Oklahoma County Law Library Recognizes Outgoing Trustee

by Venita Hoover

On August 17th, Matt Blue was recognized for his outstanding service to the Oklahoma County Law Library by Judge Bryan Dixon. Matt has served two years on the Law Library Board, one year as Secretary and one year as President. The current members of the Law Library Board of Trustees are Judge Dixon, Judge Glenn Jones, Miguel Garcia, Gretchen Crawford and our newest member Bradley Davenport. Matt served with distinction and great leadership on the Board. His fellow Board Members and Head Law Librarian Venita Hoover thanked and congratulated him for his service and presented him a plaque to commemorate his time on the Board. “I appreciate the opportunity to serve on the board and work with the wonderful law library staff that provides a great resource for attorneys and the community,” said Matt.

OCBA YLD KICKING OFF HARVEST FOOD DRIVE

By Merideth Herald, YLD Chair

Fall is right around the corner — football has kicked off, pumpkin spice lattes are back, and cooler temperatures are on the horizon. What a great time of the year and break from the summer heat! For many though, it’s not such a great time as this changing season offers no break to those one in six adults or one in four children across our state struggling with hunger each and every day.

Oklahoma is one of the hungriest states in the nation, and the Young Lawyers Division of the Oklahoma County Bar is seeking your help through its annual Harvest Food Drive to help put food on the table for our fellow Oklahomans. For the past 29 years, the YLD has committed to raise money for the Regional Food Bank of Oklahoma, who provides enough food to feed 116,000 hungry Oklahomans each week. This year is no different. We have pledged to raise $20,000 for the Regional Food

See DRIVE, PAGE 17
By Barbara Swinton

Welcome to our next great year at the Oklahoma County Bar Association. I will be serving as the President after much preparation and coaching by our outgoing President, Angela Ailles Bahm and the OCBA staff members – you ladies rock! For those who don’t know me, let me introduce myself. I am a native Oklahoman, born in Oklahoma City and have lived in Okmulgee, Tulsa, Stillwater and Norman. I graduated from Nathan Hale High School in Tulsa and attended OSU for undergrad with a degree in Political Science. Go Pokes! Off to Norman I went for law school which was interrupted by moving to Manhattan, Kansas, Kansas City and then Atlanta. I finally stayed in one place long enough to graduate from Georgia State University School of Law in 1991 and returned to Oklahoma to work for Watson and McKenzie. I later moved to Riggs, Abney, Neal, Turpin, Orbscon and Lewis and then with David Lee and Associates. A young lawyer could not ask for a better group of mentors.

In 1996 I was asked to apply for Special Judge by then District Judge Roma McElwee and the rest is history! I served 6 years on the domestic docket as a Special Judge then in 2002 ran for the seat vacated by Judge Blevins. I was elected in spite of the famous commercials, financed by an unhappy litigant, depicting me as a Barbie doll dressed in a judicial robe. Three election cycles later I am still here. In 2004 Nancy Coats retired and her civil docket became available. Getting to know a new group of lawyers and area of law was daunting but oh so interesting. Every day is a new day on this docket and boredom has never been a problem! I am blessed with a wonderful family – my husband, Charlie is a banker/lobbyist with BancFirst. We recently become empty nesters when our youngest, Jenny, went north to Oklahoma State University to study biology. Our oldest, Caitlin and her husband Kevin, are expecting first grandchild soon in Kansas City. Our next oldest, Taylor, is here in Oklahoma City and currently works at the Court Clerk’s office. Our pets are limited to “Archie”, our 72 pound gentle giant of standard poodle mixed heritage.

OCU law school has afforded me the opportunity to teach Pretrial Litigation for eight years and last semester I took on the challenge of Trial Practice. I love the interaction with law students and helping them learn about professionalism from the beginning of their career.

This year I finished my term as President of the Oklahoma Judicial Conference Executive Board, which plans the statewide judicial educational conference each July. I am still active on the OBA Bench and Bar committee and I encourage those with interest to join us. We have a great group of lawyers and judges working on improving the justice system for all Oklahomans. We are working on videos to help pro se litigants understand the procedures when they appear on high volume dockets and hope to add more videos in the future.

So, you may be asking, what’s with the title “Thanks to all Lawyers who serve…”? Well, my passion is service. I enjoy service to the Oklahoma Judiciary, the County Bar, the OBA, our church leadership team, and the National Exchange Club. One of our friends gave me a tea towel that says “Stop Unnecessary Volunteering”, but I honestly feel that there is NO unnecessary volunteering. I encourage all Oklahoma County Bar members to join me in serving others. I know there are many lawyers already doing great work with nonprofits and I want to explore ways to show our community that lawyers are giving back to our community every day.

By way of example, but by no means as a limit to our involvement, next month I will share with you the next chapter in the OCBA’s relationship with Oklahoma City Public Schools Foundation. We are now an official partner with the Foundation and we will provide you, through the OCBA website, many opportunities to serve in areas that hold your interest in public education.

We also would like to know on what boards you serve and when you may be looking for new members to help you and your service organizations. We would like to hear from you about your service in the community and will be adding a section in the Briefcase to showcase community involvement. We might even start a friendly competition between committees to see who is giving the most time and talent – but I am guessing the YLD committee is way ahead of us all!

Thank you for giving me this opportunity to serve the Oklahoma County Bar Association. I look forward to a year of service, education, and camaraderie while we further our profession.

Thanks to all lawyers who serve...
BRIEFCASE YEAR IN REVIEW

By Michael W. Brewer

Approximately one year ago I finally made good on my promise to Judge Geary Walke that I had made three years earlier to write a series of columns for the OCBA Briefcase. This started out as a trilogy of articles for the OCBA Briefcase introducing more mature practitioners to new technology, social media and the inherent issues for attorneys that come with “progress”. In the past twelve months I have learned that it is (1) difficult to teach an old dog new tricks, (2) no good deed goes unpunished and (3) it is very difficult to write a monthly article much less a biweekly blog. One of my favorite writers, Dave Barry, a Pulitzer Prize winner1 pens a year-end review each year that is a worthy piece of writing2. So with lofty goals I set myself up to be a witty literate attorney writing for the good of the profession. In September 2015, I set out to write a monthly installment for the Briefcase and also publish it as an internet blog entitled “Open & Obvious”? The only failure guaranteed more so than this project is rating my beloved Sooners in the top 3 preseason with an incredibly difficult early schedule and my true belief that they will go undefeated. But some other things have been learned along the way. My first installment “Did My New Friend Just Take My Data?” is a question that the DNC is still asking.

With some trepidation, I ventured into bar exam pass rate territory in another article. This article even drew a rebuttal article published by Judge Geary Walke, himself. So I guess I really missed the mark on that one. But, bar exam results are around again and so are the same discussions as before. In a follow up installment, I listed considerations for getting your own piece of the cloud before they run out of clouds. I wrote this article so well that I am actually buying a piece of a cloud complete with all the cyber security bells and whistles. Encrypted email ability is now a must have for many clients. Are any of you doing these things? Then came “Are They Really Super?” Well I just received a boat load of notifications online of certain “Best Lawyers®” and “Super Lawyers®” at firms and for lawyers that I know. On cue with this article, I received an email to be named a “Best Premises Lawyer in Oklahoma” from a European publication to be paid in euros, I forwarded it to Judge Walke to prove I do not write fiction. One of my lawyer friends, who is about every computer system available to penetrate including national retailers, banks, the IRS, Dropbox, LinkedIn and the Democratic National Committee. My article begging for friends, “Can I Be Your Friend” got me nowhere. The next installment “My Lawyer Friend Just Take My Data?” is a question that the publishers are being proactive on the ethics front regardless of the state. It is good for the profession and makes sense since these honors reach all 50 states and the globe via the internet.

So I hope that you got something out of this yearlong writing exercise and if nothing else, at least a little knowledge of what technology is out there and available. I also just received an invitation from one of the major publishers of lawyer marketing materials announcing an interactive webinar on blogging for all of those law firms wanting to increase their business. Their premise is that legal surveys show that law firms who regularly blog more effectively communicate with their potential markets and clients. Maybe, just maybe, I am ahead of the curve. I’ll continue to contribute to the Briefcase and publish in “Open and Obvious!” and hopefully with practice I’ll do better. Unlike Judge Walke, I am not ready to retire my quill and ink. And as in a popular cable television series, no one is really dead unless you see their head on a pole.

Michael W. Brewer is an attorney, founder, and partner of Hiltgen & Brewer, PC in Oklahoma City, Oklahoma. To contact Mike, email mbrewer@hbokc.law, call (405) 605-9000 or tweet him at @attymikeh. For more information, please visit www.hbokc.law.

---

1 en.wikipedia.org/wiki/Dave_Barry

---

J&B

J & B

JOHNSON & BISCONCE

WWW.OKLALEGAL.COM

Oklahoma’s Top-Rated Lawyers Since 1995

Martindale-Hubbell

PERSONAL INJURY WORKERS’ COMPENSATION SOCIAL SECURITY DISABILITY

1-800-426-4563
405-232-6490

The Hightower Building
103 N. Hudson, Suite 100
Oklahoma City, OK 73102
An Olio of Court Thinking

By Jim Croy

September 19, 1916

One Hundred Years Ago

[Excerpted from: O’Hern v State, 1916 OK CR 77, 159 P. 938.]

In this case the plaintiff in error, defendant below, was convicted of adul-

dy, and sentenced to pay a fine of $250. The facts in this case are very remarkable,

and the record, instead of lending color to a prosecution begun in good faith, and

for the purpose of vindicating the law, and exalting the dignity of the home and the

sanctity of the marital relation, bears the earmarks of a shameless scheme to dis-

grace, to humiliate and to sacrifice all that is sacred and holy, to enhance the prospect of obtaining a few dollars.

