Richard Ogden:
The New Special District Judge for Oklahoma County

By Collin Walke*

You may have heard the name Judge Ogden before. A famed judge from the pan-handle of Oklahoma. Famed locally for his generosity, judicial temperament, and leadership in the local Baptist church. Famed statewide for winning reelection as district judge after he passed away.

But that was Frank Ogden, Richard's father. No doubt Richard is his own person, but the indelible lessons left on Richard by his father have shaped him to be the judge he is today.

Richard grew up in Guymon and graduated from Oklahoma State University with a B.S. in Political Science. During his studies at OSU, Richard had the honor of interning for then Senator David Boren. After undergrad, Judge Ogden went on to the University of Oklahoma College of Law, where he began leaving his mark by becoming the Student Bar Association President.

After graduation, Richard began practicing law with Joel Carson and Pete Pierce. Richard once told me that during the first two years of his practice he didn’t have a single day off of work. I put this in the “I walked 20 miles to school in the snow, uphill, both ways” category... but I digress.

In 1996, Richard began what would become a long-term personal and professional relationship with Rusty Mulinx by joining the firm Gooding Mulinx. In 2001, Richard and Rusty became partners in what was then known as Mulinx, Ogden, Hall, Hampton, Andrews, & McDaniel, P.L.L.C. Though the firm name changed a few times over the years, Richard remained a partner at the firm until his appointment to the bench.

Throughout his 25-year career, Richard’s legal practice has focused on commercial litigation, with cases involving matters as varied as nuclear power plants and the hip-

Happy St. Patrick’s Day: Ireland, Snakes and Disneyland

By Mike Duggan

Paddy’s Day has come around again. Once a year we train our sights on a wee little country, barely the size of West Virginia and the population of Phoenix. Once a year we see again that nothing is as it seems in Ireland. The Celtic mists that shroud the moors and heaths; legends of fairies and banshees; St. Patrick’s Day gives us an excuse for another look, another amaze-

Are There Really No Snakes In Ireland?

I hate snakes. It is a true irrational pho-
bia. Facts inform me that serpentine roads and slithering trucks have caused me many more incidents of real danger than any snake. But just walking past the reptile house in a zoo will give me the shivers. I’ve been an avid hiker and outdoorly person most of my life, and I have encountered snakes in the wild; like my more rational friends have always told me, true to their shy nature, they have just – slithered away. I even killed a snake once, a ferocious garter snake that had somehow gotten in my drawer in Edmond. This becomes increas-

There are no snakes in Ireland, and no doubts of the fact, just a few jokers. In a recent blog from Britain’s Guardian, “Big Bill” Robinson of Slough, England wrote: “There are snakes in Ireland. I saw some very colorful ones there, including a very large python, thick as my arm and ten feet long if it was an inch. However it was in the Dublin Zoo.” Patrick Q. of McKinney, Texas, added, “I thought Rupert Murdock stayed on the Emerald Isle at times.” The last word goes to a kindred spirit, Ige Ogoja who lives in Nigeria, a place where they really do have snakes to be afraid of: “Wish I live in Ireland. I’ll have nothing to fear then but let’s just accept it was a miracle.”

Were a Miracle?

It used to be canon in the Roman Catholic Church, in the far past before they did unthinkable things like de-saint St. Christopher just because historians discovered he never existed, that St. Patrick drove them – yuk. It seems to be the universal scientific consensus that there are no snakes in Ireland (also none in Antarctica, Greenland and New Zealand). They’re everywhere else, you see, maybe even in my desk drawer in Edmond. This becomes increas-

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From the President

Voting Crisis in Oklahoma

By Jim Webb
OCBA President

“Let each citizen remember at the moment he is offering his vote that he is not making a present or a compliment to please an individual — or at least that he ought not so to do; but that he is executing one of the most solemn trusts in human society for which he is accountable to God and his country.”

—Samuel Adams (1722-1803)
Father of the American Revolution, Patriot and Statesman

I have a very distinct memory going as far back as I can remember in my childhood. Every single time the voting polls were open — regardless of the issue or the candidates — I remember being dragged along to the polls just outside the principal’s office (which I visited often) at Rollingwood Elementary School, then standing outside the voting booth as mom and/or dad would walk in, pull the curtain shut, cast their votes, and walk back out. I do not know about you, but I was never allowed to ask for whom they voted. That was one of the small list of topics that was off limits to ask someone, according to Mom and Dad.

But the point was made. When the polls are open, you show up, and you cast your vote. It is not just a right. It is your obligation as a citizen.

I was stunned when I saw the voter participation statistics on the recent Oklahoma City Council elections in Oklahoma City. The Oklahoma County Election Board reported 113,760 registered voters were eligible to vote, but voter turnout was a pitiful 5.7 percent. Ugh.

I guess I should not have been too surprised. According to the Oklahoma State Election Board and the U.S. Election Project, merely 40 percent of the registered voters — representing only 30 percent of the registered voters — participated in the elections. No brainer, but much needed.

Surely we all agree our democracy needs a strong, vigorous and engaged population. Voting is the backbone of our democratic society. As voter participation declines, our backbone weakens. At some point, we have no backbone at all.

Our democratic government finds its roots in the basic principle that voters must have a say in our society. At the time of our country’s revolution, those in favor of independence from Britain vehemently argued that the government found its legitimacy from the consent of the governed. Throughout our history, positive changes to our voting law were made the process more inclusive by granting voting rights to women and minorities. These were obviously much needed changes for the greater good of our democracy.

Today we are facing a crisis in the continuing precipitous decline in election participation. That is why I recently spoke with one of our lawyer brethren, Oklahoma State Senator David Holt (R-Oklahoma City).

As a quick aside, here are some interesting facts. Senator Holt is one of seven lawyers — five Republicans and two Democrats — in the Senate. In the past ten years, Senator Holt is the only new Republican Senator welcomed into the caucus. Only five lawyers currently serve on the 10-member Senate Judiciary Committee.

I am pleased a lawyer is driving the legislative process to advance bills that would improve voter participation. It is understandable and difficult for the party in power to push for changes in the election process that allowed for them to be in power. I applaud Senator Holt for bravely taking a public stand on these issues, some of which are unpopular.

That’s what good lawyers do.

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@ckh.com or call me at 935-9594.
Where Are My Shoes? Et Tu Shoe?

The courthouse has been home to Cleo Fields and his combined shoe shines and psychoanalysis/hug therapy for a long time. It seems that Cleo has found that not all of his customers want their shoes returned after being serviced by him. He knows this because he’s got a lot of unclaimed shoes! Being a low-cost operation, there are no receipts, ticket stubs, invoices, billing statements, etc...

But, the warning is now out: IF YOU WANT YOUR SHOES, COME GET THEM!

Otherwise, Cleo will dispose of them, month by month, even convert that leather or simulated leather material into cash via sales.

Think about it: Did you leave your shoes or boots with Cleo for shining, repairs, etc, and then... forget them? Reclaim them NOW, before March 31st, last chance.

Animal Abuse and the LINK to Domestic Abuse

By Gretchen Harris

Each of us has undoubtedly seen the heart wrenching story on the evening news or on our Facebook news feed about a dog that has been drug behind a car or beaten. We support efforts of humane officers and our courts to curb animal abuse and cruelty. But did you know that we may be able to reduce both domestic abuse and violence and animal cruelty if we recognize there is a link between the two?

One of the goals of the Lawyers Against Domestic Abuse Committee of the Oklahoma County Bar Association is to educate the OCBA members about the issue of domestic abuse. The LADA Committee has focused on continuing legal education of attorneys who encounter animal abuse or violence in their practices whether it be family law, juvenile law, criminal law or divorce law. The Committee is also working to bring a judicial conference on domestic violence to central Oklahoma from the National Council of Family and Juvenile Court Judges. But the Committee is also concerned on educating our OCBA members generally because we, as members of our community, can do to prevent animal abuse and domestic abuse.

A NOTE FROM CLEO:

IF YOU WANT YOUR SHOES, COME GET THEM!

By loki

Animals are at risk.

Animal abuse is often the “tip of the iceberg and the first warning sign of an individual or family in trouble,” according to information from the Animal Link Coalition. Animal control officers are sometimes the “first responders” to situations involving domestic abuse or violence. In fact, according to the Coalition, “Neighbors may actually be more willing to report suspected animal abuse than other forms of family violence because the incidents may occur outdoors and concerned observers recognize that the animals cannot call for help themselves.”

In addition to instances of animal abuse or cruelty that may indicate the existence of domestic violence, animals are often used by a perpetrator of domestic violence to control and silence the victim about the incident or to prevent the victim from leaving the violent situation. If a victim cannot take a family pet to safety the chances are much greater the victim will remain with the perpetrator of the violence. Children living in homes where they are exposed to the violence and control of a domestic violence perpetrator are often additionally exposed to animal abuse. Children may see their pets kicked, starved, and even brutally killed. In some situations, the perpetrator of the domestic violence intentionally harms animals in an attempt to threaten, intimidate and instill fear into the adult victim and the children. In response to this problem, many shelters, including the Oklahoma County YWCA emergency domestic violence shelter, work with veterinarians, rescue groups and no-kill animal shelters to foster pets taken by victims from violent situations.

