The Oklahoma County Young Lawyers ("YLD") have been busy in the community once again this year. The YLD directors are comprised of solo practitioners, in-house legal counsel, and attorneys from small and large firms in Oklahoma County. Our goal has been to make a difference in Oklahoma County beyond what we do as a profession through volunteer opportunities, charitable giving, and service to the community. Throughout the last year, the YLD has given many hours of community service and also met its goal of donating $20,000.00 to the Regional Food Bank of Oklahoma. I am extremely proud of the YLD’s accomplishments over the last year and look forward to the YLD continuing to make a difference in the community under the leadership of Curtis Thomas.

In the last few months, the YLD has sponsored a reception for new members of the Oklahoma County Bar Association. The purpose was to encourage involvement from young lawyers in the YLD and in Oklahoma County. We had approximately 20 new attorneys attend the reception and the response was enthusiastic. Several new lawyers will be joining the YLD Board of Directors and serving the community through our various projects. We are excited about the increased involvement and look forward to the contributions of the new members. A special thanks to Judge Patricia Parrish and Robert Nelon for taking the time to impart their knowledge and wisdom to the young lawyers and encouraging involvement with the Oklahoma County Bar Association.

“Striking Out Hunger” Bowling Tournament.

YLD Reception for New Members of the Oklahoma County Bar Association

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2015 OCBA Dinner Dance – September 4

Be sure to get your tickets for this year’s Annual Dinner Dance taking place at the Skirvin Hotel Grand Ballroom on September 4. A social hour, with cash bar, will begin the evening at 6:30 p.m. Dinner is slated for 7:30 p.m. As promised, there will be no long speeches, just introductions of Incoming Young Lawyers Division Chair, Curtis Thomas, and Incoming President, Angela Ailles Bahm. Entertainment will be provided by the incomparable duo of The Elderly Brothers!

Tickets are available by going online to www.okcbar.org and clicking on the Events page or by calling the bar office at 236-8421.
For the President

Time for a Healthy, Productive, Respectful Debate

By Jim Webb

OCBA President

I had planned my last official column as President to be a renewed call for us – including me – to increase our pro bono work. Until I started drafting this column, I was embarrassingly unaware of the current version of Rule 6.1 of the ABA Model Rules of Professional Conduct (not Oklahoma’s) declares that every lawyer should aspire to provide at least 50 (yes, 50) hours of pro bono services – annually – and there is a separate responsibility to contribute financially to organizations that provide legal services to persons of limited means. For some of you pro bono superstars, 50 hours would be a light load. For others (present company included), it’s a call to action, action, and more action.

Given recent events, though, I thought I would be remiss if I did not give an update to the potential Constitutional crisis brewing at the Capitol. The call for pro bono work will have to wait.

Last month I mentioned Representative Kevin Calvey’s “Request for Interim Study Proposal” directed primarily at the Oklahoma Supreme Court. As a reminder, our colleague Rep. Calvey strongly believes the Supreme Court’s “actions [in multiple unnamed cases] constitute an abuse of power, judicial tyranny, usurpation of the role of the Legislature, and legislating from the bench.” He has elsewhere referred publicly to us Justices as “politicians in black robes, masquerading as objective jurists.”

You may remember that Rep. Calvey has five hoped-for outcomes of his political- ly-driven study:

1) Demonstrate that the judicial selection process is tilted toward a tiny percentage of Oklahomans who are members of the OBA special interest group.
2) Suggest that statutory reforms are appropriate, necessary, and attainable.
3) Discuss other problems with our state Supreme Court, including gross mismanage- ment of funds designated for internet net- works.
4) Discuss problems with mandatory membership in the Oklahoma Bar Association, with respect to uphold the core of who we are as a people.

Editorial

Corrections and Apology!

By Geary Walke-Editor

I take full blame for ruining Judge Allen Welch’s nearly perfect article about Fred Boettcher in the July issue. On PAGE ONE we included two photos. Either the photos were wrong, or the caption was wrong. Both likely. I made two mistakes.

What the photos should have been these:

From the President

Time for a Healthy, Productive, Respectful Debate

By Jim Webb

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2) Suggest that statutory reforms are appropriate, necessary, and attainable.
3) Discuss other problems with our state Supreme Court, including gross mismanage- ment of funds designated for internet net- works.
4) Discuss problems with mandatory membership in the Oklahoma Bar Association, with respect to freedom of conscience and lack of financial account- ability of the OBA.”

After I wrote my arti- cle, but before it was pub- lished, Rep. Jeff Hickman, the Speaker of the House of Representatives, approved Rep. Calvey’s interim study request. In what I under- stand to be a relatively rare move, the Speaker assigned the interim study to the Committee instead of a House committee. (The Speaker apparently did this with a few other studies this year as well, so this is not necessarily an aberration.)

While the date has not been public- ly announced, I am told the study will be scheduled for a half day sometime before November 11. Unless the Speaker intervenes, as the requestor of the study, Rep. Calvey will largely, if not exclusively, direct and dictate what information comes before the House and how it will be presented.

The issues raised by Rep. Calvey are extremely important, not just for lawyers. He and his supporters are calling for impeachment of certain Oklahoma Supreme Court Justices, along with significant changes to how we select judges going forward. Rep. Calvey has made it abundantly clear he wants to change the make-up of the Judicial Nominating Commission – or do away with it altogether. Should this interim study result in proposed legislation next session, we are potentially talking about serious shifts in public policy and laws that would have a significant impact on every single Oklahoma citizen.

So, the question is whether Rep. Calvey will allow – or even encourage – an open, honest, frank debate of the issues. I hope so. As a lawyer, Rep. Calvey certainly under- stands the inherent wisdom of the adversarial process that is a hallmark to justice in America. We have determined that the best approach to finding the truth is to allow all the facts to come out and all the arguments to be made before the finder of fact makes a determination.

Frankly, it does not matter if you are a Democrat, Republican, or Independent. It does not matter what type of law you practice, or whom you represent. As lawyers, and as citizens, every single one of us has an outright responsibility to be well-informed on the issues raised by Rep. Calvey. Eventually, it looks like we will be voting, whether directly or indirectly, on some or all of them.

In the meantime, Rep. Calvey, if you are reading this, please structure the interim study so that the House – and the public – hear all the sides of the issues you have raised, all the facts, all the history (including the scandals that brought us where we are), and all the pros and cons of the current system and any potential changes.

Please let these matters be openly, fairly, vigorously, and respectfully discussed – by a multitude of varied voices, not just one. These issues are just too important to be treated any other way. They go to the very core of our system of government. They go to the very core of who we are as a people.

As always, remember I have an open door policy. I welcome your ideas on how we can improve the OCBA. Please email me at jim.webb@chk.com or call me at 935-9594.

Events & Seminars

SEPTEMBER 4, 2015
Annual Dinner Dance
6:30 p.m., Skirvin Hotel
Grand Ballroom

SEPTEMBER 7, 2015
Labor Day Holiday – Bar Office Closed

DECEMBER 3, 2015
OCBA Holiday Reception
5 – 7 p.m., Robinson
Renaissance Food Court
And The Prophet Said . . .
Time Capsule Opened

By Judge Russell Hall & Geary Walke

In The Oklahoman for January 28, 1937 it was reported that a cornerstone in the Civic Center would be filled with articles to be opened in 2012, after a 75 year sleep. The article noted that a city directory, newspapers and a box of old coins from the present (1937) courthouse, a parchment scroll bearing names of county employees, and a prophecy would be included in the time capsule.

In The Oklahoman for February 17, 1937 it was reported that the cornerstone was finally being sealed at 10 a.m. that day, after many delays, and included a reference to “all papers taken from the cornerstone of the old courthouse.” (The “old” courthouse is a reference to the courthouse in existence and operation in 1937, which burned down in the mid 1940s, after having been replaced by this new courthouse in which we still work.)

Recently, a guest appeared at Judge Russell Hall’s court chambers and delivered a copy of a document entitled “History and Prophecy.” There was a notation on it reading: “Original in cornerstone of Oklahoma County Courthouse built in 1936-1937.” Judge Hall was unable to get an explanation of any detail from the person delivering the document. Whether the document was the same as the one in the cornerstone of the Civic Center, or entombed in the cornerstone of the Courthouse, is unknown.

Since 1937 has come and gone it seems reasonable that the cornerstone at the Civic Center would be opened on schedule, and that this prophecy is the same as the one in the Civic Center. But, we were unable to research that point and would rather leave you with the mystery of whether there is another prophecy in the Courthouse cornerstone.

The prophecies you will read below are very interesting. Fashion, television, air conditioning, travel modes, oil and atomic energy, population, debt, politics and global changes are predicted. Some are predicted accurately. Enjoy.

History and Prophecy

Below we have penned a picture of what the world is today and what we believe the world to be like in the year 2012. But, we were unable to research that information.

