



# Briefcase

MAY 2014 Vol. 46, No. 5

A Publication of the OKLAHOMA COUNTY BAR ASSOCIATION

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**They return to Rockwood Elementary every week to help kids learn how to make reading their "Thing!"**



Janice Pitts, Karen Twyford and Chelsea Adkins (left to right) each week spend one of their lunch breaks at Rockwood Elementary reading with children. When the children eagerly ask "Will you be back next week?" you are rewarded with knowing you have made a difference in a child's life. If you are interested in volunteering, please contact Kathryn Douglas, at 405-587-0274 or kgdouglas@okcps.org

## 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 Chief Justice Tom Colbert



Samuel W. Hayes, Oklahoma Supreme Court Chief Justice in 1913

Indian Territory in 1900 and he was City Attorney of Ryan until he moved to Chickasha in 1902 and developed a prac-

See **TIME CAPSULE, PAGE 16**

### Profiles in Professionalism

## Man of the People: Ray Vaughn Jr.

By Shanda McKenney

Within five minutes of talking to Ray Vaughn, Jr., it becomes apparent that he is defined by his dedication - to his church, his family and his community. The walls of his office on the 6th floor of the Oklahoma County Building are literally covered with photographs and other memorabilia operating as tangible proof of his life of 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 grandkids, 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

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Volunteer lawyers and judges dedicated to serving the judicial system, their profession, and their community in order to foster the highest ideals of the legal profession, to better the quality of life in Oklahoma County, and to promote justice for all.



From the President

# 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.



Judge Patricia Parrish

**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 opportuni-

ty to experience childhood the way it is supposed to be lived, with hands in the dirt, and a worm on the hook. CKF camps and programs allow these kids to establish an identity away from the treatment room and hospital, to instill confidence while creating connections. This is the Cavett Kids' experience - reminding campers their illness does not have to limit their ability to have a full life.

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

See **CAVETT KIDS, PAGE 12**



From left to right: Alex Yaffe, Eric Cavett, Scott Cavett. Alex is an attorney and Scott is Erick Cavett's brother.

# 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 drags 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 substantially the following form.” Extra credit is not given by the court for individuality or experimentation. No answer is required. However, if the defendant urges a counterclaim or setoff, there is a form set out in § 1758. Both forms are sworn documents. There is no statutory form for journal

entries of judgment, but the courts have 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 counterclaims for judgment in excess of the small claims jurisdiction — currently \$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, uncomplicated, 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 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 prior to 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.



**U.S. Magistrate Charles Goodwin was officially sworn-in on April 30 at a ceremony held at the federal courthouse.**

# An Olio of Court Thinking

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 painful wounds and injuries upon the 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 from working for 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 laws 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 under modern jurisprudence, 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 unambiguous 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 denied one's spouse the 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 home and shatter the sacred relations 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, cudgelings, or 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 or the other, it appears to us that the plain English language of our Constitution and statutes should enable us to determine what 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 afforded for every wrong and for every injury 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 clearly intended to open the courts of justice to every person, no matter whom, for redress of wrongs and for reparation for injuries.

In furtherance of such intention, our Legislature, 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 fault a compensation therefor in money, 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 effect their objects and to promote justice."

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 announced a doctrine in which they did not fully concur but by which they felt themselves bound.

\* \* \*

We think a clearly intended right would be denied to 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 doubt 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

[Excerpted from *Paris v State*, 1939 OK CR 55, 90 P.2d 1078.]

The information charged that in Coal county, on or about the 19th day of August, 1937, Mollie 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 did not submit the question of whether she was a free agent or acting under the direction of her husband.

It is contended that the inference of

See **OLIO, PAGE 18**

## In Remembrance

# 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 enti-

tled. 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 effected 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 characteristic 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.



Criminal defense lawyer Joe Ruffin

# Goodbye Joe

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 animated 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 at 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 performances 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.

## Events & Seminars

**JUNE 20, 2014**

OCBA Awards Luncheon  
12 Noon, The Towers Hotel

**JUNE 23, 2014**

2014 OCBA Golf Tournament  
Gaillardia Golf Club

**SEPTEMBER 12, 2014**

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### PERSONAL INJURY

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# But Let Justice Roll on Like a River

By Roscoe X. Pound

OK, so some of you know me from my columns in *The Briefcase*. For those of you who don't, I'm Roscoe X. Pound, proprietor of Roscoe's Bail Bonds, Bait Shop and Auto Parts in Secaucus, N.J. (accent on the second syllable if you please). Since my establishment backs up to the Hackensack River, I spend a lot of time on the bank beyond my fence. Sometimes I hang out with the old timers who sit out here fishing and spinning yarns. I've even been known to drown a

worm or two myself in the course of a work day. Mostly, I come here to clear my head. The wind off the river, sighed and rattled through the reeds and marsh grass, a chill wind redolent of fish. For most of my life, breezes arrived redolent of detergent and effluence. Today, you can both fish and boat here.

The Hackie's renaissance required heavy labor by sportsmen, anglers, and folks living in proximity. Policies from both Trenton and Washington encouraged over-development and promiscuous dumping for about fifty years. It seemed

easier to roll back the river itself than those policies, many initially conceived by persons of good will in the name of progress.

I thought about my friends in Oklahoma, where potential judges go through a vetting process by a committee composed, in part, of representatives of the Bar elected from districts statewide. Neither the executive nor the legislative branches enjoy a monopoly on committee membership. What's the downside? Fair and impartial justice is the most fundamental purpose of the legal profession

and the judiciary. The current system of judicial selection lends itself to this great work. Take it from one living in a State where judges are appointed more on political connection rather than merit. Many Oklahomans may not realize how good they have it. This offers a teaching opportunity for Bench and Bar.

Attorneys live and work in the eco-system of justice. You must preserve it. Bench and Bar must wade in and do some heavy lifting, but conservation is key. Reclamation is arduous and iffy.

## Stump Roscoe

By Roscoe X. Pound

**Dear Roscoe:** *One of my clients asked me about a "poor man's copyright" to protect poetry he's written while a guest of the State. Is there really such a thing, or is that an anachronism or urban myth? S.A., Oklahoma City, OK.*

**Dear S.A.:** *Well, technically speaking, there really is no such thing, and the fact that so many people seem to believe that there is doesn't make it so. I believe your late Justice, Marian Opala, used the term "hard to repress legal myth" a time or two in his opinions. That pretty much sums it up.*

*You probably want a bit more meat. 17 U.S.C. 301 pretty much preempts common law or state law, at least from and after 1978. That puts the kibosh on the concept from the get-go.*

*Your client probably means the old "send a certified letter to myself" technique. U.S. Postal Service's publications - both hard copy and electronic - warn against using mailings as proof of ownership or origin. Let's face it, I can retype Macbeth and mail it to myself, but that doesn't make me The Bard of Avon. Quite frankly, I have enough trouble being the Sage of Secaucus. Mail (and like the State of New York in Miracle on 34th Street, I'm second to none in my admiration for the job USPS does) can be tampered with, diverted, lost, or stolen. I wouldn't be too quick sending off a valuable manuscript. At best, this might produce evidence of authorship, but nothing dispositive.*

