Time Capsule Opened by Chief Justice Colbert

By Justice Noma Gurich

In 1913 the Chief Justice of the Oklahoma Supreme Court, Samuel W. Hayes, wrote a letter addressed to the Chief Justice of the Oklahoma Supreme Court 100 years later. This letter was part of the collection of items found in the Century Chest which was sealed into the basement floor of the First English Lutheran Church at 12th and Robinson in OKC on April 22, 1913. A century later, the chest was opened and it included many relics, documents, a quilt, photos, newspapers, books, clothing, and dozens of messages from individuals and organizations to the people of Oklahoma in 2013.

This letter was opened on April 3, 2014 and read by our Chief Justice Tom Colbert in a ceremony held in the Hearing Room at the Oklahoma Judicial Center.

It is truly amazing to think about the advice given by a very wise and insightful Chief Justice, Samuel W. Hayes. He was born in Arkansas, moved to Texas as a young child, and grew up on a farm. He was educated in Jack County Texas and at the University of Virginia. Later he taught school in Texas and then moved to Ryan, Oklahoma where he taught school for 3 years. He was married in 1899, and had three children. In his spare time he studied law. He was admitted to the bar in Oklahoma County Building are literally covered with photographs and other memorabilia operating as tangible proof of his life service to the people of Oklahoma.

Commissioner Ray Vaughn has served as the Third District County Commissioner for Oklahoma County since his election to that office in 2006, but it was a long and winding road that brought him to this point. Ray attended college at Oklahoma Christian, where he played both tennis and basketball. He met his wife, Suzanne, in college. They have now been married 45 years and have 3 beautiful children and 9 gorgeous grandchildren, as evidenced by the numerous photographs adorning his office.

Although he began his academic career as an art major, Ray decided, rather randomly it seems, that he was going to become a television journalist at WKY-TV, now known as KFOR (Channel 4). Although OC offered only one class in broadcast journalism, Ray was determined to learn everything he could about the profession on his own. As a college sophomore with no experience or credentials of any kind, he strode into the business offices of WKY-TV and informed them that he wanted a job. He was turned away, of course, but it was suggested that he contact Bill Payne at KWHP radio in Edmond to get some experience. He was promised an interview once he knew a bit about broadcasting and what it entailed.

Ray fondly describes his time with Bill Payne as a learning experience. His very first assignment was to observe the live broadcast of a high school football game from Taft Stadium. Unfortunately, Bob DeLong, who was supposed to be the play-by-play announcer, ran a bit late. Showing no fear at all, Ray assumed the play-by-play announcer, ran a bit late. Showing no fear at all, Ray assumed the...
Fulfilling a Dream...

Cavett Kids: A place where illness does not define the child

By Judge Patricia Parrish
OCBA President

I only recently became familiar with an organization called Cavett Kids which may be one of Oklahoma’s most precious treasures. Once upon a time, Danny Cavett, a Chaplain at OU Medical Center, had a dream of providing a place where children battling from life-threatening or chronic illnesses could go to escape the rigid routines of treatment. Although undergoing intensive chemotherapy treatments for Lymphoma, Chaplain Cavett had the fortitude to forge ahead with his dream. Finally in 1997, his dream came to fruition at the first ever Camp Cavett. From its first one hundred participants, Camp Cavett now serves over 7,000 children through its various camps.

Eric Cavett, the nephew of Champlain Cavett, furnished the following article about Camp Cavett. I hope you are as impressed with Cavett Kids as I am.

Cavett Kids: A place where illness does not define the child.

Summer camp season is just around the corner, and children in communities across Oklahoma gear up for fishing, swimming, sleepovers, and playing baseball. In those same communities live hundreds of ordinary children living through extraordinary medical challenges; children who too often have to watch while others play, walk while others run, and hope for a time when illness no longer limits their opportunities to have a good time.

The Cavett Kids Foundation (CKF) was founded to ensure that Oklahoma’s chronically and seriously ill children have the same access to outdoor fun as healthy kids. Many children in treatment miss out on typical character-building opportunities - things like Boy Scouts and Girl Scouts, team sports, even after-school activities - due to illness. CKF camps and events provide the opportunity to experience childhood the way it is supposed to be lived, with hands in the dirt, and a worm on the hook.

It is the hard work of dedicated volunteers — from dialysis nurses that keep bedside vigil each night to the local fisherman who comes back every year just for fun — that makes camp happen, ensuring both a good time for the kids and a continuum of specialized care. Knowing that their children are safe and happy, parents have the rare opportunity to relax and enjoy their temporary respite from daily caretaking duties.

Over the years, the legal community has generously given of their time by taking kids fishing and tubing during Camp Cavett (children with a variety of life-threatening illness), white water rafting at Heart Camp (teens with congenital heart disease), skiing at Ski Camp...
Five Things about Small Claims

By James B. Croy

All of us who have been in private practice recall the unquenchable longing for the really juicy small claims case. The lawyer comes back from court and eagerly looks through the call slips, hoping against hope that the chance at a small claims case is among those calls, only to have his hopes dashed by his secretary. “No, Sorry, but no small claims today.” Dejected, he grabs himself to his office, having to content himself with the usual personal injuries and probates. But ultimately, if he has lived his life right, he finds himself in small claims court at last. There are a few things to remember about small claims:

Small Claims cases are form-driven. The case is initiated by the filing and service of an affidavit and order, the forms for which are set out in 12 O.S. § 1753. In addition to the general affidavit, a separate affidavit is set out for interpleaders. While many attorneys appear to believe that they can improve on the forms, the statute requires that the affidavit be “in substance and form,” those forms in the courtroom.

There is no discovery, intervening parties or motion practice in small claims court. The lawyer should not sacrifice a tree to the discovery god in a small claims case because the act specifically disallows depositions, interrogatories and other discovery methods in § 1760. And for those lawyers who love their motions for summary judgment, they must leave them at the door of the small claims court. Section 1758 specifies that there are no pleadings other than those set out in the act. As the Supreme Court reminds us with respect to the legislative mandates governing small claims cases, expressio unius est exclusio alterius. (Look it up: Patterson v. Beall, 2000 OK 92, 19 P.3d 839.) And § 1760 disallows intervenors. All of that notwithstanding, motions to transfer are permitted.

Courts are not predisposed to transfer small claims cases. That said, if the defendant urges a counterclaim for judgment in excess of $7,500 — and she jumps through the ‘time’ hoops, the case will be transferred. However, in other cases, the lawyer should anticipate that her case will not be transferred and should be ready for trial in the small claims court. Remember, since there is no motion practice, the motion to transfer will be presented at the time of trial, § 1757. And, it is not necessary to remind the judge that there is no discovery in small claims courts. We all remember that. We also know that the defense lawyer who thinks that his client would not benefit from discovery has not been sworn in yet, so one should not rely on that argument to carry the day and get a transfer. Remember that the legislature designed the small claims court for an informal, uncomplexed, swift and inexpensive method of litigating cases.

Small claims cases are adorned with multiple time limits. The trial will be set not more than sixty or less than ten days from the date of filing. The affidavit must have been served at least seven days prior to the trial. If it is not served in time, the case will not be continued for short service. Rather, the plaintiff will get a new case will not be continued for short service. Rather, the plaintiff will get a new order setting it down for hearing. If the defendant wants to seek a transfer of the case but has not filed a counterclaim, she must file the motion to transfer and it must be filed and mailed to the plaintiff at least 48 hours before the hearing. However, if the defendant files a counterclaim, she must file it and deliver it to the plaintiff in person no later than 72 hours prior to the hearing. Note that all of these limits are set out in hours, not days. However, if the defendant wants to have a jury trial on a small claims case over $1,500, she must file written notice with the clerk at least two working days prior to trial. But remember that if a jury trial is demanded, there is still no discovery, and the case may well be tried to a jury on the original trial date.

