WHAT DO YOU KNOW ABOUT THE DECLARATION OF INDEPENDENCE?

By Justin Hiersche

As I began researching for my second annual article for the Fourth of July issue of the Briefcase, I was faced with the dilemma of what to write about. I was resigned to the fact that it would be, yet again, about the similarities of another country’s rise to a democratic government – last year’s article covered Bastille Day and its part in the French Revolution – compared with the American Revolution. However, my research led me to two astonishing facts: (1) that hundreds (yes, hundreds) of other countries have used our Declaration of Independence as the basis for their own declarations; and (2) that I did not know very much about the inception of our Declaration.

Based on this, I determined that this article would explore some of the more unknown political minds and orators of the last 100 years (in my humble opinion): Dr. J. Rufus Fears. Most, if not all of the opinions and descriptions of our founding fathers are taken directly from my online study of his lectures. Dr. Fears was a professor at the University of Oklahoma who captivated the minds of 18-21 year-olds with thoughts of liberty, freedom, honor and examination of each of our moral compasses. Dr. Fears passed away in 2012 much to the sadness of those who knew him.

For starters, I believe the Declaration of Independence is the most influential piece of American literature ever written. Without hyperbole, it influenced the French to start a war with England for “mankind’s sake”. It also provides extreme insight into the thoughts, beliefs, characteristics and influences of some of the most influential and determined men planet earth has ever produced. Lastly, its etymological expertise is See DECLARATION, PAGE 15

Profiles in Professionalism: PASS IT ON Fred Boettcher

Fred Boettcher lives in Ponca City, Oklahoma. Brian Maixner lives in Wichita, Kansas. The story of their friendship has been reported around the world, but has barely made a ripple in the local media. Mr. Boettcher, you see, is an attorney. And stories about good lawyers doing good deeds rarely make the cut.

Mr. Maixner is a waiter at the Doo-Dah Diner in Wichita, Kansas. He has always had a ready and welcoming smile for his customers, despite his conspicuously bad teeth. Mr. Boettcher frequently travels to Wichita to visit his grandchildren. On one such trip in January 2015, Mr. Boettcher dropped in at the Doo-Dah Diner, and gave his waiter a most remarkable tip.

Mr. Boettcher introduced Mr. Maixner to his Ponca City dentist, Dr. Phillip Tyndall. He arranged for the dentist to pull Mr. Maixner’s bad teeth, and fit him with a new set of dentures. The dentures will soon be replaced by dental implants. And Mr. Boettcher insisted that the dentist send him the entire bill.

This random act of kindness was heard around the world. A dental hygienist in Virginia observed that not only did Mr. Boettcher “improve this man’s smile, (he) improved his quality of life, rid him of disease and assisted with his future employment and livelihood.” A writer in Ohio noted similarly that poor oral health can lead to “inflammation and ill health and eventual early death. By helping Brian, (Mr. Boettcher) enhanced his life exponentially.”

A writer in Pennsylvania wrote, “It is lawyers like you who continue to make me proud I am a lawyer” (Austin, Texas). “Where there is so much strife, headache and war, . . . a story like this reminds all of us there is good in the world” (Los Angeles), “It is so nice to see and read a great story about someone doing something nice for someone else . . . just because” (Texas), and “It is so uplifting to behold a reminder that there is still good in the world, and folks such as yourself” (Miami, Florida).

“I am a lawyer” (Lansing, Michigan). “You inspired me to do some good in my own world” (Los Angeles), “You inspired me to do more for those who can’t help themselves” (Arizona), “It is lawyers like you who continue to make me proud I am a lawyer” (Austin, Texas). “You have proven that the power of one can make a difference in the life of a fellow human being” (Pennsylvania), “You inspired me to do some good in my own world” (Los Angeles). For starters, I believe the Declaration of Independence is the most influential piece of American literature ever written. Without hyperbole, it influenced the French to start a war with England for “mankind’s sake”. It also provides extreme insight into the thoughts, beliefs, characteristics and influences of some of the most influential and determined men planet earth has ever produced. Lastly, its etymological expertise is See DECLARATION, PAGE 15
I Spoke Too Soon

By Jim Webb
OCBA President

I hate to say I told you so, but... It looks like I may have spoken a bit too soon last month when I said I was encouraged by what happened at the Capitol this past session. It looks like the fight (it’s now hard to call it anything less) between, at least some segments of the legislature and the judiciary is far from over.

Since I wrote my last column, two things have happened that I believe all OCBA members should know about. Both have been covered in some degree by local press, but due to summertime and/or the press of business, I know from talking to some of our members that we are not all equally aware.

First, on June 12, Representative Kevin Calvey (a lawyer and fellow OCBA member) filed a “Request for Interim Study Proposal.” Explaining the reasons for the request, Representative Calvey stated:

“The Oklahoma Supreme Court has stricken several enactments of the Legislature without just cause. In some cases, including but not limited to rulings right-to-life legislation, the Court’s rulings purport to be based on federal jurisprudence, but similar laws in other states have been upheld by federal courts. The Court’s actions constitute an abuse of power, judicial tyranny, usurpation of the role of the Legislature, and legislating from the bench. Part of the problem is that the judicial selection process in Oklahoma is tilted sharply in favor of those who are in power. His opinions with respect to the OKlahoma Supreme Court, the OKlahoma Bar Association, and the Judicial Nominating Commission are not exactly hard to figure out.

These opinions came out front and center with the second issue of which we should be aware – i.e., the wide-ranging debate that has started on the heels of the Oklahoma Supreme Court’s 7-2 decision in Prescott v. Oklahoma Capitol Preservation Commission – commonly now being referred to as the “Ten Commandments Decision.” The first response out of the chute was a call by seven Representatives (Rep. Calvey, John Bennett, Casey Murdock, Lewis Moore, Dan Fisher, George Faught, and Mike Sanders) for “judicial reform and for the impeachment of” the seven Supreme Court justices who sided with the majority decision in the case.

