Attention bowlers: the OCBA YLD is hosting its annual “Striking Out Hunger” Bowling tournament at Heritage Lanes in northwest Oklahoma City on Thursday, August 16, 2018. The event is part of YLD’s year-long commitment to the Regional Food Bank of Oklahoma, raising funds and awareness within our community to support the mission of the Regional Food Bank and the Oklahomans who rely on its services.

Many teams are expected to compete, with prizes awarded for first, second, and third place teams as well as awards for most spirited team, best dressed team, and the special strike pot contest. Teams of 4 or 5 are encouraged to pre-register; the entry fee is a $40 donation per person, inclusive of bowling, shoe rental, food, and beverages! To register, please visit www.okcbar.org or call (405) 236-8421.

 According to their bylaws, the Young Lawyers Division of the OCBA held their election of officers prior to July 1. Officers for the upcoming year are:

- Benjamin Grubb, Chair;
- Amber Martin, Chair-Elect;
- Kristin Meloni, Vice Chair;
- Cody Cooper, Past Chair;
- Cami Ruff, Secretary; and
- Randy Gordon, Treasurer.

**SAVE THAT DATE!**

**RAISING THE BAR 2018**
Friday, September 28
6-9 p.m.
Gaylord-Pickens Museum,
home of the Oklahoma Hall of Fame
1400 Classen Drive

Instead of a formal sit-down dinner, we will have serving stations, bars and more of a reception style event. Seating will be available, but no reserved tables. Entertainment will be provided by the Elizabeth Speegle Band. Black tie optional is out – it will be “snappy casual” or “Friday Office casual.” There will be the usual change of OCBA President and Young Lawyer Chair, but no formal speeches, etc. Look for more details soon!!!
This month, I would like to highlight what appears to be a little known and/or often overlooked asset of the Oklahoma County Bar Association.

In 1970, the Association created a foundation and acquired 501(c)(3) tax exempt status. For a number of years, the foundation had very limited activity. However, when Bobby Knapp retired, it received a significant donation and began annual giving in the form of grants based on annual applications.

Each year, at about this time of year when membership renewals are solicited, each member is given an opportunity to donate to the foundation. Those annual donations produce approximately $10,000.00 per year. In addition, through the year, the foundation will receive “in memory of” donations in lieu of flowers for attorneys who pass away.

Today, the foundation has a fund of approximately $300,000.00. It is managed by the Oklahoma City Community Foundation, which allows for pooling of resources, larger returns on investment and lower administration costs. The interest earned is distributed annually to the OCBA for distribution by the OCBA. The Association has approximately $15,000.00 a year to distribute.

This past year, the foundation received more grant applications than normal. It distributed a total of $15,500.00 in varying amounts to the Academy of Law and Public Safety, CASA of Oklahoma County, Legal Aid, OCU Law School, Oklahoma Guardian Ad Litem Institute, Oklahoma Lawyers for Children and the Oklahoma Innocence Project. This year, the foundation had to spread its grants thinner than usual and deny otherwise worthy causes because of the increased grant requests.

It is this type of positive return to the community that makes this organization stand out in a meaningful way. It also puts positive light on the local legal community. It is a shame that so little attention is given to this foundation and its activities.

The foundation provides a means of continued annual returns to the community in lieu of our one-time, quickly forgotten donations. It is a shame that the returns are measured in times of monetary returns, but that seems to be the way of the modern world. I would encourage everyone at this time of membership renewal, to give a little extra to the foundation so it may continue to increase donations in the future.

On a somewhat different note, I would like to report that the Board of Directors continues to investigate the possibility of allowing non-attorneys to join our membership ranks in some capacity. My invitation last month to share the membership views with the Board members was met with limited response. The invitation remains open to make comments.

Finally, looking forward, the annual golf tournament is this month. It raises donations for Pivot, formerly Youth Services of Oklahoma County. Once again, this is a direct contribution to our community that is worth supporting.
DEAR ROSCOE: It seems to me that the ink isn’t even dry on Anthony Kennedy’s resignation and already there’s war clouds rolling in over one of the President’s potential nominees over her religious views on abortion as expressed in her academic writings. My question is, as you would say, a two-fer. First, could a judge be required to recuse him or herself from certain cases based upon expressed religious views. Second, in what you have called the “age of the weaponized First Amendment” do you think it likely the First Amendment (Religion Clause) would permit such a result?

V.C., Oklahoma City, OK.

Dear V.C.: You’re asking me to enter into a lot of minds of persons unknown and extrapolate situations of largely amorphous facts. As James Buckley, formerly of the Second Circuit, once wrote at length, it is one of the most difficult things for a conscientious judge to do when he must step out of the bounds of his or her faith or philosophy in order to rule neutrally in a given case. The best of them seem to do it.

Now, your actual question seems to refer to any judge as opposed to a Supreme Court Justice as you began your query. It is in relation to the general judiciary that I express my opinion. Bear in mind, there’s a big difference between SCOTUS and the trial bench, just as there’s a difference between refusing to rule in an action at law and refusal to bake a cake.

Let’s assume the Oklahoma Supreme Court issued a mandamus requiring Judge Grommet to recuse on all capital cases, or Judge Snopes from all fair housing cases based upon positions they’ve taken in their legal articles, blogs, and speeches. Keeping in mind that our law requires both a fair trial and the appearance of fairness. I would think some precedent in which they’ve actually ruled in accordance with their preconceptions would be required. Beyond that, how would that Order affect their rights to practice their religion? “The Free Exercise Clause of the First Amendment provides ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’ The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.” Employment Div., Dept of Human Res. Of Oregon v. Smith, 494 U.S. 872, 876-77 (1990) “The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.” Id. The hypothetical wrt’s we’re talking about do not prohibit the judge’s free exercise of religion: it would not “compel affirmation of religious belief,” “punish the expression of religious doctrines,” “impose special disabilities on the basis of religious views,” or “lend its power to one or the other side in controversies over religious authority.” Id. Rather, the order reflects neutral principles applicable to all judges who exhibit potential for bias. See Olsen v. Mukasey, 341 F.3d 827, 832 (8th Cir. 2008) (“Absent evidence of an intent to regulate religious worship, a law is a neutral law of general applicability.”) (internal quotation marks omitted). This does not violate the free exercise clause.) in Smith, supra 494 U.S. at 879, SCOTUS held that a neutral law of general applicability that incidentally impinges on the exercise of religion is not a burden on religious freedom.

DEAR ROSCOE: Do you think one should be held liable in tort for interfering with an inheritance? J.H., Oklahoma City, OK.