*Copyright protection, like Ogres, has layers. A) Until the work is set down in a "tangible medium of expression" the protection is virtually nil. Thus, as if folks in the joint don't have enough to worry about in the shower, if your client starts singing or reciting his work he's inviting theft. B) Copyright protection kicks in automatically during the period between when it's written down and put on the market. C) When the work actually enters the stream of commerce, it's protected IF marked with the ©-date-name legend. D) You must formally register your copyright before you can file for infringement in federal court.*

*Why not register? It's easy and inexpensive. By the way, OCBA boasts some top flight IP lawyers - Mary Lee, Douglas Sorocco, and Trent Pipes to name but a few.*

*People ask if I worry The Briefcase will steal my work. They don't even list me as a Contributing Editor. I say "no". I know where they live and work, and they know that, like Liam Neeson, "I have a very particular set of skills, skills I have acquired over a very long career."*

**Dear Roscoe:** *My client is an elderly lady who has an adult son, recently divorced. He came back to Oklahoma and moved in with her "temporarily" and refuses to leave. He has not abused her, but is bleeding her financially. She has called the police but they told her it was just a civil matter. With no abuse, she does not qualify for a VPO. What's a mother to do? T.C., Oklahoma City.*

**Dear T.C.:** *There is so much wrong with this scenario I hardly know where to begin. The first thing I take issue with is your inference that financial exploitation is not abuse. It may not fit a statutory definition for purposes of a VPO statute, but it is abuse nonetheless. The idea that it is something other than abuse would also fit into Justice Opala's "hard to repress legal myth" category. It is, in fact, a vastly under-reported type of abuse which afflicts over 5 million elderly Americans. In 90 percent of the cases, the perp is a family member. It's an insidious form of abuse, largely arising out of three factors. First, it's more subtle than physical abuse. Second, it's rarely reported. Third, the attitude of too many in Bar, on the Bench, and in law enforcement relegate it to "civil matter" status.*

*If I taught a class on Elder Abuse, of which there are way too few nationwide IMHO, I would assign a book entitled Miss Astor Regrets by Meryl Gordon, and the legal cases Brooke Astor's plight generated. If any extant or aspiring lawyer, jurist, social worker, or peace officer doesn't see financial exploitation as the crime it really is, I'd recommend a career change. Even as law changes to become more protective of vulnerable adults, it does little good without changing minds as well. Look, I realize that courts, APS workers, and police are overworked, underpaid, and, often understaffed. But that doesn't justify calling a thing something other than what it is. If a person enters or remains on a piece of property when the owner instructs him to leave, that's trespass. If he takes money from another without permission, that's larceny. If he enters*

*another's house against the owner's wishes intending to commit larceny, it's likely burglary as well. Sounds criminal to me.*

*Do we have to wait until financial abuse metastasizes into harder crimes? While there is no one particular abuser profile, prosecutor Paul Greenwood opines: "He is between 35 and 50. He is either a single son who has never ever left home, or a divorced son who complains that he cannot pay alimony so he comes back home. Or he has just returned from prison. In every case he is lazy and unemployed." Sounds like your boy there, T.C.*

*OK, the unfortunate answer is "yes." Barring physical abuse or the assistance of law enforcement, an FED will be necessary to launch this dickwad from the nest. In my experience, lawyers hate bringing these actions and judges hate seeing them. On the bright side, however, it will lead to a writ of assistance, provide a bit of evidence that Sonny Boy has no business on the premises, and provide officers cover against lawsuits.*

I arrived in the vicinity of St. Mary's not too long after the ambulance, not too long after the EMTs got Sylvia to the ER. The dearth of parking spaces ensured that, by the time I actually entered the building, they at least had a chance to give her a once-over. A uniformed officer, noticing my interest in a victim under his watch summoned a plainclothesman. The latter, a burly guy about my age named John Seery, pushed back his jacket slightly to display the shield of a Hoboken detective clipped to his holster.

"You a relative?" he asked.

"Friend," I answered.

"Got a name, friend?"

"Roscoe Pound."

"The bail guy from Secaucus?"

I nodded.

"Heard'a you. You're not what I expected."

"Sorry to disappoint."

He shrugged. "I pictured you as more Tom Selleck-y and less Phil Robertson-y."

"I get that a lot."

"So how do you know her?"

"I'm actually a friend of her employer, John Crenshaw."

"The guy that played Hosef Usher?"

"Yep."

"How does he figure in this?"

"Not sure yet. May I ask what you know?"

He studied me for a moment. "She's gonna be alright. No major physical damage. Heavily sedated though. Apparently, she went to pick up the owner of the condo for her boss. Walked in on the mooks tossing the place. They tried to beat some info out of her, but she's a bit tougher than she looks. Then someone else came in, shot the perps once each, clean through the heart. No casings left behind. I'm guessing a .38 revolver. That's about it right now. No ID on the dead guys. Anything you could add?"

I shook my head

"So what do you know about Tura?"

Seery asked.

"Who?"

"Joseph Tura, guy that owned the condo."

"Never heard of him," I said.

"Apparently Crenshaw knew him."

"Joseph Tura?" I asked. I took out a pen and wrote the name in the palm of my hand.

"Know anything about him?"

"Older guy. Moved to the condo 3 months ago. Prior address 1942 Lombard, Waukegan, Illinois."

Seery gave me a card. I returned to the shop. Rae, looking professional in a Nine Inch Nails t-shirt, helped a woman trying to bail her husband out of the Jersey City jail. Chips sat at the spare desk eating an apple. Something didn't look right but I couldn't place it.

"While you got nothing to do, why don't you get on the net and see what you can find out about a Joseph Tura, 1942 Lombard, Waukegan, Illinois?"

"Is this a test?" he asked. "You're an expert on those screwball comedies from the '30s and '40s. Joseph Tura was Jack Benny's character in *To Be or Not To Be*. Benny was born in Waukegan. It was also Carole Lombard's last movie."

Something else caught my eye. "What are you doing to that apple?"

"Eating it how?"

"Bottom to top. That way you can eat the core too."

I got home and scooped up an apple from the kitchen table. I began typing this column. Later, I noticed the stem on my desk. Kid was right about that too.

