LEGAL ADVICE TO THE THUNDER: DON’T TRADE RUSSELL

By Miles Pringle

Like many over the 4th of July weekend, I was saddened to hear the news that Kevin Durant decided to move on from Oklahoma City. As a native son, having a worldwide superstar wear my city’s name across his jersey was inspiring and surreal. I’m not sure I fully appreciated the magnitude of his presence. We all could see how fantastic a player and person KD is, but I think we will appreciate him more now that he is gone. Sometimes distance makes the heart grow fonder.

His departure comes during a turbulent time for Oklahoma City. After years of sustained economic growth, the drop in oil prices has cost people jobs and slashed state funding in our most precious investments like our schools. City leaders have been struck down before their time, and earthquakes shake Oklahomans to their core. It would have been fun if Durant had stayed in Oklahoma City his whole career. It could have been a great story, or at least a fun distraction.

Regardless, Kevin doesn’t owe Oklahoma City anything. We both received a great deal from the relationship. I thank Kevin for his time here, and wish him luck in the future, albeit not against the Thunder. Quite frankly, if the Thunder miss the playoffs next year, but sweep Golden State, I will consider it a very successful season (I guess I’m not completely magnanimous).

Lucky for us there is another superstar wearing our name across his jersey: Russell Westbrook. Immediately following Durant’s decision, NBA talking heads began speculating on whether the Thunder should trade Russell. The reasoning they espouse is that the Thunder cannot let Russell walk after getting nothing for KD.

There are several problems with this logic. First, Kevin Durant is gone. Management should look at this team as it is, not as it

See THUNDER, PAGE 15

Back to School Bash for Family Junction Youth Shelter – July 19

We are on the downside from the 4th of July festivities and now it’s time to start planning for back-to-school! OKC Public Schools begin on August 1 and the teenagers at Family Junction need some help to get ready. This event sponsored by the Community Service Committee provides school supplies for 14 teenagers, ages 12 through 17. School supplies or cash donations are needed and should be brought to the OCBA office by July 18. Thanks for your generosity!

Members of the Community Service Committee entertained residents of the Edwards Redeemer Nursing Home along with the Elderly Brothers band.

OCBA Thunder Up was a huge success with lots of great Thunder gear going to the Juvenile Justice Center.
From the President

By Angela Ailles Bahm

Happy belated Fourth of July! I hope you had a long weekend full of family, friends, food and fireworks! As we bask in the celebration of our great country, I am taking note of what has just happened in the United Kingdom (UK) and their decision to leave the European Union (the EU).

I am an avid BBC listener. It’s on my car radio as I drive to work and during the day. I had a good idea of what was happening and what both sides were saying. It also just happened that my family and I took a vacation to Europe which included some time in London right before the vote. I was certain that the UK would stay with the EU. Aye was I wrong.

(As a side note. We were able to watch part of a debate the UK staged a couple of nights before the vote. FOUR of the debaters representing the two factions were women, two were men. Just sayin’...)

What saddens me greatly is what we’re hearing afterward: that the second most Googled question in the UK after the vote was “what is the EU”; and that it seems to have happened in the UK. But, let us not make the same mistake which seems to have happened in the UK and cast votes based on a lack of even basic information. Make sure you are informed and help to inform others.

Let us remember that the Fourth of July is a celebration of our independence, and our right to vote! One can at least say the citizens of the UK were engaged; 71.8% of the voting population voted in the referendum. Compare that to the last presidential vote in the US when the turn-out of eligible citizens was a dismal 58.2%. Oklahoma is no better; in fact, worse. For the 2012 presidential race, the percentage of Oklahoman’s who showed up to vote was 52.4%. The voter turnout for the last gubernatorial election in 2014 was a whopping 40.7%. Regardless of what party, please make sure you are active and vocal in getting folks to the polls. I keep hearing that some Republicans because of the polarization brought about by the Trump campaign, won’t even vote!

My hope is that this is not a repeat of the Bush/Gore election with the result hanging on a chad.

One of the other things we did during our European vacation was to visit the Dachau concentration camp in Germany. My daughter asked why the camp was kept when it was such a horrendous reminder of man’s inhumility to man, and my answer was, for that very reason. Not to put too sharp a point on all of this, but we must make sure we learn from history. Thank goodness people had the good sense to foresee that it must be kept as a reminder.

When considering your choices; when you talk about this election, and the issues at stake; when you vote, consider history. And consider this quote from James Madison:

As the cool and deliberate sense of the community ought in all governments, and actually will in all free governments ultimately prevail over the views of its rulers; so there are particular moments in public affairs, when the people stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will after wards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow mediated by the people against themselves, until reason, justice and truth, can regain their authority over the public mind?

I hope you’ll be that “temperate and respectable body of citizens.” One of the ways your County Bar will help with decision making for Oklahoma County positions, is that the Bench and Bar committee will schedule a candidate forum. This has been done in the past and usually is scheduled at noon at the downtown library. During the forum, the candidates who wish to participate can speak and answer questions. I believe the forum has been instrumental in helping to inform voters on the candidates for State and Judicial positions. Notices will be in the Briefcase so please keep a lookout. As always, let me know your thoughts and suggestions. Please email or give me a call, 405-475-9707.
By Adam Banner

Recently, Huffington Post reporter Matt Fizer published an article proclaiming that “Americans are sick of the ‘tough on crime’ era.” However, the economic prospect of politicians has been a part of the American justice system for decades, and it is still alive and well.

Fizer cited a poll indicating more than half (61 percent) of survey respondents think drug offenders make up too large a percentage of the nation’s inmate population. This issue should have more discretion in sentencing based on the details of the case instead of being constituted by mandatory minimum sentences.

As a practicing criminal defense attorney, I’ll vouch for that. These beliefs are not surprising, and our federal government seems to be taking steps to ease a “tough on crime” approach that incarcerates far too many people for far too long.

But these reforms are taking place on a federal level. States, including Oklahoma, have been slow to catch up. The United States has a higher prison population—more than 2.2 million inmates—than any other country in the world. Oklahoma consistently ranks as one of the top three states in the U.S. in regards to incarceration rates.

Oklahoma has taken some steps to address this issue, most notable by implementing the “Justice Safety Valve Act” in an effort to give judges more discretion when dealing with mandatory minimum sentences. The problem though, is that the Act is extremely restrictive; judges are still not allowed to consider lesser sentences for many crimes with mandatory minimum sentences.

Consequently, Oklahoma’s jails and prisons are overcrowded; however, that has always been good for business. The more inmates we have, the more money the counties make for themselves.

Oklahoma is representative of what goes wrong when “justice” is unnecessarily punitive and focused on economics rather than rehabilitation. If Oklahoma serves as an example of what is going on in states across the nation, the Oklahoma County Jail serves as a microcosm for the problems beleaguering Oklahoma’s “correctional” system.

The Oklahoma County Jail was built in 1991 to accommodate 1,200 inmates. Today, it houses 2,500. The federal Justice Department began investigating the jail, revealing at least 60 civil rights violations. The Justice Department gave the county until 2015 to rectify the violations and fix the issues... or else.

As the deadline loomed, Oklahoma Board of Corrections John Whetsel said most issues had been resolved, but others could only be fixed with extensive remodeling or a new jail, and he approached community leaders with a proposal. Thankfully, business leaders scoffed at the idea of fixing the problem by catering to it. Certainly, the jail was over capacity. But would it be better to build a bigger facility or reduce the jail population?

The majority of inmates are pre-trial or parolees, meaning they have not been convicted of any crime. Rather, many are too poor to post bond, or they suffer from mental health issues and lack the support network to get them out of jail.

Former Oklahoma Speaker of the House Kris Steele said that the jail has become a “debtor’s prison,” which he calls “immoral and unconstitutional.”

Even if a person with low income would be able to post bond, he or she would not be eligible for a public defender under existing policies and procedures. Often, inmates are forced to decide between posting bond and hiring private counsel.

The Greater Oklahoma City Chamber of Commerce created a task force to explore options for true reform, noting that if Oklahoma City builds a bigger jail, we will just fill it. The real solution is to stop the overflow of inmates into the jail.

The group is working with the Vera Institute of Justice for reform measures that could significantly impact the way Oklahoma County, and the state as a whole, handles incarceration rates. In the midst of this search for reform comes a startling discovery about the actual “costs” of incarceration.

Inmates at the Oklahoma County Jail, if ultimately convicted, are expected to pay the costs of staying at the jail. The daily incarceration rate is determined by a formula presented yearly to a judge for approval. Upon release, inmates are sent a bill for the cost of their stay.

Even if you agree that inmates should be required to pay for their stay and ease the taxpayer burden, what an Oklahoma County Judge recently discovered about the daily incarceration rate seems dramatically unjust. The jail is overcharging its inmates.

Oklahoma County is running on gas the inmates are putting in the tank. The more inmates we have, the fuller that tank gets.

The proposal presented by Sheriff John Whetsel to Oklahoma County District Judge Ray C. Elliott includes not only the direct jail costs, but also indirect costs, such as sentencing programs and the salaries of court clerk employees, juvenile justice workers, and even the Oklahoma County public defender’s office. Judge Elliot said he was “appalled” by the attempt to charge inmates for indirect costs, and asked, “How in the world can you justify that?”

Apparently the calculations for the daily incarceration rate were determined from a federal form created by the U.S. Marshall’s Service that allows indirect costs to be factored into the rate of incarceration. This form has been used for 18 years. No one had complained before.

Judge Elliott admitted that he had approved these figures in the past, but only became aware of the issue as he took a closer look at the numbers as the state looks at justice reform in general, and particularly at the Oklahoma County Jail. Oklahoma County Public Defender Bob Ravitz seemed equally outraged that a portion of his office’s payroll was counted towards the jail’s operating costs. Both Ravitz and Oklahoma County District Attorney David Prater called for an audit of the sheriff’s revenues and expenses.

So there you have it. Are we so tough on crime? Why do we incarcerate twice as many prisoners as are facilities are designed to hold?

Money. Its all about the money. If the daily incarceration rates were actually calculated from a federal form, then the overcharging may be an issue across the entire state (and possibly the entire nation). Groups like Oklahomans for Criminal Justice Reform are looking into statewide issues, while the Oklahoma Legislature approves new bills. However, as long as putting folks in jail puts money in the coffers, the system is unlikely to change. But if the jails aren’t making as much money off the inmates, they can’t afford to keep as many incarcerated; moreover, they won’t have an economic incentive to keep them behind bars for as long. If incarceration rates continue to rise, and budget rates are held in check, the jails likely can’t afford to keep as many inmates. The system will have to change to accommodate the lack of resources, or the system will fall down on itself.

