Happy Halloween!

Artificial Intelligence Attacks

By Michael W. Brewer

We are always bringing some new computer program or file management system online at our firm. After the last several years of continuing education advisories that artificial intelligence is going to change the way we practice law, I pondered when those already online systems might become “self-aware”.

It all started with self-driving cars and smart trucks. Sure, who would not want to sit in their Tesla or Google vehicle watching a movie in the back seat while being driven around town? Or, how about the smart tractor-trailer eighteen wheel rig that avoids accidents. I have heard of and observed these in the real world for several years now. But can your professional judgment be replaced by a computer? What happens when businesses pool data concerning similar claims and risks in such a way that claims are efficiently handled, settled and closed…all without or with minimal use of a lawyer. Blasphemy you say, maybe it is closer than we realize or want to acknowledge.

I finally came upon a blog article that actually makes good sense of the whole situation and want to recommend it for your viewing pleasure. It begins with a quote from a Chinese proverb “[w]hen the winds of change are blowing, some people are building shelters, and others are building windmills.”

Author Steven Embry, a lawyer and “technologist” states that data analytics (DA), its brother predictive modeling (PM), combined with their new and improved cousin, machine learning “artificial intelligence” are gradually developing the highly effective tools for insurance companies and even self-insureds to better mitigate and resolve repetitive claims. Improved claims management stemming from the use of these tools would decrease litigation and legal

Upcoming OBA Annual Meeting to Focus on Freedoms

This year’s OBA Annual Meeting is set to take place in Oklahoma City at the Sheraton Hotel, from November 2-4, 2016. Presentations of annual awards and Bar business, including a meeting of the OBA House of Delegates, will take place during the conference, along with several social events. There will also be a variety of options available for CLE credits.

Social and networking events will include the President’s Reception, annual alumni luncheons for each of Oklahoma’s three law schools, Committee and Section meetings, the Annual Meeting Luncheon and “A Night in Havana” reception hosted by the OBA Sections. The President’s Breakfast will differ from years past with a free continental-style breakfast and a presentation by OBA President Garvin Isaacs of Oklahoma City on “Lawyers’ Duty in the Courtroom,” which will include one hour of free CLE for attendees. For those who choose to obtain more CLE credits during the convention, registration packages and varied course tracks let members choose what’s best for them. There will also be a Vendors Expo, where registrants can learn about new technologies and tools to help them make the most of their time, expertise and practice.

Serving as keynote speaker at the Annual Meeting Luncheon is critically acclaimed writer for The New Yorker and best-selling author Jane Mayer. She will speak about the influence of money on judicial and national elections.

“I will talk about the way money is becoming a growing factor in judicial races and what the consequences are,” Ms. Mayer said. “I see the money as a real threat to judicial integrity and independence and am happy to talk about that.”

“We should all be concerned for the future of American democracy,” said President Isaacs. “That’s why I wanted Jane Mayer to speak at our Annual Meeting and why I selected ‘Safeguarding Our Freedom’ as the theme for this year’s Bar Convention.’’

Don’t miss out on this meeting! Register for all events using the Annual Meeting registration form found in the Oklahoma Bar Journal or online at www.amokbar.org. For the best price, register by Oct. 10. Questions? Contact Mark Schneidewent at 405-416-7026, 800-522-8065 or marks@okbar.org.
By Judge Barbara Swinton

Welcome everyone to the fall season! In Oklahoma, that means the end of tornado season, the start of football, the State Fair, and a new school year.

This school year brings a new adventure for The Foundation for Oklahoma City Public Schools. Over the next few months, we will focus on different programs and ways for you to get engaged with OKCPS.

Recently the Oklahoma County Bar Association Board of Directors approved a partnership with the Foundation to support “The Great Commitment.” This is the new strategic plan to provide a variety of ways for community partners to play a meaningful role in OKCPS and the children it serves. The main goal of the new strategic plan is to partner community organizations with schools for specific needs and requests from individual schools.

“Partners In Action” is one such program to meet these needs. The goal is to connect partners directly with schools. Principals at each school can post specific needs and community partners can post areas they are interested in so that those interests and school needs can be matched. This program focuses on mentoring, tutoring, or reading buddies; building community gardens or cleaning playgrounds; providing guest speakers to visit on career day; supplying teacher incentives or PTA dinners, etc.—there is so much to choose from!

So, you may be asking, how can I help? OCBA will have a link to the Foundation on our website and you can see what needs are listed or post what you are willing to provide. You can also go directly to the Partners in Action website at: www.okcps.org/PartnersInAction to get started today.

Positive effects are already reported from this new program. For example, a local church asked a specific school what it needed and now it now provides school lunches and school parties. Let’s see what we can do as a community partner to enrich the education for Oklahoma City schools. I encourage you to decide what you have the time, talent, and gifts to bring to school children and let us make a real difference in their lives.

So did the fall season bring anything new in my world, personally? SO MUCH!

September has been a life-changing month for me and my family. I closed out a 20 year career as a trial judge in Oklahoma County and began a new career as a judge on the Oklahoma Court of Civil Appeals. But on September 30th, the new love of my life arrived! Our first grandchild, Bennett, came into the world, and as I prepare this article, I am taking on the coolest job ever, as “Grand B.” I now know what all my grandparents have been talking about! As one of my friends said recently about grandchildren, “You’ve got to get one of these!” So true, this little guy is such a blessing and a joy to hold and behold. I want to thank all my fellow judges in Oklahoma County for all your support and encouragement in my new endeavor at the next level and to my fellow members on the Court of Appeals, I look forward to transitioning from a “Lone Ranger” to working as a fellow panel member.

This is the last Briefcase before the general election so I want to encourage each of you to research your candidates and state questions and most importantly—GO VOTE!
GOP Roots Not Traced to Know Nothing Party

By Robert R. Redwine

I enjoyed Judge Walke’s article on the Know Nothing party. His discussion of their persecution of Irish Catholic immigrants particularly resonated with me given that I am a quarter Irish through my O’Niel family. I fully concur with Judge Walke’s critique of the short-lived American Party aka the “Know Nothings” and applaud his inspiring concluding message that this country has overcome many challenges before and has proved, and will prove again with courage and leadership, the resiliency of its’ best ideals.

That said, I do think one of the statements regarding the Republican Party was in error. I specifically refer to the following: “Supposedly northern Know Nothings opposed to slavery broke off to form the Republican Party.” This is followed by a statement regarding Abraham Lincoln’s election as the first Republican President.

The Republican Party was formed by anti-slavery former Whigs and other abolitionists in 1854. The Republican Party was an opposition party to the anti-immigrant Know Nothings and to the pro-slavery Democratic Party. It is true that a grant Know Nothings and to the pro-slavery Democrats formed the American Party aka the “Know Nothings” in error. I specifically refer to the following: “Supposedly northern Know Nothings opposed to slavery broke off to form the Republican Party.”

This is followed by a statement regarding Abraham Lincoln’s election as the first Republican President. My concern is that including this incorrect statement in the article with the discussion of violent, anti-immigrant Know Nothing activities may indicate to some readers a link between these abhorrent Know Nothing actions and positions and the formation of the Republican Party, and perhaps also with the election of my favorite attorney, Abraham Lincoln (a personal historical hero to me).

Judge Walke’s article does briefly cite to a sentence from an 1855 letter from Abraham Lincoln to his friend Joshua Speed that criticizes the Know Nothings. However, I think including more of Lincoln’s letter would have made the depth of his opposition to the Know Nothings’ philosophy quite clear. The following is a longer excerpt:

“I am not a Know-Nothing – that is certain. How could I be? How can anyone who abhors the oppression of negroes, be in favor of degrading classes of white people? Our progress in degeneracy appears to me to be pretty rapid. As a nation, we began by declaring that ‘all men are created equal.’ We now practically read it ‘all men are created equal, except negroes.’ When the Know-Nothings get control, it will read ‘all men are created equal, except [African-Americans] and foreigners and Catholics.’ When it comes to that I should prefer emigrating to some country where they make no pretense of loving liberty – to Russia, for instance, where despotism can be taken pure, and without the base alloy of hypocrisy.”

Newspaper magnate Horace Greeley wrote an editorial in June 1854 that both described the purpose of the party and suggested a name for it. He stated:

“We should not care much whether those thus united (against slavery) were designated ‘Whig,’ ‘Free Democrat’ or something else; though we think some simple name like ‘Republican’ would more fitly designate those who had united to restore the Union to its true mission of champion and promulgator of Liberty rather than propagandist of slavery.”

The Republican Party platform of 1860 followed through on this position by referring to the slave trade as “a crime against humanity and a burning shame to our country.” Less well known though is that both Republican platforms with Abraham Lincoln as a candidate (1860 and 1864) included strong pro-immigration planks.

Again, I enjoyed Judge Walke’s article. I hope to see more articles such as his that integrate historical understanding into contemporary issues. I believe history to be a valuable source for wisdom. However, I believe the statement I’ve discussed is incorrect and may leave the very regrettable impression that the Know Nothing activities were connected, in some way, with the formation of the Republican Party and possibly the election of Abraham Lincoln. I’m certain that is not what Judge Walke intended so I write for the singular purpose of clarifying that point.

I therefore respectfully submit that any suggestion that northern Know Nothings formed the Republican Party is mistaken.

Mea Culpa

By Geary Walke

Mr. Robert Redwine, of Bethany, is absolutely correct to call me out. His astute eye for accuracy revealed my error for which I apologize to Mr. Redwine, and all others who noted the mistake. I certainly did not intend to imply that Abraham Lincoln had been a Know Nothing. To the contrary, I thought I was making it clear that he was not a Know Nothing. I note that Mr. Banks is estimated to have taken two-thirds of the membership of the Know-Nothings when he took issue with their position on slavery and moved to support the newly formed GOP. Mea Culpa!

While I’m at it, Judge Bill Graves corrected me on the Statue of Liberty Inscription. While I thought it was part and parcel with the statue from day one, it apparently was added in 1903. Mea Culpa!!