Dear J.H.: Should be. Maybe. Could be? Not in Oklahoma just now. The Court of Civil Appeals rejected this theory in Miller v. Johnson, 2013 OK CIV APP 59, 307 P.3d 387 and I know of no other case which has revisited the issue there in the Sooner State. Some may, and do, view the matter as an additional protection for the testator or settlor. Perhaps But prospective beneficiaries have no right to a future inheritance; only an expectation dependent on the donor’s exercise of his own right. Actionable intentional interference gives a beneficiary his own right, so far unknown to Oklahoma common law or statutory law. A beneficiary’s interests and motives and those of his donor may be consistent, but they may also conflict. Family relationships and the very personal feelings they involve change. An expectancy is powerful motivation to ignore reality and misperceive a donor’s true intent.

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Unless you’ve done it, it’s hard to imagine how truly difficult it is to fire from a moving vehicle. I, along with the main guys I work with, run monthly scenario practice drills and we still haven’t nailed it 100%, though Junior’s pretty close. It’s really hard to hit a moving target from a moving platform, especially when the target has no wish to actually become a target. Obviously, this was not Bressler’s first rodeo. That the guys in the other car seemed to have only handguns alleviated my anxiety somewhat. Though bullets fly far, most handguns diminish substantially over a distance of about twelve yards even in the hands of an expert shooter. Well, except on TV of course. In addition, I saw a lot of lead fired by the front passenger driver going in the hood and front quarter panel of the pursuing vehicle. Seems the rear passenger focused mainly on not throwing a slug into the arm of his pal in front of them. Plus, they had incoming to think about. I left it to Orenstein to return fire. I’d only be in his way, so I kept my gun drawn in the event of a debus, and kept a reassuring hand on Billy’s back as I kept him low in the seat.

“Can’t you just shoot their tires?” he asked.

“Could,” I said, “if we were on the A-Team or something.”

“Really? I’ve done it a zillion times on GTA.”

I turned my weapon around to hand him. “Go for it, Paladin.”

He shook his head. “Do you think I could do it, Paladin?”

“All you’re doing is coming closer.”

“Ramming speed,” I told him. “This thing goes against us and we gotta debus, do it shooting.”

“Better late than never, anyway.”

“Only in a locality that don’t put its name on the doors of its cruisers. Listen, this thing goes against us and we gotta debus, do it shooting.”

“Better late than never, anyway.”

“Local cops?” I asked needlessly.

“I had Bambi in the headlights now. He croaked an ‘Oh God’ and clamped his eyes shut.

I felt the car decelerate. A small fusillade smashed into the window and drivers’ side alpha post. Bressler took it down to maximum safe impact. Metal v. metal, a pair of Godzillas each shrieking in outrage and defiance of the other. Despite the dragging of a fender and the ram bar, Bressler kept the vehicle moving forward with only a slight hesitation. Two State Police cars, real ones, hurtled towards us, party lights ablaze. For a moment, I felt like John Wayne in Stagecoach. Then, adrenaline abating, the first flares of whiplash lit up my back, neck and teeth.

—Pete White, Oklahoma Lawyer and long-time Oklahoma City Councilman (1938- )
And the Court Said .

**An Olio of COURT THINKING**

By Jim Croy

July 30, 1918


Lucy L. Johnson sued the Chicago, Rock Island & Pacific Railway Company for damages for alleged injuries received by her while traveling as a passenger upon one of its passenger trains. Within a short time after the injury she signed a release and settlement, whereby, in consideration of $400, she released and discharged the defendant from all claims by reason of said injuries. Judgment was for plaintiff for $2,100, and the defendant brings the case here.

The principal question presented is whether there was sufficient evidence to submit the case to the jury on the question of fraud in procuring the release relied upon by defendant. There is no dispute that an accident occurred at Little Rock, Ark., which was caused by defendant's negligence, and which resulted in plaintiff's injury. There is no dispute that the representations as claimed by plaintiff, and admitted that he knew plaintiff might have a miscarriage.

The representations made by Drs. Harris and Reagan were believed by plaintiff and his wife, who relied upon them and were induced thereby to sign the release, which they would not have signed otherwise. In St. L. & S. F. R. Co. v. Richards, 23 Okla. 256, 102 P. 92, 23 L. R. A. (N. S.) 1032, plaintiff was injured while traveling on one of defendant's passenger trains. On the following day, while she was in bed at the railway company's hospital, away from friends and acquaintances, and still suffering from the effects of the accident, she signed the release, the extent of which she did not know, and was apparently not in a position to ascertain, the claim agent of the defendant, accompanied by the defendant's physician, visited her and sought to effect a settlement and release of the damages and liability. In order to induce her to sign such a release for a grossly inadequate sum, the claim agent and physician represented to her that her injuries were slight and temporary, when in fact they were serious and dangerous, which fact the physician knew, or should have known, had he exercised proper care. Believing the representations of the physician, and acting thereon, plaintiff signed the release, which she would not have done, had she been advised of her true condition. These facts were held sufficient to sustain an averment of fraud, and sufficient to sustain a verdict in plaintiff's favor.

This is based upon the absence of the witness Bill Williamson, “The Old Stove Man,” and the fact that the attorney for defendant, the Hon. Paul V. Carille, was a member of the Legislature and that 30 days had not expired from the time the Legislature had adjourned until the trial of defendant. The motion for continuance by reason of the absence of the witness Bill Williamson does not comply with the terms of the Oklahoma statute . . . There is nothing to show that diligence had been used to secure the attendance of the witness or that his presence could be had at the next term of court. A copy of the subpoena, to show that one had been issued, was not, attached to the motion or the affidavit. In fact, there was nothing to show that any subpoena had been issued, and if so the date thereof, in order that the court might determine whether due diligence had been used in procuring the subpoena, there is further reason that the evidence which the motion sets out is not of sufficient importance to justify the granting of a continuance.

Lot A. The fact that the court may, for good cause shown, continue an action at any stage of the proceedings upon terms as may be just, provides that if a party or his attorney of record is serving as a member of the Legislature or the Senate, sitting as a court of impeachment, or within thirty (30) days after an adjournment of a session of the Senate, such fact shall constitute cause for continuance of the case, and all motions, demurrers and preliminary matters to be heard by the court, the refusal to grant which shall constitute error, and entitle such party to a new trial as a matter of right.

This court will take judicial knowledge of the facts that the session of the Legislature which convened in January, 1941, adjourned on May 23, 1941, only 24 days prior to the commencement of the trial of defendant; also that the Hon. Paul V. Carille was a member of the Legislature, such fact shall constitute cause for continuance of the case, and all motions, demurrers and preliminary matters to be heard by the court, the refusal to grant which shall constitute error, and entitle such party to a new trial as a matter of right.