Yes, I said — well, THEY said — impeachment.

Why? In a joint press release, Rep. Calvey said, “Our state Supreme Court is playing politics by issuing rulings contrary to the Constitution, and contrary to the will of the clear majority of Oklahoma voters.” He continued:

“These Supreme Court justices are nothing more than politicians in black robes, masquerading as objective jurists. This ruling is the Court engaging in judicial bullying of the people of Oklahoma, pure and simple. It is time that the people chose justices, rather than letting a tiny special interest group of lawyers at the Oklahoma Bar Association dictate who can and can’t be a judge.”

Representative Calvey also took issue with the concept of “judicial independence,” saying:

“It is becoming increasingly clear that the term ‘judicial independence’ has become a liberal code phrase for ‘undemocratic liberal dictatorial powers.’ It is sad that the once-worth concept of ‘judicial independence’ has been perverted by those engaging in politics from the bench.”

If you have read my prior columns on the subject, you know that I believe in the fundamental framework of checks and balances provided by our Constitution. I also believe a fair, effective, and most importantly – independent judiciary is absolutely necessary to protect the rights granted to us under our Federal and State constitutions. As an aside, if you know me personally, you know I am not typically associated with “liberal code phrases,” either!

I do not believe I am overstating it to say that, unless we reverse course, we are facing a Constitutional crisis in Oklahoma. In the face of issues like these above, we absolutely should have a vibrant, public debate. I love a good debate. I gained that love sitting at the dinner table growing up. With seven opinionated people in our family, there was no shortage of discussion and argument.

Frankly, I want to hear more from those who have already taken a very public stance on these issues. I want to hear more about how 5 votes on a 15 member commission could ever “tilt” or “dictate” a decision that is ultimately made by the Governor.

I want to hear more about why the appropriate response under our Constitution when a judge makes a decision you don’t like is to impeach the judge, rather than look for Constitutionally-sound legislative approaches or even amending the Constitution itself.

I want to discuss when and how the “clear will of Oklahoma voters” matters, and when, on the other hand, we need to be concerned about the will of Oklahoma voters. I believe we all have a responsibility to be well-informed on these issues and engage, as appropriate, as these debates ensue. Let’s have the debates now, instead of letting them fester in political rhetoric that will, by its own nature, increase exponentially before our legislators show up at the Capitol for the 2016 session.

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@chik.com or call me at 935-9594.
Profiles in Professionalism:
New U.S. Bankruptcy Judge Janice D. Loyd

By Craig Regens

Judge Janice D. Loyd’s pathway to practicing law began – like so many attorneys – with Perry Mason episodes she began watching at age five. As an eight-year-old, she visited the United States Supreme Court during a Girl Scouts trip to Washington, D.C. and knew she would become an attorney. While these experiences inspired her career path, Judge Loyd’s most significant formative influence was closer to home... wherever that was at the time. Judge Loyd is her father’s daughter and her father retired from the United States Air Force as a Chief Master Sergeant, the highest enlisted rank in the service. Throughout her childhood, Chief Loyd and Judge Loyd moved frequently, discovering new parts of the country and the world together, including New York, Virginia, Colorado, Japan and Iceland. In the midst of frequent changes in location, the values Chief Loyd instilled in Judge Loyd served as their shared true north.

Chief Judge Loyd learned the value of hard work and the importance of always doing what is right, no matter the cost. Judge Loyd lives by the same code that was once my bailiff. Steve Tolson. It is fair to say that the best laugh I have had in weeks. I would no doubt where she would go: the University of Oklahoma. She earned her Bachelor of Arts degree in Political Science in 1983 and then earned her Juris Doctorate from OU’s College of Law in 1986.

Given the depth and diversity of her life experiences, it is perhaps no surprise that, beginning in law school at McClelland, Collins, Manchester & Bailey, Judge Loyd chose to practice bankruptcy law; it is the one area of law that touches upon every area of law. Because bankruptcy practitioners must constantly learn new areas of law, Judge Loyd constantly felt intellectually engaged by the practice of law. Moreover, she cherished the mentoring she received at her firm, so much so, that she remained there throughout her time in private practice and its name changes which culminated in the renaming of the firm as Bellingham & Loyd, P.C.

By John M. Amick

It was my custom when I was a District Judge in Oklahoma County, always to appoint a law student as my bailiff. In accordance with that custom, Steve Tolson, who is now a Judge in Oklahoma County, was once my bailiff.

Steve was a very good bailiff, always anxious to please and very courteous to the lawyers and litigants who came before me. During the time when Steve was serving as my bailiff a serious dispute arose among the management of the Cowboy Hall of Fame as a result of which suit was filed in the District court. The firing of the manager of the Hall, one Dean Krakel, was one of the big issues in the case. The case was routinely assigned to me. A number of very prominent lawyers were involved. Dean Krakel hired George Miskovsky. As you might expect, the case generated wide publicity.

There were some difficult legal issues involved and I called for briefs. George Miskovsky and Dean Krakel came to my inner office. He was obviously very upset. He said he had made a terrible mistake, and would gladly just resign rather than cause me any embarrassment. I asked him what happened. As courteous and polite as Steve always was, I could hardly imagine what might have occurred.

Steve said that, after a short but pleasant conversation with him, Krakel suddenly demanded, “Do you know who I am?”

“Respect” he said forgot that! “That is the best laugh I have had in weeks. I would raise your salary if I could!”

The Paralegal of the Year award for 2015 was received by Lisa McAlister. Lisa is a paralegal at Phillips Murrah. Oklahoma County District Court Judges Don Andrews and Richard Ogden presented Lisa with this recognition. The competition this year was tough. The Judges reflected on some of the characteristics that they believe are important to consider when making this difficult decision. They identified qualities such as ethical, professional, organized, versatile, and professional, among others, that should be reflected in a receipt of this type of award.