AND, yes Mr. Herndon, your name was misspelled in the caption for the photograph of you at a younger age. Many apologies MR. HERNDON. Mea Culpa!!
An Olio of Court Thinking

October 8, 1916
One Hundred Years Ago

The plaintiffs in error in this case were prosecuted and convicted in the county court of Blaine county for violating our Sabbath or Sunday laws. It appears from the record that they were conducting a general mercantile business at Hitchcock, Okla., and exposed their merchandise for sale on Sunday; that this was done in an orderly, peaceable and quiet way. And there is no complaint that it was done in such manner as to interrupt or disturb other persons in observing Sunday or the first day of the week as “holy time.”

It also appears that plaintiffs in error and were Seventh Day Adventists, and uniformly and religiously observed Saturday, or the seventh day of the week, as a day of rest and “holy time.”

Counsel for both plaintiffs in error and the state have filed able and elaborate briefs. But as we view the situation, the question presents a very simple proposition, and turns on the legislative intent as expressed in section 2406, Revised Laws, 1910. After designating the first day of the week as the Sabbath, and declaring that Sabbath breaking shall consist: First of “servile labor, except works of necessity or charity;” and second, “trades, manufactures and mechanical employments” — the Legislature then makes an exception, and in section 2406 provides that:

“It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day” from the penalties of this statute; provided, such person who uniformly and religiously keeps another day as holy time works on the first day “in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.”

Now the question is, What did the Legislature contemplate by the term “servile labor” in this exception? It is loosely stated by some courts that the term “servile labor” is infelicitous. But there is no such thing as “servile labor” in this county, and has not been for years; and the term is not only “infelicitous” but is obsolete and meaningless, as applied to present conditions. And if our statute should be limited to the literal meaning of the term, then neither the prohibition nor exception in the statute could apply to any class of labor existing today, either in this state or the nation. The word “servile” pertains to slaves, to those held in subjection and enslaved, and no such thing as that exists today in our nation. But our legislature certainly had in mind some existing character or class of labor to which they intended that both the prohibition and the exception should apply, and we think must have intended to use the word “servile” as synonymous with secular. It would be highly improper to strike down a statute so vital as this as meaningless, unless it should be impossible, by any reasonable construction, to ascertain the Legislative intent. This law, as stated by an eminent jurist —

"...Proceeds upon the theory, entertained by most of those who have investigated the subject, that the physical, intellectual, and moral welfare of mankind requires a periodical day of rest from labor, and, as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship, or rest and recreation, as this causes the least interference with business or existing customs."

But our Legislature, we think, wisely and properly, by the provisions of section 2406, Revised Laws, 1910, exempted any one who “uniformly keeps another day of the week as holy time, and does not labor upon that day” from the penalties of this statute; provided, such person who uniformly and religiously keeps another day as holy time works on the first day “in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.”

The writer of this opinion conscientiously and religiously believes that Sunday, or the first day of the week, is the day upon which all persons should rest; and is the day that should be observed as holy time by all Christians; in commemoration of the greatest fact in our religion, the resurrection of our Lord. But I cannot, and would not if I could, make my conscience the standard of my brother. We are all fallible, and I would not assume the responsibility of forcing him to adopt my faith; for, should I be wrong, my responsibility would then be doubled. And the legislature intended to refrain from interfering with or coercing the conscience of those who uniformly and conscientiously keep another day than the first day of the week as holy time, by the provisions of section 2406. And we think this is in harmony with the spirit and genius of our government.

And when our legislators exempted persons who uniformly, conscientiously, and religiously keep another day from the penalties of the statute, they intended to give them a substance and not a shadow. Hence we think the legislature intended to use the word “servile” as synonymous with “secular.” And in this we are sustained by Gladwin v. Lewis, 6 Conn. 49, 16 Am. Dec. 33. But even without a precedent, we think, no other construction could give vitality to the real legislative intent.

But it is facetiously argued by some courts that to say to these people they shall keep our Sunday does not prevent from also keeping the day they regard as “holy day.” But these courts overlook the fact that under the divine commandment these people are striving to obey it just as imperative that they work six days as it is that they rest on the seventh. And if their conscience compels them to rest one day, and the law forces them to rest another, they would thus be forced to violate the first provision of the commandment they are attempting conscientiously to keep.

For these reasons, and others that might be added, we think the judgment should be reversed.

October 8, 1941
Seventy-Five Years Ago
[Excerpted from Thompson v State, 1941 OK CR 136, 118 P.2d 269.]

The defendant, Ellret Rhea Thompson, was charged by information filed in the district court of Payne county, on September 26, 1939, with the offense of driving an automobile while under the influence of intoxicating liquor, was tried, convicted and sentenced to serve four months in the State Penitentiary, from which judgment and sentence he appeals to this court.

The defendant is to the effect that about 10 p. m. on August 27, 1939, the defendant was driving a red Ford pick-up east on State Highway No. 33 between Cushing and Drumright, while he was under the influence of intoxicating liquor; that while driving in this manner, he swerved across the road, hitting a culvert, and blowing out an automobile casing.

The evidence of the defendant is that the defendant was not driving the automobile, but that said car was being driven by one Charles Lemons, and that the defendant was not under the influence of intoxicating liquor.

The practical effect of the court’s order was to exclude all of defendant’s witnesses from the courtroom, while allowing those testifying for the state to remain and hear each other’s testimony.

This ruling of the court might have been harmless, except that when considered in connection with other events that transpired during the trial, hereinafter discussed, it amounts to depriving the defendant of that fair and impartial trial guaranteed to him under our laws.

The witness, Chickering, was with the defendant at the time of the alleged wreck, and testified on behalf of the state concerning the activities of the defendant; and prior to the incident in question. Chickering testified that earlier in the day, he, Hurst, and the defendant had drank some whisky, and that the defendant drank a bottle of beer in Cushing, which was before they started on the trip which ended in the automobile striking the culvert.

On cross-examination of the witness, counsel for defendant sought to cross-examine him concerning the intoxication of the defendant, to which the court sustained objections by the county attorney.

We think this was error. After the state had examined Chickering fully with reference to all that it desired to prove as to the defendant having been drinking intoxicants and as to the manner of the accident, the defendant should have been allowed, on cross-examination, to bring out anything that the state had omitted to show, which would in any manner tend to shed light upon the transaction.

The state cannot be permitted to prove one part of a transaction by a witness, and by failing to question him with reference to a matter which constitutes an essential element of the same transaction, force a defendant to place a hostile witness upon the stand for the purpose of proving the matter which had been omitted by the state.

We are of the opinion that the trial court erred in refusing to allow the defendant to cross-examine the witness as to whether the defendant was under the influence of intoxicating liquor at the time of the wreck.

It is next urged that the county attorney and sheriff arrested the defendant’s witnesses, one after another, as they left the witness stand and lodged them in jail. That such activities on the part of the sheriff and county attorney were widely discussed in the lobby of the courthouse, outside of the courtroom; that the jury,
excused for several minutes’ recess while the court was preparing his instructions, were allowed to mix and mingle with the spectators outside of the courtroom, and were bound to have learned of these arrests to the prejudice of the defendant. That such arrests intimidated two of defendant’s witnesses, who refused to testify after being subpoenaed, because they did not wish to be harassed by the county attorney or humiliated by being placed in jail.

This matter was raised in a supplemental motion for a new trial filed by the defendant. Upon the hearing upon said motion, the defendant placed the sheriff upon the witness stand, who swore that he arrested Mae Smith, Merle Frees, one Dye, and Charles Lemons, witnesses for the defendant who testified to the fact that Charles Lemons was driving the red pick-up at the time it was alleged by the state that the defendant was driving. The sheriff testified that he arrested these witnesses just outside of the courtroom, while the trial was in progress, at the direction of the county attorney and confined them in jail. That Frees and Mae Smith were held in jail a day or two for investigation before being released, and that charges of perjury were filed against Dye and Lemons in connection with their testimony in this case. That there were several spectators and witnesses in the lobby outside of the courtroom when these arrests occurred.

In rebuttal, the county attorney introduced affidavits from each of the 12 jurors who sat on the case that they did not hear the case discussed outside of the actual trial of said case by any one. It is not our purpose to comment upon whether the county attorney was justified in fil[ing the perjury charges against these parties, as that was a matter directed to the discretion of the county attorney who was chosen by the people of Payne county to investigate all crimes committed in that county. It was his duty, if perjury was committed to prosecute the same vigorously. But it was further his duty to commit no act during the trial for the purpose of intimidating defendant’s witnesses, or to convey to the jury from facts obtained outside of the courtroom the personal opinion of the prosecutor that the defendant’s witnesses were guilty of perjury in connection with the case on trial.

There was no direct proof that the jury learned of these arrests. On the contrary, although the affidavits do not expressly so state, the inferences from the statements of the jurors are that they did not hear any comment concerning the arrest of the defendant’s witnesses. After the arrests were made, the jury was allowed to separate and mingle with the spectators during a recess while the court was preparing his instructions; and it would be unusual if some of the jurors did not learn from some remark, carelessly or intentionally made by a spectator, that the defendant’s witnesses had been arrested for lying on the witness stand.

It is evident that if such procedure on the part of a county attorney was encouraged, there would be a great temptation to abuse this privilege. The danger inherent in such a practice is so great that we cannot place our stamp of approval on the same. If it should become necessary to arrest a witness whom the county attorney believes has committed perjury, great care should be exercised to see that this is not done in the presence or hearing of the jury, and knowledge of such arrest should be kept from the jury.

Defendant and his counsel each testified at the hearing on this motion that two witnesses subpoenaed by the defendant, Bill Criswell and Hollis Ateshcraft, refused to testify to certain truths favorable to the defendant’s cause, after they saw the arrest of the other witnesses for the defendant, because they did not want to be locked up by the county attorney.

It is all right for the county attorney to let the public know that he will prosecute any witnesses that might commit perjury in any of the courts in his jurisdiction. But the manner of making this determination to prosecute known should not be such that a truthful witness would be kept from testifying for a defendant for fear of being arrested by a prosecutor. However, there will be very few cases where an honest witness will be prevented from testifying through fear of action against him by the county attorney.

After thorough consideration of this matter, we have come to the conclusion that the defendant has made a sufficient showing to impel us to the conclusion that the action of the county attorney in connection with the arrest of defendant’s witnesses materially prejudiced the defendant in this case.

October 12, 1966
Fifty Years Ago

This is an original proceeding in which petitioner, Dennis LeRoy Powers, seeks an order of this Court prohibiting the Honorable W.L. Owen from further proceedings in Alfalfa County Court case #8003, and for a further order directing said respondent to enter an order dismissing said charge against petitioner.

