack and told her that when Junior checked in, he should call me on my cell. The EMTs would take Sylvia to St. Mary’s. I arrived there not too far behind her.
Gary Davis: Lawyer, Mentor, Partner, Friend

By Stephen DeGiusti*

I first came to know Gary Davis in mid-1983. I was a brand new associate at the law firm of Crowe & Dunlevy and Gary was the head of the firm’s oil and gas department.

In law school, I had decided that I wanted to be a litigation attorney. So, when I arrived at the law firm, I was assigned to the litigation department —which was on the 19th floor of what was then Mid-America Tower and is today the Continental Resources building. One day, not too long after I had started at the firm, one of my supervisors in the litigation department told me that Gary needed help in the oil and gas department, and asked that I go downstairs (the oil and gas department was on the 17th floor) to Gary’s office to discuss my assignment.

I was apprehensive, to say the least, as I had no real interest in “oil and gas” law — I hadn’t even bothered to take the course in law school. But, as I had no real choice in the matter, I went as requested, albeit with a healthy dose of trepidation. Gary was at that time in his mid-50s (my age today). He was bespectacled, tall, about 6’2”, and thin, with neatly combed hair that was mostly grey.

Gary Ward Davis was born in Iola, Kansas in 1931. He graduated from Kansas University in 1953, where he majored in political science and was a member of the Air Force ROTC. During college, Gary married his wife of 62 years, Sally, whom he still refers to as his bride. Following his first year of law school at KU, Gary’s law school career was interrupted by a two-year stint in the United States Air Force as a second Lieutenant stationed at Wright Patterson Air Force Base in Dayton, Ohio. While in the Air Force, Gary and Sally had their first child, Gary, Jr. The younger Gary followed in his father’s footsteps and has practiced law as a trial attorney in Texas for over 30 years. Two daughters followed, Anne [Covington] and Mary Jane [Lauderdale], and the Davis clan was complete. Mary Jane and her husband, Mike Lauderdale, who live in Oklahoma City, are also attorneys. Gary and Sally have been blessed with six grandchildren.

After fulfilling his military obligation, Gary returned to KU to complete law school. He graduated first in the class of 1957 and also served as editor of the KU Law Review. Following law school, Gary accepted a position in Phillips Petroleum Company’s law department and the Davis family moved to Bartlesville. While in Bartlesville, Gary served as president of the Washington County Bar Association (he has been a member of the OBA for 57 years). He spent the next 19 years with Phillips and eventually moved from the law department to serve as Vice President of the

See DAVIS, PAGE 16

We honor our dear friend, colleague and mentor

LAWRENCE E. WALSH

(1912-2014)

Iran-Contra Prosecutor  I  Ambassador to the Paris Peace Talks
Deputy U.S. Attorney General  I  U.S. District Court Judge
President of the American Bar Association

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The University of Oklahoma College of Law jumped 10 spots in the latest US News & World Report 2015 Ranking of Best Law Schools to #58. The ranking is the highest by any Oklahoma law school in survey history.

OU Law has received a number of recent accolades, including:

• For the second year in a row, OU Law was named a Top 20 “Best Value” Law School by National Jurist Magazine.

• No. 4 “Best Quality of Life” by The Princeton Review

• No. 19 Moot Court Program by The Blakely Advocacy Institute

OU Law continues to focus resources on what is most important to students. In the past three years, the College of Law has more than tripled the number of employers participating in the on-campus recruitment programs. While many law schools have cut career staff, OU Law recently added a third career development counselor. OU continues to add new and innovative programs providing students with a competitive edge in the marketplace.

For more information about OU Law, go to www.law.ou.edu.

Crowe & Dunlevy Attorney Named to Board of Directors for Baptist Foundation of OK

The Baptist Foundation of Oklahoma has elected Crowe & Dunlevy attorney Julie Stanley to serve on its board of directors.

Law School Offers Short Courses in China to Lawyers

For almost a decade, Oklahoma City University School of Law has been one of America’s most-engaged law schools in China. For example, each summer since 2006, OCU has offered an ABA-approved study-abroad program in Tianjin, China. Students from OCU and several other American law schools have earned credit toward their J.D. through this program. OCU is now making this study and cultural opportunity available to lawyers and business professionals.

“My adventure in China was amazing,” said April Coffin, OCU J.D. candidate, Class of 2014. “The perspective gained from living and seeing China is something that study and keeping current on international news and affairs simply cannot provide.”

About Tianjin. With a population of 14 million and only a 30-minute bullet train ride away from China’s capital Beijing, Tianjin is China’s fastest-growing national economic powerhouse. Much like Oklahoma City, Tianjin has undergone a renaissance over the last 15 years – including a redeveloped riverfront. It is a financial and international trade area that the New York Times dubbed “China’s new Manhattan.” In many ways, Tianjin has the look and feel of a modern Western city, but it still offers unique glimpses into traditional Chinese culture.

“China is full of contrast and hyperbole; it is large and quaint and crowded and beautiful and the food is more delicious than I had anticipated,” said P.J. Nowlan, Stetson University College of Law J.D. candidate, Class of 2015.

