



Briefcase

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THE POWER OF A KIND NOTE

By: Joe Hampton

Many of us were blessed by a kind and encouraging e-mail, handwritten note, or newspaper clipping from Steve Barghols. I have no clue where Steve found the time, but he had an uncanny sense of when we needed a word of encouragement, congratulation, or sympathy. He always made time to send a note "... from your friend, Steve."

Over the past few weeks, Amy and I have reviewed and sorted through Steve's work files. You shouldn't be surprised to learn Steve left them perfectly and meticulously organized – a file folder and a binder for each mediation. There was only one surprise: six identical, black 3-ring binders without his standard mediation cover page.

These mystery binders contain e-mails and notes from so many of you to Steve, dating back to 1995 and continuing through 2020. Your notes thanked Steve for his efforts as your mediator, congratulated Steve for numerous professional and personal accomplishments, and took a few well-deserved shots at Steve's political views and loyalty to the Sooners. Steve didn't delete or discard your notes. He personally put them in the six binders. He didn't put your notes on display for others to see, nor were they stashed at the back of a forgotten file cabinet.

Why did Steve keep those binders right by his desk? Here's my best guess: Steve was one of the most positive and upbeat people I have ever known. However, there



Steve Barghols

were times when Steve became a bit frustrated, down, or worried. On rare occasions, Steve would tell me he was on a "serious losing streak" because he was 0-for-3 or 4 in settling his most recent mediations (and then would whip out his teamster's card and say he could always go back to working on the loading dock). That may seem ridiculous to you and me, but Steve took his role as your mediator very seriously. He poured himself into every single mediation. Steve desperately wanted to help you and your client achieve resolution every time and was far too hard on himself when that didn't happen. I have to believe Steve occasionally grabbed one of the six binders at times like that. How do I know that? Technically, I don't. But the circumstantial evidence tells me its more probable than not. I can spot a binder that hasn't been opened since it was created. The six binders don't fall in that category. The pages are well worn, annotated, dog-eared and show all the signs of periodic review. Steve was the only person who knew those binders existed.

Steve was a larger than life individual (5'21," after all), but he was human. To all of those who sent him a kind note over so many years: thank you, on behalf of your friend, Steve.

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From the President



MY THANKSGIVING LIST



By Hon. Don Andrews, OCBA President

In the spirit of gratitude during this Thanksgiving Holiday season, I choose to focus some of my thoughts on what we have—as opposed to what we do not have. I believe it is important for us to take time out of our busy schedules, remember, and express gratitude for the things many of us take for granted. I submit

below a (by no means an exhaustive) list of a few suggested matters for which we should be thankful every day.

Good health is my #1 item of this list. During a recent exposure to COVID-19, I realized how much I took good health for granted. We all can improve on they way we take care of ourselves with a proper diet and regular exercise.

A critical component of good health is having good vision and the ability to read. During the recent fall ice storm, I took advantage of not having electricity for nine (9) days and did some “recreational” reading. It was awesome! Books provide an opportunity to enter another world, from the comfort of your own home.

Which reminds me, how grateful should we be for electricity? You don’t realize how dependent you are on electricity until you do not have any. I had to resort to utilizing my automobile to charge my cellphone. How sad is that? I am happy to have my automobile to not only get around town, but to also help sustain my apparent addiction to electronic devices.

It is hard to believe how easy it is to take the internet for granted, seeing how none of us had access to it a only a few decades ago. I did not have the internet growing up, so I believe I do not need it now—until such time as I cannot access due to an electronic device’s low battery. Sadly, I have become a victim of the technological age. Whenever I need to know some information quickly, I conduct a fingertip search on the internet with a device in the palm of my hand. Truly remarkable! In essence, the true reason that I am thankful for

my electronic devices that have cellular network access is it makes it so much easier to speak to my loved ones, including my parents, at all times regardless of how severe the weather has become.

I truly owe everything to my parents. All they did was give me life. It is more than that, though—words alone do not adequately express how grateful I am to God for blessing me with wonderful parents. They simply lead by example. Having recently celebrated their 61st wedding anniversary, they taught me how important it was to grow in life with a trustworthy partner, and thankfully, I have been blessed with the same “gift of love: opportunities with my wife.

How about some gratitude for having freedom of religion? Being able to worship whomever and however you want is something many people do not experience. We should not take our democracy or any of our fundamental freedoms lightly. Being able to express your thoughts and feelings freely should never be taken for granted. We can express ourselves not just with words, but through the gift of music and art. How less beautiful would the world be without music and art?

Another important freedom that we have is the ability to vote. Being able to have a say in the laws that govern us is so very important. I maintain that the best way to honor members of the military, both past and present, is to vote. Can you imagine how different our lives would be if the we did not have the protection of our armed forces?