## iBar Definitive Playlists

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

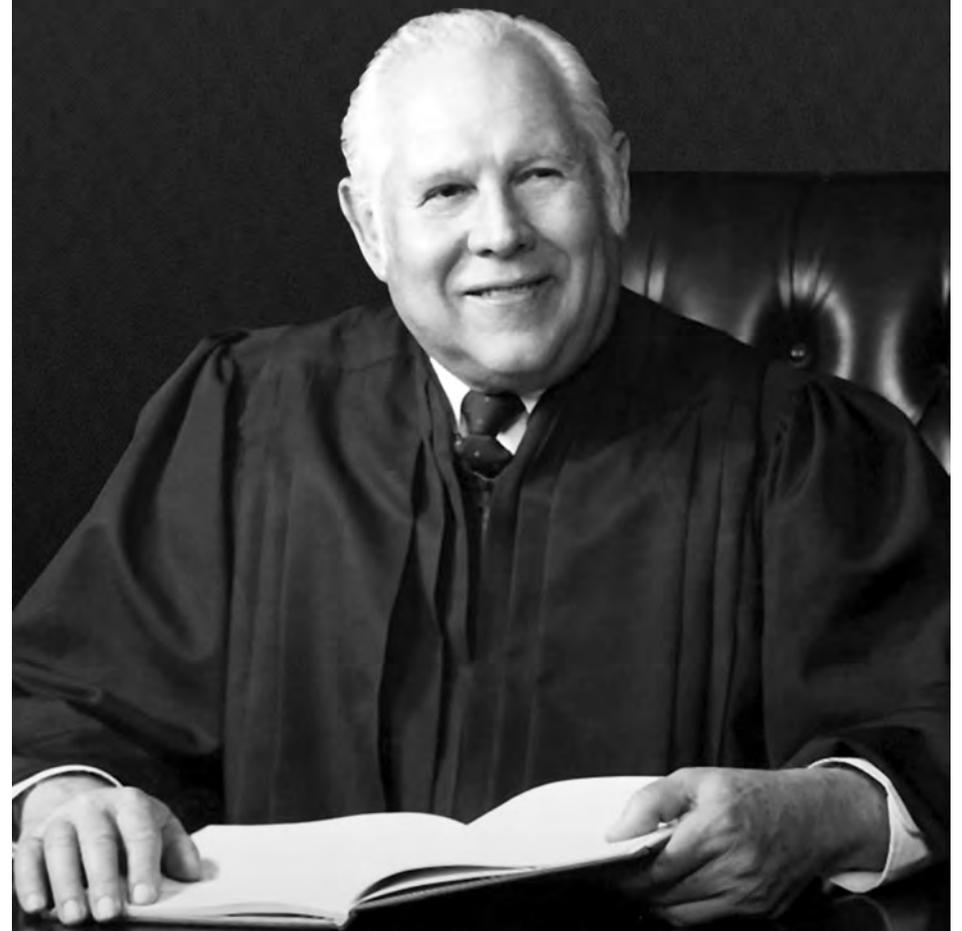
Lyrics from: [www.lyricsfreak.com/p/peter+gabriel/solsbury+hill\\_20107506.html](http://www.lyricsfreak.com/p/peter+gabriel/solsbury+hill_20107506.html)



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and his distinguished career  
serving the cause of justice as the  
longest sitting judge on the  
U.S. Tenth Circuit Court of Appeals

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# 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 adult life. Since we live in Oklahoma, the perfect place was the Illinois River, which has public campsites, rental canoes and the ability to get away from it all, except for the five 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 we 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 can't stand up so preparations for undressing had to be done on your knees or rolling around on the floor of the tent.

I decided to just empty my pockets and sleep in my cutoff blue jeans and shirt. I unrolled my sleeping bag and crawled inside. That's when I discovered that the floor was really not level and no matter how I stretched out my feet were always higher than my head. While there may be no crying in baseball, apparently there are no pillows in camping, at least we never brought any with us. I'm sure the difference was only a few inches, but it felt like I was practically hanging from the roof of the tent, much like a vampire in some hidden closet.

Maybe that is what had happened. Maybe, unbeknownst to me, I had become a vampire, but if that were true, why was I ready to go to sleep instead of

ravaging the countryside? It was a total mystery to me but, I slowly began to relax and felt either the darkness of sleep closing in or I was beginning to pass out from all the blood rushing to my head. Just before becoming comatose, I was brought back to being fully awake by raucous laughter from the two campsites next to mine. Great, a party was going on next door.

I could tell as the night wore on that alcohol was involved. I'm not sure what gave it away, maybe it was the loud slurred words or the unnaturally loud laughter, but clearly these were people who know how to camp. When they began the group songfest it really brought the spirit of celebration to this small, out of the way campsite. I think it was when they began to sing “Davy Crockett, King of the Wild Frontier,” that I got emotional.

I loved that song and that show.

I remember never missing an episode of Fess Parker as Davey Crockett. I even had a coonskin cap I wore while I watched the show. Hearing the song being sung made me wish that at this very moment I was hiking through the forests of Tennessee, maybe in the Smoky Mountains, where a bear could pounce from behind a tree, kill, eat me and put me out of my misery.

I could feel the rocks under the tent floor and the temperature inside had risen to what seemed like maybe one hundred degrees. I considered moving to one of the nice picnic tables where I could peacefully sleep the night away, but the sounds of scurrying animals past the tent changed my mind. I did not want to share my bed, even if it was a table top, with a family of raccoons who might decide to have my ears as a midnight snack. I could only wonder if we were having fun yet.

Just before first light, the party next door had apparently ended, either from the revelers drifting off to sleep or dying from alcohol poisoning. I unzipped the tent entrance and stuck my head out. I breathed in the fresh air scented with diesel fuel, carbon monoxide and the odor of unpicked up garbage from the can next to the tent.

It just keeps getting better.

A quick trip to the bathroom and then to delve into the food bag to see what was for breakfast. Let's see... we have no electricity, could not build a campfire and did not have a camp stove. That would mean my options

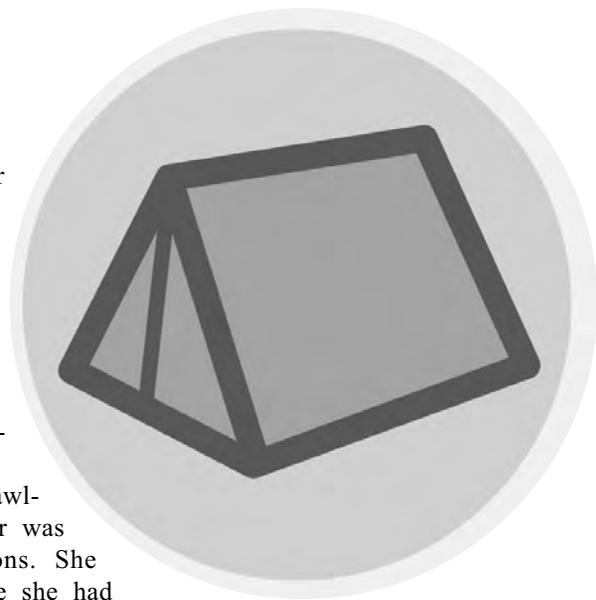
for breakfast were raw eggs or a pop tart, eaten directly from the carton. I opted for the pop tart. A raw pop tart is pretty much like eating cardboard with icing on it. I relished every bite, and in fact I considered eating the carton the pop tart came in since the picture looked so good.

I turned and saw my wife crawling out of the tent. Her hair was standing out in all directions. She looked for all the world like she had encountered a severe electrical shock. If you have ever heard the term, “not a happy camper,” I am convinced that phrase originated there that very morning. From years of married experience, I knew this was going to be a challenging day.