Like many others, OCU Law student Mark Auten, Class of 2014, had an amazing experience during his summer in Tianjin.

“China will change you, and you should embrace every minute of it,” Auten said. “The history, people, culture and identity is one that every westerner should experience.”

The academic program. An international faculty has been assembled for this summer’s Institute in International Business and Financial Law occurring June 28-July 26, 2014. The program consists of four courses, one taught each week on Monday-Thursday mornings. This leaves ample time for cultural exploration and regional travel.

“I learned a lot about both the Chinese legal system and how it fits into the global view,” said recent University of Iowa College of Law graduate Olivia Blessing. “Participating in this program was one of the best decisions I have ever made, both career-wise and as a life experience.”

Lawyers and business professionals may choose to participate in one, two, three, or all four weeks. Oklahoma’s MCLE regulations provide that lawyers will earn threeCLE credits per course. Program tuition will be pro-rated in accordance with the number of weeks attended. Full details, including course descriptions and faculty backgrounds, are available on the International Programs page at law.ou.edu. The application deadline is May 15, 2014.

One of the keys to the success of this program has been the involvement of the law school’s alumnus, GU Ming. He has been the resident director of the Tianjin program since its beginning. This will be his ninth consecutive year in that role. GU Ming is a native of Tianjin, holds both an MBA and J.D. from Oklahoma City University, and is a member of the Oklahoma Bar.

Classes are held at Nankai University, one of China’s top twenty universities and the law school’s partner since 2006. As in the past, there will be a number of English-speaking Chinese law student “ambassadors” from Nankai University School of Law to guide program participants around Tianjin and to enrich the participants’ exposure to China’s culture and legal system.

“Our Ambassadors from Nankai University were extremely helpful and provided us an “insider’s” perspective when buying gifts for family or train tickets or street food,” Nowlan said.

As part of the educational program and included in the program tuition and cost are visits to a local court or prosecutor’s office and a major law firm. Participants have opportunities to interact with Chinese lawyers, judges or prosecutors. Also available is a three-day and two-night guided weekend sightseeing trip to Beijing. Participants will tour the

OU Law Students Help Provide Free Legal Services

OU Law students recently volunteered at the Legal Aid Society of Oklahoma. Each student spent one hour helping a client with a legal issue at no cost. This opportunity provides students a chance to gain valuable experience and help those in need.

The Oklahoma City Metro Employer Council is a cooperative educational effort of the Oklahoma Employment Security Commission, Workforce Oklahoma partners and Oklahoma City area human resource professionals.

Childers is co-chair of Crowe & Dunlevy’s Labor & Employment practice group and serves as an administrative law judge at the Oklahoma Department of Labor. Since joining the firm in 2000, he has successfully represented management in cases brought by employees under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Fair Labor Standards Act and Oklahoma’s workers’ compensation laws. Additionally, Childers has expertise in Oklahoma’s non-compete, non-solicitation and misappropriation of trade secrets statutes and the Oklahoma Open Meeting and Open Records Acts.

Childers is a member of Phi Beta Kappa, the Order of the Barristers, the Board of Visitors for the College of Arts and Sciences at the University of Oklahoma and the Oklahoma Academy for State Goals. Childers is admitted to practice in all state courts in Oklahoma, as well as the U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma, the Western District of Texas, the U.S. Court of Appeals for the 10th Circuit and the U.S. Supreme Court.
Great Wall, the Ming Tombs, Tian an men Square, the Forbidden City, the Temple of Heaven, and the Summer Palace, and much more.

“The China program was a tremendous experience that took me on a cultural adventure beyond my comfort zone into a modern world with an eternal past,” said Nowlan. “I highly recommend the summer abroad program in Tianjin, China.”

Please visit law.okcu.edu for further information.

Inquiries should be directed to Mr. Gu Ming at 405-208-5125 (office) or at mgui@okcu.edu.

1 http://www.nytimes.com/2012/11/20/world/asia/the-new-mannahattan-of-china-has-local-support.html?pagewanted=all&_r=0

New Evidence Points to Tulsa Man’s Innocence in 1994 Murder Case

The Oklahoma Innocence Project file brief for post-conviction relief on behalf of Malcolm Scott

The Oklahoma Innocence Project (OIP) at Oklahoma City University School of Law recently filed an application and brief for post-conviction relief on behalf of Malcolm Scott. Scott was convicted of the murder of Karen Summers and sentenced to life in prison.

Ms. Summers was murdered in north Tulsa during a drive-by shooting in the early morning hours of September 10, 1994. Two other people were injured during the shooting. Scott and Demarchoe Carpenter were arrested, charged and convicted, despite the fact that the murder weapon and the car used to commit the crime were discovered in another man’s possession. That man, Michael Wilson, admitted being the triggerman during a video confession to the OIP just two days before his execution for another murder.