Miskovsky came into my inner office, and Krakel remained in my outer office with my bailiff. Steve Tolson. It is fair to say that Krakel was not troubled by excessive modesty, nor was he beset by doubts as to his own importance. After a short conference Krakel and Miskovsky left and Steve came into my inner office. He was obviously very upset. He said he had made a terrible mistake, and would gladly just resign rather than cause me any embarrassment. I asked him what happened. As courteous and polite as Steve always was, I could hardly imagine what might have occurred.

Steve said that, after a short but pleasant conversation with him, Krakel suddenly demanded, “Do you know who I am?”

“Respect” he said forgot that! “That is the best laugh I have had in weeks. I would raise your salary if I could!”

DEALING WITH REALLY IMPORTANT PEOPLE

Now it seems to me the place to start is at the beginning.

-Perry Mason

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July 20, 1915
One Hundred Years Ago

[Extracted from Baumle v. Verde, 50 Okla. 609, 150 P. 876.]

The defendant in error, a resident of Pottawatomie county, was damages sustained by the defendant in error. The answer was a general denial. There was a trial to a court and a jury, and a verdict for the plaintiff in the sum of $6,583, upon which judgment was rendered, and from which the appeal has been prosecuted to this court.

It appears from the evidence that Louis Baumle was a citizen of Pottawatomie county, of substantial means; that he was of German descent, and in 1907 was a widower and alone in the home, having lost his wife some 10 years prior to that time, and his only son about 6 years before; that he had a friend by the name of Knapp, who was also of German descent, and who was, in May of that year, departing from Shawnee for a visit to Germany; and that Knapp was also a widower, and the main object of his trip abroad being to select a wife, and that Baumle promised Knapp a substantial consideration if he would find a suitable wife for him, saying that he would prefer a woman of mature years, with a son, if possible, who might become his heir, and whom he might educate and start in business; that when Knapp reached Chicago he met Mrs. Verde, and after becoming acquainted with her he thought she was the person his friend, Baumle, was looking for a life partner, and wrote him to that effect.

Baumle wrote to Mrs. Verde, which letter was promptly answered, and a rather vigorous courtship then ensued for a number of months by correspondence, which resulted in a serious affair from the beginning. Mrs. Verde was greatly harassed, annoyed, and embarrased, and suffered great mental and bodily distress as a consequence of the rude treatment she had received at the hands of Mr. Baumle in breaking his engagement to marry her, and instituted this action to recover damages on account thereof.

Two juries of Pottawatomie county have passed upon this case. The first one awarded Mrs. Verde a verdict of $4,000. On appeal to this court that verdict was reversed in Baumle v. Verde, 33 Okl. 243, 124 Pac. 1083, 41 L. R. A. (N. S.) 840, Ann. Cas. 1914B, 317. The judgment appealed from in this case was the verdict rendered on new trial, granted in pursuance to the mandate of this court. We have searched the record in vain for a reason that would justify us in concluding that the jury abused the discretion vested in it by statute in fixing the amount of the damages. The trial court seems to have been fair and painstaking in its rulings, and to have fairly and fully stated in its instructions to the jury the rules of law arising upon the issues. Mr. Baumle was represented by astute and learned counsel. At length there seems to have been a fair trial, and no sufficient reason appears for disturbing the judgment.

July 3, 1940
Seventy-Five Years Ago

[Excerpted from Weitz v. State, 1940 OK CR 82, 104 P.2d 445.]

The defendant Juanita Weitz was by information charged in the county court of Ellis county on April 13, 1939, with the offense of using profane and abusive language; was tried, convicted, and adjudged to pay a fine of $25 and costs, from which judgment and conviction she appeals to this court.

Luther Elmore, the prosecuting witness, testified in part as follows:

"A. Well, she said something about me being a snooping son of a bitch. A. Well, she called me all kinds of names and everything that she could think of. A. Well, she said I was a God damn liar. A. She said she was going to shoot my God damn ass off. Q. Now, Mr. Elmore, I will ask you to state or give the exact words that Mrs. Weitz said to you on that occasion. Did she or did she not call you a God damn snooping son of a bitch? A. It is."

The prosecuting witness further testified that "They were giving it to me about messing in their liquor business, she kept servicing and taking on."

The other witnesses for the state denied that they heard any abusive language used by the defendant.

Juanita Weitz, the defendant, stated: "He asked me what I wanted with him, and I told him that I wanted him to quit haunting me."

And he reached over and patted me on the leg and said, 'Now, Honey, you know I wouldn't bother you;' and I said, 'You damn son of a gun, you get your hands off of me, I want you to leave me alone."

The defendant denied using abusive language; and her husband stated that she did not swear after he came to the car when he saw the prosecuting witness get in.

The evidence of the state is not very persuasive; however, weak as it is, it was sufficient to go to the jury, since there was positive, even though hesitant, testimony supporting the allegations in the information.

However, in the cross-examination of the defendant, the county attorney asked many prejudicial and insinuating questions (which defendant denied), which questions were not competent for any purpose. The following are the most blatant:

"Q. Have you gone on parties with any other man since last November? Q. Have you been in a habit of going to the home of single men in Shattuck? Q. Have you ever gone to the home of any single man alone in the town of Shattuck? Q. Do you recall going to the home of a certain single man in Shattuck, about January or February of this year?"

The trial judge should not have allowed this kind of an examination to have been held, as those matters, whether true or false, had no bearing whatsoever upon the issues in this case. It is assumed that the county attorney was not in possession of facts to support these statements, as no evidence was offered by him in support of these questions.

There was a sharp conflict of evidence in this case. The trial court allowed both parties to ask questions which were wholly immaterial to the issues. Because of the decided conflict in the testimony, this court is of the opinion that the questions above set forth were of such a nature as to be prejudicial to the rights of the defendant, and that without the aid of such prejudicial and inferential questions the defendant would not have been convicted.

July 14, 1965
Fifty Years Ago

[Excerpted from McKinley v. State, 1965 OK CR 89, 403 P.2d 789.]