The motion for continuance by reason of the absence of the witness Bill Williamson, “The Old Stove Man,” and the fact that the attorney for defendant, the Hon. Paul V. Carille, was a member of the Legislature and that 30 days had not expired from the time the Legislature had adjourned until the trial of defendant. The motion for continuance by reason of the absence of the witness Bill Williamson does not comply with the terms of the Oklahoma statute . . . There is nothing to show that diligence had been used to secure the attendance of the witness or that his presence could be had at the next term of court. A copy of the subpoena, to show that one had been issued, was not, attached to the motion or the affidavit. In fact, there was nothing to show that any subpoena had been issued, and if so the date thereof, in order that the court might determine whether due diligence had been used in procuring the subpoena, there is further reason that the evidence which the motion sets out is not of sufficient importance to justify the granting of a continuance.

The motion for continuance by reason of the absence of the witness Bill Williamson does not comply with the terms of the Oklahoma statute...
arrangement, time to plead, and pleads not guilty; served with a copy of information and a list of state’s witnesses. Case set for trial Wednesday, June 18th, 1941."

That on June 16, 1941, a motion for continuance was filed, the second paragraph as follows: “That Paul Carlile, attorney of record for Andrew Jackson, defendant, is serving as a member of the Legislature of the State of Oklahoma, and that the 30 days allowed by law before any member of the Legislature can be forced to, trial has not yet expired, after adjournment.”

Member of the Legislature can be forced to, during the time of this, setting and. It will be noted from the record that the appointment of Senator Carlile was made after the Legislature was adjourned, and no showing was made that he was in attendance upon the Legislature at the time of the adjournment of the Legislature. At the time defendant was arraigned, the defendant whose attorney of record was increased from 10 to 30 days after the adjournment of the Legislature. It was not in its true light, probably a typographical error, as it should be “thirty” days.

This court has had occasion to construe the statute above quoted upon various occasions, both before and after the amendment by the Legislature in 1937, that the period of time of exemption was increased from 10 to 30 days after the adjournment of the Legislature. This is the first instance where we have been called upon to, construe the section with reference to the “adjournment” clause of the statute. It will be noted from the record that the appointment of Senator Carlile was after the adjournment of the Legislature. It was not intended that the act should be construed in such manner that it would defeat justice. This has been the interpretation placed upon the act by this court. In all of the cases where the statute has been applicable, the statute was in session at the time of the trial, and the member had become counsel prior to the convening of the Legislature. In the instant case, neither of these conditions existed. Counsel was, appointed after the Legislature adjourned, and no showing was made that he could not act by reason of his official duties. We are, therefore, of the opinion that the construction placed upon this statute by the trial court was right, and that by reason of the facts, as they here exist, the court was vested with the discretion of deciding whether a continuance should be granted, and that this discretion was not abused.

July 30, 1968
Fifty Years Ago
[Excerpted from Application Of American Party, 1668 OK 113, 444 P.2d 465.]

This is an appeal from a certificate of the Secretary of State approving as sufficient the statement and affidavit required by 26 O.S. 1961 §6.2 which was filed with said official on behalf of the American Party. The appeal to this court appears to be authorized by Section 6.4 of said title.

Contestants’ primary contention is that the American Party, because it has nominated George Wallace for President, is seditious and should be refused recognition as a political party in this state. In connection with this position, it is urged that the sole purpose in forming the American Party in Oklahoma was to nominate George Wallace for President. It is further argued that this individual, because of certain statements and conduct on his part made and continued while he was Governor of Alabama, advocated, taught or justified a program of sabotage, force and violation, sedition or treason against the government of the United States of America or of this State, or which directly or indirectly carries on or advocates revolution, teaches or justifies a program of sabotage, force and violation, sedition or treason against the government of the United States of America or of this State, or which directly or indirectly carries on, or participates in, any change in the form of government thereof by force or violence.

From a careful study of the cited statute, we are of the opinion that the application to political parties as distinguished from candidates of such a party or from individuals who are members or supporters of it. The protestants do not contend otherwise. They seem to realize that the actions of Wallace only as they have been approved or adopted by the party may be considered. We hereby carry on or advocates revolution, teaches or justifies, by any means whatsoever, the overthrow of the government of the United States or of this State, or change in the form of government thereof by force or violence.”

Does Section 6.1 of Title 26 O.S. 1961 apply so as to impose the sanctions therein prescribed against a political party under circumstances which (we will assume for purpose of argument) tend to establish that the party was formed for the sole purpose of nominating such person for public office, that such person was in fact nominated and that such person has in the past committed acts or advocated views condemned by said statute where such evidence fails to establish that the party adopted as its views such views of its nominee? We think not for the following reasons:

In Dove et al. v. Ogleby (1926), 114 Okl. 144, 244 P. 798, this court observed: “While the right of suffrage does not inhere in the mere right to live or to exist, yet it does inhere in the right of self-government, and the free exercise of such right is essential to the maintenance of self-government.”

As far as this court is concerned, this same right exists today. When we consider the importance

See OIL, PAGE 18
Judge Russell Hall’s Service Honored

On May 17, 2018 at the District Court Judicial Conference, Presiding Judge Tim Henderson and the District Court judges honored retired Special Judge Russell D. Hall for his years of service on the bench. Author of A History Of Judges Of Oklahoma And Canadian Counties (2005) Judge Hall preserved the history of the bench up until Court Reform in 1968. He handled the Arraignment Docket for decades after initially serving in Juvenile Court. Previously, Judge Hall was legal counsel for the Department of Human Services. He was appointed to the bench in 1987 and retired last year.

Judge Russell Hall’s Service Honored

Judge Amick Honored for 70 Years of Service

Retired Judge John Amick was honored at the 2018 Annual Awards Ceremony for his 70 years of service to the bar. Now 95 years-old, he was admitted to the Bar in 1948, well before many of our members were born. He retired from the Bench as a District Judge with 25 years’ service on the bench.

Before all that, he had a pretty full life. Raised in the small, Grant County town of Jefferson, he went to OSU (then Oklahoma A&M) immediately after high school, until World War II interrupted his education. He took Army ROTC but did not get an ROTC commission because the war interrupted his education short of him getting a degree.

Instead, he went through Officer Candidate School and was commissioned a second lieutenant. He went to the war in Europe after D-Day, just as U.S. Forces were entering Germany. He was in combat for five weeks, in command of a machine gun platoon in an infantry division.

This took place during the winter of 1944-1945, which proved to be the coldest winter in Europe in decades. The fighting across Germany proved to be fierce as the Germans defended the Fatherland with particular vigor. Judge Amick still has trouble watching war movies or reading books about the war.

When the war in Europe ended in the spring of 1945, there were a lot of people in the army in Europe who had been there a lot longer than Amick had. Because people were rotated home to be discharged based on a point system heavily weighted to the number of months overseas, he was detailed to participate in the occupation of Germany.

When he returned state side, he transferred to the National Guard and tried to resume his studies at OSU. Again, he found a lot of returning GIs had beaten him there, and he was unable to find a place to stay at OSU.

OU had a program (called the combined degree program) which would enable him to count his first year of law school as the last year of his undergraduate degree. As a bonus, he was also able to find a room at Ma Packard’s boarding house. So, he went to the OU Law School without first getting an undergraduate degree.