The common modes of travel are automobile, railway and airplane. The average cross country traveling speeds are for the automobile, 60 miles per hour, railway 60 miles per hour, and airplane 150 miles per hour.

The population of Oklahoma City is estimated at 215,000. You will have a population of 400,000. The bonded indebtedness of Oklahoma County is $2,917,635.80. Your bonded indebtedness will be $6,000,000.00.

There are 77 counties in Oklahoma at the present time. We predict a consolidation of counties into larger units of government designed to eliminate duplication of effort.

There are two major political parties now, the Republicans and the Democrats. Both parties base their platforms on principles of government, the economy, and foreign affairs.

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Natives v. Immigrants 2015

(Part 1 of a Series)

By Michael W. Brewer

With some trepidation, I told Judge Geary Walke about three years ago that I would agree to write a series of columns on the ongoing battle between Natives and Immigrants. At the time, people were discussing building fences and kicking out immigrants; has anything changed in three years? But wait, this column is not about political viewpoints or politics, it is about technology and lawyers using technology to communicate.

This battle line is drawn between digital natives and digital immigrants and how they communicate to each other and within each group. According to Wikipedia, www.wikipedia.org, (if you don’t know what Wikipedia is, you are likely a digital immigrant and probably recognize a reference to something more tangible like a book entitled Encyclopedia Britannica) digital natives are the generation of people born during or after the rise of digital technology and digital immigrants are people born before the advent of digital technology. While these categories aren’t drawn along strict boundaries and do not follow along generational descriptors such as Boomers and Millennials, they are fairly descriptive of the status quo. We probably won’t go into Generation Z communication issues because they were born with chip implants and Apple or Google watches on their wrists.

For our purposes, we can consider digital natives as those born with the iPhone in hand, and digital immigrants as those of us who still remember dialing a telephone on the wall (landline) to speak with someone. It is also worthy to note that Wikipedia is only partly correct in any of its definitions, but that seems to be ok with millions of readers. Not to be lost on this discussion, apparently these terms were coined in 2001 by Marc Prensky, an education consultant who was studying and commenting on the decline in the American education system.

While anthropologists and sociologists discuss natives and immigrants in terms of culture, worldview, social institutions and organizational communication; what these columns will focus on is the use of technology in the practice of law and in the daily lives of lawyers. I’m not so interested in why natives and immigrants don’t communicate the same way as much as how they do communicate similarly and the paths for immigrants to become natives or at least communicate effectively with natives. We will see if we can bridge some gaps.

Over the next several months, we will discuss in no specific order, use of social media, blogs, websites, marketing, mobile lawyering, security issues on the internet, electronic billing, use of social media for selfies or food picks, office technology and courtroom technology. Lines may be blurred along the way but we will see if we can’t help educate some immigrants along the pathway to communicating like or with natives. Let’s see if we can’t enhance some of their dreams of communicating in the same ways. To paraphrase an old saying: When in a native digital society, do as digital natives do and purchase the best technology you can.

The diagram is borrowed from somebody’s twitter feed. I’d love to give the creator credit; however, I don’t honestly recall when and where I borrowed it, but it was public domain with no strings attached. A quick review of this should help confirm for you, if you don’t already know, where you are on the scale of digitally immigrant to native.

Michael W. Brewer is an attorney, founder, and partner of Hilgen & Brewer, PC in Oklahoma City, Oklahoma. To contact Mike, email mwbrewer@hilgenbrewer.com or call (405) 605-9000. For more information, please visit www.hilgenbrewer.com
The defendant, Roger W. Cunningham, was charged in the district court of Oklahoma county, February 4th, 1935; and he filed a plea of not guilty. He knew nothing more about the disappearance of his wife than what he had been told by the defendant himself.

The undisputed facts established by the prosecution were that the defendant, Roger W. Cunningham, had married the deceased, Eudora Cunningham, in 1935. At the time of their marriage, she was a school teacher; and he was employed as an instructor in the Central High School at Oklahoma City and also a night job at the Biltmore Hotel. Later he secured a job as an inspector for the Federal Housing Administration in connection with the loans which were being made on newly built houses in Oklahoma City and vicinity. He was acting as such inspector at the time of the tragedy herein.

The stepfather and mother of the deceased were Mrs. and Mrs. Joel P. Stokes, who were partners in the Stokes Realty Company. They had been instrumental in the development of the Twin Hills addition near Oklahoma City and had built their own home in that addition. During the time the Stokes Realty Company was building the various houses in this addition, the defendant was employed by them in connection with this work. He made out reports, kept the time cards on the employees, and checked the material used in the construction of the houses in said addition. During this time, the defendant and his wife (the deceased) built a house adjoining the home of the Stokes at an approximate cost of $18,000. Practically all of the money necessary for the construction of this home was borrowed from a loan company, and payments on this loan were to be made monthly by the defendant.

On March 6th, and which was signed by the defendant as an inspector for the F. H. A., he had gone out to the Stokes at an approximate cost of $18,000. Practically all of the money necessary for the construction of this home was borrowed from a loan company, and payments on this loan were to be made monthly by the defendant.

The defendant continued his work for the Federal Housing Administration in connection with the loans which were being made on newly built houses in Oklahoma City and vicinity. He was acting as such inspector at the time of the tragedy herein.

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LAWYERS FOR LEARNING COMMITTEE AUGUST UPDATE

By Jake Krattiger

The Lawyers for Learning Committee has had a good response from new members so far this summer, but is still looking for additional volunteers to act as “reading buddies” for elementary school students in the Oklahoma City Public Schools for the 2015-16 school year. For several years, members of the Committee have read with 2nd and 3rd graders at Lee, Adams, and Rockwood Elementary Schools. The students who read with Committee members are at a pivotal point in their educations as they prepare for the state-mandated standardized tests that dictate whether they are able to proceed onto the 4th grade. For various reasons, many of these children are not ready for their standardized reading test. These students greatly benefit from the individual attention and reading practice that members of the Committee provide.

Last year, the Committee had several volunteers at each school once per week. For the upcoming academic year, we hope to recruit new members and increase the number of reading buddies at our current schools. The principals at Lee, Adams, and Rockwood have all expressed their enthusiasm and gratitude that members of the Oklahoma County Bar Association are returning their year to read with their students. Although this Committee provides an important service to Oklahoma City’s students, there is no mandatory time commitment for this Committee. Some members read weekly, and others participate on the Committee as a firm or in groups with different members reading each week. If you are interested in participating on the Committee but are worried about the time commitment, please do not hesitate to sign up. If you are willing to serve as a reading buddy, we can make it work with your schedule. Anyone interested in joining the Committee and serving as a reading buddy may contact Committee Chairman Jake Krattiger at jkrattiger@gablelaw.com or (405) 568-3301.

Quote of the MONTH

“Jury trials are not an exact science. A lawyer’s decision about what witnesses to call or not call at trial is an exercise of professional judgment, and lawyers must make informed and sound judgment calls in the heat of the moment at trial. . . . This Court is not in the business of playing the Monday-morning quarterback. Just because counsel for the OBA would have defended the case differently, does not mean Respondent Starr did not provide his client with competent representation. . . .”


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investigation by the officers of the defendant’s actions prior to his wife’s disappearance, it was learned that he had been seen looking at this sewer ditch on the Friday prior to his wife’s disappearance on Monday evening. The evidence showed that the defendant had taken some time probing in this ditch with long, steel rods, but he was unable to find the body. On the night of March 24, 1939, the officers related to the defendant all of their findings; and at that time, the defendant took a piece of paper and pencil, and drew a map of the area where the sewer ditch had been constructed, and marked the place on the map where he told them the body of the deceased would be found. At the bottom of the map, he wrote the following: “Take her to Street and Draper’s.12 After he had showed the story, he wrote out in his own handwriting a confession of the murder, which reads as follows:  
March 24, 1939  
Monday night March 6th, 1939, about 7:30 p.m. I strangled my wife Eudora and buried her with a layer of gravel in the ditch on the 3600 west, between 11th Street and Park Place. May God have mercy on my soul.  
After this I drove to the Post Office Bldg. and stayed till 11:00 and then I went home and packed three traveling bags with her clothes and took them to the south end of the May bridge. We played poker all night.  
Roger W. Cunningham  
March 24, 1939  
I make the above statement of my own free will. No threats have been made against me and no promises made to me.

As this confession was made, the officers excavated the ditch at the point described in the map and found the body of the deceased. The officer who was with the defendant when he took the body to the park, and his companion, testified that the defendant said, “I killed her, I couldn’t help it.” The evidence showed that he had been chopped to death. The clothing contained in the three bags which the defendant had thrown off near the river at the south end of the May avenue bridge and threw them off on the west side of the squatter shacks-then I drove home.