The Information charging said petitioner with the offense of unlawfully shooting a protected game bird, to-wit, one (1) Franklin Gull, was laid under the provisions of 29 O.S. § 301, the same providing:

“(a) It shall be unlawful to hunt for, capture or kill any species of migratory waterfowl such as ducks, geese or brant or other migratory birds except as provided in the laws of Congress relating to the killing of

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By Shanda McKenzie

Regardless of where one stands on the substance of 12 O.S. §3009.1, since its passage there has been a long running question, fueled by dueling and diametrically opposed opinions by different District Judges in different counties, as to whether the statute would ultimately withstand appellate scrutiny. Due to this uncertainty, a number of personal injury cases were either appealed or placed “on hold” pending further guidance from the Oklahoma Supreme Court. Well folks, the wait is over.

As most of you likely know by now, 12 O.S. §3009.1 (often referred to as the “paid vs. incurred” or “paid vs. billed” statute) recently withstood Constitutional scrutiny in Lee v. Bueno, 2016 OK 97, P.3d ___. This statute essentially provides that if a plaintiff has their medical bills paid by a third-party - such as a private health insurer, Medicare or Medicaid - then that plaintiff will only be allowed to present evidence of the sums actually paid by them or on their behalf, and/or those amounts which remain actually due, rather than the sums originally billed by the providers, prior to application of the third-party payments. The opinion notes that the version of the statute addressed by the Court was passed in 2011, but it was substantively amended in 2015.

In what was essentially a 7-2 decision (at least as to most of the salient points), the Oklahoma Supreme Court upheld Section 3009.1 and ruled it did not run afoul of the “special law” prohibition in the Oklahoma Constitution. The Court’s opinion also made clear that the statute applies equally to private health insurance plans, as well as to Medicare and Medicaid. The details of the decision will not be recited here. However, it is interesting to think about the issues that were not addressed in the Lee opinion and how this pronouncement will practically affect the practice of personal injury and insurance defense law in our State.

For example, will the universal application of Section 3009.1 inhibit an injured plaintiff’s ability to retain counsel due to the relatively smaller dollar amounts that would be available from a jury? How will the cases be handled where there has already been an in limine ruling declining to apply Section 3009.1? Will there be a cottage industry of litigation to determine the definition of other terms contained in the statute, such as “similar bills,” “authorized representative,” etc.? Let’s not forget about how the now certain applicability of this statute will affect the relationship between providers and their patients. Will more providers begin accepting private health insurance in third-party liability cases, or will they stop accepting private health insurance altogether and start filing liens, instead?

Then there is the potential effect on the day-to-day business of the courts. Will there be more jury trials where no medical bills are introduced into evidence because of their relatively nominal dollar value? Will there be a need to amend the lower amount of bills prompt more early settlements by insurers? This initial ruling of constitutionality is likely only the tip of the iceberg in the appellate courts.

Another recent point of interest are the revisions to a number of the Oklahoma Uniform Jury Instructions. The full panoply of changes to the statutes of constitutionality is likely only the tip of the iceberg in the appellate courts.

By James B. Croy

In his satirical 1729 essay, A Modest Proposal, Dr. Jonathan Swift suggested that the poor in Ireland might sell their children for the rich to food, thus alleviating the food shortage and spurring the economy. The prospective law student, upon tarrying up the mountain of money he will have to expend for law school, might start evaluating his own children as a source of revenue. The upward spiral of law school costs seems to have no end, and there seems to be no way of putting on the economic brakes.

However, since the single goal of law school is to give the graduating student the legal tools to pass the bar examination and embark upon his profession, possibly an extremely modest suggestion or two might be in order for the benefit of the successful law school applicant. The first modest suggestion would be to have a “truth in expectations” notice in the letter notifying the successful candidate of his acceptance. This notice would inform the applicant of his relative class rank at admission, the ten-year percentage of students with his rank who have graduated from the law school, the ten-year percentage of graduates with his rank who have passed the bar exam the first time they took it, the percent of graduates with his rank who have passed the bar after failing it at least once, and the percent of graduates with his rank who never passed the bar. Then, the notice could inform the successful applicant of how much he should expect to pay in tuition, fees and books at the current tuition level.

The second suggestion, even more modest than the first, would be that the law school guarantee that if the successful applicant ultimately graduates from the law school, she should fail to pass the bar three times, the law school will hold him harmless for all tuition and fees. After all, the only goal for a law school student is to be armed with the legal knowledge to pass the bar and embark on a legal career. Surely the law schools, when they review applicants and cull them for admission, anticipate that any student who eventually successfully completes his law studies will indeed pass the bar. So, this would just be casting the stress on the student and putting the schools’ money where their mouths are.

Needless to say, the only reason these two modest proposals are not already in effect is that no one has thought of them. Now that the proverbial cat is out of the bag, we can anticipate the country’s law schools lining up to incorporate them into the admissions process. A possible letter of acceptance might read as follows:

Dear Successful Applicant:

It is with great pleasure that I have the honor of informing you that you have been accepted to be a member of the 2020 law class. Classes begin on September 12, 2017, and you should plan on being here three days prior so that you can undergo the administrative drudgery which is necessary for the start of your law school career.

By the way, Dean Goodfellow has asked that I advise you that you are number 107 in your admissions class of 189, or in the top 56% of your class. In the past ten years students with that class rank at admission graduate from Law School at a rate of 64%. Of the graduates who began their law school careers in the top 56% of their class, 56.5% were successful in passing the bar exam the first time they took it, and an additional 7.5% percent eventually passed it after failing it at least once. Thus, only 36% of the students with your admissions class ranking failed to be admitted to practice as a lawyer!

Additional good news is that here at Law School, we are so certain of your success in passing the bar examination that if you fail to pass the exam three times and agree never to take it again, the Law School will stand good for your tuition and fees. That is, if you owe student loans for fees and tuition, we will pay those loans and to the extent you have already paid for tuition and fees, we will reimburse those monies. What could be better?

You might well ask what those fees and tuition costs might be, as well you should. After all, better safe than sorry! But, at the current tuition rate of $1,065 per hour, to which a barely mentionable general fee of $115 per hour is added, together with the parking and security fees, student bar fees, and those pesky textbooks, you should look forward to a completely affordable $120,000.00 for your law school experience. Don’t forget to add in living expenses!!

We look forward to seeing you in September as you embark on a great adventure.

So, those are my two modest proposals. I assume they will be adopted forthwith. And by the way, although we all refer to Dr. Swift’s essay as A Modest Proposal, the full name of his paper was, A Modest Proposal for Preventing the Children of Poor People From Being a Burthen to Their Parents or Country, and for Making Them Beneficial to the Public.
Cha-Cha-Cha Changes

By Cindy Goble

I am writing this article after months of promising Debbie Gorden that I would write an article for the Briefcase. The delay is embarrassing to me, but hey, I’m making a change and turning over a new leaf! Sometimes change is good, but change is also something we fear. We tend to put up our defenses, question the wisdom of the change and resist until the cows come home!

People generally prefer the same routine day in and day out because life is busy. We rush to work, we rush to complete deadlines, we rush to pick up dry cleaning, to take the kids to soccer practice, and it is a never ending cycle that is both physically and mentally exhausting, and then we get the call from a friend of your cousin at night who has a quick legal question for you, and the beat goes on. Have you ever driven home and realized you don’t even remember the drive or whether you actually stopped at that stop sign. It has happened to me.

With all of this life happening and all of us running on autopilot, when do we have the time or the energy to give back to our community? I would suggest that we all have time to do good every single day. Doing something good in our community brings back the positive to the practice of law and to your life. Helping others in need without expectation of payment is gratifying. My first pro bono case was a simple publication divorce for a domestic violence survivor. I will never forget how good it felt walking out of the courthouse with her that day. She was extremely grateful and relieved that her nightmare was finally over.

The experience was very gratifying to me as well, after all, I am writing about it now, a mere 22 years later!

I’m inspired by an article in the September 10, 2016, OBJ written by Jim Priest, CEO of Sunbeam Family Services, “Why I Miss the Practice of Law.” The article describes the change he made when accepting his current position. The change was drastic, going from a litigation heavy practice to the person in charge of a local non-profit agency. While Jim does amazing work at Sunbeam, he didn’t mention in his article the partnership formed with Legal Aid Services of Oklahoma in a time of need. You see, our 3rd Saturday monthly legal advice clinic experienced change a couple of years ago when the building where we had held our clinic for 15+ years was sold. John Miley, a long-time clinic volunteer attorney, worked to find a new location. His wife, Justice Norma Gurich, spoke with Jim Priest and our search was over!

On the third Saturday of every month, I get the donuts and coffee for the legal advice clinic participants who gather in the training room at Sunbeam Family Services from 9:00 a.m. to noon. Attorneys give legal advice to low-income people and senior citizens who are seeking our help. I am very thankful for the attorneys and other volunteers who make the clinic possible and for Jim Priest for hosting our clinic. Regular clinic volunteer attorneys include John Miley, David Miley, Kent Johnson, Rita Douglas-Talley, David Bryan, Shanika Chapman, OU law student Lindsey Pever and legal secretary Penny Denton, with Crowe & Dunlevy. When we are stumped on a legal issue, we also have our “phone a friend” attorneys who answer my periodic calls for help with our legal issue including OBA President Garvin Issacs and Legal Aid Services of Oklahoma attorneys Rick Goralewicz, Richard Vreeland and Aubrie Comp. Since we relocated to Sunbeam Family Services, our client numbers have quadrupled! So, while Jim may not be practicing law as before, his hospitality has been instrumental in the continuation and growth of the clinic and our provision of legal advice and other legal services through the clinic at Sunbeam.

Statistics show that there are 20,000 low-income clients for every LASO lawyer in this state. What makes it even worse is that most of the 20,000 poor people will have multiple legal issues every year related to poverty.

Here is my change challenge to you. By the end of 2016, volunteer to take a case, volunteer at an outreach clinic such as the 3rd Saturday Legal Clinic, volunteer for a courthouse clinic such as the Pro Se Waiver Divorce Docket Clinic, give legal advice over the web or by telephone, pledge to participate in the annual Ask-A-Lawyer program on Law Day, volunteer to speak to groups, just do something to make a difference in the lives of a low-income family or a senior citizen. Concerned you may not be familiar with an area of law? It’s okay, we are there to help!