By: Rex Travis

Judge Amick graduated law school, as noted, in 1948 and returned to Grant County where, from time-to-time, he was County Attorney (before we had District Attorneys) and County Judge (before that office was changed to Associate District Judge) and, for a time, practiced law. He moved to Oklahoma City when he got hired as an Assistant U.S. Attorney and served in that capacity until a change in U.S. Presidents caused him to be out of the U.S. Attorneys Office. He moved immediately to Assistant County Attorney in Oklahoma County.

From there, he was in private practice, and then served as Oklahoma County Judge, Associate District Judge, and finally District Judge. For a time, he was also the General Counsel of the Oklahoma Bar Association.

Those of us who remember practicing before Judge Amick remember him as a “lawyers’ judge,” unfailingly courteous to all the lawyers who appeared before him. He had an altogether distinguished career!

Howard K. Berry, Jr. got an award for 60 years of service at this luncheon. He was admitted to practice in 1958 and, among other honors, once served as President of the OCBA. He attended along with his family, including his son, Howard K. Berry, III, who is the third generation of his family to practice law in Oklahoma County.

Seven others qualified for 60 year awards but were unable to attend the luncheon to receive them in person. They are Richard Bailey, Arthur Bay, Stanley Catlett, Jr., Arnold Fagin, Paul Johanning, Tom Kennan, and Kent Polley.

Finally, a record 49 lawyers qualified for the 50-year service award. Thirty-three of them appeared in person to receive their awards. President David Cheek remarked that it looked like the Baby Boomers had arrived at their 50-year point. I’m not sure the demographics of that quite work out, but there may be another explanation.

The class graduating law school in 1968 would have started law school in 1965. That seems to me to correlate with the height of the Viet Nam war and may indicate that the war generated a great interest in studying law, as opposed to going to Viet Nam. Just sayin’!
STONER TAKES OVER DIVERSION COURTS

By Shanda McKenney

Our regular readership is probably accustomed to reading our articles introducing new judges as they come to the bench. In the interest of full disclosure, I have known Ken Stoner for 18 years, as we interned downtown together – me with the Public Defender’s Office and he with the DA. Many hours were spent negotiating misdemeanor plea deals and navigating a crushing sea of downtrodden humanity, but I digress.

When I approached Judge Stoner about doing our customary article introducing him to the OCBA membership, he stated that he believed the work he is now doing is a lot more interesting than he is personally, so he invited me to attend one of his Drug Court dockets.

For those of you who are interested, Judge Stoner graduated from the University of Oklahoma College of Law, where he achieved many academic accolades. After serving as an Assistant District Attorney for Oklahoma County for several years, he opened his own practice where he handled an eclectic variety of matters, from defending Federal murder charges to complex estate planning for very affluent clients. He has also been involved in bringing TEDx to Oklahoma and has served in leadership roles in a variety of community service organizations. However, he found his true passion and calling in assisting those suffering from mental health and addiction issues.

Judge Stoner sought the District Court bench for the primary purpose of advancing and expanding Oklahoma County’s diversionary courts, which include DUI and Drug Court, as well as Mental Health and Veterans’ Court. It is no secret that Oklahoma faces an incarceration crisis on every level, and it is empirically proven that there will be a lot fewer people in the criminal justice system if the underlying problems that bring them into the system are properly addressed. Judge Stoner describes diversionary courts as “the most efficient (low cost and high impact), effective (lowest recidivism), and the most humane of any program in the criminal justice system.”

On the date I observed his docket, there was one graduation (they average about 5 graduates every week). The graduate is a recovering alcoholic who was facing a felony conviction if he failed to complete the program. Not only did he complete everything the program required of him, but he gained a new level of self-worth and independence, as well. As of the date of his graduation from the program, he had almost completed his Associate’s Degree, had lost 84 pounds, and had trained for and completed the OKC Memorial Marathon in 2018. The graduate’s parents were in attendance and he gave a short speech full of appreciation and inspiration to a room full of people in desperate need of hope and encouragement.

Several other participants “phased up” to the next level of the program and were allowed to give a short speech to the audience about what motivates them, how their life has changed for the better, and their desire to continue their progress. Judge Stoner and his staff have also implemented an incentive program where select participants are publically praised for things such as exceptional progress and bouncing back following a relapse. “Incentives” include things such as skipping to the head of the line for the next urinalysis test, skipping one court date toward the end of the program, or leaving court early.

As each person approached the bench to report in and provide their UA results, they announced the number of days they have been sober, which ranged from 11 to more than 700, but was always met with a round of applause from everyone in the Courtroom, regardless of the number. Judge Stoner shakes each participant’s hand, asks how they are doing, whether they are having cravings, and how they are handling life’s curveballs. Court is conducted with a high degree of structure, but less formality than usual. Vocal support, hugs, encouragement, and congratulations are actively encouraged by everyone involved.

More than anything, it is clear that each of the participants are the arbiters of their own success. It is a humbling experience to witness a recovering alcoholic describe with excitement the driving test he is taking after more than 10 years without a license. Or see the pride in the face of the recovering meth addict who has finally gotten a job after months of trying. Or watch the struggle of the heroin addict who is just starting her journey and still gets “dope sick,” but keeps showing up. Addiction knows no racial or socio-economic boundaries – these dockets include white-collar professionals as well as manual laborers and those who are disabled or who have never held a job. In Judge Stoner’s Court, everyone starts with the same resources and it is up to them to take advantage of what is being offered. However, it is universally clear that these people are all human beings - valued members of society who are worth saving. Getting the participants to believe that in themselves is often the first step toward success.
Oklahoma voters were energized on both sides of State Question 788 permitting medical marijuana. With 691,654 total votes cast, voter turnout more than doubled 2014’s primary, and surpassed the total amount of votes cast in the 2014 gubernatorial election. Its passage makes Oklahoma the 30th state to approve the use of medical marijuana. Recreational use has been legalized in nine states, including the District of Columbia, which is part of a clear trend in the United States where a majority of Americans – 64% – according to Gallup – support legalization.

Despite its growing approval among the states and voters, marijuana remains illegal under federal criminal law and its possession and distribution may be punishable with long prison sentences. Under the Obama administration, the Department of Justice (“DOJ”) issued memoranda setting out its priorities regarding enforcement of marijuana related crimes in states that have approved medical or recreational use. Essentially, it was the policy of federal agencies and prosecutors to avoid interference with the application of state marijuana laws, unless specific activities violated the priorities they set out (e.g. sales to minors, revenue to gangs or cartels, etc.). The Trump administration has reversed course from the Obama administration – ostensibly taking authority away from the states – and Attorney General Jeff Sessions revoked the prior memorandum on January 4, 2018 of this year.