“Malcolm Scott is an innocent man,” said OIP Director Tiffany Murphy. “He was wrongfully convicted and has always maintained his innocence. In reviewing the trial transcripts and other evidence, it is obvious Malcolm was in no way involved in this terrible crime. The petition we filed on behalf of Malcolm outlines the reasons he deserves to be free, and we ask that the court vacate his convictions.”

Among the new evidence uncovered in this case that points to Scott’s innocence:

• Michael Wilson and the two other men who committed this crime confessed

• The state’s two eyewitnesses have recanted their testimony

• Scott’s fingerprints were not found on any physical evidence connected to the crime

In his video confession to the OIP Wilson said his motive for committing the crime was to retaliate for being shot in the leg a few days earlier. He also said Scott and Carpenter were not in the car and had nothing to do with the murder.

“Mr. Wilson repeatedly states in the video that he was shocked he was not charged with murder after police found him with the gun and the car used in the drive-by. It is disturbing that two innocent men, convicted when they were just teenagers, have spent this much time in prison for a crime they did not commit.”

Murphy said.

The OIP’s petition outlines how Malcolm’s constitutional rights to a fair trial and due process were violated. First, he had ineffective assistance of counsel because his trial attorney failed to fully investigate and challenge the state’s case. Secondly, his Brady rights were violated because the Tulsa District Attorney’s Office failed to turn over key evidence that was exculpatory and could have helped in his defense. Additionally, the witnesses who have subsequently recanted claim they were coerced by investigators.

Oklahoma City University School of Law clinical students worked on this case since the Project’s inception in 2011. Their review of the case files, witness interviews, and records collection were vital to establishing Malcolm’s innocence.

More information about this case can be found on the OIP’s web site at innocence.okcu.edu.

Experiential Learning at Oklahoma City University School of Law

By Regan S. Beatty

On January 2, 2014, the American Bar Association Task Force on the Future of Legal Education (the “Task Force”) released its Report and Recommendations (the “Report”) concluding, among other things that “the core purpose common to all law schools is to prepare individuals to provide legal and related services in a professionally responsible fashion. This elementary fact is often minimized. The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard and many law schools have expanded practice-preparation opportunities for students. Yet, there is need to do much more. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.”

Oklahoma City University School of Law sits on the precipice of a physical move, and along with that physical move, the School of Law continues to evolve its curriculum to address the ever changing legal landscape. With the focused intent of preparing its students to serve their clients, OCU is adapting its curriculum in such a way that students will develop not only an academic understanding of the law but also the crucial professional competency necessary for success within today’s legal job market. Beginning in August with the incoming class of 2017, OCU Law will require that students have 3 credit hours of experiential learning prior to graduation.

OCU offers a variety of experiential learning options for students to fill the 3-hour requirement. Students may choose to earn credit hours by way of an externship or through clinical experience. Externship opportunities include corporate counsel externships, government practice externships, litigation practice externships, and Native American externships. Each externship affords students the chance to develop different skills ranging from general business acumen to an understanding of specialized areas of the law such tribal law. Externship students are required to devote a set number of hours to on-site service and to attend a class on campus.

In addition to its externship opportunities, OCU Law also provides a number of clinical options for students to accrue experiential learning hours. For example, the American Indian Wills Clinic permits students, under the supervision of a faculty clinician, to provide wills and estate planning services to American Indians owning trust or restricted property in Oklahoma. Clinic students are primarily responsible for all case-related work and are expected to work an average of 6 to 10 hours per week providing legal services during the semester, exclusive of class time and preparation for class. A classroom component complements students’ field work with a practice-oriented examination of advocacy and substantive law in the context of American Indian Wills Services. In addition, OCU Law has the only Innocence Clinic in the state where students work to help identify and rectify wrongful convictions in the state of Oklahoma. Students conduct investigations, make recommendations regarding litigation, and students may draft court documents and appear in court in connection with proceedings. The clinic includes weekly meetings devoted to training and to the discussion of the status of ongoing case assessment and investigation.

Students may also experience particular areas of practice first-hand through the Pro Se Waiver Divorce Docket and, soon, through the Bankruptcy Project for the Western District of Oklahoma. As participants in the Pro Se Waiver Divorce Docket project, students gather each week on the 2nd floor of the Oklahoma County Courthouse with attorneys from Legal Aid Services of Oklahoma, Inc. and private practitioners to assist pro se parties, who are referred by participating family law judges, with their case documents. Students not only learn the doctrine of family law; they also become acquainted with the judges, court personnel, and lawyers who practice in this area.

Beginning in June, students will be able to learn bankruptcy skills in a practical, client-driven environment through the Bankruptcy Project for the Western District of Oklahoma. The Project, a collaboration among OCU Law, the Bankruptcy Court, and volunteer attorneys, will meet monthly at the bankruptcy courthouse to provide pro bono legal services to debtors and potential debtors. The Project will accept referrals from Legal Aid Services, the Court, and Trinity Legal Services and will offer general bankruptcy advice ranging from preliminary filing information to basic chapter 13 issues. Operating under a limited representation agreement, Project volunteers will meet with debtors and potential debtors to address individual legal issues. In this context, students will learn not only general bankruptcy concepts but also how to work within the parameters of specific required federal bankruptcy forms with specific real-world information. In addition, the Project will provide students with the unique chance to work with local bankruptcy attorneys and staff at the Bankruptcy Court. Just as the law is ever changing, so is legal education. Oklahoma City University School of Law has risen to the challenges presented by the ABA Task Force and continues to adjust and adapt its curriculum in an effort to not only educate its students on the doctrine of law but also to prepare them to meet the demands of professional employment.