The record shows that the husband, the prosecuting witness in this case, before filing this action commenced a $10,000 damage suit against the defendant for alienating his wife’s affections. And yet this injured husband and this estranged wife were still living and cohabiting together, and conjointly swear that one of their defenseless children is a bastard, the offspring of an illicit intercourse between the defendant and the prosecuting witness, the poor child. This poor child was begotten in May, 1910. The husband slept with the wife, and had access to her, not only in May, 1910, but at all other times. She was a young, buxom, 180-pound woman; he an able-bodied farm hand. Yet they swear that because of a derangement of the stomach, he slept with the brawny, brawny-armed, brawny-shouldered defendant, and that this illegitimate child will also have the benefit of this unchaste act. And in the eyes of every man this defenseless child is entitled to the protection of the law. This poor child was begotten in May, 1910. The husband slept with the wife, and had access to her, but not in May, 1910, but at all other times. She was a young, buxom, 180-pound woman; he an able-bodied farm hand. Yet they swear that because of a derangement of the stomach, he slept with the brawny, brawny-armed, brawny-shouldered defendant, and that this illegitimate child will also have the benefit of this presumption as to its legitimacy. Besides, the husband, the prosecuting witness in this case, seems to regard intercourse with his wife as a commodity, which created a debt in his favor, which he had to collect, as a butcher would an ordinary meat to sell. And after begin-

ning any action, in an attempt to collect this debt, he wrote a long letter to the defendant, which is in part as follows:


“Mr. M. R. O’Hern,

We received your letter a few days ago and will say in reply to your threats & your witnesses you have no witness nor can you get any that is a made up lie & you know it & so do I know it. Do you think that your lies, bluffs & undermining work will pay that det that you justly owe if you do your mistaken there is only one way to settle it & that is to come up & see me & i think we can settle it all right, but if you think your bluffs will pay the det all right, but i have set my determination on this matter & shall carry it to the end & will watch for my chance to fight for my rights as long as i may live & i will see that you pay this det. ** * *”

And when he failed to collect the debt, which he assumed O’Hern owed him by reason of his alleged intercourse with his wife, he filed his $10,000 damage suit, and later filed this action.

There are a number of errors assigned, but it will not be necessary to consider them all. The first is lodged against the sufficiency of the information, and, we think, is well taken. The charging part of the information is that Mike R. O’Hern did unlawfully and feloniously commit the crime of adultery with one Jeanette Culbertson, who was then and there the lawful wife of Casner N. Culbertson, by then and there having carnal knowledge of the body of the said Jeanette Culbertson, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Oklahoma.

Section 2431, Revised Laws 1910, defines adultery as: “The unlawful voluntary sexual inter-

course of a married person, with one of the opposite sex. * * *”

It is clear, that in this information one of the essential ingredients which distin-

guishes the offense sought to be charged from other sexual crimes is totally absent. Then and thenceforward the unlawful carnal knowledge of the said Jeanette Culbertson was voluntary. That ingredient in the statutory definition of adultery is not accidental, but is one of the ingredients that essentially distinguishes this crime from that of rape. It is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

tinguishment, and allege in some way that the intercourse was voluntary, as it is in pleading rape to allege that the intercourse was accomplished by force and violence. The mere naming the offense, adultery, or rape, does not charge the crime; but it is the facts pleaded, the acts alleged to have been done, that fixes the status of the crime, and constitutes an absolute or only a qualified defense. And it is as important that the pleader in charging adultery should make this dis-

}
are analogous to those of the Board of Regents and President of the University of Oklahoma. The occasion of the alleged slander by Sanford, President of the Colored Agricultural and Normal University, in the cited case, was substantially the same as the occasion of the alleged unlawful slander involved in the instant case. That case construes section 726, O. S. 1931, 12 O.S.A. § 1443, and holds that the remarks of the president at the session of the Board of Regents concerning the fitness of the plaintiff, an employee of the school, were absolutely privileged. While, as pointed out by the plaintiff, there are respectable authorities holding that the occasion afforded only a qualified privilege, the cited case commits us to the rule of absolute privilege. . . .

Here the alleged slanderous statements were made at a session of the Board of Regents, held to pass upon the discharge, by defendants, of the plaintiff. The reason for the rule of absolute privilege is stated in Newell, Slander and Libel (4th Ed.) p. 380, § 341:

“The great underlying principle upon which the doctrine of privileged communications rests is public policy. This is more especially the case with absolute privilege. Here the interests and the necessities of society require that the time and occasion of the publication or utterance, even though it be both false and malicious, shall protect the defamer from liability to prosecution for the sake of the public good. It rests upon the same necessity that requires the individual to surrender his personal rights, and to suffer loss for the benefit of the common welfare.”

* * *

The Board of Regents is the governing board of the University. It has the final word in the employment or discharge of its faculty members and employees. It is to the interest of the public that the best qualified persons serve the University. The board must largely depend upon the president, deans, and heads of departments for correct information as to the fitness and qualifications of those on the pay roll and those seeking employment. If, in giving such information to the board, such officers were not under the rule of absolute privilege, every disgruntled person, refused employment or discharged, could file suit for damages for defamation or conspiracy against such officers and state a cause of action requiring them to stand trial before a jury as to their motives or the truthfulness of their statements, regardless of the correctness of the allegations of the petition or the merits of the cause. Such a rule would tend to deprive the board of the benefit of candor and full disclosure as to the qualifications of the employee or applicant. The rule of absolute privilege in such a case is for the protection of the public and not for the protection of the officers.

The statements being absolutely privileged, it is immaterial as to whether they were made with improper motives or whether they were false.

It follows that the means employed to secure the discharge of plaintiff were not unlawful, and the petition does not state a cause of action for conspiracy.

September 15, 1966
Fifty Years Ago

LaVon Evans was charged by the City Police of Oklahoma City on February 8, 1966, with the offense of Driving While Under the Influence of Alcohol, allegedly occurring on the 5th day of February, 1966. Petitioner filed a Motion for Jury Trial and submitted a written brief in compliance with the order of the Municipal Court and thereafter, on the 30th day of March, 1966, said Motion for Jury Trial was overruled and the court ordered the Petitioner to trial on April 25, 1966, which was thereafter continued to April 27, 1966, to be tried without a jury. On the 26th day of April, 1966, LaVon Evans filed an application for this Court to assume jurisdiction and issue an Order prohibiting the Honorable Phillip Lambert, Judge of the Municipal Court of Record of Oklahoma City, Oklahoma, from trying said Petitioner without a jury in the Municipal Court of Record of Oklahoma City, Oklahoma, Case No. 287. This Court issued an Order staying further proceedings in said cause until a determination of the issue here presented could be made.

In oral argument and in her brief, Petitioner contends that she has a constitutional right to a jury trial. In his Response and brief in support thereof, it is the position of the Honorable Phillip Lambert that a person charged with a violation of a city ordinance, the punishment for which does not exceed a fine of $20.00, does not have a constitutional right to a jury trial. We here take note that the statute authorizing the creation of the Municipal Court of Record and defining its jurisdiction, further authorizes the city to provide jury trials for persons charged in said court and provides for a direct appeal to the Court of Criminal Appeals. Apparently the city has not enacted ordinances implementing the jury provision. The Respondent correctly contends that a person charged with the violation of city ordinances, the punishment for which does not exceed $20.00, does not have a constitutional right to a jury trial.

We take note that the statute authorizing the creation of the Municipal Court of Record and defining its jurisdiction, further authorizes the city to provide jury trials for persons charged in said court and provides for a direct appeal to the Court of Criminal Appeals. Apparently the city has not enacted ordinances implementing the jury provision. The Respondent correctly contends that a person charged with the violation of city ordinances, the punishment for which does not exceed $20.00, does not have a constitutional right to a jury trial.

In construing this provision, this Court stated:

“Statutes creating additional courts upon a population basis which cover some of the counties of the state and exclude others, and in parts of certain sections of said statute provide treatments as to individual residents of said counties covered, different from the treatment provided for same individuals if residents of counties entitled, different from the treatment provided under our general laws for said individuals, are to that extent arbitrary and capricious, and in violation of the provisions of the Constitution of Oklahoma, Art. 5, Sections 32, 46 and 59, and said parts of said sections of the statutes are invalid.” . . .

We are of the opinion and therefore hold that when a person is charged with a violation of municipal ordinances in the Municipal Court of Record of Oklahoma City, he has the same right to a jury trial as accorded all other residents of Oklahoma under the provisions of 11 O.S. § 752. The Order heretofore issued staying all proceedings in the Municipal Court of Record of Oklahoma City, Case No. 287, is hereby extended until such time as a jury trial is provided for the Petitioner. The Writ prayed for is accordingly granted.

September 10, 1991
Twenty-Five Years Ago

Vogle was employed by Dillard's Department Store in Heritage Park Mall from March 25, 1986 until November 6, 1987 when she was discharged from her job for not following company rules. On November 13, 1987, Vogle filed a complaint with the E.E.O.C., alleging age and sex discrimination. Vogle thereafter
applied to the Oklahoma Employment Security Commission for unemployment benefits. On December 18, 1987, the application was denied after Claimant’s employer claimed she was discharged for misconduct relating to work. On December 28, 1987, Vogle filed an appeal with the Appeal Tribunal stating she was not discharged for misconduct but was actually discharged because of her previous testimony in an E.E.O.C. hearing for another discharged employee.

The Appeal Tribunal reversed the Commission’s determination and allowed benefits. Dillard’s appealed to the Board of Review. The decision was reversed and benefits were denied. On April 6, 1988, Vogle filed a petition in Oklahoma County District Court seeking review of the Board’s decision. On September 13, 1989, after reviewing the record submitted by the Oklahoma Employment Security Commission and the pleadings submitted by the parties, the District Court affirmed the Board of Review’s decision denying benefits.