Thus, despite the result of State Question 788, it will continue to be a crime to grow and sell medical marijuana in Oklahoma under federal law. However, federal law criminalizes more than just persons directly involved in medical marijuana transactions; it also punishes one who “aids, abets, [or] counsels” offenders. For reference, “a person aids and abets a crime when (in addition to taking the requisite act) he intends to facilitate that offense’s commission.” Guilt as an accessory depends, not on “having a stake in the outcome of the crime” but on aiding and assisting the perpetrators, whether by sale or otherwise, by providing the means to carry on their criminal undertakings. It does not matter if the act performed by the abettor is a normally lawful act.

So what acts could constitute aiding and abetting? With drugs, typically it is being in a vehicle transporting a large amount of contraband. With medical marijuana, a glaring example of aiding and abetting is prescribing physicians, as Oklahomans will need a prescription to procure medical marijuana. “Physicians prescribing and patients using cannabis lawfully under state statutes could be subject to federal prosecution.” Additional cottage industries, such as builders of grow houses, could also find themselves in violation of federal law.

Another issue for medical marijuana businesses is access to the banking system. In addition to the laws cited above, financial institutions are subject to greater standards than many other businesses. Under the Bank Secrecy Act and the USA PATRIOT Act, financial institutions must maintain robust programs designed to prevent money laundering.” These programs require financial institutions to identify their customers and use of account funds. The BSA also requires financial institutions to report illegal and suspicious activities to the federal Financial Crimes Enforcement Network (“FinCEN”) and submit currency transactions reports for cash transactions over $10,000 (as well as certain transactions over $5,000). Further, it is a crime under federal law to knowingly engage in a monetary transaction that is of a value greater than $10,000 and is derived from specified unlawful activity.

The DOJ has pursued financial institutions for their acceptance of drug related money. For example, in 2010, the DOJ entered into a deferred prosecution agreement with Wachovia Bank, N.A. to avoid charges that it willfully failed to establish an anti-money laundering program. The Drug Enforcement Administration stated that it expected how a particular cartel capitalized on weak anti-money laundering practices at Wachovia to further the cartel’s drug trafficking activities. Wachovia was ordered to pay $160 million in penalties. Earlier this year, U.S. Bank, N.A. was assessed $185 million in civil money penalties by FinCEN for failing to establish and implement an adequate anti-money laundering program. Wachovia, under pressure from the Justice Department to establish effective anti-money laundering systems, decided to accept the large penalties.

Almost all banks, savings institutions, and credit unions in Oklahoma are insured by the Federal Deposit Insurance Corporation (“FDIC”) or the National Credit Union Administration (“NCUA”), regardless of whether they are state or federally chartered. They are also subject to the supervisory powers of several state and federal agencies and regular examinations. Agencies can bring civil money penalties, revoke insurance, suspend or ban individuals from the banking industry, and take other enforcement actions. As a result, those financial institutions are wary to provide any financial services or open accounts for persons affiliated with the medical marijuana industry, however remotely.

It should also be noted that FinCEN’s authority extends far beyond banks and credit unions. FinCEN has authority over “financial institutions” which includes insurance companies, pawnbrokers, “a loan or finance company,” travel agencies, persons involved in real estate closings, or “any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.” In 2015, FinCEN held MoneyGram International Inc.’s chief compliance officer personally responsible for the company’s BSA violations. In 2016, FinCEN assessed fines upon Kustandy Rayyan, owner and operator of the Thriftway Food Mart located in Kentucky, for failing to establish and implement an effective written anti-money laundering program and failing to file accurate and timely currency transaction reports.

Difficulty accessing the banking and payment systems has led marijuana growers and dispensary to deal in cash. This presents inefficiencies, extra costs, and security risks. It is inefficient to pay all of your expenses – from plumbers to landlords – in cash, to not mention the headache of maintaining true cash accounts. It is also easier to hide proceeds from tax agencies. There is an extra cost to holding large amounts of cash, as one needs safes and other means of securing the money. Most importantly, having so much cash makes growers and dispensers prime targets for theft, with all its encompassing dangers. As a result, a vast money laundering market has no doubt arisen to handle the demand from the cash marijuana businesses have on hand.

So what are the implications for lawyers? Rule 1.2 of the Rules for Professional Conduct state that “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.” Lawyers have been disbarred in Oklahoma for violating this rule. In several states where medical or recreational marijuana has been authorized under state law, state bar associations have issued opinions advising attorneys how to handle these issues. Similar guidance from the Oklahoma Bar Association should be forthcoming.

Fortunately for Oklahoma, we are not the first state to approve medical marijuana. As such, we know what some of the upcoming issues will be. Nevertheless, there are several uncertainties, such as how the Trump administration will enforce drug laws. The medical marijuana industry will no doubt create large profits for some who get involved; however, at present the risks of this business are more than just financial, they are criminal.
Domestic Violence and Unemployment Benefits: 
What Employers Should Know

By John Miley
General Counsel, Legal Division, OESC

When a person becomes the victim of domestic violence and decides to escape the situation, in many cases, the victim can’t just walk away. A perpetrator of domestic violence, the abuser, often tries to track down the victim at places where the abuser knows the victim may retreat to or frequent. In these cases, the victim cannot move in with a friend or family member, but instead, must escape to a place of refuge or a safe house where the victim cannot be found. If the victim was employed at the time of the escape, there will be only one place where the abuser will be able to find the victim, that being the victim’s place of employment. When a victim plans an escape from domestic violence and is under threat of bodily harm, the victim must also quit employment. In several cases of this type in the past, continued employment has resulted in violence in the workplace that puts co-workers and customers of the business in danger, as well as the victim.

The basic law of unemployment benefits provides that benefits are not available to employees who voluntarily quit employment (40 O.S. §2-404). The Oklahoma Legislature has wisely made an exception to allow benefits to unemployment claimants when the claimant quit work due to domestic violence (40 O.S. §2-210(4) (d)). As most employers know, whenever unemployment benefits are granted, the employer’s unemployment tax rate goes up the next year. The Legislature recognized that this would be unfair to innocent employers that had nothing to do with the perpetration of domestic violence. In order to alleviate this unfairness, the Legislature also provided that employers would not be charged for unemployment claims made in domestic violence situations (40 O.S. 3-106(G)(7)).

When an unemployment claim is paid that will not be charged to an employer, the cost of the claim is socialized on the Unemployment Trust Fund that all employers contribute to. Although this is a “loss” to the Fund, it is a big gain for the employer community, as well as the victim of domestic violence. An employer can never predict when one of its employees may be the victim of domestic violence. When a victim decides to break away from an abuser, the last thing an employer needs is to have that abuser stalk the victim at the place of employment. The unemployment law helps the employer assist its employee to break away from the abuser and avoid violence at the work place. As for the victim, the financial assistance provided by the unemployment benefit will give the victim a lifeline during this extremely stressful time and help the victim bridge to a new job and a new violence free life.