If you cannot volunteer time, consider making a donation. It’s important to our community and to ourselves to satisfy the ethical obligation to give back to our community. You can email me at cindy.goble@laok.org or call me at 405-488-6823, for more information and volunteer opportunities.

Don’t forget to register for LASO’s free annual seminar for our volunteers and donors on October 25, 2016. The registration link is found on our website at www.legalaidok.org.
By: Special Judge Allen Welch

Bradley “Shipwreck” Wynn is a deputy sheriff who serves the Oklahoma County Courthouse. You’ve seen him. You may even know him. But you may not know that he is also, as his business card reads, a “Writer, Historian & Urban Archaeologist.”

Shipwreck is a graduate of Western Heights High School. He has worked in law enforcement for the past twenty-two years. Outside of being a law enforcement officer, he has a deep love for history and focuses on the history of Oklahoma City. He has written two books, Oklahoma City Film Row and Oklahoma City Midtown. He is currently writing two more, Badge & Brass: The Untold Story of the Oklahoma County Sheriff’s Office, and Oklahoma Drive-Ins & Theaters.

The Oklahoma County Sheriff’s Office has been working on a project collecting and recording photographs, documents and artifacts regarding the office’s 126-year-old history. Sheriff John Whetsel initiated the idea of researching and recording the past, and named Shipwreck as the office’s official historian. Shipwreck’s efforts are a labor of love. He works on the project in his “spare” time. Shipwreck has unearthed and preserved hundreds of artifacts and records. A stack of three hundred books is waiting for him. His work, from his “office” on the first floor at the Oklahoma County Jail, is made more challenging and demanding because the priceless artifacts, but for his attention, might otherwise be destroyed as a result of prisoners on the upper floors who vandalize plumbing in their spare time. His discoveries include the following:

- Original files, including the handwritten rap sheet, mug shot and fingerprint cards from the 1924 case of Theodore “Ted” Cole, who later became more famous for escaping from Alcatraz in 1937.
- An original Winchester riot shotgun manufactured in 1907.
- Hand-written jail ledgers and journals in the basement, including records kept by Sheriff C.H. DeFord, who took office in June 1890.
- A photograph of former President and then-presidential candidate Theodore Roosevelt visiting Oklahoma City in September 1912.
- A ledger entry reading “Looking up stolen cattle - self and posse - six dollars.”

Shipwreck has unearthed so many stories he could - well - write a book. (He’s working on that book, too.) Two examples follow. Shipwreck has researched the “Chinese underground,” an entire community and miles of tunnels hidden beneath the streets of Oklahoma City. More than 20,000 Chinese immigrants were suddenly unemployed after interstate railroads were completed in the late nineteenth century. Many of those immigrants moved to Oklahoma at or around the time of the land run. The center of “Chinatown” was near the intersection of Robinson and Sheridan Avenues, beneath where the Cox Convention Center now stands. The immigrants were forced, literally and figuratively, underground as a result of the Sinophobia sweeping the land.

Those hidden passages were supposedly filled with the euphoric haze of opium dens, the sounds of mah-jongg gambling and everyday workings of an entire, seldom-seen Chinese community. One raid of a dark basement beneath 12 South Robinson netted opium and rum valued at about $10,000, or in today’s currency, about $137,000.

As is the case with all communities, most of the activities were not nefarious. The residents of “Chinatown” operated several businesses, including, of course, laundries and Chinese restaurants. The Chinese community constructed a two-story library of Chinese literature at 210½ W. California Street. All that remains of the Chinese underground today, say Shipwreck, are “tales, rumors, rare images, the flotsam of old articles and the gossip of generations.”

In June 1909, Sheriff George Washington Garrison and a two-member posse set out to capture Alf Hunter, who had murdered Susie Pride, an Oklahoma City woman, the previous month. Garrison told reporters before he left on his mission that he thought he might get killed. Garrison and his companions located Hunter in a hayfield near Watonga. Hunter, hidden behind a hay bale, exchanged gunfire with the officers for 45 minutes. Garrison’s two companions were both shot, one in the neck. Both survived, because Garrison stood and fired, drawing Hunter’s fire away from the others. Garrison was shot and killed. Hunter escaped. He was captured in Ft. Smith, Arkansas, in September 1909, and was returned to Watonga. Hunter was convicted of murder six weeks later, and was hung on April 8, 1910.

For years, Garrison’s body lay in an unmarked grave. Shipwreck spearheaded a fund-raising project to finance a proper marker. Oklahoma County law enforcement officers and Garrison’s descendants gathered in October 2014, for a memorial service and a dedication ceremony in honor of Sheriff Garrison.

William Faulkner said, “The past is never dead. It’s not even past.” (Requiem for a Nun, (1951.) Similarly, Shipwreck says, about his work, “This is our legacy. This is the history we leave behind. This is what our officers today stand on.”

NOTE: This article includes excerpts from a December 2015 article in Oklahoma Magazine written by Laurie Goodale and entitled “The Road to Badges & Brass.”
spending, better still resulting in more predictable litigation outcomes and finally reduce overall liability exposure.

He goes on to state in his blog that industries like: 1. Hospitals and doctors “medical malpractice”, 2. Businesses with a high number of occupational claims, 3. Lawyers “legal malpractice” and 4. Assisted care facilities are a few of the industries who might use these tools to reduce indemnity spend and indirectly legal spend. So essentially, the industries with the most data and similarity of claims have a better chance of utilizing the new technology to reduce their legal expenses. My conclusion, we are likely to see the insurance industry try this first. After all, these are the same people who brought us electronic billing, third party bill audits, alternative fee arrangements and staff counsel.

I get the part that I am a shelter builder and not a windmill builder but this is a profession, right? Even the local news reported last week that OKC neighborhoods are complaining about windmill noise. Isn’t there an old saying that goes something like “garbage in equals garbage out”? Are there privacy and ethical issues surrounding the use and sharing of data for DA, PM and AI to evaluate claims and settlement, sure there are. Have all of those been addressed or even thought of, probably not. So we have plenty of unanswered questions going forward but can we ignore these advancements and their effect on the legal practice and profession? Do so at your own peril. As we all know the ABA in 2012 added to the comments of Rule 1.1 that lawyers have a duty to keep abreast of the benefits and risks associated with technology. Now the Florida Supreme Court has approved a rule to go into effect in 2017 requiring members of the Florida Bar to take mandatory technology CLEs. Since this is for the October issue, consider that I am really only writing this article in honor of a good Halloween fright.

After all, consider that we have seen humans get into trouble when relying on AI before: 1. Skynet, 2. Genisys, 3. HAL 9000, 4. Auto, 5. V.I.K.I, 6. WOPR, 7. Agent Smith and the Machines, 8. The Red Queen, 9. Trick or Treat?

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 @attymikeb. For more information, please visit www.hbokc.law.

3. Rule 1.1 comments, ABA Model Rules of Professional Conduct
4. In Re: Amendments to Rules Regulating the Florida Bar 4-1.1 and 6-10.3 (Fla S. Ct. Sept. 29, 2016)
7. 2001: A Space Odyssey (1968)
8. WALL·E (2008)
10. War Games (1983)

AI from PAGE 1


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.

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Meyer Leonard & Edinger PLLC has moved**

Meyer, Leonard & Edinger PLLC recently moved its offices to 100 Park Avenue, Suite 500, in Oklahoma City. Henry "Hank" Meyer, III, Ryan Leonard, Robert Edinger and Joseph Blaske have been joined by Christa Sullivan and Elaine DeGiusti. Travis Pickens is "Of Counsel" to the firm. Practice areas include complex business litigation, receivership law, energy and environmental litigation, employment disputes, insurance law, professional ethics and corporate transactions. www.milearn.com

Three Crowe & Dunlevy attorneys honored by Benchmark Litigation

Three Crowe & Dunlevy attorneys were recently honored by industry guidebook Benchmark Litigation as being among the best in their field of law.

Judy Hamilton Morse, a director in the firm’s Oklahoma City office and chair of the Litigation & Trial Practice Group, was named one of the Top 250 Women in Litigation. This is the fifth year Benchmark Litigation has released the list, which involves an extensive, six-month research process, including client feedback surveys and individual interviews. She is one of two attorneys in Oklahoma to make the list.

Benchmark Litigation has also recognized Crowe & Dunlevy directors Andre’ B. Caldwell and Evan G.E. Vincent on its Under 40 Hot List, a new accolade that honors the achievements of the nation’s most accomplished legal partners 40 years old or younger. The list was determined through a process of peer review and case examination. Four Oklahoma attorneys are listed.

An experienced trial lawyer, Morse focuses on litigation and trial practice, as well as bankruptcy and creditor’s rights. She has represented both plaintiffs and defendants in a number of business litigation matters in various industries including securities, financial services, lending, consumer credit, franchising, real estate and energy. Morse was named one of the Top 150 Women in Litigation by Benchmark Plaintiff in 2013.

Caldwell is a member of the Criminal Defense, Compliance & Investigations and Litigation & Trial Practice Groups. He represents private and public companies of various sizes in all aspects of commercial litigation, preparing criminal compliance guide lines and conducting corporate criminal risk assessments. He also represents individuals charged with state and federal law violations.

The National Black Lawyers listed Caldwell on its 2016 Top 40 Under 40 List.

Vincent focuses his practice on litigation of complex and challenging legal matters at both the trial and appellate levels and represents clients who do business in a wide variety of industries. He has served as lead counsel for jury and arbitration trials in both state and federal court appeals. He has achieved an AV peer review rating from LexisNexis Martindale-Hubbell and been named a Rising Star by Oklahoma Super Lawyers from 2012 to 2015.

Women’s Resource Center Announces Events with Ed Harris

Acclaimed Actor/Director Ed Harris is returning to Norman to host a number of events in support of the Women’s Resource Center (WRC). All proceeds go to support the services the WRC provides those impacted by domestic and sexual violence.