George McKinley was charged by information in the Court of Common Pleas of Oklahoma County with the crime of operating a motor vehicle while under the influence of intoxicating liquor. He was tried by a jury who found him guilty and assessed his punishment at ten ($10.00) in the county jail and a fine of $10.00. Judgment and sentence was pronounced in accordance with the verdict of the jury, and a timely appeal has been perfected to this Court.

The sole question presented on appeal is that the trial court erred in permitting the jury to separate after the case had been submitted to them. The pertinent facts giving rise to this assignment of error appear in the casemate at pages 59, 60 and 61 where the following proceedings were had:

"THE COURT: and at 10:35 a.m., Tuesday November 17th 1964, ARGUMENTS were had to the Jury by counsel for the respective parties.

"AND at 11:00 a.m., November 17, 1964, the Court instructed the jury to retire to the jury room and deliberate upon its verdict; and the 12 jurors left the Courtroom.

"THEREAFTER and at 12:00 o’clock noon November 17, 1964, the 12 jurors requested a noon recess for lunch.

"THE COURT: (Outside the hearing of the jurors) We have record show that the defendant is here in person and that his Attorney has to leave the courthouse in another matter, and that defendant and his attorney agree that the Court may receive the jury and/or receive the verdict.

"THEREUPON, the Court directed the Bailiff to bring the 12 jurors into the Courtroom, which was done.

"THE COURT: Have you selected a foreman?"

"THE FOREMAN: Yes, sir.

"THE COURT: Do you want to ask the Court something?"

"THE FOREMAN: Yes, sir. We would like to go to lunch.

"THE COURT: Let the record show that all members of the jury being present ask the Court to grant them a recess for lunch. Let the record further show that the Court will excuse the jurors for a lunch recess. Remember the admonition the Court has heretofore given you. I would like to have you back here at 1:15 p.m. to day, November 17th, 1964. It is now 12:05 p.m. Let me have the Exhibit, the verdicts and Instructions until you return.

"THEREAFTER and at 1:15 p.m., November 17, 1964, Court reconvened, the defendant being present in person and the State of Oklahoma being present by Mr. H.C. Cooper, Assistant County Attorney of Oklahoma County, Oklahoma, the 12 jurors being in the courtroom.

"THE COURT: Members of the jury, you may now return to the jury room and continue your deliberations. When you arrive at a verdict, knock on the door, and the Bailiff will report to you.

"THEREUPON, the 12 jurors retired to the jury room to deliberate upon their verdict.

"THEREAFTER and at 3:15 p.m., Tuesday November 17, 1964, Court reconvened, all parties appearing at last above stated, the 12 jurors being in the courtroom.

"THE COURT: Have you arrived at a verdict?"

"THE FOREMAN: Yes, sir.

"THE COURT: The clerk will read the Verdict.

"THEREUPON, the Clerk read the Verdict in open Court, and the Court polled each juror who signed the verdict, each juror so polled answering in the affirmative that the

See OLIO, PAGE 6
Select Magna Carta Provisions

By Geary Walke

The written form of the Great Charter is interesting, that is, once it has been translated into a non-dead language. The “we” you will refer, is the King. It contains some very notable guarantees of liberty, as well as some rather ordinary, routine and mundane (by today’s standards) laws which sound awfully boring. They are so elementary that I am somewhat surprised when I see them because I take them for granted. Yet, what a world it must have been without them.

We definitely take religious liberty for granted at times. And, we currently have varying opinions about how freedom of religion should be defined in today’s world. But, think for a moment what it was like to have a complete absence of religious liberty. No guarantee that “the” church would continue to exist, or what it was allowed to do. Or, what would it be like, in a country where church and state are integrated, if a King suddenly decided to add something like divorce against the wishes of the church? Oh, wait, that was done a bit later in history.

THE FIRST GRANT IN THE GREAT CHARTER:

Perpetual freedom of the church

The preamble tells us the document is about liberties, at least for “freemen,” who were the archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs. The other party to the Charter is “us,” which you will recall is the king (by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou). Note that the declared rights are to last forever, or until revoked by the Pope.

“FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church’s elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.”

We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.”

However, this document was annulled by Pope Innocent III within the same year it was signed, 1215. Odd that the Pope would annul a guarantee of church liberty.

MISCELLANEOUS GREAT GRANTS:

Taxes

Paragraph No. 12 related to the limits to the King’s authority to levy scutage (gold substituting for military service).

12. “No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter . . .” (Emphasis Ours…Ed)

Root for House of Lords

The King acknowledges in Paragraph 14 that he is need of local, baronial support. He pledges a manner, time of notice and place to obtain “common counsel” or approval from the lords on important matters.

14. “And for obtaining the common counsel of the kingdom and the assessing of an aid (except in the three cases aforesaid-ransoming the king, making eldest son a knight or marrying off the daughter) or of a scutage, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, severally by our letters . . .” (with at least 40 days written notice, to assemble at a definite place, to proceed even in the absence of some).

Access To The Courts

The King agreed that courts, at least for lesser matters, should be permanently located locally, which reflected greater power in the local barons, in Paragraph No. 17 and 18.

17. “Common pleas shall not follow our court, but shall be held in some fixed place.”

18. “Inquests of novel disseisin, of mort d’ancestor, and of darrein presentment, shall not be held elsewhere than in their own county courts.”

Root for Juries

We can find the roots of a jury system in Paragraphs 20 and 21. Amercements are proportionate to status, and peer review of Barons.

20. A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, ...(and then only by the oaths of honest men from the neighborhood.)

21. Earls and barons shall not be amerced except through their peers.

Intestate Succession

We find the laws of intestate succession are birthed to keep property of deceased lords from being appropriated by the nearest king.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest kinsfolk and friends, under supervision of the church, saving to everyone the debts which the deceased owed to him.