In order to achieve this result, employers, lawyers, human resource specialists and domestic violence counselors need to be aware of these laws. Please help by passing this information on when you have an opportunity to do so.
Awards Luncheon Highlights

Andrews Davis Law Firm, OCBA Community Service Award, David Dobson, Joe Rockett, Judge Barbara Swinton, David Pomeroy, Roland Tague & Brad Davenport

US District Judge Stephen P. Friot, OCBA Professionalism Award

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Oklahoma County Members

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60-Years of Membership
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Arthur S. Bay
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Stanley B. Catlett, Jr.

50-Years of Membership
Floyd Smith Barnes
Robert D. Baron
Robert Charles Bright
Ronald L. Buckelew
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Charles Lamar Cashion
William H. Castor
Mickey C. Coley
Jerry Crabb
Von Russell Crew
Thomas Alfred Dearmon, Jr.
Sidney George Dunagan
Clyde E. Fosdyke
Gerald L. Gamble
Judge James Dell Gordon
Judge William D. Graves
Charles Donley Hager
Malcolm Wardlaw Hall
S. Paul Hammons
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Kenneth Edward Kelsay
James Allen Kirk
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Paul Johanning
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Robert J. Mildfelt
Robert Arthur Miller
Randall Don Mock
R.P. Bob Moore
John W. Norman
Judge James H. Paddleford
John Victor Page
Jack Sterling Pratt
Dee Albert Resplide, Jr.
Louis Michael Rieves
Reid Edward Robison
J. Christopher Sturm
Floyd W. Taylor
Thomas H. Tucker
Thomas Michael Weaver

Rachel Morris, OCBA Pro Bono Award

Corporate Counsel Co-Chair Coree Stevenson, OCBA Outstanding Committee Award (Co-Chair Jami Fenner not pictured)
Randy Gordon, YLD Outstanding Director

OK County Law Library, Friends of the Young Lawyers Award, Cody Cooper, Brad Davenport, Judge Barbara Swinton & Venita Hoover

Judge Patricia G. Parrish, OCBA Bobby G. Knapp Leadership Award

Judge Don Andrews, YLD Beacon Award

Miles Pringle, OCBA Geary L. Walke Briefcase Award

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Jim Roth Named Next Dean of Oklahoma City University School of Law

Jim Roth became the thirteenth dean of Oklahoma City University School of Law on July 1, 2018. Roth is a former Oklahoma County commissioner and Oklahoma Corporation commissioner and currently serves as a director of the Oklahoma City-based Phillips Murrah law firm, where he provides leadership to the firm’s natural resources department and chairs the clean energy practice group. Oklahoma City University President Robert Henry said “Jim’s appointment follows a thorough national search process and his selection from the robust pool of applicants is a testament to his strong leadership skills and his vision to grow OCU Law.”

Jim was advanced by the Search Committee as a finalist, was approved by vote of the law school faculty, and was appointed by President Henry and President-Designate Martha Burger, who also began her term with OCU July 1, said Roth’s background demonstrates dedicated public service and impressive legal practice. “He will serve the School of Law and the university well as we grow forward,” she said.

Roth is an alumnus of OCU Law, earning his Juris Doctor degree in 1994. He also holds graduate certificates from Harvard University’s Kennedy School of Government, the United States Air War College’s National Security Forum at Maxwell Air Force Base and the Institute of Public Utilities at Michigan State University.

Gary Homsey, co-chair of the Law Dean Search Committee and vice chairman of the OCU Board of Trustees, said he looks forward to the coming years. “Jim brings excitement for the future, and he is the right choice to lead OCU Law,” Homsey said.

In 2017, Roth served as the OCU School of Law’s inaugural Distinguished Practitioner in Residence, teaching a class on energy regulation.

Lee Peoples, who has been serving as the school’s interim dean for the past year, will return to his role as professor and law library director in January, 2019 after a sabbatical.

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Artificial Intelligence and the Future of Legal Practice: The Honorable R2 D2 Presiding

Jennifer S. Prilliman
Interim Law Library Director
Oklahoma City University
School of Law

The phrase artificial intelligence, or AI, has infiltrated almost every academic and professional publication for lawyers. For some, the term “AI” conjures up images of a dystopian hell-scape overrun by Cylon armies or Blade Runner-esque Replicants. For those of us who are more optimistic about the future, we may picture cute robot companions like R2-D2 helping us through our daily tasks or co-chairing our trials. While these fictionalized futures aren’t yet our reality, the use of advanced technology is ubiquitous, and AI is finding its place in the legal profession. Most of us have encountered and used some form of AI without even realizing it. If you have ever played chess against a computer, used auto-correct, submitted a question in a chat-bot online, or performed a natural language search, you have used very narrow forms of AI.

AI is a vast, fascinating, and both technical and philosophical field of computer science with seemingly limitless possibilities. AI had its beginnings in 1943, but the term entered more mainstream discourse with Alan Turing’s work and the Turing Test in 1950. (Movie watchers may remember Turing and his work from the movie The Imitation Game starring Benedict Cumberbatch). AI refers to the ability of machines to process data, learn from that data and make decisions based on what they have learned. The Turing Test is, at a very basic level, a test that measures the ability of a machine to think and act like a human. To date, only a handful of machines have come arguably close to truly passing the Turing Test. IBM’s Watson, a computer system that can answer questions posed to it, is one of the most well-known artificial intelligence platforms. Watson may be most famous for its 2011 triumph in an exhibition game of Jeopardy against two of Jeopardy’s record breaking champions. Watson was able to understand the questions posed to it and provide the correct answer. However, what Watson was doing in that game was not thinking like a human; instead, Watson was able to quickly mine massive amounts of stored data at a rate impossible for humans to match. Watson is now being used in a variety of industries, assisting professionals in better using the data at their disposal. For instance, in healthcare “Watson for Oncology” is being used to help oncologists diagnose cancer and find treatment options. A winery in California is using Watson to analyze weather reports and remote sensors to determine how much water individual vines should receive.

There are two aspects to understanding AI and legal practice. The first includes the actual legal issues created by increased use of AI by individuals and companies. The other is how lawyers will leverage AI in the practice of law, which is the focus of this short piece. Neither topic can be adequately covered in just a few pages. Probably one of the most intriguing opportunities in AI for legal professionals is the potential for an AI tool to anticipate legal arguments and predict an outcome based on those arguments. In fact, this technology already exists, though it has not been used by lawyers. IBM’s Watson Debater can scan a database of information and identify what it believes to be the strongest or weakest arguments. A related potential use for this type of analytics is for modeling statutory reasoning. Imagine typing your client’s facts into a program, and in seconds you know the applicable laws and how they will apply! For now, these programs are quite limited and cannot replace a human lawyer’s good judgment and legal reasoning skills. However, pairing this technology’s capability with a lawyer’s abilities could fundamentally change all aspects of legal practice.

