Oklahoma County Lawyers Celebrate Law Day 2016

Law Day events in Oklahoma County began on Thursday, April 28, with the annual Ask a Lawyer Program at OETA studios. Over 90 attorneys answered legal questions from 9 a.m. to 9 p.m. This year not only did attorneys answer 947 phone calls, but they also handled 241 email requests for information. This is always a successful community service event appreciated greatly by the public.

Over 400 attorneys and judges were in attendance at the Law Day Luncheon held on Friday, April 29, at the Skirvin Hotel Grand Ballroom. Featured speaker, U.S. District Judge Timothy D. DeGiusti, spoke on the importance of the *Miranda* decision, celebrating its 50 year anniversary this year. Judge DeGiusti pointed out the genius of this decision, despite concern from the dissenting judges in the case. The Young Lawyers Division presented the Liberty Bell Award to the YWCA’s Domestic Violence Victim Assistance Program’s VPO Court Volunteer Advocacy Team. This group of advocate volunteers provides moral support, safety planning, resources and an overview of victim rights to petitioners. This year’s Howard K. Berry Sr. Award was presented to two new programs at Youth Services of Oklahoma, the Community Intervention Center and Juvenile Re-entry of Oklahoma County. The CIC Program is a 24-hour juvenile processing and intervention center for youth arrested in Oklahoma County. The J-ROC program provides life skills programs for young people re-entering the community after incarcerations. Five people were presented with the Journal Record’s Leadership in Law Awards. These awardees are recognized for their community service while continuing to lead busy legal careers and include: Bradley Davenport, U.S. District Judge Stephen P. Friot, Robert Goldman, Oklahoma State Representative Randy Grau and Karen Rieger. Susan Shields was the recipient of the 2016 Journal Record Award. Her leadership skills, professional career and community service were all instrumental in receiving this award.

The Oklahoma County Law Library in conjunction with the Metropolitan Library System featured Lawyers in the Library on Monday, May 2, from 5 to 7 p.m. Volunteer attorneys met one-on-one with members of the public to assist with legal advice.

See a full photo spread on page 12.

U.S. District Judge Timothy D. DeGiusti was the featured speaker at the 2016 Law Day Luncheon.
From the President

LAWYERS PLEASE APPLY!

By Angela Ailles-Bahm

Welcome to May… May flowers… May showers…and, the end of the legislative session. Everyone, take a breath- (Although not too much, if your allergies are acting-up like a lot of folks I know, “Bless you.”)

The last day of the session is May 27. As of the writing of this article, the bill about which you have received A LOT of information, HB 3162, looks like it will die. This is the one authored by House Speaker Hickman and Senator Bingman which requires appointments to the Supreme Court and courts of criminal and civil appeals to be approved by a “select committee” of 10 legislators from the House and Senate. It was approved in the House and advanced to the Senate. However, I thought the last vote before it went to the Senate was rather disturbing; there were 40 “yeas”, 19 “nays” and 42 “excused.” You can see how your representative and senator voted. When you pull up the bill, there is a page with a web tab that says “Bill information.” On the web page, there are several tabs, History, Amendments, Bill Summaries, Versions, Votes and Co-Authors. Click on “Votes” and you will have access to the votes on the bill in the House and Senate.

In the Senate, more tinkering was done before it went to the Senate. However, I thought the last several years. They’ve managed to anger those groups, so that’s who would be doing it.”

Currently, there are 22 lawyers in the legislature; 7 in the Senate and 15 in the House, including Rep. Calvey who is running for reelection again this year. After this year, the following Senators and Representatives are term-limited and will not be running again:

Ben Sherrer is term-limited and Rep. Randy Grau decided not to seek reelection. I have made this plea publicly and am doing it again. WE NEED MORE ATTORNEYS IN THE LEGISLATURE! PLEASE MAKE IT FEASIBLE TO ALLOW YOUR LAWYERS TO RUN FOR OFFICE!!!

Although there are exceptions to everything, in my opinion lawyers generally make good legislators. Twenty-five of our forty-four presidents have been lawyers. They understand the law. They know how to read it and how to write it. They understand the separation of powers and remember their civics classes. They understand that as a lawyer, judge, or prosecutor, you are bound to uphold the constitution. Lawyers know how to mediate an issue and work together, even with the opposition. I applaud the teachers who are running for office because they want to make a difference in our State. We need to encourage and support more lawyers to do the same. Regarding the JNC, what I have heard and what I have gleaned from the proposals for changes to the process is that generally people would like more transparency in the JNC and an opportunity for public comment. The existing JNC website could be used for publication of rules, listing of candidates for comment, description of necessary qualifications, etc. Perhaps a change in where the members from the Bar and the lay members are chosen from is in order. In the March column, I wrote that former lay member David Rainbolt suggested that we choose appointees from the current Congressional districts. JNC members are currently chosen from the districts which existed in 1967 when the JNC was created. This move alone would make the commission more directly representative of the current population. I am a member of the OBA Bench and Bar Committee and have recommended to the Committee that we look at drafting proposed changes to the JNC for submission to the Board of Governors, with the goal being approval by the House of Delegates at the annual meeting. If you have some thoughts on this issue, as always, I would like to hear them. Send me an email or give me a call at 405-475-9707.
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An Olio of Court Thinking

By Jim Croy

May 18, 1916

One Hundred Years Ago


The plaintiff in error, Adolphus Butts, hereinafter referred to as the defendant was tried and convicted for having under promise of marriage, seduced one Fay Dodson, an unmarried female of previous chaste character, and in accordance with the verdict of the jury he was sentenced to fifteen months imprisonment in the state penitentiary. From the judgment and sentence he appealed by filing in this court February 15, 1915, a petition in error with case-made.

The evidence shows that Fay Dodson, the prosecutrix lived with her parents at Davis, and she became acquainted with the defendant in August, 1911. The defendant was engaged in teaching at the Hoover school house about seven miles west of Davis, and began keeping company with the prosecutrix in December of that year. From then until the following May he called on her at her home nearly every week. His custom was to come to Davis each week on Friday evening and he would call on her that night and the Saturday and Sunday following. She was then under eighteen years of age. That the following school year he was engaged in teaching school at the Wynnewood View school house, about nine miles from Davis, and while teaching there his usual custom was to come to Davis on Friday evening each week and call on her and on the Saturdays and Sundays following until the end of his school term about May 1, 1913.

The prosecutrix testified that in May, 1912, he proposed, was accepted, and promised to marry her. That relying on his promise of marriage she consented and he had carnal connection with her. That they were to be married Christmas, 1912; that a few days before Christmas he went to Edmond to visit his parents. When he returned he said, “that he had got into it with a girl up there at Edmond, and he was afraid that she would put him in the penitentiary if he married; that he was going to take the girl at Edmond to Oklahoma City and have her operated on.” He then told her they would get married the coming Easter. That she made preparations to be married Easter Sunday and later he told her that they could not get married until after his school was out; that after Christmas he called on her two or three times a week as before. That she had made all the necessary preparations for her marriage and when his school was out he said he had to go home and make arrangements there for them to live with his father and mother. That she told him her preparations for marriage were complete; that she had made up all her clothes including her wedding dress as he had asked her to do; that he then wanted her to meet him at Oklahoma City and they would be married there; and she told him her parents would object to that arrangement; that at that time she was in the family way. That shortly after the parents of the prosecutrix learned that a few weeks before the defendant wrote her that he was coming there to visit her; that he arrived there the following Sunday and visited her at her brother’s house several days; that he wanted her to return with him and that they would stop at Ft. Worth and register as man and wife, saying: “That there would be no harm in that, that lots of boys and girls did that way.” That this was his first improper proposal to her and she refused to return with him. That when she told him that she was pregnant he gave her some medicine and told her to take it. That after their first carnal connection she submitted to him nearly every time he called on her up to May 6, 1913, which was the last time she saw him. That she loved him and believed that he was in earnest when he said he was going to marry her when she yielded to him the first time, and for that same reason she yielded to him thereafter; that she never did go with any other man except that she went two or three times with a boy and no other man ever had sexual intercourse with her. That she was delivered of a child on the 5th day of November, 1913, of which the defendant was the father. On her cross examination she was asked to identify about a dozen letters, some of them she admitted writing, but claimed that they had been changed, and others she denied. She testified that on the request of the defendant before he deserted her, she destroyed all the letters that he had written to her; her parents testified to the attention of the defendant to their daughter and her preparations for marriage, and there was other testimony to the same effect.

When the state rested counsel for the defendant moved the court to direct the jury to return a verdict of not guilty, which motion was overruled and exception allowed. Adolphus Butts, the defendant, in his own behalf testified that his age was twenty-three years; that he first met Fay Dodson in 1911; that two or three months after he met her he began keeping company with her; that it might be said that Miss Dodson and he were sweethearts; that his making love to her was nothing more than one would usually do while going with a young lady, and he might have slightly expressed affection for her at times, but he never asked her to marry him, and he denied that he had ever promised to marry her; that their relations became illicit about April 1, 1912; that her parents were strict with her and they did not get out together very often. That she was passionate and he accomplished his purpose without difficulty and the same thing occurred seven or eight times before they went to Texas and occurred while there. That at her suggestion they got the medicine, suppositories. That their illicit intercourse continued until January or February, 1913, that there was nothing ever said about their marriage until she became pregnant; that he never had any idea of marrying her, although he might have told her that he loved her; that he went with other girls, but she was the only girl he ever ruined; that his guess would be that he had had intercourse with her fifty times prior to the time she claimed was the first. He did not deny that he was the father of her child.

It appears that in May, 1913, shortly after his school closed the defendant married another woman; and the prosecutrix was not corroborated as required by law, and for this reason the court erred in denying the defendant’s motion to advise the jury to acquit the defendant when the state rested its case.

Our criminal code provides that:

Upon a trial “for having, under promise of marriage, seduced and had illicit connection with an unmarried female of previous chaste character, the defendant cannot be convicted upon testimony of the person injured, unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.” Section 5886 Rev. Laws.

To constitute the crime of seduction as defined by our penal code (Section 2423 Rev. Laws.) There must be seduction of and illicit connection with an unmarried female of previous chaste character under promise of marriage, and the requirement of the statute is that the prosecutrix must be “corroborated by other evidence tending to connect the defendant with the commission of the offense.”

* * *

Proof of facts and circumstances which usually attend an engagement of marriage is sufficient for the purpose of corroborating the testimony of the prosecutrix, and the corroboration independent of the prosecutrix’s testimony need only amount to proof of those circumstances usually concomitants of the main facts, and which are sufficiently strong and pertinent to satisfy the jury of the truthfulness of the prosecutrix’s testimony. In this case the carnal
connection is admitted, but the promise of marriage is denied by the defendant. The prosecutrix testified positively that the defendant promised to marry her, and that by reason of his often repeated promise to marry her, he succeeded in seducing and having carnal connection with her. The corroborating circumstances relied upon by the state, independent of her testimony consist mainly of evidence of attentions of the defendant upon the prosecutrix in the character of a suitor for a period of nearly two years, during which time the parties kept company and acted as lovers usually do. He admitted that his attentions were unremitting for a year previous to December, 1912, when it is alleged that the offense was committed. During that interval he visited her two or three times every week, and escorted her to church and evidenced for her such partiality by his attentions as to furnish evidence from which the jury had the right to consider as being upon the alleged promise of marriage, and he continued to keep company with her for six months thereafter. Other circumstances are detailed in the evidence which the jury might properly regard as bearing upon the question of the alleged promise of marriage, all of which were competent in corroboration of this fact. It appears that this is a case where actions speak louder than words, and the question of the sufficiency of the evidence to establish the fact of a false promise of marriage in order to obtain her consent to sexual intercourse was for the jury.