Small claims trials are informal by design. The judge in a small claims case may require additional evidence in addition to that provided by the parties. (§ 1761.) The judge might direct the evidence in a direction other than that anticipated by the parties. Just remember that the judge usually knows what evidence he or she needs to decide the case, and it might differ from the evidence the party wants to offer. Rules of evidence are relaxed in small claims cases. For instance, the judge can receive hearsay evidence or sua sponte raise the statute of limitations. The judge has great discretionary power in small claims cases. However, the lawyer should not anticipate that this discretion will extend to forgoing the need to have a live, breathing witness to prove the case.

So, when your secretary comes in your office and effusively informs you that at last you have got a small claims case, just remember that it is a creature unto itself.
By Jim Croy

May 12, 1914
One Hundred Years Ago
[Fiedeer v. Fiedeer, 1914 OK 672, 140 P. 1022.]

This action was begun in the district court of Oklahoma county by Mattie Fiedeer against John Fiedeer for damages resulting from personal injuries, upon a petition which in part is as follows: “That on, to wit, the 28th day of February, 1911, at Oklahoma City in said county, the defendant, unlawfully, violently, maliciously, and feloniously did assault the plaintiff with a shotgun loaded with powder and buckshot, and did therewith shoot the plaintiff upon the top and side of her head, and did thereby inflict dangerous and mortal wounds thereon. The said plaintiff, by reason of which plaintiff suffered great bodily and mental pain and anguish, and became and was and still is sick, injured, and disabled from working, and will continue to suffer pain and to be disabled under moderate jurisprudence, the remainder of her life, all to her damage in the sum of $4,800, and further, by reason of which the plaintiff was compelled to and did expend a large sum of money for nursing, medicine, and medical treatment in endeavoring to be healed and cured of the said wounds and injuries, to wit, the sum of $200, to her further damage in the sum of $200.” She also claimed punitive damages on account of humiliation and mental suffering in the sum of $5,000.

The defendant answered as follows: “Comes now the defendant and denies each and every allegation in plaintiff’s petition.”

And the defendant, further answering, says that on the 28th day of February, 1911, the said plaintiff and defendant were legally married, bearing toward one another the relation of husband and wife, under the law of the state of Oklahoma, and during such marriage relation, existing as aforesaid, no action of damages will lie for the personal torts committed upon the other spouse during the marriage relation.

And defendant, further answering, says that on the 12th day of May, 1911, a decree of divorce was granted in the district court of Oklahoma county, which operated as a dissolution of the marriage contract as to both, and said cause is still pending, the time for appeal not having expired; but defendant further alleges that, even if the plaintiff claims she is divorced from the defendant, she can receive nothing in damages, as under the law dissolution of marriage does not permit the plaintiff to sue defendant for a tort committed upon the plaintiff during coverture—concluding with a prayer.”

...This brings us to a question which, especially when we consider the language that has been the occasion of much profound reasoning and of an equal amount of sophistry. Many carefully reasoned, though we cannot say well reasoned, cases are cited in support of plaintiff in error’s contention. From an examination of the authorities cited, they appear to us as in a great measure controlled by the common-law rule under which the entity of the wife was completely lost in the husband. But modern Legislatures, though vainly, it seems, have by plain, explicit, and unmistakable language attempted to break away from the common-law rule and to put the courts out of hearing of the still lingering echoes of barbaric days. The ground upon which the stronger of the more modern decisions have determined that the wife has a right to maintain an action for tort against the other during coverture have been in the main, based upon public policy, reasoning that to maintain such an action would tend to invade the holy sanctity of the bonds of matrimony, by placing the parties between husband and wife, and that therefore, for public policy’s sake, such actions should not be maintained; and yet those very decisions, in support of their philosophy, hold that the civil courts are open to parties seeking divorce and alimony, and that the criminal courts are open for the prosecution of either husband or wife for assault and battery, and for shooting each other with shotguns. We fail to feel the force of such philosophy. We fail to comprehend wherein public policy sustains a greater injury by allowing a wife compensation for being disabled for life by the brutal assault of a man with whom she has been unfortunately linked for life than it would be to allow her to go into a criminal court and prosecute him and send him to the penitentiary for such assault.

Nor are we able to perceive wherein the sensitive nerves of society are worse jarred by such a proceeding than it would be to allow the parties to go into a divorce court and lay bare every act of their marriage relation in order to obtain alimony. But, aside from the philosophy on the one side, the other appears to us that the plain English language of our Constitution and statutes should enable us to determine what are the rights of a married woman are intended to be in such cases. Section 6, art. 2, of the Constitution of Oklahoma, provides: “The courts of justice of the state shall be open to every person, and speedy and certain remedy shall be afforded for every wrong done or suffered to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.” From the language of this section of the Bill of Rights, it appears to us that the framers of our Constitution intended to open the courts of justice to every person, no matter whom, for redress of wrongs and for republication for injuries. In furtherance of such intention, our Legislatures, realizing the harsh rules of the common law in such matters, has provided section 3363, Rev. Laws 1910: “Woman shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights as a woman, which her husband does as a man; and for any injuries sustained to her reputation, person, property, character, or any natural right, she shall have the same right to appeal in her own name alone to the courts of law or equity for redress and protection that her husband has to appeal in his own name alone.”

Section 2845, Rev. Laws 1910, provides: “Any person who suffers detriment from the unlawful act or omission of another, may recover from the person in whose favor the injury was done, any loss or damage occasioned thereby, which is called damage.”

Section 2846, Id., defines what is meant by a detriment as follows: “Detriment is a loss or harm suffered in person or property.”

The foregoing statutes, it seems to us, are sufficiently clear to define the rights of persons, without discrimination or distinction, and to enable all persons to know just what their rights are and the courts to know just how to adjudicate them. But our Legislature, possibly in contemplation of such contingencies, and in order to avoid the reading into the statutes a meaning not intended, or at least in further emphasis of its intention, has made other provisions. Section 2914, Rev. Laws 1910, reads: “Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained.”

And in order to make itself still more clear as to its intentions, the Legislature in section 2948, Id., said: “The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to the laws of this state, which are to be liberally construed with a view to enable all persons to know just what their rights are and the courts to do right.”

Construing these statutes and constitutional provisions as a whole, we think it is clearly manifest that the legislative intent has been an endeavor to shake off the shackles of the common-law rules as to the rights of married women and to clearly define such rights. Besides, many of the more modern decisions on this question either offer an apology or give way to expressions of regret that the earlier decisions of their respective jurisdictions had not yielded a doctrine in which they did not fully concur but by which they felt themselves bound.