Roger W. Cunningham  
March 24, 1939

The defense introduced evidence to show that the defendant was a graduate of Central High School of Oklahoma City. That while he was a student in the high school, his conduct and actions seemed peculiar; that he was 515th among the 525 graduating students in 1923. He attended the University of Oklahoma; and while a student there in 1924, contracted a case of syphilis. That he took treatment for this disease in 1924 and 1925 from Doctor Ben Cooley of Norman. He left school and entered business in Oklahoma City. He continued to take treatments for this disease, and was pronounced cured in 1927. He married at that time and divorced his wife about a year and a half later. The defendant’s father was a prominent physician in Oklahoma City. In 1932 he was taken ill and removed to the Mayo Clinic in New York. He continued to take treatments for this disease, and was pronounced cured in 1932. He married his present wife and had two children. He remarried and has two children. He has been married three times, and has children of his own. He has been married and divorced three times.

The defense introduced evidence to show that the defendant was a patient, receiving treatment. After the discharge of the defendant after his marriage to Eudora so far as the record discloses. That when his marriage was dissolved as a part of the time that the defendant was a patient at the State Hospital, he attended school at the University at the same time. The defendant introduced Dr. James A. Willse as an expert psychiatrist, who testified, in response to a hypothetical question, that he had no opinion whether the defendant was sane or insane. He considered the evidence that the defendant had been insane at the time he killed his wife. To refute this, the state introduced the testimony of Dr. George L. Borecky, who testified that he had taken a Wassermann test of the defendant, and that the test was negative and that he had the defendant under observation since the 29th of March, and that in his opinion the defendant was sane at the time of the trial and at the time of the homicide on March 6th.

These two doctors were the only expert witnesses who testified concerning their opinion of the sanity of the defendant. Other medical testimony was introduced concerning the effect of the disease of syphilis on the human mind. The state showed that there were 15 per cent of all the people who contract the disease of syphilis became affected in their central nervous system. That when the disease got in the central nervous system it could be arrested but never cured. The defendant received treatment and was pronounced cured in 1932 and 1933. After June 7, 1933, the tests that were taken of his blood and spinal fluid for this disease, and also was given the malarial treatment at the State Hospital. The proof shows that the defendant had the disease in his central nervous system during the time of his treatment in 1932 and 1933. After June 7, 1933, the tests that were taken of his blood and spinal fluid for syphilis were negative.

The testimony showed that on the Friday following the homicide on Monday, the defendant had a party of men at his home where they played poker all night. A person cannot but conclude from an examination of this record that the defendant was wholly without emotion. But the evidence does not fairly permit any other conclusion than that the homicide was the willful, deliberate and premeditated act of a person who understood the nature and consequences of his act. We have held that the test of criminal responsibility for committing an act which is declared to be a crime is fixed at the point when he played the death, even to the narrow details, lingus with right and wrong as applied to the particular act, and to understand the nature and consequences of such act.  

The defense of insanity, at best, presents a question of fact for the jury; and when they have settled that question by a verdict, and then found the defendant guilty of murder in the first degree, and not by reason of insanity, it is not for the court to disturb the verdict of the jury. The instructions covering the theory of the crime of murder in the first degree are sufficient to cover any instruction which this court might give.

August 3, 1965
Fifty Years Ago

**Excerpted from State v. Ferris, 1965 OK 123, 405 P.2d 156.**

This is an original proceeding by Patricia Kay Medlin (petitioner) for a writ prohibiting Weldon Ferris, Judge of the District Court of Kiowa County, Oklahoma (respondent) from further exercising jurisdiction in cause numbered and filed 868-D, Charles Medlin v. Patricia Kay Medlin. The alleged basis for the writ is that the District Court of Kiowa County had acquired prior jurisdiction of the parties and subject matter in the above styled action by virtue of an action petitioner had earlier filed in that court, and consequently an intangible conflict of jurisdiction would arise if both courts were permitted to act.

Petitioner asserts the respondent improperly and arbitrarily denied her special appearance and denial of jurisdiction to the District Court of Kiowa County, Oklahoma.

The circumstances in the present matter are that petitioner and Charles Medlin (Charles Carl Medlin), herein referred to as Charles, are wife and husband, and on April 8, 1965, petitioner filed suit against Charles in the District Court of Oklahoma County for separate maintenance, and support of herself and her minor child, and at the same time a summons and order for temporary separate maintenance was issued by the District Court of Washita County. The summons and order were returned “not found.” On April 12, 1965, Charles filed a petition in the Childen’s Court of Oklahoma County charging the child was neglected and after an adverse finding thereon petitioned the District Court of Kiowa County to declare it an alias summons and order were issued out of the Oklahoma County District Court and this process was returned “not found.” On May 10, 1965, a further alias summons and order were issued, directed to the sheriff of Oklahoma County, and these were served on Charles on May 13, 1965.

In the meantime, on May 7, 1965, Charles filed his action in the District Court of Kiowa County, above described, against petitioner for separate maintenance, and a summons and an order directing immediate delivery of the child to Charles was issued. This summons and order were served on petitioner on May 10, 1965, in Oklahoma County. On May 13, 1965, the Kiowa County District Court issued a summons and order directing the sheriff of Oklahoma County to physically take the minor child from petitioner and deliver the child to Charles. Charles delivered the order to the sheriff and while the sheriff was attempting to execute this order Charles was served with the second alias summons and order issued by petitioner’s Oklahoma County suit.

Charles has filed a special appearance and plea of no jurisdiction in the Oklahoma County suit. This has been denied and he has given notice of intent to appeal to this court. Petitioner filed her special appearance and plea of no jurisdiction in the Kiowa County suit. This has likewise been denied and she has given notice of intent to appeal to this court.

Petitioner urges the District Court of Oklahoma County has jurisdiction of the parties and subject matter, but that respondent assumes to act and proceed and try the Kiowa County suit and exercise judicial power in conflict with the jurisdiction and order of the Oklahoma County District Court. Under the facts we have a situation where two suits for separate maintenance and similar equitable relief are pending between the same parties, in which the same relief may be granted.

The separate maintenance action filed by petitioner in Oklahoma County and the summons issued therein were instituted and issued almost a month prior to Charles’ Kiowa County action. Petitioner diligently procured the issuance of additional alias summons in an effort to secure service on Charles and did finally secure effect upon him. The parties, the subject matter and relief asked are the same in both actions. The District Court of Oklahoma County has jurisdiction and authority to grant full, complete, and adequate relief on all issues. By reason of the prior filing of petition and issuance of summons in the Oklahoma County District Court, that court first obtained jurisdiction of the controversy. 12 O.S. 1961 § 151. To permit continued procedure in the two courts would create discord in the course of the courts and would cause confusion to exist between the courts and litigants therein.

There is no necessity for an action in the District Court of Kiowa County in order that the rights of Charles be protected. This is a situation where further proceedings in the Kiowa

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Profiles in Professionalism:

JERRY TUBB: MAKING IT A BETTER DAY THAN BEFORE

By Alisa White

Jerry Tubb, 76, states, “It is amazing where life takes you.” The son of a Midwest City drug store owner, Tubb graduated from Midwest City High School in 1957. He went “down the road” to OU and graduated with a B.A. in 1961. After undergrad, he had to figure on what to do when his dad bought a motorized wheelchair.

When asked about cases that stand out in his mind, Tubb remembers his direct involvement in the creation of a business model still commonly used. During the Penn Square Bank failure period, Tubb represented an oil and gas company who was a clear candidate for bankruptcy. Tubb had the idea to approach the creditors to obtain more credit and to work cooperatively with the creditors to drive one hundred more wells. Tubb notes the plan ultimately failed but it would have worked had the gas prices not plummeted. Nonetheless, “The case offered a new approach that has been followed since,” says Tubb.

Tubb admits he often feels like a mediator. He’ll enter a room full of lawyers representing creditors. He’ll listen to their demands and look over their list of “deal breakers.” Tubb says, “It’s my job to turn those ‘deal breakers’ into ‘deal makers.’” He explains, “My job is turn difficulties into consensus” and to “craft a tool from that we push forward.”

Tubb has three pieces of advice for young lawyers. First, “Be dynamic. Change happens all the time and you need to stay current.” He notes he recently had a case with parties in five states. They were able to save money and work together most of the case just by using email. “We never would have worked a case predominantly through email in the past but now technology is an integral part of our practice and we need to know how to use it.” He added, “Be open to and knowledgeable about the next ‘email capability’ in technology.”

Second, Tubb says young lawyers need to have certain qualities. Be “forthright, candid and qualified and commit to the calling of the law rather than the business of the law.” Finally, Tubb says all attorneys should serve in local and state professional organizations. “As a member of our organizations, you are reminded about the importance of service,” he states.

Tubb has been a longtime supporter of the Oklahoma County Bar Association Board of Directors from 1967-1969. From 1981-82 he was president of the county bar association. He remembers the time as being a period of incredible growth for the bar association. “It was a wonderful experience because so many ideas and plans were being proposed and everyone said ‘yes’ when we asked them.” He remembers in 1967 the dues were just $7.50. “[The county bar association] wasn’t considered a significant organization. To be serious, we needed to raise the dues, so we did, to $25.00 a year. That made us a serious organization.”