Vogle claims the District Court erred because the evidence did not support the decisions of the Board of Review and the District Court, and the standard for work related misconduct applied by the District Court and Board of Review was erroneous.

The transcript of testimony before Hearing Officer, Paul Riggins of the Appeal Tribunal, reveals that Betty Vogle, Appellant, was a beauty advisor in the cosmetics department at Dillard’s in Heritage Park Mall. Employees were encouraged to take discontinued perfume testers for themselves or immediate supervisor, then an approval slip was taken to customer service. Customer service was to verify the approval and issue a claim slip to the employee. At the end of the day, the employee turned in the claim slip and took the merchandise home. The merchandise was also taken past a security guard who provided an additional check point. One day Vogle inadvertently omitted the first step in the process. Another employee, Beth Mahoney, also failed to get approval, but was not terminated.

Anna Ellis, store manager, testified at the hearing that Vogle had always obtained approval on previous occasions and that it was never denied. This was the only time Vogle failed to obtain approval. Ellis deemed this isolated act to be “dishonesty” even though Vogle returned the testers as soon as she learned there was a problem. On the day in question, Mahoney, a co-worker, had chosen some testers from the drawer and placed them in a sack. Vogle asked her to place two more in the sack and volunteered to take them to customer service. Mahoney was not terminated even though she had been reprimanded the week before for giving away a tester without permission.

Vogle testified at the hearing that Dillard’s wanted to terminate her employment because of her testimony in an E.E.O.C. complaint filed by Shona R. Clark, a Creek Indian. Clark, as a former employee, filed a complaint for discrimination after she was continually ridiculed by her supervisor and called a “squaw” in the presence of others. On several occasions her supervisor asked her to do a “rain dance”. Once, when Clark was attending a store sponsored seminar, her supervisor was required to inventory her line. When Clark returned, she found a note from the supervisor which read, “If you do this to me again, I will kill”. Clark filed an E.E.O.C. complaint for discrimination and was subsequently discharged. On November 3, 1987, she filed a second complaint for retaliation, as well as age and race discrimination, stating “the working conditions for employees over 40 years old at Dillard’s Heritage Park Mall are pressurizing. Management has made comments to the effect that ‘no one over 30 years old will be hired as cosmetics consultant’”. Clark also claimed in her second complaint that other females at the Heritage Park store have been subjected to threats and intimidations for cooperating and participating in the investigation of her prior charge. Vogle testified at Clark’s hearing.

At Vogle’s hearing, witness, Teri McClain, testified that on previous occasions, Ellis had tried to terminate Vogle because “she was a trouble maker.” After Vogle’s transfer to the Muskogee store was approved, Ellis exclaimed, “I finally got rid of her!” Vogle refused to accept the transfer which apparently created further disharmony between the two.

Unemployment benefits were denied to Vogle after she filed an E.E.O.C. complaint subsequent to her discharge. Vogle alleged in the complaint that management made discriminatory remarks about older women in cosmetics, banging on the counters and waiving fists, which drew the attention of customers. When Vogle asked why her Christmas commission was considerably less than that of other employees, she was told that it was because she was a witness in Clark’s E.E.O.C. hearing. She also alleged in her Complaint that the women were subject to security checks while the men were free to leave work without being searched.

From the foregoing evidence and testimony, the Hearing Officer made the following findings of fact and conclusions of law:

- The claimant did know the rules but made a mistake. There was another employee involved in this incident but she was not discharged because the claimant had the items in question on her own person when leaving the store. It is a general practice for employees in the beauty aid line to take testers home with permission.

- Section 2-406 provides a disqualification for claimants who are discharged from their last employment for misconduct connected with work. The term “misconduct” has been defined as an act or course of conduct evidencing such willful or wanton disregard of an employer’s interest as is found in deliberate violation or disregard of standard of behavior which the employer has the right to expect of his employee.

- In this case the claimant was not stealing the testers since it is a common practice to take these products home. The problem lies in the fact that the claimant did not get permission as the rule required. The claimant was aware of this rule. No evidence or testimony indicates that the claimant had broken that rule before or had been warned on any other matters. The claimant may not have used good judgment in the matter. Evidence of misconduct has not been proven. The Commission’s determination is REVERSED. Benefits are allowed.

The Board of Review reversed this decision after receiving a letter from James E. Frick, a consultant hired by Dillard’s. No new evidence or testimony was submitted. The Board found that Vogle’s actions were tantamount to misconduct, but made no finding that her acts were detrimental to her employer’s interests. The District Court for Oklahoma County affirmed the Board.

Title 40 O.S. 1971 § 2-406 provides that an individual seeking unemployment compensation shall be disqualified if he has been discharged for misconduct connected with his last work. The Court in Vester v. Board of Review of Oklahoma Employment Security Commission, 697 P.2d 533 (Okl. 1985), defines “misconduct” as:

Conduct evincing such wilful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in careless or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his employer.

Conduct excepted from the foregoing definition is “mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith error in judgment or discretion.” Id. at 537. The Court in Tynes v. Uninoyal Tire Co., 679 P.2d 1310 (Okl.App. 1984) made a distinction between conduct which is grounds for termination and that which automatically subjects the claimant to a forfeiture of benefits. While the violation of a work rule may well justify the discharge of an employee, such a violation does not necessarily amount to misconduct for unemployment compensation purposes. Id. at 1313.

The conduct of Vogle may have been inadvertent or ordinary negligence, and may have been grounds for dismissal, but it does not constitute the type of conduct described in Vester or Tynes which would divest her right to unemployment benefits. Mere violation of a work rule although it may justify a discharge, does not necessarily constitute misconduct for the denial of benefits. . . . Vogle’s conduct was not wilful or intentional. It was a mistake. Vogle inadvertently failed to gain approval before removing the merchandise, but she did not steal it. She simply omitted one step in the process. Customer service employees did not check for approval but nevertheless issued a claim check. Furthermore, Vogle turned the testers in after she realized there was a problem.

An isolated infractions of a work rule not detrimental to the employer’s interest is not misconduct within the meaning of 40 O.S. 1972 § 2-406 and is not sufficient to deny unemployment benefits. The evidence does not support the decision of the Board of Review and the District Court in denying benefits. The decision of the Appeal Tribunal awarding benefits is reinstated.
The Know Nothings

By Geary L. Walke

It kills me to discover how ignorant I have been throughout my life. That conclusion seems to come about a lot these days. Maybe it’s just my age. While I might know a bit about a lot, the depth of my knowledge is severely lacking. Somewhere in my past I was taught there was a political party called the Know Nothing Party, but if more knowledge about it was offered, I failed to lap it up and retain it. A recent reference I saw suggested the Know Nothings were built around objections to immigration policies. That sounded a lot like a current events theme we’ve all watched grow over the course of the last decade. That led me to dig and mine for more information.

The 1830s (as a point of reference) found Andrew Jackson as our 7th President. He was a first generation American-born son of Scots-Irish immigrants. Before you begin thinking this may be a nod to Donald Trump, don’t: Jackson at age 13 was a courier in the Revolutionary War, later became a lawyer, a Congressman and a U.S. Senator, as well as becoming a celebrated Army hero in the War of 1812, all before he ran for President. His terms (1829-1837) saw the threat of southern secession decades before the real thing. Slavery wasn’t the only issue dividing parties, politicians and the country. The economy and banking decentralization was at the forefront of politics. Jackson signed the Indian Removal Act and rejected the authority of the U.S. Supreme Court. And the number of immigrants into the U.S. started to grow.

In the decade that followed, immigration rose to the top of all the lists of hot subjects. The numbers of people immigrating to the United States was growing by leaps and bounds. Between 1840 and 1850 the number of all immigrants into America tripled. Between 1845 and 1852 Ireland was devastated by the great potato famine, known as the Great Hunger. A mold turned the fields of potatoes to black mush in a country where one third of the population was totally dependent on potatoes for nourishment (for reasons which open up an entirely different can of worms). A million Irish men, women and children died from starvation. Another million emigrated. The majority emigrated from Ireland and ended up in the United States, and most of those remained in the tenements of New York City and Boston. The arrival of great numbers of Irish did not go unnoticed in political circles.

The American Nativist Party was formed in the 1840s. Their claim: We are a Protestant Nation, Anglo Saxon, and “if allowed to be mixed with mongrel races and Papists, will descend into Babylon.”

The political party had its own paramilitary wing called the Wide Awakes. They were violently anti-Catholic, considered the Irish to be “scum unloaded on America wharves,” burned at least three Catholic churches in New York City, burned a priest’s library of 5,000 books, and at least 30 people were killed in one rampage against the Irish immigrants. Legend has it that the virulently anti-Catholic, anti-immigrant party became known as the “Know Nothings” when the rank and file were told to repeat that answer if anyone questioned their violent activities.

In 1854 the Know Nothings won all the Massachusetts congressional seats, took most of the Massachusetts state legislative seats, captured half of New York’s delegation and won six governorships. They pushed anti-immigration laws and made it harder for immigrants to become police officers or hold office. They proposed that an immigrant would have to live in the United States for 25 years before becoming eligible for citizenship at a time when the life expectancy in America was 38 years. A year later they were the second largest political party in the nation, and the only party to have been founded to specifically oppose an ethnic group (Irish).