Or, we could just keep raising the cost of incarceration to coincide with the rise in incarcerated individuals...or vice versa. Is it the chicken, or the egg? Who says crime doesn’t pay?

MOSOLO Report – Legal Services for Small Firms

By Austin Reams

Last June, I attended the Solo and Small Firm Conference sponsored by the Missouri Bar at the Tan-Tar-A Resort at Osage Beach, Missouri. The event included over twenty (20) hours of MCLE and was attended by hundreds of attorneys. Many vendors participated, providing information about a competitive field of developing and diverse services for law firms. Some are detailed here. This is not an endorsement for these services and questions should be directed toward contacts available on the listed websites.

CaseEdge

CaseEdge provides access to nearly 25 million pleadings available for download from jurisdictions including California, Washington, Delaware, Florida, Georgia, Illinois, Maryland, Minnesota, Texas and West Virginia, and the service is looking to add new jurisdictions within the next year. According to CaseEdge, its service permits users to upload any draft pleading and its system automatically presents a rank-order of similar pleadings available. CaseEdge integrates other services such as e-signatures, powered by DocuSign, allowing electronic agreements, engagement letters, and other documents to be digitally signed and tracked. Casemaker works with CaseEdge to provide research from
**By Jim Croy**

**July 15, 1916**

**One Hundred Years Ago**

[Excerpted from: *Draughn v State* 1916 OK CR 71, 156 P.2d 989.]

Plaintiff in error in this case, who will be referred to as defendant, was convicted in the district court of Marshall county of rape, and sentenced to seven years in the penitentiary. He was prosecuted and convicted under subdivision 2414, Revised Laws, 1910, which provides that rape is an act of sexual intercourse purporting to be a marriage solemnized in some other way.

- **An Olio of Court Thinking**

**June 10, 1941**

**Seventy-Five Years Ago**

[Excerpted from *Powell v. Durant Milling Co.*, 1941 OK 211, 136 P.2d 908.]

This is an original proceeding in habeas corpus, wherein the petitioner, Ora Wooldridge, seeks his release from imprisonment in the State Penitentiary at McAlester.

The verified petition filed herein alleges, in substance, that the petitioner was taken before a justice of the peace in Texas county on August 27, 1938, where an information had been filed against him, charging said petitioner with attempted rape of Olene Wooldridge, a female person of the age of 12 years. That the said justice of the peace did not have a lawyer to represent him, and that said petitioner did not have a lawyer to represent him before said justice of the peace at said preliminary hearing; however, the justice of the peace at said hearing held said petitioner to answer said charge in the district court of Texas county that on the same date the petitioner was arraigned in the district court of Texas county on said charge of attempted rape, and entered his plea of guilty to said charge and sentenced to a term of 30 years in the State Penitentiary, that said petitioner did not have a lawyer to represent him at the time he pleaded guilty or at any time. That he was ignorant, and was not advised that he was entitled to have a lawyer appointed to represent him, and did not have served upon him a copy of the information and a list of the witnesses who were to appear against him. A copy of the criminal complaint filed before the justice of the peace, of the information filed in said hearing, and of the judgment and sentence pronounced upon the plea of guilty, are attached to the petition and made a part thereof.

The Honorable Jess F. Dunn, warden of the State Penitentiary, has filed his response, in which he states that he holds the said petitioner in custody pursuant to the judgment and sentence pronounced by the district court of Texas county, dated August 27, 1938, said prison having been received at the penitentiary September 6, 1938, to serve a term of 30 years. The response further alleges that the said Ora Wooldridge was throughout all proceedings advised of the charge against him and all his rights in connection therewith, and alleges that the statements to the contrary and petition filed herein are not true and have been made with little regard to the true facts.

When this case was set for hearing, no evidence was introduced on behalf of the petitioner, but counsel for petitioner announced to the court that they were relying solely upon the certified records attached to their petition to show a denial of due process of law in connection with the sentencing of said petitioner.

The Attorney General, on behalf of respondent, introduced in evidence the affidavit of L. E. Tryon, county attorney of Texas county at the time of the sentencing of said petitioner, also, the affidavit of C. A. Sullivan, sheriff of Texas county; also, the affidavit of the Honorable F. Hiner Dale, district judge of said county, who pronounced the sentence upon the petitioner; and a certified copy of the transcript of the proceedings before J. E. A. Sullivan, justice of the peace, containing a copy of the minutes of the district court showing the proceedings at the time the defendant entered his plea of guilty and was sentenced.

From this evidence it appears that the petitioner had been arrested on August 26, 1938, by the sheriff of Texas county upon complaint of two daughters of the petitioner that their father had committed rape against their persons; that the county attorney was out of the city at the time the petitioner was taken to jail; that upon his return, at the request of the petitioner, petitioner was taken to the county attorney’s office where the county attorney discussed the seriousness of the offense which the defendant was alleged to have committed.

The county attorney told the petitioner at that time that the county would furnish him a lawyer if the petitioner wanted them to do so, but that the petitioner said he was guilty and was ready to plead guilty. That the county attorney ordered the sheriff to take him to jail, and think the matter over further before taking him before the justice of the peace.

That early the next morning the petitioner sent for the sheriff and told him that he had made peace with his Lord and he wanted to go ahead and plead guilty and take his medicine.

That the petitioner was then, later that morning, taken before the justice of the peace where the complaint was read at length to the petitioner, and he was then informed by the justice of the peace of his right to take 24 hours to plead, and of his right to be represented by an attorney, but that the petitioner waived these rights and waived a preliminary hearing, and was then bound over further before taking him to the district court (in addition to the testimony, the transcript of the record from the justice of the peace shows that these rights were waived by the petitioner).

That later, that same day, the petitioner was taken before the district judge, and the information was read to petitioner in the open court by the county attorney; and the district judge informed him that he could
take time to plead, and that he was entitled to be represented by an attorney, and that the county would hire one for him without expense to the petitioner if petitioner could not hire one. That the petitioner stated that he did not want an attorney, but wanted to plead guilty and get it over. That the district court then pronounced sentence upon the petitioner. The petitioner remained in jail nine days, where his mother and other relatives visited with him before he was taken to the penitentiary.

The minutes of the district court proceedings show that the petitioner was informed of his rights which were waived by him; the minutes specifically reiterate that he waived his right to be represented by counsel and the time to plead, and entered his plea of guilty.

It is apparently the contention of petitioner that since the record shows the petitioner waived his preliminary hearing, was bound over to the district court, and entered his plea of guilty in the district court without the aid of counsel, all on the same day, that the same on its face showed a want of due process of law.

* * *

In the above cases [omitted here] the minutes of the district court proceedings were silent as to whether the petitioner was advised as to his right to be represented by counsel, and time to, plead, and his right to be tried by a jury; but in the instant case, the minutes of the district court show the petitioner was fully advised as to his rights, and that he waived the same. Petitioner offers no evidence to rebut the recitals in these minutes. On the contrary, the affidavits of the trial judge, the county attorney, and the sheriff show the petitioner was fully advised of his rights; but that being guilty of the offense with which he stood charged, he desired to plead guilty, and that he waived time within which to plead to the information, his right to a trial by a jury, waived his right to be represented by counsel, and entered his plea of guilty, the petitioner fully understanding the nature of the charge against him and the consequenc
es of his plea.

It is our opinion, after a consideration of this record, that the contentions of the petitioner are without merit, and that his petition filed herein should be denied.

July 12, 1966
Fifty Years Ago

This is an appeal from an order modifying a divorce decree to change the custody of Troy Edmond Earnst, the minor child of the parties, from the mother, Priscilla Earnst (defendant) to the father, Henry Earnst (plaintiff).

The record in this case reveals that plaintiff and defendant were divorced from each other on the grounds of mutual incompatibility in the District Court of Texas County on November 5, 1962, with defendant being granted the custody of their minor child, and with plaintiff being given visitation rights and being required to pay $85.00 per month as child support. On March 30, 1965, plaintiff filed a petition for modification of custody award alleging as grounds therefor that the circumstances and conditions regarding support and maintenance of the child had changed materially, in that the child was not receiving proper care under the custody of the defendant.

At a hearing held on April 7, 1965, the court modified the decree, vesting custody in the father and granting the mother visitation rights, and defendant perfected her appeal.

Defendant contends that under the evidence and law the action of the trial court was a clear abuse of discretion.

Plaintiff testified that he had paid all support payments required by the decree, except the last two; that he exercised his visitation rights without any problems until defendant moved to San Antonio, Texas, in June of 1964, and that due to distance involved, he had not visited the child while it had been in Texas; that he felt the child was not properly cared for, but that it was being properly fed, and had not been mistreated; that if the court awarded him custody, he would hire a housekeeper to take care of the child while he worked; that he now had the child in his custody by having the grandmother (defendant’s mother) bring the child to him.

Mrs. West, defendant’s mother, testified extensively, but her testimony can be summarized as follows: that she loved her daughter and the child, but felt that her daughter hadn’t been taking proper care of the child, that the daughter’s financial situation was not too good; that her daughter slept too late in the mornings after being out late at night; that she had to take care of the child on many occasions when the defendant was absent; that the child was sick a lot; that she felt the plaintiff was the proper person to have custody, because he was making more money than the defendant, that she had seen the child riding a bicycle in the street since the defendant had moved to San Antonio; that she objected to the child being cared for by a man that sleeps in the daytime; that she did not have permission of the defendant when she transported the child from San Antonio to the plaintiff in Oklahoma.

Defendant’s father testified that he felt a child should have both a father and a mother; that he felt the defendant was capable of taking proper care of the child; that he knew the defendant had recently remarried; that if the defendant would show that she could stay at home and take care of the child, that he was all for it.

Defendant’s grandmother testified that she lived in San Antonio; that defendant and the child lived in one of her rent houses when defendant first moved to San Antonio; that she took care of the child part of the time for defendant; that the child was not properly bathed and dressed by the defendant at times; that she felt that the defendant neglected the child; that defendant wouldn’t take her advice; that defendant would be capable of being a mother if she put her mind to it.

Defendant’s sister testified that in her opinion defendant was a good mother; that he felt the defendant had recently remarried, that her mother was an overindulgent grandmother; that the child would be better off with her mother; that she visited with defendant and the child for one week at Christmas time in San Antonio; that she took care of the child, that he was all for it.