- The week of Monday, October 31 through Friday, November 4th Evans Theaters (1300 N. Interstate Drive) will host the Ed Harris Film Festival. The weeklong festival features five films personally selected by Ed. The films highlight his range and versatility as an actor and director: Appaloosa, Frontera, Touching Home, The Hours, and Pollock. Show times and tickets to individual films will be available through the Evans Theatres website: http://www.evanstheatres.com.

- The film festival will culminate in a special showing of Pollock on Friday November 4th at 7pm. Following the screening, Ed Harris will personally host a question and answer session with audience members. Tickets for this special event are $40 and also can be purchased at http://www.evanstheatres.com.

- On Saturday, November 5th at 7pm the Women’s Resource Center will host “An Evening with Ed Harris” at the Sam Noble Museum. The evening will feature a catered reception in Ed’s honor on Thursday, November 3rd along with an overview of the work of the WRC. Event sponsors include: Evans Theatres, OMS Technologies, Women’s Healthcare of Norman, Barry Harley, Realtor, Tammy Conover, artist, Cinnamon and Cream, LifeSpring In-Home Care Network and Cleveland Country Lifestyle. Table sponsorships ($1000) are still available and individual tickets ($100) can be purchased online at http://wrcnormanok.org/ed-harris-dinner-event.

More information about the services the WRC provides those impacted by domestic and sexual violence can be found on their website at: http://wrcnormanok.org.

- Mark Hayes Jr., Matthew Holman and Sam Merchant join Oklahoma’s largest law firm

McAfee & Taft has announced the addition of law school honors graduates Mark A. Hayes Jr., Matthew J. Holman, and Samuel J. Merchant as new associates.

- Mark Hayes Jr. is a trial lawyer whose civil litigation practice involves the resolution of a broad range of complex commercial and business disputes in both state and federal courts and in arbitration proceedings. A portion of his practice is devoted to environmental law and litigation. Hayes graduated with honors from the University of Oklahoma School in 2016 and earned his bachelor’s degree from Princeton University. While in law school, Hayes served as assistant editor for the Oklahoma Law Review as well as a judicial intern for The Honorable John E. Dowdell of the U.S. District Court for the Northern District of Oklahoma.

- Matthew Holman is a transactional lawyer whose practice encompasses a broad range of corporate and business matters. A portion of his practice is devoted to representing energy and oil and gas companies in a broad range of transactional matters, including asset sales and acquisitions, joint operating agreements, oil and gas leases, and other contracts.

- Holman graduated magna cum laude from the University of Arkansas School of Law in 2016 and earned his bachelor’s degree in business administration degree in finance from the Sam M. Walton College of Business at the University of Arkansas. While in law school, he was a member of the Arkansas Law Review and served on the executive committee of the Student Bar Association.

- Samuel Merchant is a trial lawyer whose practice focuses on business and commercial litigation before state and federal courts, arbitrations and administrative proceedings. A portion of his practice is devoted to exclusively representing management in labor and employment matters.

- Merchant graduated from the University of Oklahoma College of Law in 2016, where he received his bachelor’s degree from the University of Central Oklahoma in 2013. While in law school he served as president of the Student Bar Association, assistant managing editor of the Oklahoma Law Review, and vice president of the OU Law Chapter of the Federal Bar Association. He also served as a judicial intern for The Honorable E. Bacharach of the U.S. Court of Appeals for the Tenth Circuit.

Phillips Murrah welcomes two new attorneys

Phillips Murrah is proud to welcome Hilary A. Hudson and Kendra M. Norman to our Firm.

Phillips Murrah welcomed Hudson to the Firm’s Litigation Practice Group as an associate attorney. Hudson represents individuals and both privately-held and public companies in a wide range of civil litigation matters.

Norman has joined Phillips Murrah’s Transactional Practice Group as an associate attorney. She represents individuals and businesses in a broad range of transactional matters.

Hudson and Norman are recent graduates of the University of Oklahoma School of Law.

Fellers Snider Welcomes Jared R. Ford

The law firm of Fellers Snider welcomes Jared R. Ford to its transactional practice.

Jared joins Fellers Snider after practicing at two leading oil and gas firms in the Southwest where he garnered extensive experience in real estate and business law with an emphasis on oil and gas title examination.

Jared graduated from the University of Oklahoma College of Law, where he served as an Articles Editor for the Oklahoma Law Review as well as President of the Volunteer Income Tax Association, was a member of Phi Delta Phi legal fraternity, and was awarded two American Jurisprudence Awards in injury claims.

While in law school he served as president of the University of Central Oklahoma in 2013. While in law school he served as president of the Student Bar Association.

McAfee & Taft, has been named by the editors of Benchmark Litigation to its inaugural “Under 40 Hot List” of the nation’s most notable up-and-coming litigators. Honorees were selected through a research process consisting of client feedback, peer review, and an analysis of recent case work.

Hunsinger’s state and federal litigation and arbitration practice includes the representation of clients in individual and class action lawsuits involving products and consumer sales, banking and finance, product liability, commercial real estate and landlord-tenant disputes, consumer finance, consumer litigation, oilfield services, insurance disputes, personal injury, automobile dealership law and regulation, and other business litigation matters.

Hunsinger has concentrated experience in the defense of state and federal consumer claims, consumer arbitration, automobile dealership and financing defense and regulatory compliance, consumer finance, oilfield services, insurance disputes, personal injury, automobile dealership law and regulation, and other business litigation matters.

Hunsinger is a 2003 honors graduate of the University of Oklahoma College of Law and a member of the Defense Research Institute, Oklahoma County Bar Association, Oklahoma Bar Association, Federal Bar Association, National Association of Dealer Counsel, and Oklahoma Society of Certified Public Accountant. He currently serves on the board of trustees of the Oklahoma Bar Foundation.

Baer & Timberlake, P.C. Announces New Associate

The firm of Baer & Timberlake, P.C. is pleased to announce that Kim Jenkins has joined the firm as its newest associate in the Oklahoma City office. Ms. Jenkins graduated in May of 2016 magna cum laude from Oklahoma City University.

Ms. Jenkins is a member of the William J. Holloway Inn of Court. While at Oklahoma City University she was the recipient of the 2015 Oklahoma Bar Association Bankruptcy Section Award, the 2016 OBA Business/Corporate Law Section Award and CALI Awards in Criminal Law, Consumer Bankruptcy and Family Law.

A University of Oklahoma student in excellent academic standing, Rear works for a local law firm handling filings at the Oklahoma Corporation Commission and at various courthouses around the metro area, in addition to other duties. She has experience working in law offices in varying capacities since 2012. She plans to graduate with a legal assistant certificate in 2016.

The Crowe & Dunlevy Foundation established this annual scholarship in 2013 to assist a University of Oklahoma Law Center student enrolled in the Legal Assistant Education program in his/her pursuit of a career in the legal field in honor of longtime Crowe & Dunlevy paralegal B. Jo Balding. After serving the firm for more than 50 years with professionalism and dedication, Balding retired in spring 2016.

Scholarship applicants must be enrolled in the Legal Assistant Education program at the University of Oklahoma Law Center and be in academic good standing with at least an 81 grade point average in legal specialty courses at application submission.

Benchmark Litigation names Hunsinger to “Under 40 Hot List” of trial lawyers

Rodney K. Hunsinger, II, a trial lawyer and shareholder with the law firm of McAfee & Taft, has been named by the editors of Benchmark Litigation to its inaugural “Under 40 Hot List” of the nation’s most notable up-and-coming litigators. Honorees were selected through a research process consisting of client feedback, peer review, and an analysis of recent case work.

Hunsinger’s state and federal litigation and arbitration practice includes the representation of clients in individual and class action lawsuits involving products and consumer sales, banking and finance, product liability, commercial real estate and landlord-tenant disputes, consumer finance, consumer litigation, oilfield services, insurance disputes, personal injury, automobile dealership law and regulation, and other business litigation matters. He has concentrated experience in the defense of state and federal consumer claims, consumer arbitration, automobile dealership and financing defense and regulatory compliance, consumer finance, oilfield services, insurance disputes, personal injury, automobile dealership law and regulation, and other business litigation matters.

A University of Oklahoma student in excellent academic standing, Rear works for a local law firm handling filings at the Oklahoma Corporation Commission and at various courthouses around the metro area, in addition to other duties. She has experience working in law offices in varying capacities since 2012. She plans to graduate with a legal assistant certificate in 2016.

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Dear Roscoe:

Get this. My client gets pulled over on a speeding charge. Admittedly, he didn’t come to an immediate stop when the officer flashed his lights. Anyway, the cop handcuffs him and has him stand in front of his scout car. My client gives the OK to search the car. While the policeman does that, client manages to get his hand inside a back pocket and flip out a packet of weed. Cop sees him do it, rummages around in the grass ‘il he finds it, and charges him with obstruction of justice. I’ve looked at the statute and it looks a bit murky. Can they really make that stick?
H.F., Del City, OK.

Dear H.F.:

My best guess is that, if he did it while standing in front of the police car he did it in front of the dash camera as well. This proves yet again that the criminal masterminds one runs into are few and far between.

Murky is the word for obstruction of justice. As far as making it stick, yeah they probably can. After all, they made it stick on Martha Stewart. If you recall, she went up on the obstruction charge as opposed to the crime for which she was under investigation to begin with. Likewise, Kenneth Starr attempted to apply the obstruction statutes very broadly in his investigation of former President Clinton. Mr. Starr argued that Mr. Clinton committed obstruction of justice by denying to friends and subordinates that he engaged in intimate contact with Monica Lewinsky. According to Starr, this constituted “misleading conduct” obstruction because Mr. Clinton expected that his denials would be repeated to the grand jury that was investigating the relationship. Same reasoning applies to the Marathon Bomber’s buddies who concealed evidence. In federal cases, obstruction is both a felony and an enhancer.

Oklahoma’s charge of obstructing an officer defines the crime as “willfully delaying or obstructing any public officer in the discharge of the duty or attempt to discharge any duty of his office.” Thus, under Oklahoma law, to be guilty of obstruction, a defendant must (1) willfully; (2) delay; obstruct; (3) a public officer; (4) known by the defendant to be a public officer; (5) in the discharge of any duty of his office. Okla. Uniform Jury Instructions, Crim.2d, § 6–48 (2012). While Oklahoma doesn’t have the developed appellate jurisprudence that the Feds and other states may have, it has nonetheless held that lying to an officer may suffice for a conviction. Marsh v. State, 1988 OK CR 206, 761 P.2d 915.