Any reason to celebrate is something to be thankful for, especially during this holiday season. My favorite holiday has always been Thanksgiving. It is a time to reflect upon and express gratitude for our own bountiful blessings, which are all too easy to overlook as we go about our day-to-day lives. If you are searching for a way to express how grateful you are, I suggest that you contact someone close to you and let them know, in the spirit of gratitude, how grateful you are for their presence in your life. I hope that everyone has a safe and wonderful Thanksgiving holiday!

Quote of the MONTH

*We must, indeed, all hang together or, most assuredly, we shall
all hang separately.*

Benjamin Franklin (1706-1790)

Stump Roscoe

By ROSCOE X. POUND

Dear Roscoe: *I know it's possible to support a legal position with something other than legal authority, but how much slack is there in what you put in a brief?* G.M., Edmond.

Dear GM: Your own Court of Civil Appeals, in the person of Judge Ed Garret, once put it thusly:

"In examining Shades' brief, we find that FDIC is correct that neither statutory nor court decision authority is cited. However, we decline to hold that Shades cites no authority for her position. Her clearly stated contention is that the guaranty agreement is so plain on its face that it shows that the trial court committed "plain error" in failing to follow the plain and unambiguous language of the contract in entering judgment. In determining liability on a contract, the language of the contract itself is certainly the basic authority. "Authority" is not always limited to statutes or court decision."

Federal Deposit Ins. Corp. v. B.A.S., Inc., 1987 OK CIV APP 16, 735 P.2d 358. And what law school graduate (or even a student who has not graduated) has never heard of the "Brandeis Brief" – heavy on social science data and policy analysis, light on legal citation. Sometimes they even work.

In the first place, you need to do a qualitative canvass of the authority out there. Quite frankly, the prospect of blazing a new legal trail in the absence of any precedent or even weighty tertiary authority seems kinda daunting, though not necessarily a sure deterrent. In the second place, the scenario you describe sounds like a highly fact-driven case where cases sometimes break down to "it's just not fair" and "the jury should have believed *me*" arguments which often toe the line of frivolousness. Still, if you're looking, let's say, at a public health issue, JAMA or Lancet will get you a lot farther than Prevention or Dr. Oz.

Also, be wary of straying too far out into "where no one has gone before." Take this quote, for example, arising out of a B-Girl prosecution:

"The question before us, however, is not whether the proposed instruction was "logically entailed" by the given instruction, but whether it was "substantially covered"; and those are meaningfully different concepts. After all, the average juror is not Mr. Spock. If he were, then a trial-court judge's job would be much easier. He could instruct the jury in broad strokes—instructing only as to the bare elements of the crime, perhaps—and be confident that the jury would deduce all of the finer-grained implications that must logically follow. As it stands, however, the vast majority of American juries are composed exclusively of humans. And humans, unlike Vulcans, sometimes need a bit more guidance as to

exactly what the court's instructions logically entail." *US v. Takhalov*, 838 F.3d 1168 (11th Cir. 2016).

Unpacking it, I first wonder if the majority of juries consist of humans, what's the make-up of the minority. Second, it helps to note that this opinion is the opinion in the case, written by a judge, and not an appellate brief. Judges have a lot more latitude in their writing. Which leads us to point three: know your judicial audience. Finally, do not try to plug the holes in your argument with attempted humor. Sure, judges appreciate a good chuckle now and then. Humor is harder than one might realize on the printed page. And you never want to appear to take the court or your case anything less than seriously.

Dear Roscoe: *Can a district attorney declare certain police officers PNG and unreliable to the point that she will not consider a case investigated by that officer absent corroboration by another officer or witness?* SD, Guthrie, OK

Dear SD: Depends on how she does it. any decision about an officer's ability to testify in an actual case would be shielded by absolute immunity and cannot be divorced from her communications with Collins. True, absolute immunity applies to a prosecutor's decision not to prosecute a case involving individual police officers, no matter the motive. *Roe v. City & Cnty. of San Francisco*, 109 F.3d 578, 583–84 (9th Cir. 1997); *Harrington v. Almy*, 977 F.2d 37, 40–41 (1st Cir. 1992). But communicating with an officer's supervisor and injecting herself into employment or manpower decisions before a criminal proceeding even exists poses a different question. See *Torres v. Goddard*, 793 F.3d 1046, 1052 (9th Cir. 2015). The Supreme Court confirmed as much in *Kalina v. Fletcher*, 522 U.S. 118, 129 (1997) when it evaluated each act in filing criminal charging documents separately, explaining how a prosecutor could be immune for filing an "information and the motion for an arrest warrant" but not for "personally attesting to the truth of the averments in the certification." Thus, in a variety of contexts – defamation, false light, interference with contract relations – the absolute prosecutorial immunity for cases brought by that office begins to dissipate the further a DA moves from advocacy to non-advocacy matters. And remember from the outsell that "absolute immunity" has always been meant to be applied sparingly.