Defendant’s present husband, William Jones, testified that he and defendant were married on March 29, 1965; that he was going to school and will graduate in
**Head of ABA Young Lawyers To Address County Bar**

When the Oklahoma County Bar Association hold its annual meeting in the Silver Palm Room of Val Gene’s at Penn Square on January 10th, 1974, the bar will be privileged to have as its guest speaker Mr. Daniel T. Rabbitt, Chairman of the Young Lawyers Section of the American Bar Association.

Daniel Rabbitt, of St. Louis, Missouri, is a 32 year old trial lawyer and a partner in the St. Louis firm of Moser, Marsalek, Carpenter, Cleary, jackel, Kenney & Brown. A native of St. Louis, Dan is a 1964 graduate of the St. Louis University School of Law. He has been a member of the Executive Council of the Young Lawyers Section of the Missouri Bar since its inception in 1967, served as Chairman of the Young Lawyers Section of the American Bar Association.

Dan was selected as one of the Outstanding Young Men of America for 1972 by the magazine of the same name and has authorized several legal publications dealing with trial practice.

On August 6, 1973 he was elected Chairman of the 63,000 member Young Lawyers Section of the ABA at its annual convention in Washington, D.C. Dan will preside over the Section’s activities and 33 committees until the next annual meeting in Honolulu in August of 1974 and coordinate the activities of the young lawyer local and state bar associations throughout the United States. The Young Lawyer Section represents all of the lawyers in the ABA 36 years of age and under.

The meeting itself will be a candlelight dinner with a cocktail hour preceding between 7-8 p.m. Three awards for outstanding service will be presented at the meeting. The OCBA Awards Committee headed by Kent Fretes has selected Les Conner, Jr. as the Outstanding Service Award, Judge Carl Traub for the Judicial Service Award and Dan Hogan, owner of the Daily Law Journal Record, for the Outstanding Layman Award. Special recognition for Judge Clarence Mills has also been planned.

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**Spirits and Body, Work on Both**

By Warren E. Jones

For this month’s column, I want to tell you about a couple studies that interested me and, I hope, you.

The first one appeared in the newest issue of JAMA Internal Medicine. The researchers from the Harvard School of Public Health wanted to study the relationship, if any, between church attendance and subsequent mortality in women. I imagine the outcome would be similar for men, but the 75,000 women in the study, the Nurses Health Study, were conveniently available for this study.

So, the precise question being addressed was whether attendance at services OR MEETINGS had any impact on subsequent mortality. Turns out it did. In the follow up period, sixteen years, approximately 13,000 of the 75,000 nurses died, but those who attended church had lower risks of all cause mortality, cardiovascular mortality, and cancer mortality. The researchers adjusted for a very large number of known predictors of mortality, including age, smoking, depression, blood pressure and 20 or so more.

So, for example, nurses who had high blood pressure who attended church were compared against nurses who had high blood pressure and did not attend church.

Here are the specific outcomes: Against women (the nurses in the study) who did not attend church at all, those who attended (again, services OR meetings) less than weekly enjoyed a 13% reduced risk of mortality, those who attended weekly, a 26% reduction, and those who attended more than once weekly, a 33% reduction.

The researchers were quick to say that the results do not imply that health care professionals should prescribe attendance, but for those who already hold religious beliefs, attendance could be encouraged as a form of “meaningful social participation.” I could argue that meaningful social participation from other sources may have similar benefits. The researchers didn’t go there.

The other study I found interesting (in the newest Preventive Medicine) had to do with the impact on premature mortality of meeting strength training guidelines (from the public health agencies) among men and women 65 and older. Significantly, the study was conducted on a large, national sample.

As I’ve mentioned many times before, the American Heart Association and the American College of Sports Medicine recommend twice weekly strength training for all ages (including those “older” citizens at and beyond 65, albeit at slightly lower intensity).

I’m happy to report that the researchers (from Penn State and from Columbia) found that older adults who were “guideline concordant” (those who followed the strength training recommendations) benefited from a 19% reduced risk of all cause mortality, after statistically adjusting for a number of demographic, health behavior, and co-morbid confounders that could also explain the reduced risk.

So, aside from other benefits of strength training (minimally, improved physical functioning), guideline concordant “older” adults improve their chances of survival. They improve their chances against non-concordant relative to premature mortality.

By the way, whether the subjects were or were not concordant was by way of “self-report.” Many, I bet, indicated that they did meet the strength training guidelines but really did not. I bet the results would be even better if the risk of mortality was measured on those whose concordance was actually objectively measured.

Take home Message: Go to church, and lift!

Warren E. Jones, J.D., HFS, CSCS, CEQ, is an American College of Sports Medicine 94(CSM) Health Fitness Specialist, a National Strength and Conditioning Association Certified Strength and Conditioning Specialist and a holder of an ACSM Certificate of Enhanced Qualification. His clients range from competitive athletes to the morbidly obese. He can be reached at wejones65@gmail.com or at 405-812-7612.

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**Events & Seminars**

**AUGUST 18, 2016**
Striking Out Hunger Bowling Tournament
6 p.m., Heritage Lanes

**SEPTEMBER 16, 2016**
Annual Dinner Dance
6:30 p.m., Skirvin Hotel Grand Ballroom

**FEBRUARY 11-15, 2017**
Annual Ski Trip Seminar
Santa Fe, New Mexico

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**Excerpts from OCBA News:**

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**By Bill Gorden**

**1177: The Year Civilization Collapsed**

It is not news that the end of the Twelfth Century B.C.E. was a mess. Long standing and short standing “empires” and kingdoms fell apart, at roughly the same time. Archaeologists looked for a cause, and based on some Egyptian scripts and one or two others, plus some apparent violence in some of the fallen ruins, came to a conclusion. Some people calmed the “Sea Peoples” had a role on the scene, or scenes, all over the Eastern Mediterranean. They wreaked havoc, and loosed the dogs of war. Then they adapted to the near-by norms, and settled down. If that explanation sounds weak, well, it was. Cline’s book seeks to de-bunk these ideas, and is quite thorough at doing so. Unfortunately readability suffers for that thoroughness, but he is on a mission. If you enjoy reading about the ancients, this is probably for you, but if you sat in the back of your Western Civ. Class, maybe not. The last part of the book, where Cline knits together all the threads, is the most interesting and flows well, and without the rest of the book this part would not be possible.

It seems that, (surprise, surprise), there were multiple causes for the demise of the varied civilized places at this time, among them a series of devastating earthquakes, diminishment of economic interaction, climate change, and some invaders. Cline keeps talking about “international” trade and diplomacy, but this rings hollow. Nation states as we conceive them would take another two thousand years to flower. There are some flaws here, but the book is sound and ground breaking.
Stump Roscoe

By Roscoe X. Pound

Dear Roscoe: I have several clients whom I've represented in bankruptcies tell me the same tale. They have surrendered a vehicle, but the loan company or dealership refuses to pick up the vehicle, and refuses to respond to my clients' request that they do so. I've warned them against disposing of the vehicle since the dealership or finance company still have a lien and, obviously, they can't sell it because they don't have title. In one case, a client parked the vehicle in the bank's parking lot. Two weeks later he received a municipal citation for abandoning a vehicle on private property. Different trustees in the cases have given me differing answers. What gives? E.D., El Reno, OK.

Dear E.D.: What gives is a disturbing trend of creditors and dealerships refusing to go to the trouble of picking up a vehicle they don't consider worth messing with. And it's not just cars. Debtors with other big ticket items like boats, motorcycles and RV's receive similar treatment. Sometimes the paranoid conspiracy part of my brain thinks the credit and auto industry have gotten together and come up with a practice as a way of rubbing the Debtors' noses in their bankruptcy by forcing them to look and maneuver around these rusting hulks in their garages, yards and driveways. However, I have as much evidence for that as I do for my theory that Madison Avenue backs some kind of mass sales promotion by making sure that all 57 cable channels go to commercial at the same time.

So, let me start by stating the obvious. I'm aware of no law that requires a lender to come and physically get their vehicle. From my perspective, the debtors have several options of varying quality. First, they can continue to contact the creditor day in and day out until they finally break down and get the car just to shut you up. This, of course, is both time consuming and expensive. Second, you could either leave the car at the lot or, if you can't get access to it, some place nearby. That, of course, could give rise to other liabilities as your one client discovered. A third option would be to keep the vehicle insured and up to date and drive it until the lender pulls its corporate head from its butt and comes to get it. Well before most classes start. As he walked from the parking lot to class, he barely noticed two guys following close behind. Then he noticed Daddy Mike appear from the shadow thrown by overhanging branches. Nathaniel started to greet him. Mike shook his head slightly and mouthed: "Keep walking. Don't look back." Nathaniel then heard the distinctive sound of a silenced pistol. Two bodies lay on the sidewalk. Daddy Mike had vanished. The News at Noon reported both the departed carried guns and knives. Time to shut this horror show down.

Daddy Mike and I drove to Kearney. We pulled up to the house where Ismail forgave me. Obviously, given the run at Nathaniel, Ismail did not grant complete absolution. I got no response from the bell or vigorous door-hanging. We circled the house. No one truly appeared to be home. Back in the front yard, I spotted one of the old guys from the forgiveness ritual. He saw me see him and made a beeline for his door. "Nado!" I commanded. Stop. He froze.

"Very good", he said. "You'd make a fine policeman. Or a thug." "Pretty much one and the same where you come from." I replied.

This is true. We'll go inside. Too hot for me out here."

I followed him into his house. He'd cranked the A.C. to the max. He vanished for a moment and came back with two glasses of iced tea.

"How can I help you Mr. Pound?"

"I'm trying to make sense of it all. That forgiveness dog and pony show, for example. Does that even mean anything?"

"Oh yes. Both Enver and Ismail would rather die than violate kannun. At least their family's version of it."

"Why did Enver try to kill my son."

He chucked. "He's a cheap bastard. Probably already paid the assassain."

"So it's over?"

"More likely entering a new phase. Enver must renew the blood. Probably kill Ismail and make it look like you did it."

"Hard core."

He nodded. "Never underestimate him."

"What do you suggest?"

"Kill him first."

We spoke for about half an hour. Finally I asked: "Where do you fit into all this?"

He sighed. "I am their father."

This took me a moment to digest. "Faleminderit shume."

I said. Thank you very much.

He favored me with the saddest smile I've ever seen. "Shko me Perënditë, Mr. Pound." Go with God.