Tubb prefers not to be in court but when he is, he doesn’t have a preference between federal and state court. He notes though, obviously because of his volume of bankruptcy cases, he finds himself mostly in federal court. He served on the Magistrate Selection Committee for the United States District Court for the Western District of Oklahoma from 1998-2007. “We always tried to enhance and improve the judicial branch of our government,” he recalls. Tubb says it is a shame that there are such distinct differences between the federal and state courts. “Federal judges are better equipped to discharge their duties than state judges.” He continued, “Our state court judges need more help and support.”

Tubb counts several federal judges as personal friends. United States District Judge David Russell says, “Jerry and I have been friends for over 40 years. Professionally, Jerry has handled countless complex business transactions and is just an outstanding lawyer.” Judge Russell continued, “Jerry is a tough negotiator and very smart. He has overcome a lot and is one of the strongest people I’ve ever known.” When asked whether the Judge and Tubb shared any interesting stories, the Judge laughed and said, “Several of us invested in a well around 1982 or ‘83. On New Year’s Eve, we learned that the well had struck an oil creek. We were so excited and celebrated with a glass of champagne. As it turned out, that well never even paid for the bottle of champagne.”

Judge Russell summed Tubb up by saying, “I can’t think of one person that doesn’t respect and like Jerry.”

David Pomeroy, an attorney with Andrews Davis and a former partner of Tubb for almost thirty years, echoed Judge Russell’s comments. “I joined Fuller and Tubb in 1969 and stayed until 2006. Jerry is a capable and competent lawyer and an even better human being.” Pomeroy continued, “Jerry and I had many an adventure together; he is the best person I know.”

Over the years, Tubb’s hobbies and interests have revolved around his two kids, his five grandchildren, various business ventures, and community organizations. “I started my own oil company and it tried to do well, but didn’t,” he said. He is a founding member and current chair of the Board of Directors of the Lynn Health Science Institute, which conducts clinical trials and comprehensive medical research studies. Tubb married his wife, Charla, 55 years ago when he was a senior in undergrad and had his oldest daughter, Jennifer, also an attorney, during his first year of law school. Years ago, he and his wife bought a home in the mountains of southern Colorado and he says being next to the Cucharra River with his children and grandchildren has always been one of his favorite things.
Profiles in Professionalism:  
SID DUNAGAN

By Amy Stipe

Few Oklahoma attorneys are held in such high regard as Sidney G. Dunagan. The man has done it all – and with such dedication, integrity, professionalism and heart. I consider myself very fortunate to have been his right hand for the past sixteen years. To many others, Sid has been a wonderful mentor, valuable client counselor, formidable opponent and a dedicated and tireless servant of the Bar, all while maintaining the very definition of professionalism. This recurring feature in the Briefcase, profiling the most professional of Oklahoma’s attorneys, begins to be written about Sid Dunagan.

Sid moved to Tulsa, Oklahoma from Illinois when he was ten years old. He became an Eagle Scout at the early age of 12 and, in high school, he ran track and cross country. As an undergraduate studying political science and history, Sid attended the University of Tulsa on a partial track scholarship and, later, an academic scholarship. While in college, Sid delivered the morning and afternoon newspapers for the Tulsa World and Tulsa Tribune. Sid was a member of the PSI Kappa Alpha fraternity and served as President of the Intracratery Council, foreshadowing his future as a committed and successful leader. The Perry Mason television show inspired Sid to attend law school at the University of Tulsa, during which time he worked as a law clerk making $1 per hour for the firm he would later help manage, Gable Gotwals.

After law school, Sid was one of few direct commissioned officers for the United States Army where he spent five years of distinguished and dedicated service with the Judge Advocate General’s Corps. Sid served with the First Infantry Division and the First Field Force, north of Saigon along the South China Sea, and later spent three years in Frankfurt and Heidelberg, Germany. Sid tried dozens of cases while in the JAG Corps, prosecuting and defending drug, assault and murder cases. Sid was awarded the Bronze Star on two separate occasions, as well as the Meritorious Service Medal.

Sid returned home to Tulsa in 1973 and joined the Gable Gotwals law firm as an associate. As a young lawyer, Sid worked on a variety of civil litigation matters and had some amazing mentors and colleagues along the way, including Ellis Gable, Charles Gotwals, Doug Fox, Jim Sturdivant, Judge Joe Morris, Chuck Baker, John Barker and many other Gable Gotwals leaders. Sid was always revered as very smart, hard-working and focused. So focused, that Sid’s very thorough preparation for an oral argument once got the best of him. While arguing a case in 1976 before Judge Dale Cook, Sid raised his arm and with a pointed finger said, “Therefore comma …”. He froze mid-sentence and then went right on with his argument.

Throughout his career, Sid has handled cases in nearly every area of the law, including pipeline disputes, airplane crashes, contract disputes, banking matters, employment class actions and, like many of the Oklahoma attorneys of his vintage, the 1982 failure of Penn Square Bank. I often tease Sid when he begins a story with, “Back in the Penn Square Bank days …”, though, from what I understand, those years provided many Oklahoma lawyers with a lot of experience, proficiency and, of course, billable hours. Sid has also dedicated much of his time to handling pro bono cases, including his work with Oklahoma Lawyers for Children.

As if he was not doing enough practicing law full time and raising, with his late wife Lynn, two wonderful children, Janna Dunagan Gau and Hugh Dunagan, Sid was tirelessly serving the Oklahoma and American Bar Associations. Sid served on the Oklahoma Bar Association Board of Governors from 1984-1986 and as OBA Vice President in 1987. In 1994, Sid enjoyed a productive and successful year as President of the OBA. He also served as President of the Tulsa County Bar Association (1990-1991), a TCBA Foundation Director (1991-1997), and was State Chair of the Oklahoma Fellows of the American Bar Foundation (1989-1991). Sid was also an Oklahoma Bar Foundation Trustee (1992-1993) and a member of the Oklahoma County Bar Association. Sid was selected as the Outstanding Senior Member of the TCBA in 1992. In addition to his state and county bar association leadership positions, Sid has served in the ABA House of Delegates (1993-1994) and has been a member of the American College of Trial Lawyers since 1989. He also taught bar review courses for twenty years and has presented dozens of Continuing Legal Education lectures and papers during his career. Throughout this time frame, Lynn served alongside Sid and was highly involved in the Tulsa and Oklahoma County Bar Auxiliaries and served as President of the American Lawyers Auxiliary (now American Lawyers Alliance).

In 1995, Sid moved his family and law practice to Oklahoma City to establish and then manage the new Gable Gotwals office here – committing to stay for only two years with a plan to return to Tulsa. In fact, Sid did not even sell his home in Tulsa when he moved. Sid opened the Oklahoma City office with partners Eric and Linda King, and was soon joined by Rob Robertson and David Kearney. Following a law firm marriage, then “divorce”, with the Mock, Schwabe, Waldo, Elder, Reeves and Bryant law firm, the new Gable office was established and growing, adding Steve Barghols as a partner and me as the first (and only) full-time associate. The rest, as they say, is history. Twenty years later, the Gable Gotwals Oklahoma City office now has 25 tremendous attorneys and a fantastic staff supporting them. I would not want to work anywhere else.

To list the legal honors Sid has received would take more space than allotted for this article so I will just list a few. Sid was inducted as a Fellow of the American College of Trial Lawyers in 1989; he has been named one of the Best Lawyers of America for twenty years; he was honored by the Oklahoma Bar Association with the Earl Sneed Award in 1981 and the John E. Shupp Award for Ethics in 2007; he received the Outstanding Senior Alumnus Award from the University of Tulsa in 2005; he also has been named one of the Top 50 Lawyers in Oklahoma and an Outstanding Senior Lawyer by the TCBA in 1991-92.

I have many great stories about working with Sid for so many years – like the deals we had with Gerry Spence (of Silkwood fame) in a pipeline explosion case; the fact he told me to tell him he was color blind until after I had spent many hours putting color coded demonstrative exhibits together for a trial; the time the whole office pitched in to purchase Sid some blue jeans for casual Fridays as a joke (I think he wore them once just to be nice); the time I discouraged Sid from titling a proposition in a Daubert brief, “Oops” (Sid kept the title and we won the argument); the time we deposed a Spanish speaking eye witness to a plane crash while standing in a cow pasture in the heat with an interpreter from the Latin Grammy award show (the witness testi- fied that he had twins “born one month apart” – causing even the interpreter to chuckle); and the time we stood on the courthouse steps in Norman after winning a week long jury trial only to hear the jury foreman discuss how he had done internet research regarding that case during the trial.