The purpose of this description of the link between animal abuse and domestic abuse is not to detail any planned project of the LADA Committee concerning animal abuse; it is, rather, to inform our OCBA members of that link to increase their awareness as members of our community and as attorneys. Fortunately, there is a group in Oklahoma City that has been formed to address the link between animal cruelty and domestic violence. In June, 2014, the “Oklahoma Link Coalition” (safeandhumaneoklahoma.org) was formed by professionals from thirteen Oklahoma organizations including those in domestic violence, animal protection and veterinary medicine. The organization meets once a month to discuss topics related to the link and to provide information to professionals and the public through presentations and handout materials. The contact is Paul.Needham@okdhs.org.

Finally, the National Link Coalition offers suggestions for what members of the community and incidentally, attorneys, can do to prevent animal abuse and its link to domestic abuse:

• Support legislation for pet protection and abuse laws and those which allow veterinarians, animal control officers and law enforcement officers to report instances of violence to other relevant agencies;

• Ensure that pets are included in protective orders, which is already permitted in Oklahoma;

• Support safe havens such as shelters and foster homes for pets who are displaced because of domestic violence; and

• Educate yourself and others around you about the link between animal abuse and domestic abuse.

Perhaps that last bullet is the most important.

Et Tu Shoe?

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An Olio of Court Thinking

By Jim Croy

March 2, 1915

One Hundred Years Ago

[Excerpted from Chancey v. Whinnery 1915 OK 123, 147 P. 1036.]

This case presents to the district court of Okmulgee county, and involves the title to the allotment of Pompey West, a deceased full-blood Creek Indian, who died intestate on April 17, 1911. At the time of his death said Pompey West left surviving him no wife, no children, no issue of any children, no mother, no bother or sister. On April 24, 1911, Mary Barnett, maternal grandmother of said Pompey West, made and executed to the plaintiff, Chancey, a warranty deed to Pompey’s allotment, which deed was duly approved by the county judge of Okmulgee county. On September 19, 1911, Billy West, the putative father of Pompey, executed a deed to said allotment to the defendant, which deed was also approved by the county court. On the part of plaintiff in error it is insisted that Billy West and Sissie Barnett (daughter of Mary Barnett), the mother of Pompey West, were never married under the tribal and customary laws of the Creek Nation, or that, at the time Billy and Sissie assumed their marriage relations by living together, Billy had a living, and/or wife named Sardeeka, and that between the time Billy and Sissie were adulterous, and not matrimonial, and that, even though Pompey was the son of Billy, he was an illegitimate from whom Billy could not inherit at his death. The salutary rule so widely enforced is in favor of matrimony. The law is so positive in requiring a party who asserts the illegitimacy to question it to establish its invalidity... The presumption of marriage and the legitimacy of children, and status, is in favor of matrimony. The law is so positive in requiring a party who asserts the illegitimacy to question it to establish its invalidity...

March 5, 1940

Seventy-Five Years Ago

[Excerpted from Missouri Kansas & Texas Ry. Co. v. Flowers, 1940 OK 108, 101 P2d 816.]

This is an action to recover for damages to plaintiff’s truck resulting from a collision with defendant’s freight cars. Defendant appeals from a judgment rendered on verdict for plaintiff.

The position of counsel for plaintiff in error is, as we understand, that Billy and Sardeeka had not having been divorced as provided by the statutes of the Creek Nation, the former was incompetent to enter into the marriage relation with Sissie. The validity of Indian marriages contracted between members of any Indian tribe, in accordance with the laws and customs of such tribe, where the tribal relations and government existed at the time of the marriage, is one generally, if not universally, recognized, and is the settled law of this jurisdiction... Billy and Sardeeka having, therefore, been lawfully married according to the tribal customs, and having lived together as husband and wife, subsequent to the passage of the Creek law regulating divorces, the question as to whether, there being no proof of a legal divorce, they can only follow that the relationship between Billy and Sissie was meretricious, and that Pompey was not, therefore, the legitimate son of Billy. But what proof is there that Billy and Sardeeka were ever divorced? The statement by Billy that he had never applied for a divorce from Sardeeka in the district court of the Creek Nation is no evidence that Sardeeka had not obtained a legal divorce from Billy. Marriage will not be destroyed on presumption. The law is absolute to preserve the sanctity of the marriage relation, the legitimacy of children, and stability of descent and distribution, and therefore a divorce must be proved in evidence in the absence of proof of the contrary. The authorities, with very general accord, are to the effect that, when a marriage in fact has been shown, the law raises a presumption that it is valid, casting the burden on him who questions it to establish its invalidity...

March 24, 1965

Fifty Years Ago

[Excerpted from Alexander v. State 1965 OK Cr 33, 400 P.2d 458.]

J.R. Alexander was charged by information in the District Court of LeFlure County with Larceny of Domestic Animals. He was tried by a jury who found him guilty and assessed his punishment at 3 years in the State Penitentiary and a sentence of the court pronounced in accordance with the verdict of the jury, he appeals. This prosecution was laid under the provision of Title 21 O.S. 1961 § 1716 [21-1716], the same providing: “Any person in this State who shall steal any horse, jackass, jennet, mule, cow, or hog, shall be guilty of a felony and upon conviction shall be punished by confinement in the State Penitentiary for a term of not less than three years, nor more than ten years...”

In construing this statute this court has uniformly held that in order to support a conviction for larceny of domestic animals, it is necessary to allege and prove the ownership of the animal stolen, and a felonious intent on the part of the taker to deprive the owner thereof and to convert the same to his, the taker’s own use. See Taylor v. State, 95 Okl.Cr. 98, 240 P.2d 803.

In the instant case the state established that nineteen listed pigs owned by one Idus (Nub) Putman were found to be missing sometime after November 26, 1962, and that nineteen listed pigs had been sold by J.R. Alexander to the

And the Court Said...
OKLAHOMA COUNTY BAR ASSOCIATION

ASK-A-LAWYER VOLUNTEER FORM

Date: Thursday, April 30, 2015
Place: OETA, 7430 North Kelley Avenue, Oklahoma City, OK 73111
Phone: 848-8501
Directions: OETA is behind Channel 9, off of Kelley, between Wilshire and NE 63rd
(Go west off Kelley on NE 73rd, which is the parking lot of Channel 9)

I want to volunteer to answer phones on Thursday, April 30, 2015
during the OCBA’s Ask-A-Lawyer program with OETA.

I would like my shift to be:

8:45 a.m. – 11:00 a.m. ___ 11:00 a.m. – 1:00 p.m. ___ 1:00 p.m. – 3:00 p.m. ___
3:00 p.m. – 5:00 p.m. ___ 5:00 p.m. – 7:00 p.m. ___ 7:00 p.m. – 9:00 p.m. ___

Name of Ask-A-Lawyer Volunteer: ____________________________________________

Address: ____________________________________________________________________

Phone: ____________________ Fax: ____________________ E-mail: ____________________

FILL OUT THIS FORM & FAX TO THE OCBA AT 405-232-2210. THANKS!

Quote of the MONTH

“You can safely assume that you’ve created God in your own image when it turns out that God hates all the same people you do.”

~ Anne Lamott, writer (1954- )

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The Treatment of Prisoners of War in the Civil War
Part One: Prepared for the Oklahoma City Civil War Round Table

By Rex Travis

Acknowledgments

I would like to thank a lot of people in the process of researching and writing this paper. Particularly, I must acknowledge the help of Joan Stibitz, Head Park Ranger at Andersonville National Historic Site and her staff. Ranger Stibitz had mercy on a poor researcher many miles from home who did not know how to make advance arrangements to use the research library at the Center. Special thanks go also to Ranger Don Pettitjohn and to Volunteers Jimmy Culpepper and Mark Stibitz for sharing their extensive knowledge. I should also thank Peggy Sheppard, author of Andersonville Georgia, USA who volunteers at the Visitor Center of the Town of Andersonville. I should also thank my wife, Patricia Travis, for her extensive knowledge. I should also thank Peggy Sheppard, author of Andersonville Georgia, USA who volunteers at the Visitor Center of the Town of Andersonville. I should also thank Peggy Sheppard, author of Andersonville Georgia, USA who volunteers at the Visitor Center of the Town of Andersonville. I should also thank Peggy Sheppard, author of Andersonville Georgia, USA who volunteers at the Visitor Center of the Town of Andersonville. I should also thank Peggy Sheppard, author of Andersonville Georgia, USA who volunteers at the Visitor Center of the Town of Andersonville.

If you had served as a soldier in the Civil War, you would have had something like a 5 percent chance of being killed in combat. By contrast, your chances of becoming a prisoner of war would have been something like 16 percent. This is a higher rate of soldiers captured than in any war before or since and stems from reasons beyond the scope of this paper.

Once you became a prisoner of war, your odds of survival were much worse than if you were in combat. Of the 214,800 soldiers who were taken prisoner during the war, 25,796 died in Union prisons, a rate of slightly more than 12 percent. Of the 194,743 Union soldiers imprisoned, 30,218 died, a rate of a little more than 15 percent. These death rates are simply outrageous and demand explanation.

The explanation and some of the story of how that came to be will be the subjects of this paper. The answer seems, in short, to be that neither side was prepared for the massive number of prisoners taken. Also, both sides seemed to have assumed prisoners would be paroled and exchanged with no need to take care of them for long periods of time. Further, neither side seems to have given a high priority to providing for the survival of its prisoners.

