OBA Award Winners from Oklahoma County

OBA President Linda Thomas presents the 2017 Outstanding County Bar Award to President David Cheek and Executive Director Debbie Gorden.

TOP LEFT: Judge Bryan Dixon received the Neil E. Bogan Professionalism Award. BOTTOM LEFT: Carolyn Thompson was awarded the Alma Wilson Award for her service to the students at Douglass High School. TOP RIGHT: President Thomas presented Mack Martin with a President’s Award for his leadership as Chairperson of the OBA Standards for Defense of Capital Punishment Cases. BOTTOM RIGHT: The Outstanding Service to the Public Award was presented to Oklahoma Lawyers for Children. Accepting the award was Tsinena Bruno-Thompson, CEO of OLFC.

Christmas Fiction: Mary Beth

By Jim Croy

Dad had spent World War II in a tank, and I always thought the reason he took up farming when he got back was that he couldn’t stand to be confined in small spaces anymore. At any rate, by the time I came along—two years later—he was a hardscrabble farmer trying to eke out a living on twenty acres of sun-parched mediocre dirt. He worked the land with hand-me-down machines and a lot of sweat and sore muscles. When the wheat was good, he would take it to the elevator in town and hope to get just enough cash to make it through the winter. Mom tended the truck garden, so we had

See MARY BETH, PAGE 13
Outstanding County Bar!

by David Cheek

For those of you who have not heard, the Oklahoma Bar Association recognized the Oklahoma County Bar Association as a recipient of the Outstanding County Bar Award for 2017. The OCBA was chosen, in large part, due to the work that the community service committee is doing, as I described in last month’s article.

If that does not make you feel good about our Association, let me tell you about a long standing committee that is largely overlooked and often unheralded.

The Lawyers for Children Committee of the Oklahoma County Bar Association has been in existence for approximately fifteen years. Bob Sheets, of Phillips Murrah, has been the mastermind of this Committee, almost since its inception. Its primary mission is to participate in Reading Buddies with the Carver Mark Twain Head Start located at 2412 W. Main Street. The Committee shares this duty with the Downtown Kiwanis Club. Both groups read primarily on the third Wednesday of every month (the second Wednesday this month due to winter break), for ten months out of the year, to either the morning or afternoon class of the head start children. There are approximately twenty children in each class, ranging in age from 3 to 5 years old. The Lawyers for Children Committee alternates with the Kiwanis Club between mornings and afternoons on a monthly basis.

This mission of the Committee in reading to the children serves two purposes. First, the children are excited to have business people from the community make time in their day to come visit them and read stories to them. Second, reading to children in this age group is one of the most important things that can be done to improve the child’s development in preparation for kindergarten and beyond.

Years ago, a good friend of Bob’s, who was in charge of Oklahoma’s A+ School Program, told him of the “30 million word gap” — the number of words that children in various socio-economic groups, and it was discovered that there was as much as a 30 million word gap of words that children in lower income areas have experienced, as opposed to children in higher income areas. This word gap can affect the child’s development of imagination and preparation for entering kindergarten. While the members of the Lawyers for Children Committee know that they cannot alleviate the entire gap, they can help do something to excite children about wanting to read, and about learning in general.

Recently, however, the Committee has taken on a new mission to read on the first Tuesday of every month at 8:30 a.m. to children who are in the pre-school classes at Lee Elementary School, located at 424 S.W. 29th Street. At Lee Elementary, there are three pre-school classes of approximately 20 children each. Members of this Committee are committed to reading to each class on the first Tuesday morning of every month at 8:30 a.m. Just like reading at the Carver Mark Twain Head Start, the purpose is to show the children that people care enough to come and read to them, share experiences with them, and to teach them that reading is fun and something that they can find enjoyment in as they progress through school.

This activity runs entirely on a volunteer basis, and only requires about an hour to an hour and a half, once a month, for each class. In addition to reading once a month, the Committee also provides age appropriate books to children to keep, take home with them, and start developing their personal library.

Anyone, including non-OCBA members, who would like to be involved can indicate their interest in this Committee by showing up to read to the children at either Lee Elementary on the first Tuesday of the month at 8:30 a.m., or at Carver Mark Twain Head Start, either at 9:30 a.m. or 1:30 p.m., depending upon which class is being covered that month. The more readers there are, the smaller the groups. But no matter what the size of the group, the children enjoy their reading buddies taking time to come and read to them. Anyone who is interested should contact Pam Bennett at the Oklahoma County Bar and ask to be added to the list. You will receive emails each month about which class the committee is reading to, and a reminder of which day the reading takes place.

This is one of those Committees that let you have some control over its demands and your personal level of participation. It also provides a start and stop time period for participation as busy schedules will allow, while still accomplishing a positive result. I hope you will consider participating.

Happy Holidays to all!

Christmas Books for the Lawyers on Your List

by Jeff Massie

Lawyers are notoriously difficult to buy for…beyond red silk power ties and gloss black Mazzepartis….Below are some literary tomes to fill even the fussiest lawyer who ‘has it all’. With so much of the American Civil War being bantered and debated again, it seems like a good time to list some of the legal titles from my library and available at Amazon or other fine book dealers. My list leans toward the Left and Right…which we all should. Merry Christmas and Happy Readings!

1. My Life in Court by Louis Nizer ‘‘quintessential classic read”
2. Legal Cases of the Civil War by Robert Bruce Murray - the war that is never ‘over’
3. Conquest by Law by Lindsay G. Robertson [OU Law Professor] ‘removal of indigenous people by color of law’

4. John Surratt: Rebel, Lincoln Conspirator, Fugitive by Frederick Hatch
5. Lincoln and Chief Justice Taney: Slavery, Secession, and the President’s War Powers by James F. Simon
6. The Body of John Merryman: Abraham Lincoln and the Suspension of Habeas Corpus by Brian McGinty
7. A Constitutional History of Secession by John Remington Graham
8. Infamy: The Shocking Story of the Japanese American Internment in World War II by Richard Reeves
10. Chief Executive to Chief Justice: Taft between the White House and Supreme Court by Lewis L. Gould
Anthony Hopkins’ narration notwithstanding. That’s neither here nor there. Dr. Seuss Enterprises, owner of HTGSC, was, to say the least, displeased with the production which placed poor Cindy Lou Who (now about 42) in a trailer park discussing and dealing with such grown up crises as poverty, teenage pregnancy, alcohol abuse, and prison culture. She even acquired an addiction for something called Who Hash. Playwright Matthew Lombardo took the offensive and sought a declaration that his play—intended as parody—constituted fair use. U.S. District Court Judge Alvin Hellerstein agreed. Quoting extensively from the play’s profanity-laced moments, he ruled that “Who-Ville was recast from its original depiction as a place where people can overcome adversity by smiling and singing together, and was depicted as a hard-bitten world where young women are impregnated by green beasts, families struggle to put food on the table, paparazzi run rabid and citizens get high on ‘Who Hash’ to escape problems of daily life.”

Thus, he found that “the Play recontextualizes Grinch’s easily-recognizable plot and rhyming style by placing Cindy Lou Who—a symbol of childhood innocence and naive-ness—to outliers, pathology-laden, adult-themed scenarios involving topics such as poverty, teenage pregnancy, drug and alcohol abuse, prison culture, and murder. In so doing, the Play subverts the expectations of the Seussian genre, and lampoons the Grinch by making Cindy Lou’s naive, Who-Ville’s endlessly-smiling, problem-free citizens, and Dr. Seuss’ rhyming innocence, all appear ridiculous.”

Personally, I can’t say if it was art, but I liked it. If only they’d done the same with Sponge Bob.

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We actually had a fairly nice Thanksgiving, up to a point anyway. Of course, at this time of year we customarily remember the neediest among us as well. And, of course, “needy” does not always connotate economic difficulties. Some of you may have guessed that I’m referring to Sandy Keeney. I knew this first Thanksgiving without Katy would be rough, and I also knew that she had no local family. I called her up to invite her. She had already accepted an invitation from Aubrie, aka the Contessa d’Glanville. I thought that interesting. I knew Aubrie’d taken the Godth stuff down a notch or two in deference to her new role as working mother. Still, I wouldn’t have minded being a fly on that wall.