Big data is another phrase receiving a lot of attention. “Big data” refers to data sets that are so large and complex that most computer processes cannot adequately manage them. Technology that could not only sort through this

See AI, PAGE 15
Oklahoma City University School of Law and Southeast High School Street Law Partnership

By Laurie W. Jones
Associate Dean for Admissions OCU School of Law

The original Street Law program began in Washington, D.C. in 1972, when a small group of Georgetown Law University law students created an experimental curriculum to teach District of Columbia high school students about law and the legal system, with a focus on the practical application of the law to the high school students’ lives: thus, the name “Street Law.” Since then, Street Law programs have expanded throughout the United States and internationally. Currently, more than seventy domestic and fifty overseas law schools participate in Street Law programs. Training on how to start a program has been offered in recent years to representatives from China, Korea, Russia, Egypt, Turkey, Latin America, and the Ukraine. Street Law courses are designed to empower young people around the world to be active, engaged citizens by equipping them with the knowledge and skills they need to successfully participate in and create change in their communities.

Topics typically covered in Street Law courses include an introduction to law and the legal system, criminal law and juvenile justice, consumer law, family law, individual rights and liberties, immigration law, and employment law. The approach is practical, relevant, and experiential, blending legal content with innovative hands-on teaching strategies that actively engage the high school students and draw upon the law students’ creativity, knowledge of the law, organizational abilities, and public speaking and presentation skills. This practical law focus is a powerful vehicle for promoting civic learning.

Street Law was first offered at Oklahoma City University School of Law in the spring semester of 2018, although the idea for the course had first been posed by Dean Emeritus Larry Hellman several years ago. The logistics of finding the right high school willing to partner with us and generating interest in and support for such a course fell into place after a conversation with Brandon Cargy, OCU Law ’05, and then the general counsel to Oklahoma City Public Schools. He immediately suggested Southeast High School, an application school located about ten minutes south of the law school with a student body that is 95% Hispanic and Latino and a principal, Ms. Myllissa Hall, whom he anticipated would support the course and the idea of law students teaching in the high school classroom. Principal Hall enthusiastically welcomed the concept of Street Law and several months later, the public school district and the law school approved the course through their respective curriculum committees and governing bodies. Coordinating the schedule for the high school and law school, selecting textbooks, developing a specific syllabus, and advertising the course to students came next. Along the way we sought support from community partners, and a generous grant from the Oklahoma County Bar Foundation helped fund a visit for the high school law students to the federal courthouse, where the students were welcomed by the court clerk, Judge David Russell and his law clerk, and personnel from the U.S. Marshals’ office.

The inaugural spring semester Street Law class had eighteen high school students and twenty law students, with a high school teacher and law professor. A bit uncertain with each other at first, the two groups of students quickly bonded and enjoyed the hours they spent together during the week. Two of the law students came from teaching backgrounds and moved comfortably back into the role of educator, while some of the law students were initially more cautious in front of the class. They drew upon their law school experience, their enthusiasm for the subject and students, and their colleagues’ ideas and collaboration to all become masterful classroom teachers.

Our goal in offering Street Law were lofty but straightforward: to empower high school students to be active, engaged citizens with the knowledge and skills they need to participate in and contribute to their communities; to develop a habit of pro bono service to the community in law students; and to have law students serve as mentors and role models for high school students, thereby encouraging the high school students to pursue higher education and perhaps a career in law, particularly for those who come from historically underserved populations. Along the way we learned so much about ourselves, each other, the public education system, and the value of sharing vital information about the law in a way that is meaningful to non-lawyers. We plan to expand the program to a second OKCPS high school in spring 2019. Street Law allows OCU law students another opportunity to serve the community and to view the city as our campus.

By Bill Gorden

On Grand Strategy
John Lewis Gaddis, Penguin Press, 2018
Hardback, 368 Pages, $26.00, Kindle $12.99

In the Business section of most bookstores, online book sales sites, or airport magazine/book stalls, there are many listings on “Business Strategy.” The hallmark guarantee success, each calls general principles of strategy by different practitioners, he includes the likes of Clausewitz, and even Tolstoy. Strategy is not just the day to day grind. Most of it is not just the day to day grind. Gaddis takes out the common thread of each of these strategies and more, and examines the commonalities as he sees them.

The general idea here is two-fold. One the author calls the hedgehog, the other the fox. The hedgehog represents a set idea or plan, which must be followed, perhaps based on some initial success using it. The fox lives a more exciting life, supporting first this then that, sometimes inconsistently, but always with the goal in mind.

The author does not choose. Rather, he shows that a truly Grand strategy involves being some of both hedgehog and fox. As you sit reading this, you may already be leaning one way or the other, based probably on life experience and education. Gaddis says the most successful practitioners of strategy dip into more than one pond. One plan fits all does not cure all ills, there must be improvisation. Solely relying on improvisation fails to give the ground troops a direction to follow. The ultimate key is matching capabilities to resources.

This is not a beach read, unless you are a nerd. It is applicable, however, not just to history/military/government issues, but to areas such as health and even business as well. Gaddis would be the last to say that it exposes a set idea or plan, which must be followed, perhaps based on some initial success using it. The fox lives a more exciting life, supporting first this then that, sometimes inconsistently, but always with the goal in mind.

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complex data, but also predict the likelihood of a legal argument prevailing, could replace hours of rote legal work. This goes beyond statistical analysis or forecasting. Rather than a team of lawyers and legal professionals combing through thousands of pages of documents in print or electronically for snippets of information, imagine instead asking a computer to find every bit of information that satisfies or disproves an element.

Use of AI could also improve a citizen’s access to the justice system. Automated adjudication for small claims civil matters, standard motion hearings, or other routine legal issues could replace hours of rote legal work.

If, after reading this piece, you would like to learn more about AI and the practice of law, you can consult any of the texts referenced in the footnotes. If academic legal writing isn’t up your alley, there are numerous great fiction options that will scare you into learning more. I recommend watching, Battleship Galactica (2004); Ex Machina (2014); The Initiation Game (2015); Wall-E (2008 – for something lighter), and Blade Runner (1982).

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GableGotwals welcomes Jace White to the Oklahoma City office.

Jace White is an associate attorney in the firm’s Oklahoma City office. He has been focusing his practice on general litigation since graduating summa cum laude from law school where he was ranked third out of 118 graduates. During his time at Oklahoma State University, he earned several distinctions, including being named the CASNR Outstanding Senior, an OSU Outstanding Senior, and an OSU Senior of Significance. His practice at GableGotwals primarily consists of complex business litigation in both state and federal courts, though he has a background in insurance defense and bad faith litigation. Jace handles claims involving insurance contracts, real estate agreements, and energy contracts.