Our first stop for this fun filled day was at the canoe rental. There seemed to be hundreds of people, all renting canoes. The canoes themselves were shiny aluminum that all looked as if someone had beaten on them with a ball peen hammer. I have never seen a sorrier lot of boats in my entire life. We got our canoe and with my wife in the front, I pushed off. I had never been in a canoe before, but how hard could it be? She had said she was not paddling and had instead brought a book to read.

The river was solid canoes. From bank to bank and nose to tail, the canoes filled the waterway. It would have been possible to walk on the river to the other canoes from one side of the river to the other without getting your feet wet. We had not gone more than a hundred yards when the canoe to my left went aground and left an open lane. At the same time the canoe on my right nudged my canoe causing it to turn to the left. I didn't know how to stop it turning.

In an instant we were perpendicular to the bank and there were three canoes lined up along the side of ours and were pushing us downstream sideways. Do you know that canoes don't have brakes? Apparently their skill level was not much more than mine and I could see in their faces that they were unsure what to do next. That is when fate intervened and one end of my canoe struck against a submerged rock which stopped that end from moving and caused us to pivot slowly until we were



once again aligned parallel to the stream's banks. That was a good thing. The bad thing was that now we were moving down the river backwards.

At least the other canoes had slid past us and I could now deal with a new group of canoeists. Because we were moving backwards, it was difficult for me to

maintain the same speed as the rest of the group, so one after another came up and glided past me. One guy who was no more than three feet from me as he passed asked, “Why are you going backwards?”

“I'm in training to get my canoe guide's license. This is one of the things you have to know how to do.”

“Cool man, that's awesome.”

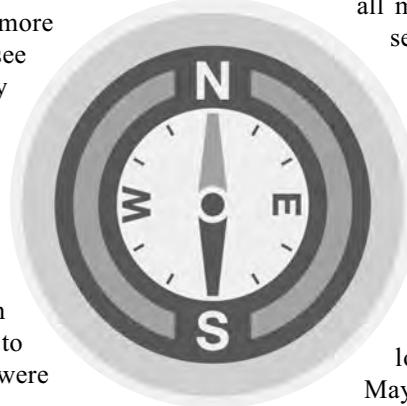
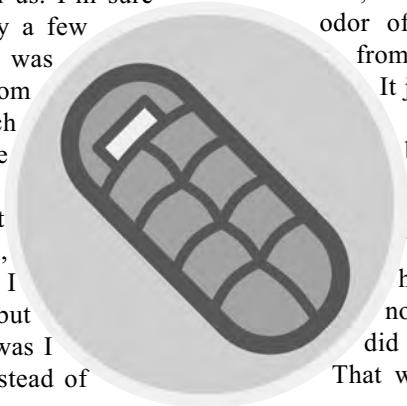
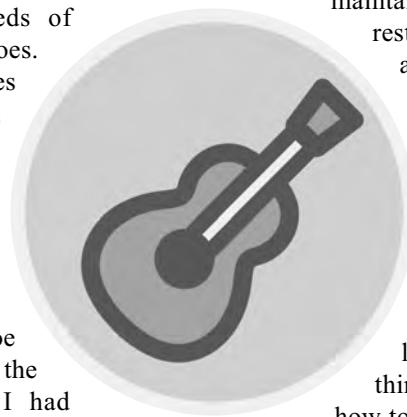
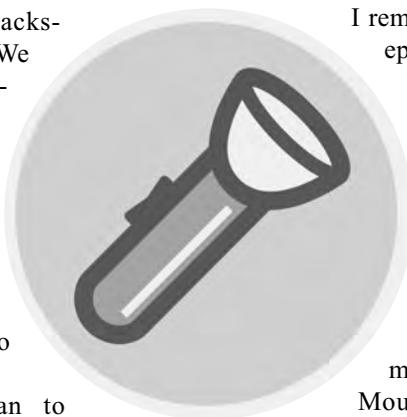
The river finally curved and I was able to run the end of my canoe up onto the beach. I jumped out in water up to my knees and finished pulling the canoe ashore. I figured I would wait for an opening and then resume the journey, only frontwards this time. My shoes were full of water and my socks were 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 jumping 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 lying on the couch and looking at the ceiling. Maybe next year.





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Keynote Speaker Chief Judge David Lewis



President Patricia Parrish shows off the stuffed animals that were donated to the Bethany & Warr Acres Police Departments after the luncheon.



2014 Law Day Chair Curtis Thomas



David High and Angela Ailles Bahm answer phones at the Ask a Lawyer Program.



Journal Record Award recipient Jim Howell with Journal Record Publisher Mary Mélon.



Liberty Bell Award winners Penny Denton & Susan Blethrow with YLD Chair Drew Mildren.



Calm Waters Executive Director Barbara Butner accepts the 2014 Howard K. Berry Sr. Award from OCBF Director Charles Geister.



Volunteer David Cheek at this year's Ask a Lawyer Program.

“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

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 Hoch, 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.

CAVETT KIDS from PAGE 2

(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

campers 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](http://www.cavettkids.org).

What Ski Camp Means to me...

To me Ski Camp is a Place I can come and act completely myself, and be with people I know went through the same hardships I experienced. Every year I come I get closer with all the other campers. After going to camp for three years I have learned to accept my hardships as a blessing. Each year I leave with so many new friendships that I know will last forever. This camp is really the best week of my year.

Branen, 18, Leukemia




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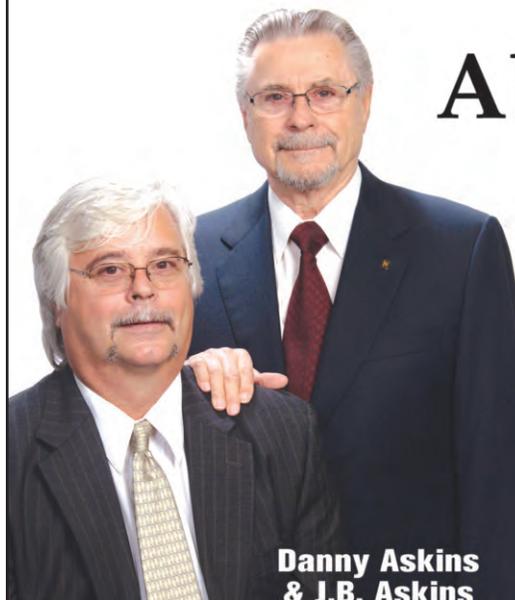
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## Bar Observer

### DFPH&J Names New Partner

Daugherty, 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 with regard to the filings of interests and prospective interests in aircraft with the International Registry. Prior to joining DFPH&J, Mark practiced law in the area of real estate, including title examination and litigation, with firms which represented national real estate lenders and his practice was statewide.

### 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 merg-

er 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](mailto: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 & Creditor’s 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.

## Old News

Excerpts from *OCBA News*:  
March, 1973, Part 3

### Unauthorized Practice

In response to the State Supreme Court’s decision of 1972, concerning the practice of law by laymen, who do not have any relationship with the court, the OCBA employed an attorney who wrote an amicus curiae brief.