Quote of the Month

“Many legislators look dumb for much the same reason that cows look bovine.”

Edward L. White, Oklahoma Attorney
outside the window. The Court Clerk
seemed to be a two-person operation, with
old docket books still visible, including one
with the title “Lunacy” lined through and
replaced with the more genteel “Mental
Health.”
For those who are unaware, the Annual
OCBA Aspen trip has been ongoing for
the last 35 years. Between Angie Hendricks
and her crew from Bentley Hedges Travel
and Debbie and Connie at the Bar, it all works to
perfection. You pay your money, show up,
and everything is ready to go. The only
trouble I’ve seen in the last four years is
whether the snow in Aspen will clear long
enough for your flight to land. Last year,
the twenty-five minute flight from Denver to
Aspen stretched into an hour and a half
before the pilot announced that it was clear-
ing and he thought we’d go ahead and “try”
to land.
Aspen began as a mining camp called Ute
City in the Silver Boom of the latter part of
the 19th century. Boom eventually went to
Bust, and Aspen went through the “Quiet Years”
until investors saw it’s potential as a
ski resort in the 1940s. In winter, Aspen
turns into a dead end because Highway 82,
the main route in and out of town, is closed
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It’s the Waist, Stupid.

By Warren Jones

Readers of my column will recall my frequently discussing the dangers of body fat and, more precisely, abdominal fat. The newest Mayo Clinic Proceedings sheds new light on the topic. Researchers from the Mayo Clinic examined the association, the relationship, of waist circumference with all cause premature mortality among 650,000 participants.

What’s more, they examined that relationship within identical levels of body mass index. So, they compared the effect of waist circumference within the same body mass index among thousands of men and women.

The rationale of the study probably lies in the fact that the use of BMI as a measure of obesity has limitations: BMI does not discriminate fat mass from lean mass, and BMI does not discriminate abdominal fat from “gluteofemoral” fat (fat at one hips, butt, and lower body). The nature of the mass (lean vs. fat) and the location of the fat mass have different health implications. As you might expect, greater lean mass is protective, and abdominal fat is destructive.

Abdominal obesity appears to be more strongly associated with multiple chronic diseases than is hip obesity. And that is a product of adverse metabolic effects, e.g., decreased glucose tolerance, reduced insulin sensitivity, and adverse lipid profiles.

What did the researchers find? Waist circumference is strongly and positively associated with all cause mortality for both men and women. Men with a waist circumference of 37.4 inches had 80 percent greater mortality risk compared with women with a waist circumference of less than 27.5 inches.

Further, each 2 inch increment in waist circumference is associated with a 7 percent increased mortality risk for men and a 9 percent increased mortality risk for women.

These findings held true no matter what the age at baseline. Although the association of waist circumference with all cause mortality for men and women was strongest for ages 20 to 49 and 50 to 59, risks were elevated even among men and women aged 70 to 84.

While the researchers did not come to this conclusion, I would opine that waist circumferences lower than 35.4 inches for men (the reference group) and lower than 27.5 inches for women (the reference group), would be further protective. That is, a 7 percent less risk for every 2 inches below 35.4: 33.4, 31.4, 29.4, etc., for men, and a 7 percent less risk for every 2 inches below 27.5: 25.5, 23.5, 21.5, etc., for women. So, find your waist circumference, and measure your waist circumference. The location of the waist circumference measurement should be at the level of your navel. The pressure of the measuring tape should be firm, but not indenting into the skin.

For readers out there whose waist circumference is greater than the reference group, there is a ton of evidence out there that modest exercise and a healthy diet are associated with reductions in metabolic risk profile, in morbidity, and in mortality regardless of weight status or weight change. And most randomized trials have found that increased physical activity is associated with significant reductions in waist circumference and “visceral” fat (fat in and around your internal organs... your abdominal fat) despite either no change in weight or a small change in weight.

By the way, the elevated risks of premature mortality were present among those people in the study who were either normal weight or underweight. So even if your body mass index is below 25, if your waist circumference is elevated, you are at an elevated risk.

The lead researcher, Dr. James Cerhan, is quoted in Stone Hearth Newsletter, a health newsletter, as saying, “The primary goal should be preventing both a high body mass index and large waist circumference. For those patients who have a large waist, trimming down even a few inches — through exercise and diet — could have important health benefits.”

The researchers conclude, “Our large sample size enabled us to detect a graded, linear increase in mortality risk across the full range of body mass index, including those within the normal and underweight category. The continuous association we observed makes it more difficult to define clinical cut points for waist circumference and suggests the importance of measuring waist circumference in more patients.”