We think a clearly intended right would be to allow a married woman in such cases to hold that she could not recover. By this we do not mean to be understood as holding that a married woman in such cases is entitled to exemplary damages for mental anguish, humiliation, etc. We do not question whether such doctrine would be sound. These are matters which, in the very nature of things, she takes chances on, assumes the risk of, when she enters into the marriage contract and upon the marriage relations. But, upon the whole, we are unable to perceive wherein either public policy, or society, or the sanctity of the home, or the sacred relations of marriage, is better protected by denying her a reasonable compensation for injuries maliciously and feloniously inflicted upon her by a husband with a shotgun loaded with buckshot, or that either of the aforesaid sacred institutions is worse injured by allowing her a just and reasonable compensation in such cases, than to allow her to go into the criminal courts and send him to the penitentiary, or into a divorce court and publish their entire married life to the world. True, it is argued that to allow recovery in such cases would be to open the avenues to every conceivable species of fraud, deception, and perjury, through which designing women would be enabled to go into courts and recover for alleged wrongs which they had never sustained. But the answer to this argument is that the divorce courts open the same avenues in order to recover undeserved alimony. And again, should a woman, who has been crippled or maimed or disabled for life through the malicious, wanton, and willful assault of a brutal husband, go into court and ask for alimony for her support, there is not a court in Christendom but what would award her a more liberal alimony than if she were a strong, healthy, able woman. Now, upon what theory would such additional alimony be allowed? Unquestionably it would be on the ground of the tort she had received at the hands of her husband. We can see no difference in principle in an indirect and direct recovery for tort.

May 26, 1939
Seventy-Five Years Ago

The information charged that in Coal county, on or about the 19th day of August, 1937, Mallie Paris did have in her possession about 12 pints of tax-paid whisky, with the unlawful intent to sell the same.

On the trial the jury returned a verdict of guilty and fixed her punishment at a fine of $50 and confinement in the county jail for 30 days.

... One of the grounds of the motion for a new trial, and here assigned as error, is that the court erred in refusing to give instructions on the presumption of law that she was under coverture, as provided by statute. Penal Code, sec. 1802, 21 Okla. St. Ann. § 157. And requiring the jury to find that she was acting independently of her husband’s control in order to find her guilty.

The instructions requested were refused by the court and the instructions given by the court were held to overrule the objection of either whether she was a free agent or acting under the direction of her husband.

It is contended that the inference of
Joe Ruffin
Criminal defense lawyer

By Rex Travis

Criminal defense lawyer, Joe Ruffin died March 23rd. He was 59 and died of a stroke.

Joe was an interesting man. He was born in Japan while his father, a psychiatrist was assigned there in the military. He grew up in Oklahoma City and went to OU for his undergraduate education and OCU Law School.

Joe grew up a rich kid in a mansion at 16th and Hudson, in Heritage Hills. Despite this (or perhaps because of it) one of Joe’s outstanding characteristics was that he was able to relate to and identify with criminal clients, who were of a completely different background. He was always dedicated to seeing to it that his clients got the quality defense to which he passionately believed they were entitled. I’m confident a lot of his clients were unable to pay him or pay him very much, but that didn’t seem to bother Joe.

After his college and before law school, Joe served in the Peace Corps in Korea. He taught English as a second language there. He seemed deeply effect-ed by that experience. Some thought it prepared him to relate to his criminal clients later in life.

To most of us, Joe’s most salient character-istic was his cheerfulness and good attitude. Particularly was this remarkable in light of the misfortune he had in life. He married and had four children with his first wife, Maria. She died, which was a terrible blow to Joe. But he persevered and survived it and remarried Gayle. They were to all appearances very happy until his death.

By Teresa Rendon

Joe Ruffin, OCU law grad, long-time criminal defense attorney, devoted husband to Gayle, and loving father to four children, passed away on March 23, 2014. He left a large group of friends and loved ones who will remember him fondly. Joe had a personality as big as the Goodyear Blimp, a finely-crafted gift of gab, a large storehouse of stories and jokes, and enough opinions to give away freely at the drop of a hat. Whenever I saw Joe at the courthouse, there was always a hug, a platonic peck on the cheek and a quip or two in store for me. I have never seen a person who could talk to absolutely anyone the way Joe could. He and I both loved estate sales, so from time to time, I could corroborate this theory of Joe. I would observe him in action with complete strangers in animation, conversation. He would enter a house and take up with a person who looked like he was bored, maybe waiting for his wife to finish shopping. Before you knew it there would be jokes told, personal stories shared and even an exchange of cards and phone numbers. That man could talk to a fence post and make it listen!

I first laid eyes on Joe when he and I were both law students at OCU. But it wasn’t a school that I first noticed him. Instead Joe came knocking on our door one evening to pick up our cousin Maria Elena for a blind date. In typical Joe-fashion, he came in and announced that he was hot and thirsty and asked if there was something he could drink. Before I could get out of my chair, Joe marched to the kitchen, opened the refrigerator and served himself some lemonade. Joe never let anything get in his way, knew just what he wanted, and had no use for formalities.

When Joe and Maria Elena eventually fell in love, he went down to Mexico City to ask for her hand. Joe spoke fluent Spanish, but there were, from time to time, some expressions that he used creatively. When he wanted to explain to his future in-laws that one of the things he noticed about their daughter was that she was very emotional, he used a word in Spanish that meant sexually aroused. You can just imagine the future in-laws’ jaws dropping! In spite of this linguistic gaffe, or maybe because of it, Joe and Maria Elena got married in Mexico City. They settled in Oklahoma City where Joe was starting his law practice, and had four wonderful children Maria Belen, Diana Luz, Daniel Antonio and Montserrat Elena. Peter Haddock, Joe’s best friend and former colleague at the Oklahoma County Public Defenders’ Office remembers him as a man devoted to God and his family.

After Maria Elena died of cancer, Joe rekindled a long-ago relationship with Gayle, who was his college sweetheart and became his second wife. How lovely it was that they were able to meet again just at the right time in their lives. Their time together was shortened by Joe’s untimely death of a massive stroke.

At Joe’s memorial service, attorney William Campbell recalled Joe’s stellar courtroom performance and the way Joe was able to get his clients to do the practical thing, which in some cases was to get the best deal they could. In other cases, Joe fought like a lion because he was committed to access to justice for all, often referring to his clients as the “falsely accused.” Joe left behind him a legacy of commitment to justice and the judicial process, a loving family and devoted friends. He will be sorely missed.

Goodbye Joe

By Rex Travis

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By Chris Deason and Judge Don Deason

A couple of years ago, a new priest, Father Ray Ackerman (son of the local advertising mogul), was assigned to the parish where Chris and I attend church. We liked him immediately. When he delivered his homily (sermon), Father Ray would stand in front of the altar with no written notes and deliver a message that was profound, timely, and relevant to our lives. And, he did it within ten minutes or less - a man after my own heart. We really became fans of his one Sunday when his homily was based upon Peter Gabriel’s 1977 song, Solsbury Hill.

For those unfamiliar, Gabriel rose to fame with the 70s progressive rock band Genesis. By most accounts, he felt that he had been thrust into a role in their performances that was increasingly theatrical, and that he was cast as a front man in a role with which he was not comfortable. Gabriel abruptly left Genesis to pursue a solo career when he had not proven himself as an independent performer, a very risky move at the time. His first single release was Solsbury Hill, which still gets plenty of air play on various radio/digital station formats.

In the song, whether he intended to or not, Gabriel describes what many have interpreted to be a spiritual awakening.

As for Solsbury Hill itself, located near Bath, England, the written history begins with Iron Age and continues through the present day because of environmental concerns. Having enjoyed the song for decades, I had not paid attention to the lyrics until Father Ray wove them into his homily on that Sunday.

Although Gabriel has disavowed religious overtones of the song, it is easy to understand how listeners could easily find a connection in the lyrics. Many a website is dedicated to what the song is about. The only consensus is that listeners agree to disagree about whether the song is based on Gabriel having a religious experience, based on his desire to be free from the commercial music machine, or about him getting taken back to his home planet by aliens. It seems the song can be about whatever you need it to be.