Due to the efforts of the County Bar, a recent opinion was issued by the Oklahoma Supreme Court holding that the Judicial Department may prevent an unlicensed person from engaging in the practice of law without regard to whether their acts are “forensic” or “non-forensic.”

The Unauthorized Practice of Law Committee has been reactivated. All members are urged to notify the Oklahoma County Bar Association of any activities which may involve the unauthorized practice of law.

### 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 the 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 realign-

ing 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)

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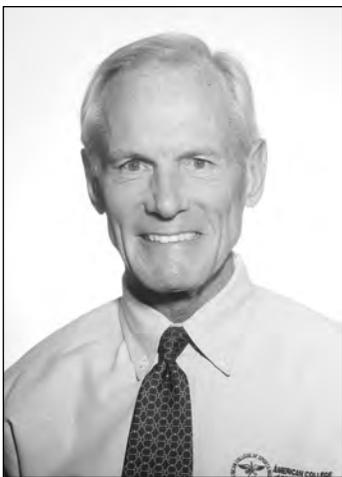
# The Positive and Negative Roles of Alcohol in Heart Health

By Warren Jones

The newest issue of the *Mayo Clinic Proceedings* has a wonderful review article on the positive and negative effects of alcohol on heart health.

Ultimately, it's the dose that determines the outcome. That is, a little goes a long ways towards heart health, and an abundance is destructive. "Little" and "abundant" are defined by drinks per day or (depending upon the design of the study) week. "Drinks" are defined by the alcohol being consumed: a "drink," regardless of the variety, contains 14 grams of ethanol. This equates to 12 ounces of beer, 5 ounces of table wine, and 1.5 ounces of hard liquor or distilled spirits.

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 drinkers are at lower risk for cardiovascular disease than abstainers, but heavy drinkers are at the highest risk. It appears that the maximum protection is noted at one half to one drink per day for women, and at one to



Warren Jones

two drinks per day for men. Protection continues, while lessening, in women for intake up to 2 1/2 drinks per day and for men up to 4 per day. Intake above those levels is associated with progressively higher death rates, and in a dose – dependent relationship.

The relationship between alcohol consumption and heart rhythm is similar. Heavy alcohol consumption, whether short-term or long-term, can precipitate arrhythmias. Above a safe threshold of approximately 1 drink per day, the relative risk of atrial fib increases approximately 10 percent for each drink per day.

And how about the relationship between alcohol consumption and high blood pressure? Same old, same old. Beyond the first one or two drinks per day, each additional alcoholic drink will increase 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, CEO, 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.*

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## Douglas Bragg hired as new Staff Attorney in Legal Aid's Oklahoma City Office

Legal Aid Services of Oklahoma, Inc. welcomes Douglas Bragg as a new Staff Attorney in the Oklahoma City office. Doug received his Bachelor of Science in Criminal Justice from Tennessee State University in 2005. He received his J.D. from the University of Oklahoma, College of Law in 2009.

Mr. Bragg will be working as an embedded attorney with The Education & Employment Ministry (TEEM) in Oklahoma City. He is a member of the Oklahoma County Bar Association, the



L. Douglas Bragg

Cleveland County Bar Association, and the Oklahoma Criminal Defense Lawyers Association.

Mr. Bragg was on the Executive Board of the Black Law Student Association while a student at OU Law. Upon graduation, he was selected for membership in the National Order of Barristers, which is an honorary society dedicated to recognition of outstanding performance in advocacy by law students across the nation. He is extremely excited about joining the Legal Aid community.

## 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 policy 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 a

*"Those of us who practice in this area have benefitted from Bill's willingness to try to change bad law."*

- Rex Travis

unanimous opinion, adopted the California courts' rationale, holding that there was a covenant implied in an insurance policy, that the insurance company would handle claim in good faith and, if good faith required it, pay the policy. The case became *Christian v. American Home Assur. 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 his 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 benefitted 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.

### iBAR from PAGE 7

**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 McDaniel
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)



## TIME CAPSULE from PAGE 1

tice. In 1906, he was elected to serve as a member of the Constitutional Convention from the Chickasha district, which met in 1906, in Guthrie.

At the election of state officers, held at the same time as that for the adoption of the Constitution, Hayes (32 years old) was elected to the Supreme Court. He began his service on November 16, 1907, upon the issuance of the President's proclamation admitting Oklahoma into the Union. He was elected Chief Justice in January of 1913 and served in that capacity until 1914, when he resigned. He then became a candidate for the US Senate against Senator TP Gore, but was defeated. He was a Democrat, a Methodist, a 32nd degree Mason, a Shriner, two-time Regent for Oklahoma University, member of the Men's Dinner Club, and the Oklahoma City Golf & Country Club. He was well regarded by everyone. He loved farming and he retired to farming about ten miles southwest of Oklahoma City. He made a scientific study of cattle, and had one of the finest Guernsey herds in the US. He fell ill in 1940, and died on March 14, 1941. He is buried in Chickasha.

The History Museum will open an exhibit on April 22, 2014 that features all of the treasures.

A full history of Chief Justice Hayes can be read in the *Chronicles of Oklahoma, Volume 19, No. 4*, December, 1941 by D.A. Richardson. See: <http://digital.library.okstate.edu/Chronicles/v019/v019p309.html>

While the content of the letter speaks for itself, and Chief Justice Hayes' comments are incredibly prescient, it is clear that Justice Hayes did not anticipate that a woman might be Chief Justice, beginning the letter with "My Dear Sir." He surely never anticipated that the Chief Justice of the Supreme Court who opened the letter is the first African American appellate jurist in Oklahoma history, also a fellow educator.

The letter makes 3 points:

1. Judicial elections at all levels should be non-partisan.
2. Judicial pay should be sufficient to attract quality candidates.
3. Improved quality and uniformity of justice, procedure and trials which would insure that most cases be resolved at the trial level and only cases of real legal significance, i.e., constitutional issues would be reserved for appeals.

Fifty five years after the letter was written, as a result of the revelations of embarrassing corruption in the highest levels of the judiciary, a nonpartisan merit selection process was adopted for the selection of appellate judges, with nonpartisan retention elections. All judicial trial court elections also became nonpartisan. These changes were not accomplished without opposition. To this day, there are leaders in this state who want to alter or abandon this system of judicial selection because it strengthens the independence of the judiciary, and return to a time when judges were merely politicians who could be easily influenced by the rich and powerful. Judicial independence is the foundation of equal justice under the law. Any change that makes the selection of judges subject

to pure partisan politics must be vigorously defended by the legal profession.

While judicial compensation has been increased over the decades, there has been no increase in judicial salaries in the last seven years. Although the budget for the entire judiciary is less than 2 percent of the state budget, salaries for the 3rd branch of government are lagging well behind the regional average. Judicial salaries must keep pace, encouraging younger attorneys to fill the shoes of those retiring judges.