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Dear OCBAs:

I couldn't let this day end without expressing how much I appreciate each and every one of you and the support you have given me. I did not win the primary election outright, but I WILL be in the runoff with Rick Warren on August 23. I can win - but I will need your support. You can support my campaign online at www.lindaamickdodson.com or by mailing a check to PO Box 555 OKC 73101. I also need your word of mouth support as well as people to call and put out signs.

We have a winning plan, and to have real experience in the Court Clerk's Office is an important goal so thank you for anything you can do to help.

Thank you for your continued support,

Linda

--

Correct R.G., OKC, OK.

Dear R.G.:

No such thing as a slam dunk. And by the way, sorry about Kevin Durant. A common law marriage is formed when the minds of the parties meet in consent at the same time." Standerfer v. Standerfer, 2001 OK 37, 11, 26 P3d 1041 (quoting Reaves v. Reaves, 1905 OK 32, 82 P. 490). Earlier cases put emphasis on specific elements that it was said tended to form the proof of the existence of common law marriage. Standerfer made it clear that elements (2) through (5) are merely evidence of the consent to enter into the common-law marriage relationship. "The presence or absence of those factors can be persuasive evidence of the existence or non-existence of the marriage relationship, but are not elements for which proof is required." The distinction noted is between the fact of the marriage and the proof of it. The party seeking to establish a common law marriage has the burden to show by clear and convincing evidence the existence of the marriage. Standerfer, Id. Your somewhat rigid view of the forms of proof necessary to establish the existence of a common law marriage seemingly ignores State ex rel. Oklahoma Bar Association v. Casey, 2012 OK 93, 13, 295 P. 3d 1096 . There, the Court held that Oklahoma has long recognized the agreement to be married "may arise through the parties' declarations, admissions, or conduct; but no particular form of expression is required . . . and thus, the mutual agreement may be express or implied." Id. at 13 (emphasis added)(citing Reaves v. Reaves, 1905 OK 32, 8, 82 P. 490; and In re Graham's Estate, 1934 OK 674, 0, 37 P2d 964). While documents and other tangible evidence are great, Oklahoma Department of Mental Health & Substance Abuse v. Pierce, 2012 OK CIV APP 73, 283 P3d 894, shows that, "[T]he determination of the weight and probative value to be given evidence is within the exclusive province of the . . . Court which may accept all or part of the evidence, or reject evidence entirely." Id. at 16 (emphasis added) (internal quotation marks omitted). While the Court noted the significance documentary evidence can play in establishing the consent of the parties, Id. at 20, it did not state documentary evidence is a more heavily weighed or reliable form of evidence than is other evidence, including witness testimony. Indeed, while there was documentary evidence upon which the court relied in Pierce to support the existence of the common law marriage (e.g., an affidavit executed under penalty of perjury declaring a common law marriage), there was other documentary evidence showing the parties considered themselves to be single (e.g., each filed tax returns as single persons even after acknowledging their common law marriage).

***

First, I want to add my concurrence to Bill Gorden's review of The Witches. I checked it out from the library and then bought a copy of my own.

I really didn't think Ismail would make a good ally. He seemed a few French
THE QUIET DEATH OF THE EXCLUSIONARY RULE

Kieran D. Maye, Jr.

In the waning weeks of the Supreme Court’s term that ended in June, there were the usual blockbuster cases. You have read about them. They dealt with hot button issues like abortion, affirmative action, and immigration. With all the attention to those important cases, one of the most significant cases of the term has gone largely unnoticed. It added another significant slash to the “death by a thousand cuts” that the Supreme Court has been administering to the exclusionary rule.

A Brief Review

Before getting into the details, let’s have a refresher. We all know that an officer cannot stop someone for no good reason, right? Of course not. And we also know that if an officer, in the course of that illegal stop, discovers evidence—evidence that cannot be used in a prosecution of the person illegally stopped, right? Again, of course not. These basic concepts of constitutional law derive from the Fourth Amendment which promises us all: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

The first of the stated rules, that officers cannot just stop anyone they want, comes from Terry v Ohio. The rule from Terry is that an officer must have a “reasonable suspicion” that the suspect is involved in criminal activity and that suspicion must be based on “specific and articulable facts.”

The second of the stated rules is the exclusionary rule. In Mapp v Ohio the Supreme Court pronounced the exclusionary rule, which requires trial courts to exclude unlawfully seized evidence in a criminal trial. The taint effect is the proverbial “fruit of the poisonous tree.” The purpose of the exclusionary rule is not to reward the defendant, but to deter unlawful police conduct. However, in 2016, in Davis v. United States, 574 U.S. 223 (2015), the Supreme Court found that the exclusionary rule is not strict enough to deter the police.

THE QUIET DEATH OF THE EXCLUSIONARY RULE

From: Lawyers for Learning

Fellow Members,

I am Celeste J. England, the 2016/2017 chair of the Lawyers for Learning Committee (LFL). My top goals for LFL this year are to first, increase the number of active members/volunteers and second, expand our outreach to additional schools and programs. As a member/volunteer for LFL you go out into the Oklahoma County Community and participate in various outreach programs. As of last year, members read with children at three (3) different elementary schools, typically on a weekly basis. Thus far we will have the following opportunities:

• Mentoring at Stanley Humphries in NW Oklahoma City (off Penn and Hefner)
• Mentoring at Fillmore Elementary School in SW Oklahoma City
• Reading at Adams Elementary
• Reading at Lee Elementary
• Reading/Mentoring at Rockwood Elementary
• Reading at various elementary schools throughout the county for Law Day and Constitution Day which will only require a one(1) time, one (1) hour commitment.

Judge Parrish and Judge Davis are also working on setting up a tutoring program at the juvenile courthouse for children who have been adjudicated delinquent in the Juvenile System. I am currently working on finding more schools spread out throughout the county in need of reading, tutoring or mentors so that there will be more places to volunteer closer to where you live and work. As more opportunities became available, announcements via email will be made.

Volunteers do not have to be attorneys! We urge you to encourage your Interns, secretaries, paralegals, receptionists, family member etc. For instance, my husband and I will both be mentoring at Stanley Humphries and my secretary will be free to volunteer, should she choose do so. If you have any non-OCBA members wanting to volunteer, please send their contact information to me so that we can get them on our volunteer roster. Last year we even had a few law firms who sent a set amount of attorneys each week to volunteer, and it would be fantastic to see more firms do the same this year. Maybe a little friendly competition could be in order?

Whether you can only volunteer a couple times a year or weekly, we have an opportunity for you to participate and help make a difference in a child’s life. I hope that you will sincerely consider joining LFL and/or providing us with staff or family volunteers. Joining LFL is a way to show your commitment to pro-bono work in our community while helping children soar to new heights.

If you are a current member/volunteer or plan to become one please complete the volunteer background check at: https://www.helpcounterweb.com/welcome/apply.php?district=okcps by August 1, 2016!

Thanks for your consideration. Please contact me at celeste@okclegallawpractice.com or Vice Chair Jake Krattiger at Krattiger@gbableaw.com

True Yours,

Celeste J. England
Attorney at Law
Solo Family Law Practitioner

Crowe & Dunleavy names Libby Scott chair of Administrative & Regulatory Practice Group

Crowe & Dunleavy has named Elizabeth “Libby” Scott as chair of the firm’s Administrative & Regulatory Practice Group. In this role, she will lead a team of attorneys dedicated to serving a wide variety of clients with government, regulatory and legislative needs, from taxation to licensure and regulation on every level of government. The firm has extensive experience handling matters involving federal, state and local governmental agencies, boards and commissions as well as healthcare regulatory agencies.

Crowe & Dunleavy is a founding member of State Law Resources, a national network of independent law firms—one from each state and the District of Columbia—each selected for its demonstrated abilities in handling administrative, regulatory and governmental relations issues at state and federal levels.

Scott is based in the firm’s Oklahoma City office and is also a member of the Healthcare and Criminal Defense, Compliance & Investigations Practice Groups. She primarily represents healthcare providers in state and federal administrative proceedings and all related litigation. Her practice also includes government affairs and legislative issues.

Prior to joining the firm, she served as an Assistant Attorney General in Oklahoma, where she was a prosecutor and general counsel for various state agencies in administrative and judicial proceedings. Scott began her career in private practice in the areas of commercial litigation and banking law.

Scott is a member of the State Bar Association and the American Inns of Court. She received her law degree from the University of Oklahoma College of Law, where she was research editor for the Oklahoma Law Review. In addition, she has bachelor’s degrees in accounting and economics from Oklahoma State University.

Oklahoma City Association of Legal Administrators Announce Election of 2016/2017 Board

The Oklahoma City Association of Legal Administrators proudly announce the election of their new board for 2016-2017. President, Diana Akerman, Office Administrator at Abowitz Timberlake & Dahnke, President-Elect, Rebecca Adams, Administrator at Dorbin Larimore & Blialick, Secretary, Bette Bialis, Administrator at Goolsby Proctor Heffner & Gibbs, Treasurer Suzy Klepac,

Secretary Elizabeth Johnson

Office Manager at Sweet Law Firm, and Past-President, Velinda Goss, Office Manager at Pierce Couch Hendrickson Baysinger & Green.

Former Oklahoma Governor Brad Henry Joins Spencer Fane LLP

Spencer Fane is pleased to announce that former Oklahoma Gov. Brad Henry has joined the firm.

Widely considered one of the most respected, effective and popular governors in Oklahoma history, Gov. Henry is one of only four governors in Oklahoma to hold two consecutive terms. Gov. Henry was appointed by President Obama to the federal Council of Governors and previously served in the State Senate, where he chaired the Senate Judiciary Committee. His legal career includes extensive experience representing both public and private sector clients in government and administrative law.

Gov. Henry earned his undergraduate and law degrees from the University of Oklahoma, where he served as managing editor of the Law Review. He most recently served as Of Counsel with the former Lester, Loving & Davies, P.C., which joined the firm on Feb. 1, 2016, in a strategic move to better serve its clients and broaden its capabilities.

James J. Biscone Joins Johnson & Biscone

Johnson & Biscone, P.A. has announced attorney James J. Biscone has joined the firm. His practice will focus on personal injury, workers’ compensation and criminal defense.

Biscone previously served as a licensed legal intern with the Oklahoma County District Attorney’s office where he gained experience in all stages of the criminal process.

He earned a Bachelor of Arts in Political Science and Philosophy, Cum Honore and Magna Cum Laude, at Oklahoma City University. Biscone received his Juris Doctor degree Cum Laude from the Oklahoma City University School of Law. He is licensed to practice in the State of Oklahoma, all federal district courts in Oklahoma, and the 10th Circuit Court of Appeals.