So, for those of you with elevated waist circumferences, do two things: get moving, and make better decisions on your eating. If making better decisions on your eating is not to your liking, then, for sure, get moving.

Warren E. Jones, JD, HFS, CSCS, CEQ, is an American College of Sports Medicine (ACSM) Health Fitness Specialist, a National Strength and Conditioning Association Certified Strength and Conditioning Specialist, and a holder of an ACSM Certificate of Enhanced Qualification. His clients range from competitive athletes to the morbidly obese. He can be reached at wejones65@gmail.com or at 405-812-7612.
Excerpts from OCBA News: March, 1973, Part 2

A Thankless Job
By Judge Ed Dycus

The goal of court administration is to foster more effective delivery of judicial service to the state.

This is being done in most of the United States, says Marion P. Opala, Oklahoma’s Court Administrative Director since 1968, through “making judges functionaries of justice, rather than separate institutions.”

The trend has prevailed completely in such states as Illinois, Hawaii, Nebraska and North Carolina, Mr. Opala said, where the judiciary is integrated into institutionalized service.

The result in those states has been “more geographical movement of judges and the tendency to de-localize law practice” he stated.

“Of course, the average judge opposes the concept of management because it limits his ability to operate independently. The average lawyer also resents management, because in its absence it is the lawyer who calls the shots. Judges usually won’t force the ‘fast side’ to trial, so this allows lawyers to dictate the speed-or lack of it-of the dockets.”

It is the opinion of the Court Administrator that Oklahoma has enough judges, but that they are just not in the right places. The largest counties, Oklahoma and Tulsa, are understaffed, and some smaller counties are overstaffed.

One solution to this might be a Joint Resolution now in the Legislature which would submit to a vote of the people repeal of the Constitutional provision that each county shall have an Associate District Judge. This would effect a permanent redistribution of judicial manpower.

At present, Mr. Opala’s office, acting through the authority of the Supreme Court of Oklahoma and Arkansas, and was regarded by Judges and Associates from smaller counties to the two larger counties for jury trial dockets.

These judges are selected for service by nine regional presiding judges, who act as intermediate supervisors of judicial personnel. In addition to this task, the regional presiding judges also make intra-regional assignments on their own authority.

One of the drawbacks to this service away from home for judges, Mr. Opala pointed out, is that the State’s expense schedule usually reimburses them for less than their actual expenses so that the assignments represent financial sacrifice for the judges in addition to being away from home and family.

For the above-mentioned reasons—and others—the Court Administrator feels he’s a “thankless job, except it does afford an opportunity for service.”

Service has played an important role in his thinking since he determined to become a lawyer as a young student in pre-World War II Poland.

He came to the United States—and Oklahoma City—as the result of a chance meeting with builder and developer Gene Warr. Mr. Warr had been a partner of Mr. Opala’s in Europe. Mr. Warr arranged for his father, C.B. Warr, developer of Warr Acres, to sponsor Mr. Opala as an immigrant in 1947.

The elder Mr. Warr also gave the young Opala a job in his lumberyard. Working there and later in an electric supply company, he was able to fulfill his ambition by graduating from Oklahoma City University School of Law in 1953 and becoming an assistant for three years under County Attorney Granville Scanland.

Interpersed with private practice in the 50s and ’60s was service for five years as Referee of the Oklahoma Supreme Court from 1960-1965 and acting as Legal Assistant to Justice McNerney in 1967 and 1968.

In addition, the energetic Administrator obtained two more degrees in his spare time: the BS in Economics from OCU in 1957 and LLM from New York University College of Law in 1968. He is presently a candidate at NYU for the Doctorate of Jurisprudence.

He also was a professor at OCU School of Law, 1965-1969, and has been a Visiting Associate Professor at the OU College of Law since 1969. Property and English Legal History are his favorite teaching subjects.

With his law practice and many honors have come Mr. Opala’s way, but the two of which he seems proudest are associated with scholarship: Induction into Phi Delta Phi Legal Fraternity and into the Order of the Coif, both post-graduate honors.

Davies from Page 11

Petrochemical Division. He left Phillips to become the CEO of Commonwealth Oil and Refining located in San Antonio, Texas. In 1978, Gary returned to do what he loves most — practicing law and trying lawsuits — when he joined the firm of Martin, Pringle, Fair, Davis & Oliver in Wichita, Kansas. In 1982, Gary was lured away from Wichita to join Crowe & Dunlevy as the head of its oil and gas practice.

I quickly understood why Crowe & Dunlevy recruited Gary to Oklahoma City. He was in the prime of his law career. He had scores of clients, each of whom clearly thought that Gary hung the moon. He had a track record of winning lawsuits, and his talents were in high demand. Hence, the need for my help, as well as that of several other associates. And my fears about working in the area of “oil and gas” law quickly evaporated.

While Gary certainly possessed considerable knowledge of the oil and gas industry, he was first and foremost a trial lawyer. As such, he was just as comfortable trying personal injury or products liability cases as those involving take-or-pay claims or royalty owner disputes.