Weights and Measures

I suppose there was a lot of double dealing going on in the pubs and fast food joints of the day because this document, this cornerstone of liberty, standardized weights and measures. While we take this simple matter for granted, just imagine a world where every single transaction might involve different standards. And yet I’m certain there were a lot of merchants and entrepreneurs of the day who complained of this “over-regulation” by the government.

35. Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, “the London quartar;” and one width of cloth (whether dyed, or russet, or “halberget”), to wit, two ells within the selvages; of weights also let it be as of measures.

Other provisions dealt with kiddles, wapentakes, trithings and other strange subjects. Still others prevent the taking of wood without permission. And, yet others direct who can be ordered to make bridges at river banks, and who must remove fish traps from the Thames. The next installment will spell out some truly grand provisions which are historic and essential to our system of government.

**Quote of the MONTH**

“The problem with the rat race is that even if you win, you’re still a rat.”

~ Lily Tomlin, Comedienne (1939 - )
verdict was his or her verdict. And the Court thereupon ordered the Clerk to file and record the Verdict. “THEREUPON the Court dismissed the 12 jurors from any further consideration of this case, and the jurors left the courtroom. And the trial proceedings of November 16th and 17th, 1964, in this cause were concluded.” In his brief and argument before the Court, counsel for the defendant asserts that in his absence and without his consent, the trial court allowed the jury to separate for lunch and that in so doing the court committed fundamental error. The defendant relies upon Page v. State, Okl.Cr., 332 P.2d 693, wherein this Court, speaking through the Honorable John Brett in construing Title 22 O.S. 1951 § 857, had this to say: “The provisions of 22 O.S. 1951 § 857 imperatively require that upon the final submission of the case to the jury, they cannot be permitted to separate, and if permitted to separate, such separation vitiates the verdict, in the absence of proof by the state that no prejudicial injury resulted by reason of their separation.” It is the position of the state that the record does not support the defendant’s assertion that the jury was allowed to separate, but merely reflects that the court allowed the jury to recess for lunch. While we are inclined to agree with the state’s interpretation of the record, such interpretation is unnecessary to a determination of the issue here presented.

In Page v. State, supra, and in every other reported instance where this Court has reversed and remanded a case for new trial it affirmatively appeared that the trial court allowed the jury to separate over the objection and exception of the defendant. In each instance the error was preserved and presented to the trial court in the motion for new trial, and in each instance the state failed to introduce evidence to overcome the presumption of prejudice that arises when a jury is allowed to separate over the defendant’s objection. In the instant case counsel for defendant had voluntarily absented himself with the apparent acquiescence of the defendant, and was not present when the jury requested a recess for lunch, and assuming that defendant’s contention that the court allowed the jury to separate is correct, it, nevertheless appears that the defendant was present and failed to object. Moreover, it does not appear that the alleged separation was assigned as error in the defendant’s motion for new trial, nor was the state given an opportunity to present evidence to overcome the presumption of prejudice that a timely objection been interposed when the alleged error occurred.

We are of the opinion, and therefore hold, that when a case has been submitted to a jury and no request is made that they be kept together, and they are allowed to separate without objection being interposed, defendant will be deemed to have waived any objection to such separation, and the error may not be raised for the first time on appeal.

July 17, 1970 Twenty-Five Years Ago

[Excerpted from Benham v. Plotner, 1990 OK 64, 795 P.2d 510.]

The query presented on certiorari is whether a criminal conviction pending on appeal may be admitted into evidence as conclusive proof of allegations made in a subsequent civil action. We are of the opinion, and therefore hold, that a criminal conviction pending on appeal may be admitted into evidence as conclusive proof of allegations made in a subsequent civil action. The instructions giving conclusive effect pursuant to 12 O.S. 1981 § 2803 (22), statutoryutory effect pursuant to 12 O.S. 1981 § 2803 (22), the statutory exception to the hearsay rule is irrelevant because there was not a “final judgment” as used in § 2803(22) provided that evidence of a final judgment or a plea of guilty by a person convicted of a crime punishable by death or imprisonment in excess of one year is not excluded as hearsay, and that such evidence may be used to prove any fact to sustain a judgment. It is apparent that Plotner’s sentence of fifteen years for attempted rape and five years for forcible oral sodomy met the initial requirements of § 2803(22).

The doctrine of issue preclusion is activated when an ultimate issue has been determined by a valid and final judgment - that question cannot be relitigated either by a party to, or a party in privity with, the prior adjudication in any future lawsuit. Here, the determinative factors are the phrase “final judgment” as used in § 2803(22), and the definition of issue preclusion/collateral estoppel. A judgment is not final in the sense that it binds the parties until the losing party has failed properly to perfect an appeal, or until the highest court, whose jurisdiction is invoked by either party, upholds the decision of the trial court. Because a case does not become final until the appeal or the right to appeal is exhausted, and because Plotner’s criminal conviction was on appeal at the time of the civil trial, Plotner’s conviction was not a final judgment. Therefore, it could not be introduced as conclusive proof of attempted rape or forcible oral sodomy.

This doesn’t mean that Plotner’s convictions were inadmissible. The last sentence of § 2803(22) provides that “the pendency of an appeal may be shown but does not affect admissibility.” Initially, this sentence seems to conflict with the phrase “final judgment” used in the first line of § 2803(22). However, the comments to § 2803(22) note that a choice is available if the doctrine of issue preclusion/collateral estoppel is inapplicable. The question is may either be admissible for “what it is worth”, or it may have no effect at all. The comments state that the rule adopts the first alternative in felony convictions - the conviction should be admitted “for what it is worth”. Although the state is entitled to offer evidence in rebuttal, the jury is entitled to consider the conviction “for what it is worth”. If the defendant is unable to offer a satisfactory explanation, it is presumed that the jury will give the conviction substantial weight and effect.