Johnson & Biscone, P.A. is one of the premier law firms in Oklahoma City. For over 30 years, Johnson & Biscone has represented injured Oklahomans. The team focuses on personal injury, medical malpractice, workers’ compensation and social security disability. Johnson & Biscone is among “Oklahoma’s Top Rated Lawyers for Personal Injury” by Martindale-Hubbell. For more information, visit oklegal.com.

Weak passwords. Unsecured devices. Outdated software. Hackers look for easy ways to expose security vulnerabilities in your network. Your network and the client data it stores—from intellectual property, to case and litigation strategy, to personally identifiable information—are critical firm assets. And asset need protection.

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THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

OKLAHOMA CHAPTER ANNOUNCEMENT

Check Available Dates Calendars Online for the following Charter Members, recognized for Excellence in the field of Alternative Dispute Resolution

The National Academy of Distinguished Neutrals is an invitation-only professional association of over 900 litigator-rated Mediators & Arbitrators throughout the US and a proud partner to both the DRI & AAJ. For info, visit www.NADN.org/about
OCBA AWARDS LUNCHEON 2016

Judge Don & Chris Deason – Geary L. Walke Briefcase Award

Judge Geary Walke – YLD Beacon Award

John Heatly – Bobby G. Knapp Leadership Award

Amber Martin – Outstanding Young Lawyer Director

Lysbeth George – Pro Bono Award

Celeste England, Vice Chair of Lawyers for Learning Committee, Outstanding Committee Award

On behalf of Sonya Patterson, her mother received the President’s Courageous Lawyer Award

Anthem Brewing President Patrick Lively – Friends of the Young Lawyers Award

Leonard Court – Community Service Award
By Chris Deason and Judge Don Deason

Last month we ran into Jerry Day who pointed out it happened to be the 3rd of June. We stood there slack-jawed while he waited for us to recognize it as the date on which Billy Joe McAlister jumped off the Tallahatchie Bridge in Bobbie Gentry’s Ode To Billie Joe. The rest of our day was spent trying to identify songs that reference specific dates. Our goal was to list as many songs as possible before it became necessary to, as they say, “Google it.”

We initially recalled songs about days of the week and quickly rattled off the obvious such as Manic Monday (The Bangles, written by Prince), Ruby Tuesday (The Rolling Stones), Wednesday Morning 3 AM (Simon and Garfunkel), Friday I’m In Love (The Cure), Saturday Night’s Alright For Fighting (Elton John), and Every Day Is Like Sunday (Morrissey). What about Thursday? We have nothing for Thursday.

Wanting to one up Jerry, we redirected our attention to songs containing a month and a day. It was a tough task. Only three or four songs came to mind. The rest had to be plucked from cyberspace. Still, it was a fun exercise.

We challenge readers to identify the artists and titles for the songs below — without the benefit of the internet. Good luck.

“Early morning April 4, shot rings out in the Memphis sky . . .”
“By May the 10th Richmond had fell . . .”
“Do you remember, the twenty-first night of September . . .”

<table>
<thead>
<tr>
<th>Song</th>
<th>Artist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somewhere</td>
<td>West Side Story (she also likes Barbra Streisand’s version)</td>
</tr>
<tr>
<td>Let’s Stay Together</td>
<td>Al Green (William “Mac” McElwee’s version is the best)</td>
</tr>
<tr>
<td>The Time Of My Life</td>
<td>Bill Medley &amp; Jennifer Warnes (sexiest song ever)</td>
</tr>
<tr>
<td>Through The Years</td>
<td>Kenny Rogers (her life up and until 2011)</td>
</tr>
<tr>
<td>Home</td>
<td>Blake Shelton (Usher at the OKC tornado benefit concert will do)</td>
</tr>
<tr>
<td>Thinking Out Loud</td>
<td>Ed Sheeran (inspirational because life goes on and can be good)</td>
</tr>
<tr>
<td>Friends In Low Places</td>
<td>Garth Brooks (guilty pleasure sung loudly and off key - in public)</td>
</tr>
</tbody>
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Judge Michele McElwee earned a degree from OU in secondary social studies education. She followed in her father’s footsteps as a high school teacher and coach until she swerved into her mother’s path and entered the Oklahoma City University School of Law. She worked as Judge Rita Strubhar’s Administrative Clerk until she graduated law school in 2004. Judge Michele did the Reverse Double Whammy by first working as an Assistant Public Defender and then as an Assistant District Attorney.

She spent the last five years at the DA’s office in the Special Victims Unit. Gov. Mary Fallin appointed her as an Oklahoma County Special Judge in 1995. Music has been an important part of her life. As a youngster, Judge Roma played piano and saxophone in grade school and high school. She was even Shawnée’s Junior Artist in 1968. As a drama student at OU she was able to participate in all of the productions. Judge Roma was blessed and lucky enough to marry a high school math teacher, coach of all sports, AND a singer in a soulful band which performed all around OKC. He was, is and always will be, the best singer/performer she has ever seen. Mac was the love of her life and the father of her child. Their marriage was in its 40th year until his passing in 2011. Judge Roma listens to music on CDs. Her playlist runs from her teens through the present day. She says it was “somewhat fun” to compile the playlist.

Judge Roma McElwee obtained a degree in Fine Arts from OU before attending Oklahoma City University School of Law. By November of 1974 she was so full of knowledge that she opted to do the Double Whammy. That is, she served as an Assistant District Attorney and then as an Assistant Public Defender. After several years in private practice she was appointed as an Oklahoma County Special Judge in 1995. Music has been an important part of her life. As a youngster, Judge Roma played piano and saxophone in grade school and high school. She was even Shawnée’s Junior Artist in 1968. As a drama student at OU she was able to participate in all of the productions. Judge Roma was blessed and lucky enough to marry a high school math teacher, coach of all sports, AND a singer in a soulful band which performed all around OKC. He was, is and always will be, the best singer/performer she has ever seen. Mac was the love of her life and the father of her child. Their marriage was in its 40th year until his passing in 2011. Judge Roma listens to music on CDs. Her playlist runs from her teens through the present day. She says it was “somewhat fun” to compile the playlist.

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</tr>
</thead>
<tbody>
<tr>
<td>Sugar</td>
<td>Maroon 5</td>
</tr>
<tr>
<td>Cruise</td>
<td>Florida Georgia Line (makes me want to drive around and cruise)</td>
</tr>
<tr>
<td>You’ll Never Find</td>
<td>Lou Rawls (my favorite song my dad used to sing)</td>
</tr>
<tr>
<td>Unbreakable</td>
<td>Janet Jackson (favorite artist of all time)</td>
</tr>
<tr>
<td>X’s &amp; O’s</td>
<td>Prince (have to have Prince on the list)</td>
</tr>
<tr>
<td>Turn Your Lights Down Low</td>
<td>Bob Marley (she loves Jamaica)</td>
</tr>
<tr>
<td>Earned It</td>
<td>The Weekend (Guilty Pleasure)</td>
</tr>
</tbody>
</table>
By Teresa Rendon

A few weeks ago my sister and I went to Cuba. We wanted a post-embargo experience uncluttered by Duncan Donuts, WalMart and McDonalds which are surely to invade the island. We had been talking about it for months, making arrangements and reading guidebooks. As two very independent ladies, we did not want to go on a guided tour. We wanted to go, do and see exactly what we wanted to go, do and see. So we flew from Cancun, Mexico on a fifty-minute Aeromexico flight to Havana. Upon applying for out Cuban visa we had to check the box which represented the purpose of our trip. We figured "educational, cultural" would do nicely, so we chose that category for our self-guided journey. Surely rum tasting counted as a cultural, educational experience.

Our stay was in a private apartment reserved through an Air B & B-type outfit which arranges “casas particulares” (private homes) for cheaper tourists like my sister and me. For the two of us we paid $40 per night to stay in a nicely-appointed, air-conditioned apartment with kitchenette and cable TV (Cuban-style cable with Cuban programming and a few Spanish-language shows).

At the risk of being obvious or telling you what your already know, landing in Cuba is like stepping back into the fifties. You know what your already know, landing in Cuba is like stepping back into the fifties. The most iconic evidence of this cultural dynamic is the evidence of this cultural dynamic is the evidence of this cultural dynamic is the evidence of this cultural dynamic is the "Wall of Cretins" which displays caricatures of Batista, Reagan, and both Bushes with captions such as “Thank you, Fidel” pop up like dandy lions everywhere. Statues of Jose Marti, the national poet of Cuba, the Castros and Che stand in private gardens and public places. There is even a Museum of the Revolution which tells the story of Fidel, Raul, Che Guevara, and Camilo Cienfuegos, heroes of the revolution which toppled the Batista regime. Most notably for me in the Museum of the Revolution is the “Wall of Cretins" which displays caricatures of Batista, Reagan, and both Bushes with captions such as “Thank you for solidifying the Revolution.”

Clearly we did not conduct a broad survey about what people think about the government. That was not our place and would have seemed disrespectful. Neither did the people we met share their feelings about the government. One couple, a teacher and her construction worker husband support ed their family of four on their combined incomes of $17 per month. This was possible, they explained, because they received monthly food ration for each of the four family members, which allowed them to receive chicken, rice, beans, cooking oil and other items. They also had access to universal medical care and free education, including college. Additionally, they had housing, although sometimes it was an apartment in a formerly grand mansion.

(smuggled in?) or a robin’s egg blue 1957 Ford Fairlane or even much older cars in tip top condition. The tropical sun makes an eye-popping display of their rainbow of color.

Another mid-century sign was inescapable display of official patriotism on every corner. The word “revolution” abounds even though it was five decades ago. It is impossible to go anywhere in Havana without seeing posters and billboards extolling the achievements of the Castro government and the coup which brought him to power. I say “coup”, not knowing if it was really a coup, just to avoid saying “revolution” one more time. Slogans such as “Our youth are our treasure,” “The revolution is moving forward,” or simply, “Thank you, Fidel” pop up like dandy lions everywhere. Statues of Jose Marti, the national poet of Cuba, the Castros and Che stand in private gardens and public places. There is even a Museum of the Revolution which tells the story of Fidel, Raul, Che Guevara, and Camilo Cienfuegos, heroes of the revolution which toppled the Batista regime. Most notably for me in the Museum of the Revolution is the “Wall of Cretins” which displays caricatures of Batista, Reagan, and both Bushes with captions such as “Thank you for solidifying the Revolution.”