The background, against which this exchange of American prisoners for captured British troops. The colonials, of course, could not exchange troops if the British would not. However, as was the case later in the Civil War, local command- manders sometimes exchanged prisoners.

Within the memory of some in the Civil War was the War of 1812, fought only fifty years before. The reason prisoners did not occur in that war because the British had by then been forced by the treaty ending the revolutionary war to recognize the United States as a sovereign country. For this reason, the British and American sides often exchanged the carcasses of their dead. The model for this agreement was a custom common in European wars of the time. Due to this cartel, there do not seem to have been the recurrent scandals over poor treatment of prisoners of war in the War of 1812. The War of 1812 cartel was, in turn, the model for an ill-fated cartel entered into in 1862 for the exchange of prisoners.

Early in the war, an officer might be captured and released on parole; that is, upon his statement as an officer, that he would not, until exchanged, again fight as a combatant against the capturing govern- ment. He would then be released to go to his lines and procure the release of an officer of equivalent rank for whom he could be exchanged. Once that officer was released, the paroled officer had satisfied the conditions of his parole and could again become a combatant. In some instances, this system of parole was extended to enlisted men, although the norm seems to have been that parole was extended only to those that were held in some form of captivity by their own army until an exchange could be arranged.

This system soon became problematic. Particularly, the Union side complained that the Southern States refused to exchange prisoners once they were captured again without there having been any exchange. In some instances the Confederates simply declared the paroled prisoners “exchanged” when there had been, in fact, no exchange. In other instances, the Northern side complained that the Southern forces put their paroled soldiers into “labor battalions,” which built fortifications at the front, freeing other soldiers for direct combat. The North continued this was an abuse of the prisoners and sometimes prevented them from engaging in parole or exchange in the future.

Finally, however, the sides reached an agreement or “cartel,” for the parole and exchange of prisoners. While it worked, it was not a model of the paroling of prisoners owed their freedom to it.

The cartel was negotiated by U.S. General John Dix and Confederate General D.H. Hill in July of 1862 and was commonly known as the “Dix-Hill cartel” (or the “cartel”) which lasted until 1863 and then it broke down.

The cartel provided an elaborate basis for calculating the exchange of military members of different ranks. A prisoner could be exchanged for an opponent of equal rank. A major-general could be exchanged for 40 privates, a colonel for 15, a lieutenant-colonel for 10, a captain for 4 or a lieu-tenant for 2. The cartel contemplated prisoners would be paroled within 10 days of their capture.

The first problem arose because of the North’s decision to enlist black troops into the Union army. The South perceived that, whatever the outcome of the war, if its slaves ever figured out that they could attack the white masters and prevail in armed conflict, their way of life was over. As a result of earlier slave uprisings, all of the southern states had two laws in the possession of each black soldier or the encouragement of a slave to take up arms an offense punishable by death. In many areas of the South, blacks outnumbered whites by a sufficient margin that the fears of the whites in this regard were probably reasonable. The South’s approach to the problem of the North arming black units was harsh. The North claimed that the Confederacy sometimes killed captured black soldiers on the battlefield. Probably the most infamous instance was at Ft. Pillow, Tennessee. Most of the 262 black Union soldiers assigned there were killed when the fort fell to Gen. Nathan Bedford Forrest’s cavalry. The South’s claim that they were killed after the battle was over is buttressed by Forrest’s description to his commander:

“We busted the fort at midnight and scattered the niggers. The men is cillam in the woods.”

The Confederate version was that all the black soldiers were killed in combat because the fort’s commander refused to surrender in a timely way.

Jefferson Davis issued a proclamation December 23, 1862 that: “all negro slaves captured in arms be at once delivered over to the executive authorities of the State in which such slaves were captured and made to at once belong to be dealt with according to the laws of said States.” Other Confederate laws provided that any black soldier captured would be returned to his master, if the master could be identified. If no mas- ter could be identified, in the case of a free black man from the North, then the black soldier would be sold into slavery. As a practical matter, the South usually put the black prisoners into labor battalions and paid the slaves’ owners for their labor.

Officers captured leading black troops were a different matter. The Davis proclamation provided that they would be turned over to the state in which they were captured to be punished under the state laws. The capturing slave would revolt, for which the penalty was usually death.” While some white officers of black units were executed, most were simply held as POW’s but not treated as officers. Rather, they were put in enlisted men cages, and generally mistreated by the guards.

But the real problem raised by the North’s use of black troops was that the South would not let black prisoners participate in exchanges. In turn, the North took the position that it would not participate in any exchange which prohibited the participation of all troops, black as well as white. An agreement was reached that prisoners from each side would serve out their sentences in the service of the other and, in return, each side would receive officers. It was the so-called ”30 for 30” agreement.

In addition to the problem of black prisoners, the North came to realize that prisoner exchanges benefitted the South rather more than the North. With its much larger population base, the North never seemed to have suffered a shortage of men to staff its military adequately. By contrast, the South soon found itself desper-ately short of men. As a result, each prisoner returned to the South was almost immediately returned to active duty. That is why the Southerners, by contrast, usually went home, both because their terms of enlistment were up and because the North did not so desper-ately need them in the army.

General Grant spoke to the problem in a letter to the General Granger:

“Every man we hold, when released on parole or otherwise, becomes an active soldier against us at once either directly or indirectly. If we commence a system of exchange which liberates all prisoners taken, we will have to fight on until the whole South is exterminated. If we hold those captured they amount to no more than dead men.”

For these reasons, from about May of 1863 until nearly the end of the war, there were no general exchanges. Heavy fighting led to large numbers of prisoners captured. Untold suffering resulted. The bulk of the prison deaths occurred during this late period in the war, as we shall see.

The 450 prisoners in which both sides attempted to hold and care for their large contingents of prisoners12 fell into seven classes: (1) existing jails and prisons including city and county jails, some of which became prisoner of war establishments in New York, as well as large state pris- ons such as the Texas State Prison in Huntsville and the state prison at Alton, Illinois; (2) coastal fortifications. These were found mostly in the North and included Ft. McHenry (where the Star Spangled Banner was written in the War of 1812) and Fort Delaware, which came to be widely known; (3) old civilian buildings constructed for use as a military prison. Probably the most notorious of these was Libby Prison in Richmond, a converted shoe-chandler’s building. These seem mostly to have been in the South but the North had Gratiot Street Prison and Myrtle Street Prison, both in St. Louis; (4) barracks surrounded by high fences. These were mostly Northern facilities, including as the best known, Camp Douglas, in Chicago, Elmira, in New York and Camp Chase, in Columbus, Ohio. Most of these were county or state Fairgrounds before the war and were first used to assemble and train northern contingents of the war but were later pressed into service as prison camps to use the facilities built for the Northern soldiers. Johnson’s Island,
Your Clients Need A Partner You Can Trust

You’ve spent years building a relationship with your clients who trust your judgment. With a full suite of financial services and dedicated, experienced professionals, you can trust ours.
intoned in Gaelic, “In ainm an Athair ...” (“In the Name of the Father ...”), very carefully avoiding the confusingly similar “In ainm an Nathair,” (“In the name of the Snake”), and herded the horde of serpents into the sea for all eternity.

The scientific explanation, while more prosaic, is certainly the one more in vogue today. It teaches us that snakes evolved some 100 million years ago, right along with Tyrannosaurus Rex, at a time in Earth’s history when Ireland was conveniently and completely underwater. True, when it popped out of the water, there were probably snakes everywhere, but it wasn’t really Ireland then, either. It was connected to Britain and the rest of Europe by land bridges. Then-miracolo!-the land bridges sank and the most recent ice age came, 3 million years ago, covered Ireland with a thick sheet of ice, and froze the pesky buggers for good and all.

As a 2012 piece in RTE (Ireland’s NPR) put it, “Ireland thawed out the last time 15,000 years ago. Since then, 12 miles of icy water in the Northern Channel separate Ireland from Scotland, which does harbour a few species of snakes. Ireland has no snakes because they simply cannot get here.”

The Plot Thickens

The same RTE article goes on to say that, “Herpetologists… point out that snakes play an important role in ecosystems by controlling rodent populations…” So - why isn’t Ireland overrun by rats and mice? Cats of course. Ah, but there’s the rub.

Cats Kill Mice

It all goes back to a 1987 British study that shocked the scientific world, and especially the cat lovers of the world, down to their whiskers. Researchers Peter Church and John Lawton studied the nighttime prowl of 77 house cats living in 77 homes in the small village of Bedfordshire, England. They relied on earlier studies that had documented that the “trophies” that our kittens bring home for us after a night of hunting represent about 50 percent of their total haul. Every day for a year the cat owners saved any trophies for the scientists, who meticulously collected and identified the corpses.

“Church and Lawton accumulated 1,094 prey, 64 percent of which were small mammals, mostly wood mice, field voles and common shrews, plus the occasional rabbit, weasel and bat,” wrote George Harrison in an October, 1992 edition of National Wildlife magazine. “The remaining 36 percent were birds…” The bombshell was that when the numbers were extrapolated from the number of British cat owners, gentle kitty was killing, just in Britain, 70 million mammals a year.