Given the kids both had people to see and places to be, we scheduled our Thanksgiving dinner for lunch time. We dined in the company the still-recuperating Father Auggie and TV icon Rodger Crenshaw, and my parents. Mr. Crenshaw joined us in the absence of his long-time assistant Sylvia who chose this year to bring Junior home to meet her family. Ah, so many walls, so little flyness. Junior and Sylvia would stop by for dessert and see that Mr. Crenshaw got home safely. I did my best to help clean and clear until such time as Penny named me an impediment to progress in the kitchen and banished me to the living room. With the Vikings and Detroit playing for no one in particular, we decided to kill time until game time for the Giants. I just about settled in to relax when the phone rang.

Caller ID told me Aubrie was on the line. I had a sinking feeling. Sure enough, Sandy called her in near hysterics while someone shouted in some foreign language and sounded like he was trying to wrest the phone from Sandy’s hand. Aubrie discerned enough from the conversation to know that the events took place at a Sunoco station on Route 3. I grabbed my jacket and called out a goodbye someone shouted in some foreign language. Sandy sat on the curb talking to Aubrie’s but she declined. As Sandy saw me, she ran over and threw her arms around me. If I had swam out to confiscate it. Hysteria ensued. I stuck the house before letting her in. The place looked just the same as when I had found her with Katy’s body. I mean exactly the same, with the dining room table still set for an uneaten breakfast for two. I brewed her some tea and brought her one of her prescribed alprazolam tablets. Her breath still came in shuddering sobs.

I sat talking with her until she seemed calm enough to leave alone. I offered to take her to Aubrie’s but she declined. As we spoke, her cell buzzed for an incoming message. It said she should check her mail. She looked at me with mild panic and said she’d rather open it while I was there. I tried to dissuade her from opening it at all. An email title line simply said “From Katy with Love.” When she clicked on it, it took her to an e-greeting that said: “Still mourning? Holidays rough? I know a place you can get away.” The writing dissolved to reveal an open grave. They used Paul Simon for the background: “Mother and Child Reunion”.

Ignorance, allied with power, is the most ferocious enemy justice can have.

— James Baldwin, writer (1924-1987)
An Olio of Court Thinking
by Jim Croy

December 4, 1917
One Hundred Years Ago
[Excerpt from Cunningham v. Berry. 1915 OK 409, 150 P. 139 (Rehearing Denied December 4, 1915.)]

The one question involved in this case upon which we have had misgivings is the doctrine that the law imposes upon the surgeon is reasonable or ordinary care. We earnestly requested and hoped that counsel in the argument upon rehearing would give us light on this question. But counsel have not cited nor have we been able to find a single instance in which the courts or law imposes any standard of diligence upon one other, other than reasonable and ordinary care. It is true this is a relative term. And what would be reasonable and ordinary care and ordinary diligence under the circumstances, amounts to reasonable and ordinary care, and is a question of fact for the jury.

Seventy-Five Years Ago
[Excerpt from Cassingham v. City of Oklahoma. 1942 Okla 418, 131 P.2d 1011.]

This case is presented on appeal from the district court of Carter County. It involves the validity of an ordinance of the city of Ardmore, a city operating under a charter form of government, prohibiting the sale on Sunday of beer containing not more than 3.2% of alcohol by weight, commonly called ‘nonintoxicating beer.’ There are other provisions of a regulatory nature contained in the ordinance which do not constitute the basis of any attack in this proceeding, and which will therefore not be a subject of discussion in this opinion.

The action was instituted in the trial tribunal on November 12, 1942, by G. W. Sparger, as plaintiff; against Clarence Harris, city manager of the city of Ardmore, and Tom Kyle, chief of police of the city of Ardmore, as defendants.

The plaintiff in his petition alleged in substance his ownership of a place of business in the city of Ardmore known as “Puny’s Steak House,” where he sells all kinds of food and lawful drinks, including 3.2 beer. Plaintiff asserts that his profit on the sale of the latter constitutes a substantial part of his income from the business. That he has, in compliance with and in accord with the law of the State of Oklahoma, procured a license to sell such beer which he asserts entitles him, as a matter of law, to sell beer seven days in the week. He sought injunctive relief against the enforcement of the ordinance.

In their answer the defendants incorporated a general denial, excepting only such matters as should be thereafter admitted. They then admitted that plaintiff, who was engaged in the restaurant business and sold 3.2 beer. They also admitted that such beer is a legal and lawful commodity in Oklahoma, but asserted that the sale is subject to regulation, and that, if taken in sufficient quantities, it would constitute intoxication. They assert that the city ordinance attacked in this proceeding constitutes a valid regulatory enactment by the legislative body of the municipality.

To this answer the plaintiff demurred, which demurrer was by the statute excepted to and overruled. Thereupon the plaintiff engaged in the restaurant business and sold 3.2 beer.

An Olio of Court Thinking

And the Court Said...
We have before us an ordinance which prohibits sales which the general laws of the state authorizes.

It is suggested by the defendants that the word “necessary” should be read into the statute as a qualifying adjective before the word “drink.” To do so would constitute a judicial usurpation of legislative power and would lead to a field of speculation which the judicial branch of the government could not control.

Those who abstain from coffee, tea, coca cola, or other common beverages could, with equal propriety, claim these beverages are unnecessary, and some who adhere to beer for asserted reasons based on health considerations might well claim that beer is a necessary beverage. Obviously, we cannot repeal in part a legislative act by reading into it language which does not appear therein.

Defendants have called our attention to a former decision of this court approving as valid municipal ordinances closing picture shows on Sunday. Notice Blackledge v. Jones, 170 Okla. 356, 41 P2d 648. Picture shows were therein classified as amusements. No statute of this state expressly authorized them to remain open on Sunday. As stated by the Criminal Court of Appeals of this state in paragraph 4 of the syllabus in Ex parte Johnson, 20 Okla. Cr. 66, 201 P3d 533:

“Where the Legislature has made or may by general law make a specific police regulation, that fact of itself will not prevent the lawmaking power of a city from making further regulations on the same subject, not inconsistent with general laws. A municipality may move in the same direction as the Legislature, but not contrary to nor in an opposite direction.” (Emphasis ours.)

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Under the admission of defendants in their pleading, beer must be treated as nonintoxicating when viewed from a legal standpoint, which is the only standpoint from which we may view it. For that reason, and for the further reason that our general statute expressly authorizes the sale of such drinks, we cannot apply the cited cases.

It is our conclusion that the portion of the ordinance relating to the sale of 3.2 beer on Sunday is invalid. As to the other provisions of the ordinance or their severability, we express no opinion. No question is raised in this action in connection therewith. The cause is therefore reversed, with directions to enter judgment for the plaintiff in accord with the views herein expressed.

In presenting the case counsel have refrained from advancing moral or theological reasons in support of their respective positions. This lawyerlike recognition on their part that our decision must be governed by legal considerations is to be commended.

December 26, 1967
Fifty Years Ago
[Excerpted from Lavender v. Lavender, 1967 OK 250, 435 P2d 583.]

This appeal concerns the propriety of the trial court’s decree granting defendant in error, the husband, divorce and full custody of minor children, and making division of jointly acquired property. Other than to show the basis for matters discussed, extended recitation of evidentiary matters is unnecessary.

Plaintiff sought a divorce and custody of the children upon grounds of incompatibility growing out of the defendant wife’s temperament and erratic behavior. Defendant denied all misconduct alleged and by cross-petition sought a decree of divorce and other relief. As grounds for relief defendant charged plaintiff with excessive drinking and extreme cruelty both toward defendant and the children, which course of conduct rendered continuation of the marriage intolerable. Defendant also asked custody of the minor children, child support, alimony, division of the jointly acquired property and allowance of reasonable attorney’s fee.