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To Cuba Libres.

Tasting Havana Club rum for drinking straight or mixing Cuba Libres.

You probably have very distinct interests and tastes other than mine and my sisters and will find what fascinates you on this extraordinary island, but whatever you do, if Cuba is in your plans, go now before invaders from the North arrive!
State & Federal cases, codes and statues. Before filing, Casemaker can be used to upload a brief to double-check current citations therein to see if they remain good law, and the same function can also be used to upload the opposition’s brief. CaseEdge includes functionality with Microsoft Exchange to organized email according to cases and clients, and Daubert Tracker provides profiles on over 50,000 expert witnesses. Searches can be performed for an expert by discipline, area of law and whether they were retained by plaintiff or the defense. Law Pay can be used with CaseEdge to manage billing and payments. www.caseedge.com

CosmoLex

CosmoLex is a law firm practice management that includes a general ledger business accounting, trust (IOLTA) accounting, document & email management, and legal research functions. CosmoLex integrates built-in legal-specific accounting. It is a cloud-based application that allows lawyers to log in to view and manage their email correspondence (from Gmail or any other provider), take credit card payments (via LawPay), conduct legal research (with Casemaker), and manage their firm’s case documents (via DropBox or Box). It appears that integrated functionality with other legal focused programs is becoming the new norm. www.cosmolex.com

Leap and Smokeball

Leap is another legal practice management software that includes matter and document management, time & billing, trust accounting and other functions. Leap focuses its development to the needs of solo and small law firms, and thus it is geared toward areas of real estate law, family law, wills and estates and bankruptcy, providing various automated forms. According to Leap, it provides an integrated document management system, time recording, and billing and trust accounting in a single product. “Cloud technology” seems to be the standard that most practice management software leans, and Leap is no exception, making information available to users from the office and via mobile devices. Smokeball is another case management practice software that is tailored toward small firms and has mobile functionality. www.leap.us / www.smokeball.com

Sobriety Check Now

Sobriety Check Now provides alcohol monitoring for a variety of reasons, including aftercare treatment, family matters, DWI/DUI, and school and work screening. It is a private monitoring program that is partnered with a dependency specialist. The SOBERLINK monitoring device collects a deep-lung breath sample to measure breath alcohol concentration (BAC), while simultaneously taking a photo of the individual to confirm their identity. The device wirelessly submits the test results to a cloud based monitoring web portal where it is then checked by a case manager. Tests are usually submitted to 3 to 4 times per day and are meant to take no more than 30 seconds to complete. Sobriety Check Now also incorporates urine and/or other forms of testing when necessary for other substances. www.sobrietychecknow.com

Ruby Receptionist

Automated receptionists is becoming a more competitive and common service provided to small firms. From their offices in Portland, Oregon, Ruby Receptionists automated system (sounds like Siri with a more personality) handles calls using a custom greeting, transferring calls, taking messages and answering questions about a law practice. It is a subscription service priced by 100 to 500 receptionist minutes. www.callruby.com

With the explosion of electronic discovery, digital forensics is becoming a competitive and crowded market. Companies such as Lantern Security and S2 Consultant offer a wide-range of electronic discovery and recovery services. www.lanterntsec.com / www.s2consultant.com

These services are by no means an exhaustive list of services available to law firms today. With the end of summer in sight, and the approach of the Fall season, many readers will likely soon attend a MCLE conference packed with vendors of services tailored to the legal field. The take away from a visit to such events today appears to be – there’s more competition and a wide range of services marketed to firms of a tighter budget.

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accounting; that he has job offers; that his parents have offered to help him and defendant with money, if they should need it; that he would like to visit with the child to the best of his ability; that he would welcome plaintiff’s kin folks in his home if they would come half way; that he had served in the service for almost three years; that he helped the defendant care for the child for about a four day period when he was ill; that on this occasion, the defendant, the child and his two roommates shared his apartment; that this was necessary for the welfare of the child as the weather was cold and defendant’s house was not warm; that he was 23 years of age and defendant was 26.

One Don Leeking, a former roommate and army friend of defendant’s husband, testified that there was a good relationship between the child and defendant’s husband; that he had never seen the defendant mistreat the child.

Defendant, in her own behalf, testified that her mother had, in effect, stolen the child from her when she took the child away from her father without the father’s permission; that as soon as she discovered that the child was in Guymon, she and her new husband came to Guymon; that she tried to pick up the child, but was threatened with bodily harm; that she and the child lived for about five or six months after they first moved to San Antonio in a rent house owned by her grandparents; that she made the decision to keep the child at her future husband’s apartment the time he was ill because of the cold weather; that she wanted her child back; that she has taken care of him properly and would do so in the future; that her new husband and the child get along very well; that she felt her mother was over-protective and overindulgent; that to her knowledge the child had never been in the street alone, but that he might have; that she had no objection to the plaintiff visiting and being with the child; that she went to school when she first moved to San Antonio; that she received money from her mother while attending school; that she was engaged to her husband before they were married; that she had brought the child to Guymon two times since she moved to San Antonio and both times the plaintiff was allowed to visit with the child.

That she would be amenable to working out with the plaintiff a visitation schedule which would enable plaintiff to have the child for certain periods of time, that she felt the plaintiff was entitled to visit and be with his child.

In Young v. Young, Okl., 383 P.2d 211, we held:

“...In awarding custody of a minor, the court should give paramount consideration to what appears to be for the best interest of the child in respect to its temporal, mental and moral welfare. In a proceeding to modify provisions of an order relating to custody of child, burden of proof is upon applicant to show a substantial change in conditions since entry of order sought to be modified which bear directly upon the welfare and best interest of the child or show that material facts bearing upon welfare and best interest of child were unknown to the court at time order sought to be modified was entered.” (emphasis ours)

An examination of the court’s finding, in light of the applicable rules, convinces us that the order of the court changing the custody from the defendant to the plaintiff was in error and was an abuse of the court’s discretion.

The evidence submitted by the plaintiff in support of the modification of custody lacks probative value. Plaintiff’s own testimony falls short of proving that the burden set out in Young v. Young, supra. He admits that there were no problems until the defendant moved to Texas, that he “felt” the child was not being properly cared for, but admitted that it was being properly fed and had not been mistreated. His offer to hire a “housekeeper” to take care of the child while he was working seems to be trivial and certainly no substitute for the care and attention of a mother. The testimony of defendant’s mother and grandmother seems to be lacking the clarity and decisiveness necessary to be convincing. It reveals, at its best, ill-feeling and a long lived controversy between the defendant and her relatives. Neither testified that the defendant was an unfit mother, only the grandmother said she was neglectful, without any further explanation of the term. Such an opinion, expressed by a witness who from her other testimony is prejudiced, has little or no probative value.

Defendant’s mother, in her testimony, alludes to the fact that plaintiff is financially able to take better care of the child. Such testimony is not helpful in determining what would be in the best interest of the child. If, after a proper hearing, the defendant shows that she needs more money to properly support the child, the plaintiff could be required to increase the amount of the monthly child support payments.

We are not impressed by the means used by the plaintiff, acting in concert with defendant’s mother, to gain actual physical possession of the child. Such conduct, on his part, joined in if not instigated by the defendant’s mother, only weakens his position. It is well settled in this state that the removal of a child from the state, does not deprive the appropriate district court of its continuing jurisdiction over questions pertaining to the custody of the child . . . Plaintiff could have, and should have, without resorting to such an improper means, filed his application to modify the divorce decree, given the proper notice of the setting thereof to defendant, and had his day in court. . . .

The child with whom we are presently concerned was, at the time of the hearing, of the age of 5 years. Custody of a child of tender years, other things being equal, must be given to the mother. Lewis v. Sisney, 205 Okl. 599, 239 P.2d 787. See also 30 O.S. 1961, Sec. 11.

We said in the case of Currin v. Chadwick, 206 Okl. 148, 241 P.2d 947, that:

“The unfitness which will deprive a mother of the right to the custody of her minor child must be a positive and not merely a comparative unfitness; * * *

* * *

“It is not sufficient to establish the unfitness of a parent for the custody and control of her minor child to show that she has some faults of character, or bad habits; it must be shown that her condition in life, or her character and habits are such that provision for the child’s ordinary comfort and contentment, or for its intellectual and moral development, cannot be reasonably expected at the parents’ hand.”

We have carefully examined the record and find that the judgment of the trial court is against the clear weight of the evidence and that the trial court has abused its discretion. The cause is therefore reversed and remanded to the trial court with instructions to the trial court to vacate its last order, reinstate the provisions of the divorce decree with respect to custody, and upon such reinstatement, determine the question of attorney’s fees, which was raised by defendant’s brief, but according to the record before us, not ruled upon by the trial court, nor answered in plaintiff’s brief.

July 30, 1991

Twenty-Five Years Ago


Appellant Cohen Realty, Inc. (CRI) filed suit against Appellee Stephen A. Marinick (Marinick) to enforce a non-competitive covenant of an employment contract executed by the parties on June 1, 1987. After a temporary restraining order was issued prohibiting Marinick from competing in any manner with CRI, Marinick filed a motion for summary judgment, which was sustained by the trial court. This appeal followed.

CRI is a real estate brokerage company which represents customers and clients in the sale, purchase, lease or rental of nursing homes throughout the United States. Marinick, a licensed real estate broker, was hired by CRI in June, 1987. Prior to Marinick’s employment with CRI, he had worked predominantly in the filed of commercial leasing and had no experience related to the nursing home industry. Marinick signed an agreement prepared by CRI and its attorney containing a non-compete covenant which provided, in pertinent part:

Marinick further covenants and agrees that notwithstanding anything herein to the contrary, he shall not, for a period of ten (10) years from the effective date of this Agreement, whether Marinick is associated with or employed by CRI or whether this Agreement may have been terminated for any cause whatsoever, either directly or indirectly, as a real estate broker, business broker, sales associate or otherwise, compete in any manner whatsoever with CRI by representing customers or clients in the sale, purchase, lease or rental of nursing homes.

The agreement also contained a provision against divulging “trade secrets” or “confidential knowledge or information”, and contained a liquidated damages clause upon violation of the provisions.

Marinick worked for CRI for two years and was terminated. A termination agreement was entered into between the
could have been. Do not compound Kevin’s departure with a mistake. Coaches often advise players to think of the next shot attempt, and forget the one just missed. The focus needs to be to make this team better. It is hard to come up with a scenario in which this team is better without Russell.