One would think that Britain’s cats would have been elevated to nobility for saving the country from 50 million rodents a year. After all, let’s not forget that when medieval superstition killed almost every cat in Europe as a witch, and the next thing you know, here comes the Black Plague. Bubonic plague, carried by the fleas of rodents, killed a third of Europe’s population in just three horrific, but cat-free, years.

But then there were, well, those 20 million er, birds. Songbirds. With a very vocal advocacy group of bird lovers who quickly turned histrionic. In Temple’s words, “I got hate mail from cat lovers and cat haters, including a shooting target with a cat’s face painted on it and another letter that said: ‘If you want to study cats, we have a pile of dead ones for you.’”

Scientifically, the study ignited dozens of replication studies, all with similar findings. The latest, published in Nature Communications and reported on in National Geographic Magazine in 2013, and also the largest to date in scope, was conducted by Peter Marra. He estimated 20.7 billion rodents and other mammals killed by cats in the continental United States per year (and, yes, up to 3.7 billion birds).

See ST. PATRICK’S DAY, PAGE 9

Fanad Head Lighthouse in Donegal, Ireland
**ST. PATRICK’S DAY** from PAGE 8

**Ireland Hates Cats**

The words above are taken from the title of a 2009 article by Kenneth Haynes at *Irish Central*. The story reports on research done by University College Dublin which found that while 36 percent of homes in Ireland have a dog, only one in ten own a cat. The study also cited statistics on dog vs. cat ownership in other countries to show that the Irish situation is indeed an anomaly. In most countries, the split between dog and cat owners is about equal. Haynes also quotes the Mars company, which manufactures Pedigree dog food and Whiskas cat products, confirmed the trend, saying: “Ireland is unique in Europe. Other countries are much more cat-loving.” Only 215,542 Irish households kept a kitty, the majority of cat owners being single older women living alone.

**The Problem**

You can see where we’re going with all this. With no snakes and hardly any cats, why isn’t Ireland drowning in mice?

**Ireland Loves Cats**

The answer is that, as we said in the beginning, in Ireland nothing is quite as it appears. The Cat and Dog Protection Agency of Ireland, a national registered charity founded in 1946, points us to an agency of Ireland, a national registered charity founded in 1946, points us to an area. They do not need much food – often leaving out household scraps is enough to sustain them. Feral cats rarely carry any disease, which might put human health at risk. Most people would see a small, controlled population of feral cats as a positive, beneficial aspect of a housing estate. The Agency even looks for volunteers to monitor local “communities” of feral cats.

“Nothing do exist, in vast numbers, are what they call feral cats. These cats “… breed indiscriminately. The female can have up to three litters a year with up to eight kittens in each litter. Their numbers run to the thousands in every county in Ireland.”

Read on, though, and one discovers that what the Agency, and its affiliated, much larger, Irish Society for the Prevention of Cruelty to Animals, mean when they talk about feral cats much closer approximate the “barn cats” that every good farmer keeps in the American Midwest. I remember, as a boy in Iowa, the saucer of milk placed every morning in a corner of the barn; looking back but never quite catching sight of anything until all the humans were back in the house; but then seeing all manner of cats and kittens attacking the bowl. “Good mousers,” my father would say. “You’ll never see a mouse in the hay while they’re around.” And we didn’t.

“Feral cats live very closely with humans, and depend on humans for food. A small number of feral cats are a useful addition to any human dwelling area. Cats provide a very effective means of vermin control. Rats and mice are not problems when there is a feral cat community. Many people grow fond of the ‘regular’ feral cats in an area. They do not need much food – often leaving out household scraps is enough to sustain them. Feral cats rarely carry any disease, which might put human health at risk. Most people would see a small, controlled population of feral cats as a positive, beneficial aspect of a housing estate.”

The Agency even looks for volunteers to monitor local “communities” of feral cats.

**Disneyland Cats**

So the only mystery left is whether the idea for Disneyland’s much publicized feral cats came from Ireland or not. Haven’t heard of them? All 200 of them? Disney’s website quotes them in their own words: “The Disneyland Cats have been around for as long as any of us can remember. Our ancestors lived in Sleeping Beauty Castle before we were unceremoniously evicted. Ever since then, we’ve prowled the streets and walkways of Disneyland (and more recently Disney California Adventure). When it comes right down to it, we run the place. Without us, rodents would run amuck and the entire population of Disneyland would be a lot less cute. We put up with the humans visiting our quarters, but only because they leave at night. There are magical food stations positioned for us all around the property, and we get to eat whenever we like. Nowhere is off limits to us. Disneyland is OUR land. And we try our best to forget it was ‘all started by a mouse.’”

Only on Saint Patrick’s Day could a person start with snakes in Ireland and end up at Disneyland. Let me weave back to my Guinness and the New York City parade on the telly. By the way, did I tell you the true origin of Guinness stout? Ah, maybe for another day. Erin go bragh.
Jackson provides experienced paralegal support for attorneys whose practices are concentrated in energy and oil & gas litigation on the state, federal and appellate levels. Her primary responsibilities, which focus on trial preparation from inception to conclusion, include maintaining litigation files, document management, coordinating and responding to discovery requests, reviewing discovery, scheduling and summarizing depositions, preparing and filing pleadings, docketing, preparing and organizing documents and exhibits for trial, and assisting attorneys at trial. Jackson began her legal career in 1987 as a litigation paralegal for a law firm in Oklahoma City before making the transition 19 years later to the litigation support department of a publicly traded energy corporation.

**Oklahoma Chapter of ABOTA Names 2015 Officers**

Gary B. Homsey of the Homsey Law Center was named President of the Oklahoma Chapter of the American Board of Trial Advocates for 2015. Other officers include: James Jennings of JENNINGS TEAM, Vice President and President Elect for 2016; Brad West of THE WEST LAW FIRM, Secretary; Mike Jones of JONES LAW, Treasurer; William Grinn of BARROW & GRIMM, Immediate Past President; Dan Follo of RHODES, HIERONYMUS, JONES, TUCKER & GABLE, National Board Representative; and Monty Bottom of FOLIART, HUFF, OTTAWAY & BOTTOM, National Board Representative.

**Crowe & Dunley hires Aviation Industry Leader**

Crowe & Dunley recently announced Jon Croasmun has joined the firm as a director in the Aviation/Aircraft practice group. Croasmun has concentrated his career in the practice of commercial and business aviation law. Croasmun is a former manager and senior in-house counsel for a multinational banking and financial services holding company. He is an expert in corporate trust products, drafting for both structured and structured financing for aircraft and other large-ticket assets. During his tenure, he has been responsible for closing hundreds of transactions and managed regulatory compliance and risk management issues surrounding the USA PATRIOT Act, Officer Foreign Assets Control and other banking regulations. An aviation industry leader, Croasmun has worked with peers on government regulatory oversight and contract standards. He participates in an industry consulting group to respond to aviation related issues, including Federal Aviation Administration concerns surrounding non-citizen trusts and participated in oral and written responses to U.S. officials relating to aviation policy.

A frequent speaker at aircraft finance conferences throughout the world, Croasmun most recently spoke at the National Business Aviation Association national convention, the American Bar Association Aircraft Financing subcommittee meeting and the 16th Annual Global Corporate Aircraft transactions forum. Croasmun received his Juris Doctor from the University of Utah J. W. Marriott College of Law in 2003. He holds a bachelor’s degree in business management from Brigham Young University. Locally, he is involved in community youth organizations including American Youth Soccer Organization and Boy Scouts of America, and is a member of business law, employment law and ethics at the University of Phoenix.

**Judge Jeffrey Sutton, United States Court of Appeals for the Sixth Circuit, Speaks at OU Law as Part of the Henry Lecture Series**

Judge Jeffrey Sutton, United States Court of Appeals for the Sixth Circuit, delivered the 2015 Henry Lecture Series. His talk, “Our Fifty-One Constitutions,” was presented to students, faculty and staff at the University of Oklahoma College of Law.

Judge Sutton has served on the U.S. Court of Appeals since 2003. Before his appointment, he was a partner with Jones Day Reavis & Pogue, where he practiced appellate law and constitutional and commercial litigation. He served as State Solicitor of Ohio, where he argued before the Ohio Attorney General and participated in complex litigation on her behalf at the trial level, from 1995-98. After earning his law degree at Ohio State University, he clerked for Judge Thomas J. Flannery of the Sixth Circuit Court of Appeals in 1990-91. He has also argued 12 cases before the U.S. Supreme Court and filed over 50 meritorious amicus curiae briefs at the Supreme Court level. Judge Sutton also is a lecturer at Harvard Law School and The Ohio State University College of Law.

The Henry Lecture series has brought many notable speakers to OU Law such as Obama White House Counsel Greg Craig; Chief Justice John Roberts, Associate Justice Stephen Breyer, Retired Associate Justice Sandra Day O’Connor with the U.S. Supreme Court; Michael McConnell from Stanford Law School; Robert Garrett from the University of Southern California Gould School of Law; Elizabeth Warren from Harvard Law School; and Frederick A. O. Schwarz, Jr. The Henry Lecture Series is an annual event that began in 2000 to inspire and stimulate future generations of scholars, lawyers and public servants. Five attorneys in the Henry family graduated from the OU College of Law: the Honorable Lloyd L. Henry and his sons, the Honorable Doneen Jones and the Honorable Kevin Donelson and Terry Watt. Doneen Jones was reelected to serve as corporate secretary.