Tax attorney Ryan Anderson joins McAfee & Taft

McAfee & Taft has announced that attorney Ryan C. Anderson has joined its Tax and Family Wealth Group. His practice encompasses the areas of individual and business taxation, tax structuring of business transactions, business entity selection and formation, and the litigation of tax matters in state and federal courts. Anderson graduated cum laude from the Pepperdine School of Law in 2017, where he earned his Juris Doctor of tax matters in state and federal courts.

Jace White graduated with distinction a year later from the Georgetown University Law Center, where he obtained his master of laws degree in taxation. While in law school, Anderson served as a tax law clerk for the United States Senate Committee on Finance and as a judicial extern for The Honorable Robert E. Bacharach of the U.S. Court of Appeals for the Tenth Circuit. Prior to embarking on his legal career, Anderson served as an infantry team leader in the United States Army for more than three years and in the Oklahoma National Guard for five years. While on active duty, he deployed to Afghanistan in support of Operation Enduring Freedom.

Crowe & Dunlevy honors OU Law students with firm’s Diversity Scholars Program scholarship

University of Oklahoma College of Law students Chloë Coleman and Jimmy Lai were recently named recipients of Crowe & Dunlevy’s Diversity Scholars Program scholarship, an honor awarded to OU Law candidates each year who meet qualifications of academic achievement, financial need and commitment to the law. Each scholarship recipient was awarded $2,000 per semester based on the student’s exemplary progress and performance, for a total commitment of $10,000 per recipient.

Crowe & Dunlevy first established the firm’s Diversity Scholars Program at the University of Oklahoma College of Law in 2005. Since then, more than a quarter of a million dollars in scholarships have been awarded to outstanding candidates.

Chapel joins Hartzog Conger Cason & Neville

Hartzog Conger Cason & Neville recently announced that Jesse Chapel has joined the Firm. Chapel, the immediate past chair of the Oklahoma Bar Association Section of Taxation, will join the Firm’s highly regarded tax, estate planning and corporate law practice areas. Chapel graduated cum laude from the Oklahoma City University School of Law and obtained an LLM in Taxation from the University of Florida Levin College of Law. Prior to becoming an attorney, Chapel worked five years for the State of Oklahoma Office of State Finance.
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therefore of the subject matter with which we are concerned here coupled with the fact that sedition and treason which, for practical purposes are identical, are included among the most despiable of all offenses, we are of the view and therefore declare it to be the public policy of this state that before the penalties and sanctions of Section 6.1, supra, may be invoked against a political party, it must be made to appear by competent evidence which is clear, cogent and convincing, that such sedition and treasonary activities as are condemned by said statute. We are of the further view that a strong presumption exists that a political party is not in violation of said Section 6.1, supra, which has otherwise complied with the laws of Oklahoma in its organization and formation and which, by its express platform and principles, teach or advocate political beliefs and political ideals consistent with peaceable and lawful methods of accomplishing changes in our social, economic or political structure.

In determining whether the American Party should not be recognized because of Section 6.1, supra, we do not deem it necessary to determine whether Mr. Wallace has in any manner made any statements, which would amount to a violation of the statute if performed by the party. What we are concerned with is whether the proof in this case is clear, cogent and convincing that the American Party has adopted as its official views any of its candidates for President which are not consistent with the announcement of the party as expressed in its platform or statement of principles. If our answer would be in the affirmative, then we would be concerned with the nature of such views as to whether they were sedition.

At the beginning of our discussion, we note that no one contends that the statement of principles of the party as contained in its platform contravenes the matters prohibited by Section 6.1, supra.

We disagree with protestants' contention that the act of nominating Wallace for President by the party amounted to an adoption of any and all views of Wallace or beliefs advanced by Wallace. Such views were in accord with the platform of the party or not. It is obvious, if protestants be correct, that no one could possibly make an intelligent determination as to the principles for which any of the parties stand, for one would necessarily have to look to the candidate and for his most recent expressions of opinion and the purpose of political parties for existing would, to a large extent, be nullified.

Neither are we convinced of the validity of protestants’ argument that because the sole purpose of forming the American Party was to nominate a candidate, the views of the latter represent the views of the party. While, of course, this would be true to a large extent - else the man would never have received the nomination of the party - such is not necessarily true where the views of the candidate are at variance with the announced platform of the party. The candidate ordinarily would conform his views to the views of the party - not vice versa.

According to the record, some witnesses who were instrumental in forming or organizing the party testified that they had contemplated forming a third party for several years and that it was the intention of the organizers of this party that it be a permanent one. Others stated that if something happened that Wallace did not continue his candidacy, the party would select another. Witnesses testified that other people would be just as acceptable to the party as Mr. Wallace - one witness even named a few. One witness testified that it was expected that other persons would seek the nomination of the party for other offices, even on the local level. The Chairman of the party testified at one point when his views were brought up that he did not contemplate or think that Wallace thinks differently, I disagree with him. I don’t have to agree with everything he says to be for him for President.” The same thing could probably be said by members of other political parties concerning the nominee of their party for the office of President.

A great portion of the voluminous record was taken up with evidence concerning the activities of George Wallace while he was Governor of Alabama. Insofar as such evidence concerns actions of Mr. Wallace which could not be classified as contrary to the principles of the American Party of Oklahoma, we fail to see the materiality or relevancy of the same. It is admitted that the party is consistent with the platform of the party. The question is whether the party has accepted as its policy any of Mr. Wallace’s views which may be classified as sedition and therefore inconsistent with the platform. The witnesses were allowed almost unrestricted freedom in giving their testimony and the same was admitted on the question of Mr. Wallace’s witness and ability to discharge the duties of the office which he seeks - a question which obviously involves politics, not jurisprudence.

From an examination of the record and the briefs, we understand that it is the action of Judge Burdick in changing the crime of sedition in 1963 in the integration by negro students of the University of Alabama and three public schools of Alabama, which it is said amounted to illegal resistance to the laws of the United States and constituted sedition. This view is urged notwithstanding Wallace was charged with the crime of sedition arising out of these occurrences. Our attention has not been called to any evidence which would indicate party approval, expressed or implied, of Governor Wallace’s actions in handling the problem in Alabama.

In the circumstances as revealed by this record, we are of the opinion and hold that the evidence was not clear, cogent and convincing, and not sufficient to show that the actions of George Wallace in his handling of the Alabama integration problem has been ratified or approved by the American Party and that the principles or beliefs evidenced by such actions are consistent with the expressed views of the party have been adopted by the party.

Accordingly, we hold that the action of the Secretary of State in approving as valid the affidavit of the Chairman of the American Party which was filed by said officer as required by 26 O.S. 1961 § 6.2 should be approved.

[Ed note: This opinion is more interesting if read in conjunction with the June opinion of the Supreme Court, excerpted in the June 2018 Briefcase.]
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Marnie Taylor
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