It is also urged that the evidence was insufficient to show that the prosecutrix was a female of previous chaste character; that by her own admissions as indicated by the letters in evidence received by the defendant purporting to be from the prosecutrix, she had been unchaste in her previous intercourse with the defendant. The words used in the statute, “an unmarried female of previous chaste character,” mean the same in law as in morals; that is actual personal virtue in distinction from a good reputation. However, where the defendant introduces proof of specific facts tending to show unchaste character then the state may in rebuttal introduce evidence of her general reputation for chastity. A female of previous chaste character “is one who has not had sexual intercourse unlawfully, out of wedlock, knowingly and voluntarily.”

Under the statute the previous chaste character of the prosecutrix in a prosecution for seduction is a material element of the offense and must be alleged and proved beyond a reasonable doubt, and in this case the court so instructed the jury. The law presumes that every female is chaste, but the presumption in favor of the chastity of the prosecutrix in a seduction case is overcome by the presumption of the innocence of the defendant. The proof that the prosecutrix was a female of previous chaste character need not be made by evidence directly upon the point other than the testimony of the prosecutrix, but may be shown prima facie, by presumptions from other facts. In this case it was shown as an undisputed fact that the prosecutrix had always resided with her parents and went in such society as the neighborhood afforded. This was competent evidence that she was of previous chaste character and the question of the sufficiency of the evidence to establish that fact was for the jury.

May 27, 1941
Seventy-Five Years Ago
[Excerpted from In re Cully’s Estate, 1941 OK 183, 117 P.2d 126.]

It is conceded that there is but a single issue presented here for determination, and that is whether or not the trial court erred in finding that Lucinda Cully was the wife of Wallace Cully on the date of his death.

All of the parties to this action are Seminole Indians. Plaintiff testified that she had lived with the deceased, Wallace Cully, as his wife, since the year 1925 to the date of his death in 1937. Plaintiff testified further that her first husband was Jim Taylor; that to their marriage was born one child; that the child died in infancy; that she was separated or divorced from Jim Taylor according to the Indian custom; that Jim Taylor thereafter had several wives; that she thereafter married Thompson Davis; that to this marriage was born four children and only one of them is now living. It appears that Thompson Davis served a term in the penitentiary, which term was completed in 1914. Plaintiff testified that he did not return to her after he left the penitentiary, but married another woman. Plaintiff further testified that Thompson Davis thereafter had several other wives; and that he died in 1927. On cross-examination her testimony indicates that she believed that his conviction and sentence to the penitentiary terminated the marriage relation. She testified further that she had a child by one John Harjo. No contention is made of any marriage relation with Harjo, since he was a married man at that time. She testified that she had sexual relations with Wallace Cully in 1924; that a child was born to them in 1925; that when the child was born she was living in her own home, and about a month later moved into the home of Wallace Cully, pursuant to their agreement to live together; that they continued to live together until the date of his death; that he always referred to her as “the old lady,” which in Indian language means “my wife.”

Defendants introduced certain files from the probate proceeding in the case of the estate of Thompson Davis. According to this documentary evidence the plaintiff, Lucinda Cully, therein represented herself as an heir of Thompson Davis.

Defendants contend that the purported marriage between plaintiff and Wallace Cully was contracted at a time when she had a living undivorced spouse and that the same was bigamous and criminal in its inception and could not ripen into a common-law marriage; whereas plaintiff contends that her marriage with Wallace Cully was contracted in good faith, and even though said marriage was bigamous in its inception, after the death of Thompson Davis in 1927, she and Wallace Cully continued to live together until his death in 1937; that their relationship was matrimony and that their marriage became fully consummated as a common-law marriage and existed to the date of his death.

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See OIUO, PAGE 18

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Excerpts from OCBA News:
December, 1973, Part 2
Experience and Idealism

By Kurt F. Ockershauser

Our new District Judge David M. Cook, is an Oklahoma Citian through and through. He was born 55 years ago near the Presbyterian Hospital is now located. He went to public schools here in Oklahoma City graduating from Central High School in 1936. During high school he became interested in debate, public speaking and government; consequently, he went to the University of Oklahoma where he majored in pre-law studies and graduated from the University of Oklahoma Law School in 1942.

After graduating from law school he was assigned as a field artillery officer to the 24th Infantry Division and served 3½ years overseas in the Southwest Pacific. He saw action throughout the area including the Philippines, New Guinea, participated in five major campaigns and five beachhead landings. He was awarded the Silver Star, our Nation’s third highest award for gallantry as well as a Bronze Star with one oak-leaf cluster. It is an interesting coincidence that Judge Mills, whose vacancy Judge Cook is filling, also was awarded the Silver Star in World War I.

After the war, Judge Cook went into practice with his father-in-law in Wewoka. In 1954 he was elected to the Bench in Seminole County and served there until September of 1957. He resigned from the Bench because of low salary and two teenage children. Thereafter, he worked for Skelly Oil Company in Tulsa until 1963 whereupon he joined with Comer Smith, Jr., in a law practice. Subsequently he engaged in a general practice partnership until 1970 when he branched out on his own here in Oklahoma City doing predominately trial work. Off and on since 1963, Judge Cook has been an Associate Professor of Law at Oklahoma City University teaching such varied subjects as evidence, domestic relations, criminal law and procedure and property law. Consequently, not only does he bring to the bench many years of practical experience as a highly qualified trial lawyer, but also intellectual and scholastic experience through his contact with Oklahoma City University.

As so many other fine public servants, Judge Cook is dedicated to the concept of community service. When asked about ambition to higher office he remarked that it was his sole desire to impartially administer justice according to the law—which is just as well since he is going to be on the bench anyway. Interestingly, Judge Cook has challenged the lawyers here in Oklahoma County. Challenged, not in the sense of doing battle with us, for as he sees it, “...every courthouse is a temple of justice and the advocates at bar as well as the judges on the bench are equally ministers of justice, and there is much to be done.” The greatest assets Judge Cook sees for any advocate are his wisdom, courage and honesty and he is looking forward to working with the bar very closely.

But, Judge Cook is not all work and no play. He is an avid reader and to counter the “settling” effects of this pastime he is a member of the Central Oklahoma City YMCA and tries to get some exercise in regularly. While Judge Cook has survived several personal tragedies in that both his wife and daughter are deceased, he is very proud and takes great satisfaction in his son, who is also an attorney in Oklahoma County. We wish Judge Cook well and are confident that his abilities and dedication to public service are in the highest traditions of this country’s bench and bar.

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LOSE Weight and GAIN Lean Mass?

By Warren E. Jones

If you have ever attempted to lose weight over a month or two stretch, and you were successful, you probably noticed that along with your fat mass loss, you also lost lean mass, i.e., some muscle mass. Hypoenergetic (low cal) diet-induced weight loss results in 20-30% of mass lost as lean body mass (muscles) with the remaining loss being from adipose (fat) tissue.

So what is the best approach to incorporating weight loss along with preservation of muscle mass? The obvious first answer is that we use our lean mass, our muscles, in our waking hours to perform Activities of Daily Living (ADL) and we use our muscles to engage in aerobic activities (running, swimming, biking, walking, dancing, etc.) and resistance training. A less obvious (but nonetheless very important) answer is that as we lose lean mass, our Resting Metabolic Rate (RMR) decreases, and as our RMR decreases, our Daily Caloric Need (DCN) decreases, and as our DCN decreases, the fewer calories......FOOD......we get to take in to our DCN decreases, the Daily Caloric Need (DCN) decreases, and as our DCN decreases, the fewer calories......FOOD......we get to take in to avoid regaining body weight.

So, for all those reasons, it is essential for anyone contemplating a weight loss effort to do what he or she can to PRESERVE lean mass while losing fat mass. The newest issue of the American Journal of Clinical Nutrition explores an approach to achieve a loss of fat mass along with NO loss of lean mass and, in a particular situation, a GAIN of lean, muscle mass.

The researchers from McMaster University in Canada took 40 overweight young men and placed them on a reduced calorie diet (40% reduction). Half of the men consumed protein at approximately 1.2 milligrams per kilogram of body weight. That amount is three times higher than the Recommended Dietary Allowance. The other half consumed twice that much (2.4 mg/kg/day).

Both groups undertook four weeks of days per week intense aerobic and anaerobic exercise training. The training included full body resistance training and very intense aerobic and sprint training. The training was designed to promote rapid gains in fitness and strength as well as promotion of lean mass retention.

The results? Happily, both groups lost body weight. In the control group, the one consuming the lower level of protein, there was no change in lean mass. That is, even though they lost body weight, their intense training combined with their protein consumption allowed them to lose no lean mass. All of the lost weight was from fat mass.

In the experimental group, the one consuming 2.4 mg/kg per day, there was both a body weight loss AND a lean mass gain. The best of both worlds. What is more, in addition to actually gaining muscle mass during their weight loss effort, their fat mass loss was almost three pounds greater than the fat lost in the control group, the lower protein consuming group.

Because of the intense training in both groups, there were no different responses in post study strength, performance, aerobic fitness, or anaerobic power between the two groups. So, in both groups, the loss of fat mass was the SOLE contributor to the participants’ weight loss. But only in the experimental group was the fat loss greater, and only in the experimental group was there a gain in lean mass.

It would be well nigh impossible for one to consume 2.4 mg/kg/day by eating protein rich food. It would be somewhat difficult to consume merely 1.2. To meet those goals, one would need to resort to protein powders, insoluble in milk or other liquid or semi-liquid.

So, if you want to.......lose weight, it seems clear that the intense training and the consumption of higher levels of protein are keys. Check with your doctor to gauge his or her concerns about any health implications from that level of protein consumption.

Warren E. Jones, J.D., 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.
Scaling Scores = Changing Scores

By Geary L. Walke

Mike Brewer’s engaging article in the last edition of the Briefcase brings to light a national problem regarding bar exams. One way to provide for admission to multiple state bars without taking multiple bar exams, is to subscribe to the theory of scaling. But what does that mean?

Historically, each state set the method and manner for applicants to be admitted to the bar to practice law. As our world shrank, more and more people wanted to practice law in more than one state. For many years a person would take multiple bar exams, or else apply for reciprocity where it was allowed. In 1976 Oklahoma began utilizing the multistate bar exam and the scores of that test could be utilized by other states in assessing whether to admit a person to practice in that other state.

Eventually, an alternative to the diversity of models was suggested such that the bar exam results of one state could be compared to the bar exam results of all other states. Someone decided that this could not be done in a straightforward fashion, because, after all, the bar exams in some states simply were not rigorous enough to compare to . . . the more rigorous states. It would be unfair to allow the bar exam score for a lawyer from State A, where the rigors were low, to be compared to the bar exams in some states simply were not rigorous enough to compare to . . . the more rigorous states.

The true question is whether it will be Oklahoma or a non-transparent group, using non-transparent methodology, that decides who passes the Oklahoma bar exam. Mr. Brewer concludes that the split decision by the Oklahoma Supreme Court to rescind the decision for scaling, lowers our bar exam standards. Not so. Were our standards lower before the Supreme Court entered an order in 2013 allowing our tests to be “scaled?”

Research scaling. A simple google search (“scaling for tests”) will get scientific and mathematical explanations with unfathomable titles. I found a simple example on-line: a November 1992 letter found in the issue of Mathematics Teacher (p.608).

The author also warned that modifying grades to fit expectations (subjective standards), noting that such treatment could easily “dilute the integrity” of the testing. The author also warned that modification of grades must be done fairly, and also infrequently.

More to the point: does anyone know what the scaling is for Oklahoma bar exams? The decision vacating the use of alternative scoring and grading of bar exams was made in March at 2016 OK 30. The Order reads: “The order of April 9, 2013, SCAD-2013-11, implementing a new scoring model which scaled the Oklahoma raw total score to the equated Multistate Bar Exam (MBE) score for the Oklahoma Bar Examination, is hereby vacated effective June 1, 2016.”

At that time the Oklahoma bar examiners recommended there “be no change” from the scaling system that began in 2013. The consensus of three law school deans was to wait before vacating the decision. Whether to hurry or wait, is not the issue. Until we know what scaling is . . . precisely, we should not allow it.