After the trial of this case, the Court of Criminal Appeals affirmed the forcible oral sodomy conviction, and dismissed the attempted rape conviction in the criminal action. The instructions giving conclusive effect to both convictions significantly tainted the entire trial and prejudiced the jury’s verdict. We cannot assume that any portion of the jury’s verdict can be saved. The fact that the jury was told by the trial court that Plotner was guilty of attempted rape and forcible oral sodomy, and that he was liable to Benham for damages influenced its determination. This is implicit in its finding for Plotner on the claims of assault and battery and intentional infliction of emotional distress. A judgment reversed and remanded with directions to grant a new trial, results, except for questions of law settled by the proceedings in error, in the action standing as if no trial had been held. Because the trial court’s instructions giving conclusive effect to Plotner’s criminal convictions before a final judgment had occurred were erroneous and prejudicial, the cause must be remanded for a new trial not inconsistent with this opinion.
Celebrating a Life’s Work

Thank You, and Congratulations

All of us at Fellers Snider would like to thank Jap Blankenship for his more than 50 years of leadership and service. Your guidance and wisdom have been invaluable, and we will honor your legacy by maintaining your high standards.

We all wish you health and happiness in your retirement. It has been an honor and a privilege to work with you.

— Your Fellers Snider Family
OCBA Awards Luncheon 2015

Held at the Oklahoma Sports Association Museum
Oklahoma City, OK
June 12, 2015

President Jim Webb welcomes everyone to the 2015 OCBA Awards Luncheon

Awards Chair Judge Patricia Parrish presents Judge Lisa Davis with the Professional Service Award

Judge Geary Walke receives the Community Service Award on behalf of his son Collin Walke

Heather Cline was the recipient of the Pro Bono Award

Community Service Committee Chair Ray Zschiesche received the Outstanding Committee Award

Briefcase Editor Judge Geary Walke presented this year’s Briefcase Award to Rex Travis

Reid Robison was the recipient of this year’s Bobby G. Knapp Leadership Award

Curtis Thomas received the President’s Service Award

The President’s “Unsung Hero” Pro Bono Award went to John Miley.
President Webb presented the Outstanding Young Lawyer Director Award to Curtis Thomas.

Judge Lisa Hammond was the recipient of this year’s Friends of the Young Lawyers Award.

President Jim Webb received the Young Lawyers Beacon Award from YLD Chair Justin Meek.

Awards Luncheon 2015 (Continued)

60 – Year Service Awards

Presenting the OBA Service Awards were Oklahoma Supreme Court Chief Justice John Reif and OBA President David Poarch.

Robert Allen
George Armor
Gordon Brown

James Hamill
Bill Robinson

Additional 60-Year Award Recipients: Marvin Franklin, Richard Frank McDivitt, Fred McDonald and Blanchard Renegar.
50 – Year Service Awards

Presenting the OBA Service Awards were Oklahoma Supreme Court Chief Justice John Reif and OBA President David Poarch

Additional 50-Year Award Recipients: Jerry S. Duncan, Arlen Fielden, Garwin Kent Fleming, Artis Visanio Johnson, Donald Lisle, Eldon D. Lyon, Judge David Russell, Kenneth W. Turner, Roy D. Williams and Richard D. Winzeler
Crowe & Dunlevy attorney elected officer of national estate law group

The American College of Trust and Estate Counsel (ACTEC), the leading trust and estate organization of peer-elected trust and estate lawyers, has named Crowe & Dunlevy attorney Cynda C. Ottaway president-elect. ACTEC inaugurated the 2015-2016 officers during a recent annual meeting in Marco Island, Florida.

Ottaway serves as a director in the firm’s Oklahoma City office and is chair of the Private Wealth & Closely-Held Business practice group and a member of the Taxation practice group.

Her practice focuses on estate planning, trust and estate administration and litigation and planning for closely-held families in Oklahoma. Ottaway has experience in wealth transfer techniques and assists individuals and businesses with succession planning.

She is a frequent speaker and writer, having served on the ACTEC Commentaries on the Model Rules of Professional Conduct, Fourth Edition, 2006. Ottaway has served in several other leadership roles with ACTEC, including service on the Executive Committee and as secretary and treasurer. She has also served on the Board of Regents and is a past president of the ACTEC Foundation.

Ottaway was named 2014 Oklahoma City Lawyer of the Year by Best Lawyers in the category of Trusts and Estates and is listed in Best Lawyers in America in areas of Closely-Held Companies and Family Business Law, Non-Profit/Charities Law, Tax Law and Trusts and Estates. She was named one of the Top 25 Women Oklahoma Super Lawyers in 2013 and is listed in Oklahoma Super Lawyers in the areas of Estate Planning and Probate.

In addition to her legal practice, Ottaway is an active community volunteer in Oklahoma City, serving on several boards including United Way. Oklahoma City Museum of Art, Board of Visitors for Honors College and the Board of Visitors for College of Law at the University of Oklahoma. She is a volunteer with Leadership Oklahoma City and Rotary Club 29.

Crowe & Dunlevy attorney receives Excellence in Human Resource Management Award from Oklahoma Human Resource State Council


Court signified a professional who demonstrates the organization’s mission of serving the human resource professional and advancing the profession. Recipients are role models for the profession who share their professional expertise and leadership both within and outside the organization. Fellow Crowe & Dunlevy attorney Gayle L. Barrett is also a former award recipient.

Crowe & Dunlevy attorney Griswold with $10,000 scholarship for paralegal education at the University of Oklahoma

Crowe & Dunlevy recently presented Elisabeth Griswold with the $1,000 B. Jo Balding Scholarship for Students in the Legal Assistant Education Program at the University of Oklahoma Law Center.

Griswold is currently working as a legal secretary at the Oklahoma Corporation Commission. Her previous experience includes serving as a legal secretary for the Cleveland County District Attorney’s Office, a case worker for the District Attorney’s Child Support Division and as a mental health technician at Norman Regional Hospital. She is expected to complete the Legal Assistant Education Program at the University of Oklahoma Law Center in fall 2016.