One of my favorite stories about working with Sid is probably the one where he and I went up in an airplane with our expert witnesses to simulate some of what took place right before the crash of a King Air airplane in a case we were defending. When we were pretty high up, the pilot expert asked Sid and I to close our eyes, then he took his hands off the controls and let the airplane drift. We began in a downward “death spiral” – eyes closed. I was literally green in the face. Sid did quite well. This ironically occurred on the same day the Associate bonuses were being decided at the law firm.

Sid is an incredible attorney, colleague, mentor and friend. He has taught me almost everything I know about practicing law and has helped make me into the attorney I am today. We have spent sixteen years chasing all over the country for different clients on many different cases. I have seen Sid hold his own against the best in the legal field, go head to head with the most recognized experts across the country, charm the socks off a jury in a very down to earth way, convince the highest courts of our legal positions, and build Legos with my kids on my living room floor. He is very hardworking, dedicated, thoughtful and engaged, and has been a great example by serving in various leadership roles. In fact, Sid strongly encouraged me to serve on the Gable Gotwals Board of Directors, like he did for many years. While I could never fill his shoes, I believe the things I have learned from Sid, both in law and leadership, will help me continue to grow as a lawyer and a leader.

I am not alone in holding Sid in such high esteem. Sid has been described as a very hard worker, a great mentor, a brilliant mind, a dedicated professional, honest, principled, an accomplished advocate for his clients, a consummate gentleman, and a good friend. These comments from some well respected legal professionals are very telling:

• “Through Sid’s service to the bar, his community involvement and his professional demeanor, Sid has undoubtedly become a role model for many attorneys in their personal and professional lives. Sid treats everyone with equal courtesy and respect. His character and personal integrity are beyond reproach. Personally, Sid’s influence has positively impacted my professional career and, in my opinion, Sid Dunagan exemplifies the finest of our Oklahoma attorneys.” Cathy M. Christensen, Cathy M. Christensen PC.

• “Sid is a gentleman and a scholar who has practiced with the highest standards for many years. I know of no one who thinks otherwise.” Reid Robison, McAfee & Taft.

• “As I look back on my career, and I
the many great lawyers I have had the pleasure to work with (and against), Sid stands apart as the complete lawyer: a brilliant strategist, a zealous and yet fair advocate, a tireless worker for his clients, the most generous friend and team-mate who always treats everyone with respect, and a true professional dedicated to the improvement of the practice. Stated simply and with heartfelt sincerity, Sid is my professional role model and the one lawyer I most admire. … I pay him the highest honor and compliment any lawyer can receive -- I am a better person as a result of having Sid as a colleague and friend.” Brian Duffly, Shareholder and Co-President of Greenberg Traurig, Denver, CO.

• “Sid’s many contributions to those of us that have the good fortune to practice with or around him have had a lasting effect on us and our profession. Sid was not only a fabulous mentor and teacher, but led by example in his professional and personal life.” John Barker, Gable Gotwals, and Retired ONEOK, Inc. Senior Vice President and General Counsel.

• “Sid epitomizes the core values of our profession—service to the client, excellence in representation and, above all, integrity.” Arthur R. Formanek, Retired Associate General Counsel for both Wal-Mart Stores, Inc. and El Paso Natural Gas.

• “Sid’s law practice has always been marked by the highest in professional ethics and civility.” Andrew M. Coats, University of Oklahoma College of Law Dean Emeritus.

• “Sid’s reputation of being a strong advocate for his clients, while maintaining the highest ethical standards of our profession, is known by large numbers of lawyers and judges across Oklahoma, and in many other states.” Charles D. (“Buddy”) Neal, Jr., Stedley & Neal.

• “Many Oklahoma lawyers know Sid not as a bar leader, but as an honest, principled, hard-working and accomplished advocate for his clients.” Steve Barghols, Gable Gotwals.

• “From the outset, Sid possessed a keen mind, guided by high principles of basic fairness and, perhaps begrudgingly, a healthy respect for the enacted laws of the State of Oklahoma. Sid, like so many of us TU alumni, adhered to the instruction of Colonel Kirkpatrick who taught us Ethics. Regardless of the dilemma, we learned early and often that ‘When in doubt, don’t do it!’ This lesson, among many, has served us all, including Sid Dunagan, well. To paraphrase Colonel Kirkpatrick as to the recognition to be sought for Sid, ‘There is no doubt, so do it!’” John R. Woodard, Coffee, Senger and McDaniel.

• “Sid Dunagan has an exceptional ability to see a case from a client’s viewpoint. He plans the path for success which includes the work to be done by his associates and staff in helping to achieve positive results. It is his overall perception that makes him an outstanding attorney.” Lynette Hamill, Gable Gotwals Paralegal.


Today, Sid continues to practice law at Gable Gotwals in the Oklahoma City office, after 42 years of great service at the firm – frankly, I will not let him retire. Sid and his wife Sherry Wood are having a ball traveling the world, visiting every continent and over thirty countries. Sid and Sherry recently completed a total remodel of an older home they purchased – a task that may have been more stressful than the practice of law. Sid also currently serves as President of the Oklahoma City downtown Beacon Club.

Some of my favorite Sid-isms over the years include, “you can’t fall out of a ditch,” “don’t screw it up” and “that’s merely a wart on an elephant’s behind.” But my favorite is, “you’ve got this, kid.” And, thanks to Sid’s years of exceptional mentoring, leadership and encouragement, I would like to think that I do.

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Kick It Forward Kickball Tournament to Benefit Lawyers

The OBA Young Lawyers Division is seeking sponsors, players and volunteers to make the upcoming Kick It Forward kickball tournament a success. Set for Saturday, Aug. 29, at Wiley Post Park in Oklahoma City, the event will assist lawyers in financial need with a one-time payment of all or a portion of their OBA dues. Register today as a team or as an individual!

The YLD’s next big event is the Annual “Striking Out Hunger” Bowling Tournament. The tournament is scheduled for Thursday, August 20, 2015 at 5:30 P.M. at Heritage Lanes in Oklahoma City. The tournament is not limited to members of the YLD and we always enjoy having more seasoned lawyers enter the tournament. The purpose of the tournament is to continue fundraising efforts toward our annual donation to the Regional Food Bank of Oklahoma. The tournament is always a great time and prizes will be awarded to the top teams.

The YLD appreciates the support from the Oklahoma County Bar Association and hope you will again be a part of these efforts to raise money for the Regional Food Bank of Oklahoma. There is still time to enter teams as well as sponsor the tournament. Sponsorship checks should be designated “YLD Bowling Sponsor” and mailed to Debbie at the Oklahoma County Bar Association office: 119 N. Robinson, Oklahoma City, Oklahoma 73102. Team registration can be accomplished the same way or online.

DIVISION from PAGE 1

Oklahoma County Juvenile Center Project

Members of the Oklahoma County YLD recently participated in the makeover recently given to the Oklahoma County Juvenile Center. For our part, the YLD purchased various books, games, and furniture for the waiting area at the Oklahoma County Juvenile Center. We set up bean bags and other furniture in the waiting area to be used by the children appearing at the center. Our hope was to make a difficult situation more comfortable for the children appearing at the juvenile center.

Beyond our efforts at the Oklahoma County Juvenile Center, there are much bigger things happening under the direction of Judge Lisa Davis. Significant improvements have been made at the Oklahoma County Juvenile Center in many areas, including the meeting rooms for families and children. If you have not had the opportunity to volunteer for Oklahoma Lawyers for Children or otherwise appear at the juvenile center, I encourage you to see all the changes. The transformation has been truly impressive.

OCBA YLD Annual “Striking Out Hunger” Bowling Tournament

The YLD’s next big event is the Annual “Striking Out Hunger” Bowling Tournament. The tournament is scheduled on Thursday, August 20, 2015 at 5:30 P.M. at Heritage Lanes in Oklahoma City. The tournament is organized by the Oklahoma County Bar Association and is open to all attorneys and their families. The tournament will feature games of 50 pins, a chance to win prizes, and a chance to raise money for the Regional Food Bank of Oklahoma. There is still time to enter teams as well as sponsor the tournament. Sponsorship checks should be designated “YLD Bowling Sponsor” and mailed to Debbie at the Oklahoma County Bar Association office: 119 N. Robinson, Oklahoma City, Oklahoma 73102. Team registration can be accomplished the same way or online.

Judge Lisa Davis received a special recognition award from the Oklahoma Supreme Court for her work at the Juvenile Justice Center. Justice Noma Gurish presented the award to Judge Davis at the Oklahoma County Bar Association’s Annual Meeting on Aug. 11.

The OBA Young Lawyers Division is seeking sponsors, players and volunteers to make the upcoming Kick It Forward kickball tournament a success. Set for Saturday, Aug. 29, at Wiley Post Park in Oklahoma City, the event will assist lawyers in financial need with a one-time payment of all or a portion of their OBA dues. Register today as a team or as an individual!
Crowe & Dunlevy attorney receives state service award

Crowe & Dunlevy attorney D. Michael McBride III recently received the Mary Townsend Crowe Service Award from the Oklahoma Federation of Indian Women (OFIW). The OFIW Statewide Award Committee recognized McBride as an outstanding individual who has gone above and beyond the call of duty to serve and benefit American Indians. He received the award during the OFIW Statewide Awards Banquet held at the Claude Cox Omniplex in Tahlequah, Oklahoma.