Dear Roscoe:

Can the identified donor of a directed organ donation sue for conversion if the donor’s family refuses to honor the donation? S.J., OKC, OK.

Dear S.J.:

What a mess. I’m tempted to ask: if this is an actual or hypothetical question.

Looking at strictly from a legal perspective, it depends. At common law, there was no ownership interest in a dead body. In a case called Colavito v. New York Organ Donor Network, Inc., 486 F.3d 78 (2nd Cir. 2007), the court dodged the bullet based on a finding that the kidney in question was not compatible with the plaintiff’s decedent and, therefore, of no value to him. That’s not to say that there’s no potential grit for the judicial mill. The Uniform Anatomical Gift Act provides “The rights of the donee created by the gift are paramount to the rights of others . . .”

Given that the UAGA’s policy favors both the donation and a bank of transplant-ready organs, providing the donee with a cause of action may serve an especially important function: ensuring the transplantation takes place. In the last study I know of, five percent of Americans claim they would be unlikely to donate a deceased family member’s organs, even if that family member had explicitly expressed the wish to donate. This statistic suggests that a substantial number of people would not seek to enforce their family member’s donation preference if it contradicted their own preferences. This seems particularly true in light of the fact that legal enforcement poses high litigation costs. Especially when the donor’s family members do not approve of the donor’s wishes, “hospitals and doctors... often fail to honor a deceased’s directions to donate.” In these cases, a donee’s cause of action could prove necessary for effectively enforcing the donor’s wishes.

***

I sat at a table surrounded by Big Cheeses of law enforcement agencies, great and small. Some folks from Interpol gave me deference on the strength of legends of services previously rendered. The FBI provided grudging courtesy and attention like kids ordered by their parents to respect a somewhat odd uncle. NYPD seemed unsure of why the hell I was there in the first place. Secaucus’ own Joe Innocente tolerating another simply because I was his ride.

We debated Enver Kaleka as orderly as the Vice-Presidential Debate, only a little less courteously. The topic shifted to who got to try him first. Out of all the countries which had placed a price on his head, the majority in the room seemed evenly divided between France, whose penal system is both reasonably secure and certainly no day on the Riviera, and Pakistan, where we could fairly guarantee a death sentence. Two in the room held out for Jersey, where he killed both police officers and civilians. Oh, and the near death experience of Ernie Trani, as well, but I thought it impolite to bring that one up at the moment.

“Don’t even bother,” a condescending City cop said. “I understand where you’re coming from, Captain, but this is a matter of international importance. The State of New York itself waives its right to try him here in favor of getting him out of the country and in the ground somewhere else. Apparently, the Feds feel the same way.” Some guy from Main Justice nodded sagely.

“He hasn’t killed anyone in New York that we know of,” Joe fired back.

“Besides” I said, “Jersey has a death penalty.”

“Barely,” observed an Interpol gal who seemed to lead the Pakistani cheering section. “When was the last time you used it?”

“It isn’t gonna be Jersey,” the head FearBee said. “Two votes out of 11, the motion fails to pass. Get over it!”

“But I have a weighted preference,” I said.


“Because you can’t send him anywhere unless you have him to send,” I answered.

“And that’s where I come in.”

“You don’t got him,” said a portly, uniformed NYPD guy with a rainbow of commendatory fruit salad on his chest.

“True,” I replied. “I don’t got him, but I can get you closer than anyone else.”

“Well, we’re waiting,” the Assistant Chief of Whatever groused.

“Would you call the gentleman out in the waiting room, please?” I asked.

Ismail Kaleka entered the room wearing two thirds of a three piece suit over a custom-tailored shirt and tie. He moved down the length of the table, amiably shaking everyone’s hand as if he were running for mayor. I half-expected him to give out cigars. Instead, he selected a bagel, carefully spread some strawberry cream cheese atop it, poured himself a coffee, and took a seat. Thus settled in, he flashed me a broad grin and, bagel slice in hand, gestured me to continue.

“Ladies and gentlemen,” I said, “meet Ismail Kaleka, our quarry’s brother.”

Somewhat disappointingly, Ismail did not stand and bow.

“Mr. Kaleka has graciously agreed to assist us in our hunt for his brother, who, he assures me, has sequestered himself somewhere up in The Bronx.”

“And he knows this because...” prompted a Fed.

“We hold certain enterprises in common,” said Ismail. “They require a modicum of communication between us.”

“What kind of enterprises?” an NYPD detective asked.

“The kind one does not speak of except at appropriate times or places.”

“You could be as bad as he is.”

“Could be, but I’m not. For instance, I can assure you all I have never killed anyone.”

“So you say,” Ismail shrugged.

“And why exactly would you help us?” a lady from DOJ asked.

Two reasons. The first is called, I believe, transactional immunity for activities up to this point in time. As a bit of gravy for you, you will find the information useful as to other crime fighting adventures. I shall discuss these once our little entente is formalized.”

“And the other?” asked the ranking AUSA in the room.

“Mr. Pound has agreed to renege on a promise he made to my father,” Their eyes fell on me like sandbags falling off the Chrysler Building.

“In short,” I said, “I won’t kill him.”

It took a bit of time for us to get back to the business of catching Enver. “First of all,” I said, “this is a job for The Sting Ray.”
such migratory wild fowl; provided, the hunting regulations pertaining to wild duck, wild geese, brant, and all other birds protected by the laws and other regulations of Congress shall be the same as fixed annually by the Federal Department in control of migratory wild fowl.

(b) Anyone violating any of the provisions of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25.00), nor more than One Hundred Dollars ($100.00).

It is the Position of Respondent, as stated in his brief, that: “Section 301(a), Title 29, O.S. provides that it shall be unlawful to hunt for, capture or kill any species of migratory waterfowl, such as ducks, geese or brant or other migratory birds except as provided in the laws of Congress, frosted to the killing of such migratory wild fowl; . . . [and] that the statute means exactly what it says, that is, it is unlawful to kill ducks, geese or brant or other migratory birds except as Congress shall provide. A gull is a migratory bird, as shown in the treaties between the United States and the United Mexican States. Therefore, it comes clearly within the statute.”

We believe the position adopted by the State is untenable, for to support its position we must assume that the legislature, by enacting 29 O.S. § 301, intended to incorporate by reference not only the laws of Congress, but we must also imply that the legislature intended to incorporate by reference treaties entered into between the United States and foreign powers. The fallacy of such reasoning becomes readily apparent from even the most cursory examination of Article 1, Section 1, and Article 2, Section 2, of the Constitution of the United States. Article 1, Section 1, of the Constitution of the United States provides:

“All legislative Powers herein granted shall be vested in Congress of the United States, which shall consist of a Senate and House of Representatives.”

Article 2, Section 2, of the Constitution of the United States, provides, in part:

“[H]e [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.”

It is thus readily apparent that the treaty entered into between the United States of America and the United Mexican States, was not a law of Congress, but rather the act of the President of the United States with the concurrence of at least two thirds of the members of the United States Senate as authorized under the provisions of Article 2, Section 2 of the Constitution of the United States.

We are of the opinion and therefore hold, that the legislature of the State of Oklahoma, by enacting 29 O.S. § 301, did not intend to incorporate by reference any of the provisions of a treaty entered into between the United States of America and the United Mexican States.

This is not to say that the legislature in its wisdom may not enact a penal statute prohibiting the shooting of a Franklin Gull; however, such a legislative enactment must meet the constitutional requirement that its mandates are so clearly expressed that any ordinary person can determine in advance what he may and what he may not do under it.

While ignorance of the law is no excuse, our fundamental concept of due process does not require a citizen to employ counsel to research the statutes of Oklahoma, the laws of Congress, and the treaties of the United States, and construe them together, in order to determine whether he may lawfully engage in sporting activities.

[Ed. Note: As we all know, the brant is a small goose with a short, stubby bill. The under-tail is pure white, and the tail itself black and very short.]

October 29, 1991

Twenty-Five Years Ago

In 1976 the Legislature abolished the civil causes of action for “alienation of affections” and “seduction.” Plaintiff brings this action, claiming to be aggrieved by her former husband’s leaving her for another woman. The defendant is the other woman. Plaintiff claims her suit should go forward as one for “intentional infliction of emotional distress.” Defendant asks that the case be dismissed. We agree that it is against this standard of damages allowed to proceed. It should proceed, however, as a suit based upon the tort recognized in Oklahoma as intentional infliction of emotional distress.

Plaintiff points out that Plaintiff is not the first litigant to plead a different theory in an attempt to circumvent the legislatively-repealed cause of action. In Lynn v. Shaw, 620 P.2d 899 (Okla. 1980), the plaintiff, whose husband had allegedly been “stolen” by another woman, carefully framed a cause of action in “criminal conversation,” a similar but distinct tort. Criminal conversation, we observed, is simply “adultery in the aspect of a tort.” We analyzed its elements as compared to those of the repealed “alienation of affections” and “seduction,” and concluded they were “so intertwined as to encompass one another.” Thus the tort of criminal conversation was held to have been implicated by the above statute.

Plaintiff invokes our language in Frazier v. Bryan Memorial Hospital Authority, 775 P.2d 281, 287 (Okla. 1989) on dismissals for failure to state a claim:

“A pleading must not be dismissed for failure to state a legally cognizable claim unless the allegations indicate beyond any doubt that the litigant can prove no set of facts which would entitle him to relief.”

We agree that it is against this standard that Plaintiff’s efforts in pleading a differently entitled tort must be measured. The tort she has elected to proceed under is known in Oklahoma as “intentional infliction of emotional distress”, sometimes also known as the tort of “outrage.” . . . We examined its ingredients in Breeden v. League Services Corp., 575 P.2d 1374 (Okla. 1978), where we quoted with approval from the Restatement of Torts, Section 46, and Commented thereto:

“... Liability [in such cases] has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”

We also concluded that it is for the court in the first instance to determine whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit the matter to go before a jury.