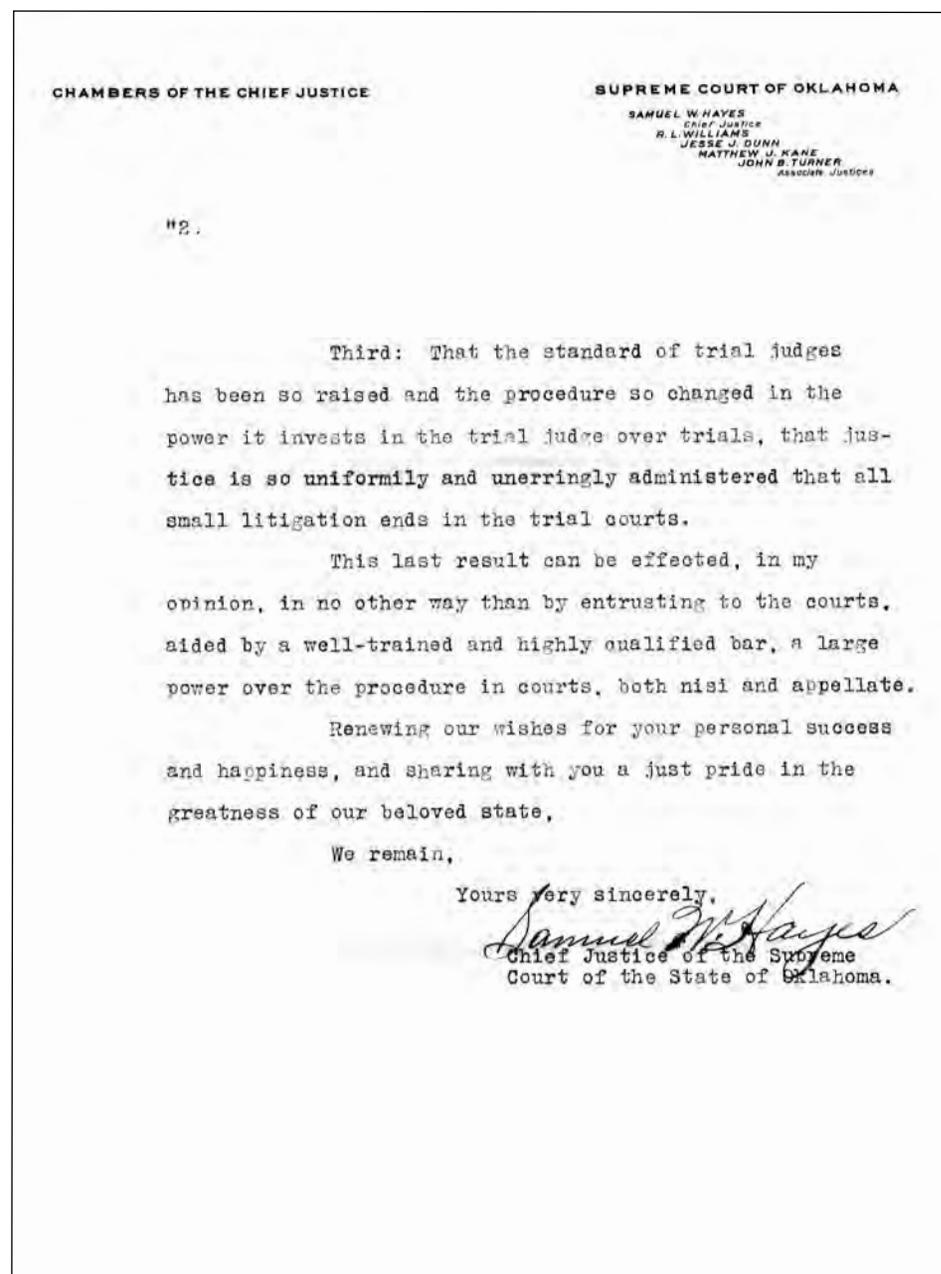
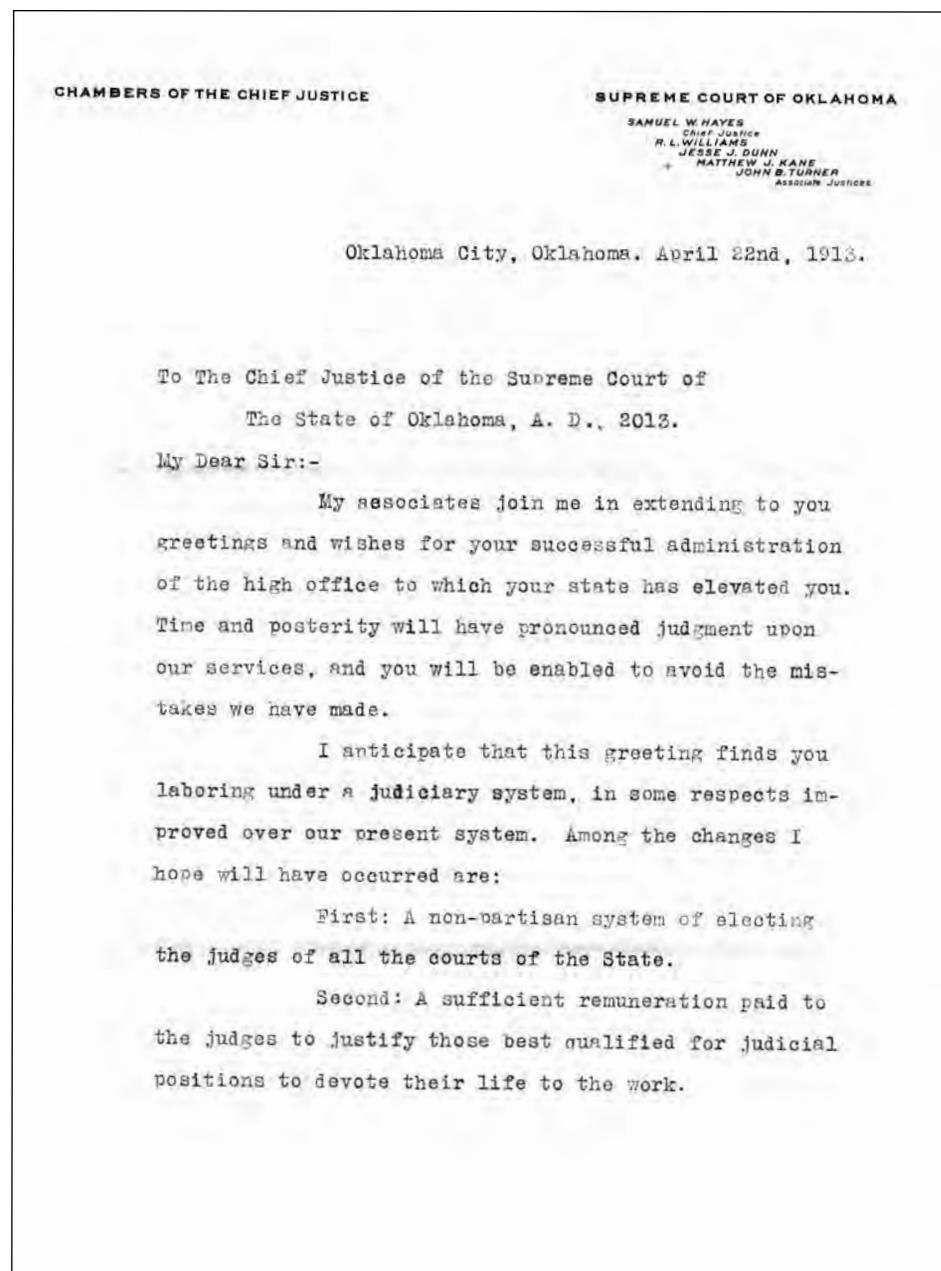
The court reform of the 1960s eliminated the byzantine court system in effect the first half century of Oklahoma's history. It substituted a greater, more simplified system of courts and judges, with much of the selection process for judges based on merit. It eliminated the justice of the peace system whereby appointees need not be trained in the law, and whose income was dependent on the manner in which they decided cases before them. It also eliminated the need for appellate judges to amass large amounts of campaign money. Greater standardization in procedure followed, with the adoption of the uniform Pleading Code, the Evidence Code and the Discovery Code. These changes reflect substantial movement in the right direction toward fulfillment of Chief Justice Hayes' third hopeful point of judicial progress.