Climbing up on Solsbury Hill
I could see the city light
Wind was blowing, time stood still
Eagle flew out of the night
He was something to observe

Came in close, I heard a voice
Standing, stretching every nerve
I had to listen had no choice
I did not believe the information
I just had to trust imagination
My heart going boom, boom, boom
Son, he said, grab your things I’ve come to take you home

To keep in silence I resigned
My friends would think I was a nut
Turning water into wine
Open doors would soon be shut
So I went from day to day
Though my life was in a rut
Till I thought of what I’d say
And which connection I should cut

I was feeling part of the scenery
I walked right out of the machinery
My heart going boom, boom, boom
Son, he said, grab your things I’ve come to take you home

When illusion spins her net
I’m never where I want to be
And liberty she pirouette
When I think that I am free
Watched by empty silhouettes
Close their eyes but still can see
No one taught them etiquette
So I will show another me

Today I don’t need a replacement
I’ll tell them what the smile on my face meant
My heart going boom, boom, boom
Hey, I said, you can keep my things they’ve come to take me home

Come back home
Come back home
Come back home

Lyrics from: www.lyricsfreak.com/p/peter+gabriel/solsbury+hill_20107506.html
Memorial Day Memories

By Larry Sturgill

What is it about camping that makes someone say, “I know what, we will leave our comfortable house with cable television, a nice hot shower, food in the fridge and a soft couch to stretch out on, and instead, go sleep in a tent on the ground with no amenities whatsoever?”

If anyone knows who does that, I would like to meet him so I can ask what drugs he used to make him that delusional.

I have endured one camping trip in my adulthood. Since we live in Oklahoma, the perfect place was the Illinois River, which has public camping sites, rental canoes and the ability to get away from it all, except for the few hundred other people who would be camping in close proximity to each other. It was Memorial Day, what a perfect time to start the summer season.

We packed light-check, a tent-check, sleeping bags-check, a cooler with drinks and snacks-check, check, check. We arrived at the campgrounds just before dark, paid the camping fee and got our lot assignment. It had been dry so no bonfires were allowed. It didn’t matter since there was no firewood to burn anyway.

I immediately began to pitch my tent, which is camping talk for getting the tent out of the box and attempt to decipher the instructions to set the thing up. I found a level place and carefully cleaned up the bigger rocks so I had a nice place for the tent. At this point, I should say that even if the ground looks to be level, it is not. It only took me an hour to finish what the tent instructions said was a ten minute job, and by then it was pitch black dark.

Since I had no electricity and it was pitch black, we had little choice but to retire early and be ready for the next day, ready for a full day of fun and adventure. I learned some things about a tent. First, you have to crawl into it. Second, you have to know how to do it with my paddle, each time we drifted and we started off downstream again. By the time the canoe on the right nudged my canoe to the left, I didn’t know how to stop it turning.

In an instant we were perpendicular to the river. The canoes themselves were shiny aluminum that all looked as if someone had beaten under one end of my canoe up onto the shore. I figured I would wait for an opening and then resume the journey, only forward this time. My shoes were full of water and my socks were soaked. At least, if I had to walk through a fire, my feet would be saved.

It was only a few minutes later that a gap appeared in the river of aluminum and we started off downstream again. By hugging the bank and pushing away from it with my paddle, each time we drifted close, and then occasionally jutting out and pushing the canoe from behind, I was able to navigate the rest of the course.

We went to the rental office, turned in our canoe and got in the van for the drive back to the starting point. My children were simply gushing with enthusiasm.

“Wasn’t this fun, we need to do a family outing like this every year.”

“Sounds great,” I said. Meanwhile I was thinking, “Instead of a camping trip next year, how about something that is much more fun, like root canals on all my teeth or a do-it-yourself appendectomy in the comfort and convenience of the bed of my pickup truck.”

Unfortunately, I have not been able to work another camping trip into my busy holiday schedule of laying on the couch and looking at the ceiling. Maybe next year.
Trust Can Never Be Overstated Or Underestimated.

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The Oklahoma County Bar Association’s celebration of Law Day 2014 began with a sell-out crowd at the Annual Law Day Luncheon held on May 1 at the Skirvin Hotel Grand Ballroom. Keynote speaker, Chief Judge David Lewis of the Oklahoma Court of Criminal Appeals, spoke on this year’s theme of “Every Vote Matters.” Judge Lewis told the crowd, “The rule of law for those of us that believe in it know that every citizen, no matter how low or high you are, you will be treated with respect; that’s the rule.”

Former Senator Jim Howell was honored with the prestigious Journal Record Award. Journal Record Publisher Mary Mélon also presented the Leadership in Law Awards to Shirley Cox, Miguel Garcia, Will Hesch, Michael Joseph and Sheila Stinson. The recipient of the Howard K. Berry Sr. Award was Calm Waters Center for Children and Families. The Young Lawyers Division presented the Liberty Bell Award to Penny Denton and Susan Blethrow.

The Annual Ask a Lawyer Program was also held on May 1 at OETA Studios. This annual program sponsored by the Oklahoma Bar Association offers telephone consultations free from 9 a.m. to 9 p.m. The Oklahoma County Bar Auxiliary provided refreshments throughout the day for those lawyers participating in the event.

“The rule of law for those of us that believe in it know that every citizen, no matter how low or high you are, you will be treated with respect; that’s the rule.”

- Chief Judge David Lewis of the Oklahoma Court of Criminal Appeals

OCBA Celebrates
Law Day 2014
(campers affected by muscle loss or amputations due to cancer), shooting clay pigeons at Leadership Camp (campers with exceptional leadership qualities), dancing the night away at Kamp Courage (kidney/spina bifida/cerebral palsy/PKU/diabetes), and teaching older campers life lessons at Transitions Camp (campers striving to succeed at adult life). From closing down the office so that staff can volunteer, to renting boats to take campers fishing, lawyers have significantly contributed to making a life changing impact on these campers’ lives. One special lawyer went so far as to rent a limo to take several lucky Cavett Kids for a very special night to the Hanson concert in Tulsa!

Outside of volunteering time, lawyers have generously given and raised thousands of dollars so that these special children can enjoy camps free of charge. These camps and events are not possible without the extreme generosity of private donations. The legal community has become a mountain of support for Cavett Kids Foundation and its many campers.

Cavett Kids Foundation - Three C’s:
• Teach Coping Skills in a nurturing, fun environment;
• Build Character by reinforcing positive expectations and encouraging personal growth;
• Establish meaningful Connections between children who often feel isolated from their peers.

These are the “Three C’s” that the Cavett Kids Foundation strives to instill in every camper — the cornerstone of the Cavett Kids’ philosophy, and the main reason that Cavett Kids’ events so often become a transformative experience for both campers and volunteers.

What started with one camp and a dream has now become six camps serving over 400 children with various life-threatening and chronic illnesses each year. The diagnoses may differ — leukemia, heart disease, cystic fibrosis, Crohn’s disease to name just a few — and the treatments and outcomes may vary, but a common experience links all campers, creating a unique environment where children hear stories that sound remarkably like their own. For many, camp is the only place where these children feel truly understood, where they never feel left out. Cavett Kids also helps over 10,000 children and their families through a partnership with University of Oklahoma Physicians called Diversionary Play.