The parties were married in 1952 when defendant was sixteen years of age. Plaintiff was ten years her senior and had been married previously. They were the parents of four children ranging from 11-5 years of age at the time of the divorce. Defendant was active in church and school activities in her community. Plaintiff, a welder by trade, was not inclined to participate in these family activities. The parties had lived at various places outside the state following their marriage, but in 1962 purchased a 300 acre ranch for $30,000.00, paying half the price down, and thereafter making valuable improvements to this homestead. Part of plaintiff’s efforts were devoted to raising cattle and horses, the evidence indicating both ventures returned some profit. The evidence also showed that after 1961 plaintiff’s income from his business ranged from $6,500.00- $13,500.00 annually.

Plaintiff introduced evidence to show defendant’s erratic behavior resulted from emotional instability which created many marital problems. Defendant’s evidence was that plaintiff drank excessively, absented himself from home without explanation, and was quarrelsome.

To do so would constitute a judicial usurpation of legislative power and would lead to a field of speculation which the judicial branch of the government could not control.

Those who abstain from coffee, tea, coca cola, or other common beverages could, with equal propriety, claim these beverages are unnecessary, and some who adhere to beer for asserted reasons based on health considerations might well claim that beer is a necessary beverage. Obviously, we cannot repeal in part a legislative act by reading into it language which does not appear therein.

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Novels set during and about the Shoah/ Holocaust are constrained by the nature of that event in telling the whole story. The event ranges from the Thirties through at least the Forties, and ranges from the steppes of Russia to the boats sailing to the Americas, from the Arctic to Palestine. Likewise, to cover all that time, one needs a cast of characters interconnected but spread all over that time and place.

The nature of the event likewise is recruit-ed to build suspense, to keep the pages turning. Who will live, who will die, who will be scarred for the rest of their lives, who will escape are the questions maintaining our interest. This is needed due to the grimness of the subject. The swirling of the characters toward the center of the maelstrom builds emotional interest.

The TV mini-series Shoah was very adept at building the narrative, but there is a catch. Spoiler alert: If you want to read the book without a game-changing circumstance, stop here. As one reads through some 60 smallish chapters, with many characters and venues of action, one begins to wonder why so few of the characters, though mistreated, seem to be surviving. We know that at least 60% of European Jews were killed in the Shoah, so how is it that so many of the characters make it out of life threatening situations again and again? The swirling toward destruction fear is still there, but it seems to wane as we get to the end of the book. What gives?

It is a novel based on an actual family. The people who die actually died, the others were fortunate enough to survive. What seems incredible in art was reality in real time. The Author writes about her grandparents and other ancestors. The writing is superb at taking small items or places which were given up in trying to survive, a tea set, for instance, and getting us to buy into the memories. The story becomes real, prompted by the actual life lived by real people. That is how any of us remember the past.

The evil presented is real, but is ameliorated by the descriptions of the periodic disinterest of lower levels of villains as to outcomes for the persecuted. Laziness and greed allowed some lives to continue. Death had become bureaucratized. That may be the biggest insult to humanity at large.

This is a read for Winter, susceptible to reading a few chapters at a time. It is haunting, as all this material is, and should be.
Miller & Johnson names new associate attorney

Miller & Johnson, PLLC is proud to announce that Lyman G. Lenker IV has joined the firm as an associate attorney. Lyman graduated from OSU with a Business Administration (Economics) degree, and from OU College of Law with his JD. Lyman has in fact spent his entire legal career at Miller & Johnson, having started as a law clerk after his first year of law school. He is now officially admitted to practice in all State and Federal courts in Oklahoma, and in the Tenth Circuit Court of Appeals.

Lamirand named to this year’s Forty Under 40 class

Crowe & Dunlevy attorney Jennifer N. Lamirand was recently recognized as a 2017 Forty Under 40 honoree by okc.BIZ, a publication of the Oklahoma Gazette. The award is bestowed upon exceptional individuals younger than 40 who have positively impacted the greater Oklahoma area, including improving business practices, advancing education and raising the bar for civic endeavors.

Lamirand is a member of Crowe & Dunlevy’s Indian Law & Gaming, Securities Litigation and Litigation & Trial Practice Groups in the firm’s Oklahoma City office. She earned her Master of Laws degree from the London School of Economics and Political Science, her law degree from the University of Notre Dame Law School and a Bachelor of Arts in English from Oklahoma State University.

Lamirand has served as an assistant attorney general or general counsel for several tribal nations in Oklahoma. She is a member of the Citizen Potawatomi Nation and serves as an associate justice on the Citizen Potawatomi Nation Supreme Court. She also currently acts as Secretary for the Oklahoma Bar Association Indian Law Section and serves on the board of directors for Oklahoma Shakespeare in the Park.

Each year the okc.BIZ Forty Under 40 program honors central Oklahoma achievers who are making a difference in their organizations and in their community. Honorees are selected by a panel of judges following a stringent application, review and board-led deliberation. This year’s class includes a diverse group of professionals from the public, private and nonprofit sectors. Recipients were honored at a private awards banquet Nov. 14.

OU College of Law Launches Center for Technology and Innovation in Practice

The University of Oklahoma College of Law is pleased to announce the launch of the OU Law Center for Technology and Innovation in Practice, formally bringing together and expanding the elements of the college’s groundbreaking Digital Initiative.

The new center encompasses the existing elements of the college’s Digital Initiative, which is built around three core elements:

- the common platform of the iPad, given to students at no cost;
- a digital training curriculum that educates OU Law students to use technology for productivity in law school and in practice; and
- the Inasmuch Foundation Collaborative Learning Center, a state-of-the-art space dedicated to connecting students to one another, and to the people and societies they will serve.

OU Law Center for Technology and Innovation in Practice also will include technology certifications and opportunities to explore new law practice technology:

- Students can earn certifications through the Legal Technology Core Competencies Certification Coalition (LTC4), a nonprofit that has established legal technology core competencies and certification that all law firms can use to measure ongoing efficiency improvements.
- In addition to training students on the use of current technologies, the center will investigate new and emerging technologies for use in the law school curriculum as well as in law practice. The center is exploring virtual, augmented and mixed reality use scenarios in law practice, as well as implementing artificial intelligence tools in legal research and document drafting.
- Future offerings through the center may include an incubation program, which could provide recent OU Law graduates with the foundational technologies, training and tools that all start-up law firms need to succeed in today’s legal market.

With the support of OU Law Associate Dean Darin Fox, Director of Technology Innovation Kenton Brice spearheads the center’s efforts in advancing OU Law’s offerings in the digital realm.

To learn more about OU Law’s Digital Initiative, visit law.ou.edu/digitalinitiative.

Book Review: By Geary L. Walke

Oklahoma’s Most Notorious Cases, Volume #2

By Kent Frates

Written by long-time Oklahoma City attorney, Kent Frates, this second volume still fulfills the promise of the title. It’s unfortunate that Oklahoma has so many notorious cases to report, but the fact is, it does. And, Kent Frates gives us an easy-to-read adventure of notorious criminal cases covering a century of statehood.

The selection of cases that made headlines across the country when they were actually happening is a great read for the diverse, blood chilling tapestry of crime. For anyone who enjoys the details of crime, criminal investigations and the legal proceedings dealing with the bad guys, you will not be disappointed. A full account of the personalities involved as well as the background for each story in order to put all of it into a very interesting context is presented by Mr. Frates as a fitting sequel to Volume #1 (see Book review in Briefcase November, 2014) by the same name.

The old cases from early statehood are woven together with the more recent cases in a welcome style. Most of you will recognize as “current events” stories about the pharmacist, Jerome Erslard, and the case of Dr. John Hamilton, convicted of murdering his wife – between surgeries. I’m old enough to recall all but the oldest cases. But, for us history buffs, the stories of the murder of an Ardmore millionaire in 1920 at the hands of his scorned mistress, and the death of outlaw-turned-lawman Bill Tilghman, prove perfectly edifying and satisfying.

And, it’s out just in time for Christmas for those who are still stuck on what to get for that hard to buy for lawyer you know.
Jerry Brown was awarded the 2017 LASO Pro Bono Award for an Oklahoma City Attorney at the LASO reception held during the OBA Annual Meeting.