Handbills in New Orleans asked, “Americans! Shall we be ruled by Irish?” Members of the Know Nothing party pledged to support only American-born Protestants and to never marry a Catholic. Even Abraham Lincoln noted, “When the Know Nothings get control, it (the U.S. Constitution) will read ‘all men are created equal except for Negroes, and foreigners, and Catholics.’” Harper’s Weekly noted that 75% of the violence in New York City are the work of the Irish, whom, they claimed, had an “incapacity for self-government.” This, at a time when America’s total population was about 30 million and the Irish numbered about 2 million (6%).

Supposedly, northern Know Nothings opposed to slavery broke off to form the Republican Party. In the 1860 election Lincoln won with a plurality for the newly born Republican Party (and was not even on the ballot in Arkansas, Alabama, Mississippi, Texas, Tennessee, Florida, Georgia, Louisiana and North Carolina). The Democrats split their support. The Northern Democrats supported Stephen Douglas who favored letting territories hold popular votes to determine whether they would become slaveholding or not. The Southern Democrats wouldn’t tolerate choice in the matter of slavery and nominated John C. Breckinridge. The Know Nothings nominated slaveholder, John Bell.

The Know Nothing Party soon disappeared into the dustbin of history, as all such ill-conceived efforts should. The lesson I came away with after that bit of study, was that America is much more resilient and strong than we might think. We have survived much more than the political bums we now suffer and we will again survive sectarianism, racism and all measures of unjustifiable social exclusion. We should, heed our own welcoming words to the immigrants to America in New York’s harbor. These words are inscribed with the Statue of Liberty, or, as it is formally named: “Liberty Enlightening the World.” We don’t say it for ourselves alone. We declare these words and hope the rest of the world will join us.

Upon its dedication in 1886, President Grover Cleveland said the statue’s “light shall pierce the darkness of ignorance and man’s oppression until Liberty enlightens the world.”

Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these the homeless, tempest-tossed to me, I lift my lamp beside the golden door!

America is strong and can overcome pitiful arguments and displays of political power and all the travails and difficulties history reveals. It takes courage and leadership, but America will survive, and our ideals will survive even against those who continue to know nothing.
The answers come in the June issue of Mayo Clinic Proceedings where researchers from the Division of Cardiovascular Medicine, Henry Ford Hospital, Detroit, Michigan studied all three questions. They determined that among approximately 29,000 men and approximately 28,000 women, all of whom went through a stress test on treadmills at ever increasing speeds and ever increasing inclines. Their average age was 53. By the way, I’ll explain later how you can, in a very low stress way, identify YOUR CC via METS or VO2 Max.

The outcome measured, as related to CC, was mortality among those 57,000 men and women over many years. With that info, the researchers could identify relative risk based on the CC reflected in the stress tests. Stuningly consistent, though, with what I’ve been telling you all these years), men and women with a MET level of 12 or more had an 80% reduced risk of premature mortality vs. those men and women who achieved a MET level of less than 6.

The researchers found that women, while achieving lower MET levels, achieved equivalent survival at MET levels 2.6 lower than men. That is, even though women achieved lower MET levels by 2.6, the predicted survival was equal to men who had a MET level of 2.6 higher. The lesson for women: even though your MET level won’t be as high as men’s, your lower MET level does not necessarily mean greater risk; and this: your working on getting it as high as possible will offer more protection. And the lesson for men: having a MET level equal to your spouse (female spouse, that is) puts you at a higher risk of premature mortality than her risk.

They also found that reduced risk of premature mortality did not have a threshold; that is, improvements from 2 METS to 3 METS gave more protection; and 4 was more protective than 3; and 5 more than 4. The lesson for men and women: work on getting your MET level even slightly higher if it is now VERY low.

They also found that reduced risk of premature mortality did not have a plateau; that is, improvements from 2 METS to 3 METS gave more protection; and 4 was more protective than 3; and 5 more than 4. The lesson for men and women: work on getting your MET level even slightly higher if it is now VERY low.

You have read in this column that, in one way or another, your having greater cardiovascular capacity (CC), whether expressed in METS or in VO2 Max, protects you from premature mortality.

Several matters, though, I don’t believe I’ve ever addressed are: 1) whether there is a threshold below which improvements in CC no longer offer protection, 2) whether women (with smaller hearts and lungs and, therefore, lower absolute CC) are offered less protection than men with higher absolute CC.

Now, do some simple math. This math will allow you to determine your MET level. Here is the formula for men (relax; this is very simple): 139.168 minus (388 times your age) minus (0.077 times your weight...in pounds) minus (3.265 times the amount of time to complete the mile in minutes and percent of minutes....e.g., 15:20 would be 15.33 minutes) minus (.156 times your HR at the end of the mile).

For women, use the same formula except for the very first number: don’t use 139.168...

Now, the result of that calculation will yield your VO2 Max. To get to your MET level, merely divide your VO2 Max by 3.5. So, for example, if your VO2 Max is 35, dividing it by 3.5 yields a MET level of 10.

Now you’ll be able to see how reduced your risks are against persons scoring less than 6. Less than 6 METS. Keep in mind that the average age for the 57,000 subjects was 53, so if you are older or younger, these numbers may not exactly apply to you, but just remember that no matter your age, having a higher and higher MET level or VO2 Max level is protective. At any age, higher is better.

For men, against those having a MET level of less than 6, men having a MET level of 6 to 9 had a 42% reduced risk of premature mortality; men at 10 to 11 had a 68% lower risk; men at 12 and above had an 80% lower risk. For women, against those other women at less than 6, those at 6 to 9 had a 50% reduced risk; women at 10 to 11 had a 69% reduced risk; and women at 12 and above had an 80% reduced risk.

Take home message? If you want to be around for a while, or your family wants you to be around for a while, and if you are not fit, just get started, please. If you are fit, get fitter. Much, much fitter.

Jack Herdon
when he served as Justice of the Peace. “Not Guilty” was not part of his vocabulary back then.

by Warren E. Jones.

You have read in this column that, in one way or another, your having greater cardiovascular capacity (CC), whether expressed in METS or in VO2 Max, protects you from premature mortality.

Several matters, though, I don’t believe I’ve ever addressed are: 1) whether there is a threshold below which improvements in CC don’t offer the protection, 2) whether there is a plateau above which improvements in CC no longer offer protection, 3) whether women (with smaller hearts and lungs and, therefore, lower absolute CC) are offered less protection than men with higher absolute CC.

Now, the result of that calculation will yield your VO2 Max. To get to your MET level, merely divide your VO2 Max by 3.5. So, for example, if your VO2 Max is 35, dividing it by 3.5 yields a MET level of 10.

Now you’ll be able to see how reduced your risks are against persons scoring less than 6. Less than 6 METS. Keep in mind that the average age for the 57,000 subjects was 53, so if you are older or younger, these numbers may not exactly apply to you, but just remember that no matter your age, having a higher and higher MET level or VO2 Max level is protective. At any age, higher is better.

For men, against those having a MET level of less than 6, men having a MET level of 6 to 9 had a 42% reduced risk of premature mortality; men at 10 to 11 had a 68% lower risk; men at 12 and above had an 80% lower risk. For women, against those other women at less than 6, those at 6 to 9 had a 50% reduced risk; women at 10 to 11 had a 69% reduced risk; and women at 12 and above had an 80% reduced risk.

Take home message? If you want to be around for a while, or your family wants you to be around for a while, and if you are not fit, just get started, please. If you are fit, get fitter. Much, much fitter.

Warren E. Jones, J.D., HFS, CSCS, CEQ, is an American College of Sports Medicine 9ACSM) 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 403-812-7612
The proven payment solution for lawyers.

Managing payments and growing revenue for over 30,000 law firms in the US, LawPay is the only solution recognized by the ABA. Designed specifically for the legal industry, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind your credit card transactions are handled the right way.

LawPay.com/OKCBAR | 866.376.0950

LawPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL.
SPICE SAYS:

DO THE RIGHT THING!

by Joi McClendon

Pro bono...a curse word among lawyers. (Short for pro bono publico [Latin, For the public good]. The designation given to the free legal work done by an attorney for indigent clients and religious, charitable, and other nonprofit entities.) What began as a noble idea in law school, became a draining reality. For most lawyers, tackling a pro bono case happens every blue moon. Bottom line: too time consuming and no money! We certainly have the capability of helping others in need, so why do we not do more of it?

It is safe to say that we became attorneys for many reasons with the number one being to help people. When is the last time that you took a case for no fee? Why is that? Each one of us has a busy life with long hours both at the office and at home, but why not contribute a few extra hours to someone who desperately needs it? At the end of the day, our lives are not dramatically altered by donating our time and resources, but the pro bono client’s life will be.

I recently took on a Murder case pro bono. I knew my client was innocent, and I could not walk away. The former public defender in me surfacing yet again! The case went to jury trial earlier this year and my client was acquitted. An innocent man walked because I did the right thing, not for a fee, but for equal access to justice. It was many grueling hours, but the result was worth every one of them. The very fact that I was a part of that process was payment enough. I was rewarded in more experience and the gratefulness of my client. I am not stating this to brag or to spout from some sort of high horse; I offer this example because we all have the capability of offering our time and talent to help those who cannot afford an attorney.

Now, I am not saying that you take on a murder case for free or anything such as that, but challenge yourself to help someone in need with the talent you possess in our profession. Remember why you became a lawyer: to help your fellow man. Legal Aid and the Public Defender’s Office are inundated with requests for help. If each one of us were to offer assistance, imagine how that would grease the wheels of justice! Look for ways to aid those who need your help: inside and outside of our profession. Take a case pro bono, donate your time to a shelter, buy one downtown some lunch, but do something to help make our world a better place.
2016 STRIKING OUT HUNGER BOWLING TOURNAMENT

Most Spirited Team – Crowe & Dunlevy Team #1

Best Dressed Team – Crowe & Dunlevy Team #2, Gaylon Towle, Tim Gallegly, Christopher Staine (not pictured, Zane Anderson & Ben Davis)

3rd Place – Team idoxs

Strike Pot Winner Gaylon Towle

1st Place – Team Nelson Terry #1, Derek Cowan, Carolyn Smith, Ryan Dean, Justin Meek & Ben Grubb

2nd Place – Team Chesapeake Energy, Whitney Donley, Merideth Herald, Jason Blase & Sandra Fraley

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 assets need protection.