Camp fosters independence and self-sufficiency; it creates a sense of being able to do normal things while dealing with extraordinary challenges. In the process, support systems are formed, friendships that campers can rely on long after camp is over and the hardships of normal life have resumed.

The Value of Sunshine...
Children feel it and parents see it. Children come home, tired but happy, fortified by fun and sunshine, excited about the challenges they faced and the friendships they made, instilled with newfound feelings of independence, and — most important of all — proud of themselves and all that they accomplished.

When Cavett Kids go back to school in the Fall, they’ll have their own camp stories to tell — just another ordinary summer camp experience in the Oklahoma sunshine. Isn’t that extraordinary?

Cavett Kids Foundation is hosting a fundraiser, “Camp Challenge”, on May 30, 2014 at Riverwind Casino. This is a wonderful opportunity to learn more about Cavett Kids and to help fulfill the dreams of these courageous children. For more information on Cavett Kids Foundation: “Where illness does not define the child.” go to www.cavettkids.org.
**DFPH&J Names New Partner**

Dagherty, Fowler, Peregrin, Haught & Jenson (“DFPH&J”) has named Mark J. Peregrin as partner at the firm. Mark J. Peregrin has been assisting clients as special FAA counsel at DFPH&J since 2007. His practice is focused on structuring and closing worldwide transactions involving the sale, registration, leasing and financing of private, corporate and commercial aircraft and the filing of such transaction documents with the FAA Registry in Oklahoma City, Oklahoma. He also advises clients on matters arising under the Cape Town Convention and the International Registry. Prior to joining DFPH&J, Mark practiced law in the area of international trade and shipping with the FAA Registry in Oklahoma City, serving as special FAA counsel at DFPH&J since 1987.

**GableGotwals Welcomes Leo J. Portman and Rex E. Herren as Of Counsel Attorneys in the Oklahoma City Office**

Leo J. Portman will work in several areas of practice including Title Examination, Oil and Gas Law and Estate Planning. Prior to joining GableGotwals, Leo was a sole practitioner at Portman & Associates. He has previously served as President of an oil and gas company during bankruptcy liquidation and payment of creditors, all of whom were paid in full under his direction. He also fulfilled the role of sole practitioner for oil and gas corporations and outlined estate planning programs for clients.

Rex E. Herren brings over forty years of experience to GableGotwals in the areas of Title Examination, Oil and Gas, Real Estate Law, Indian Law and Probate Law. He has worked with both the Five Civilized Tribes in Eastern Oklahoma and the General Allotment Indians in Western Oklahoma. Rex has also served as Assistant Regional Solicitor with the Office of the Solicitor in Tulsa, Oklahoma.

**Jeff Hassell Transitions from General Counsel to GableGotwals Shareholder**

Jeff Hassell brings a unique perspective to his banking clients. He has spent the majority of his career as a GableGotwals shareholder. However, this past year he has navigated the legal intricacies of the banking industry from a general counsel position at the F&M Bank & Trust Company. After a recent merger of F&M Bank and Prosperity Bank, Jeff is returning full-time to the firm as a shareholder.

With additional knowledge of the banking industry’s legal, operational, financial, compliance and regulatory requirement, Jeff is distinctively qualified to assist both large and small banks.

Jeff can be reached at jhassell@gablelaw.com or 918-595-4823.

**Crowe & Dunlevy Announces New Directors**

Crowe & Dunlevy recently named Zachary W. Allen, Elliot P. Anderson, Adam C. Hall, Brett D. Liles and Drew T. Palmer directors of the firm. Allen is based in the firm’s Oklahoma City office with a focus on real estate. He concentrates his practice in commercial real estate lending, leasing, development and sales transactions, representing a diverse range of clients, including developers, purchasers, owners, tenants and lenders.

Based in the firm’s Tulsa office, Anderson provides litigation and consultation services in business and commercial matters, with a particular emphasis on environmental compliance and remediation, and oil and gas law. His areas of practice include Energy & Natural Resources, Environmental and White Collar, Compliance & Investigations.

Hall works in the firm’s Oklahoma City office, where he specializes in business and commercial litigation with an emphasis on financial institutions and finance, securities litigation, bankruptcy and creditor’s rights and debt restructure and loan workouts. He is a member of the Antitrust, Banking & Financial Institutions, Bankruptcy & Creditors’ Rights, Litigation & Trial and Securities Litigation practice groups.

Liles is a director in the firm’s Tulsa office. He focuses his practice on multiple aspects of business and commercial transactions, with an emphasis on aircraft, secured financing, real estate, mergers and acquisitions, and securities. He is a member of the Aviation/Aircraft, Banking & Financial Institutions, Construction, Corporate & Securities, Indian Law & Gaming and Real Estate practice groups.

Palmer practices intellectual property law in the firm’s Oklahoma City office, specializing in litigation and conflict resolution in the software, Internet and other high-technology industries. He advises clients on a variety of matters related to the protection and enforcement of their patent, copyright, trade secret and trademark rights. Leveraging his background in the software industry, Palmer also drafts and negotiates software and other technology licenses for various regional businesses.

He is a member of the Intellectual Property and International practice groups.

**At The Capitol**

**By Kurt Ockershauser**

As usual, the current session of the Legislature has under consideration a number of bills particularly pertinent to lawyers. One of the most imposing pieces of legislation is SB 22 which will be known as the Oklahoma Criminal Code. This Bill endeavors to repeal Title 21, as well as other selected sections in an attempt to clarify, update and consolidate Oklahoma’s present criminal laws. The Bill is presently in the Senate Judiciary where it has been since January 3, 1973.

While much can be said about no-fault insurance, both pro and con, it appears the Legislature, regarding the current attempts to bring Oklahoma’s laws concerning abortion into line with the recent Supreme Court decision, the Uniform Abortion Act of Oklahoma is expected to create a good deal of controversy in both Houses. Already, the proposed legislation has been sent back to the Senate Judiciary Committee for the purpose of examining its compliance with Supreme Court ruling. After the Judiciary Committee, it will be passed to the Public and Mental Health Committee, before going to the floor of the Senate.

A bill is currently being considered in the Senate Judiciary Committee which would increase all but one of the Associate District Judges in Oklahoma County to full District Judges. This would be welcome news to all Associate District Judges in that it would properly increase their salaries by $3,000 per year. The bill will be passed to the Appropriations and Budget Committee and will then pass to the floor.

The Municipal Court Reorganization Act of 1973 proposes some streamlining in Municipal Courts here in Oklahoma. One of the provisions requires all Municipal judges to be attorneys. There will also be a realignment of Municipal traffic offenses so as to comport with the state statutes in assessment of penalties. This bill is currently in the Municipal Government Committee and will then go to the Senate Judiciary Committee.

Other developments in the Legislature include a proposal to increase District Attorneys’ salaries to match that of District Judges. Also included is a proposal to allocate 30 percent of the Court funds to be used for the needs of local law enforcement agencies. Finally, it is hoped that some of the problems involved in the vacation of streets and plats will be solved. There are two Senate bills pending which specify with greater particularity, who is supposed to receive notice of the intended action and how such notice is to be affected. These appear to be the most substantial changes in the procedure as it is now being considered.

**Quote of the Month**

“No one on his deathbed ever said, “I wish I had spent more time at the office.”