Jerry Brown of Oklahoma City. Jerry received his B.A. from the University of Oklahoma. While in college, he served as an intern for the Hon. Wes Watkins, U.S. House of Representatives. Afterward, he received a J.D. from Oklahoma City University School of Law, where he graduated among the top one-fourth (¼) of his class. Jerry is a noted author on consumer bankruptcies and consumer-related law. Jerry began his volunteer service with LASO in 2009. He has continuously taken bankruptcy cases and co-counseled complicated bankruptcy cases with LASO advocates since that time. Jerry has never said "no" to a referral request from LASO.

Jerry assisted Mary, a low-income senior whose sole income was social security of less than $900 per month. Her mother passed away leaving her ill father alone. She left her job to be a caretaker for her father who passed away a few months later. Mary’s brother passed away shortly after their father. The circumstances she faced has rendered her financially unable to pay her credit card payment. When she received notification that she was being sued, she was referred to Mr. Brown who generously accepted her case, filed a bankruptcy and she was granted discharge early 2017. This is one story among many that Mr. Brown has helped over the years.

Kendra Coleman was awarded the 2017 OBA Award for Outstanding Pro Bono Service.

Ms. Coleman is a 1994 graduate of Star Spencer High School, where she was salutatorian of her graduating class. Subsequently, she attended Fort Valley State University on a full academic scholarship, earning a bachelor’s degree in accounting and later earning a MBA with an emphasis in marketing from the OCU Meinders School of Business and a J.D. from the OCU School of Law. Upon passing the Oklahoma Bar, she formed The Gill Law Firm PLLC, where she continues to practice primarily family, criminal and juvenile law. Ms. Coleman regularly participates in voter registration drives and voter education forums. She also participates in school career days, teaching kids how attorneys can make a positive impact on the community.

As a member of the Spencer community since she was a young girl, Ms. Coleman knew that Spencer needed legal help available in the community. Ms. Coleman partners with Legal Aid Services of Oklahoma and the Mary Mahoney Medical Clinic, to provide a walk-in legal clinic to the underserved of the Spencer community. The clinic is mainly designed for same-day brief legal advice, but Ms. Coleman often accepts pro bono cases for clients that need a higher level of assistance than a walk-in clinic can provide. She also calls upon other lawyers for assistance with some cases.

Recently, a grandmother came to the clinic seeking legal representation for the guardianship of her granddaughter. The granddaughter is autistic and there were also pending disability benefits hearings. The court cases were stalled until the grandmother could find representation; however, the grandmother’s only income is social security and she could not afford an attorney. Ms. Coleman was able advise the grandmother and find an attorney who was willing to successfully take on the guardianship and disability cases. The grandmother was so grateful that disability benefits were awarded and she is now able to afford her granddaughter’s autism medications.
On November 1st, Judge Kathryn Savage was sworn in as the newest Special Judge on the Oklahoma County bench. She has been assigned to retired Judge Roma McElwee’s former docket and courtroom on the sixth floor of the Oklahoma County Courthouse. After years of appearing in front of judges, it was time for her to preside on the other side of the bench.

Judge Savage grew up northeast of Tulsa in Collinsville, Oklahoma. After high school, she went to Oklahoma State University, earning a B.A. with a major in political science and a minor in economics. Like many aspiring lawyers, she knew early on that a legal education was something she wanted to pursue. In 2000, she graduated from Oklahoma City University School of Law. Her career then spanned from prosecution to civil litigation, and eventually to the Oklahoma Attorney General’s office.

She began her legal career in the Oklahoma County District Attorney’s office under Bob Macy. She worked in several divisions while an A.D.A. Judge Savage then moved to Tulsa and worked for a civil litigation firm for several years. From there, she spent some time in the Muskogee County District Attorney’s office. After getting married, she moved back to the Oklahoma City area and became a prosecutor for Pottawatomie County. From there she went to the Oklahoma Attorney General’s office, serving in the Multi-County Grand Jury unit.

Her move to the bench felt like a natural progression in an already accomplished career. Judge Savage describes the decision to move to the court as answering a calling, which she noted, “is not how I would normally describe a job. It really felt like a good fit. I can do something positive here.” Her goal while on the bench is to make the experience as positive as possible for litigants. As most attorneys know, when members of the public appear before a judge, it is not usually a good day. They are often unhappy, and even angry, to be there. She wants individuals to have “a positive experience with the legal justice system, because so many do not.” She explains that people often feel better just having an opportunity to tell their story. “I’m going to let them talk,” she said. “Let them get it all out. When they feel heard, you can see the difference, regardless of the ultimate outcome.”

When not working, Judge Savage loves to travel, especially to visit family and friends and for MLB and NFL games. She looks forward to an annual trip to Fort Walton, Fla. where she and her family visit relatives and relax together at the beach. Her favorite NFL team is the Pittsburg Steelers, and her favorite baseball team is the Chicago Cubs. She is also an L.A. Dodgers fan by marriage, certainly making this year’s MLB Championship extra interesting in her home.

Judge Savage advises new attorneys to have confidence and feel comfortable seeking feedback about courtroom presentation, demeanor, and professional skills from others, including opposing counsel and judges. She also advises that practicing attorneys should consider what judges look for and how they, as an attorney, can make a judge’s job easier. These informal mentoring opportunities can provide valuable insight to newer attorneys and many lawyers and judges are willing to provide it.

The Oklahoma County Bar Association welcomes Judge Savage to the bench.
Highlights of the 2017 OCBA Holiday Reception

Tim Bomhoff & Judge Tom Prince

Ashley Warshell & Randy Gordon

Jimmy Goodman, George Dahnke & Ben Butts

Coree Stevenson & Ken Stoner

David Cheek & Bob Nelson

Chanda Graham & Brad Davenport

Amber Martin & Randy Gordon

Billy Croll & Steve Barghols
It has now been just over six years since I donned my body armor for the last time and walked up the ramp of the C-130 for the ride that would start my last trip out of Iraq. The first leg of the journey was from Kirkuk in north Iraq, where I had spent two years of my life, to Baghdad and the American embassy.

Two days spent there for the first portion of our processing and then on to Ali Al Salem, the American Air base in Kuwait. I turned in my equipment and got the shuttle off base to the hotel in Kuwait City. For the first time in months, I did not have to worry about incoming rocket fire or IEDs. A six hour wait at the hotel, in a room reserved by the State Department, and I was on my way to the commercial airport for the midnight flight back to the USA.

It was a strange feeling to arrive at Will Rogers Airport, after having been gone for so long. It was at least a month before I felt like I was home and relatively safe and two years before I stopped flinching at loud, unexpected noises. Of course, on the fourth of July fireworks were out of the question.

During the time period from 2003 until 2011, 4486 American military were killed in action. Over 32000 were wounded with many more coming home with PTSD, one of the reasons we average 22 veterans committing suicide every day. It was at least a month before I felt like I was home and relatively safe and two years before I stopped flinching at loud, unexpected noises.

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As of December 31, 2011 there were no more American troops in Iraq, in accordance with the bilateral agreement signed by President G.W. Bush in 2008. After the departure of American troops, the security and stability of the country deteriorated quickly. ISIS troops, primarily Sunnis, who numbered only a few thousand overran Mosul, Iraq’s second largest city, and took control of the central bank and the money on deposit there. The numbers of ISIS immediately swelled to some forty thousand as they took control of much of the northern area of Iraq.

From Mosul, ISIS spread across Iraq as the Iraqi army threw down their weapons and fled. The absolute barbaric behavior was without comparison to any other modern day event. People were butchered, homes destroyed and lives shattered. Thousands of people fled. Many were captured, young men were executed and young women were sold into slavery.

American advisors are once again present. ISIS is losing their strong hold and will eventually disappear back into the cover of the communities. The Shia government centered in Baghdad has established themselves as the power in the country by taking control of the northern areas of Iraq. In a country that has seen struggles for thousands of years; the end is not in sight.

While the political and tribal struggles go on, every American who served in Iraq also has their individual struggles. Three of the men I served with came home in a body bag. At least one more committed suicide after his return. For me, the Iraq war and continuous to be very personal. My closest friend and one of my interpreters was a man named Mohammed Ibrahim, nicknamed Tim by the American soldiers, was captured and executed in November of 2016. The highest ranking NCO as well as the commanders of two Iraq brigades, who I worked with, was murdered. Abu Sadaam, the head of the Hawija District Council and his driver were recently gunned down in a Chicago style gangland slaying. Anyone who cooperated with the Americans was on a hit list and after ISIS took control they either fled the country or were executed. Anyone who was friends with the Americans paid a very high price for that friendship.