**Fellers Snider Elects New President**

The shareholders of Fellers Snider elected Bryan N.B. King to serve as the firm’s president. Mr. King, who joined the firm as an attorney in 1995, has been serving on the firm’s executive committee for the past five years. The shareholders also elected Greg Castro (Oklahoma City) and Travis Fulkerson (Tulsa) to serve on the firm’s executive committee, and Kevin Donelson and Terry Watt. Donelson was reelected to serve as corporate secretary.

**Fellers Snider Announces New Shareholders**

The Fellers Snider law firm announced that R. Blaine Nice and Philip R. Feist have become shareholders. Blaine Nice is a civil litigator with close to 30-years of legal experience. Prior to joining Fellers Snider, Nice was a municipal attorney with the City of Norman. Nice focuses his practice on issues related to municipal law including zoning and planning, contracts, and labor matters. He also serves as a Municipal Judge for several communities in the Oklahoma City metro area. Nice received his undergraduate degree from Oklahoma State University and his J.D. from the University of Oklahoma College of Law. Nice is based out of the firm’s Oklahoma City office.

Phil Feist, who has over 22-years of legal experience, has focused his practice on estate planning, wills, trusts and family businesses for the last 18 years. Feist is licensed to practice in California, Florida, Kansas, Oklahoma, Texas, and the U.S. Virgin Islands, and is certified by the State Bar of California as an Estate Planning, Trust & Probate Law specialist. Feist received his undergraduate degree from the University of California, Davis, a Master of Theology from the Dallas Theological Seminary, and his J.D. from the University of San Diego School of Law. He is based out of the firm’s Tulsa office.

**Cooper and Brklaciec Join GableGotwals**

Casey Cooper joins GableGotwals as a new Shareholder in the Tulsa office. Cooper’s primary focus will be complex litigation, corporate services, environmental services, oil and gas matters and the law of higher education. Cooper is a former attorney in the U.S. Navy’s Judge Advocate General’s Corps. Cooper received his J.D. from the University of Tulsa School of Law. He also earned a Bachelor of Science in Business Administration, from the University of Tulsa.

**Stacy M. Brklaciec**

Stacy M. Brklaciec joins GableGotwals as an Of Counsel Attorney in the Tulsa office. Brklaciec will focus on healthcare law. A former Tulsa County Assistant District Attorney, Brklaciec earned her Juris Doctor from the University of Oklahoma College of Law.
By Philip Hart

Act One


I recently ran across a book that I had read with pleasure more than 50 years ago. With the exception of one passage that I recalled (wrongly, it turned out), I found everything in it brand new when I read it again with as much delight as a 10-year-old kid reading a Hardy Boys book. I refer to the late playwright Moss Hart’s autobiography, Act One. Autobiography should be in quote marks, too, because Hart the dramatist could not resist embellishing a good story and stringing events together which surely could not have fit together so neatly. You need not be particularly interested in the theatre to relish this book. Its focus is the monumental struggle Hart waged to escape the poverty in which his family appeared to be permanently trapped in the poorest sector of the Bronx, told with humor as well as pathos. There is inspiration to be found in Hart’s tale of his unwavering determination to succeed.

The good news is that Act One is not out of print (and therefore expensive if a copy were to be found). Instead, a second edition of Act One came out in 2014 and is readily available. This is a book to cure any lingering winter blues or to take with you on your vacation this summer.

BENCH WARNERS from PAGE 1

Richard was appointed by then Governor Henry to the Board of Regents for the Regional University System of Oklahoma where he championed university and student causes. Richard was also one of the founding board members of the Cimarron Alliance, an organization that advocates for LGBT rights in the state. And this day, Richard serves as a member of the vestry at St. Paul’s Episcopal Cathedral. Judge Ogden’s appointment to the bench is the culmination of a legal career with numerous professional accolades including Chair of the Oklahoma Bar Association's Young Lawyer’s Division and former member of the OBA Board of Governors. While Judge Ogden has much to be proud of, I do not believe I ever saw him speak with such pride as when he donned his father’s judicial robe at his swearing in and which he’ll continue to wear on special occasions while on the bench.

BAR OBSERVER from PAGE 10

University of Tulsa College of Law in 2008. She earned her Bachelor of Science in 2000 from the University of Central Arkansas.

Abbott Selected for The National Black Lawyers ‘Top 40 Under 40’

Jasper Abbott, an attorney with Sweet Law Firm, has been selected for membership in The National Black Lawyers – Top 40 Under 40 for 2015. The National Black Lawyers – Top 40 Under 40 is an invitation-only national organization that encourages and recognizes outstanding black lawyers under the age of 40 who exemplify superior leadership, reputation, influence and stature.

Forty black lawyers from each state are selected for membership each year. Selected nominees demonstrate superior leadership, reputation, influence, stature and profile as a black lawyer. Abbott attended The University of Kansas, where he earned a bachelor’s degree in political science. He was inducted into The Order of Barristers while attending law school and earned his Juris Doctor from The University of Oklahoma College of Law in May 2010.

Abbott is licensed to practice law in all Oklahoma state courts and in the United States District Court for the Western District of Oklahoma.

Sweet Law Firm is a boutique defense, litigation firm with offices in Oklahoma City, Tulsa and Denver. Please visit www.sweetlawfirm.com for more information.

For more information about The National Black Lawyers, visit www.nbltop100.org.

Bill Hall Honored with Lexology 2015 Client Choice Award

Bill Hall, a patent attorney with the law firm of McAfee & Taft, was one of only 414 lawyers worldwide to be honored with Lexology’s 2015 Client Choice Award. Winners were announced February 19, 2015, at a gala event in London, England. Established in 2005, the Client Choice awards recognize excellence in client care and service excellence. Winners are chosen based on individual client nominations and assessments, which rate lawyers on quality of legal advice, value for money, commercial awareness, effective communication, billing transparency, tailored fee structures, response time, sharing of expertise, and use of technology.

Previous winners from McAfee & Taft include labor and employment attorney Sam Fullkerson and trial lawyer Ron Shinn.

Launched in 2007, Lexology is a daily newsfeed of law firm client alerts, articles and blogs delivered to the desktops of senior business lawyers worldwide on a daily basis. Lexology has built a unique audience of over 228,000 subscribers, over 60 percent of whom are in-house corporate counsel representing the vast majority of Fortune 500, FT Global 500 and FT Euro 500 companies – including all members of the Association of Corporate Counsel.

Legal Services Corporation Notice of Availability of Competitive Grant Funds for Calendar Year 2016

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2016. A Request for Proposals (RFP) and other information pertaining to the LSC grants competition will be available from grants.lsc.gov during the week of April 6, 2015. In accordance with LSC’s multiyear funding policy, grants are available for only specified service areas. To view the service areas for which competitive grants are available, by state, go to grants.lsc.gov/about-grants/where-we-fund and click on the name of the state. A full list of all service areas in competition will also be posted on that page.

Applicants must file a Notice of Intent to Compete (NIC) through the online application system in order to participate in the competitive grants process. Information about LSC Grants funding, the application process, eligibility to apply for a grant, and how to file a NIC is available at grants.lsc.gov/about-grants. Complete instructions will be available in the Request for Proposals Narrative Instruction. Please refer to grants.lsc.gov for filing dates and submission requirements. Please email inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Crowe & Dunlevy, Attorney Joins Claims and Litigation Management Alliance

Crowe & Dunlevy attorney Tanya Bryant has been invited to join the Claims and Litigation Management Alliance (CLM). The CLM is a nonpartisan alliance comprised of thousands of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals and attorneys. Through education and collaboration, the organization’s goals include creating a common interest in the representation by firms of companies and promoting the highest standards of litigation management in pursuit of client defense. Attorneys and law firms are extended membership by invitation only based on nominations from CLM fellows.

Bryant is a director in the Oklahoma City office of Crowe & Dunlevy. She exclusively represents management in employment-related matters ranging from policies and procedures to lawsuits brought by employees under federal and state law. In addition, she handles Oklahoma Employment Security Commission hearings and Equal Employment Opportunity Commission investigations.

Crowe & Dunlevy Names Chair of Employee Benefits & ERISA Practice Group

Crowe & Dunlevy recently named director Alison M. Howard chair of the firm’s Employee Benefits & ERISA (Employee Retirement Income Security Act) practice group. In this role, Howard leads a team of experienced attorneys concentrated in employee benefits and ERISA litigation. The firm’s attorneys in these two areas work together, sharing information, ideas and resources on client matters, in order to keep abreast of legislative, administrative and judicial developments.

Howard concentrates her practice on healthcare and employee benefits law and also handles complex civil litigation and appeals. She is admitted to practice in Oklahoma, the U.S. District Court for the districts of Oklahoma and the Tenth Circuit Court of Appeals. Howard is listed in Best Lawyers in appellate practice and was recently rated by Super Lawyers as an Oklahoma Rising Star in employee benefits and ERISA law.

She received her undergraduate degree in English and pre-medicine from the University of Notre Dame and continued her education at Notre Dame Law School. Howard enjoyed 16 years living abroad in Germany, Panama, Canada, and finally in England, where she completed the Concannon Program of International Law, consisting of courses and seminars in comparative and international law. An active member of the community, Howard is a member of the Oklahoma and American Bar Associations and participates in the American Health Lawyers Association and Oklahoma Lawyers for Children.