Justice Taylor is exactly right: “The purpose of the bar examination is to screen applicants in such a way as to protect the public and to protect the reputation of the legal profession. The bar examination should not be easy. It should be a rigorous test of legal knowledge and ability.”

However, Justice Taylor concludes: “The fact that there was a greater failure rate on the most recent bar examination is not a reason to change the examination’s grading or scaling.” (emphasis added)

I submit that if the scaling is non-transparent, then it should never have been approved in 2013. So, while the results of one exam should not represent definitive evidence of the failure of “scaling,” perhaps the scaling, if non-transparent, as this writer believes, should never have been authorized in the first place. If or when it ever is authorized, it should be communicated to law school faculties, administrators and students.
It seems obvious that the individual prosecutor who prosecuted a defendant could not then serve as an appellate judge reviewing the propriety of that same conviction that the prosecutor procured. There is in fact abundant authority for this proposition. But how far in each direction does this line stretch? Suppose the prosecutor is not the individual assistant district attorney (ADA) in the office that prosecuted the defendant but someone else that had some participation in the case. Or suppose that the prosecutor-turned-judge is now multiple years removed from the DA’s office and the conviction. And other thorny issues are the questions presented in a case that was argued before the U.S. Supreme Court in late February called *Williams v. Pennsylvania.*

### The Trial of Terrance Williams

Terrance Williams had a troubled adolescence. He committed two homicides in Philadelphia. The first was when he was 17 years old and the second was shortly after he turned 18. In the second case, Mr. Williams and a co-defendant, Marc Draper, were charged with murdering and robbing Norwood.

The procedure in the Philadelphia DA’s office for seeking the death penalty required the ADA to write a memo requesting approval to seek the death penalty. In January 2006, the ADA assigned to the Williams and Draper case wrote a death penalty memo to the chief of the homicide unit. That memo set out the aggravating factors that she felt justified the death penalty then discussed, albeit briefly, certain mitigating factors. The homicide chief reviewed and approved the death penalty memo and forwarded it to the elected DA for approval. This is where the story gets interesting. Ron Castille had taken office as the District Attorney for Philadelphia on January 1, 1986, fifteen days before the ADA wrote her death penalty memo. After receiving the death penalty memo regarding Williams, Castille placed his own handwritten note at the end of the memo as follows:

> Mark: Approve to proceed on the death penalty.

> 

> Ronald Castille

The case proceeded to trial during which Mr. Williams pled actual innocence. Mr. Williams’ co-defendant testified against him and told the jury the only motivation for the murder was robbery. The jury convicted Mr. Williams of first-degree murder.

During the sentencing phase of the trial, the prosecutor argued that Mr. Williams “has taken two lives, two innocent lives of persons who were older and perhaps unable certain to defend themselves against the violence that he inflicted upon them. He thought of no one but himself, and he had no reason to commit these crimes.” This becomes important later when it is determined that the prosecutor was aware of the fact that Mr. Norwood, the victim, had allegedly sexually abused Mr. Williams as a child. The jury sentenced Williams to death.

### The Election of Justice Castille

So you might be thinking, okay what is so interesting about this case? In 1993, after finishing his tenure as Philadelphia DA, Mr. Castille campaigned for election to the Pennsylvania Supreme Court. During his campaigning, he ran as a law-and-order type candidate and bragged that he had “sent 45 people to death row.” Mr. Castille was elected to a seat on the Pennsylvania Supreme Court.

### Williams Gets a Stay

Now, fast forward to 2012. Mr. Williams’ conviction and sentence have been affirmed multiple times and prior post-conviction proceedings have been unsuccessful. On March 9, 2012, Williams filed yet another post-conviction relief petition based on what he contend was new information. That information was testimony from the co-defendant, Mr. Draper. Draper stated that the state had threatened to prosecute him for an unrelated murder and that in response to that threat he testified falsely at the Williams trial that the killing of Norwood was motivated only by robbery. Draper explained that the murder of Norwood was actually motivated by sexual abuse that Mr. Williams had suffered at the hands of Norwood. Draper had informed the detectives and the prosecutor of this during pretrial interviews. Draper’s statements to investigators and prosecutors had not been disclosed to Mr. Williams’ trial counsel, therefore raising a significant Brady violation issue.

The post-conviction relief court ultimately determined that substantial prosecutorial misconduct had taken place including among other things the Brady violations and granted a stay of execution.

### Pennsylvania Appeals the Stay of Execution

Pennsylvania appealed the stay of execution to the Pennsylvania Supreme Court. By this time, former District Attorney Ronald Castille, having successfully campaigned as a law-and-order candidate bragging about his 45 death penalty convictions, is now Chief Justice of the Pennsylvania Supreme Court. Mr. Williams moved to disqualify Justice Castille on the basis of his participation in the original prosecution. The same date that he asked for recusal was a Justice Castille issued a one-sentence order on the motion that read, “AND NOW, on this first day of October, 2012, motion for recusal is DENIED, as is the request for referral to the full court.”

After a full briefing of the case regarding both the Brady violation and other prosecutorial misconduct (but not the failure of Justice Castille to recuse), the Pennsylvania Supreme Court unanimously reversed the stay of execution.

### Search for a Standard

The oral argument of this case to focus mainly on fashioning a constitutional standard when recusal is required. Justice Alito seemed particularly troubled with the lack of a standard and stated that any justice on any court who has not express those views and perhaps have the constitutional line is going to be drawn.” He, and other justices, regularly challenged the advocates to put forward a clear constitutional test. The lawyer for Mr. Williams asserted the constitutional standard should be “when the prosecutor has direct personal involvement in a substantial decision in the case, and the issue before the court reflects upon that decision.” The state did not do a much better job articulating a standard. The state ran for cover in the *Caperton* standard of “a totality of the circumstances and the required finding of a likelihood of actual bias.”

Towards the end of the argument, Justice Alito commented that he did not see a clear rule that would encompass this particular case other than a rule that states “[a] judge is required by the Constitution to recuse in any case in which the judge had personal participation as a prosecutor.” Judge Alito then seemed troubled by that rule, calling it “far reaching.”

Frankly, I do not see a problem with that rule. Why is that too “far reaching”?

### Does One Bad Apple Spoil the Whole Bunch

A second issue is presented in the case. It arises from the fact that Justice Castille was only one of nine justices that voted to reverse the stay of execution of Mr. Williams. The state argues that his failure to recuse does not taint the outcome of the entire panel.

In *Aetna Life Insurance Co. v. Lavoie,* the Court left unresolved the question whether the Constitution is violated by the bias, appearance of bias, or potential bias of one member of a multijudge tribunal, where the biased member did not cast the deciding vote. In an effort to avoid reversal in the event that Justice Castille should have been recused from the case, Pennsylvania Attorney General Tom Corbett moved to affirm Williams’ conviction and filed a lengthy concurring opinion arguing that the Pennsylvania Supreme Court unanimous reversed the stay of execution.

The issue presented to the United States Supreme Court is not the underlying Brady violations or the whether is was a violation of the Code of Judicial Conduct for Justice Castille not to recuse. The question is whether Justice Castille’s refusal to recuse constitutes a violation of Williams’s Constitutional right to due process. In *Caperton v. A. T. Massey Coal Company,* the Court addressed the problem of recusal in connection with campaign contributions to a judicial candidate. In *Caperton,* a litigant had spent $3 million supporting a particular candidate for the West Virginia Supreme Court. That candidate was ultimately elected and then refused to recuse when a case involving that same litigant and a multi-million dollar verdict came before the court. In *Caperton,* the United States Supreme Court held that when there is an intolerable likelihood of actual bias, it is a due process violation to fail to recuse. In *Caperton,* a litigant had spent $3 million supporting a particular candidate for the West Virginia Supreme Court. That candidate was ultimately elected and then refused to recuse when a case involving that same litigant and a multi-million dollar verdict came before the court.

In Williams, like in *Caperton,* it does not appear to be any great debate that Justice Castille should have recused from the case. The question is a broader problem of when does failure to recuse creates a constitutional violation.

### Conclusion

The issue presented to the United States Supreme Court is not the underlying Brady violations or the whether or not a violation of the Code of Judicial Conduct for Justice Castille not to recuse. The question is whether Justice Castille’s refusal to recuse constitutes a violation of Williams’s Constitutional right to due process. In *Caperton v. A. T. Massey Coal Company,* the Court addressed the problem of recusal in connection with campaign contributions to a judicial candidate. In *Caperton,* a litigant had spent $3 million supporting a particular candidate for the West Virginia Supreme Court. That candidate was ultimately elected and then refused to recuse when a case involving that same litigant and a multi-million dollar verdict came before the court. In *Caperton,* the United States Supreme Court held that when there is an intolerable likelihood of actual bias, it is a due process violation to fail to recuse. In Williams, like in *Caperton,* it does not appear to be any great debate that Justice Castille should have recused from the case. The question is a broader problem of when does failure to recuse creates a constitutional violation.

### Search for a Standard

The oral argument of this case to focus mainly on fashioning a constitutional standard when recusal is required. Justice Alito seemed particularly troubled with the lack of a standard and stated throughout the argument, “[the] problem that is presented by this case is where the constitutional line is going to be drawn.” He, and other justices, regularly challenged the advocates to put forward a clear constitutional test. The lawyer for Mr. Williams asserted the constitutional standard should be “when the prosecutor has direct personal involvement in a substantial decision in the case, and the issue before the court reflects upon that decision.” The state did not do a much better job articulating a standard. The state ran for cover in the *Caperton* standard of “a totality of the circumstances and the required finding of a likelihood of actual bias.”

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IS MY LAW FIRM OWNED BY LAWYERS AND MANAGED BY LAWYERS?

By Michael W. Brewer

Just when you thought low bar passage rates nationwide were the problem for the profession, another tiger is crouching at your door. The landscape for delivery of legal services future is rapidly changing, effecting our chosen profession and is coming to your computer or smart phone. The ABA Commission on the Future of Legal Services is on the move concerning Alternative Business Structures (ABS)1. As the ABA moves forward to provide a guide for states in the regulation of ABS (also non-traditional legal service providers), aggressive entities, whose primary function is to provide only legal services but whose ownership may not only be lawyers, are entering markets throughout the United States. Among the Rules of Professional Conduct stands Rule 5.4, which prohibits non-lawyer ownership of law firms, non-lawyer management of law firms and sharing of fees with non-lawyers (except under very limited circumstances). Currently, only two jurisdictions permit forms of ABS that are exceptions to Rule 5.4. Limited exceptions exist in accordance with 5.4(b). Oklahoma also regulates the legal practice in accordance with Rules 5.4 and 5.5. By the time this article reaches publication, the comment time provided for by the ABA will be closed (notice and comments were only allowed for in about a two to four week time frame). Additionally, only ABA members could access the proposal on the ABA website. Recently relying on the proposed ABA resolution, companies like AVVO (www.avvo.com) have entered into fixed fee telephonic legal advice services in eighteen (18) of the nation’s most populous states. AVVO’s CEO has a goal to be the “Match.com of legal”.2 The rub here is that the “fixed” fee structure used by AVVO includes a sliding scale marketing fee paid to AVVO. Clients of AVVO choose a service and attorney from a provided list and make full payment up front through AVVO’s website. AVVO then notifies the attorney who contacts the client directly and completes the service. Once a month, AVVO deposits earned fees into the attorney’s operating account. As a separate transaction, AVVO withdraws from the account a per service marketing fee.3

Significantly, the ABA Commission on the Future of Legal Services is considering ABS structures that allow ownership investment by non-lawyers at all percentages and active participation and operations of legal service entities by persons who are not licensed lawyers.4 Other issues are raised when dealing with multi-disciplinary practice but that is not the point of this article. Although similar, these are not the same questions that were raised when pre-paid legal services came on the scene. Those issues were resolved by the ABA and in Oklahoma early on.5