Regardless of what the plaintiff calls her cause of action, she has sued the defendant for willfully taking away her husband. It could have been called “alienation of affections”; it could have been called “seduction”; it could have been called “criminal conversation.” But all civil law suits under those theories have now been prohibited. Can she proceed on the theory of “outrage?” The law as expressed in Breeden and adopted from the Restatement of Tort tells us she cannot. The plaintiff is asking us to allow a jury to find certain conduct so outrageous as to be “regarded as atrocious and utterly intolerable in a civilized community,” when the legislative body freely elected from the same community has expressly and deliberately, within our own generation, removed the acts of alienation of affections and seduction from the Restatement of Torts. We cannot accommodate the plaintiff without doing grave insult to our legislators and those who elected them. This we will not do.

Title 76 O.S. §8.1 forbids the plaintiff from recovering damages for the acts of which she complains in her petition, even though she chooses to give the suit a name not used in the statute. The Legislature has effectively immunized that conduct from civil liability in tort.
The Effect....Three Decades Later...of Adolescent Fitness.

By Warren E. Jones

If you have a son or brother or nephew or grandnephew or grandson who is a late adolescent, tell him about this study. And, by the way, even though the study I will describe involves only young men, I strongly suspect the findings would be identical or very similar among young women.

Over years and years, 1.3 million Swedish military draftees were measured for fitness at an average age of 18, as described in a recent issue of the International Journal of Epidemiology. They were followed for almost 3 decades. Some of them died. Not from war, but from natural causes or trauma or drug abuse or alcohol abuse.

The research scientists wanted to know what would be the impact, if any, of the conscripts’ fitness level at age 18 on an early demise. It turns out that those least fit were much more likely (twice as likely, actually) to die prematurely than the most fit. The odds of an early demise among the least fit was greatest not, as you might expect, from heart disease or strokes or cancer, but from drug abuse and alcohol abuse and suicide. The early death among the least fit was of course much higher for natural causes, too, but not nearly as much as with the abuse deaths and suicides.

The risks of an early demise from any cause, whether “natural” or not, was “graded.” That is, at ever increasing levels of fitness at, again, only 18 years old, came ever decreasing odds of premature death than normal weight men less fit.

The research scientists did not speculate as to the connection between low adolescent aerobic fitness and early death associated with alcohol, narcotics, and suicide. Nor will I. I do not believe, though, that it is coincidental. But it speaks to the wisdom of achieving, at a young age, aerobic fitness, whether normal weight or overweight. And it certainly speaks to the wisdom of maintaining, at a relatively young age, normal body weight....or mere overweight (not obese)....along with high levels of fitness.

The one exception? No surprise: obese 18-year olds. Obese 18-year-old men even at the highest levels of aerobic fitness enjoyed no protective effects from that level of fitness. Actually, normal weight men in all levels of aerobic fitness, even the lowest, had lower odds of early death compared with obese individuals even in the highest quarter of aerobic fitness.

And consistent with that notion, I’m sure you will understand that normal weight men aerobically fit had lower risk of death than normal weight men less fit.

And with one exception, the protective effect of adolescent fitness held even at higher body weights. The protection was less than among normal weight young men, but it was higher again based on ever increasing levels of fitness compared to heavier counterparts.

Switching gears, the newest issue of the journal, Sports Medicine, contains a study describing methods to overcome the axiom that performing aerobic exercise within the same training program (same exercise session or, at least, the same day) resistance exercise (called concurrent exercise training) interferes with the beneficial muscle adaptation (hypertrophy: muscle growth) associated with resistance training. Only today was I able to download the abstract (the summary) of the study. As I type this, I am out of town and don’t have access to the online full study. I’ll get my hands on it, I’ll review it, and I’ll pass along to you what I hope to be helpful information.

William Warren

President

Commercial Interiors

Bill Warren Office Products
No Marcellus, that is not Denmark

OCU and the July Bar Exam

Observations and Opinion by James B. Croy

The July Oklahoma bar examination results were announced in September, and again the pass rate was abysmal for the graduates of Oklahoma City University. While the pass rate was below expectations for the other two law schools—at 82% for OU and 71% for TU—the OCU success rate of 61% almost defies comprehension. That figure represents the percent of total applicants passing the bar and includes repeat takers. However, even when the repeat takers are removed from the equation, the OCU pass rate is still only 67%. This is very poor when compared with the first-time pass rate for OU graduates, which is 85%, and for TU graduates, which is 82%.

Just as Marcellus found something rotten in Denmark, one cannot escape the conclusion that something is very wrong at OCU. Students at OCU pay out roughly $110,000 in tuition alone and go into debt for many tens of thousands of dollars beyond that with one goal in mind: to pass the bar examination after they have graduated. There is only one measure of a student’s success in studying the law, and that is the bar examination. As we all know, in order to practice law, one has to join the club. Thus, not only is the success of the law student measured by the bar examination, the success of the law school is measured by the same standard. When one out of every three graduates fail to achieve success the first time they take the bar, the onus must fall on the school. This brings us to the first of several assumptions: The law school and the student should each expect that, upon graduation, the student will pass the bar examination. Of course, there are the outliers—people who do not test well—people who do no preparation for the bar—people who freeze up and “blow” the test. And those unfortunate are with us at each bar examination. Let us generously set that number at 10% of the test takers. And, of course, there can be problems with the test itself, which might account for OU and TU graduates passing the bar at a lower rate than in the past. But, in general, the law schools have one function: to prepare the student for passing the examination so that he or she can practice law. Whether it is the A student or the C student, that student, upon graduation, should pass the bar.

In looking for the source of the problems at OCU, one might start with the entrance requirements. That is, one might question whether the admission standards at OCU were slackened in 2012 or 2013. Last year, with the disastrous July 2015 bar results for OCU, the school administration was adamant that the admission standards had not been lowered. This leads us to the second assumption: that the admission standards are not the cause of the poor showing on this year’s bar exam. Thus, the problem must lie somewhere in the legal education process at the school itself. That is, the same level of student previously enjoyed a higher pass rate than that level of student does recently.

This brings forth several questions: Has the curriculum changed in the past few years? For instance, has the school changed the status of certain courses from mandatory to elective? One can imagine the “lost at sea” feeling an examinee might feel when confronted with a criminal procedure essay question after skipping criminal procedure in law school because it was no longer required. As it happens, this is not a hypothetical example, and one might suggest that OCU compare the test results for those not passing the examination with recent changes in the curriculum.

This brings forth the assumption that the law school administration either is or can be privy to the gross test results. Statistics of the test results are available to some entities and it would seem that there is an overwhelming need for OCU to have access to those results to see where it is failing its students. In the unlikely event that the school is not able to obtain the results for the essay portion of the test on a question-by-question basis from any other source, those students who did not pass the bar will be eager to share that information with the faculty of the law school. It would then be incumbent on the school to compare the test results with the curriculum to verify that the school is indeed teaching to the test.

However, if the school then determines that the problem does not lie with the curriculum, and the quality of the entering student has already been eliminated, the possible source of the problem then becomes very uncomfortable, indeed. For then one must start looking at the aura of the school itself and the instruction which the students are receiving. This must be a cause of deep introspection within the halls of the new law school.

One part of that introspection must be an examination of the grading regimen at OCU and whether that system has been made easier in recent years. One might posit that a law school does its students no favors by making it easier to graduate if that reduces the graduates’ possibility of passing the bar.

There now exists at OCU a bar preparation course during the students’ final year. For those in the lower half of the graduating class, the course is mandatory both semesters. For those in the upper half, it is mandatory only in the second semester. Also, there is an additional bar preparation class for graduates, offered between graduation and the bar examination itself. One cannot escape the conclusion that these efforts are, at best, failures. Consider for a moment the alternative to that conclusion: that were it not for these courses more than one in three OCU graduates would fail the bar exam on the first try. That defies belief.

A strictly structured bar preparation course could be of benefit to the graduating student. It would necessarily be limited to the best method of approaching the two parts of the bar exam. Its methodology would be to demonstrate how the examinee should approach the generic essay or multiple choice question, as opposed to trying to teach the student the finer points of torts or property law. The time for such instruction has long since passed. The administration of the law school should keep in mind that every hour the graduate spends in the post-graduation bar preparation course is an hour which he or she could otherwise spend going over the written bar preparation materials.

The final assumption is that the administration and faculty of the OCU law school are seriously attempting to ascertain the source of the school’s recent failure to properly prepare its graduating student for the state bar examination. One hopes that the results of this self-examination will be announced to the legal community of Oklahoma.

One impetus to a serious self-examination should be the recent announcement of the American Bar Association Accreditation Standards Committee that the standards for bar passage rate for ABA-accredited law schools have been significantly tightened. The current standard is that within five years 75% of an accredited school’s first-time examinee failures must pass. The new standard adopted by the committee is that within two years 75% of the graduating class must pass a bar examination.

Somewhere above I referenced “teaching to the test.” That might seem harsh to some, but law school is a professional trade school. Its goal is not to vest the student with a broad liberal arts education. It is not to endow the student with the urgent need to ponder questions of philosophy. It is not to give the student the basic principles of electrical engineering so that he can be further tutored at GE. No, its only purpose is to give the student the tools with which he or she can successfully pass the state bar examination. And if the graduating student does not have a very high expectation of succeeding at the bar examination, then the school has failed in its mission.

(Croy is a 1980 graduate of the Oklahoma City University School of Law. He was successful at the July bar exam that year.)

Events & Seminars

OCTOBER 27, 2016
OCBA Delegate Caucus for OBA House of Delegates 4:30 p.m.