Crowe & Dunlevy’s employee benefits practice represents employers in the design, implementation and administration of all types of employee benefit plans and deferred compensation arrangements. The firm’s attorneys are business-oriented, focused on a practical approach to ERISA and benefits law, and are thoroughly familiar with the increasingly complex array of statutes, regulations, regulatory guidance and case law governing employee benefit plans.

The firm’s ERISA claim attorneys have litigation experience in cases involving ERISA preemption, insurance benefits, continued medical coverage under COBRA and under state statutes, breach of fiduciary duty, and litigation for exercising ERISA rights, penalties for failing to furnish information or notice under ERISA and COBRA and wrongful termination, bankruptcy, tort law and subrogation.

Judge Ogden has been assigned to the domestic docket for Oklahoma County, and he looks forward to joining the other members of Oklahoma County’s distinguished bench.

*Collin Walke has previously been associated in the practice of law with Richard Ogden.*
By Warren E. Jones

Most people have a vague, but sufficient, understanding of what a heart attack is, what a stroke is, or what sudden cardiac arrest is. Less clear, I believe, is an understanding of what heart failure is.

"Congestive heart failure," as it is called in medical circles (this and the next paragraph are from WebMD.com), is when your heart doesn’t pump as much blood as it should, often because of clogged arteries or after a heart attack. This means that other organs don’t get enough oxygen or blood. It can also cause blood to back up in other parts of the body, which can cause fluid in the liver, lungs, abdomen, arms, and legs. People with congestive heart failure can have shortness of breath, fatigue, irregular heartbeat, swelling in the ankles and feet, a cough, difficulty sleeping, weight gain, and lack of appetite. Congestive heart failure is usually caused by plaque buildup in the arteries. But other types of heart conditions and heart attack can also cause congestive heart failure.

Depending on what causes the heart failure, it can happen slowly over many years or more quickly. At first, you may only notice the symptoms when you are active. Over time, you may start to notice symptoms even when you are resting. Heart failure can happen on the right side or left side of your heart, or it can affect both sides. Heart failure is a serious condition that is usually chronic.

One of my freshman law school professors was fond of the phrase, "treasure trove." At least in the context of that class, I didn’t really understand that phrase. In the context of this paper, though, I can’t resist! "Put the Cooper Center for Longitudinal Studies (known by you and me as the Cooper Clinic in Dallas) is a treasure trove of research on health and fitness. Their latest research, as it appears in the newest issue of the American Heart Journal, informs us on the relationship between fitness and heart health; the relationship between co-morbidities and heart failure; the relationship between co-morbidities and heart failure (by co-morbidities, I mean previous heart attacks, high blood pressure, high cholesterol, diabetes, chronic kidney disease, chronic obstructive pulmonary disease, and obesity); the relationship between change in fitness and heart health; and the relationship between subsequent co-morbidities and heart failure.

Their findings were numerous, all as follows. Lower fitness measured in middle age was associated with a higher burden of heart failure at older than 65 years, and lower fitness measured in middle age was associated with a higher burden of co-morbidities at older than 65 years. For example, compared with low mid life fitness, high fitness was associated with a lower burden of heart failure hospitalization, heart attack hospitalization, and diabetes.

Further, both lower fitness levels measured at the beginning of the study, at mid-life, and the presence of co-morbidities at older than 65 years were associated with a higher rate of heart failure hospitalization rates.

And, after adjustment for traditional risk factors like high blood pressure or diabetes or high cholesterol, i.e., identifying the risk of heart failure among all those with high blood pressure but at different levels of fitness, the researchers found that middle life fitness was associated with a lower risk for heart failure hospitalization per (for each) "metabolic equivalent." Scientists use metabolic equivalent as a measurement of fitness. The higher, the better. So, among those with, say, high blood pressure, or high cholesterol, or diabetes, the more fit, the less risk of heart failure hospitalization.

Next, the researchers identified the impact of a change in fitness, either better or worse, on heart failure risk in later life. The researchers found that compared with individuals with persistently low fitness levels in mid life, individuals who increased their fitness levels from low to just beyond low (that is, not necessarily high) had a lower rate of heart failure hospitalization. As you might expect, individuals with persistently low fitness levels had the lowest risk for heart failure hospitalization... especially among those with no or few co-morbidities.

Finally, the researchers found that lower mid life fitness was associated with a higher risk for heart failure independent of, and across all levels of, chronic disease. That is, low fitness, in the presence or absence of chronic disease, is predictive of heart failure, and high levels of fitness are helpful in the face of one or more chronic diseases.

So, all in all, we know that both lower mid life fitness and increased co-morbidity burden are associated with a higher risk of heart failure hospitalization. And we know that the inverse association between mid life fitness and heart failure hospitalization risk is independent of the presence of co-morbidities. Finally, we know that an improvement in mid life fitness is associated with a lower rate of heart failure hospitalization at a later age.

So, how does one avoid (at least greatly reduce the chances of) all those symptoms described earlier in this paper... and the dismal prognosis... from heart failure? First, move a great deal. Second, achieve a high level of fitness. Third, eat right. Of course, being fit and free of any of the above described co-morbidities is ideal. If, though, you have one or more co-morbidities, get fit. And then more fit. And then most fit.

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

By Roscoe X. Pound

Dear Roscoe:

In its infinite wisdom, the Oklahoma Legislature is considering a Bill to end mandatory Bar membership in Oklahoma. Your thoughts? D.B., 550

Dear k.d.: When I first spotted your email, I thought "Hmmm, I didn’t know kd was a lawyer." Abolish the integrated Bar, huh? At first I thought you were gonna tell me they planned to do something really silly like ban A. P. History.

Way back when, the Oklahoma Supreme Court decided an integrated Bar was the way to go, and described its power to do so thusly: "The Supreme Court has the right to exercise all powers fundamental to its existence, and it is fundamental that it has the inherent power to regulate admission to the bar and to control and regulate the practice of law of those admitted to the bar." They did this at the behest of local bars, attorneys, and courts, noting the "peculiar relation" between the courts and the legal profession. Other courts have traveled this road. For example: In re Splain, 16 A. 481, 483 (Pa. 1888) (validating the court’s inherent power to determine admission requirements). With respect to eliminating mandatory bar membership, see Braddock v. State Bar of Ariz., 550 P.2d 1089, 1091 (Ariz. Ct. App. 1976) ("There is no question but that the Supreme Court has inherent power to integrate the bar of this state."); N.M. ATTY. G. 153 (1977) ("The power which inheres in the New Mexico Supreme Court, as the highest authority within the judicial department of state government, to regulate the practice of law and the legal profession includes the right to require the integration of the bar and to compel the payment of fees for the support of the affairs of an integrated bar association."); cf. Lathrop v. Donohue, 367 U.S. 820, 845 (1964) ("We think that the Supreme Court of Wisconsin, in order to further the State’s legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers... Given the character of the integrated bar shown on this record, it is the place of the membership requirement to the compulsory payment of reasonable annual dues, we are unable to find any impingement upon protected rights of association.").

To me, the nuts of the issue are: As we view it, one of the primary purposes of integrating any state bar through its incorporation was and is to place upon the bar itself the duty and responsibility of disciplining its members... Actually the principle of self government is the very essence of an integrated bar and if the provisions relative to admissions and discipline wereemasculating it would leave but an empty shell. In re Lewksowski, 220 P.2d 229, 232-34 (Ariz. 1950).

The preservation and protection of freedom and justice depends upon both an independent Bar and an independent judiciary. Encroachment upon either should galvanize the legal profession in opposition. One of the many evils of a non-mandatory Bar is the decay of self regulation under uniform standards. This, in turn, lays groundwork for other intrusions of independent administration of justice. Writing on this issue in 1984, Past OBA President Robert J. Turner noted that if we allow self-regulation to go by the boards, "TURN OUT THE LIGHTS....THE PARTY’S OVER." In this observation, as in many others, Jim Turner displayed both prescience and wisdom.

After the Battle of the Parking Lot described last issue, said parking took on an atmosphere of freaky holiday. Police vehicles, ambulances, and various organs of the press gathered like ravens on roadkill. Given that all in my team remained unscathed, the unwonted notoriety seemed a small price to pay. As the crowd converged, Ernie reeled into sequestration in my office. Joe Innocente appeared early on, and, as the sideshow grew, took control. As we entered my office, he and Ernie played a brief game of who-blinks-first. He then settled into one of my three visitors’ chairs, the remaining two now occupied by Ernie and Chips. Daddy Mike perched himself on the radiator like a complacent gargoyl.

"Damn it, Roscoe," said Joe, “this ain’t Dodge City. It ain’t even New York City. We can’t be having shootouts in the street.”

"It’s not like I invited them over," I replied to him.

Captain Innocente brought his massive hand down hard on my desk, "It’s exactly like that! You get involved in these Byzantine quests and damn the consequences! I’ve given you a long leash over the years but you’re going too far now. It’s lucky you don’t have many customers.

"Way to make lemonade, Captain," Ernie quipped.