Second, superstars do not grow on trees. If you define a superstar as player selected to the All-NBA Team (probably the broadest definition one could use), then you should know that there are only fifteen slots allotted for the All-NBA Teams. There are thirty teams in the NBA, so best case scenario is that half the teams in the NBA can have one All-NBA player. Thunder had two All-NBA players last season. Russell was on the First Team, Kevin was on the Second. Golden State now has four, although it will be interesting to see which player takes a step back. There are only so many possessions in a 48 minute basketball game, thus a limited number of shots.

Third, trading Russell would set a bad precedent. It would demonstrate to other players that OKC is not a place superstars come to spend a career. It’s at best a stepping stone to greater things. The Thunder should rally around Russell this year and demonstrate that OKC takes care of its players. There is a chance he stays. Remember the Thunder can offer him more money and years than any other franchise. Sage advice often offered to me is: “never let them see you sweat”. Don’t panic, play it cool.

Finally, and most importantly, trading a superstar almost never works. The Milwaukee Bucks traded Kareem Abdul-Jabbar after the ‘74-’75 season and haven’t been to the NBA Finals since. The Denver Nuggets Traded Carmelo Anthony and have had one winning season since. Minnesota is only now recovering from trading Kevin Garnett nine years ago. New Orleans hadn’t had a winning season since trading Chris Paul. Orlando has been abysmal since trading Dwight Howard.

There are examples of trades working out better, but those appear to be the exception which proves the rule. Basketball is a business in which four quarters do not equal a dollar, a lesson this franchise has painfully learned with the Harden trade.

Russell could demand a trade or walk; however, it is a risk worth taking. I must admit I am biased in this analysis. I enjoy watching Russell attack the rim with reckless abandon (doubly so because “OKC” is plastered across his chest). Why end that before we have to?

The two statutory exceptions referred to above in Sections 218 and 219 involve the sale of good will or dissolution of a partnership, which are not applicable to these facts. Marinick also alleged the non-compete covenant was in violation of the prohibition against restraint of trade found in 79 O.S. 1981 § 1. Upon review of the evidence, the trial court found that the covenant constituted an unreasonable restraint on trade for too long a term in an undefined territory. We agree.

The principle is well established that a promise is unenforceable if the interest in its enforcement is outweighed by a public policy harmed by enforcement of the agreement. Town of Newton v. Rumery, 480 U.S. 386, 392, 107 S.Ct. 1187, 1192, 94 L.Ed.2d 405 (1986). In order for a contract to be found illegal because it unreasonably restrains trade, the reasonableness of the restraint must be judged by assessing the evidence may be admitted under the “good faith” exception to the exclusionary rule.

Utah v Strieff

That brings us to Utah v Strieff, decided on June 20, 2016. Salt Lake City police received an anonymous tip that drugs were being sold at a particular house. Officer Falkrell, an 18 year veteran of the force, checked out the house. He watched the house for a total of about three hours over a week-long period. Finally, Officer Falkrell decided to stop the next person he saw come out of the house. That was Mr. Strieff. Officer Falkrell followed him on foot to a nearby convenience store. There he stopped him in the parking lot, questioned him and asked for his identification. Everyone agrees that this stop was unconstitutional. Officer Falkrell had no “reasonable suspicion” that Mr. Strieff was involved in any criminal activity, and had no reason to fear that he was armed. Officer Falkrell then radioed dispatch and asked as plain as if there were no warrants out for Mr. Strieff. Lo and behold there was an outstanding warrant for a minor traffic violation. BINGO. Officer Falkrell then arrested Mr. Strieff on the outstanding warrant. He then searched
Mr. Mike Fugate, teacher at Dove Public Charter School, and part of a church TV ministry at St. Luke’s Methodist Church, ran into Justice Noma Gurich and John Miley while on camera operator’s duty. Conversation led Mr. Fugate to ask for assistance with his Mock Trial project. After more introductions and not much arm twisting, the teacher gained assistance from the likes of retired District Judge Jerry Bass, Brady Henderson and Noma Gurich and others. The project? Here is the low down:

Does a tragic death mean murder? A cold, dead body; blood on an aspirin bottle; a suspicious computer search his- the process went all the way from crime to verdict.

Mike Fugate, DSA teacher, without previous legal experience, put together the successful forensic science course at the request of Principal Yunus Bici. Beginning from scratch, Fugate relied on connections he had with legal profession- als through his church. With a lot of hard work, Fugate said he thought the experi- ence was successful.

“A lot of people helped me — Judge Bass, Mr. Henderson, Justice Gurich, the Oklahoma Bureau of Narcotics, and I couldn’t have done it without the best bunch of young people I’ve seen in my career. Kudos to Dove Science Academy,” Fugate said.

Oklahoma Supreme Court Justice Noma Gurich, who has lots of experi- ence with student and adult mock trials, said she was very impressed with Dove Science Academy.

“What Dove has done here is very unique. I don’t know of another program that teaches students about the justice system by way of science. From what I’ve seen, it’s exposed students to critical thinking and required them to reconcile scientific data with legal theories and rules as do real professionals,” Gurich said.

Students gained this invaluable expe- rience with the guidance of legal pro- fessionals, including Gurich, Oklahoma County Retired Judge Jerry Bass, ACLU Oklahoma Legal Director Brady Henderson and medical profession- als, such as Oklahoma State Medical Examiner Forensic Toxicologist Chelsea Fort.

During the mock trial, Gurich served as the courtroom judge while Bass acted as state prosecutor and Henderson defended Mack.

To prepare students for the mock trial, Bass, Gurich and Henderson visited DSA campus regularly and spoke about the legal elements of the case and how stu- dents would translate that to a successful trial.

“I think it’s [a mock trial] the best thing we can do to teach citizenship. In this country, I don’t think we spend enough emphasis on what we have in comparison to the rest of the world,” Gurich said.

“Part of being a good citizen, in this country, is not only serving in the military if you decide that’s where you want to go, but serving on juries is part of citizenship. “Voting is so important, and I think when people participate in the court sys- tem, they understand why we care so much about this – why we fight foreign wars; why we take time out of our busi- ness life and our education life and our busy life to serve on juries and to go vote and to run as a candidate. This is the best public education that we can do. I only wish we could get everyone to participate in some sort of mock trial situation or actually serve on a jury.”

To prove Mack was guilty of murder, students theorized he gave Bear two aspi- rin; a lethal dose for the stuffed animal’s size. They collected evidence of an aspi- rin bottle, 911 call, fingerprints, computer search history and more.

“It’s been exciting getting to interact with a real judge and prosecuting attor- neys. We’ve gotten to experience what it is to be a real forensic scientist. We’ve seen the reality. It’s not like TV at all. There’s more paperwork. It takes much longer to do everything. And recording everything is so important; the chain of custody log, the photo log, without it, everything can be ruled inadmissible,” said Juliet Ignacio, DSA student and “chief of police.”

Throughout the forensic science class, Henderson said he was impressed with Dove Science Academy students for their ability to ask insightful questions.

“To me that’s what makes a really great young high school student. It’s not necessarily what that student knows, it’s the questions they ask and how they engage with people. I’m just really glad for the opportunity to come and be a part of showing them a different experience,” Henderson said.

At the conclusion of the mock trial, many students no longer thought Mack should be convicted of First Degree Murder and instead convicted of a lesser offense of either Second Degree Murder or Manslaughter. Their perceptions of burden of proof, particularly that of “beyond a reasonable doubt,” had shifted and their idea of justice was no longer dictated by the simple pleasure of “con- victing” a favorite teacher.

“This was tough. The defense, Mr. Henderson, had a strong argument,” Ignacio said. “I was nervous because I’m the chief of police, and I had to show all of the evidence we had all collected. There are definitely some things I would change. But I think the evidence built a strong case against Mr. Mack,” Ignacio reflected on her experience.

Gurich explained that while everyone has a sense of right and wrong a court system does not and cannot make people whole again and that through the forensic science class, students learned justice is the process that ensures everyone has an equal shot.

“Right or wrong is not justice. Justice is a process. Justice means that you have been guaranteed certain presumptions and certain protections by our US Constitution and our Oklahoma Constitution,” she said. “And I think that whether there is a finding in a criminal case of guilt or innocence is not a measure of justice. The measure of justice is: What was the pro- cess? Was there integrity in the process? Does everyone stand equally in front of the law — whether you’re poor or rich or black or white or anything else?”

*About Dove Public Charter Schools:
Serving students for 15 years, Dove Public Charter Schools promote a disciplined, organized and vigorous education. The faculty and staff at four campuses (Dove Science Academy Elementary; Dove Science Academy OKC; Dove Science Academy Tulsa; and Discovery School of Tulsa) mold responsive, productive and civic-minded individuals. With a 1:15 faculty-student ratio, the schools offer a “hands-on approach” that allows for individual focus and create students who are a productive part of the community. Dove Public Charter Schools are run by the charitable non-profit organization, Sky Foundation, which promotes STEM (sci- ence, technology, engineering and math- ematics) in every school environment.
To learn more about us, see dovepubliccharterschools.com
Who Would YOU Nominate* For The U.S. Supreme Court?

Part 4

By Geary Walke

I now see how a 4-4 divided Supreme Court causes disruption in the daily lives of people. But, why worry about citizens when there is political maneuvering to be done? I sincerely thought the nomination process would be off high center by mid-summer. I am abjectly disappointed.

Maybe we should never rush right into filling those slots. Perhaps we should wait and kind of see how issues shake out politically after a year or two. But, why only a year or two? Maybe a decade would be better to give us the right perspective on a nominee and world issues. Call it supreme crisis management? After lengthy litigation and lengthy appeals, an additional delay at the highest court will eliminate any vestige of credibility the judicial system has left. But, that delay will give hard working U.S. Senators in the majority party additional time to find the absolute best choice for the position. After all, the litigants involved have only put their money, their hopes, their lives and their liberty into their cases for several years. What’s a few more months, or years, of delay?

When the Legislative Branch effectively strangles the Judicial Branch by trying to defeat the Executive Branch, the entire tree of government is threatened. Where is the check and balance for this problem? Voters. If the voters retain the legislators who cause the judicial branch to be crippled by refusing to allow the executive branch to fill the available positions per Constitutional authority, then confidence in government will ultimately be diminished, and I predict a severely negative result for the economy. After all, who wants to invest in a land where important conflicts cannot be resolved in a peaceful, predictable process? We can let people “joust for justice.” There’s definitely an argument there for a liberal reading of the 2nd Amendment.