No doubt, Chief Justice Hayes would be very proud of our legal profession, the quality of our judiciary and the quality and uniformity of justice in Oklahoma 100 years later. For the most part, we have progressed along a path of continual improvements. He was hopeful that we would avoid the problems that plagued the legal system in Oklahoma in 1913. However, we must be forever vigilant to avoid repeating the mistakes of the past. What will we, as a profession, pass on to the next generation?

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. To help effect this result in 2014, is by guaranteeing that every person has the fundamental right of equality and access to our courts will be aided by you, by insuring that we continue 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.



## PROFILES from PAGE 1

microphone and called the football game (about which he had only rudimentary knowledge) for more than a quarter, lest there be dead air. The very next week, Ray was named “Sports Director” of Payne’s radio station. Other misadventures with Bill Payne ensued, including an attempt to break the world record for a live radio broadcast by a single person, which Bill understood to be 63 continuous hours. Ray managed a 63.5 hour “Wake-A-Thon” before shutting things down and sleeping for a VERY long time.

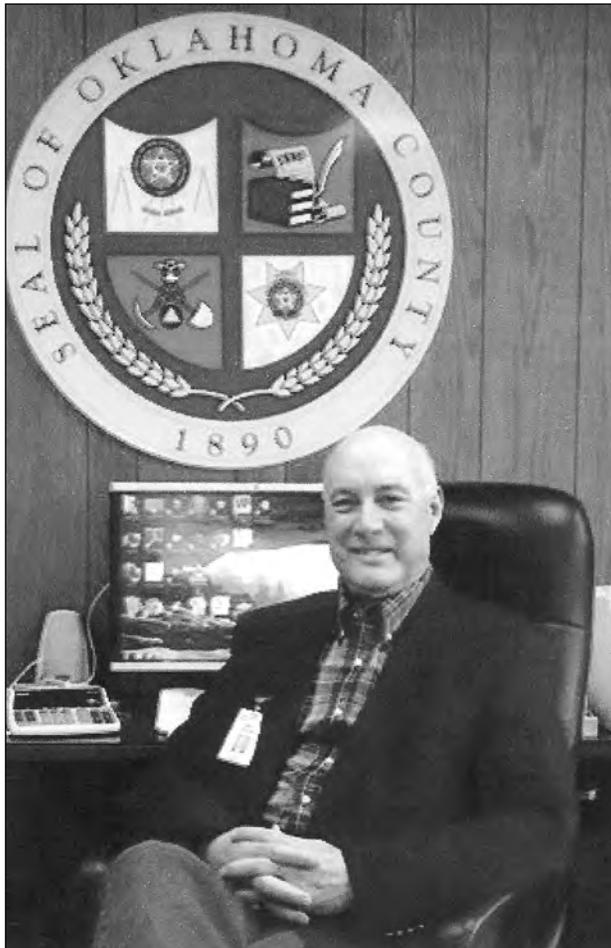
Ray eventually graduated from OC with a degree in Speech and immediately returned to Channel 4 for that promised interview. He was ultimately hired as the weekend radio news guy for 6 a.m. broadcasts. Through this job, he worked with a number of local radio personalities, such as Danny Williams, Don Wallace, Ronnie Kaye and Fred Hendrickson. As much as he enjoyed radio work, he really wanted to advance through the television ranks and eventually become an evening news anchor. When State 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 at 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 television 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 thoroughly 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 classes 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 employer, 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 Tomek 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. anchor 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



Oklahoma County Commissioner Ray Vaughn Jr.

aid-style clinic offered by OCU and supervised by Public Defender T. Hurley Jordan. He had also taken a law practice 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 a network of other local attorneys from whom he routinely sought advice. Although the incarnation of his firm changed over time with several different law partners coming and going, Ray’s practice was consistently composed 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 part-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 fellow 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-

retary, Pat Chivers, with his success at balancing a legislative career with his family and on-going legal practice.

Following his tenure at the State House, Ray returned to the private practice of law, never intending to run for public office again. However, not much time passed before the Oklahoma County Assessor, Leonard Sullivan, contacted him about helping some County officials “clean up” some issues with Oklahoma County’s government. It seemed that a small coalition of county officials had unilaterally created an “Office of Budget and Management” that served the sole purpose of duplicating the efforts of, and ostensibly keeping an eye on, other county officials. The two County Commissioners spearheading this new office refused to disband it, despite the protests of other county officials, who believed it to be an unauthorized use of power and a misuse of county funds. Ray stepped in to represent the protesting faction of county officials and eventually obtained legal relief for the County officials in the Oklahoma Supreme Court.

Following this victory, Leonard Sullivan was instrumental in convincing Ray to run for the Third District Commissioner’s seat that was coming up for election. Ray knew very little about what a County Commissioner actually did on a day-to-day basis, but he did know how to run a campaign, so he decided to give it a shot. Following what Ray describes as a “brutal” campaign, he was elected to a four-year term as County Commissioner and took office on January 2, 2007. He became Chair of the Board of County Commissioners five months after taking office.

Since that first day on the job, Commissioner Vaughn has gotten up to speed on what county government does. He is dedicated to improving the image of county government statewide and was instrumental in organizing County Commissioners on a statewide basis and providing them with a voice at the State Capitol. His ultimate goal is to enhance the function of county government so as to ensure the taxpayers are getting their money’s worth. He wears jeans and boots to the office most days to accommodate spontaneous site visits to local construction projects and he is adamant about keeping an open door policy in his office.