The Crowe & Dunlevy Foundation established this annual $1,000 scholarship to assist one University of Oklahoma Law Center student enrolled in the Legal Assistant Education program in his/her pursuit of a career in the legal field in honor of longtime Crowe & Dunlevy paralegal B. Jo Balding. Balding has served the firm for more than 50 years with professionalism and dedication.

To qualify for the scholarship, applicants must be enrolled in the Legal Assistant Education Program at the University of Oklahoma Law Center and be in academic good standing with at least an 8.1 grade point average in legal specialty courses at application submission.

OU Law selects Professor Lindsay Robertson as the Chickasaw Nation Native American Law Chair, the First Chair of its kind in the Nation

Dr. Lindsay Robertson has been selected as the first Chickasaw Nation Native American Law Chair at The University of Oklahoma College of Law. This is the first Native American Law Chair to be held by a permanent, full-time faculty member at a law school in the United States. This appointment will come before the OU Board of Regents in September.

Dr. Robertson joined the law faculty in 1997. He teaches courses in Federal Indian Law, Comparative and Indigenous Peoples Law, Constitutional Law and Legal History and serves as Faculty Director of the Center for the Study of American Indian Law and Policy and Founding Director of the International Human Rights Law Clinic.

“Over the past 18 years, Dr. Robertson has worked tirelessly at OU Law to build one of the most comprehensive Indian Law curricula in the nation,” Harroz said, with courses that include Native American Natural Resources Law, Tribal Courts, Federal Indian Water Law, Religion, Culture and Indian Law, Indian Gaming Law, Peacekeeping, and Tribal Economic Development, as well as Native American Law internships with the U.S. Department of Justice, Congressman Cole’s Office, and the U.S. Department of the Interior.

OU Law is at the forefront of curricular development in the growing field of International and Comparative Indigenous Peoples Law, with a seminar co-taught by Robertson with colleagues in Canada, Australia, and New Zealand; an international Indigenous Peoples Law clinic; international Indigenous Peoples Law internships in Geneva, Costa Rica, Japan and Washington D.C.; and a summer fellowship in comparative and international indigenous peoples law that has brought to the College of Law Latin American scholars and advocates including Francisco Cali, current Chair of the United Nations Committee on the Elimination of Racial Discrimination. Dr. Robertson has assisted OU Law alumni in securing Indian Law positions all over the United States, including major policy positions in Washington D.C.

OU Law students take at least one course in Native American Law. Located in the heart of Indian Territory, OU Law offers three different programs providing specialization in Native American Law: the Juris Doctor Certificate, the Master of Laws (LL.M.) and the new Master of Legal Studies (MLS). The College of Law has main-
Dear Roscoe:

F.D., Bethany, OK.

referred to Ernie Trani as a “gunsel,” obvi-

By Roscoe X. Pound

“You can come in when we’ve got the yard under
 structures providing both cover and concealment.

He handed me his Wilson SPR.

“Pros?” asked Innocente.

“You and the two cops cover us,” he said.

“I heard a short burst, sounding a lot like
 Ernie’s Beretta. After several tense minutes,
 Hettinger waited us in. They held almost twenty
 guys at gunpoint. The movers, just trying to earn
 a wage, seemed anxious and cowed. Justifi-

ally so. The gray-uniformed, as Hettinger pre-
 dicted, ranged in age from about 16 to 18, plus one
 grizzled den leader. Ernie held a tactical rifle taken
 from one of them.

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 grizzled den leader. Ernie held a tactical rifle taken
 from one of them.

“C’mon Hett,” said one of the movers. “What’s
 the deal?”

Hettinger thought for a moment. “I do get a deal
 for you. You and your people load yourselfs into
 one of those trucks. Find a place outside town, and
 have a few beers. Kill a couple of hours before going
 in and everything’ll be ok.”

“You are kidnapping Martin,” the Desmond
 fella said. “Taking children will not play well with
 women in the county. And need I also add that you
 and these thugs are also in trespass?”

“Thugs?” Innocente said.

Shrugged. “I’m ok with it.”

“What do you think, Mr. Pound?” Hettinger
 asked.

“I think we’re spreading ourselves too thin
 trying to search this place and ride herd on this
 bunch.” I addressed myself to the mover appar-
 ently in charge. “Take two trucks. One can carry
 your men back to wherever after a few hours like
 Martin said. We’ll load these NAZI-neophytes
 and company in the other. Drive them around,
take them out for ice cream for all I care. But do not
 let them leave the truck for at least a few hours. I’d
 suggest dropping them off at the States’ barracks.”

“Hey wait a minute Roscoe,” Seery said. “Now
 we really are kidnapping.”

“Look at the bright side,” I said. “It’s not a
 pre-medicated act ‘cause I’m making this up as we
 go along. That’s gotta be worth some kinda
 immunity right?”

Hettinger stepped up to the head of the
 moving crew. “Look, Danny, this is a matter of trust, ya
 know? If word of what’s going on gets in the
 wind, we’re toast. Now, I guarantee you ain’t
doing anything illegal. If anything, you’re helping
 out Neilson and these Jersey cops here. But I
 also guarantee that if you cross me on this, I, or
 my family if I don’t make it out, will know who
 batched it up.”

Danny looked Hettinger in the eye. “Darn it,
you don’t have to threaten me. It’s against my
 better judgment, but I owe you one trip out on a
 limb.”

“Load ‘em up Jimmy,” Hettinger told Desmond.
 “Or what?” sneered Desmond. “You’ll shoot
 unarmed children?”

“I mean I wasn’t planning to start with them,”
 Ernie said.

Emie’s words and tone left little room for
 maneuver or brave fronts. “You boys get in the
 truck, Desmond said.

A chorus of protests arose. “Now!” Desmond
 shouted.

The other adult with the brut pack climbed into
 the truck, and helped the kids as they climbed
 aboard. “This as a thinking teacher, Desmond,
 I ask you, what about how the Gousse-
 steppers you want them to emulate used to load
 Jews and Gypsies into trucks and railcars. Only,
 this time there may still be a happy ending.”

With both trucks loaded, they pulled out.