NOVEMBER 2-4, 2016
OBA Annual Meeting OKC Sheraton Hotel

NOVEMBER 11, 2016
Holiday – Bar Office Closed

NOVEMBER 24 & 25, 2016
Holidays – Bar Office Closed

DECEMBER 1, 2016
OCBA Holiday Reception 5-7 p.m., Robinson Renaissance FoodCourt

FEBRUARY 24-28, 2017
Annual Ski Trip Seminar Santa Fe, New Mexico

MAY 1, 2017
Law Day Luncheon 12 Noon, Skinner Hotel
Q. There is a scene in Saving Private Ryan, as they are first setting out on their mission, where Corporal Upham reveals he is writing a book about the bond of brotherhood that develops between soldiers who serve together during wartime. You were deployed four times to Iraq and Afghanistan. If you were to write a book about that experience, what would it say about the lasting bonds you developed?
A. The Task Force is still being formulated, but the intent is to find a way to take care of Oklahoma’s Veterans and ensure we continue to take care of their medical needs in the future. There are gaps in coverage and that is unacceptable. I am hopeful we can come up with a viable solution.
Q. Is there anything we can do at the County Bar, or as members of the Bar to help this effort?
A. Stay tuned for what the County Bar, or as members of the Bar to help this effort.
Q. As an alternative to Veterans Courts, Oklahoma County under the leadership of our District Attorney David Prater, has established a Veterans Diversion Program. It’s the only one of its kind in the nation and is proving to be incredibly successful in keeping veterans suffering from substance abuse and mental health issues out of prison. I believe other counties should establish similar programs. Do you think the legislature would commit itself to helping this endeavor, and would you be willing to lead the charge?
A. I think the legislature would be willing to help diversify the judicial budget to find ways to make it work. In the long run it likely saves the state money, if a solid proposal was presented, I would no doubt help to champion that cause.
Q. Speaking of the legislature, you all have a lower approval rating in the state than President Obama. SoonerPoll.com reported in August that it’s at 34%. To what do you attribute this dissatisfaction among Oklahomans, and how do you think the legislature can go about rehabilitating its image?
A. A great deal of the perceived issues is spun by the media. With that said, the legislature has to work on communicating with the public while we are in session. Regardless, democracy does work and we will have at least 32 new people in the House next year. It gives us an opportunity to reset.
Q. Over the last decade, the share of revenue collected going to the general fund has steadily declined. Increasingly, “off the top” apportionments and tax credits, which collectively make up over $3 billion. Some argue that our legislative term limits cause a brain drain, creating a loss of institutional knowledge regarding the complicated process of developing a state budget and making it more difficult to substantively address the structural changes needed. Do you believe that term limits has contributed to the difficulties in managing the budget process, and if so, would you be in favor of doing away with legislative term limits for that reason?
A. Every year I wonder how much money the state will spend defending unconstitutional legislation. Each session there seems to some law that has passed that embroils the state in litigation. I am somewhat biased in this respect, but I blame the declining number legislators with law degrees who understand the constitution and the principles it embodies. How has being an attorney aided you in your duties as a state legislator?
A. I believe the public, since the Iraq war, has a better understanding of the sacrifices a soldier has to endure particularly during extended deployments, and the impact that has on our military families and our country as a whole. What was the hardest thing to coping with while you were gone, and were there any difficulties adjusting upon your return?
A. Coping with the hole in your heart due to the absence of your family is overwhelming, but as each day passes you stay busy and learn to endure. Adjustment itself is difficult. Your family has continued their lives while you are away. Upon your return, there is friction, because we all have our routines and anyone returning from a deployment has to assimilate back into society.
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Q. Veterans’ courts help to deal with the uniqueness of issues that plague veterans upon their return.
A. I lost my father to a car accident while I was deployed within a week from another. I think the legislature would be willing to help diversify the judicial budget to find ways to make it work. In the long run it likely saves the state money, if a solid proposal was presented, I would no doubt help to champion that cause.
Q. Do you think Oklahoma County under the leadership of our District Attorney David Prater, has established a Veterans Diversion Program. It’s the only one of its kind in the nation and is proving to be incredibly successful in keeping veterans suffering from substance abuse and mental health issues out of prison. I believe other counties should establish similar programs. Do you think the legislature would commit itself to helping this endeavor, and would you be willing to lead the charge?
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Q. What would you like to see the legislature focus on in the upcoming session?
A. I hope we focus less on social issues and concentrate on reforming our budget process. That is our one Constitutionally duty.
Q. Over the last decade, the share of revenue collected going to the general fund has steadily declined. Increasingly, “off the top” apportionments and tax credits, which collectively make up over $3 billion. Some argue that our legislative term limits cause a brain drain, creating a loss of institutional knowledge regarding the complicated process of developing a state budget and making it more difficult to substantively address the structural changes needed. Do you believe that term limits has contributed to the difficulties in managing the budget process, and if so, would you be in favor of doing away with legislative term limits for that reason?
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The First Monday in October

The 40 cases scheduled for review this term fall into the following broad categories: 25 Federal Statutory Construction, 3 Immigration, 2 Voting Rights and one each in Double Jeopardy, Ineffective Assistance of Counsel, Fourth Amendment, Rule 606 / Impeachment of Jury Verdicts, Establishment Clause, Commercial Speech, Death Penalty, Due Process, Regulatory Takings, and Tribal Sovereign Immunity.

That being said, there are a few interesting and challenging cases of constitutional law on the docket.

**Jury Deliberation – Impeachment of Verdict**

Pena-Rodriguez v. Colorado

**Facts of the Case:**

Miguel Angel Pena-Rodriguez was convicted of unlawful sexual conduct and harassment in state trial court. After the entry of a guilty verdict, two jurors informed Pena-Rodriguez’s counsel that one of the other jurors made racially biased statements about Pena-Rodriguez and the alibi witness during jury deliberations. Based on affidavits from some of the jurors, which related racially biased statements about Pena-Rodriguez’s likely guilt and the alibi witness’ lack of credibility, the alibi witness’ lack of credibility and her demeanor before and after arrest. The defense presented the testimony of a clinical psychologist to evaluate the risk of future dangerousness.

**Facts of the case:**

In July, 1995, Duane Edward Buck was convicted of capital murder for both of the deaths. During the penalty phase of trial, the prosecution presented evidence of Buck’s future dangerousness based on his criminal history, his conduct, and his demeanor before and after arrest. The defense presented the testimony of a clinical psychologist to evaluate the risk of future dangerousness. That expert stated that he considered demographic factors, including race, in his analysis and that, statistically, minorities are overrepresented in the criminal justice system. On cross-examination, the prosecution clarified that the expert’s opinion was that the race factor “black” increased the likelihood of future dangerousness. The jury found that there was sufficient evidence of Buck’s future dangerousness without any significant mitigating factors to justify a life sentence, so the jury sentenced Buck to death. The Texas Court of Criminal Appeals affirmed the conviction and sentence.

Buck filed various claims for state and federal habeas relief that were denied, until the U.S. Supreme Court decided Trevino v. Thaler, which held that Texas’ procedural scheme made it almost impossible to raise ineffective assistance of counsel claims on direct appeal, and therefore a procedural default on such a claim could be excused. While some of these claims were pending, the state attorney general admitted in a different case that the state should not have called an expert witness to testify about future dangerousness of a defendant based on race and named Buck’s case as one affected by similar testimony. Buck again sought federal habeas relief based on ineffective assistance of counsel because his counsel knowingly called an expert witness who testified that race was a factor in determining future dangerousness. The district court dismissed the claims because Buck failed to show that the outcome of his trial was prejudiced.

The U.S. Court of Appeals for the Fifth Circuit similarly denied Buck’s request for a Certificate of Appealability by holding that Buck did not show sufficient extraordinary circumstances to justify relief from the lower court’s judgment.

**Questions:**

Did the statutory distinction between the physical presence requirements for transferal of derivative citizenship for unwed citizen mothers and unwed citizen mothers and unwed citizen fathers different from children of unwed citizen mothers. This case challenges that distinction as violating the Equal Protection Clause of the Fifth Amendment.

**Questions:**

- Did the statutory distinction between the physical presence requirements for transferal of derivative citizenship for unwed citizen mothers and unwed citizen fathers different from children of unwed citizen mothers. This case challenges that distinction as violating the Equal Protection Clause of the Fifth Amendment.
- Did the U.S. Court of Appeals for the Second Circuit's decision that the gen-
### 2016 Judicial Survey Results Announced

Bench & Bar Committee Timothy J. Bomhoff has released the results of the 2016 Oklahoma County Bar Judicial Survey. Surveys were mailed to the OCBA membership in July with a return date of August 15. This data was tabulated by Dr. Mahmood T. Shandiz, Ph.D., Professor of Management Science at the Meinders School of Business, Oklahoma City University. Scale for Opinion on Characteristics: 1 = Strongly Agree, 2 = Agree, 3 = No Opinion, 4 = Disagree, 5 = Strongly Disagree.

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In Jennings v. Rodriguez, the Supreme Court clarified that der-based difference was a violation of equal protection constitute a conferral of U.S. citizenship in the absence of statutory authority to do so.

**Facts of the case:**
- Sections of the Immigration and Nationality Act require that noncitizens who are determined to be inadmissible to the United States must be detained during removal proceedings, though some may be released on bond if they can demonstrate that they are not a flight risk or a danger to the community. Alejandro Rodriguez and other detained noncitizens sued and argued that their prolonged detention without hearings or determinations to justify the detention violated their due process rights. The U.S. Court of Appeals for the Ninth Circuit held that prolonged detention without a hearing raised serious constitutional concerns, and therefore ruled that the relevant mandatory statutory language should be interpreted as having a time limitation; at the six-month mark, detainees are entitled to bond hearings at six-month intervals, for the duration of their detentions.

**Questions:**
- Are noncitizens who are subject to mandatory detention under the relevant text of the Immigration and Nationality Act entitled to bond hearings, with the possibility of release, if their detentions last six months?
- Are noncitizens entitled to release unless the government proves by clear and convincing evidence that the noncitizens are dangers to their communities and flight risks?
- Should the length of the noncitizen’s detention be weighed in favor of release, and should new bond hearings be provided automatically every six months?

**Potential Blockbusters**
There are a few potential blockbusters in the pipeline.

**Masterpiece Cakeshop v Colorado Civil Rights Commission** asks the question that has been posed since the Court's ruling on same sex marriage; whether a private bakery can legally refuse to bake a cake for same-sex couple's wedding.

Gloucester County School Board v G.G. deals with the issue of transgender person’s use of public bathrooms. The Court has granted a stay, which prohibits a transgender boy from using the boys’ bathroom in a Virginia high school, but the Court has not yet granted cert in the case. With 35 – 40 spots left open on the Court docket this term, there is certainly room for these two matters, as well as other interesting cases. But since the Court seems determined to avoid controversial issues while it is short staffed, it seems unlikely that we will see any major blockbusters this term. The Court appears to be content to mark time until there is a ninth justice.
8th Annual End of Year CLE

Tulsa: Tuesday, December 6th, 8:30 am - 12:30 pm
OKC: Wednesday, December 7th, 8:30 am - 12:30 pm

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