McBride serves as chair of Crowe & Dunlevy’s Indian Law & Gaming practice group and is based in the firm’s Tulsa office. A trial, appellate and business lawyer with two decades of experience, he has participated in numerous Indian law, litigation and complex transactions. McBride has tried more than 50 cases to conclusion in federal, tribal and state courts including numerous jury trials. He excels in gaming regulatory matters, the handling of complex Indian law matters, environmental, economic development and regulatory matters. Corporations, investment funds and individuals have hired him as an expert consultant and as an expert witness in multiple state and federal court cases to testify on Indian gaming matters.

He has represented more than 20 Indian tribal governments or their entities and numerous corporations and individuals doing business with tribes. He is one of only a few tribal members or tribal members on the International Masters of Gaming Law (IMGL) and serves as the organization’s treasurer. IMGL recognized McBride with the President’s Cup Award in 2011.

He has been recognized by Chambers & Partners and Best Lawyers® as a leading Indian law attorney and has been named a 2013, 2014 and 2015 Star Individual, the highest individual ranking awarded by Chambers. He is listed by Oklahoma Super Lawyers for Indian Law, Gaming, Political Law and Business Litigation. McBride is also recognized by Best Lawyers for Native American & Gaming Law and as AV rated by Martindale-Hubbell.

He is a member of the Federal Bar Association’s (FBA) national board of directors and is chair of the audit committee. He was chair of the FBA’s Indian Law Section, the largest Indian law organization in the country, from 2006 to 2008. In 2008, the FBA named him general counsel on the organization’s national board of directors. The FBA has recognized McBride with a number of awards, including an Indian Law Section Distinguished Service Award in 2009, an Outstanding Section Chair Award in 2007 and 2008 as well as 2011, 2012 and 2013 of the last decade. The three Imms in Tulsa of the American Imms of Court have also honored Mike with the John S. Athens Award for Leadership and Ethics.

McBride received his undergraduate degree from Trinity University and Juris Doctor from the University of Oklahoma.

OU Law students receive $10,000 commitments through Crowe & Dunlevy Minority Scholars Program

Scholarships based on academic achievement, need and commitment to the law.

Oklahoma-based law firm Crowe & Dunlevy has selected first-year University of Oklahoma College of Law students Elizabeth P. Dankers and Victoria S. Proctor as the 2015 Minority Scholars Program recipients. The program provides assistance for minority students who qualify based on academic achievement, financial need and commitment to the law.

The Minority Scholars Program scholarship may be renewed for a recipient in each of the two remaining years of law school, based on satisfactory progress and performance. The scholarship recipients are awarded $2,000 per semester for a total commitment of $10,000 per recipient.

Dankers is involved in the Organization for the Advancement of Women in Law, Sports and Entertainment Law Society and Legal Group for Building Tolerance and Acceptance. She has completed Oklahoma Lawyers for Children training and provided Victimized Persons Group Assistance. She has also received the prestigious Frank and Edna Asper Elkouri and Second Century scholarships. Dankers’ professional experience includes participating as a summer fellow at Battleground Texas, a state and federal organization founded with the goal of making Texas a swing state, organizing all field operations and planning multiple events, including voter registration drives. She has a bachelor’s degree, summa cum laude, in marketing from Tarleton State University in Stephenville, Texas.

Proctor is active in the Native American Law Student Association, Organization for the Advancement of Women in Law and Christian Legal Society. She was involved in Kiwanis International, the National Conference of American Indians and awarded Miss Keetoowah for 2009-2010. Proctor has participated in the National Indian Gaming Association, Oklahoma Indian Gaming Association, Oklahoma Law Association and Develop Native America conferences. She has professional experience working with the United Keetoowah Band of Cherokee Indians in Oklahoma, serving as administrative assistant for the corporate advisory board and special projects/celebration coordinator. Proctor received her bachelor’s degree, magna cum laude, in mass communications with an emphasis in public relations and a minor in communications from Northeastern State University in Tahlequah, Oklahoma.

Crowe & Dunlevy announces new paralegals

Crowe & Dunlevy recently announced Sarah Biddy, Dorci Kelley and Brittany McCrave as new paralegals in the firm’s Oklahoma City and Tulsa offices.

Biddy serves as a paralegal in the Private Wealth & Closely-Held Business and Real Estate practice groups in Oklahoma City. She assists attorneys on drafting documents required for probate proceedings and real estate transactions and prepares documents relating to trust and estate matters. Previously, Biddy worked as a legal secretary in Crowe & Dunlevy’s Bar Associated associate degree in paralegal studies from Southwest Tennessee Community College in Memphis, Tennessee and a bachelor’s degree in business administration and criminal justice from Mississippi College in Clinton, Mississippi.

With more than 20 years of legal experience, Kel erty is a National Association of Legal Assistants certified paralegal in the firm’s Tulsa Litigation & Trial practice, as well as being a certified paralegal in finance, administration, project management, document management and research, legal research, fact investigation as well as pleading and document preparation. Kel erty received her legal assistant certificate from the University of Oklahoma and studied accounting and business administration at Northeastern State University in Tahlequah, Oklahoma and The University of Central Oklahoma in Edmond, Oklahoma.

McCrave serves as a paralegal in the Intellectual Property practice group researching law and preparing documents related to trademarks and patents in the Oklahoma City office. Prior to her paralegal position, she joined Crowe & Dunlevy as a legal secretary. She received her associate degree in paralegal studies from Ivy Tech Community College in Sellersburg, Indiana.

Mulinix Edwards Roseli & Goeree, PLLC announces addition of David T. McKenzie as of counsel with the Firm and Gregory P. Chansolme, Dylan Charles Edwards and Paul B. Casen as associates with the Firm.

David T. McKenzie was born in Ft. Lewis, Washington, and has lived most of his life in Oklahoma. He received a Bachelor of Arts degree in Political Science from Southwestern Oklahoma State University, a Master of Science degree in Criminal Justice Administration from Northeastern Oklahoma State University, and a Juris Doctorate degree from the University of Oklahoma College of Law in 1988. From 1988 to 1989, Mr. McKenzie was an Assistant City Attorney in Moore, Oklahoma. In 1989, he joined the state’s criminal prosecutors and civil municipal defense. He was in private practice from 1989 to 2000, where he specialized in criminal and constitutional litigation. At one time or another, he has represented almost every adult bookstore and gasoline station in Oklahoma City. He is a former member of the First Amendment Lawyers Association. He retired from the Office of the Public Defender of Oklahoma County in May 2015 and is currently Of Counsel with the Oklahoma City office of Mulinix, Edwards, Roseli & Goeree. Mr. McKenzie is an Adjunct Professor of Law teaching Trial Practice at the Oklahoma City University School of Law. McKenzie has also served as an expert witness in cases involving the State of Oklahoma, the United States District Court for the Northern District of Texas, the United States District Court of the Western District of Oklahoma, the Ninth Circuit Court of Appeals, and the United States Supreme Court. He is the legal analyst for the KFOR television news station in Oklahoma City. He is a former member of the Civil Procedure and Evidence Code Committee of the Oklahoma Bar Association and a member of the Oklahoma Bar Association Criminal Law Section’s “Professional Advocate Award, Defender of the Year” and he received the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers Association. He has been named a “Super Lawyer in the area of criminal law in Oklahoma in 2008. He was the 2010 recipient of the Oklahoma Bar Association Criminal Law Section’s “Professional Advocate Award, Defender of the Year” and he received the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers Association. He has been named a “Super Lawyer in the area of criminal law in Oklahoma in 2008. He was the 2010 recipient of the Oklahoma Bar Association Criminal Law Section’s “Professional Advocate Award, Defender of the Year” and he received the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers Association. He has been named a “Super Lawyer in the area of criminal law in Oklahoma in 2008. He was the 2010 recipient of the Oklahoma Bar Association Criminal Law Section’s “Professional Advocate Award, Defender of the Year” and he received the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers Association.
The Most Important Element of the Magna Carta
(In My Opinion)

By Geary Walke

Alright, that’s my subjective opinion. After you read the article and read the provision as issue, then you decide. But, I believe rights usually diminish or disappear if there is no viable, speedy and effective way to enforce them.

Paragraph 61 is self-described as “security” for the promises made by the King. The Barons first choose their team of twenty five representatives. These representative Barons are given the duty to enforce all the provisions in the Magna Carta. (Last month I suggested this was the root of the House of Lords. Thus far, no one has cursed me or established I am a mad hatter).