In the near future, will traditional attorneys and law firms compete with ABS legal service providers on price and quality? AVVO CEO, Mark Britton claims “we put the needy consumer together with the needy lawyer.”6 While it may be true that there are consumer needs for legal services that are not being met by the current law firm model, does a Match.com or Tinder App scenario really provide a good solution? If the client cannot afford a $150-$250 an hour lawyer, but can afford a flat fee for the simple task they need accomplished, will they still get the same level of quality and competency? If this is the direction of the profession then does it behoove current law firm ownership to move toward ABS structures or multi-disciplinary practices in order to attract a larger piece of the market by providing more services? Does crossing state lines via the internet, even if only for a specified question and response, constitute practicing law in another jurisdiction? Rather than a line of credit at the local bank, does a lawyer now seek passive investor partners or in the case of big law, do they seek financing from a new partner in the firm that may be an investment firm or hedge fund?7

Hypothetically, a savvy entrepreneur with a good computer program and internet marketing plan could contract with numerous recent law school graduates and successful bar exam takers to provide a web based legal service provider accessible to consumers in multiple jurisdictions. It might even develop into an App you can download to your smart phone. A question that arises is who is there to mentor, guide, supervise, correct or lift up the young lawyers? What keeps the contract attorney from going outside of his area of knowledge or jurisdiction? Who has the client relationship and fee contract? This does not seem like progress toward maintaining professional competency and integrity in providing legal services to clients. By the way, AVVO plans to add many other states to its coverage by the end of the year.8

Many of the questions I raise are not new to the profession. Understand that the proposed guidelines from the ABA are aimed at regulating the issues I raise and many others. The next steps in regulation will be taken at the State Bar level. As the legal profession evolves through time and technological innovation, is this a direction that will further erode the public view of lawyers as professionals? But then again, I was worried about bar exam integrity and scaling of scores; and after all, I’m just a caveman. This world frightens and confuses me! Sometimes I just want to get off LinkedIn and other social media, get my data out of the cloud, throw away my iPhone 6 and go fishing. But I do know this…the times they are changing.8

Michael W. Brewer is an attorney, founder, and partner of Hiltgen & Brewer, PC in Oklahoma City, Oklahoma. To contact Mike, email mbrewer@hbokc.law; call (405) 605-9000 or tweet him at @attymikeb. For more information, please visit www.hbokc.law.

1 Memorandum from The ABA Commission on the Future of Legal Services to the ABA Entities, Courts, Bar Associations (state, local, specialty, and international), Law Schools, Disciplinary Agencies, Individual Clients, and Client Entities (Apr. 8, 2016)(on file with the ABA Commission).
3 Id.
4 Memorandum from The ABA Commission on the Future of Legal Services to the ABA Entities, Courts, Bar Associations (state, local, specialty, and international), Law Schools, Disciplinary Agencies, Individual Clients, and Client Entities (Apr. 8, 2016)(on file with the ABA Commission).
7 Id.
8 Acknowledgement to SNL and the late great Phil Hartman.
It was Deborah who accompanied law student Bay Mitchell to Oxford, England in the summer of 1978 for OU’s study abroad program. Their traveling companions included Don Deason, Gary Rife, Blant Brown, David Thomas, Richard J. LaFranboise, Prof. Mack Reynolds, Prof. Dale Vliet, and Prof. William McNichols.

By Chris Deason and Judge Don Deason

We were all shocked in January of this year when Glenn Frey of the Eagles unexpectedly passed away. Then came David Bowie’s death, and after that everyone’s favorite country singer, Merle Haggard, after all he had been through. Surviving, by chance, The Day the Music Died, and a rough and tumble career. Then, recently, Prince. Of all musicians, Prince. Lots of our favorite music has died in the last two years. It seems like it’s all catching up to all of us. Any list we could make would leave out many of the great musicians in our lives, but here is a list of some who have always stood out.

2015 - Lemmy, Motrhead; Scott Weiland, Stone Temple Pilots; Allen Toussaint, all the great music from New Orleans; Mike Porcaro, Toto; Chris Squire, Yes; B.B. King; Gary Richrath, REO Speedwagon; Little Jimmie Dickens, (May the Bird of Paradise Fly Up Your Nose); Sam Houston Andrew, Big Brother and the Holding Company; Lesley Gore (It’s My Party); Leonard Nimoy (the unforgettable “Bilbo Baggins”); Preston Ritter, The Electric Prances; Percy Sledge, (When a Man Loves a Woman); Jack Ely, The Kingsmen (Louie Louie); Ben E. King (Stand by Me); Ornette Coleman; and then this year.

2016 - David Bowie; Prince; Merle Haggard; Paul Kantner, Jefferson Airplane; Sine Anderson, Jefferson Airplane (before Grace slick); Jason Mackenroth, Blue Man Group; Dale Griffin, Mott the Hooiple; Mic Gillette, Tower of Power; Glenn Frey, Eagles; Maurice White, Earth, Wind and Fire; Dan Hicks, Dan Hicks and the Hot Licks; Vanity; Paul Gordon, B-52s; Chris Finley, Herman’s Hermits, Merseybeats; Lenny Baker, Sha Na Na; Sir George Martin, producer for the Beatles; Frank Sinatra, Jr.; Andy Newman aka Thunderclap Newman; Mike Lyon, Earl’s Killer Squirrel; Keith Emerson, Emerson, Lake and Palmer, The Nice; Gato Barbieri; Jimmy Van Zant, Lynyrd Skynyrd; Pete Zorn, Steeleye Span, Richard Thompson’s band; Harrison Calloway, Muscle Shoals Horns.

There are so many more. Thank you for your music.

Judge E. Bay Mitchell was appointed by Gov. Frank Keating to the Oklahoma Court of Civil Appeals in 2002. That’s why his name shows up on those retention ballots. Judge Mitchell’s path to the bench started with 14 years in private practice and then a stint as staff attorney for the Honorable Carl B. Jones of the Oklahoma Court of Civil Appeals. He is a graduate of the University of Oklahoma where he also received a J.D. in 1979. Judge Mitchell grew up in Enid. He has been married to the incomparable Deborah for over 30 years. It was Deborah who accompanied law student Bay Mitchell to Oxford, England in the summer of 1978 for OU’s study abroad program. Their traveling companions included Don Deason, Gary Rife, Blant Brown, David Thomas, Richard J. LaFranboise, Prof. Mack Reynolds, Prof. Dale Vliet, and Prof. William McNichols. It was also Deborah who told Chris Deason that Don was “wild” back then. Try as she might, Chris can’t imagine what that would look like. You may not be able to picture it either if you happen to know Don. Apparently, Elvis passed away while this wild bunch was traipsing around Europe. The King is dead.

Judge Mitchell enjoys 1960s classic rock, but he elected to share seven songs that are never skipped over in his 450 song playlist.

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My second wife Bonnie Owens and I worked together after we divorced for a period of maybe 20 years. And I managed to stay friends with another wife. And then there’s one that I don’t mess with. Everybody’s got one of those.
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– Merle Haggard

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**A Special Message from Oklahoma Lawyers for Children**

The journey children take after being removed from an abusive or neglectful home and being placed into foster care is often shrouded in mystery or misunderstanding. With articles written almost daily about abuse inflicted on the children of our community, we felt it was important to help everyone understand what that journey is really like. To help our legal community understand, we created Oklahoma Lawyers for Children’s “Walk in a Child’s Shoes” tour of the Juvenile Justice Center at 5905 Classen, just across the street from the Chesapeake campus on Monday, May 9th and a second “walk” on May 31st. This “walk” is not a fundraiser, merely a unique opportunity to help the community better understand what happens when a child is taken into protective custody.

The “walk” will take guests through the steps that a child removed from their home due to abuse or neglect goes through during their deprived case. Very few people actually have a grasp of what children go through when they enter the foster care system and what various “players” roles and responsibilities are to those children. The “walk” will start promptly at 12:45 and will conclude no later than 2:00pm. This is quite a unique opportunity since our guests will be able to attend an actual Show Cause hearing which is the very first step in a deprived case after a child has been removed from the home. These cases and hearings are closed, confidential hearings which are not otherwise open to the public or even to members of the bar not participating in the proceedings before the court that day.

If you can attend, please let me know and I will forward you additional instructions for entering the building.

Tsinena Bruno-Thompson
President and CEO
Oklahoma Lawyers for Children, Inc.
800 N. Harvey Avenue
Located at OCU School of Law, Suite 323
Oklahoma City, OK 73102
(405) 232-4453
Fax (405) 842-8822
www.OLFC.org

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**Ultimate iBar**

**The Music We’ve Lost**

By Chris Deason and Judge Don Deason

- People Who Died - Jim Carroll Band
- Mr. Jones - Counting Crows
- Babel - Mumford and Sons
- Heard It In A Love Song - Marshall Tucker Band
- After The Gold Rush - k.d. lang
- My Silver Lining - First Aid Kit
- "Thick As A Brick" (the long version is a guilty pleasure) - Jethro Tull

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**Song** | **Artist**
--- | ---
People Who Died | Jim Carroll Band
Mr. Jones | Counting Crows
Babel | Mumford and Sons
Heard It In A Love Song | Marshall Tucker Band
After The Gold Rush | k.d. lang
My Silver Lining | First Aid Kit
"Thick As A Brick" | Jethro Tull
Over the last twenty years, Mr. Koop has developed a broad-based complex civil Litigation Practice involving personal injury, insurance defense and litigation, products liability, employment law, aircraft title and finance, oil and gas litigation and construction law.

An Oklahoma native, Mr. Koop graduated with a Bachelor of Business Administration degree in Economics from the University of Oklahoma in 1991 and received his Juris Doctorate from the University of Oklahoma College of Law in 1994. He has been a frequent speaker on a variety of topics such as uninsured and underinsured Motorist law, bad faith litigation issues and the handling of personal injury cases from both plaintiff and defense perspectives.

Founded as Shartel & Wells on January 1, 1902, Lytle Soulé & Curlee, a Professional Corporation, is the oldest firm in Oklahoma City and one of the oldest firms in the State. The firm represents corporations, partnerships, limited liability companies and individuals in all aspects of a general, civil, business practice.
Oklahoma County Lawyers

Back row: Amy Livengood, Ronald “Skip” Kelly, Terrell Monks, Cecelia Spain, Front row: Vanessa Davis, Venita Hoover

Journal Record Award winner Susan Shields is presented with this year’s award by Journal Record Editor, Ted Streuli.
Celebrate Law Day 2016

OK County Fundraising Chair for Legal Aid, Dan Couch, made a report to the Law Day Luncheon crowd.

Law Day Chair Amber Martin introduced this year’s featured speaker, U.S. District Judge Timothy D. DeGiusti.

OCBF President Charles Geister presents the Howard K. Berry Sr. Award to Youth Services of Oklahoma.

The YWCA Domestic Violence Victim Assistance Program’s VPO Court Volunteer Advocacy Team was the recipient of the Liberty Bell Award.

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Danny Askins & J.B. Askins
Lytle Soulé & Curlee is pleased to announce that Steven K. Mullins, general counsel to Governor Mary Fallin from 2012 through 2016, has joined the firm as of counsel. Before serving as legal counsel to the governor, Mr. Mullins served as legal counsel to the Federal Government in various capacities for over twenty-eight years including: United States Attorney for the District of South Dakota, Senior Department of Justice Legal Advisor in Afghanistan; General Counsel to the Department of Justice Executive Office of United States Attorneys in Washington, D.C.; and Assistant United States Attorney for the Western District of Oklahoma. Mr. Mullins began his career in 1982 as a judicial law clerk for the Honorable Luther Bohanon.