At Dobson, we pledge to mitigate your risk of exposure and system downtime. How? We proactively monitor and maintain your network, implement and manage preventative security measures, and provide certified technical support that protects your firm – and your clients – 24/7/365.

Don't lose a case – or your firm – because your assets were left exposed. Let Dobson protect, secure and manage your IT so you can focus on the success of your clients AND your firm.

Protect your assets. Schedule a meeting with a Dobson consultant today.

Call 405-242-0105 today to get started.

Visit DobsonTechnologies.com/Legal-Security to schedule a meeting with a Dobson consultant today.

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

www.OKLAHMAMEDIATORS.org

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
In June of 2016, “The Superunknowns,” a novel by local attorney Austin Reams, was published. This Labor Day holiday, he was interviewed about the book by Mary Jane Southwick, his mother who was the first licensed woman stock broker at Bache, Hasley & Stewart in Oklahoma City, in 1979.

**Synopsis of “The Superunknowns”**

“The Superunknowns” takes place in Oklahoma City. Twin sisters, Edith and Irene, receive a package from their deceased father. Inside is a samurai sword; its blade scrawled with the message: “I will see you again in mountains.”

The event jars their awareness, waking them up from a virtual world, a false reality that overlays all aspects of life viewed through contact lenses. Like the twins, most people don’t remember that family members have disappeared, taken to debtor concentration camps where so-called Employees are brainwashed to believe they’re still living out their lives back home.

When floating objects the size of mountains emerge from sundogs around the world, the distracted public takes little notice, but the twins have no choice when one centers over their house and they begin to develop super-natural abilities. In a world where smart phones have been integrated with contact lenses, seeing things for what they are puts them in danger.

As their powers grow, the government imprisons them in a deep underground military base. Able to know the answer to any fact-based question asked, while undergoing a polygraph, Edith learns the true plight of their father. Edith and Irene, who is a Japanese sword master able to use briefs helped, but those skills are different than dream reading, and water at the corner of May Avenue. After escaping by foot on Memorial Road with other refugees for food and water at the corner of May Avenue. After escaping from a labor camp in Kansas, their father tries to rescue his daughters, making his way through Enid back to Oklahoma City. For example, Edith and Irene must travel from a labor camp in Kansas, their father tries to rescue his daughters, making his way through Enid back to Oklahoma City. Other key events in the story occur in the metro, including the climax fight scene when downtown Oklahoma City. In June of 2016, “The Superunknowns,” a novel by local attorney Austin Reams, was published. This Labor Day holiday, he was interviewed about the book by Mary Jane Southwick, his mother who was the first licensed woman stock broker at Bache, Hasley & Stewart in Oklahoma City, in 1979.

**Interview With Local Attorney About New Novel, “The Superunknowns”**

Southwick: How does Oklahoma play a part in the novel?

Reams: Two of the lead characters, twins Irene and Edith, both live in northern Oklahoma City when their father disappears (believed to be deceased) and a massive UFO appears over the city. The UFO begins to follow Irene, leading the government to kidnap her to a deep underground military base, after which she and her sister develop superpowers. Several key scenes occur in Oklahoma City. For example, Edith and Irene must travel by foot on Memorial Road with other refugees for food and water at the corner of May Avenue. After escaping from a labor camp in Kansas, their father tries to rescue his daughters, making his way through Enid back to Oklahoma City. Other key events in the story occur in the metro, including the climax fight scene when downtown is destroyed. Other scenes occur in places I’ve lived and worked, including San Francisco and Los Alamos.

Southwick: Did your experience as an attorney help in writing the novel?

Reams: I suppose my experience researching and writing briefs helped, but those skills are different than dream reading, and crafting it into a novel. I honestly try to forget the legal world when I write stories. Learn more about “The Superunknowns” at www. mimbrez.com. The book is available there, and can also be found at Full Circle Bookstore, and in paperback and e-book formats at Amazon.com and barnesandnoble.com.

THE RED MASS

**By Doneen Douglas Jones**

On September 24, 2016 at 5:00 p.m. at the Cathedral of Our Lady of Perpetual Help, 3214 North Lake Avenue, Oklahoma City, the Most Reverend Paul S. Coakley will celebrate the Annual Red Mass for the Archdiocese of Oklahoma City. The Most Reverend John D. Conley, Bishop of the Diocese of Lincoln will deliver the homily. The Red Mass is dedicated to seeking guidance from the Holy Spirit for all who seek justice and offers an opportunity for members of the bench, bar, legislature, law enforcement and governmental agencies to reflect on their responsibilities. In the United States, the Red Mass is traditionally celebrated shortly before or after the United States Supreme Court convenes on the first Monday in October. The Red Mass originated in Europe in the middle-ages and derives its name from the red vestments worn symbolizing the tongues of fire that descended on the Apostles at Pentecost. You are welcome to join the Red Mass celebration regardless of religious affiliation.

Members of the judiciary and law school faculty members are invited to rode in the Connor Center at 4:40 p.m. for a procession into the Cathedral. If you have any questions, please contact Rosemary Lewis at 405-709-2759 or Rlewis@archokc.org. Please be a part of this long standing tradition and receive God’s blessing for the coming year.
I Bar

Imitation iBar for a Genuine Friend: Judge Don Deason

By Geary Walke

The Briefcase Award for 2016 was awarded to Chris Deason and Judge Don Deason for their creative and inclusive iBar: Ultimate Playlists, wherein one or two members of the bar would courageously identify some favorite tunes and open themselves to applause, criticism or laughter. It usually included a brief spot of biographical information, and usually contained some historical notes of interest about contemporary music.

We were never privileged to see a playlist by Don, with the exception of a Christmas playlist he created for a friend, which was later contributed to the Oklahoma City Observer's holiday playlist. The playlist was titled, “Muskrat Candlelight.” The second song, “Muskrat Love,” is a tune that is performed by America in 1973.

The first song that comes to mind is by John Denver, called “The Eagle and the Hawk”:

I am the eagle, I live in high country
In rocky cathedrals that reach to the sky
I am the hawk and there’s blood on my feathers
But time is still turning they soon will be dry
And all of those who see me, all who believe in me
Share in the freedom I feel when I fly

Those of us who had the honor of working with him knew what an outstanding public servant Judge Deason was, and our belief in him helped many of us fly like that eagle. His “lighter” side was just as appreciated. When we work in a field with so much heartache and anger, seeing that love and affection he had for Chris was special, and when he was with her you could almost hear him channel Bruno Mars:

When I see your face
There’s not a thing that I would change
Cause your amazing, just the way you are
To my friend Don Deason, thank you for everything – you will be missed.

Judge Lynne McGuire wrote: Over the twenty-eight years I was privileged to know Don Deason, he was my mentor, my boss, and my friend. I have struggled to come to terms with moving forward in this courthouse without him.

I think I’ve realized that it’s not that the Oklahoma County Courthouse won’t ever be the same again without him, it’s that the Oklahoma County Courthouse won’t ever be the same because of him.

A collective remembrance was sent out by his friends and fellow members of the Ruth Bader Ginsburg American Inn of Court, to which Don and Chris contributed so much time and effort:

Judge Don Deason was a dear friend and valued member of our Inn. He was always present with a smile on his face and willingness to lend a helping hand wherever needed. He will be greatly missed. Our hearts are heavy with his loss, and our thoughts are with his family.

I will close this counterfeit version of iBar with this: Every year at Christmas Don and Chris would spend endless hours brewing up the best Christmas Eggnog ever. They would lovingly deliver dozens and dozens of these gifts of liquid heaven to friends around town. It was a massive project, and expensive as well, but a true Christmas gift from their hearts that will be remembered by all.

Rest in peace, Judge. May your heaven have all the music possible. You have made our world better and we will miss you greatly.

Bar Observer

Former Oklahoma Corporate Commissioner Joins Spencer Fane LLP Firm Welcomes Patrice Douglas to Oklahoma City Office

Spencer Fane is pleased to announce that Patrice Douglas has joined the firm as Of Counsel.

Douglas is a fourth generation Oklahoman who has spent much of her career in various public service roles in the state. Her service began in 2009 when she was elected Mayor of Edmond, Oklahoma, and continued throughout her time as Chairman of the Oklahoma Corporate Commission.

As a former President of SpiritBank, former Executive Vice President of First Fidelity Bank, member of the board of directors for BankSNB, President of Emerging Markets for Premier Consulting Partners and an Executive Partner with GIANT Partners, Douglas has extensive experience working with private financial institutions.

Douglas has served as a Chair of the Corporation Commission of Oklahoma, where she facilitated the regulation of fuel, oil, gas public utilities and transportation in Oklahoma. She draws from her regulatory knowledge to help clients in the energy industry navigate the complex rules and regulations of the field.

In 2011, Douglas was the first municipal official to receive the Kate Barnard Award for Outstanding Public Service for her work as mayor of the 6th largest city in Oklahoma. She has also been a three-time finalist for the Journal Record’s Woman of the Year award and was the recipient of the Energy Visionary Policy Leadership award in 2013. Douglas is an active member of the local business community and often accepts speaking engagements throughout Oklahoma, in which she covers topics such as politics, banking and overregulation.

She received her juris doctorate from the University of Oklahoma.