Thus began a wonderful working relationship. Over the next dozen or so years, I had the great fortune and privilege to work closely with Gary on dozens of cases. We spent countless hours together: discussing cases and strategy, working on pleadings, motions and briefs, arguing motions, preparing for trial, and trying cases. I watched Gary interact with clients and with other lawyers, I watched him take depositions, I watched him argue motions, I watched him try cases — how he controlled witnesses, how he dealt with the lawyers he commanded the courtroom. Like any good apprentice, I watched, I absorbed, I emulated and I learned. And through it all, Gary was a terrific mentor — and not just to me.

At any given time, Gary was mentoring a half dozen or so associates and young partners. His door was always open — literally — and there was a steady stream of young lawyers in and out of his office: receiving projects to work on, sitting in on conference calls with clients, watching as he edited our written work product, or talking about our cases.

When you work that closely with someone and spend countless hours working side by side over an extended number of years, you really get to know them. Incredibly, in all that time, I never saw Gary in a bad mood. To the contrary, he’s always been one of the most upbeat, positive people I’ve ever known. I also have never heard him speak negatively about another lawyer or a judge.

Of course, you cannot be a trial lawyer handling large dollar litigation without being tough. Certainly, Gary can be tough when he needs to be and is fundamentally competitive. However, no matter how many balls he’s juggling at any given time, I’ve never heard him raise his voice or yell at anyone.

Rather, he always comports himself as a gentleman and a professional. I am sure that part of this comes from his upbringing and his deep and abiding faith.

After several years working as an associate, I was made shareholder of the firm, and Gary and I became law partners. I had seen how Gary treated and advised clients and how that translated into his tremendous success as a rainmaker. Once I became a partner in the firm I also got to observe Gary’s approach to firm politics. We are all aware of law firms of all sizes that have failed to survive over the years because of disagreements over how the firm should be run and how the economic pie is divided.

Here, again, Gary led by example. His philosophy, which he shared with me early on, was to always work hard and to give more to the firm than you take out. In that way, you set an example of selflessness to your partners and you ensure the firm’s vitality. And that is precisely what he did, year after year. Indeed, Gary was one of the hardest working lawyers I’ve known and, consequently, he was always one of the highest revenue generators at the firm. And while he was well-compensated, I am quite sure that had he had a mind to do so he could have demanded a bigger piece of the pie or obtained such by joining some other law firm. But he never did that. Rather, he put the good of the firm and of his partners first.

I spent almost 27 years practicing law with Gary. Unfortunately, as I matured as a lawyer and developed my own business, I worked on fewer and fewer matters with him. Nevertheless, I still sought out his counsel and advice, and occasionally he sought mine. Once, when Gary was in his 70s, he was working on a fairly large lawsuit and the client wanted to conduct a mock trial. I was honored that Gary asked me to play the role of counsel for the other side. This was a rare treat, indeed — getting to display my skills as a trial lawyer against my mentor’s. After abbreviated opening statements, the jurors were leaning my way. Not surprisingly, however, by the time closing arguments were completed, Gary had won them over. Clearly, the student still had much to learn from the master.

Through the years, Gary and I became good friends. My father died just before I graduated from law school. In many ways, Gary filled that gap in my life, providing fatherly advice and always being there for me when I needed guidance and support. He was there when I married. And when my wife and I moved out of Oklahoma City to get educational supports for our special needs son, Gary was there for us every step of the way. I don’t remember exactly when it started, but for the last decade or so whenever Gary and I are departing after a visit or a phone call, we always end by saying three simple words to one another: I love you. I am blessed to have had such a great mentor and friend.

Gary is 83 years young, and his mind remains powerful and sharp. But his body is slowly failing him. As a young lawyer in my 20s I could barely keep up with Gary on our treks to the courthouse. His strides were long and his pace was fast. Now his constant companion is a cane and his steps are slow and measured. His law practice has slowed down too. Although he still works every day, his practice is not as frenetic as it once was. For the last decade, he has been in high demand as a mediator. Interestingly, many of the lawyers who seek his service as a mediator are those who litigated against Gary over the years — a testament to Gary’s talents and integrity.

Gary has left an indelible mark on me and on the many other lawyers he has helped along the way. Most of what I am as a lawyer today I owe to Gary. Lawyer, Mentor, Partner, Friend. He is all of those and so much more. His legacy as a great lawyer and a wonderful human being is secure. I am blessed to have had — and continue to have — him in my life.

The eyes of the aged are tired
And his eyes are growing old
But his blood runs through my instrument
And his song is in my soul
My life has been a poor attempt to imitate the man I revered
I am just a living legacy
To the leader of the band
I am a living legacy to the leader of the band.