Mr. Mullins is a veteran litigator having who has tried numerous and diverse matters to jury verdict as lead counsel. Mr. Mullins can provide an extensive knowledge and experience base to your legal matters involving federal and state governmental regulation, election and campaign finance law, Native American law, complex commercial disputes and general civil litigation. Mr. Mullins’ practice area also includes civil fraud defense, false claims act defense, and mediation/arbitration services.

Steven K. Mullins has joined Lytle Soulé & Curlee as Of Counsel


Weak passwords. Unsecured devices. Outdated software. Hackers look for easy ways to expose security vulnerabilities in your network. Your network and the client data it stores – from intellectual property, to case and litigation strategy, to personally identifiable information – are critical firm assets. And assets need protection.

At Dobson, we pledge to mitigate your risk of exposure and system downtime. How? We proactively monitor and maintain your network, implement and manage preventative security measures, and provide certified technical support that protects your firm – and your clients – 24/7/365.

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Protect your assets. Schedule a meeting with a Dobson consultant today.

Call 405-242-0105 today to get started.

Visit DobsonTechnologies.com/Legal-Security to schedule a meeting with a Dobson consultant today.
By Geary Walke

On March 16, 2016, President Obama nominated Merrick Garland for the United States Supreme Court. Garland is currently the Chief Judge of the US Court of Appeals for the District of Columbia. Thus far, he has been viewed by one side as a perfect nominee, but a contrary position has objected to Garland's decisions concerning gun regulation and environmental issues.

Judge Garland has some of the hallmark DNA for a justice on the Supreme Court: He was a Presidential Scholar and a National Merit Scholar, Valedictorian at Harvard, then Magna Cum Laude at Harvard Law, and member of Harvard Law Review. He clerked for Supreme Court Justice Brennan and Judge Friendly of the 2nd Circuit. He has served as an appellate judge since 1997. All wonderful items to be found on a nominee’s resume, but they are limited in what they tell us.

Judge Garland also clerked for a sitting appellate judge. Pretty typical on background of nominees, and not impressive traits. He has written an opinion as directed by the clerk’s judge or sidekick for a jury. But, learning to write judicial opinions as directed by the clerk’s judge or sidekick for a jury.

Managing many people of different disciplines (not just lawyers) is more difficult. Managing people in stressful situations takes a special personality and good interpersonal skills. He must listen, but make decisions quickly and meaningfully. He must speak, but with credible purpose and authority.

He is male. That isn’t a negative characteristic, but it is not a separately noted “plus.” After all, every single justice on the SCOTUS for 200+ years has been male and white, except for four.

It isn’t a negative, but it also isn’t a plus. He is Harvard educated. Also nothing new, and not a negative, but still, should it give us reason to pause? Harvard on your C.V. isn’t a sickness, but it is a singular source for education and experience for many of our justices serving on the SCOTUS, and I submit our vistas should be much more broad. As Lord Acton said, “Few discoveries are more irritating than those which exhibit a pedigree of ideas.” It’s irritating to me that there is a preference for a pedigree from Harvard/Yale. When ideas have a distinct and singular pedigree, without more, they lack authenticity or authority.

In April Justice Sonia Sotomayor also declared the SCOTUS needed more diversity. She said, “(I) think there is a disadvantage from having (five) Catholics, three Jews, everyone from an Ivy League school.” She added that diverse backgrounds help the justices “educate each other to be better listeners and better thinkers because we understand things from experience.” However, she went on to stress that decisions ultimately depend upon the law, not personal viewpoints or experiences, but “...a different perspective can permit you to more fully understand the arguments that are before you.”

Her other qualifications? Judge Garland clerked for a Supreme Court Justice. Yawn. That’s typical and unmeritorious in this writer’s opinion. Why? Because research and writing skills don’t easily convert to skills of persuasion or advocacy of facts and law, which should be the focus of an advocate, and a Supreme Court Justice should have experience as an advocate. A clerk has no client whose case may be advocated. Instead, it’s to stress that decisions ultimately depend upon the law, not personal viewpoints or experiences, but “...a different perspective can permit you to more fully understand the arguments that are before you.”

One notable feature on his resume is that he supervised the prosecution of the Oklahoma City terror bomber Timothy McVeigh and also the Unabomber. These are unique characteristics that no other nominee has ever had. It distinguishes him from other potential nominees in very real terms and it tells us volumes. Managing people is difficult. Managing many people of different disciplines (not just lawyers) is even more difficult. Managing people in stressful situations takes a special

But we also know that there is a disproportionate number of Harvard and Yale graduates who are given the opportunity, while other, very smart people (best and brightest) are not even considered for the opportunity. The University of Oklahoma has graduated many distinguished, intelligent and capable attorneys who proved over a life time they were up to any task given to them, but they would never have their names on the long list of potential SCOTUS nominees, much less the short list. Why not?

And, working at the ground level with real clients, real problems needing solutions, and the quest through the labyrinth of trial and appellate procedures has merit to be considered for this august nomination is necessary. At the ground level the problems look much different than in the rarified atmosphere of the courtroom, or writing an opinion according to the recipe of a judge or justice. That reality should be reflected in nominations for SCOTUS.

Who Would YOU Nominate* For The U.S. Supreme Court?

Part 3
Fellers Snider Welcomes Rebecca Wood Hunter

The law firm of Fellers Snider welcomes Rebecca Wood Hunter to the firm. Rebecca earned her Juris Doctor from the University of Oklahoma in 2002 where she was a member of Law Review and Note Editor. For the first six years after law school, she worked for Eller & Detrich in Tulsa. She has 14 years of experience in business law, thought planning, elder law, family, and divorce law. Rebecca will be based out of the Fellers Snider Tulsa office, where her practice will focus on estate planning.

OU Law Professor Evelyn Aswad Receives David L. Boren Award For Outstanding Global Engagement

Professor of Law at the University of Oklahoma, Evelyn Aswad, received OU’s 2016 David L. Boren Award for Outstanding Global Engagement at the university’s annual “A Tribute to the Faculty.” The award is designed to recognize faculty who have exhibited outstanding commitment to and support for the university’s international mission.

Aswad is the Herman G. Kaiser Chair in International Law at the OU College of Law where she teaches courses on International Human Rights Law, International Law Foundations, International Business & Human Rights and Arab Spring & Legal Reform. She joined the OU Law faculty in 2013 after serving for 14 years as an attorney in the Legal Bureau at the U.S. Department of State, most recently as the head of the Office of Human Rights and Refugees. Her research focuses on the fundamental freedoms of expression, religion, and assembly.

In her time at the OU College of Law, Aswad has developed an innovative international human rights law curriculum that combines international law and practice, current events and a focus on vulnerable communities abroad. Through her many connections with the U.S. Department of State, OU Law has been host to a number of leading voices on international human rights law issues and OU Law students have had numerous opportunities to brief State Department officials on human rights issues. Aswad also played a pivotal role in partnering with the U.S. Department of State for its pilot launch of the Diplomacy Lab program, of which OU serves as Secretariat helping manage one of the largest partnerships the State Department has with the academic sector.

In 2013, she was appointed by the U.S. Government as the U.S. Substitute Member to the Council of Europe’s Commission on Democracy Through Law, better known as the Venice Commission. The prestigious international body of legal experts convenes several times a year to develop numerous legal opinions on human rights issues arising in Europe. Aswad brought her participation in this distinguished group to OU Law through a course titled The Venice Commission: Democracy Through Law.

In 2014, the U.S. Department of State asked Aswad and the OU College of Law to host consultations with the business community, NGOs, and U.S. Government officials about the upcoming White House National Action Plan. Following the successful consultations, the U.S. Department of State requested Aswad serve on its Stakeholder Advisory Board, which consists of professionals who provide counsel on issues at the intersection of international business and human rights.

As a testament to her commitment to the university’s international mission, Aswad consistently uses her countless service positions within the international community as learning opportunities for her students. Whether by crafting courses, creating programs or taking students with her to U.S. Department of State advisory council meetings, Aswad exposes her students to real-world applications of international law.

Oklahoma-Based Hall Estill Brings Oil and Gas, Corporate, Intellectual Property and Environmental Law Expertise to Denver

Hall Estill today announced the opening of its fifth office in Denver. The new Denver office will initially be composed of long-time energy industry attorneys James J. “Jim” Bender and A.M. “Kip” Hunter III.

Hall Estill represents clients ranging from Fortune 500 corporations to nonprofit organizations and emerging businesses in 14 different practice areas. The immediate focuses of the Denver practice include oil and gas, corporate, intellectual property and environmental law.

Hunter most recently served as Principal of A.M. Hunter III and Associates along with attorney Matthew J. Schreiner, who will also be joining the Hall Estill Denver practice. Hunter has extensive commercial contract, corporate development, oil and gas and intellectual property experience including serving as Executive Director and General Counsel of Sundance Energy Australia Limited.

Bender has substantial experience within the energy industry having served as Senior Vice President and General Counsel for The Williams Companies, WPX Energy and NRG Energy and as interim CEO and director of WPX and as Chairman of the Board of APCO Oil and Gas International. He currently serves as an independent director of two publicly traded companies—Shell Midstream Partners and Two Harbors Investment Corp. as well as a senior advisory board member for Orion Energy Partners, a New York-based private equity firm focused on the energy industry.

Hall Estill is particularly proud to bring a physical presence to Denver in the same year that it celebrates the firm’s 50th anniversary.

2016 Executive Committee selected at Crowe & Dunlevy Timila S. Rother named president of firm

Crowe & Dunlevy has named Timila S. Rother president and CEO and elected its 2016 Executive Committee, including James W. Lariarome as vice president of economics and Joel W. Harmon, T. Hils and Drew T. Palmer as members. The five-member committee is responsible for managing the firm’s business activities, including long-range planning, among other responsibilities.

Lariarome, based in the firm’s Oklahoma City office, and Hills, based in the firm’s Tulsa office, are returning committee members; the remainder are new to their roles and all based in Oklahoma City.

Rother is a director and member of several Practice Groups, including Litigation & Trial, Insurance, Healthcare and Appellate. Her experience and practice focus includes commercial, class action, insurance and healthcare litigation. She is also experienced in ethics and professional liability litigation, and serves as loss prevention and claims counsel to the firm.

She is a lecturer on ethics, insurance, healthcare and cybersecurity topics. Additionally, she is a member of the American Bar Association, the Oklahoma Bar Association, Oklahoma Legal Ethics Advisory Panel and the OBA Professionalism Committee and listed in Best Lawyers for Insurance Law.

Rother is a graduate of the University of Oklahoma College of Law and obtained her bachelor’s degree in political science from The University of Oklahoma.

A director at the firm, Harmon serves in the Banking & Financial Institutions and Bankruptcy & Creditor’s Rights Practice Groups. He focuses his practice in commercial and banking law, lending transactions, workouts and restructurings, bankruptcy litigation, creditor’s rights law and defense of financial institutions. His representation of creditors presently includes national banking associations and state-chartered banks as well as industrial concerns, creditor’s groups and individuals. Harmon represents many clients as lead counsel in creditor-related litigation and financing transactions.

Palmer received his law degree from the University of Oklahoma College of Law and has a Bachelor of Arts degree from Brown University.

MICHAEL SCHADE RETURNS TO DUNLAP CODDING AS SENIOR COUNSEL

Dunlap Coddington is pleased to announce that Michael A. Schade has returned to the firm as Senior Counsel and Biotechnology Practice Group Leader. His practice includes all areas of intellectual property law including patent, trademark, copyright, technology, and e-commerce and assists clients with intellectual property matters requiring litigation, licensing, technology counseling and complex transactions.

Prior to his return, Schade served for several years as the Senior Director of Intellectual Property and Staff Attorney at the University of Oklahoma. In that role, he was responsible for the oversight and management of the University’s patent portfolio in order to maximize the economic impact of such assets to increase revenue for the University and the State, as well as other public benefit associated with a variety of software, internet, service and other license agreements.