Innongled at Ernie for a good fifteen seconds. “You’d best not call attention to yourself right now. What do you have to say about all this?”
By Judge Don Deason and Chris Deason

We both enjoy writing this column every month, and very much appreciate the feedback and comments we get from our fellow OCBA members. Shortly after last month’s briefcase came out, there was a letter hand delivered to Don’s chambers from well-known local attorney Gerald Kelley. He and his wife had their own experience with Herman’s Hermits, and we decided we should share it with our readers. By the way, Don concedes the accuracy of Mr. Kelley’s observation concerning the authorship of our articles.

Dear Judge Deason:

I have enjoyed reading the monthly article penned by you and your wife in each edition of the Briefcase, although I suspect the more cogent portions are attributable to your wife. I particularly enjoyed the latest article concerning the purlingon of the Herman’s Hermits banner. I thought I would drop you a line and update you with respect to Herman if not so much the Hermits.

Peter Noone, a/k/a Herman, is still touring but is the only original member of the band. My wife and I were lucky enough to visit with him backstage at the Palace Theater in Corsicana, Texas last May. He was very engaging and posed for many pictures and autographed my wife’s albums.

When we informed him we were from Oklahoma City, he immediately recalled a concert the original band played at Wedgewood Amusement Park which was located on NW Highway where the Wedgewood Apartments now stand. In the late 1960s Wedgewood was surprisingly successful in booking relatively big-named acts to play at the amusement park. The bands would generally set up on top of either the arcade building or the miniature train station. Noone vividly recalled playing on top of the arcade. I suppose it was as close as Herman’s Hermits would come to matching the Beatles on top of the Apple building in London.

I was lucky enough to take in The Who concert at Wedgewood about the time “I Can See For Miles” was popular (summer of 1968) and, yes, they destroyed their equipment at the conclusion of their act which was their schtick at the time. Hard to believe Wedgewood was able to land what was, or soon became, a super group. To my recollection, the Beach Boys and the Kingsmen also appeared at Wedgewood. I am sure there were others I don’t recall. Wedgewood was in competition with the other major amusement park, Sprinklelake, which also booked relatively big acts. My recollection is that Sprinklelake tended to book country-western acts (Wanda Jackson, Conway Twitty, etc.) as opposed to rock acts.

I can report that only pictures were “taken” by my wife and me in Corsicana last May – no banners.

“Herman’s Hermits 1968 US television concert special” by NBC Television.

Gerald Kelley’s Playlist: “Jerry” Kelley is now a sole practitioner concentrating in probate and real estate. He previously practiced for 28 years with older brother and real property law guru, James “Jim” Kelley. Married to his high school sweetheart, Ellen, they have been married 40 years and have five children; daughter, Meredith, is a 2003 graduate of O.U. Law School. Jerry graduated from Bishop McGuinness Catholic High School in 1970 and went on to earn a B.A. in advertising from the University of Oklahoma in 1974. He accepted an invitation to join Phi Beta Kappa, but was disappointed to learn there were no keg parties. He claims a J.D. from O.U. Law School and membership in both the Order of the Coif and the Order of the Quaff.

Song Title | Artist
--- | ---
Long Time Gone | Crosby Stills and Nash
Golden Ribbons | Loggins and Messina
Maybe I’m Amazed | Paul McCartney
Meadows | Joe Walsh
A Woman In Love (It’s Not Me) | Tom Petty and the Heartbreakers
You Can’t Do That | Beatles
Can’t Find My Way Home | Blind Faith
Dear Mr. Fantasy | Traffic
Can’t You Hear Me Knocking | Rolling Stones (guilty pleasure)

Judge Don Andrews’ Playlist: A 1989 OCU Law grad who was recently sworn in as District Judge in Oklahoma County on January 12, 2015, and is currently assigned to the Civil Court Division. He began his legal career with Shadid & Pipes. After approximately nine (9) years, he decided to remain in Downtown OKC and affiliated his law practice with Rusty Mulinix, Richard Ogden and Joel Hall. Later, this small group of lawyers formed the law firm of Mulinix, Ogden Hall Andrews and Ludlam, P.L.L.C. Throughout his twenty-two (22) years in private practice, Judge Andrews represented both individual and business clients in a variety of proceedings, focusing primarily on general or commercial/business litigation. He is a member of the Oklahoma Bar Association, the Oklahoma County Bar Association, where he serves as a founding member on the Lawyers Against Domestic Violence Committee, and is on the Board of Directors for the Oklahoma Judges Association. Considering his self-proclamation as a “weekend musician,” you may, from time-to-time, see/hear Judge Andrews playing numerous low brass instruments at local music festivals or church events, which may better explain his playlist, to-wit:

Song Title | Artist
--- | ---
Lucy’s World &amp; Or Rainbow Man | Earl Klugh
Can’t You Hear Me Knocking | Rolling Stones (guilty pleasure)
Can’t Find My Way Home | Blind Faith
You Can’t Do That | Beatles
A Woman In Love (It’s Not Me) | Tom Petty and the Heartbreakers
Golden Ribbons | Loggins and Messina
Long Time Gone | Crosby Stills and Nash
Maybe I’m Amazed | Paul McCartney
Meadows | Joe Walsh
A Woman In Love (It’s Not Me) | Tom Petty and the Heartbreakers
You Can’t Do That | Beatles
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Dear Mr. Fantasy | Traffic
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Excerpts from OCBA News: July-August, 1973, Part 1

A Minority Here - And Elsewhere

By Eric J. Grove

Drug use in Oklahoma, when viewed in proper perspective, includes the traditional problem of alcoholism and the unwarranted consumption of amphetamines and barbiturates by persons of all classes and stations. Yet, we lawyers tend to focus our attention on the youthful element’s indulgence in illegal drugs. This focus is likely a result of the high visibility of today’s young people, both in terms of the frequency of drug-related frequent encounters with law enforcement authorities.

In any event, lawyers who defend criminal actions involving contraband drugs have a unique opportunity to discuss with their clients the problems of the so-called “drug culture” locally. Highlights of just such discussions are reported here.

Cause for alarm may be misplaced. Marijuana is extremely commonplace at all levels of Oklahoma City society. Contrary to certain uniformly unconfirmed sources, mari-juana use does not pose the most serious problems area. The trends that do appear unhealthful are these:

1. Consumption of barbiturates or “downers”. Use is increasingly. In particular, young people in Oklahoma City are taking Quaaludes, despite repeated adverse publicity warning of potential addiction.

2. Consumption of barbiturates with alcohol: This trend is particularly dangerous in that alcohol for overdoses is higher and overdoses can be fatal.

3. Use of cocaine: “Coke” is apparently regarded as a sophisticated drug often reserved for special occasions. It is available but extremely expensive. Young users are disregarding its potential for addiction. Only expense is precluding wider and more frequent usage.

4. Glue-sniffing: Despite much publicity about the dangers of inhaling paint fumes, younger people in lower socio-economic brackets are still doing it to do so.

Other information, however, indicates a growing awareness in some quarters that the immoderate, sustained and improperly administered use of substances known as “chemicals” is incompatible with a renewed, fashionable appreciation for “organic” or “natural” substances. Marijuana and peyote are among those “organic” drugs and hence acceptable.

Also, people who use illegal drugs in Oklahoma City are highly skeptical of substances which one can purchase “on the street,” that is, from a dealer who reliability, honesty and often identity are unknown. White powder can turn out to be “smack” (heroin), cocaine, mescaline, THC (tetrahydrocannabinol) or LSD (lysergic acid diethylamide). “Shooting up” or injecting the drug into one’s blood stream by hypodermic is relatively unpopular. However, many young people falsely believe that “shooting” — ingesting through the nasal passages — the same drugs will not lead to addiction. Belief in that myth constitutes a danger in itself.

When the use of illegal drugs in Oklahoma became popular in the mid-sixties, many users consumed them to avoid the av artificial status and because their friends used drugs. A leveling off process is evident. The process seems to be involving more people from a broader cross-section of society, but those people are more selective about which drugs they use. Marijuana is remarkably popular among novices, as is alcohol, particular beer and wine.

Finally, those uninitiated in the Oklahoma City “drug culture” should understand a fundamental difference between that class of persons who consume illegal drugs and those who use the drugs. People who use the drugs generally impose no moral scheme upon the use of drugs when such use harms no others. They simply regard drug use as a right with which no authority can properly interfere. Hence, condemnation and penalties will not suffice to reverse current trends.

Education about such usage and effects of various drugs in clearly indicated, especially in light of education’s impact on the once widely used hallucinogens such as LSD. However, those who would be educators must be credible. The credibility of many authorities is low due to dissemination of misinformation about marijuana. A majority of drug users in Oklahoma City will listen and will learn from credible informal sources. A minority here — and elsewhere — probably never will listen, and they should constitute the object of our community’s genuine concern.

OLD from PAGE 4

sales barn in Mena, Arkansas on the 27th day of November, 1962.

Careful examination of the record in the instant case fails to disclose any evidence or circumstances from which it might reasonably be inferred that the pigs sold by the said J.R. Alexander were the missing pigs owned by Idus (Nub) Putman.

March 20, 1990

Twenty-Five Years Ago


Anna-Faye Baumgardner/appellant (employee), had been working for Department of Human Services/appellee (DHS), thirty-six years when she applied for the position of Programs Supervisor on March 19, 1985. In accordance with the position announcement, the employee submitted a written memorandum and DHS Form P-12. The selection committee, comprised of five administrative employees, interviewed seven applicants for the job. The employee was the unanimous choice of the selection committee. Despite her unanimous selection by the committee, and a request by the supervisor of the department in which the vacancy occurred that she be promoted, the employee was denied the promotion. A less qualified male applicant was given the job.