Cathy Christensen and Associates, P.C. Welcomes New Attorney

Shea Bracken has joined the firm of Cathy Christensen and Associates, P.C. His practice will focus primarily on personal injury and tort litigation, including medical malpractice, nursing home injuries, wrongful death, vehicle accidents, and premises liability among others. Shea will also practice in the areas of family and domestic law. He previously worked for Rodolf and Todd defense firm and has defended severe injury and high damage cases. His practice has been in insurance defense, medical malpractice defense, employment law, and products liability. He has a passion for litigating cases, being in the courtroom, and obtaining the best outcome for his clients. Shea served in the United States Marine Corp Infantry. He is a decorated veteran with a combat deployment to Fallujah during Operation Iraqi Freedom II. Shea obtained his Bachelor of Arts from Oklahoma State University in 2008. He graduated with honors from Oklahoma City University School of Law in 2011, where he was a member of Law Freedom II. Shea obtained his Bachelor of Arts from Oklahoma State University in 2008. He graduated with honors from Oklahoma City University School of Law in 2011, where he was a member of Law Review. Shea is an active member of the Oklahoma Bar Association and the Oklahoma County Bar Association. She can be contacted at 405-752-5565, or 2929 N.W. 138th Street, Oklahoma City, Oklahoma, 73134.

Craig Marshall Regents Joins GableGotwals as an Associate Attorney

Craig Marshall Regents joins GableGotwals as an Associate Attorney in the firm’s Oklahoma City office. Regents’ primary practice will focus on litigation and business reorganizations, workouts and bankruptcy. Regents is a former law clerk for the Honorable Sarah A. Hall, Chief Judge of the U.S. Bankruptcy Court for the Western District of Oklahoma, and a former Oklahoma Assistant Attorney General. A graduate of the University of Iowa College of Law, Regents earned his master’s degree from the London School of Economics and his undergraduate degree from the University of Oklahoma.

Crowe & Dunley adds Commercial Space Transportation Attorney

Gregory R. Rasnake has recently joined Crowe & Dunley as a director in the firm’s Oklahoma City office. A member of the firm’s Aviation & Commercial Space, Administrative & Regulatory and Criminal Defense, Compliance & Investigations Practice Groups, Rasnake has experience in government policy and regulations, commercial space transportation compliance, aircraft certification and aircraft certification.

Prior to joining Crowe & Dunley, Rasnake served as Acting Deputy Associate Administrator, Deputy Director of Strategic Planning and Chief of Staff of the Federal Aviation Administration (FAA) Office of Commercial Space Transportation. As Deputy Director of the Budget Office at the FAA, he served as the agency’s lead liaison to the Senate and House Appropriations Committees.

A United States Army veteran, Rasnake also served in the Office of the Assistant Secretary for Government Affairs at the Department of Transportation and played a key role in the confirmation of many departmental presidential appointees. He held positions in human resources and Congressional affairs at the United States Department of Transportation.
STATE QUESTIONS FOR 2016

By Miles Pringle

Currently there are seven State Questions on the ballot this November. As ballot titles are limited to 200 words, here is additional information to consider this fall. [NOTE: Any opinions expressed in this article are that of the author and not of the Oklahoma County Bar Association or the Briefcase Committee]

State Question 776: Death Penalty

State Question 776 seeks to add an amendment to the Oklahoma Constitution providing the legislature with authority to make “changes in methods of execution.” The language of the proposed amendment states that “[a]ny method of execution shall be allowed, unless prohibited by the United States Constitution.” Given that the state of Oklahoma has executed the second most people since reinstatement of the death penalty in 1976, one might think that there was a constitutional mandate for execution. That would be wrong. The only provision in the Oklahoma Constitution relating to the death penalty limits the Governor’s power to parole death sentences. This last paragraph (III-C-10) (“Governor shall not have the power to grant paroles if a person has been sentenced to death or sentenced to life imprisonment without parole.”).

State Question 776 does not actually amend or change anything. The Oklahoma Constitution does not limit the death penalty, and the legislature has the authority to mandate methods of execution. See e.g. 22 O.S. § 1014 (amended effective November 2015 to include nitrogen hypoxia as a means of execution along with a lethal injection utilizing a lethal quantity of drugs, electrocution and firing squad). Regardless of one’s stance on the death penalty, this measure would have no immediate impact on the status quo of Oklahoma law.

State Question 777: Right to Farm

State Question 777 is probably the most controversial state question on the ballot. It provides that “the rights of citizens and lawful residents of Oklahoma to engage in farming and ranching practices shall be forever guaranteed in this state.” It also prohibits the legislature from passing any law which “abridges the right of citizens and lawful residents of Oklahoma to employ agricultural technology and live stock production and ranching practices without a compelling state interest.” Thus, SQ 777 appears to be an attempt to prevent any future regulation of the agriculture industry.

Agriculture is fundamental for America’s and Oklahoma’s prosperity and security. Looking at the food lines in Venezuela, many people are wondering what the future looks like. It certainly affects our economy. In total, agriculture accounts for approximately 1.5% of Oklahoma’s gross domestic product, and similar amount in share of jobs.

Agriculture and livestock operations are incredibly complex today. We are not talking just about small family farms. While “most cropland was operated by farms with less than 600 crop acres in the early 1980s, today most cropland is on farms with at least 1,100 acres, and many farms are 5 and 10 times that size.”3 “The shift of acreage to larger farms is part of a complex set of structural changes in crop agriculture”, and are accompanied by greater specialization. Technology has been fundamental in this development, “from bigger and faster capital equipment to information technology, chemical herbicides, seed genetics, and changing tillage techniques”, and reduced amount of labor used in agriculture.

I recently had a long conversation with a farmer’s wife about her farm and swine operations in Minnesota, which he helps operate. The cattle operation is impressive, including lots of moving parts such as transportation, veterinary bills and commodity prices. Just figuring out the right amount of feed is paramount, because the cattle are susceptible to diseases and other conditions, and that their care is a real science. For example, swine need special truck beds for transportation, and the beds must be thoroughly sanitized after each ride to avoid spreading any contagions.

Farms have been a part of our nation for a long time. Agriculture is vastly different today than during the dust bowl era, and will continue to evolve well into the future. Who knows what the next 50 years will bring. How far does this amendment reach? Will the legislature be unable to regulate water rights because they “abridge” some corporation’s farm? Agriculture already receives preferential treatment from the government as compared with some other industries. Ranchers and farmers have access to preferable farms loans (which are partially guaranteed by the government), subsidies to control supply and prices, tax credits, and special bankruptcy provisions. Farming and ranching do not need more protection from the government, it is their best friend (which is entirely appropriate in most circumstances).

Agriculture is an important industry, but it is not necessarily non-negotiable, or susceptible to dangers and hazardous activities. Oklahomans, through their legislature, have the right and need to pass laws relating to farms, ranches, puppy mills, grow houses, and water rights when appropriate. There are other arguments against SQ 777, such as the amendment’s benefit to foreign corporations and its protection of animal abuse as discussed by General Edmondson. In sum, it is hard to find a good reason for this measure to be passed.

State Question 779: 1% Sales Tax for Oklahoma Education Fund

State Question 779 would raise the Oklahoma Sales Tax by 1% to create an education fund. The fund would be distributed 69.5% to the common education fund (including a $5,000 per pupil payment for teachers), 19.25% for higher education, 8% for early childhood education, and 3.25% for career and technology training. The measure includes a provision that its funds may not be used to offset any current education funding.

Some critics of SQ 779 have argued that the law may provide no tangible benefits. This is an interesting argument to make when Oklahoma City public schools literally had to shut down early last year and nation. A sales tax is a regressive tax that student supplies due to budget short falls. The tangible benefits would be full school years, new textbooks, and a blanket teacher pay raise (whose average pay is the third lowest in the nation).

The more effective arguments against the measure, such as: 1) Oklahoma’s sales taxes are already high, and 2) budget shortfall can be better resolved by repealing recent tax cuts and will hopefully benefit from increased prices. Repealing recent tax cuts would be a better way to shore up Oklahoma's shortfall, although that did not happen this year in spite of massive budget shortfalls. If someone knows how to raise international oil prices (short of bribing the King of Saudi Arabia), please let me know!

Raising the sales tax may not be the best way to raise funds for education. Oklahoma pays approximately the sixth highest average sales tax by state in the nation. A sales tax is a regressive tax that disproportionately affects the poorest Oklahomans. SQ 779 is an incomplete and imperfect solution to a real and serious problem for Oklahoma. One could view it as a good start, but not worth the cost.

State Question 780: Criminal Justice Reform

State Question 780, self-titled the “Oklahoma Smart Justice Reform Act”, amends certain state drug laws and property crimes. It would make possession of small amounts of drugs a misdemeanor and raise the threshold of property crimes to $1000 for a felony. The best statement in favor of SQ 780 is made within its proposed Section 1, which states: “The people of the state of Oklahoma find the fact that Oklahoma has the second-highest overall incarceration rate in the country, and the highest incarceration rate for women, is inconsistent with Oklahoma values, and drains resources away from investments that can do more to promote public safety. Therefore, the people intend, in enacting this initiative measure, to criminalize all offenses, except for offenses listed below: (1) stop wasting taxpayer money keeping people who commit low-level offenses behind bars for years; and (2) sad- dle fewer people who commit low-level offenses with felony convictions that will follow them through life and prevent them from getting an education or a job.