~ Paul Tsongas, U.S. Senator (1941-1997)
The health effects of drinking are determined by the quantity, as I have said, and the pattern of consumption. Studies have consistently reported that light to moderate intake will increase high blood pressure. Within 2 to 4 weeks of abstinence, alcohol induced high blood pressure will resolve. And the relationship between alcohol and strokes? Heavy drinking and chronic alcoholism are strong independent risk factors for stroke. Nonetheless, most studies show a protective effect with light to moderate drinking and, yes, an elevated risk of stroke with heavy drinking. The American Stroke Association recommends that heavy drinkers who have had strokes should eliminate or reduce their alcohol consumption.

The relationship between alcohol and type II diabetes? Consistent data indicate that regular light to moderate drinking is associated with substantial reductions of 30 to 40 percent regardless of the alcoholic beverage consumed. And consistent with the above data, the protection decreases or disappears with more than four drinks per day.

Finally, the relationship between alcohol consumption and the metabolic syndrome? Consistent with the above data, a lower prevalence of the metabolic syndrome is seen in people who regularly consume light to moderate amounts of alcohol. The main active ingredient of any alcoholic beverage is ethanol. It is this compound, rather than any other component of a drink, that is the primary factor for both conferring health benefits and causing toxicity, depending on the pattern of consumption and dosage. Light to moderate intake will enhance insulin sensitivity, elevate high density lipoprotein cholesterol (the good cholesterol), reduce inflammation, increase adiponectin (to help regulate glucose levels), improve endothelial (blood vessel) function, reduce triglycerides, and reduce abdominal obesity (greater amounts will increase abdominal obesity and triglycerides in direct proportion to the amount consumed... perhaps giving truth to the concept of a beer belly.

The health benefits of drinking, similar to those bestowed by exercise, are best attained when done daily and in moderation. This is likely due to the fact that many of the benefits of light to moderate drinking are transient, generally dissipating within 24 hours. I should not leave this topic without mentioning that, notwithstanding the benefits of light to moderate drinking, heavy, long-term alcohol use increases the risks for many malignancies, particularly cancers of the gastrointestinal tract and liver. In addition, for women, even light to moderate alcohol intake is associated with increased risk of breast cancer.

So, there you have it. It is very clear that, except for the breast cancer risk in women, light to moderate drinking is protective and should be practiced. On the other hand, habitual alcohol intake appears to be a slippery slope that some people cannot safely navigate. As a result, the American Heart Association cautions people not to commence drinking if they do not already consume alcohol. Cheers!

Warren E. Jones, JD, HFS, CSCS, CEQ, is an American College of Sports Medicine (ACSM) Health Fitness Specialist, a National Strength and Conditioning Association Certified Strength and Conditioning Specialist, and a holder of an ACSM Certificate of Enhanced Qualification. His clients range from competitive athletes to the morbidly obese. He can be reached at wejones65@gmail.com or at 405-812-7612.
Merle Gile: Upon graduating from the OCU School of Law night program in 1972, Merle hung out the proverbial “shingle,” and thought he was big enough to file two law suits on the same day he was admitted to practice law. One of those cases went to jury trial. Merle had never before witnessed a jury trial in his entire life. As expected, he managed to anger the Judge who ceremoniously sustained a demurrer. Thankfully, the Judge cooled down enough to grant the newly minted attorney’s Motion for New Trial. Merle thought he was clever until the Defendant appealed. Even though he had never done an appeal, he pulled one out of his boot and the Supreme Court ultimately held in his favor. The Defendant gave up, but settled for only a minimal sum of money. A victory? Of course it was. Trial by fire is always worth the education, if not for the riches. Merle is like Cher to the extent that his storied history with OCBA members can be conjured up by the mere mention of his name. As far as we know, he is in no other way like Cher. His list of cohorts brings to mind a Rat Pack of sorts consisting of Merle, D.C. Thomas, Jake Hunt, and Jack Dawson. He listens to music in his car. Here are a few of his favorites.

Song Title | Artist
--- | ---
How Great Thou Art | Sandi Patty
Take It Easy | Eagles
I Did It My Way | Frank Sinatra
I Got Friends in Low Places | Garth Brooks
Somewhere over the Rainbow | Judy Garland
Sioux City Sioux | Dick Thomas
Scotch and Soda (guilty pleasure) | Dean Martin

Monica A. Dionisio: Monica grew up in Elk City, Oklahoma. As the daughter of attorney Paul Albert, she followed his footsteps. They hope the dynasty will continue with her younger brother who was taking his very last law school final on the day this article was written. All three attended the OU College of Law, Monica graduated in 2012, and began her practice with Heroux Partners in Tulsa. When the firm was absorbed into some larger outfit, she returned to OKC and became an associate with the firm Hester Schem Hester & Deason where she has been cutting her chops on what is reported to be the largest divorce case in U.S. history. Monica and her husband have undertaken what she leads us to believe is the world’s largest backyard renovation. They have two loyal pups named Scout and Radar. The iPhone is loaded up with county music, but she likes all sorts of music. The songs listed are a few of her favorites.

Song Title | Artist
--- | ---
My Maria | Brooks and Dunn
Baby's Got Her Blue Jeans On | Mel McDaniell
Alabama | Cross Canadian Ragweed
I Will Follow You Into the Dark | Death Cab for Cutie
Royals | Lorde
Crazy in California | The Great Divide
Heartbreaker | Mariah Carey (guilty pleasure)

Bill Pipkin -
Established First Party “Bad Faith” Law in Oklahoma

By Rex Travis

William A. “Bill” Pipkin died April 7. Bill was not a member of the Oklahoma County Bar. He always practiced in Moore but had a lot of cases in Oklahoma County. Bill was not a specialist. He was a general practitioner who handled the gamut from family law to criminal law and real estate cases. Yet, he established an important area of Oklahoma law, first party bad faith.

Bill represented a man named Bobby Christian, who worked for an oil field related company. Christian had a disability policy through his company. Bill sued American Home Assurance Company in Garvin County, where Mr. Christian lived and worked because the insurance company would not pay him disability benefits under the policy.

During the trial of that suit on the policy, it developed that the insurance company had no legal defense to the claim. It had to pay the disability benefits.

Bill then filed a second suit in Oklahoma County arguing that the insurance company was in bad faith in denying the claim and that the denial of benefits caused Christian emotional distress and made him pay attorney fees. The case was assigned to Judge Jack Parr. The law in Oklahoma at that time was clear: the only thing the insurance company owed for failure to pay an insured’s claim was the amount of the claim. This didn’t give an insurance company much incentive to pay claims since all it would be out would be its defense costs and what it would have to pay if it lost the case.

Judge Parr, of course, followed the law in place at the time and sustained American Home’s Motion for Summary Judgment. Bill knew that was the law, but it just didn’t seem right to him. He appealed, urging the Oklahoma Supreme Court to reverse the law which held the insurance company was not liable for “consequential damages” if it denied a claim in bad faith. He relied on some California cases which had broken new ground in holding that way.

The time was right. Justice Simms, in unanimous opinion, adopted the California courts’ rationale, holding that there was a covenant implied in an insurance policy, that the insurance company would handle claims in good faith, and, if good faith required it, pay the policy. The case became Christian v. American Home Assurance Co., 1977 OK 141, 577 P.2d 899.

There had been earlier cases in which a liability insurance company could be held liable to its insured if it failed in bad faith to pay a liability claim and, as a result, the insured became liable for an amount in excess of its policy limit. These were called “third party” bad faith cases because the claim involved the insured’s liability to a third party (the claimant) Those cases were based on the rationale that the insurance company, by agreeing to defend the insured, owed a fiduciary duty to do so in good faith. However, this was the first case to apply the rule in a first party case (where the insured is suing his insurance company for money).