Several of my friends were fortunate enough to be allowed to immigrate to the United States and, despite the culture shock of the differences, are adapting and living safe and productive lives.

While history will one day make a ruling on the wisdom of the United States invading Iraq, one thing I know for certain. The men and women of the United States, who served in that endeavor, both military and civilian, stand by their personal efforts. We believed that we were making life better for the people we met. The men and women who were the ordinary Iraqi citizens were happy to have us there and disappointed when we left.
MARY BETH from PAGE 1

fresh fruit and vegetables during the growing season and canned food after that. She sold what we didn’t need ourselves. Of course, we had hens running around the farmyard, producing daily eggs to eat and to sell. And, there was Mary Beth.

We had pigs. A couple of sows seemed to be constantly nursing piglets, and dad would sell them young to other farmers and grown to the packing house. All but Mary Beth. She was a cute scrappy runt who didn’t grow the way she should have, so she wouldn’t bring enough at sale to bother with. She became my pet pig. She followed me around the farmyard and into the fields like a dog. We were inseparable for months. I named her Mary Beth because that was my sister’s name, and I pointed out their visual similarities to my sister every chance I got.

But I knew farm life, and I knew in my heart of hearts that it couldn’t last.

Sure enough, in November dad took me aside. “Son,” he said, “you know that Mary Beth is not a pet. She’s livestock. You know that we can’t afford to have a pet pig. You know that, don’t you?” Yes, I knew that. I didn’t want to think about it, though.

As Christmas approached, I came to realize that Mary Beth, who didn’t have enough meat on her legs for ham, did have just the right amount for a pork roast Christmas dinner. Mom and dad never actually told me what was going to happen to Mary Beth, but they made it a point to talk about it with each other in hushed voices where I could overhear. It was going to be a terrible Christmas. But dad told me I was a man now and had to buck up and talk about it with each other in hushed voices where I could overhear.

Finally, on Christmas Eve, dad told me he wanted me to go check the north fence to see if a fence post was down. But I went anyway. I ran as hard as I could. I knew there wasn’t a fence post down. I could just see the bad coming Christmas day.

In our family, we three kids always got the same three presents at Christmas: both of us boys got new jeans from Sears and Roebuck, and mom made my sister a new dress. Each of us got three apples and an orange, and we each got a toy, also from the catalogue. On this Christmas we all got the clothes and the fruit, and Roy got a two-level filling station with cars. Mrs. Beth—my sister, that—is—got a doll house with furniture and all. I was hoping for a baseball mitt. But all I got was a yo-yo. A measly yo-yo.

When I looked at mom, disappointment written all over my face, she just smiled sadly and said, “You’re the oldest.” That was all. I was the oldest. I had lost so much, and now all I got was a yo-yo. And then came the moment I couldn’t stand. It was time for Christmas dinner. I wanted to run away, but I couldn’t. I had to sit there and take it. When I got to the table, it was groaning with food. Our food, from our farm. But something was missing. The main course. Mary Beth. Dad said the prayer and then nodded to mom to go get “the meat.” I stared at the floor as I heard her come back in the room. My brother and sister had tears in their eyes, too. Mom put the huge platter in the middle of the table, and finally, with all of my will, I lifted my eyes to Mary Beth.

Except the roast was too big to be Mary Beth. My mouth flew open but I couldn’t talk. I stared at dad. “Charley McKinney had a heifer that was doing poorly,” he said, talking about the farmer to the east of us. I think he might have said something else, but I didn’t hear it. I was flying out of the house, racing to the barn. And there, in her stall, was my Mary Beth, calmly eating an enormous red ribbon that mom had tied around her neck.

The greatest Christmas present in all of the world ever!
Who heads the CFPB?

by Miles Pringle

The Consumer Financial Protection Bureau (“CFPB”) made news recently when, on November 27, 2017, two persons showed up at the Consumer Financial Protection Bureau claiming to be its Acting Director. This was a result of the former CFPB Director, Richard Cordray, appointing his chief of staff, Leandra English, to serve as Deputy Director of the CFPB, and resigning his post on the same day to run for Governor of Ohio (November 24, 2017). It was Mr. Cordray’s explicit intent for Deputy Director English to serve as Acting Director of the CFPB, until his successor was approved by the Senate. On that same day, President Trump designated John Michael (“Mick”) Mulvaney, Director of the Office of Management and Budget, to serve as Acting Director of the CFPB. Subsequently, Deputy Director English sued for declaratory judgement that she is the Acting Director, and not Director Mulvaney.

As background, Article II of the Constitution requires that the President obtain Senate approval prior to appointing certain officers of the United States. 5 U.S.C. § 3341 (a)(2). If the FVRA does not apply, then President Trump cannot appoint anyone.

This past week, I returned home after spending four very fun days at the Annual Meeting of DRI — The Voice of the Defense Bar in December 2015, and a career government lawyer (primarily Department of Justice, and case law all point to the conclusion that the President may use the Vacancies Reform Act to designate an acting official, even when there is a succession statute under which another official may serve as acting.”

Another interesting aspect of the CFPB, as noted in a previous article, is that in 2016 the D.C. Circuit Court of Appeals ruled that the CFPB was “unconstitutionally structured” because the Director could only be removed for cause, as opposed to at will by the President. See PHH Corp. v. CFPB, 839 F.3d 1, 816 F.3d 550, 556 (9th Cir. 2016) (“neither the FVRA nor the [National Labor Relations Act] is the exclusive means of appointing an Acting General Counsel of the NLRB. Thus, the President is permitted to elect between these two statutory alternatives to designate an Acting General Counsel.”)

As we do not want the responsibilities of such offices to go unperformed due to vacancies (or the President and Senate may not promptly agree on a replacement…), Congress provided that the President may direct certain officials to temporarily carry out the duties without Senate confirmation. Id; citing the Federal Vacancies Reform Act of 1998 (“FVRA”). “The general rule is that the first assistant to a vacant office shall become the acting officer. The President may override that default rule by directing either a person serving in a different [Senate approved] office or a senior employee within the relevant agency to become the acting officer instead.” Id.

At the heart of this dispute is a question of statutory interpretation. The CFPB’s enabling statute, the Dodd-Frank Act, provides that the Deputy Director, who is appointed by the Director, shall “serve as acting Director in the absence or unavailability of the Director.” 12 USC § 5491(b)(5). Deputy Director English, and several drafters of the Dodd-Frank Act, assert that “absence or unavailability” includes a Director’s resignation. The President, on the other hand argues that FVRA applies, under which he has the authority to name the Acting Director.

In her Complaint, Deputy Director English argues that the FVRA is a gap filler statute, and that Dodd-Frank is a “later- enacted, more specific, and mandatory text.” The Complaint also points to earlier versions of the Dodd-Frank Act that incorporated the FVRA, but was removed and replaced by in the final bill. Deputy Director English’s pleadings additionally argues that even if the President does have the authority to appoint an acting director, naming Director Mulvaney is an abuse of that discretion because he will not resign as OMB Director, an office that serves at the pleasure of the President, thereby undermining the CFPB’s statutorily mandated independence. 1

Citing a Ninth Circuit Opinion (and several government memoranda), the attorneys for the government argue that Dodd-Frank is not the exclusive authority on this issue. Rather, the President may choose between Dodd-Frank or the FVRA. See Hooks ex rel. NLRB v. Kitap Tenant Support Servs., 816 F.3d 550, 556 (9th Cir. 2016) (“neither the FVRA nor the [National Labor Relations Act] is the exclusive means of appointing an Acting General Counsel of the NLRB. Thus, the President is permitted to elect between these two statutory alternatives to designate an Acting General Counsel.”)