In cooperation with the other two Commissioners, Ray is charged with overseeing a total county workforce of about 1,600 employees. They implement legislative mandates, bury approximately 200 unclaimed bodies every year and make sure the lights stay on at the County Jail. They oversee all county-owned facilities, manage large equipment yards and care for the poor through Meals On Wheels, Med-Ride and other social support systems. They build bridges, fix potholes and oversee IT and HR departments. They also work hand-in-hand with other elected officials such as the Court Clerk, County Clerk, County Assessor, County Treasurer and Sheriff to make sure public services are running as smoothly as possible. It is the functional equivalent of a blue collar desk job and Ray seems to be loving every minute of it.

In his “free” time, Ray continues to pursue his love of art, which includes painting in oil, watercolor and acrylics, creating stained glass windows, woodworking and metal work. His finished pieces are given away to friends and family and occasionally submitted to small competitions, where they have received some acclaim from professionals. When asked if he plans to retire in the near future, he temples his fingers, grins, and chooses his words judiciously. Apparently his wife is of the opinion he should hang it up soon, but it appears he has no intention of doing so.



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## OLIO from PAGE 4

duress arises under the provisions of sections 1800 and 1802, Penal Code, 21 Okla. St. Ann. §§ 155, 157, and that there is no evidence to rebut the inferences.

In the case of *Sentell v. State*, 61 Okla. Cr. 229, 230, 67 P.2d 466, 468, it is said:

"The general rule that, as to criminal acts committed in the presence of her husband, a married woman is presumed to have acted under coercion, is, of course, where recognized, applied to cases of liquor-law violation. But in proving the unlawful manufacture, or the possession of liquor, or the maintenance of a liquor nuisance, distinctive questions are presented in reference to inferences arising from the wife's presence, her failure to object or to take other action, or her assistance rendered in avoiding detection of the crime. In such cases, the rule generally recognized, even where the presumption of coercion does not obtain, is that the husband as the head of the household is presumptively responsible for conditions there, and that the wife cannot be held accountable therefor in the absence of some evidence of guilt in addition to the fact of her mere presence in the place of the offense.

"It may be said that marriage does not take from the wife her general capacity to commit crime, but it casts upon her the duty of obedience to her husband, and, in the absence of proof to the contrary, 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 was 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 return a verdict of acquittal.

From the record before us, we are clearly of the opinion that for the reasons stated the evidence wholly fails to show that this 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 wherein 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 trader, d/b/a B & W Thrif-T-Wise, 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 petition alleging that if the 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 it was held liable to plaintiff or The First National Bank, then it be awarded judgment against Wells, its prior indorser.

Wells answered and alleged that if the indorsements were forgeries, that plaintiff could not recover because it was negligent in the plan it followed in drawing and delivering its checks, which negligence was the cause of the loss, if any, occasioned by the alleged forgeries.

At the close of plaintiff's evidence, the trial court sustained the demurrers of The First National Bank and the Community State Bank and overruled the demurrer of Wells. Wells offered no evidence and judgment was rendered in favor of plaintiff against Wells. Wells perfected this appeal from the order overruling his motion for a new trial.

Wells contends that under Title 48 O.S. 1951 § 149, the indorsers on a negotiable instrument are liable in the order in which they indorse, and therefore, under the pleadings and evidence, plaintiff neither stated in its petition nor established by evidence any cause of action against him.

Wells' theory is that if there was any liability on the part of him, it would have been to the Community State Bank; and if there was any liability on the part of the Community State Bank it would have been to The First National Bank and The First National Bank would have been liable to plaintiff; and since the trial court sustained the demurrer of The First National Bank, it found The First

National Bank was not liable to plaintiff. Wells states that by sustaining the demurrer of Community State Bank, that it was not liable to either the plaintiff or The First National Bank and no liability could be imposed upon him. In summary, Wells' theory is that before liability could be imposed upon him, liability would have to also be imposed upon The First National Bank and Community State Bank.

Although Title 48 O.S. 1951 § 149, specifically provides that "indorsers are liable prima facie in the order in which they indorse", we find nothing in said section which limits a drawer's right to recover only against the drawee bank or the last indorser.

\* \* \*

Under the above authority, plaintiff would have had the right to proceed against Wells and recover judgment against him, without proceeding against The First National Bank or the Community State Bank. We therefore conclude that when A issues a check payable to a certain payee and such check is drawn on B bank, if an indorsement of the payee's name is forged and the check is cashed by C, and C indorses said check and forwards it to B bank for collection and B bank honors the check and charges the same to A's account, Title 48 O.S. 1951 § 149, does not limit A's entitlement to recovery against B bank only nor does such section preclude A from recovering against B bank.

\* \* \*

In the instant action, Wells does not contend that either The First National Bank or the Community State Bank had notice that any of the indorsements of the signatures of the payees was forged; nor does Wells contend that if the trial court had rendered judgment against The First National Bank and the Community State Bank that they or one of them would not have been entitled to a judgment against him. In other words, Wells tacitly recognizes that if plaintiff were entitled to recover, the Community State Bank or The First National Bank would be entitled to have judgment against him. Wells recognized this in his Answer as he specifically plead the negligence of the plaintiff in conducting its business and issuing the checks and made no allegations whatsoever relating to the negligence of The First National Bank or the Community State Bank.

Although plaintiff did not ask for judgment against Wells, under the facts and circumstances in this case, we cannot say that the trial court's failure to render judgment in a different manner than it did, affected the substantial rights of Wells. By virtue of Title 12 O.S. 1961 § 78, any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party must be disregarded. We therefore conclude that rendition of a judgment against Wells alone, under the facts and circumstances in the case at bar, does not constitute reversible error.

Wells contends the evidence clearly establishes that plaintiff was negligent in the issuance of its checks and the trial court erred in overruling his demurrer to the evidence.

The record discloses that Wells cashed 27 checks between September, 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.)

**May 30, 1989**

**Twenty-Five Years Ago**

[Excerpted from, *Ingram v. Oneok, Inc.*, 1989 OK 82, 775 P.2d 810.]

In this case, our certiorari cognizance for review of the Court of Appeals' opinion pursuant to the provisions of Article 7, § 5, Okl. Const., was not timely invoked. The pertinent terms of Art. 7, § 5, Okl. Const., provide:

...When the intermediate appellate courts acquire jurisdiction in any cause and make final disposition of the same, *such disposition shall be final and there shall be no further right of appeal except for issuance of a writ of certiorari* ordered by a majority of the Supreme Court which may affirm, modify or make such other changes in said decision as it deems proper... [emphasis added].

The required cost deposit reached the clerk too late - after the maximum time allowed for filing a petition for certiorari had lapsed. See 20 O.S. 1986 § 30.4; and 12 O.S. Ch. 15, App. 3, Rule 3.14(G). It is nonetheless this Court's firm resolve that the interdivisional conflict on an urgent issue among the panels of the Court of Appeals be settled by this Court's opinion. 12 O.S. Ch. 15, App. 3, Rule 3.13(A)(3)...

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, provide:

...The original jurisdiction of the Supreme Court *shall extend to a general superintending 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 superintendence, 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 superintending control over inferior courts is separate and in addition to the general appellate jurisdiction of the Supreme Court... 'This 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.'").

# 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 Wehba, 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 LasVegas

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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