Those of us who practice in this area have benefited from Bill’s willingness to try to change bad law. I and my clients have had the benefit of Bill’s good work for almost 40 years, for which I remain grateful. It’s an inspiration for the good things lawyers can do.

“Those of us who practice in this area have benefitted from Bill’s willingness to try to change bad law.”

- Rex Travis
Judicial independence is the foundation of the judiciary. It should be influenced by the rich and powerful. If we do not return to a time when judges were trained and qualified lawyers and judges would not be forgotten, if we fail to attract quality candidates, if we fail to assure that most cases be resolved at the trial level and only cases of real legal significance be decided at the appellate level, and if we fail to assure uniformity of justice in Oklahoma 100 years later, we must be forever vigilant to avoid repeating the mistakes of the past.

Chief Justice Tom Colbert, in his remarks to the newly admitted attorneys in Oklahoma on April 22, 2014, referenced the letter from Chief Justice Hayes. Chief Justice Colbert stated: “You may wonder why I mentioned the remarks from a Chief Justice from 100 years ago. I have done so, to illustrate to you the timeless relevance of the unchanged challenges in our judiciary and the Bar Association that we are facing today... As Chief Justice Samuel Hayes hoped in 1913 that justice (in 2013) is so uniformly and unerringly administered that all small litigation ends in the trial court, we must also hope to have a well-trained and highly qualified Bar.”

George Santayana is often quoted for his insight into our human tendency to repeat our errors, saying, “Those who cannot remember the past are condemned to repeat it.” Let us vow that access to justice will not be a forgotten goal, that well-trained and qualified lawyers and judges will administer justice according to law and equity, and that construction of the judiciary will not be made upon partisan designs.

*From: The Life of Reason, by George Santayana, 1905. This quote is often incorrectly attributed to Winston Churchill.
As he had served several indigent clients through a legal
p.m. anchor opportunity and hang out a shingle in
admittedly, a morning person. Much to his boss’s chagrin,
now had three small children to care for and Ray is,
10 p.m. to 6 p.m. broadcast and Ray was in line to assume
and sit for the bar exam, even though he had no intention
and 8 months. Upon graduating, he decided to go ahead
er, he managed to obtain his law degree in a mere 2 years
Attending classes year-round, with the help and support
es on Monday, Tuesday, Wednesday and Friday nights.
through Sunday at Channel 4 and attended evening class-
admitted on the Friday afternoon before classes started on
position as a national network correspondent covering
a law degree. Suddenly it all came together in Ray’s
City, he covered the trials of David Hall and Leo Winters,
criminal trials, which kept him at the courthouse every
weekend anchor, so he and his family returned to the
Phoenix, AZ, where he gained additional experience and
repeater and also shown to audiences in Ardmore, OK
Senator George Miller offered him a job at KTEN in Ada,
OK, he jumped at the chance. Although KTEN was a
small station, their news broadcasts were picked up by a
repeater and also shown to audiences in Ardmore, OK
and Denton, Sherman and Denison, TX. He spent a year
KTEN, then moved to stations in Wichita Falls, TX and
Phoenix, AZ, where he gained additional experience and
broader audiences. Finally, in 1973, he was offered a tel-
vision position at Channel 4 in Oklahoma City as the
weekend anchor, so he and his family returned to the
metro.

Suddenly, at the ripe old age of 25, he had achieved his
loftiest professional goal, so he began considering setting
a new one. During his stay in Arizona, he covered the
state legislature and also covered several high-profile
criminal trials, which kept him at the courthouse every
day for six straight weeks. Upon returning to Oklahoma
City, he covered the trials of David Hall and Leo Winters,
as well as the Oklahoma Legislature, all of which he thor-
oughly enjoyed. Carl Stern had recently been hired as
NBC’s national network correspondent in Washington,
D.C. and he was the first television journalist to also have
a law degree. Suddenly it all came together in Ray’s
mind - he would attend law school so he could obtain a
position as a national network correspondent covering
politics and the courts.

Ray was accepted as a night student at Oklahoma City
University School of Law. He found out he had been
admitted on the Friday afternoon before classes started on
Monday. As the weekend anchor, he worked Thursday
through Sunday at Channel 4 and attended evening class-
es on Monday, Tuesday, Wednesday and Friday nights.
Attending classes year-round, with the help and support
of his wife and a minor accommodation from his employ-
er, he managed to obtain his law degree in a mere 2 years
and 8 months. Upon graduating, he decided to go ahead
and sit for the bar exam, even though he had no intention
of ever actually practicing law.

About the same time Ray found out he had passed the
bar exam, Jack Ogle, the News Director at Channel 4,
decided to retire. George Tonnek was set to move from the
10 p.m. to 6 p.m. broadcast and Ray was in line to assume
the 10 p.m. slot from George. However, he and his wife
now had three small children to care for and Ray is,
admittedly, a morning person. Much to his boss’s chagrin,
and a bit to his own surprise, he decided to forego the 10 p.m.
and use the opportunity and hang out a shingle in
Edmond in 1976.

Ray was not completely ignorant of the practice of law,
as he had served several indigent clients through a legal
aid-style clinic offered by OCU and supervised by Public
Defender T. Hurley Jordan. He had also taken a law prac-
tice management class at OCU. Given the fact he was
fully-employed during law school, he was able to pay for
school as he went along, so he did not have the specter of
massive student loans hanging over his head. Ray also
had network of other local attorneys from whom he rou-
tinely sought advice. Although the incarnation of his firm
changed over time with several different law partners
coming and going, Ray’s practice was consistently com-
posed of approximately equal parts family law, estate
practice and general civil litigation.

Ray’s father passed away when Ray was only 32 years
old and as a result, Ray sought out other personal and
professional mentors during his early years of practice.
He tried about one jury case per year and loved the fact
that every day was a different experience. Mary Ann
Karns was the Edmond City Attorney at this time and had
been a law school classmate of Ray’s. They befriended
each other when they were offered the option of typing
their exams and Ray began helping her carry her massive
IBM Selectric to the exam room. Mary Ann was a single
mother who found it difficult to attend municipal court,
which was held in the evenings. She hired Ray in 1978 as a
time Assistant City Attorney, where he covered
night court sessions until 1986, when he became an
Associate Municipal Judge for the City of Edmond for
two years.

Despite the fact he found the practice of law so fulfilling,
he always thought that if the timing was right, he
would like to run for the state legislature. Gaylon Stacy,
a former journalist and friend, decided not to run for
re-election and in 1988 Ray was elected to the Oklahoma
House of Representatives as a “staunch conservative,”
where he served for 16 years, until he was forced out by
term limits. He gives name recognition a lot of credit for his
initial election. He credits his wife and long-time sec-
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dressed under the provisions of sections 3090, 22 Oka. St. Ann. § 850, provides that the defendant is guilty of the offense. The evidence wholly fails to show that the defendant is guilty of the offense. For the reasons stated in the opinion that the trial court has a duty to advise the jury to acquit the defendant of the offense, and to find that the defendant is guilty of the offense, it is not only the right but the duty of the trial court to advise the jury to acquit the defendant of the offense, and to find that the defendant is guilty of the offense. If the evidence introduced by the defendant is insufficient to rebut the inferences arising from the evidence of the offense, the defendant's failure to object to such evidence, or his assistance rendered in avoiding detection of the crime is insufficient, even where the presumption of coercion does not obtain, is that the defendant is guilty of the offense. The law indulges a presumption that, where a crime, with some exceptions, was committed by a married woman, conjointly with or in the presence of her husband, prima facie she was not criminally liable, as it is presumed that she acted in obedience to his commands and under his coercion. * * *

In the case at bar a prima facie case of coercion was established when it was shown that the defendant had a married woman, occupying the premises with her husband as their home, and that the criminal act, if any, was in the presence of her husband. There was no evidence offered to show that she acted upon her own initiative, or that she acted freely and of her own volition, and there was no evidence offered to rebut the presumption that she acted under coercion of her husband.