It is hard to disagree with this statement. Moreover, drug crimes in particular disproportionately affect African Americans. For example, nationally, blacks are 3.6 more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs, even though “whites are actually more likely than blacks to sell drugs and about as likely to consume them.” After serving out their sentences, ex-felons face a litany of obstacles in reintegrating into society. What also needs to be pointed out is that Oklahoma prisons operate as mental health facilities. In 2015, more than half of 1,600 inmates had a history of mental illness, and 46% currently

State Question 781: Rehabilitation Funding

State Question 781 is contingent upon SQ 780 passing, and would use funds saved from SQ 780 to create the “Community Safety Investment Fund”. Monies in the fund would be distributed to counties in proportion to their population. The fund would be used to provide community rehabilitative programs, such as mental health and substance abuse services. The purpose of the new law, as stated in Section 1, is to enact “criminal justice reforms that focus on treating the root causes of crime by increasing investments in rehabilitative services like drug and mental health treatment, job training, and education programs.”

As stated above, Oklahoma has the second highest overall incarceration rate per capita, and when leaving prison, ex-felons face a litany of obstacles in reintegrating into society. What also needs to be pointed out is that Oklahoma prisons operate as mental health facilities. In 2015, more than half of 1,600 inmates had a history of mental illness, and 46% currently
The Oklahoma Innocence Project (OKIP) at Oklahoma City University School of Law is hosting a catfish fry to raise money for the project which helps wrongly convicted Oklahomans regain their freedom. The Project operates completely on donations, and all services are offered free of charge to the clients.

The event will take place on October 2, 2016 at Saints Pub in the Plaza District, 1715 NW 16th, Oklahoma City. For $25, supporters will receive unlimited catfish and beer from 1 p.m. to 7 p.m. A number of bands will provide live entertainment during the fundraiser. All proceeds will benefit OKIP.

The Project had its first exonerations in May when Judge Sharon Holmes freed Malcolm Scott and De'Marchoe Carpenter. The pair had been in prison for more than 20 years, wrongfully convicted of murder in a 1994 Tulsa County drive-by-shooting. Since regaining their freedom Malcolm has enrolled in college and De'Marchoe is studying for his forklift and commercial driver's licenses.

There have been thousands of requests for assistance since OKIP opened in August 2011. As was the case for Malcolm and De'Marchoe, litigation can take years and cost tens of thousands of dollars. The Project is housed at OCU Law and law students work on cases under the supervision of Project staff. The OKIP catfish fry is open to the public. All donations are greatly appreciated and will directly benefit the clients of the Project. Additionally, there is still an opportunity to be a sponsor for $250. Contact the Oklahoma Innocence Project at (405) 208-6161 if you would like to be a sponsor.

**QUESTIONS from PAGE 15**

had symptoms of mental illness.12 Of incarcerated men, 30% currently exhibit symptoms of a serious mental illness, and 58% of female offenders currently exhibit symptoms of a serious mental illness.13 Serious mental illness being defined as: a DSM-IV-R Axis I mental disorder that causes maladjustment and/or personal suffering to the extent that medication is needed and prescribed by a psychiatrist or an Axis I diagnosis in the groups of psychotic disorders, Bi-Polar, or Major Depression.

This is a difficult issue. Investment in treating substance abuse and mental illness is tremendous. Currently, Oklahoma leaves far too much on DOC to treat these issues, which it is not designed to do. However, if DOC is allowed to keep any savings from SQ 780, then theoretically it can make important investments, such as staffing, infrastructure improvements, and better treatment of substance abuse and mental health (so long as the Legislature lets DOC keep the savings). SQ 781 is a tough call.

State Question 790: Removal of the Prohibition against State Sponsorship of Religion

According to Wikipedia, Moses was born circa 1400 B.C., and died circa 1201 B.C. Somewhere during that time Moses brought down from Mt. Sinai the words of the Lord, which included the Ten Commandments. In 2016, some 3,200 years later, the Oklahoma Legislature enrolled State Question 790, which proposes to remove the prohibition of government using public money or property for the direct or indirect benefit of any religion or religious institution. This is the Legislature’s response to the Oklahoma Supreme Court’s ruling regarding the Ten Commandments monument on the State Capitol. Prescott v. Okla. Capitol Pres. Comm’n, 2015 OK 54, 373 P.3d 1032 (“Because the monument at issue operates for the use, benefit or support of a sect or system of religion, it violates Article 2, Section 5 of the Oklahoma Constitution and is enjoined and shall be removed.”).

The Supreme Court has held that a monument to the Ten Commandments in Texas did not violate the Establishment Clause of the United States Constitution. Van Orden v. Perry, 545 U.S. 677, 125 S. Ct. 2854 (2005). This case was not a blanket endorsement of having the Ten Commandments on all state capitol grounds; however, the Court did note the role that the Ten Commandments have played in our Nation’s history. “We need only look within our own Courtroom. Since 1935, Moses has stood, holding two tablets that reveal portions of the Ten Commandments written in Hebrew, among other lawgivers in the south frieze. Representations of the Ten Commandments adorn the metal gates lining the north and south sides of the Courtroom as well as the doors leading into the Courtroom. Moses also sits on the exterior east facade of the building holding the Ten Commandments tablets.” Id, 345 U.S. at 688. Regardless of the Oklahoma Supreme Court’s ruling, removing Oklahoma’s separation of church and state is a terrible idea.

In 1802, Thomas Jefferson said “Believing with you that religion is a matter which lies before God, and not the state, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church & State.”

As further explained by the Supreme Court: “Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect.” Lemon v. Kurtzman, 403 U.S. 602, 622, 91 S. Ct. 2105, 27 L.Ed.2d 491 (1971). “We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government.” Id, 403 U.S. at 622-23.

Although repealing Article 2, Section 5 of the Oklahoma Constitution will have no effect on the Establishment Clause of the U.S. Constitution, separation of church and state is a pillar upon which our free society stands. There should be no undermining of this basic principle, which was contained in Oklahoma’s original Constitution in 1907.

State Question 792: Alcohol Reform

No research needed, just vote yes.

For more information and resources, visit the OKIP website at http://www.oklahoma-innocence.org. The OKIP catfish fry is open to the public. All donations are greatly appreciated and will directly benefit the clients of the Project. Additionally, there is still an opportunity to be a sponsor for $250. Contact the Oklahoma Innocence Project at (405) 208-6161 if you would like to be a sponsor.

(Endnotes)


4 Id.


6 Forbes.com, “10 States with the Highest Average Sales Tax Rates”.


8 Perry, Gene, “Every sentence is a life sentence: 3 barriers to life after prison”, Oklahoma Policy Institute, published Jan. 21, 2015.


10 Id.

11 Oklahoma Department of Corrections, “2015 Annual Report” (“Inmates sentenced by the court to the ODCC are housed in county jails until reception into ODCC custody.”).

12 Id.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office:

District Judge
Seventh Judicial District, Office 3
Oklahoma County

This vacancy is due to the passing of the Honorable Donald Deason on July 28, 2016.

To be appointed to the office of District Judge of Oklahoma County, Office 3, one must be a legal resident of Oklahoma County, and a member of the Oklahoma Bar. The nominee must also be a practicing attorney. Additionally, prior to appointment, such appointee shall have had a minimum of four years’ experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net under the link to Programs, then Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 N. Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-6862. Applications must be submitted to the Chairman of the Commission at the same address no later than 5:00 p.m., Friday, October 7, 2016. If applications are mailed, they must be postmarked by midnight, October 7, 2016.

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission

Bank. Together we can make a difference across our great state. A donation of just one dollar provides 5 meals for hungry Oklahomans, and 96 cents out of every dollar donated is attributed directly to hunger relief.

Members of the YLD will be reaching out to firms and individual attorneys in the coming weeks via letters, emails or phone calls to solicit donations for the Regional Food Bank. All donations are tax deductible, any amount is appreciated and, of course, cash donations are welcome. Our fellow Oklahomans need our help; I urge each of you to seriously consider making a donation of any size to this worthy cause. As you can, the Regional Food Bank will put your dollar to work!

In addition to soliciting donations for the Harvest Food Drive, the YLD also hosts two annual events to raise money for the Regional Food Bank – the Chili Cook-Off each Winter and the Bowling Tournament each Summer. These are two fun events for a worthy cause. The Chili Cook-off is a fiery competition between fellow lawyers and friends in the legal community and also consists of a silent auction. The bowling tournament is also a fun competitive event with fellow friends and colleagues. Stay tuned for more details on these events.

Beyond our food drive, the YLD participates in other community service projects and is always looking for new ideas. Please let us know if we can help you with a service project or if you have any ideas. We look forward to another great year and cannot say thank you enough for all of your support over the years with the Harvest Food Drive.
By Vicki Behenna
Executive Director

Our criminal justice system is designed to tip toward those who are accused of crime to be presumed innocent until proven guilty, beyond a reasonable doubt. Sometimes our justice system fails with devastating results. Sometimes people who are innocent of a crime are wrongfully convicted through flawed eye-witness identification, faulty forensic testing, coerced confessions, prosecutorial misconduct, or due to ineffective defense counsel. All over the United States, organizations have been formed to help those wrongly convicted. It is called the “Innocence Movement.” The Oklahoma Innocence Project (OKIP) at Oklahoma City University School of Law began in August 2011 with the mission to provide pro bono legal services to those Oklahomans who have been wrongfully convicted, and to educate future lawyers about the causes of wrongful convictions. In short, the OKIP provides hope to the wrongly convicted, both present and future.