Deputy Director English addresses the Hooks opinion by stating that the existence of one statute’s compatibility with the FVRA does not mean that it “will always be an available alternative.” Both statutes at issue in Hooks provided the President with authority to appoint an acting officer, whereas Dodd-Frank provides no authority to the President to appoint an acting director. Thus, “[w]here two statutes provide a mechanism by which the same person (i.e., the President) may fill the same vacancy (the vacancy left by the General Counsel), it makes sense that the President is permitted to elect between these two statutory alternatives… in contrast, the statute governing the position of Acting Director does not empower the President or someone he controls to fill the vacancy; it instead provides for the automatic succession of the Deputy Director to the position of Acting Director.”

The General Counsel for the CFPB has sided with the President and Director Mulvaney. Mary McCloud, hired in December 2015, and a career government lawyer (primarily Department of the Department of State), wrote a letter on November 25th

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1 This argument is moot because If the FVRA applies, then Deputy Director Mulvaney is specifically allowed to be appointed as “a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate.” 5 U.S.C. § 3345 (a)(2). If the FVRA does not apply, then President Trump cannot appoint anyone.

Trimble: Is there a ‘ROI’ for young lawyers’ bar association involvement?

This past week, I returned home after spending four very fun days at the Annual Meeting of DRI — The Voice of the Defense Bar in Chicago. Like every international bar association annual meeting, this was a homecoming, a family reunion, a party and a business meeting. It was exhausting and exhilarating. It had education and networking and was a nonstop parade of interesting speakers on every topic in the law and politics. It was food and drink and merriment with old friends and many, many new ones. It was something that I wish every lawyer could experience.

Several times during the meeting, I met young lawyers from firms of all sizes and all parts of the world and the country. As I talked to these excited young lawyers, I heard one theme that was constantly repeated. To a person, they told me that attending the annual meeting was a “touch-off.” They said that their firms were expecting them to come back and present evidence that there was “return on investment” for the time and cost of sending them to Chicago for a few days. They weren’t sure what they would be able to tell their supervisors, and they weren’t sure if they could come back next year unless they had a return on investment this year. I was saddened and concerned by this news, but not terribly surprised. We live in a time when lawyers today no longer have the time or the relationships take at least 10 “touch-offs” before a relationship will turn into business. It is not realistic to expect that a young lawyer will attend an event or bar meeting and come back with a new case or a new client. Does it happen? Yes. Is it the norm? No. Despite the lack of monetary return on investment, young lawyers and their law firms gain huge returns on intangible benefits. Bar association involvement allows young lawyers to learn about their profession and to hear firsthand about the issues that other lawyers and firms may have. Through bar association meetings, young lawyers begin the process of gaining subject matter competence and reputation. If they are persistent, they get to speak, they get to write, and they get direct contact with clients and other lawyers with similar substantive background. They gain confidence in networking, and they realize that our profession is far more than sitting behind a desk grinding. Above all else, they make friends who will grow up with them and become their network of referrals at a later age.

My pitch to partners who are reading this is shrewdly outlining the issues. The letter acknowledges, “there is a debatable question as to whether the phrase ‘absence or unavailability’ is broad enough to provide authority for the Deputy Director to serve as Acting Director in the situation of a vacancy created by a resignation. On the one hand, it could be argued that a vacancy—as opposed to a temporary absence or other unavailability—does not qualify as an ‘absence or unavailability’… On the other hand, the common meaning of ‘unavailability’ arguably encompasses vacancies. ‘Unavailable’ means ‘not available’, i.e. not [qualified and willing to serve.”

Ms. McCcloud concluded that “the statutory language, legislative history, precedent from the Office of Legal Counsel at the Department of Justice, and case law all point to the conclusion that the President may use the Vacancies Reform Act to designate an acting official, even when there is a succession statute under which another official may serve as acting.”

Another interesting aspect of the CFPB, as noted in a previous article, is that in 2016 the D.C. Circuit Court of Appeals ruled that the CFPB was “unconstitutionally structured” because the Director could only be removed for cause, as opposed to at will by the President. See PHH Corp. v. CFPB, 839 F.3d 1, 816 F.3d (D.C. Cir. 2016), reh’g en banc granted, order vacated, (Feb. 16, 2017). While the Court has yet to rule following rehearing, it originally called the CFPB and similar agencies “a headless fourth branch of the U.S. Government” with significant powers over U.S. citizens. As such, the Court opined that independent agencies must be headed by multi-member commissions or be accountable to the President. While the Judge (Hon. Timothy Kelly, recently confirmed in September by a 94-2 vote) has reasons to rule for either party, the idea of an unelected official being able to appoint his successor at such a large agency, intermittently or not, may not sit well with him.

Endnotes

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Scott Rowland Interview
by Jeff Massey

Scott Rowland was selected by Gov. Mary Fallin to succeed the retiring Arlene Joplin at the Oklahoma Court of Criminal Appeals. Before departing his office as First Assistant in the Oklahoma County District Attorney’s Office, I interviewed Scott.

JM: Tell us about your education and home life growing up.
SR: My dad was in corporate America and we lived in the Dallas area. I was one of 5 kids and had a normal childhood. My mother’s brother lived in Wynnewood, where he ran a restaurant. We would travel up from the Dallas area often to visit them and the rest of the family. Then in 1972, my dad abruptly moved us to Wynnewood, where my dad took over my uncle’s small, fast-food-style restaurant. We only served lunch and dinner. My dad had a strong work ethic and I learned how to busiest, wash, and cook. I’m still a good short order cook.

JM: Did you enjoy small-town middle America?
SR: I had the typical experiences of most kids growing up in the 70’s in Oklahoma. I graduated from Wynnewood High School in 1983. My mother’s brother lived in Wynnewood, where I majored in journalism and political science. I was one of the youngest members of the Capital Press Corps. When I left the capital coverage, then-Governor Bellman issued a proclamation for “Scott Rowland Day” across the State. I have subsequently determined it is neither a recurring annual event, nor a paid State holiday.

SR: I was at a play, “The Jungle Book,” and I took David’s call. When he asked me to be his First Assistant, and I told him where I was and that I would call him back. My initial reaction was gratitude at being considered, but to decline. But the more I sat there watching that play with my wife and daughter, I thought that I could make a difference by partnering with David.

JM: What advice would you give to lawyers that they could hang on their walls?
SR: “You must be measured in your judgments; but be resolute in them as well” or, “do not be afraid of making the wrong or right decisions. Be determined to make a decision.”

JM: What about advice to litigating lawyers?
SR: Be an expert on the Evidence Code. Young lawyers can get lost in the maze of courthouse routine, and poor trial skills will result from inadequate preparation. Become an expert on some section of the Evidence Code.

For more experienced lawyers, they should write, study and apply the law energetically. Young lawyers learn from old lawyers, and old lawyers should be sharp in their skills for emulation. Enjoy the practice of law. It is an inexact art. It is not all advocacy and confrontation. Separate yourself from your advocacy role before you go home.

EM: What is something about you that has not been asked in an interview?
SR: I learned to fly a plane before I could legally drive! I was 15 and all the kids were getting those small engine motorcycles. My dad did want my twin brother and I to get killed on those bikes, so he bought us flying lessons instead. My instructor and I had just landed after several weeks of lessons, and he hopped out and explained how to solo in that Cessna 152. I just did exactly what he taught me, and away I went. I was not concerned about anything other than damage control as I looped the field. In my mind, I kept thinking, “I’m close enough to the ground that I can keep it straight-on for any controlled crash.” I landed perfectly and they cut the back out of my shirt. I presume it’s still on the wall down at the airfield somewheres.

JM: What were your early legal steps after graduating from OU College of Law?
SR: I worked for the Oklahoma Bureau of Narcotics from 1989 to 1994. Drew Edmondson hired me, and I worked extensively in the Wiretaps Section. Later, I became Chief Legal Counsel, until David [Prater] asked me to come to the D.A.’s office. One of my first cases to try was with [now judge] Lisa Hammond. At the time, I was cross-designated with both OBN and the OCDAs. We worked several cases together and that is how I met David [Prater].

JM: How did David Prater approach you about being First Assistant at the Oklahoma County D.A.’s Office?
SR: I am not sure if it was a play, “The Jungle Book,” and I took David’s call. When he asked me to be his First Assistant, and I told him where I was and that I would call him back. My initial reaction was gratitude at being considered, but to decline. But the more I sat there watching that play with my wife and daughter, I thought that I could make a difference by partnering with David.