As a former executive in the software industry, he has a unique and invaluable perspective regarding the business motivations and common practices in enterprise software. As an attorney, Palmer leverages that knowledge and experience to assist clients in navigating the complex legal issues surrounding the procurement and use of information technology.

Palmer received his law degree from the University of Oklahoma College of Law and has a Bachelor of Arts degree from Brown University.
By Roscoe X. Pound

Dear Roscoe:

Does the GOP need a convention? Why don’t they just have a coronation? G. W. OKC

Dear G.W.: Gee, G., your question came in before the Indiana results, which may brand you as the most, or least, optimistic people out there. If you’re not a fan of The Donald, no need to toss in the towel that early. I know whereof I speak. Anyone who knows me knows I’ve been a Mets fan well before the 1969 “miracle.” And what do I get for all my optimism year after year. Here we are in May and Mets are in second place in the NL East. I don’t mind the Cubs in first place either, I might add. So, ya gotta believe.

OK, back to the GOP. No law actually requires there be a convention for either party. It’s a question of their own rules. If, sometimes, it seems like they make those rules up as they go along, well, sometimes they do. Keep in mind that the rules do not necessarily carry over from one convention to the next. On the Republican side, a Standing Committee on Rules develops a working draft that is ratified by the full Republican National Committee. The ratification is usually a matter of form. Then it goes to the temporary Convention Committee on Rules and Order of Business, which has a free hand to change the rules and develop a proposal that the delegates will vote on.

Before Trump emerged as last man standing, the rulemaking aspect held some room for drama. For example, delegates are not legally bound, even back when they were made of straw. Boater even back when they were made of real straw. Probably why I never wore funny hats. Probably why I never.

I almost felt young again. Spring had sprung. The air was crisp and relatively clean. I was in a Pathmark parking lot in hot pursuit of a wayward young fellow I’d bonded out. He failed to appear at his preliminary hearing. In an endurance race, I’d have the edge. But I’m no longer really built for speed. Junior, on the other hand, blew by me whippet quick gaining some serious ground on the kid. I’d be lucky to keep eyes on them if they continued at that clip. At the end of lot, the runner bounded up to the top of a chain link fence separating the lot from a housing complex. He easily swung himself over. Junior almost cleared it with a side vault. I climbed.

The newcomer was a tall, blocky fellow in a black vest worn over a white dress shirt and jeans. He looked like he’d spent time in heavy labor. He smiled slightly and nodded to me in greeting.

"Hello Mr. Pound," he said. "My name is Ismaill Kaleka."

Junior, having rocketed the kids’ basketball into Thug 1’s head, stood with his own gun drawn. Kaleka looked at him, then me. He smiled more widely. “I’m guessing you know kannun?”

I nodded.

“Yes. Then you know that I couldn’t kill you in the presence of the elderly fellow and children.” He said something in Albanian to Thug 2, probably about collecting his pay.

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"Then you know that I couldn’t kill you in the presence of the elderly fellow and children.” He said something in Albanian to Thug 2, probably about collecting his partner and leaving.

"I’d like you to be my guest at my home and discuss some matters of mutual interest.”

"Here’s good,” I said.

"For what I want to talk about. And, as you no doubt also know, kannun forbids a guest cannot be harmed. We shall discuss forgiving the blood.

I thought about it hard. Looked to Junior, then said: "OK."

"Good. So tell me, do you think you could have outrun my man?”

I shrugged. I held my jacket out to the sides, showing I had no gun.

He laughed, “You are the man for the job.”

"What job?” I asked.

"Killing my brother of course.”

I almost felt young again. Spring had sprung. The air was crisp and relatively clean. I was in a Pathmark parking lot in hot pursuit of a wayward young fellow
In the case of Mudd v. Perry, 108 Okla. 168, 235 P. 479, it was said:

"Bishop, in his work on Marriage and Divorce, in treating of marriages formally entered into in good faith, where there was an impediment to the marriage on the part of one of the parties at the time of the ceremony, says: ‘If the parties desire marriage, and do what they can to render their union matrimonial, though one of them is under a disability of a temporary nature, this matrimonially meant will in matter of law make them husband and wife, from the moment when the disability is removed.’ . . ."

A great number of witnesses testified. From the evidence adduced it seems clear that Lucinda Cully and Wallace Cully considered themselves to be husband and wife and held themselves as husband and wife, from the moment when the disability was removed.

Defendants contend that the relationship between Lucinda Cully and Wallace Cully had its inception in bad faith; that the purported marriage entered into in good faith, where there was prior misconduct which was evidenced by the parties conducting themselves as husband and wife and held themselves out to be such before the public in the communities in which they resided. Certain merchants were called as witnesses and testified that Wallace Cully had told them that Lucinda was his wife, and they were to let her have whatever merchandise she needed and that he would pay for it.

May 31, 1966
Fifty Years Ago

The issue in this case is whether an appeal may be taken directly from an order vacating a default judgment.

On November 15, 1965, default judgment was rendered in favor of plaintiff, Josh J. Evans, against defendants, Elizabeth Wilkinson, Executrix, and Elizabeth Wilkinson, individually. On December 9, 1965, the trial court entered an order vacating said judgment, and plaintiff, Evans, did not file a motion for new trial. He seeks to present this appeal directly from the order vacating the default judgment and not from an order overruling motion for new trial.

For more than fifty years in Oklahoma lawyers and judges often had difficulty in determining whether a motion for new trial, and an order overruling the same, was necessary in perfecting an appeal. Frequently motions for new trial were filed when unnecessary, and appeals were dismissed because not filed in this Court within the statutory time. Out of this historical background came the suggestion from the Oklahoma Judicial Conference in 1962, that if motions for new trial were required in every case this would eliminate the uncertainty and at the same time give the trial judge an opportunity to review his alleged errors.

It was also believed that if any errors were made, either fact or of law, the errors might be discovered and corrected at the trial level and thus the necessity of an appeal might be avoided.

Following the Judicial Conference in 1962 the Legislature in 1963, amended 12 O.S. 1961, Sec. 651 so that it now provides in pertinent part, as follows:

“A new trial is a re-examination in the same court, of an issue of fact, or of law, either or both, after a verdict by a jury, the approval of the report of a referee, or a decision by the court. * * * * * *”

Considering the broad purposes of Section 651, as amended, it is apparent that all final orders of the trial court which are appealable, must be first presented to the trial court in Motion for New Trial, and that the appeal to this court must be from the order overruling motion for new trial.

We have carefully considered appellant’s (plaintiff’s) arguments and contentions and find them without merit. Decisions of this court rendered prior to the amendment of Section 651, supra, have been cited. These decisions, in view of the amendment, are now obsolete.

This case must be dismissed for want of jurisdiction to consider the errors sought to be presented because such errors were not preserved for appellate review by a motion for new trial and an order overruling the same.

May 29, 1991
Twenty-Five Years Ago

Appellant was convicted of First Degree Murder and sentenced to death after a two stage proceeding in Tillman County District Court, Case No. CRF-88-50. . . .

The problem which requires reversal of this case is a simple one; the State failed to comply with the constitutional requirement that all witnesses in capital cases must be endorsed at least two days prior to the beginning of the trial. Okla. Const., Art. II, § 20. While it is true that many of our rules of criminal procedure are sometimes difficult to follow or to discern the true meaning, the same cannot be said for this very plainly stated right. Such a simple requirement should have been easily carried out. Unfortunately, the State absolutely, and apparently deliberately, failed to endorse one of its most important witnesses.

The case against Appellant was at best, largely circumstantial. The murder victim was twenty-six year old Gloria Jean Jefferson who had been involved in a somewhat tumultuous personal relationship with Appellant for some time. Jefferson was found dead, having been stabbed at least fifty-nine times, with her head severed from her body. There were no witnesses to the crime, no weapon was found and there was no forensic evidence.

The evidence linking Appellant to the crime consisted of a shoe found near the body, a piece of stationary from Appellant’s place of employment, several cigarettes and a beer can in brands like those found in Appellant’s home.

The problem which we must now address concerns the State’s presentation of Juanita Conley, a sixty-one year old school teacher who was also romantically involved with Appellant, during its case-in-chief at trial. At the time of Appellant’s preliminary examination, Ms. Conley was subpoenaed by the defense as an alibi witness. When she was called to the stand, the witness was expected to testify in conformity with statements that she had previously given to police and to the State’s investigator that Appellant had been at her house the night of the murder and had not gone out all night.

At the preliminary examination, Ms. Conley changed her story dramatically. Instead of establishing the anticipated alibi, Conley testified that Appellant had come to her house at 11:30 on the night of the murder and confessed that he had just killed Jefferson. She testified that she cut Appellant’s dirty socks into small pieces and flushed them down the commode. The next morning, she drove him to a park in Texas near the Red River, where he threw a small paper bag into a trash can.

Despite the apparent value of Conley’s testimony to the State’s case, the State never moved to endorse her as a witness. On July 22, after the preliminary examination, the State filed an Amended Information with no witnesses named. A witness list filed on July 29, after the court granted Appellant’s Motion for Endorsement of Witnesses, did not mention Conley. Appellant made no preparations prior to trial, defense counsel asked the prosecutor if he planned to call Conley at trial. The prosecutor replied that he had not decided but that if he did call her, defense counsel could not claim to be surprised since Conley had originally been his witness. When the trial began, there had been no endorsement.

During his opening statement, the prosecutor told the jury that although the case was circumstantial, the testimony of Juanita Conley would tie all the evidence together. This was the first official notice to the defense that the State intended to call Conley.

When Conley was called, counsel for Appellant objected on the grounds that the witness had never been endorsed. He told the court that although he knew the essence of Conley’s testimony at preliminary, when she was not endorsed as a witness, he had not made any preparations with regard to any potential cross-examination.

At the in-camera hearing on Appellant’s objection, the State’s argument was based on whether or not Appellant could establish that he was surprised at the existence of the witness. Appellant argued that the rule established by the Constitution was mandatory and that surprise alone was not the determining factor. He told the court that while not surprised per se that the witness existed, he was surprised that she had been called as a witness, thus he was unprepared to continue. He argued that the rule was designed to protect a defendant from being forced to trial without benefit of preparation time.

The trial court held in conformity with the State’s position that because Appellant had prior knowledge of the witness, he could not claim to be surprised. The trial court refused Appellant’s request for a continuance based on the same reasoning.

See OLIO, PAGE 22

The job of the newspaper is to comfort the afflicted and afflict the comfortable.

– Ben Blackstock, Newspaper writer (1926-2016)
By Judge Allen Welch

Alexander Hamilton is back! The play Hamilton just won the Pulitzer Prize for drama. The book Alexander Hamilton by Ron Chernow (first published 2004) is currently the second best selling paperback book, and the top-selling hardback, in America. The e-book Hamilton by Lin-Manuel Miranda is the best selling e-book (and has sold so many copies so quickly that Amazon is currently out of stock). The soundtrack to Hamilton, written by Lin-Manuel Miranda and the top-selling hardback, in America, by Ron Chernow, believes - a sad commentary - that Hamilton is not your father’s rap. Hamilton is truly inspirational. The home- less orphan, infused with optimism, arrives in New York City “where you can be a new man.” Hamilton studies hard and works hard with the passion that only the hungry know because, he says, he is “not throwing away my shot” (a double entendre which Hamilton revisits later, during his preparation for the duel).

The music and vocals soar, in walls of sound. Phillipa Soo, the young lady playing Eliza, is a remarkable singer. Her voice bounces and slides seamlessly up and down the scale and across octaves as she sings the uplifting “Helpless,” after meeting Hamilton for the first time. “Look how lucky we are to be alive right now,” she encourages Hamilton.

Burr and Hamilton banter frequently. One scene describes their collaboration as co-counsel for the defendant in a historic murder trial, and includes this exchange:

Hamilton: Gentlemen of the jury, I’m curious, bear with me, Are you aware that we’re making history? This is the first murder trial of our brand-new nation. I intend to prove beyond a shadow of a doubt -

Burr: Hamilton, sit down! Our client Levi Weeks is innocent. Call your first witness. That’s all you had to say.