— "Leader of the Band" by Dan Fogelberg

*Mr. Digiuli is Executive Vice President, General Counsel and Secretary of PostRock Energy Corporation
EMERGENCE from PAGE 8

people can obtain free college education and find good paying work in the tech industry. The International Criminal Tribunal for Rwanda has convicted dozens of the orchestrators of the genocide, including the individual who was a sitting head of state when the atrocity occurred, while establishing new international case law on genocide, sexual violence and incitement. The gacaca, informal local courts based on historic tribal dispute resolution mecha-

nisms, were created with a focus on confession and reconciliation to try the mas-
sive backlog of accused genocidaires. The national courts, devastated by widespread killing of judges and lawyers, are making great strides. Still, everything is far from perfect. The government is dominated by members of the Rwandese Patriotic Front, which has utilized its role in stopping the genocide as a means to maintain control over the coun-

try. It regularly exercises a heavy hand to quell political opponents, often charging these individuals with “minimizing” the genocide. Arbitrary detention and torture are not uncommon. A close friend obtained asylum in the United States after repeated harassment by local authorities for assist-
ing in United States litigation involving Hutu defendants. As a result of the govern-
ment’s efforts to maintain complete control, the rural, primarily Hutu population,

is vastly underrepresented, much as it has been historically. Despite these very real concerns, I believe that Rwanda can flourish. André Sibomana, a Huta Catholic priest, con-
cludes his book Hope for Rwanda: “Let us give Rwandans time to live and let us give children time to bury their parents. Of old age.” It is a simple wish that we all can appreciate.

OLFC from PAGE 9

encouraged participants to contact him, Ryan Houser from the PDs office or the officers of the Juvenile Law Section to express their specific ideas for change. Other conference topics addressed the Indian Child Welfare Act, delinquency issues and how to recognize, address and bring trauma related conditions in deprived and delinquent children to the Court. Attendees gathered for a social event free to members of The Juvenile Law Section and was approved for seven hours of CLE credit (including one hour of ethics) and satisfied the requirements of 10A, § 1-8-101(B)(1).

And Much More

One child told the audience via a video presentation, “I worry all the time what the ‘Big People’ are going to do next.” OLFC is more than awards, parties or even the law. It’s about giving something tangible to children, during quite possi-

bly the darkest times of their lives. As Hanna said, “I volunteer because I want to advocate for kids’ voices and I want to make sure ‘my’ kids aren’t lost in an overwhelming system.” For more infor-

mation, go to www.olfc.org.

FERN from PAGE 6

time we’ve got left. It’s a terrible race. Wish us luck. Wish the Iraqis luck.”

time for seven hours of CLE credit (including one hour of ethics) and satisfied the requirements of 10A, § 1-8-101(B)(1).

and published by the Tulsa County Bar Association. This article was originally written April 2, 2004 and published by the Tulsa County Bar Association. * Mr. Green is a lawyer in Tulsa, Oklahoma.
check, after she had returned from Texas, and, as alleged, then at a time when the full extent of her injuries should have been known to her, and that plaintiff thereby ratified her release and was bound by that conduct estopped from questioning its effect. The single authority quoted by defendants in this connection indicates the inapplicability of the charge of ratifi-

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The jury, in a 10-2 verdict for the defendants, should have been sustained.

See OLIO, PAGE 19
By Bill Gorden

Book Notes

Where Nobody Knows Your Name: Life in the Minor Leagues of Baseball
John Feinstein. Doubleday, 2014, Hardback, 368 pages, $26.95

Between the creation of Organized Baseball and the later 1950s, Major League baseball was overwhelmingly North of the Mason-Dixon Line and East of the Mississippi. The Kansas City Athletics, formerly of Philadelphia, were the exception. During this time period those covering the sport, during the Newspaper and Radio eras, were most often anchored in New York, with a scattering in the second and third cities of the baseball realm. They were often ethnic, often homers, flavorful in their language, opinionated but open to prolonged discussion. In all of these John Feinstein is a throwback. He has found the national stage, and retains his part of it. On radio, (FM 105.3 locally), he sounds the same as his writing in this and other books. His previous books were about Bob Knight, Professional Basketball and the NFL.

Here is presented Feinstein’s take on minor League Baseball. He captures the essence of this part of the sport, the instability from night to night in minor league ball, and the idea that no one wants to be in the minors, though they want to be there. His previous books were about Bob Knight, Professional Basketball and the NFL.

Here is presented Feinstein’s take on minor League Baseball. He captures the essence of this part of the sport, the instability from night to night in minor league ball, and the idea that no one wants to be in the minors, though they want to be there more than they want to be selling Kenmore washing machines or unemployed. On the scene, in the park, office, dugout and clubhouse reporting makes this a real and readable book. It is mostly positive, but sometimes you will really feel sorry for someone facing their last hurrah, the death of The Dream. There is literally a story for each minor league ballplayer, manager, and umpire. Feinstein does a good job with this.