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Evictions have immediate and long-lasting consequences. A judgment of eviction remains on a credit report for seven years, seriously impacts credit scores, and many landlords are unwilling to rent to individuals who have previously been evicted. Finding housing after eviction often requires families to sacrifice other basic human needs like food, clothing or health care and results in loss of stable connections to community and school, lost wages, job loss and homelessness. These consequences weaken our communities and our economy and place vulnerable adults and children in dire and sometimes life-threatening circumstances.

Oklahoma County’s Forcible Entry and Detainer (FED) docket is held four days a week and between 50 and 100 cases are heard each day. Most defendants appearing at this docket are not prepared to present evidence and do not have knowledge of their procedural or substantive rights. Many defendants are not represented by counsel. Some defendants may have legitimate defenses to an FED action. Others could benefit from the skills of an attorney to mediate issues with their landlord and achieve an outcome beneficial to both parties. Legal Aid Services provides some assistance at the FED docket but the need for help normally exceeds legal aid’s capacity.

The Oklahoma City University School of Law began conversations with judges and administrators of the Oklahoma County District Court earlier this year with the goal of offering some assistance to unrepresented individuals at the FED docket. The Founders Fund of the Law School generously funded a grant to create the Oklahoma City University School of Law Pro Bono Eviction Assistance Program. This program will provide assistance to people facing eviction, give them accurate and timely information about their procedural and substantive rights, and help them mitigate the potentially devastating consequences of eviction. The program will serve citizens and non-citizens without regard to their income. Volunteer OCU law students will be trained to provide assistance to individuals at the FED docket and will be supervised by the program’s part-time attorney director.

OCU Law is currently searching for a part-time attorney director to run the program. The director must be a licensed attorney in the State of Oklahoma and have the expertise, experience and ability to train and supervise law students and volunteer attorneys and paralegals in the relevant law and procedures. The director will coordinate and manage a help desk prior to and during FED dockets in Oklahoma County. The director will be responsible for communicating with judges and court administrators to constantly improve the effectiveness of the program and respond to the needs of the court.

The director will provide information and legal assistance and, from time to time, legal representation to individuals and families receiving services from the program. Applicants interested in the director position are encouraged to apply online at http://ocuemployment.silkroad.com/

Work performed by OCU law students in the Pro Bono Eviction Assistance Program represents a portion of the more than 20,000 hours of pro-bono and volunteer hours completed by OCU law students each year. Several OCU law students are also serving on the newly-formed Oklahoma City task force affiliated with the American Bar Association’s Commission on Homelessness and Poverty. These and other initiatives provide students with an opportunity to give back to the community while simultaneously learning essential legal skills.

The University of Oklahoma College of Law honored Gregory L. Mahaffey, shareholder and president of the Oklahoma City law firm Mahaffey & Gore, P.C., with the Eugene Kuntz Award at the Oklahoma Oil and Gas Reception Nov. 16. The award, and an award for Oklahoma’s many contributions to the energy industry and to oil and gas law in particular.

“Our weekly to honor Gregory Mahaffey with this year’s Kuntz Award,” said OU Law Dean Joseph Harroz Jr. “For nearly 40 years, he has worked diligently to advance oil and gas law in Oklahoma. His contributions to the legal field render him truly deserving of an honor worthy of the great Eugene Kuntz.”

The Eugene Kuntz Award is named for former OU Law dean and renowned oil and gas professor Eugene Kuntz. The award is presented annually in conjunction with the Eugene Kuntz Conference on Natural Resources Law and Policy, the largest conference in the nation focusing on oil and gas law. The conference, which was held Friday, Nov. 17, was hosted by OU Law and the Oklahoma Bar Association’s Energy and Natural Resources Law Section.

Mahaffey co-founded Mahaffey & Gore, P.C. in 1980. He concentrated his law practice on Oklahoma Corporation Commission matters and oil and gas litigation. He is past president of the Oklahoma City Mineral Lawyers Society, and he has presented papers and lectures to various bar associations and oil and gas landman associations in Oklahoma, Texas and Arkansas.

Mahaffey has appeared before most of Oklahoma’s district courts, all of the federal district courts in Oklahoma, and the 10th Circuit and 5th Circuit U.S. Courts of Appeals. He has also tried cases in Kansas, Texas, Arkansas and Mississippi. Mahaffey earned his bachelor’s degree in industrial engineering from Texas Tech University and his juris doctorate from the University of Oklahoma.

OU College of Law to honor prominent oil and gas lawyer with prestigious Kuntz Award

By David W. Kisner*

For many years there has been a story told around the courthouse about a lawyer who got a judgement against a witness at a Bench trial. I know it’s a true story, because I was that lawyer. That is a different story for a different time.

My first jury trial was in either 1968 or 1969, my first year as a baby lawyer. I worked for an older lawyer who was well known by the insurance adjusters for accepting virtually any offer, no matter how small. The adjusters would often pick a small amount that they thought it would take to settle the case and send a check for that amount to my boss without bothering to negotiate.

The client was a lady from Lawton who had been run over by a Coca-Cola truck. I do not remember of the exact nature of the injuries, but they were only soft-tissue injuries as best I can remember, and the medical bills were small. The insurance adjuster sent my boss a check for $800.00, who then called the client, had her drive to Oklahoma City from Lawton and tell her that the case was settled. When she go to Oklahoma City he told her that he had settled the case for $800.00, but she refused to sign the release and fired him on the spot.

This is where I got involved. My boss then talked the client into giving him another chance to get more money. He told her he had just hired a “jury expert” to try cases and called me into his office to meet the client. When he looked in my direction and said “jury expert” I looked behind me to see who this jury expert was, who must have followed me into the room. When I looked behind me there was no one there, which is when I realized that I was the “jury expert” he was referring to.

Prior to trial the opposing counsel, Ben Goff, now long deceased, invited me to his office to view some film he had secretly made showing the Plaintiff bending over, hanging laundry, unloading groceries from her car and other chores using her “bad back.” I was very intimidated and thought surely that I had a loser, but could see no way out of trying this case to a jury.

Well, I drove to Lawton for my first jury trial experience before Judge Toby Morris, the kindest man I have ever met. I told him how inexperienced I was, that I had never before even seen a jury, much less picked one, but he assured me that everything would be fine. To illustrate how long ago this was, the doctor who was my witness, charged $25 to personally appear at trial to testify. After a day of trial the jury came back with a $1,000.00 Plaintiffs’ verdict. I floated back to Oklahoma City thinking, “Is this all there is to trying a jury case?”

*Mr. Kisner is in the middle of his 50th year in the private practice of law.
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and physically abusive toward both defendant and the children, all of which created such family discord as to cause defendant and the children to leave home.

Following birth of the youngest child, defendant underwent a period of emotional instability for which she sought psychiatric treatment. This illness, coupled with defendant’s lack of understanding and conflict with defendant’s parents, provided plaintiff’s principal complaint concerning the family situation. In September, 1963, defendant underwent major surgery. After recovery and subsequent medical advice she became able to understand and was willing to accept the marital relationship and responsibilities.

About a year prior to this action defendant filed a divorce suit which was abandoned after the parties effected a reconciliation. Apparently, however, the breach had not been fully repaired and family discord continued. In March, 1964, defendant took the children and moved to her parents’ home in Bethany, Oklahoma. The children were enrolled in the local schools, and were doing well at the time the trial court entered the decree now on appeal.

The trial court found defendant’s conduct had destroyed the purpose of the marriage, and awarded plaintiff a divorce and full custody of the children. The decree made no finding as to defendant’s unfitness, and neither mentioned nor determined any issue presented by cross-petition. After the case was at issue this Court sua sponte ordered the matter set down for oral argument. At that time the Court learned that, because of the exigencies of his work, plaintiff voluntarily had returned custody of the children to defendant and regularly contributed to their care and support. Under these circumstances we will affirm this agreement by modifying the trial court’s finding as to custody, and grant custody of the children to defendant, subject to reasonable visitation rights of plaintiff. Upon this basis it is unnecessary to consider questions arising relative to admission and exclusion of evidence at the trial relative to fitness of either party to have custody of the children.