Burr was initially a mentor, of sorts, to Hamilton. “I practiced the law,” Hamilton enthused, “I practically perfected it. I’ve seen injustice in the world, and I’ve corrected it.”

But Hamilton is not your father’s rap. Hamilton almost steals the show. He warns the patriots that “when push comes to shove, I’ll send a fully armed battalion to remind you of my shot.”

There are reasons why Hamilton is the most influential founding father never elected President. He had poor judgment at critical junctures, and needlessly alienated people because he was righteously certain about all of his opinions. Hamilton was also the culprit in America’s first sex scandal. It seems that the hard-working Hamilton declined the perpetually pregnant Eliza’s invitation to “go upstate and take a break.” He needed to stay home and work, instead. Returning home alone one night, he met a young lady who sobbed “My husband’s doing the wrong thing, beatin’ me, cheatin’ me, mistreatin’ me, suddenly he’s up and gone, I don’t have the means to go on.”

Well - who saw this coming - one thing led to another. As a matter of fact, young Maria Reynolds - and her husband - concoct a scheme whereby the irresistible Maria would come on to Hamilton who, as they hoped, fell into their trap - repeatedly. Then Hamilton paid hush money to his consort and her husband, in exchange for their silence. When Hamilton’s adversaries cornered him about perceived misappropriations, Hamilton published a 95-page pamphlet in which he declared that he was not guilty of “pecuniary speculation... My real crime is an amorous connection with the blackmailer’s wife, for a considerable time with his privity and connivance...”

Hamilton’s colossal and self-centered ego turned him into a laughing stock - at Eliza’s expense - and shattered any chance he had of becoming President. “You married an Icarus” Eliza’s sister Angelica told her, “He has flown too close to the sun.”

That tragedy was soon followed by a greater tragedy, when Hamilton’s son was killed in a duel. As their son languished, his anguished mother Eliza sings “There are moments that the words don’t reach. There is suffering too terrible to name. You hold your child as tight as you can and push away the unimaginable.”

Hamilton, the musical, has some rap. And jazz, and love songs, and pop, and soaring music and lyrics. Anyone who appreciates music will find something or, more probably, many things they’ll treasure.

The Civic Center box office told me that Hamilton will begin a national tour at the end of this year and that “it is possible that Hamilton will come to Oklahoma City sometime in 2018.

Hamilton was one of the greatest experiences of my life. I hope that all of my friends and loved ones enjoy the rich experience I enjoyed, and see this play - the greatest history lesson ever!
SHOWDOWN IN VIRGINIA OVER VOTING RIGHTS

By Miles Pringle

On Friday, April 22, Virginia Governor Terry McAuliffe (Democrat) signed an Executive Order giving formerly convict-ed felons in Virginia the right to vote after completion of their prison sentences and any associated probation or parole. In his announcement, Gov. McAuliffe made several references to Virginia’s troubled history with voting restrictions, specifically referencing the state’s enactment of a poll tax. See Harper v. Va. State Bd. of Elections, 383 U.S. 663, 66 S. Ct. 1079 (1966). (McAuliffe could not benefit from this move until the 2021 gubernatorial election (both U.S. Senators from Virginia are Democrats (Tim Kaine and Mark Warner)). The move is expected to affect approximately 200,000 individuals.1 To put this in perspective, Virginia had 5,196,436 registered voters in 2015 (down from 5,428,833 in 2012).3 Not everyone eligible to vote registers to do so. Exact numbers are hard to come by, but depending upon the year between 78% (2008)4 and 66% (2015)5 of eligible voters register nationally. Not everyone registered to vote does so. Virginia turn out in 2014 (senatorial election) was 41.6%, 43% in 2012 (presidential).6 Thus, depending on the election cycle, the number of new voters could be 110,000 in a presidential election or 55,000 in non-presidential elections. This is in 2012 (presidential).6 Thus, depending on the election cycle, the number of new voters could be 110,000 in a presidential election or 55,000 in non-presidential elections.

Several pundits and rivals have accused the move as an attempt to help Hillary Clinton in the fall, as Gov. McAuliffe was Co-Chairman of her 2008 presidential campaign. If that was the sole motivation, it was likely an unnecessary move, as Hillary has several paths to winning in November with or without Virginia. To win the White House in 2016 the Republican Nominee will need to gain 64 electoral votes from Mitt Romney’s showing in 2012.7 Virginia has 13 Electoral Votes. Thus, any Republican will need to not only win Virginia, but hold all the swing states Romney won (e.g. North Carolina), and come up with 51 additional Electoral Votes. For example, the Republican Nominee will need to flip Florida, Ohio, Wisconsin and Virginia. A tall order for any candidate, but likely impossible for a candidate like the President-Elect Donald Trump whose unfavorable rating is around 65%8 (although Hillary also has high unfavorable ratings of around 54%).9 Furthermore, it appears that the Governor’s move will be held up in litigation. On May 2, 2015, Virginia Republicans announced that they will file a lawsuit challenging the Executive Order.10 In short, the lawsuit hinges on whether the Governor has the authority to issue a blanket order, or whether restoring voting rights must be performed on a case-by-case basis. It is unclear how long this challenge in the courts will last, but it may prevent the Orders’ implementation until after the presidential election (if ever).

Virginia Republicans may have watched history into a political trap. Hillary likely doesn’t need Virginia in the fall, and may take it without any additional voters. There is no senate seat up for grabs, and, because of gerrymandering, the congressional seats do not appear to be in play. Furthermore, this policy is easily made into a racial issue as minorities, especially African-Americans, are affected by America’s incarceration policies. Virginia imprisons 1,422 African-Americans per 100,000 compared to 283 white Americans per 100,000.11 Virginia Republicans are buying bad publicity for this and future elections. If the executive order is upheld, those affected individuals (along with their friends, families and moral sympathizers) have been given incentives to vote against state Republican candidates. If struck down, Gov. McAuliffe has time to fashion another remedy before the 2017 gubernatorial election and/or make it a strong campaign issue in future elections. Regardless, Virginia Republicans appear to be standing in the way of minority voting rights. Not a palatable position in 1966, much less so in 2016.

In Gov. McAuliffe’s Executive Order the right thing to do? Yes. Even Virginia Republican Party Chairman John Whitbeck acknowledged “[t]hose who have paid their debt to society should be allowed full participation in society.”12 America’s rate of incarcerating its citizens is morally repugnant. “It is well known that, with nearly 5 percent of the world’s population, the United States has close to 25 percent of the world’s prisoners.”13 American prosecutors win 95% of their cases (90% without

2 See Stolberg and Eckholm, Supra Footnote 1.
6 See Virginia Dept. of Elections, Supra Footnote 3.
8 Held v. Office of Election Law, 383 U.S. 663, 86 S. Ct. 1079 (1966) ("Those who have paid their debt to society should be allowed full participation in society."); Maryland v. Hunter, 353 U.S. 307, 77 S. Ct. 711, 1 L. Ed. 2d 796 (1957) ("It is well known that, with nearly 5 percent of the world’s population, the United States has close to 25 percent of the world’s prisoners.")
11 See Stolberg and Eckholm, Supra Footnote 1.
Building a faith-based response to domestic violence

By Timothy Tardibono

It is no secret that Oklahoma ranks high in several categories related to domestic violence. The YWCA and allies have done a remarkable job educating Oklahomans on the challenges women and children face from violent men that are supposed to be loving and noble partners in developing a stable family. Driving east on I-44 toward Broadway Extension, the YWCA billboard blares the startling message that 1 in 4 women are subject to such abuse. Additionally, Oklahoma continues to rank near the top for states where women are killed by their male partners. Compounding the damage done to Oklahoma’s mothers, wives, daughters, sisters, aunts and grandmothers is the data showing the traumatic consequences to children who are front-row witnesses to the abuse. Nationally, data shows that upwards of 10 million children are exposed to domestic violence at home. Unfortunately, this learned, abusive and manipulative behavior is showing up in teenagers as young women are increasingly reporting that their boyfriends are threatening violence or self-harm if she breaks up.

It is no secret that Oklahoma ranks high in church attendance, it is safe to conclude that some of the female and child victims of domestic violence are also sitting next to us in Sunday school, worship services and small home-group meetings. Fortunately, faith leaders are speaking out encouraging other religious leaders to not only take the issue seriously from the pulpit but also build infrastructure into the fabric of the church body that creates a safe place for victims and provides helpful resources. One such leader is Russell Moore who is President of the Ethics and Religious Liberty Commission of the Southern Baptist Convention which is the leading faith denomination in Oklahoma.

In recent years, Moore has been forceful in raising the issue to faith leaders within and outside the Southern Baptist fold. Moore recognizes that the church’s response should not only be reactive. He asserts, “The time to start addressing domestic violence is not just reactively in a crisis but proactively, starting in our children’s programs. We should teach our boys to reject as unworthy of Christ the sort of ‘bro’ culture that sees women as objects, whose value is assigned by their sexual attractiveness or availability to men.”

Attorneys can assist their faith leaders by providing education on the issue of domestic violence. Here are a few ideas on places to start:

1. Attorneys should first familiarize themselves on the domestic violence/sexual assault resources in their community. The OCBA’s Lawyers Against Domestic Abuse Committee has developed information on such resources and can connect you to LADA Committee partners already providing safe, supportive resources for women and children trapped in cycles of abuse.

2. Attorneys can educate their pastors and other church leaders about those community resources and encourage their faith leaders to be bold in addressing the issue. If a pastor is struggling with where to find a Biblical model for a man that proactively prevents abuse, one should look no further than the Old Testament story of Ruth.

When clergy usually discuss the story of Ruth it tends to be in the context of the devotion a non-Israelite woman Ruth, gives to her Israelite mother-in-law Naomi despite dire circumstances. When Ruth and Naomi’s husbands die leaving them as widows in a foreign country, Ruth does not forsake Naomi but follows her back to Bethlehem stating, “Your people will become my people, and your God will become my God.” (Ruth 1:16) But sometimes overlooked in the story is the male figure Boaz who should be highlighted by pastors as a male model against domestic abuse in three different ways.

First, Boaz was a leader in the community, both civically and in business, but did not shy away from wielding that influence in positive ways. In the custom of the day, farm owners allowed widows to come behind the hired male harvesters allowing the widows to gather excess grain. When Boaz was made aware of Ruth working in his field to gather grain for her and Naomi, he used his influence and power to prevent her abuse. Knowing that his male employees had the capacity and opportunity to take advantage of and abuse Ruth, Boaz made it clear to his employees that such abuse would not be tolerated telling Ruth, “I will tell the men to leave you alone.” (Ruth 2:9) He also encouraged Ruth to not seek out other fields to work but to stay in his field where he could use his authority to shield her.

Boaz’s model should encourage business and civic leaders to create workplace policies which will prevent and discourage domestic violence while also creating consequences for abusive activity.

Secondly, in the story, Boaz demonstrates self-integrity and rejects the opportunity to abuse Ruth himself when he could likely get away with it. Boaz’s honorable response sets a clarion call for men to follow in rejecting the abusive opportunities power can bring.

Thirdly, at the end of the story, Boaz uses his influence to challenge a male relative of Naomi to be accountable for his family responsibility to care for Ruth. When the other man refuses, Boaz does not leave Ruth without recourse but takes action himself to secure Ruth’s future.

These three assertive actions by Boaz sets a “Boaz Standard” for discouraging abuse that could be highlighted by faith leaders as a model to replicate, especially by the men in their congregations.

3. Finally, attorneys should consider playing the role of the Good Samaritan and offering their pro-bono legal services to help guide and advocate for a fellow church-goer who has become a victim. According to studies, the highest lethality danger for an abused woman is during and immediately after her efforts to escape and protect her children. Such a dangerous time is clearly a point when the legal community needs to urgently step in and invoke legal protections.