If anyone reports a violation to four of these Baronial representatives, they are required to notify and petition the King in person, or in his absence, the King’s representative, to correct the matter without delay. The King has forty days in which to make amends. If the King is out of the country then his representatives have that time to correct the problem(s).

Here’s the kicker: If there are no amends made, and the problem is not resolved, then the four reporting Barons shall notify the twenty five Baronial representatives. The twenty five Barons shall then, together with everyone in the country, take possession of the King’s castles and lands until they receive satisfaction. The only reservation is that the King, any Queen, and any children will not be harmed.

Once the problems have been solved, then everyone would return to the status quo ante. No harm, no foul, no hard feelings, no threats of head lopping.

All people in the realm are given permission to swear their oaths of allegiance to the Barons against the King in these efforts. More remarkably: if anyone refuses to swear allegiance to the Barons, then the King will force them to swear allegiance to the Barons.

In the event of the death of representative Barons, or if one or more Barons are otherwise unavailable, then the remaining Barons are authorized to appoint such number of replacements as will total twenty five. A decision made by a majority of the Barons present to make decisions bound all twenty five. And all decisions and enforcement by the twenty five Barons shall be performed to the best of their abilities (with all their might). Part of their oaths prevented them from receiving, directly or indirectly, any benefit which might cause them to diminish or revoke any of the liberties granted in the charter. Any benefit offered to try and persuade a Baron to so diminish or revoke any of the liberties, would be considered null and void.

Before Magna Carta the populace was totally dependent upon the discretion of the King to acknowledge rights and entitlements, to enforce rights and entitlements, and to protect against the loss or infringement of those rights or entitlements. After Magna Carta the Barons were made a part of the infrastructure to protect rights of all free men as well as themselves. “Free men” would be an expanding term throughout the next 800 years, and continues to expand even today.

And, Magna Carta is referenced, in writing, sixty paragraphs of rights and entitlements. If the King didn’t acknowledge those rights later, the Barons were entitled to force acknowledgment. If the King didn’t enforce the specified rights of free men, the Barons were entitled to use force to enforce those rights.

Importantly, the country, England, was recognized as an entity which would not dissolve because important rights of free men were being defined, acknowledged and enforced. Despite frictions and perhaps even violent differences manifested between the people and their leaders, the country was to be maintained in as whole a condition as possible.

Paragraph 61 reads as follows:

61. Since, moreover, for God and the amendment of our kingdom and for the better alloying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them incomplete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five-and-twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything beat fault toward any one, or shall have broken any one of the articles of the peace or of this security, and the offense be notified to four barons of the foresaid five-and-twenty, the said four barons shall repair to us (or to our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five-and-twenty barons, and those five-and-twenty barons shall, together with the community of the whole land, distress and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations toward us. And let whoever in the country desires it, swear to obey the orders of the said five-and-twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to every one who wishes to swear, and we shall never forbid any one to swear. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty-five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect aforesaid. And if any one of the five-and-twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty-five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others. Further, in all matters, the execution of which is intrusted to these twenty-five barons, if perchance these twenty-five are present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty-five had concurred in this; and the said twenty-five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might. And we shall procure nothing from any one, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and if any such thing has been procured, let it be void and null, and we shall never use it personally or by another.

It is true that this document didn’t last through the remainder of 1215 after being signed by King John on June 15, 1215. Pope Innocent III caused it to be repealed, or revoked, or whatever it was that was done to effectuate nullification in the eyes of the King and the Barons.

But, part of the history and beauty of this brilliant document is that it was resurrected many times, until 1297 when it finally and officially became the law of the land and has been reaffirmed for another 718 years. The ideas contained therein, the principles described therein, could not be forgotten. America’s history has been blessed with the contents of this great, big charter, for four hundred years.

The rights and privileges of a free people cannot be ignored. These principles became institutionalized. As a result, after terrible battles and struggles, America, a nation of laws, was born. We lawyers and judges have special responsibilities to see to it that the rights of all citizens, under law, are not diminished or revoked. And while one can trace the Baronial responsibilities directly to our U.S. Senate, I say it can also be traced to all of us, the people.

Stand up and be counted.
There are people who enjoy music and there are people who love music. We are lucky enough to encounter fans on both ends of spectrum and those who fall in between. It is exciting to receive a down and dirty playlist from an OCBA member who spent about ten minutes thinking about it. We also enjoy submissions that include insightful commentary about the artists, the lyrics, or the memories tied to each song. Every once in a blue moon, we are able to convince a music enthusiast to participate. It is an undertaking to get them to commit. After that, they disappear for a month or so to come up with a playlist. We don’t know what the process entails other than it takes a long time and is reported to be enjoyable.

The enthusiast inevitably creates a dilemma. Their lives are so full of music it is impossible to identify only seven songs. The final product is a wonderfully diverse playlist with dozens of entries. We thoroughly enjoy receiving their submissions and think everyone should have an opportunity to see one of these lists in its entirety. This month’s participants were kind enough to share some music with us. Todd McKinnis may be a closet enthusiast, but you’d never know it. He followed instructions to the letter and we thank him.

**Todd McKinnis:** Todd was born in Lawton, pretty much grew up down there, and then graduated from Edmond High in 1985. Once upon a time it was the only high school in Edmond. After compiling the requisite number of successful years, he graduated from the OU College of Law in 1994. Todd has since practiced real estate, business, and charitable/non-profit law to such an extent that he is basically outside general counsel for countless businesses and organizations. The man can otherwise be found watching his four kids do anything that gives them joy. Doing so has been the biggest and best part of his life. Todd usually listens to music through an App on his iPhone. About the time he is comfortable with the latest App for this purpose, one of his kids informs him, “No One listens to music thru THAT App anymore.” Todd mentioned still having a multi-disc CD changer in the car, and western addict. The newest performer on my list is Kacey Musgrave. She writes all her songs.

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<tr>
<th>Song Title</th>
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<td>Cats in the Cradlet</td>
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<td>The Way It Is</td>
<td>Bruce Hornsby</td>
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<td>Jesus Freak (guilty pleasure)</td>
<td>DC Talk</td>
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**Roland Tague:** Roland is an elusive enthusiast we have worked on for years. He finally agreed and did not disappoint. In July it was necessary to expand Roland’s entries to 10 songs. Shortly thereafter, a message read, “There are about 2,500 songs on my iTunes list so it was difficult to narrow it to 12 and a Guilty Pleasure.” He had somehow upped the limit to 13. We finally caved. Just this once, and only this once, the entire submission is published. Enjoy the note from Roland and his outstanding unedited playlist.

“One of the songs bring back old, old memories and people I knew growing up. I had an indirect connection to some of my selections. My college fraternity brother, David Gates, dropped out of OU, moved to California, and become a singer songwriter. Along with his group, Bread, he sings Aubrey. Our own former OCBA President, John Kenny, writes song lyrics as a hobby. His lyrics can be heard on Boot Jack Rodeo. Mason Williams, while a junior at Northwest Classen High School, sang with a group which included OCBA member and Oklahoma Securities Administrator, Irving Faught. After graduation Mason and Eddie Ruscha, who became a famous artist, drove to California after graduation. Eddie eventually drew gas stations and Mason wrote Classical Gas.

The older songs on the list bring back early memories in my life before I became a country and western addict. The newest performer on my list is Kacey Musgrave. She writes all her own songs. I have included Follow your Arrow. Lastly, “My Guilty Pleasure” is written by the brother of Lonesome Dove author, Larry McMurtry. Be patient when you listen to it as it takes a long time and is reported to be enjoyable.

**OLO from PAGE 6**

County case should be prohibited.

Respondent contends the fact that service of summons was first secured in the Kiowa County case was effective to give that court jurisdiction in preference to the District Court of Oklahoma County.

The answer to this contention is found in Hendron v. Sarkey, 179 Okl. 316, 65 P.2d 519, where we stated the rule that filing of a petition and issuance of summons marks the commencement of the action although such process is not completed by service, provided the jurisdiction of the court is perfected by continuing attempts to make such service, and service of process is in fact completed in due time. Therein we point out that this rule is subject to certain exceptions, but none of these exceptions are present in the instant situation.

The contention of respondent has no merit.

**August 14, 1990**

**Twenty-Five Years Ago**


Appellants filed this individual suit and class action against Appellee Oklahoma Natural Gas (ONG) for damages to their private property and other similarly situated property when ONG relocated a properly operating gas meter from the basement of their property. ONG moved to dismiss Appellants’ amended petition on the ground that the district court had no subject matter jurisdiction and Appellants failed to state a claim upon which relief could be granted. The district court sustained ONG’s motion to dismiss and this appeal followed.