The employee filed a grievance under 74 O.S.Supp. 1985 § 841.9 which was upheld unanimously by the DHS grievance committee. Notwithstanding, the Director again denied the promotion. The employee appealed to the Ethics and Merit Commission (now the Oklahoma Merit Protection Commission, hereinafter referred to as the Commission), alleging violations of the Oklahoma Personnel Act, 74 O.S.Supp. 1985 §§ 841.10 (A), 841.19(A)(6). The employee charged that the policy which allowed the Director to impose an additional subjective criterion to the selection process discriminated against women, and against her in particular. The policy provided that a member of any applicant’s class. She asserted that female applicants more often than male applicants were subjected to this standard resulting in a disparate and adverse impact upon women. She also alleged that the statutory posting requirements, § 841.19(A)(6), for the position were not met because the notice failed to include a statement that an additional subjective criterion of “optimal qualifications” would be imposed by the Director if the successful candidates’ salary were increased by $400.00 per month.

The Commission conducted an investigation. It found that the application of the “optimal qualifications” to applicants receiving a salary increase of $400.00 more per month resulted in a discriminatory impact in the prohibition of females, and that the failure to include the “optimal qualifications” in the posting of the vacancy disregarded the requirement of the Oklahoma Personnel Act.

A full hearing before a hearing examiner ordered that the claims of the employee be upheld. The decision of the hearing examiner carried the matter forward to full final review by the Director if the salary promotion resulted in a salary increase of at least $400.00 per month. Had she been promoted, the examining director would have received a $798.00 monthly increase. The man, who got the job, was not subject to review by the Director because his salary increase was insufficient to trigger review. The Director of DHS determined that the large salary increase which Baumgardner would receive if promoted required “optimal qualifications.” After he failed to find these qualifications in the agency documents used in the initial screening of applicants, he denied her promotion.

Pursuant to 74 O.S.Supp. 1984 § 841.13A, DHS appealed to the Oklahoma County district court. The trial court reversed the decision of the Commission. It found that the Director’s review of any promotion resulting in a salary increase of $400.00 per month did not discriminate against the rejected female, and that the applicant review policy did not breach the posting requirements of the Oklahoma Personnel Act. The employee appealed.

DHS contends that the hearing examiner’s findings of fact are insufficient to support the legal conclusions reached. We agree. The findings of an agency acting in its adjudicative capacity must: 1) recite the underlying facts which support the ultimate facts drawn from the evidence; 2) be free from ambiguity which raises doubt concerning whether the agency’s decision is supported by the applicable law and utilized the legal theory correctly, and 3) be sufficiently specific to enable a reviewing court to ascertain whether the ultimate facts upon which the decision is rested afford a reasonable basis for the order. These requirements determine the validity of the decision and, where an agency fails to make adequate findings of fact, its determination cannot be affirmed.

On review of the Commission’s order, we find that it is infirm. The findings of fact give an account of procedural rather than of ultimate facts. The remaining paragraphs of the order which contain the legal theory, are unsupported by actual findings of fact. Because the order lacks findings of fact upon which the Commission could have based its decision, and because the conclusions of law do not correctly apply the legal theory to the facts, the order is fatally deficient and must be vacated.

The employee asserts that the omission of the requirement of “optimal qualifications” from the position announcement contravened the posting requirements of the Oklahoma Personnel Act. After a full hearing before a hearing examiner ordered that the claims of the employee be upheld, the implementation of final review by the Director resulted in discrimination and violated the requirements for the posting of vacancies by the agencies. The hearing examiner ordered that the position be declared vacant, and that the employee be awarded the position, with appropriate back pay.

The decision was upheld by the Commission on the motion to reconsider by DHS.

employee charges that because the announcement of the vacancy required submission of minimal qualifications, and because the Director relied only on these documents for his determination of whether an applicant possessed “optimal qualifications”, the review ignored the plain language of the statutes. Title 74 O.S.Supp. 1985 § 841.19 (A)(6) requires the appointing authority to post any additional factors which will be considered in filling the vacancy. The word “shall” is usually given its common meaning of “must”, implying a command or mandate.

The use of shall required that the posting include the additional factors. The final review policy by the Director held the applicant to a high standard without giving the applicant an opportunity to show “optimal qualifications”. We find that this final review was an additional factor, and its omission violated the posting requirements. Because of the violation of § 841.19(A)(6), 74 O.S.Supp. 1985 § 841.19 (C) requires that the position be declared vacant.

The cornerstone of proceedings before an administrative agency is that each party be given a full and fair hearing on all points at issue. An absence of findings of fact to support statutory conclusions of law is fatal to the validity of the decision. If the substantial rights of the parties have been prejudiced because of factually defective agency findings, conclusions, or decisions, this Court must reverse and remand for further proceedings. Here, reversal and remand for new proceedings is essential for two reasons: 1) the Commission’s order is legally deficient because its findings of fact and conclusions of law are legally insufficient to support the decision; and 2) the omission of the requirement of “optimal qualifications” from the position announcement violated the statutes. Title 74 O.S.Supp. 1985 § 841.19 (A)(6). For these reasons, the position is declared vacant, and the cause is reversed and remanded to the Commission for new proceedings which must conform to the standards set forth herein.
While wars kill people, they do not necessarily kill the ideas that spawned the violence. Likewise, in a sense, all wars are about winning, or at least not losing the “hearts and minds” of one side or the other. Cold wars emphasize these realities, and may even be entirely about the resonance of competing ideas. So it was in the Post WWII era. Each side had enough firepower to destroy the other, plus a bunch more. Potential violence was tamed to the thinkable, one eye on the shoulder at the unthinkable. In some very discernible sense, the Cold War was about ideas.

One idea, which had a precarious existence on each side of the Iron Curtain was that people could just live their lives, extraneous to politics, whether domestic or foreign. People in communes on this side of the curtain were vilified for “dropping out” of the political arena. People on the other side went to concentration camps and worse for the same notion.

In the midst of this, Boris Pasternak wrote a book. The book’s hero, Yuri Zhivago, championed this idea, in an epic describing the events of the Russian Revolution through the twenties. Pasternak had written poems before, and was considered a premier Russian writer. Thus, Stalin and Kruschev could not send him directly to the Gulag. Instead they forbad, through Russian bureaucracy, the publication of the book. Pasternak and others got a manuscript or two to Italy and other European sites. Then the CIA entered the scene.

In those days, (the 1950s), anything to discomfit the enemy was a good thing, and so the CIA hurriedly and in some senses ineptly began to smuggle the quickly published book. Presumably this is because two authors are involved, and wires got crossed. That is about all of the negative here. If you are not into the vagaries of literature or publishing, the story itself should hold the reader.

**Pasternak**, his family, his mistress all paid a price. Loyalties were sometimes fluid. Soviet Writer’s Guilds bent over backwards double to attempt to prove Pasternak was not and could not be a great writer. Then, he was awarded the Nobel Prize for Literature. Ouch. Pasternak declined to accept, in a carefully worded letter. How would he ever have been allowed to leave the USSR to receive it anyway. He loved Russia, if not the Soviet state, and would not have endured exile in the West, in any event.

This is a very involved book, talking about a time only recently unearthed from CIA and Russian secret files. It is interesting reading, especially for Boomers, who may have taken a high school date to see the American made movie, which is still an iconic piece.

The tone of the book and some of its structure are influenced by the Russian grammatical style. Every once in a while a new name, often a first name, is slipped in without prior introduction. Presumably this is because two authors are involved, and wires got crossed. That is about all of the negative here. If you are not into the vagaries of literature or publishing, the story itself should hold the reader.

**Reviewer’s note:** This book was bought for $2.00 at the Metropolitan Library System’s annual book sale. Support the Libraries by attending the annual book sale each February.

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1 Speer, p. xiv. Throughout these notes, references to materials in the Bibliography will appear by reference of the author’s last name, here “Speer.” The Union enlisted 2,893,304; the confederacy enlisted between 1,227,890 and 1,406,180, making the total enlisted between 4,299,484 and 4,121,194. Deaths on both sides were 120,012. 211,411 Union troops were captured, of which 16,668 were paroled in the field, leaving 264,743 imprisoned. 462,634 Confederates were captured, including 247,769 paroled in the field and captured but not held at the end of the war. This leaves 214,865 Confederates imprisoned. 2 For example, at the end of the Revolutionary War, the United States held slightly over 6,000 British prisoners. By contrast, the fall of Fort Donaldson, Tennessee, in February, 1862 resulted in the capture of 15,000 Confederate soldiers.

3 Id.

4 Denney, p. 71.
5 The Prisoner Exchange Cartel of July 22, 1862, reprinted as Appendix 1 to Denney. 6 Denney, p. 175; maye Forrest fought better than he spelled. 7 Denney, p. 83.
8 Id. p. 84.
9 Id. p. 83.
10 Chapman, p. 177-178; Major Archibald Boyle was captured leading black soldiers. He was wounded and put in the enlisted men’s prison at Andersonville and denied medical treatment for his wounds.
12 These 150 princes are listed in Appendix C to Speer, p. 323.
13 Speer, p. 9-10.
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