These three steps are not the only steps attorneys can take to help their faith leaders embrace the fight against domestic violence, but hopefully they are three initial steps to help faith leaders develop a Boaz Standard against domestic violence in their congregations and surrounding communities.

Timothy Tardibono is a Member of OCBA’s Lawyers Against Domestic Abuse Committee and the President of the Family Policy Institute of Oklahoma which is a nonpartisan, nonprofit research and education organization focused on protecting families and strengthening communities to improve the well-being of Oklahoma’s children and families. For more information on how FPIO can assist faith leaders on topics like domestic violence, foster care, human trafficking and children of incarcerated parents please email info@okfamily.org or call 405.664.6514.
"I will sleep better!" "I did not understand how important these papers were until today!" "I needed to do this for a long time, now it is done." "Thank you team!"

These are just a few of the comments of the 114 satisfied clients of the 7th Annual MAKE-A-WILL and Family Financial Planning Workshop this year. This is a community legal service project that recently helped families in Oklahoma City create paths for the distribution of wealth from one generation to the next through Wills and Trusts. These families also had the opportunity to do Advance Directives and Family Financial Planning.

This project was designed to work through OKC eastside churches to reach potential clients, and prepare them. There were 25 churches involved this year. The effort to connect with families in the churches was led by Pastor Lee Cooper of Prospect Baptist Church and Ms. Espanola Bowen of Church of the Living God (PGofT). Under their efforts, coordinators and pastors of the churches initiated a MAKE-A-WILL Sunday service, followed by meetings to prepare the clients. Volunteer attorneys were assigned to churches to help with legal questions and discuss confidentiality concerns.

The volunteer attorneys came from the Association of Black Lawyers, the Oklahoma County Bar, and the Oklahoma State Bar. It was the efforts of these volunteer lawyers that were the key to making sure all of the pieces came together. It has long been apparent that 90 percent of the African American population does not have wills or trusts; nor the routine ability to pass assets down from one generation to the next. The purpose of MAKE-A-WILL is to provide this opportunity to the citizens of Oklahoma City.

An additional component is to advise families on how to manage their day-to-day finances and to help ease them out of debt. Attorney Ken Maillard with four other volunteer financial advisors met individually with 48 clients and provided day-to-day family financial management advice. The exit surveys provided many positive comments about the quality of this assistance.

This year, MAKE-A-WILL had 17 volunteer attorneys and 45 law student volunteers from Pro-Bono programs of the OCU and OU Law Schools (22 from OCU and 23 from OU). A key component of these student volunteers was the leadership provided by the Black Law Students Association at OU Law, Professor Danne Johnson at OCU Law, Professor Kathleen Guzman and Attorney Rebecca Hamrin from OU Law to find and encourage law students to volunteer.

Legal Aid of Oklahoma (LAO) and the Southwest Urban Foundation (SWUF) were the sponsors of the effort. Attorneys Rick Goralewicz and Cindy Goble led the effort from LAO by providing the templates, draft forms and by recruiting the legal secretaries and notaries required to make the project flow. The SWUF under the leadership of Executive Director Leonard Benton provided the financial and facility resources to support the attorneys, students and staff.

Assistant Dean Stanley Evans of OU Law stated, "This was our best effort ever! The 114 families served were a dramatic increase over our previous best effort of 94. Watching the clients walk out with Wills, Trusts, Advance Directives, and quality financial advice, was truly a moving experience." He added that, “We have now served over 600 families over the past seven years and brought them to a state of being able to preserve and distribute wealth under a family plan. This effort is changing the estate and family financial dynamic in OKC.” Dean Evans is the overall legal coordinator of the event.

“The law students expressed extreme joy over the opportunity to observe and to join in the spirit of servant leadership and community awareness showcased at the workshop – a great learning experience,” stated Professor Johnson.

Oklahoma attorneys and law students from OCU and OU contributed over $37,200 worth of free services on this day alone and probably another $22,000 in the preparatory work. The exit surveys showed client satisfaction rates ranging from 86 to 99 percent over twelve categories.

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BAR OBSERVER from PAGE 16

intelectual property counsel to individ-
ual clients, universities, large pharma-
ceutical and manufacturing companies, and start-up biotechnology companies. He is currently an Adjunct Professor and Lecturer of Law at the University of Oklahoma College of Law. Schade received his J.D. degree and his B.S. in Biochemistry, magna cum laude, from that same institution.

Dunlap Codding P.C., with offices in Austin, Chicago, Oklahoma City, and Washington, D.C., serves sophisticated international, national, and regional cli-
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Dunlap Codding is a member of Primerus, an International Society of Law Firms.

OU Law Announces MLS Program in Oil, Gas and Energy Law

The University of Oklahoma College of Law is pleased to announce the launch of a Master of Legal Studies (MLS) degree in Oil, Gas and Energy Law. The program, which is designed for non-law-
yers, will enroll its first students in fall 2016.

The MLS program is a 32 credit hour graduate degree that can be completed in 15 months. Of the 32 credit hours, 28 will be offered completely online. The final four credits are earned during a one-
week intensive session hosted at the OU College of Law, providing ample oppor-
tunity to meet and network with other students in the program before gradu-
atation. The combination of online and on-campus learning provides students the flexibility to attain an OU Law degree from anywhere in the world.

The degree program offers a competi-
tive advantage to anyone who assembles land interests for the energy industry, negotiates oil and gas contracts, deals with mineral rights or works closely with oil and gas or energy attorneys.

OU Law is an international leader in oil and gas, natural resources and energy law. In addition to the new MLS, the school offers a Master of Laws degree in energy and natural resources through its John B. Turner LL.M. Program, along with J.D. certificates in both areas as well. OU Law hosts the annual Eugene Kunz Conference on Natural Resources Law and Policy, the largest conference of its kind in the coun-
try, and is home to the Oil and Gas, Natural Resources, and Energy Journal (ONE J), the first journal of its kind.

Tax attorney Lacey Stevenson joins McAfee & Taft

McAfee & Taft has announced that tax attorney Lacey Stevenson has joined its Tax and Family Wealth Group. Her practice encompasses tax planning for business, including complex business transactions and estate and tax planning for high net worth individuals and fam-
ilies.

Stevenson graduated Phi Beta Kappa with a bachelor’s degree in political sci-
ence from the University of Oklahoma in 2012 and went on the graduate magna cum laude from the Baylor University School of Law. While in law school, she was named to the Order of the Barristers and was a member of the Baylor Law Public Interest Society and the Interscholastic Moot Court Team. She also worked as a law clerk for the civil division of the United States Attorney’s Office for the Western District of Oklahoma.

Kirk & Cheaney adds new associate

Kirk & Cheaney is pleased to announce Amber Brock has joined the firm as an associate. Ms. Brock received a Bachelor of Science in Business Administration degree from Oklahoma State University in 2006 and a Juris Doctorate Degree from the University of Tulsa College of Law in 2009. She has broad experience in civil litigation, including family law, insurance defense, employment, probate, bankruptcy and many other areas.

OU Law Moot Court Program Ranked In Top 15 For Third Consecutive Year

For the third consecutive year, the Blakely Advocacy Institute ranked the University of Oklahoma College of Law’s competition program as one of the top 15 in the nation.

OU Law’s ranking qualifies the school for the prestigious Kurth Tournament of Champions, which is reserved for the top 16 schools in the country to compete for the Moot Court National Championship. The tournament is slated for January 2017 in Houston. This year, 75 OU Law students participated in 30 teams travel-
ing across the country to more than 20 competitions.

In combination with OU Law’s status as a Top 20 Best Value Law School, and the college’s recent rise in the latest U.S. News and World Report rankings, the Blakely Advocacy Institute ranking demonstrates the OU College of Law is one of the nation’s leading public law schools.

Bass Law Names 2016 Class of Summer Clerks

Saige Lee, The University of Oklahoma College of Law – Lee, ranked in the top 10% of her class, is a member of the Dean’s Honor Roll. She holds a summa cum laude Bachelor of Arts degree in Political Science and Leadership Studies from the University of Texas of the Permian Basin.

Harry Warden, The University of Oklahoma College of Law – Warden is a member of the Dean’s Honor Roll and Phi Alpha Delta. He holds a summa cum laude Bachelor of Business Administration degree in Entrepreneurship from the University of Oklahoma.

JUDGE from PAGE 8

suassively, that it is essential to our system of justice that appellate review is conducted through private collegial deliberations by a panel of judges. No litigant should be able to look inside the deliberative process. Allowing a litigant to conduct an inquiry into how appellate courts make their deci-
sions would have an overwhelming chill-
ing effect on the deliberative process that 
sultutes a due process violation. It would be impossible for the Court to apply the

test of a bias justice, that equals structural error 

s viewed to be getting lost in the debate that is

s were to be rewritten in the debate is that Vir-

s, the buildings they designed there.

books found reviewed here were often

JUDGEXform PAGE 20

prisoner population grew 11.7%.21 Oklahoma has the second-highest incarceration rate in the United States.22 This is a moral and budgetary crisis.

Gov. McAuliffe’s Executive Order does not fix the underlying problem of over incar-
ceration. It does begin to address the issue that in a free country, when individuals have paid their proscribed debt to society with years of their lives, those individuals should be allowed to regain that society. What appears to be getting lost in the debate is that Virginia had one of the most unforgiving policies in the nation. It was one of only four states (Florida, Iowa and Kentucky) which continue to prohibit felons from voting after all prison, probation and parole time has been served.23 The Executive Order brings Virginia into the national norm as the new policy is also practiced by thirty-one other states, including Oklahoma.

Perhaps Gov. McAuliffe has overstepped his authority, and any reinstating of voting rights must be done on a case-by-case basis. Regardless, his action is a smart move polit-
ically and morally the right thing to do.

21 Id.

SHOWDOWN from PAGE 20

Till We Have Built Jerusalem

Me, Earl, and the Dying Girl


This is a multi media phenomenon that is sort of strange, but might just rock 
you. There is a book and a movie. It is originally an adolescent novel, and is, 
(sor of), written for that audience. The movie could be classified that way as 
well, but both book and movie are, well, exceptional. The movie was a Sundance 
award winner.

They are about adolescence and unex-
pected and expected death. They are about 
the meaning of adolescence, the adoles-
cence of Americans. They are about 
adolescence of the lead character, who vowed never to have a friend in 
High School so as to avoid complications. 
They are about doing the right thing when you don’t want to but realize you are going to. They are, or initially seem to be, non-religious. This is left 
to the reader/watcher. They ring true to this 
reviewer as to today’s young people. 
They are both profane in parts, but not gratuitous to the story. Your kids/grand-
kids hear worse in the halls.

By Bill Gorden

Book Notes

Judge Vicki Robertson used to say the books found reviewed here were often “eclectic” which is a very true from time to time. This is one of them. This book examines the careers of three architects who spent time in Jerusalem, and the buildings they designed there. Not everyone is interested in that. They were each somewhat fascinating people, but not dramatically out of the ordinary.

The key is the time they were all in operation there, from the period just before World War One to around 1937. During this time, after early Zionism had brought a bigger Jewish population to Palestine, and before the flood run-
ing from the Holocaust, There was a varied mixture of culture in Jerusalem, and despite the occasional riot, on a day to day basis there was something of an accommodation to be had of various viewpoints, Jewish, Muslim, Christian, and perhaps none of the above. This is what the author is really studying. The description of the architecture is out-
standing, and particularly the discussion of the politics, both local and world-
ly, which affected that architecture. The story, though, makes one wonder if there might still be some way to go back to a normal that might accommodate toler-
ance. Yes, it is ecletic.
Managing your mineral rights can be a challenging endeavor. With limited time and experience, you might find yourself leaving money on the table. As one of North America’s leading mineral managers, it’s our job to navigate the complexities of the industry and help you get the most out of your assets.

Helping Make The Most Of Your Mineral Rights.

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