Being from New York, however, his take is a little limited. He traveled South to the minor league, and West as far as the Midwest. Some of the players he interviews have spent time at Las Vegas or Albuquerque, but it doesn’t seem the author did. As similar as most of the minor league experience is, (it is homogenized), his author did. As similar as most of the minor league experience is, (it is homogenized), his author did. As similar as most of the minor league experience is, (it is homogenized), his author did. As similar as most of the minor league experience is, (it is homogenized), his author did. As similar as most of the minor league experience is, (it is homogenized), his author did. As similar as most of the minor league experience is, (it is homogenized), his author did. As similar as most of the minor league experience is, (it is homogenized),

Return of a King: The Battle for Afghanistan
William Dalrymple, Alfred A Knopf, 2013, Kindle Ed. $11.84

April 5, 2014 marked the last elections in Afghanistan before American troops pull out. After 12 years, the decimation is eerily similar to the end of the First Anglo-Afghan War, the subject of this book. That war stretched from 1838 to 1842. It ranged over much the same territory as the current engagement has. It dealt with much the same national culture as is found in the current Afghanistan. The tribes represented are much the same. We should not be surprised that the results have been largely the same. Parts of the current story are well worn in the press, other parts less well known. The older story, even after so much interaction between the U.S. and the Afghans, is still a mystery to many. Afghanistan wrecked British supremacy for some time in this part of the world after the Anglo-Afghan War.

Olio

From PAGE 18

to be 75 percent negligent, and the driver to be 25 percent negligent in causing the accident and the resulting injuries.

Amanda appealed, and the Court of Appeals found that the trial court erred when it refused to give her requested instructions concerning the standard of care of drivers toward children. The Court of Appeals noted that the requested instructions were based on Bready v. Tipton, 407 P.2d 194, 200 (Okla, 1965), and Lawrence v. Eicher, 271 P.2d 320, 323 (Okla. 1954). The Bready Court approved a special care jury instruction for a boy ten years and four months old. It held that it was the jury’s prerogative to consider the natural propensities of a child of his age; and that the jury must determine whether, under all the circumstances, the driver had the right to assume, without honking his horn, that the boy would remain riding on the south side of the highway in a position of safety rather than attempting to cross the road. In Lawrence, a four year old child was killed after it was struck by a car. The Court approved a “child of tender years” instruction, finding that a child of tender years demands, and the law imposes, the duty of extreme care. (Both Bready and Lawrence were promulgated before the adoption of the Oklahoma Uniform Jury Instructions.)

In 1968, the Oklahoma Legislature authorized the Supreme Court of the State of Oklahoma to prescribe and institute uniform instructions to be given in jury trials of civil cases in order to effectuate an equal and uniform administration of justice. The Legislature recognized that many judgments in actions tried by juries were reversed because of errors in jury instructions; and that in some instances, justice was withheld, delayed, or denied because of erroneous instructions.

(The obvious purpose of the OUJI is twofold: 1) to provide juries with clear, concise, uniform, and unbiased instructions to guide their deliberations; and 2) to increase the efficiency of trial counsel and trial courts by eliminating the need to draft and select proposed instructions on commonly encountered subjects.)

On December 14, 1981, the Oklahoma Supreme Court adopted the Oklahoma Uniform Jury Instructions - Civil (OUJI-CIV) with an effective date of January 1, 1983. The Oklahoma Uniform Jury Instructions were first considered in a criminal case...

Since the effective date of the OUJI-CIV, we have had two occasions to consider their application.

We first addressed the OUJI-CIV in Woodall v. Chandler Material Co., 716 P.2d 652-53 (Okla. 1986). The Woodall Court concluded: that 12 O.S. 1981 § 577.2 directs all trial courts to use the instructions set forth in OUJI-CIV; that if the trial court finds that the instructions are inaccurate, it may modify instructions to cover the subject being submitted; and that the trial court is duty-bound to submit simple, brief, impartial, and non-argumentative instructions if the OUJI does not contain an appropriate instruction. Recently, in Studebaker v. Cohen, 747 P.2d 274, 276 (Okla. 1987), this Court considered whether the addition of an “Act of God” instruction in the unavoidable accident instruction, OUJI No. 9, was proper. We found that the OUJI-CIV did not contain an Act of God instruction, and that the trial court should have given the instruction as written. Instruction No. 10.5 of the OUJI-CIV, “Care Required for Safety of Child”, states that no instruction should be given. The explanation for not giving the instruction is that:

A ‘Care required for safety of child’ instruction should not be given. The standard of care is ordinary care, and anticipation of the behavior of children is one circumstance as to what constitutes ordinary care in the situation. The essence of the instruction is that one must anticipate the ordinary behavior of children and exercise greater care for their protection.

The statute is couched in language which leaves no doubt concerning the mandatory nature of the OUJI. Pursuant to 12 O.S. 1981 § 577.2, if the OUJI contains a pertinent applicable instruction, the trial court “shall” use the instruction unless the trial court determines that the instruction does not accurately state the applicable law. Failure to use the uniform instruction is error unless the court finds an instruction to be erroneous or otherwise improper, and so states its reasons for not using the OUJI into the record.

The recognition of the propensities of children is within the common knowledge of the ordinary juror, and is an implicit factor in any jury’s deliberation in reaching a verdict. It is readily apparent that ordinary care, insofar as young children are concerned, involves the exercise of greater care. Therefore, there was no reason to include a special instruction on the care required for the safety of a child.
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