On June 6, 1988, Appellants reported a gas leak in their backyard located between the gas meter in their basement and ONG’s easement behind their home. ONG disconnected gas service to the home and removed the gas meter from the basement in order to relocate it in its easement. In doing so, ONG left a ten-inch gap in the gas pipeline and refused to repair it or replace the leaking pipeline in the back yard. ONG denied ownership and responsibility for the pipeline from its easement through Appellants’ backyard up to the gas meter. Appellants were forced to repair the ten-inch pipeline gap in the basement caused by ONG removing the properly working meter and had to lay new pipe line to the new gas meter site before ONG would agree to restore gas service to their property.

The district court dismissed Appellants’ amended petition upon ONG’s contention that the Oklahoma Corporation Commission (Commission) had sole jurisdiction over the subject matter of Appellants’ suit.

ONG is regulated by the Commission, which is a tribunal of limited jurisdiction with powers conferred upon it by the Oklahoma Constitution and by statute. Article 9, § 18 of the Oklahoma Constitution empowers the Commission to supervise, regulate and control public utility companies doing business within the state in all matters relating to performance of their public duties. Title 17 O.S. 1981 § 152 provides that the Commission shall generally supervise all public utilities and shall prescribe rules, requirements and regulations affecting their services, operation, and the management and conduct of their business.

*... The Commission is not a court of general jurisdiction and cannot enter a money judgment against any party. *...* The Commission, likewise, does not have the power to enter a money judgment resulting in damages beyond its expertise.*

On the other hand, the district courts have unlimited original jurisdiction of all general civil actions involving ONG. *See Oklahoma Code Ann. art. 7, § 7 of the Oklahoma Constitution in all cases where exclusive jurisdiction is not given some other court, or as otherwise provided by law.*

**See OLO, PAGE 14**
Dear Roscoe:  I'm representing a young attorney who came out here from Ohio for a deposition, and was caught in a prostitui-
tion sting. He has a recording on his phone
where he asked the lady in question if she
was a cop, and she flatly denied it. I filed a
Motion to Dismiss, but the judge overruled
it. What gives? Should I get a writ?  B.T.,
OKC.

Dear B.R.: The question is not “should you
get a writ” but “could you get a writ.” The
answer is “no.” “What gives” is that you and,
apparently, this young barrister, have been
snookered with a false, albeit widespread, urban myth.

The number of cases in which deception as to
identity gives implicit testimony to the fallacy of the
premise. In cases such as State v. Vallejos, 945
P.2d 957, 123 N.M. 759 (N.M., 1997); People v.
(Cal.App. 1 Dist., 1981); and State v. Wiley, 900
P.2d 1116 (Wash.App.Div. 1, 1995), to name a few,
undercover officers denied their status as offi-
cers. Neither the defense nor the court challenged
that undisputed fact as affecting the validity of the
conviction. In addition, at least since Frazier v.
Cupp, 394 U.S. 731 (1969), SCOTUS has shown
tolerance for police deception, using a “totality of
the circumstances” standard.

The myth of “a cop must tell” seems to grow
out of television, and a basic misunderstanding
among the less sophisticated of the duties of
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Justice Is For the Lonely
A Novel by Steve Clark

By Pam Bennett

Justice Is For the Lonely is the first of a four book series, and the first book written by Steve Clark, Oklahoma City attorney and OCBA member.

This book includes a fair amount of well developed characters, some who are likeable and some not so much. The reader definitely needs to pay attention to what’s going on and keep track of each person.

The plot and various sub-plots move along at a quick pace and one is quickly drawn into the story after the heroine, a Dallas attorney, quickly dispatches a fellow attorney after he makes some unwanted advances.

I was actually a little disappointed she didn’t get another chance at him later in the book. Although there were a couple of places where the story bogs down, considering all of the twists and turns, Mr. Clark does a good job of keeping everything straight and the reader on track. There is a lot of legal maneuvering and someone who doesn’t have at least a little knowledge of the legal system may get confused, but in most cases the writer does go back and explain what happened.

The story initially centers around a fictional former Dallas Cowboy player who is the victim of medical malpractice. His story concludes with a trial and eventually his death, but only takes the reader to the middle of the book. The rest of it deals with the fall-out after the trial (the Plaintiff is awarded a huge judgment) and then the real fun begins when a very nasty parolee decides to go on a crime spree that involves nearly every other character. There are a couple of good plot twists at the end, one of which involves the football player. This kind of leaves the reader hanging and hopefully the next book of this series will address this interesting development.

Overall, this is an intriguing first book that is well written. I look forward to reading the rest of the series.

PROPHET from PAGE 2

Democrat and Republican. The Democratic party is in power both nationally and locally. We predict that the Republican party will have died, but there will arise another major political party in its stead. The state power of today will have greatly decreased and the federal government will have become increasingly powerful. You are probably ruled by a flexible form of socialism, although it is not called by that name, and the constitution of the United States will have been greatly changed.

Women will have become a distinct power in government, and they will be holding high positions.

You will have passed through another great war in which Germany and Japan will attack Russia, the former being joined by Italy and the latter by France and Japan.

The United States will be drawn in by the ineffectuality of her neutrality laws and by propaganda from the rich commercial interest, whether there is life on the other planets.

By the time this document is read, it will be definitely ascertained that there is a plant and animal life there, and scientists will be still trying to establish contact with them.

You will have moochers, boozers, political graft, flies on picnics, cold wave, heat waves, permanent waves, radicals, silk stocking, dizzy spells, and bridge games.

In addition you will have brightly colored suits for men and beauty parlors for men, although we who have stepped aside are happy to have been spared such a revolution.

With all her setbacks, mistakes, problems and gullibility, you will be as proud of our country and her accomplishments when this prophecy is read as we are today, January 20, 1937, the day on which Franklin Delano Roosevelt is being inaugurated for his second term as President of the United States.

Given under our hand and seal this 20th day of January, 1937.

Signed By: Helen Nix, County Clerk

Also from The Oklahoman: Helen Nix served as county clerk for sixteen years, running on a “pretty face and efficient record”. Her campaign ads show her sporting a permanent wave that she references in her prophecy. In 1946 she was upset for reelection by Joe Pitts who ran as “GI Joe”. In 1954 The Oklahoman reports that she had moved to Inglewood California in 1948 and was a real estate broker specializing in investment property. The article reports she married in 1954 to tiling contractor George F. Alwin.

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1221 N. Classen Blvd.
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Book Notes

The Mediterranean Air War: Airpower and Allied Victory in World War Two
Robert S. Ehlers, Jr., Hardback, University of Kansas, 2015 $36.75

JG 26, Top Guns of the Luftwaffe
Donald Caldwell, Fortune Books, Kindle, $9.99

As has been mentioned in this column previously, the dying-off of the Greatest generation has provided havoc at times, with accurate history being used in period pieces set in World War Two. One hesitates to keep reading when the author incorrectly states the start year of the war.

Something opposite may be happening in non-fiction works on the subject. Initially, after the war, there was a flood of autobiographical how-I-won-the-war stuff, and a flood of books from the losing generals as well, the Allied countries populace wanting to peer behind the stage. Then came in movies and TV as well as books, the “realism surge”, such as the Longest Day. Recently, the documents from both sides have taken over the conversation. People embellish their own records. Documents, though subject to some shape shifting, (a lower rank writing to please the commander), may have more objective reality. People talk of the courage of other people, drive, determination, stick-to-virtiveness.

Documents set out status charts, force structures, inventory, spares, fuel and ammunition stores. Dull, but instructive.

So it is with these two books. On paper, the Italian and German Air forces in the Mediterranean during the time of the Africa Corps and the Invasion of Italy were close to even. As a practical matter, even though some German Aces ran up totals against the Allies in this theatre, the overall result was very one-sided. The reason was not the aircraft involved. The Italians planes were not too far off the R.A.F. Mark, and the German-British comparison was more or less even, except for the Spitfire. Only when U.S. made planes began wearing British roundels were the machines clearly uneven.

What cost the Italians was a slipping or non-existent organizational structure in their air command. Lack of ammunition, lack of fuel, almost a complete lack of cooperation vis-a-vis ground forces meant a lot of effort was expended to no avail. The documents tell us this. The Germans themselves were looking in three directions almost all the time, Russia, Africa, and the Balkans. Same story. Ehler’s book sets all this out in a readable way. One can pick up the narrative anywhere in the book and get the import of the story. Documents are like that.

Caldwell’s book reads, at times, like the documents which form the basis of the story. As such, it can be tedious at times, but there is a big story looming behind the numbers. To boil it down, the Luftwaffe shot down somewhere around two out of every five Allied fighters sent over Europe. The story? The Allies, especially the Americans, has so many planes, so many trained pilots, that the Luftwaffe was overwhelmed by material. The resulting air superiority caused there to be enough fighter that they became Allied fighter—bombers, which then made it impossible for the German ground forces to move during the day, and then at all. Pick up Germans in Normandy by Hargreaves, and one finds the same story. Allied localized bombing and constant presence are the story. Materiel and manpower, but perhaps materiel most importantly, made the difference.

None of this is to take away from the valor of the Allied service personnel, but it is a cautionary tale just now evolving into history.

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