“They think they’ll keep with the program?” I
 asked.

“Yeah,” said Hettinger, “Danny’s good peo-
 ple, and all those guys are related in one way or
 another.”

I noticed his smile, and he noticed my puzzled
 look. “And the family name is Reznik.”
The minimum recommendation in “met hours per week” is 7.5. Your using the met hours avoids the necessity of your trying to identify whether your exercise is moderate or vigorous. If you achieve 7.5 met hour per week, you will have satisfied the minimum exercise recommendations. Let’s say you choose an exercise at a three met level. If you exercise only 30 minutes a day, you need exercise only five days per week to meet the minimum recommended level (3 met X 5 hours X 5 days = 7.5).

The met level of hundreds, maybe thousand, of activities (not just exercise) appears at the Compendium of Physical Activities sponsored by the National Cancer Institute and Arizona State University. Just Google it, and click on “Activity Categories,” select an activity, and you’ll have the met level of your chosen activity. Merely multiplying the met level and your duration in hours….twenty minutes would be .33; an hour and fifteen would be 1.25…..will give you your metabolic hours of exercise. Remember, you want per week AT LEAST 7.5 met hours.

Warren E. Jones, JD, HFS, CSCS, CEQ, is an American College of Sports Medicine (ACSM) Health Fitness Specialist, a National Strength and Conditioning Association Certified Strength and Conditioning Specialist, and a holder of an ACSM Certificate of Enhanced Qualification. His clients range from competitive athletes to the morbidly obese. He can be reached at wejones65@gmail.com or at 405-512-7612.
OCBA 2015 ANNUAL GOLF TOURNAMENT

1st Flight, 1st Gross – Mike Coker, Grady Parker, Dan Davis & Zachary Walls

1st Flight, 1st Net – Michael O’Neil, Judge Tim DeGiusti, Mychael McWhorler & Gary Chilton

1st Flight, 2nd Gross – Derek Chance, Ed Blau, Brent Dishman & Scott Anderson


2nd Flight, 1st Gross – Matt Dobson, Jon Lee, Ed Lee & Kyle Goodwin

2nd Flight, 1st Net – Randy Sewell, Ben Butts, Monty Cain & Brent Neighbors

2nd Flight, 2nd Gross – Lance Phillips, Kent Watson, Cesar Armenta & Joel Porter

2nd Flight, 2nd Net – James Prado, Justin Lowe & Michael Johnson

3rd Flight, 1st Gross – Don Cooke, Larry Spears, Jim Ferguson & Clay Ferguson

3rd Flight, 1st Net – Trey Tipton, Kevin Blaney, Skip Cunningham & Eric Odom

3rd Flight, 2nd Gross – Greg Mahaffey, Matt Jankowski, Rick Rose & Travis Brown

3rd Flight, 2nd Net – Bobby Wegener, David Pardue, David Pomeroy & John Oldfield

beyond comparison with just about any other piece of American literature. Let’s face it; the Declaration of Independence is 18th Century trash talk to the most powerful person in the world at the time. How insanely swaggering is it to start off a letter addressed to the entire planet except his population to take notice of just what a jerk King George III was. It’s social media, before social media. By the fall of 1776, the Declaration of Independence had spread through French, Danish, Italian, Swiss, and Polish populations, feared by the controlling authorities in these regions as ordinary men became more intent on branding their own form of independence against their respective oligarchical governments. It is a brilliant piece of writing because at the same time it defaces the tyrannical target of its rhetoric, it also declares in unforgettable words that it is only out of United States’ “decent respect” for mankind that its drafters should declare the grievances publically for consideration. King Louis XVI of France must have thought something of this statement. Perhaps the most interesting aspect of the Declaration of Independence was its inception and the individual delegates serving during that timeframe. Interestingly, it was none other than Richard Henry Lee who first put forth a resolution that the colonies should be free and independent states. A notable descendant of Richard Henry Lee was none other than Robert E. Lee, who, paraphrasing Dr. Fears, made his best attempt to tear apart the very Union his forefather worked so hard to cultivate. A committee was formed by the appointment of John Hancock to prepare such a declaration. I like to think of the delegates back then without their layers upon layers of staff and endless supply of research tools and consultants. No political salary on which to rely about a date, when the written word, not the date of its origin is to be celebrated? It is also worthwhile to consider that both Adams and Jefferson fought off imminent death in 1826 so that they could each live to that see that magnificent anniversary of when they each signed the Declaration that changed the course of humanity. It has been said and supported by American Historians such as Dr. Fears that America is the only nation in history that was founded on moral values. “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” Think of it this way, in order to become an American, you do not have to have American blood running through your veins as you would have in ancient Greece, Rome or even Britain in 1776. To be an American, you do not have to claim that you were born in this land. All you have to do is swear to uphold the ideals and accept the principals upon which our nation was founded. That is it. Embracing the ideas as far back as Aristotle and Cicero, often quoted by Jefferson, that mankind has a moral obligation, and true happiness is found by the fulfillment of this obligation, to live a life in such a way that each individual leave the world a better place. So amidst all of the fireworks, hamburgers, hot dogs, and Budweiser, take some time this month to ponder what you are doing to live and support those very words that caused a British King so much trouble, moved a French monarch to war, and brought 56 men together in Philadelphia to scribe their names on such a profound document.

The work is lighthearted, but maybe not beach-in-July reading, unless you really are a word nerd. It is similar to Eats, Shoots, and Leaves, but maybe a little snootier. This lady has corrected the best writers, and lived to tell about it. Sort of like writing a brief for an extra word conscious Federal Judge. Norris talks about spelling, including Franklin’s attempt to change the alphabet, the difference between usage of which and that as modifiers, the proper and preferred use of commas, and a large amount of Other linguistic material. If this book makes you look over your shoulder, even past your spellcheck and grammarcheck, good. At the New Yorker, three read-throughs per stage of production seem to be required. Mean what you say, so they can read what you mean.
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