There is no doubt that all nine supreme court positions could be immediately filled with qualified people. We could quickly appoint nine white males with no difficulty. After all, we’ve done that for 200 years. Or nominate and appoint nine Harvard graduates. Or nine former Supreme Court Clerks. We could also fill the positions with nine duly qualified Native American Indians. Or, nine graduates of Washburn University School of Law in Topeka, Kansas. Or nine females over six feet in height. There is no doubt there are sufficiently qualified persons of each race, each gender and from each geographical location to fill the entire U.S. Supreme Court.

But why must we have clones? The sitting president has the constitutional responsibility of nominating justices. Can we ever hope to have nominees who look like more than those who currently serve? Can we not have a reasonable dispersion of characteristics so that we, the average citizens, can feel there is a slight connection and common traits between us and those who make ultimate and important decisions? When will an Oklahoman be appointed to the high court? When will a Native American be appointed, or a Mexican American? The more the justices look alike, the less they reflect large segments of America. Americans deserve a high court that reflects the diversity of our great nation. Confidence in judicial decisions is easier to establish when citizens feel a sense of brotherhood, of commonality, of shared common roots, with our Supreme Court justices.

*I could name a hundred lawyers and judges who are, in my opinion, qualified to sit on the U.S. Supreme Court from our rank and file in Oklahoma. They are every bit as intelligent, thoughtful, ethical, analytical and objective as those nominees who claim special pedigrees. Nominating and appointing only those from a rarified stratosphere of law practice or background is not productive in this day and age.

Who would YOU nominate to the U.S. Supreme Court?

Sweet Law is proud to announce Naureen Hubbard as partner in our Oklahoma City office.

An attorney with Sweet Law since 2014, Naureen has deep experience in general insurance defense and medical malpractice defense.

She has tried numerous civil cases throughout the State of Oklahoma.

Naureen has been named a Super Lawyers Rising Star for 2015.
Why I Love “Our Little Tennis Clinic”

By Tsinena Thompson

I happen to love tennis. I love that it’s a physical sport, but it’s also a very “polite” sport. Women can play with men, children can play with adults in singles or doubles. It sure seems like a lot more people are taking up tennis these days. It’s so much fun to see little kids learning to swing a racquet next to the court of some “super seniors” who may not move quite as quickly as they once did, but can drop that ball exactly where they want and right where their opponent is not. Maybe more people are taking up tennis because it can be played inside or outside, rain or shine. Maybe it’s because you can play the game as a single player or as part of a team, or possibly because it’s great exercise and unlike golf, you don’t have to take 5 hours out of your day to play. Maybe tennis is so popular because it brings a unique joy to players’ lives.

About five years ago, Suzanne LaBelle, Tennis Director at The Greens Country Club, wanted to support OLFC and suggested that foster children might enjoy the club’s summer juniors tennis program. We thought that would be a good idea. Since tennis clinics typically start around 8:00 – 8:30 in the morning, we decided that it would be a good idea to have a little something available for the kids to eat before heading out to the courts for several hours of exercise. We started bringing in fresh juice, fruit, yogurt & granola cups and muffins to make sure the kiddos were properly fueled up. And, well, everyone knows that kids are always hungry, so we started cooking out for them every day after the clinic was over. And, well, you know it gets pretty hot in the summer, so why not make arrangements for the kids to go swimming at The Greens family pool to cool off and relax a bit?

And so OLFC’s little tennis clinic has grown. As the years have gone by, it’s not uncommon for us to have well over 100 foster children come to the OLFC’s week-long tennis clinic at The Greens. Over the years, I’ve spoken with several foster families that have told me how much this clinic helped their foster child. It’s hard for traumatized children to find healthy outlets for their frustrations. They’ve been removed from their homes through no fault of their own. Now living with people they barely know – or may not have ever even met before – ripped away from siblings, pets and other familiar aspects of home. Who wouldn’t be upset? Many foster parents have commented to me that their kiddo sure had a lot of aggression to get out, and tennis seemed to help a lot! Others remarked that their foster child had difficulty being respectful or using manners and that the polite, respectful nature of tennis really helped that. Wow! Who would have thought that?

Without question, the most moving story of how OLFC’s little tennis clinic made a difference to a child came a couple of years ago when I sat down next to a man who had been bringing four to six children to the clinic the first couple of days. I asked him, “Surely these are not all of your foster kids, right?” He laughed and quickly said no, that he and his wife had a sibling group of three boys and that the other children belonged to neighbors who were also fostering. As he would come to drop off or pick up the kids we would wave hello or goodbye. A couple of times, as he was waiting for the kids to get their things, we would chat a little and I learned that he and his wife had been foster parents almost 17 years! As we continued talking, I asked him which of the boys out on the court were his foster sons. I will never forget him smiling, pointing out the boys one by one—and of course I would say hello and goodbye to them as they came to the clinic each day.

On the last day of the clinic, the foster dad came up a little early and sat down to chat with me. I asked him if the boys had enjoyed the clinic and if he thought they might like to continue playing. We were sitting in the gallery looking out over the courts and he pointed out one of his foster sons that looked about 16 years old, and then he began to break out in tears. Not knowing what was wrong, or if the clinic had been a disaster for this kid, I really didn’t know what to do or say. The man gathered himself, apologized profusely for the tears and told me that in all of the years and all of the children that had been placed in his and his wife’s home, he had never, ever seen a young man so utterly convinced that he could do nothing right. He looked me right in the eyes, shook his head and repeated so I would really understand that this handsome young man did not believe that he could do even the simplest thing right.

All of his life, he had been screamed at, beaten and had it pounded into his head that he was no good, would never be any good, and could never do anything right. His foster dad continued to weep as he told me what a wonderful thing OLFC’s tennis clinic had been for this young man. On the first day when the boys came home, this young man viewed himself as he always had, that it wouldn’t make any difference if he went back because he could never learn to play. But the boy’s younger brother reminded him that he should go back because everyone would get these really cool t-shirts. So he came back, and when he got there, people were glad to see him. When his foster dad picked him up that day, he was actually beaming, so excited that he had been hitting the ball back and forth over the net! That seemed like such a small thing, but to this young man, it was HUGE. The foster dad told me about the various things that they had tried to do, but nothing seemed to be able to overcome this young man’s overwhelming sense of failure – except OLFC’s little tennis clinic. As he left that day, I saw a young man come bouncing off the court, just like so many other kids, sweaty, laughing and having fun.

I smiled and yelled out to all of them to have a great day, thrilled on the inside to know that OLFC’s little tennis clinic had made a difference in this young man’s life.

Learn more about OLFC’s 2016 tennis clinic and tournaments at OLFC.org/events.
officer Fackrell's arrest of Strieff thus was an obligation to arrest Strieff…

Well, according to a 5 – 3 majority of the Supreme Court, no.

Justice Thomas, writing for the Court and joined by Chief Justice Roberts, and Justices Kennedy, Alito and Breyer held that the discovery of the outstanding warrant “attenuated the connection between the unlawful stop and the evidence seized from [Mr.] Strieff incident to arrest.” The Court applied the test from Brown v. Illinois on the application of the attenuation doctrine. Brown is a three-part test. The first factor is the “temporal proximity” between the unconstitutional conduct and the discovery of the evidence. The question is how closely the discovery of evidence followed the unconstitutional search. Second is “the presence of intervening circumstances.” Third is “the purpose and flagrancy of the official misconduct.”

Everyone agrees that the first factor was clearly in Mr. Strieff’s favor. The discovery of the warrant occurred only minutes after the illegal stop. Only the lapse of “substantial time” between the two could favor admission. In the key case of Wong Sun v. United States, the defendant had voluntarily returned to the police station “several days” after he had been unlawfully arrested, arraigned and released in his own recognizance. The Court held that the connection between the arrest and the statement had “become so attenuated as to dissipate the taint.” Here there was hardly several minutes, let alone days, between the unlawful stop of Mr. Strief and the call to headquarters for a warrant search.

The second factor, the presence of intervening circumstances, is more problematic. The majority reasoned that “the warrant was valid, it preceded Officer Fackrell’s investigation, and it was entirely unconnected with the stop. And once Officer Fackrell discovered the warrant, he had an obligation to arrest Strieff…” Officer Fackrell’s arrest of Strieff thus was a ministerial act that was independently compelled by the preexisting warrant. And once Officer Fackrell was authorized to arrest Strieff, it was undisputably lawful to search Strieff as an incident of his arrest “… The majority also found that the third factor, “the purpose and flagrancy of the official misconduct,” also strongly favors the State. Justice Thomas thought Officer Fackrell was at most negligent.

The majority therefore concluded “the evidence Officer Fackrell seized as part of his search incident to arrest is admissible because his discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest.”

The Dissents

Justice Sotomayor wrote a scathing dissent. She argued that Officer Fackrell’s violation was calculated to procure evidence. His sole reason for stopping Mr. Strieff was investigatory—he wanted to discover whether drug activity was going on in the house Mr. Strieff had just exited. The warrant check was not an “intervening circumstance” separating the stop from the search for drugs. It was part and parcel of the officer’s illegal “expedition for evidence in the hope that something might turn up.” Justices Ginsburg and Kagan joined in this part of Justice Sotomayor’s dissent. However Justice Sotomayor went further. Writing for herself, she concludes with the following poignant passage:

By legitimizing the conduct that produces this double consciousness, this case tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.

We must not pretend that the countless people who are routinely targeted by police are “isolated.” They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. … They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.

Conclusion

The majority, I think, misses the point. The core of the attenuation doctrine is proximate cause, almost a “but for” analysis. Certainly, Officer Fackrell would not have run a warrant search on Mr. Strieff, if he had not unlawfully stopped him in the first place. In fact, Officer Fackrell would never have known who Mr. Strieff was. But the majority concludes that a police officer can stop someone on the sidewalk for absolutely no reason, ask for his identification, and if he happens to have an outstanding traffic ticket, arrest him, search him, and any evidence found can be admitted, even though the initial stop, that predicated the warrant search, was unconstitutional. In doing so, the Court administers another of the “thousand cuts” it has dealt the exclusionary rule over the last 15 years. And even more troublesome is the door that the Court leaves open. Justice Thomas noted:

And, because we ultimately conclude that the warrant breaks the causal chain, we also have no need to decide whether the warrant’s existence alone would make the initial stop constitutional even if Officer Fackrell was unaware of its existence.

Thus the Court seems to leave open the possibility that the ends may ultimately justify the means. While the exclusionary rule it is not dead yet, it is surely on life support.
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