The evidence relative to value of various items of the jointly acquired property was not fully definitive in some instances, the trial court’s findings being based principally upon plaintiff’s testimony. The Court found that other instances property values were fixed arbitrarily, or without evidence to support valuations which were included in the total joint estate to be divided. The finding as to the parties’ indebtedness included items not supported by any evidence. Additionally, although defendant was forced to employ counsel to defend the action, the court denied the prayer for an allowance of attorney’s fee.

In cases such as this settled principles govern disposition of the matter. Where the evidence in a divorce action is conflicting as to the facts and fault of the parties and there is any evidence sufficient to sustain the granting of divorce the decree will not be disturbed. . . . Although evidence as to fault was conflicting, the trial court’s finding that plaintiff should be granted divorce by reason of incompatibility is supported by some evidence and therefore is affirmed.

Defendant’s cross-petition asked divorce upon grounds of extreme cruelty. There was evidence in support of the matters alleged bearing upon plaintiff’s course of conduct toward defendant and the children. There was corroborative evidence of such matters. This evidence was sufficient to support a decree of divorce upon the grounds of extreme cruelty. 12 O.S. 1961 § 127 (cruelty) prohibited a party from making any finding upon the cross-petition, we render the judgment that should have been entered. The trial court’s judgment accordingly is corrected by granting of divorce to both parties.

December 8, 1992
Twenty-Five Years Ago

[Excerpted from Reinstatement of Katz, Matter of, 1992 OK 161, 847 P.2d 1385, 63 OBJ 3645.]

On June 26, 1986, the applicant, Scott William Katz, was disbarred from the Florida State Bar for three years. On August 13, 1986, the Florida Supreme Court issued an order of disbarment for three years. The record does not show whether the second disbarment was imposed concurrently with the first. Also the record does not show Katz’ current standing with the Florida State Bar.

In the Florida Supreme Court’s order of disbarment, it agreed with the referee’s findings that:

1. In Count I, [Katz] must be presumed to have divulged secrets of his client’s to the client’s adversary.
2. In Count II, he outrageously and successfully pressured his client to wrongfully refuse to pay him money when his client had no legal obligation to do so. Certainly moral extortion if nothing else.
3. He deliberately lied under oath to a Federal Judge who relied upon such falsehood in issuing the order. . . .
4. Based on the Florida disbarment proceedings, disbarment proceedings were initiated in Oklahoma. After this Court issued a show cause order to which Katz failed to timely respond, an order issued on August 13, 1986, disbarring the applicant from the practice of law and ordering his name be struck from the roll of attorneys in Oklahoma.

On July 29, 1988, Katz filed a petition for reinstatement with this Court. On September 20, 1989, this Court issued an order dismissing the petition. The order cited rule 11.1(e) of the Rules Governing Disciplinary Proceedings, Okla. Stat. tit. 5, ch. 1, app. 1-A (1981), and stated that the evidence as to defendant’s unfitness for reinstatement shall not be permitted within five (5) years following the effective date of the disbarment order.

On April 16, 1990, Katz asked the Oklahoma Bar Association (OBA) to ascertain the date upon which he could apply for reinstatement. The OBA responded that Katz would not be eligible for reinstatement until February 19, 1992, and quoted rule 11.1(e) in the response.

On June 10, 1991, Katz requested that the OBA send him the forms for reinstatement. The OBA once again responded that he would not be eligible to apply for reinstatement before February 19, 1992.

Even after this Court’s order dismissing his petition for reinstatement and two letters from the OBA, Katz submitted another petition for reinstatement on December 23, 1991. He stated under case law he could file the petition before February 19, 1992. Katz has continually repeated this argument. However, he has yet to cite any supporting authority.

On February 24, 1992, this Court issued an order. . . .
The unauthorized practice of law
finding that this conduct constituted
we find it unnecessary to make a
since his disbarment. Like the PRT,
interests in at least sixteen lawsuits
has represented himself and his own
Katz testified that he had not
"practicing law while disbarred."
Katz was disbarred, he was arrested
Proceedings. During the period that
the Rules Governing Disciplinary
failed to comply with rule 11.1 of
practice of law because he had
had engaged in the unauthorized
Katz has not shown by clear and
convincing evidence that he has
The PRT found that it was
unnecessary to determine if Katz
had engaged in the unauthorized
practice of law because he had failed
to comply with rule 11.1 of the
Rules Governing Disciplinary
Proceedings. During the period that
Katz was disbarred, he was arrested
and pled no contest to a charge of
“practicing law while disbarred.”
Katz testified that he had not
engaged in the unauthorized practice
of law during his disbarment. Katz
has represented himself and his own
interests in at least sixteen lawsuits
since his disbarment. Like the PRT,
we find it unnecessary to make a
finding that this conduct constituted
the unauthorized practice of law
because Katz did not comply with
the Rules Governing Disciplinary
Proceedings by demonstrating by
clear and convincing evidence that
he had not engaged in the
unauthorized practice of law.
Rule 11.1 requires that an
applicant for reinstatement submit
"affidavits of the court clerks in
the several counties in which he
has resided, establishing that the
applicant has not practiced law
in their respective courts" during
the disbarment. Katz submitted an
affidavit from a court clerk in
Arkansas. However, although Katz
has resided in Palm Beach County,
Florida, he has not submitted an
affidavit from that county’s court
clerk. In fact, that court clerk
refused to sign such an affidavit.
No other evidence was presented
to show that Katz had not engaged
in the unauthorized practice of law
during his disbarment. Therefore,
Katz has not shown by clear and
convincing evidence that he has
not engaged in the unauthorized
practice of law during the relevant
time period.
The PRT also found that Katz
had not maintained the necessary
knowledge and competence to
practice law. This finding is used
to determine whether an applicant
must take the bar examination after
it has been determined that he
possesses the necessary standards
for readmission. Therefore, we need
not address this factor.
In addition to the factors
considered by the PRT, this Court
will consider the following in
determining whether an applicant
should be reinstated:
the petitioner’s
demonstrated consciousness of
the wrongful conduct and
disrepute which the conduct
has brought to the profession,
[2] the extent of petitioner’s
rehabilitation,
[3] the seriousness of the original
misconduct, [4] conduct
subsequent to discipline, [5] the
time which has elapsed since
the original discipline,
and [6] the Petitioner’s
character, maturity, and
experience at the time of
disbarment.
The seriousness of the original
misconduct and the time which
has elapsed since Katz’ disbarment
were discussed above. There was
no evidence presented as to Katz’
character, maturity, and experience
at the time of disbarment.
Katz did not present any evidence
that he regretted his misconduct.
The evidence is to the contrary. The
Florida Supreme Court’s order of
disbarment shows that he attempted
to justify his conduct and that he
felt that he had done nothing wrong.
The evidence of the extent of
petitioner’s rehabilitation, or in
this case, lack thereof, and Katz’s
conduct subsequent to discipline are
intertwined and will be discussed
together. Katz filed several petitions
for reinstatement prematurely. At
least one of which was filed after
the Court issued an order stating
that an application could not be
filed until five years had lapsed
after the disbarment.
Since his disbarment, Katz
has been held in contempt on several
occasions. By his own admission,
he willfully violated an order of a
federal bankruptcy judge because he
did not consider him a judge.
Katz was sanctioned under rule
11 of the Federal Rules of Civil
Procedure for filing a meritless
motion filled with "scandalous,
libelous, and impertinent matters.”
1284, 1287-88 (W.D.Ark. 1990). In
addition, rather than appealing the
adverse ruling, Katz has instead
sued the judge making the ruling.
He sued the chief of police who arrested
him for trespassing on property a
court had ordered Katz to not go on.
These acts show that he has not been
rehabilitated and continues to show
disrespect for the legal system and
the courts.
It is this Court’s finding that
the applicant, Scott William Katz,
does not possess the necessary
qualifications to be reinstated to
the practice of law in Oklahoma.
Therefore, the Petition for
Reinstatement is denied.
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