The Code of Criminal Procedure, sec. 3090, 22 Okla. St. Ann. § 850, provides that if the evidence introduced by the state fails to incriminate the defendant, or as a matter of law is insufficient to show that the defendant is guilty of the offense charged, it is not only the right but the duty of the trial court to advise the jury to acquit the defendant of the offense. From the record before us, we are clearly of the opinion that for the reasons stated the evidence wholly fails to show that the defendant was guilty of the offense charged, and for this reason the trial court should have advised the jury to return a verdict of acquittal, because the evidence is insufficient to warrant a conviction.

May 12, 1964
Fifty Years Ago
[Excerpted from Wells v. Loveless Manufacturing Corporation, 1964 Ok 107, 392 P.2d 381.]

Loveless Manufacturing Corporation, referred to as plaintiff, issued several checks over a period of time to named payees whereon the First National Bank and Trust Company of Tulsa, Oklahoma, plaintiff’s depository bank, was the drawee bank. The indorsement of the name of each payee was forged and the checks were cashed by J.S. Wells, a sole proprietor firm of B. & W. True, as referred to as Wells. Wells indorsed the checks and deposited them in the Community State Bank. Community State Bank then indorsed them and transmitted them to the First National Bank for collection. The First National Bank paid the checks and charged plaintiff’s account for the amount of each check.

Plaintiff commenced this action against the First National Bank to recover the amount of the checks. The basis for plaintiff’s action was that indorsement of the name of the payee in each of the checks had been forged. The First National Bank filed an application to make the Community State Bank and Wells party defendants. They were made party defendants and The First National Bank filed a cross action alleging that forgeries of indorsements of the names of the payees were not genuine and were forgeries, each check before presentation to it had been indorsed by Wells and the Community State Bank, and that by such indorsements they expressly guaranteed the validity and genuineness of all prior indorsements. The First National Bank prayed that plaintiff take nothing, but in the alternative prayed that if plaintiff be awarded judgment against it, that it have judgment over and against the Community State Bank and Wells.

Community State Bank filed an answer and a similar cross petition against Wells and prayed that plaintiff take nothing, but in the alternative prayed that if plaintiff be awarded judgment against it, that it have judgment over and against the Community State Bank and Wells.

Inasmuch as the object to be attained may be accomplished without affording relief to the tardy certiorari petitioner, we assume today certiorari cognizance conferred by Art. 7, § 4, Okl. Const. See also 20 O.S. 1971 § 30.1. The pertinent terms of Art. 7, § 4, provest:

"...The original jurisdiction of the Supreme Court shall extend to a general supervising control over all inferior courts... The Supreme Court, Court of Criminal Appeals, in criminal matters and all other appellate courts shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law..." [emphasis added].

Acting in the exercise of that supervening, we promulgate our pronouncement on the dispositive issue for the general guidance of the bench and bar. See e.g., State v. Kight, 49 Okl. 202, 152 P. 362, 363-364 (1915) ("the grant of jurisdiction of a general supervising control over inferior courts is separate and in addition to the general appellate jurisdiction of the Supreme Court") and the provision practically places the Supreme Court in the same relation to the inferior courts of the state as the Court of King’s Bench bore to the inferior courts of England, under the common law.

The record discloses that Wells cashed 27 checks between 1959 and August, 1960, wherein the indorsement of the signature of the payee was forged. The evidence discloses that the same person forged all the indorsements on all the checks. Seven of the checks were made in favor of the same payee and several of the remaining checks were made to the same payee. (Note: This case was included because of the incessant clamor by the commercial lawyers for historical ‘paper’ cases.)
Magic Music Man

By Judge Don Easter

On April 19, 1995, the Murrah Federal Building bombing brought Oklahoma City to a virtual halt. Over the next few months we slowly recovered from the shock. Almost any diversion was welcomed that helped us to not dwell on the Murrah event.

Such an event was KOMA radio station’s first Rock ‘n Roll reunion held at the Ladies’ Building on the State Fair Grounds about six months after the bombing. I’m not sure how many people the building was designed to hold but it wasn’t big enough to hold everyone who came. People were turned away once the building filled. It was wall-to-wall people.

The music presented was amazing for someone who grew up in the Oklahoma City area during the 1960s. Wes Reynolds and the House Rockers; Squatty and the Botty’s; DeWayne and the Beldettas; Jim Edgar and the Road Runners, and The Juveniles are the bands I remember but there were several others also performing.

Teen hops were held every weekend all over Oklahoma in the early and mid-1960s. Just about every armory in Oklahoma was the sight of a dance at least once a month. As you might imagine, the acoustics in an armory were awful. The sound reverberated off the concrete walls. It was loud but it rocked the crowd.

Disc jockeys like Dale Weba, Ronnie Kaye, Danny Williams and Johnny Dark attended the dances and paid the performing band a sum certain in cash. The DJ kept the overage. Since KOMA reached the far corners of the earth at night, the bands that were advertised became familiar to teenagers from Oklahoma to California.

I was fortunate to have been a member of DeWayne and the Beldettas and Squatty and the Bottys in the mid-60s. I performed with DeWayne and the Beldettas at the KOMA reunion. We played at OU, OSU and Arkansas. We played Texas-OU weekend at LouAnn’s Club in Dallas. We played in Las Vegas and in clubs along the West Coast one summer. The band recorded Tennessee Stud on the Hanna-Barbera label and it was the number one selling record in the Oklahoma City market shortly after release.

The Reunion had each band perform three numbers. I recall that DeWayne did his favorite song - Ahab the Arab. We played Tequila. And finally, we performed the song that topped every other song played that day. We did Lee Greenwood’s God Bless the USA. DeWayne did that song as well as Greenwood and he hit it just right that day.

If you can imagine, there was an arena full of 50-somethings. The guys wore their high school letter jackets and whatever particular daily attire they wore in high school. The girls also dressed for the occasion. There was a distinct presence of English Leather in the air. The crowd wasn’t rowdy but it was noisy in the arena even during the music - until DeWayne began to sing.

Suddenly the entire arena was quiet. Those who had cigarette lighters fired them up and lifted them into the air. The only sound in the arena was the music and DeWayne’s voice. When we finished there was a moment of silence as the crowd slowly regained their composure. Applause followed.

And by the way, on keyboard that day was the Honorable Bill Hetherington, Judge of the Oklahoma Court of Civil Appeals, and on trumpet was Norman attorney, Lindsay Bailey. Jim Faulconer, assistant director of bands at OU played several instruments. Johnny Mercer played guitar. Of course, DeWayne was DeWayne Beggs, longtime Sheriff of Cleveland County. Yes, it was the same DeWayne Beggs you may remember seeing on the Jude ‘n Jody Show a long, long time ago. He passed away May 15, 2009. The Cleveland County jail facility now bears his name. He was beloved by the citizens of Cleveland County, and beloved for the music he made in his time.
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