Since OKIP opened its doors in 2011, it has received over 1,300 requests for assistance. For the Project to accept a case for investigation and review, it must fit within the Project’s criteria. It cannot be a death penalty case, the inmate must claim to be actually innocent of the crime for which they were convicted, and their sentence must be sufficiently long. Why does the length of someone’s sentence weigh in the evaluation of what cases the Project can accept for review? The answer is very simple – time. It takes the Project anywhere from four to seven years to investigate a wrongful conviction case. Once a request for assistance is made, the Project, through its staff and OCU law students enrolled in the clinic, must begin the task of gathering evidence, including case files, interview notes, preliminary hearing and trial transcripts, forensic lab reports, etc. Once that evidence is obtained, the Project begins the task of trying to find witnesses, some whom may have testified more than 15 or 20 years ago, some who may have died, and some witnesses who might not want to be found. The Project has no ability to formally request discovery or to subpoena a witness before a petition for post-conviction relief is filed. Students at OCU School of Law work on these cases. They are taught about the causes of wrongful convictions. They learn how to gather evidence and how to interview witnesses, even difficult witnesses. They provide research and write legal briefs in support of the Project’s clients. They move cases forward in a meaningful way. Many of the students even volunteer their time to the Project after they graduate from OCU School of Law and begin their own legal careers. The OKIP has over 300 cases that meet the investigative criteria and are in queue for further investigation. Ninety-one cases are in queue waiting to be reviewed for further evidence gathering by the Project’s staff and law students. It takes an incredible amount of heart, tenacity, and resources to move a post-conviction case forward.

In 1995, Malcolm Scott and DeMarchio Carpenter were convicted of first-degree murder. They were each sentenced to life in prison and two seventy-five-year terms for shooting with intent to kill and twenty years for the use of a vehicle to discharge a weapon. They were 18 years old at the time. They were convicted with the help of eye-witness identification, even though the shooting occurred in the early morning hours and one eye-witness was shot in the buttock, apparently running from the fray. Scott and Carpenter have always professed their innocence. While living their lives in the custody of the Oklahoma Department of Corrections, they wrote hundreds of letters to lawyers asking for help to prove their innocence, as the years rolled by. Scott and Carpenter heard about the New York Innocence Project and both men independently wrote to several projects. In August 2011, when OKIP opened, Scott and Carpenter’s case found its way to the staff. The case was investigated and in February and March 2014, the Project filed Applications for Post-Conviction Relief for both men. An evidentiary hearing was held in January 2016 and on May 9, 2016, after twenty-two years in prison, they were set free because OKIP took the case, gathered the evidence necessary to prove Scott and Carpenter’s innocence, and then presented that evidence to a trial judge who found both men factually innocent of the murder that occurred in September 1994.

Their story is important on a number of levels. It involves faulty eye-witness identification, as well as the confession of the actual shooter two days before his execution on a totally unrelated murder he committed after the shooting for which Scott and Carpenter were convicted. The case is currently on appeal before the Oklahoma Court of Criminal Appeals, so a detailed discussion of the case will have to wait for another day. However, the case is an important example of how the criminal justice system can go astray.

OKIP is an essential link in Oklahoma’s criminal justice system. It operates primarily on private donations. It deserves and needs the support of all Oklahoma lawyers to fulfill its mission.

“The only thing necessary for the triumph of evil is that good men do nothing.”

- Edmund Burke

OBSERVER from PAGE 14

of Veterans Affairs and the United States Department of Justice, including serving as Chief of Legislative Affairs at the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Rasnake received his Juris Doctor from the University of Oklahoma College of Law and his bachelor’s degree at Longwood College in Farmville, Virginia.

OU Law Announces New Energy Law Professor

The University of Oklahoma College of Law is pleased to announce the hire of Kristin van de Biezenbos as associate professor of law. She assumes teaching responsibilities in the college’s strategic areas of energy and gas law this fall.

At Texas Tech University School of Law, van de Biezenbos taught courses on Energy Law, Oil and Gas, International Business Transactions and Admiralty Law. She earned her J.D., magna cum laude, from Tulane University Law School where she served as Senior Notes and Comments Editor of the Tulane Law Review and received the Rufus C. Harris Award for best writing on a civil law subject, the James A. Wysocki Trial Advocacy Award and the Cicero C. Sessions Award for Trial Advocacy.

Before working at Texas Tech, van de Biezenbos was a Westerfield Fellow at Loyola University New Orleans College of Law where she taught Legal Research and Writing, Moot Court/Appellate Advocacy and Transnational Insolvency. She also worked in private practice focusing her work on commercial litigation, oil and gas, maritime law, international law and arbitration. She is a member of the Louisiana State Bar Association. van de Biezenbos’ scholarship primarily focuses energy and maritime law.

OU Law is an international leader in oil and gas, natural resources and energy law. The school offers a Master of Laws degree in energy and natural resources through its John B. Turner LL.M. Program, along with certificates in both areas; and an online Master of Legal Studies degree in oil, gas and energy law. OU Law also hosts the annual Eugene Kuntz Conference on Natural Resources Law and Policy, the largest conference of its type in the nation, and is home to the Oil and Gas, Natural Resources, and Energy Journal (ONEJ), the first journal of its kind.

Crowe & Dunlevy adds three paralegals

Crowe & Dunlevy recently named Jessica Patterson, Amy Schutza and Jackie Shubitowski paralegals in the firm’s Oklahoma City and Tulsa offices.

Located in the Oklahoma City office and a member of the firm’s Aviation Practice Group, Patterson’s duties as a paralegal include serving as the firm’s communications liaison with the Federal Aviation Administration (FAA). Her previous experience involves serving as a legal secretary at the firm, as well as work in the mortgage industry. Patterson received her associate of science degree from Northern Oklahoma College in Tonkawa, Oklahoma.

Serving the Intellectual Property Practice Group in the Oklahoma City office, Schutza previously served as a legal secretary and document clerk for the firm before moving into her new role as paralegal. Her new duties include filing and maintaining patent and trademark applications with the United States Patent and Trademark Office (USPTO). She is a graduate of Latham High School in Fairbanks, Alaska and volunteers with Victory Family Church.

With more than a decade of experience as a legal secretary and paralegal, Shubitowski is located in the Tulsa office and provides support to the firm’s attorneys, assisting in trial preparation, file management and other paralegal tasks. She served as a legal secretary for Crowe & Dunlevy for three years and worked for several other law firms prior to joining Crowe. She received her Certified Legal Assistant/Certified Paralegal certification and her Advanced Certified Paralegal – Trial certification from the National Association of Legal Assistants.
Community Service Committee In Action

By Monica Ybarra, Vice Chair

Oklahoma City attorneys Nicholle Jones Edwards, Kayce Gisinger, Monica Y. Ybarra, Ashley Schovanec, and Chance Pearson were on site at OU Children’s Hospital to lend a hand to the children heading to Camp Cavett. The Cavett Kids Foundation serves hundreds of children with various life-threatening and chronic illnesses every year. Among other programs, the Cavett Foundation provides a unique summer camp experience that meets the medical needs of its campers without distracting from the fun of summer camp.

“We were blessed to be a part of the Camp Cavett experience this year. Seeing the excited faces of the kids heading off to camp was so heartwarming,” said Monica Ybarra. “Just because a child suffers from a life-threatening or chronic illness doesn’t mean they shouldn’t have the opportunity to go to summer camp,” Ashley Schovanec said. “It was such a sweet sight watching the kids head off to camp.”

Volunteers from the Oklahoma County Bar Association’s Community Service Committee managed traffic flow in the parking lots, assisted campers and their families through the check-in process, helped organize and load luggage, and assisted camp organizers with other tasks throughout the morning.

Domestic Violence Training Planned for October 18

October is Domestic Violence Awareness Month and a one-day Domestic Violence Training (Safe Town) is being planned for Community Leaders, Clergy, Pastors, and Faith Leaders.

DATE: October 18, 2016 Time: 8:30AM—4:00PM
LOCATION: OU/DHS Training Center 617 W Rock Creek Rd, Norman OK
Please register at http://events.oucpm.org/safetown/. RSVP by October 11, 2016. For additional questions, please contact: Connie Nizza at Constanzia.CTR. Nizzai@okdhs.org or by calling (405) 325-1309.
There is no cost to attend.

Abraham’s
Bail Bonds
Since 1959
City, State, Nationwide
405-528-8000
1221 N. Classen Blvd.
OKC

Crowe & Dunlevy now has a new and exciting legal offering on its roster with the addition of Gregory R. Rasnake, whose experience with the FAA in commercial space transportation puts him in a class all his own. As a director in the Aviation & Commercial Space Practice Group, he advises clients on government regulations and compliance in commercial space transportation. We welcome him to the firm.

INNOVATION

GREGORY R. RASNAKE
Aviation & Commercial Space

crowedunlevy.com
Your Clients Need A Partner You Can Trust

You’ve spent years building a relationship with your clients who trust your judgment. With a full suite of financial services and dedicated, experienced professionals, you can trust ours.

Oklahoma City: Wes Knight | 405.936.3929
Tulsa: Mark Thompson | 918.293.7561
www.bankofoklahoma.com

PRIVATE BANKING | FIDUCIARY SERVICES | INVESTMENT MANAGEMENT | FINANCIAL PLANNING | SPECIALTY ASSET MANAGEMENT | INSURANCE

© 2016 Bank of Oklahoma, a division of BOKF, NA. Member FDIC. Equal Housing Lender. The Private Bank at Bank of Oklahoma provides products and services through BOKF, NA and its various affiliates and subsidiaries.

BOK Financial Corporation (BOKF) offers wealth management and trust services through various affiliate companies and non-bank subsidiaries including advisory services offered by BOKF, NA and its subsidiaries BOK Financial Asset Management, Inc. and Cavanal Hill Investment Management, Inc. each an SEC registered investment adviser. BOKF offers additional investment services and products through its subsidiary BOK Financial Securities, Inc., a broker/dealer, member FINRA/SIPC, and an SEC registered investment adviser and The Milestone Group, also an SEC registered investment adviser.

Investments and insurance are not insured by the FDIC; are not deposits or other obligations of, and are not guaranteed by, any bank or bank affiliate. All investments are subject to risks, including possible loss of principal.