On Monday morning I found myself in the parking lot of Golden Age Comics and Collectibles. The one-story building held a sea of tables bearing cartons of plastic wrapped comics of varying degrees of antiquity. Most of the wall space held current issues, collectibles and a mixed



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bag of horror and science fiction flicks on disc as well as gaming equipment. I could see what appeared to be office space and a break room in the northwest corner. I started over there when a voice called out:

"Hey Mr. P., didn't know you were a fan."

A young man stood behind the check-out counter. He wore jeans and a T-shirt bearing the likeness of H.P. Lovecraft. Like many, I had a hard time separating Lovecraft's artistic genius from his virulent racism. In fact, I found it surprising that Lenox, knowing better than most the bio of the man would even wear it.

"Lennox Peabody," I said with a wide grin. I suffered a bro-hug and fist bump from him. I wore a simple cloth mask with the Mets emblem. Lennox' leaned more toward something he may have picked up at Darth Vader's most recent garage sale. I provided bond for Lennox three years ago on a DUI/Joyriding charge. It occurred as he celebrated his eighteenth birthday. "You keeping to the straight and narrow, son?"

"Better believe it."

"Your mom and grandma OK?"

"Granny's showing her age a bit more, but she can still whip me."

"Tell her if she gets tired of doing it herself, give me a call."

He laughed. "Ah, she never gonna get tired of whipping me herself."

At this point, I could see my quarry emerge from the office. He saw me as well and started over. As he drew nearer, Lennox called out to him "Hey Mr. Brosnahan, c'mon over and meet somebody."

The Bob Goulet lookalike stood before me. We stood just out of reach of each other.

"This is the guy I was telling you about. Helped me with my GED, shook me loose from the gang, and got me into Tech."

Brosnahan looked to be sizing me up again. "So you're the guy he's always talking about like you saved his life or something?"

"I wouldn't go that far," I said. "What are you doing at Tech now?"

"Culinary arts. One day I'm gonna start my own restaurant and you both are gonna have a table on permanent reserve."

I caught Brosnahan's eye. "Separate tables might be better."

"Let's talk in the office."

"Fine," I said. "Lennox, maybe I can catch you for lunch on the way out."

"Yeah, great."

I followed Brosnahan back to the office. The décor was Spartan. One desk, a swivel chair and two for visitors, and a black metal file cabinet. He motioned me to one of the visitor's chairs. I sat.

"Want some coffee?" he asked.

"Sure."

He seemed surprised. "I'll have to make it."

"OK." He studied me some more.

"It'll just be instant."

"Instant'll be fine."

He exhaled and pushed himself back from his desk. He headed for the break room. A moment later I heard the microwave. "You don't want anything in it do you," he called.

"No, thank you," I knew when to cut a little slack.

He returned with two hot cups of warm coffee. "So, you ran my plates I suppose."

"You invited it. It would be impolite not to accept."

"OK. Let's get down to brass tacks."

But they'll have to wait for the next issue. Right now I'm gonna take Lennox to lunch as planned. Then I'm going to pour me some Pappy Van Winkle and try to find some more of Amul Thapar's opinions to read.

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Are You Just Passing Through?

Michael W. Brewer is an attorney, founder, and partner of Hiltgen & Brewer, P.C. 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.

Before 2020, I was a fan of action, post-apocalyptic, and sci-fi movies. After the last eight months, not so much. I was never so ready for Christmas movies. Reality has set in that the Rock is not coming to save us. But from these frivolous get-your-mind-off-harsh-day-to-day realities, I did glean some quotes for use here. Funny thing is, I write what is intended to provoke thought about our profession and professionalism . . . so how can a few movie quotes can come into play? Well, play along with me; even Johnny Ringo needs a Huckleberry. Also, I just observed on the internet that a local Ph. D. Psychiatrist was offering help, suggestions, and assistance for those dealing with election anxiety when I thought our 2020 anxiety level was rooted in COVID-19, the economy, people not wearing masks, no vaccine in near-term, no new movie releases, and the inability to travel freely about the country and abroad. As professionals, we are uniquely suited to face adversity on a daily, if not minute-by-minute, basis. Attorneys build up that hard-outer shell that allows them to take hits and keep on ticking but we are not immune to depression, addiction, or loneliness, among other mental issues. It is

I've heard many attorneys use advocacy as their reason for doing a lot of things that aren't factually or legally supported. I assume their motivation is money and nothing more.

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important that we reach out for assistance when needed. Even the strongest Avenger needed a team to assemble to take on what was threatening his world.

In my experience, work losses have allowed me to learn and improve my professional tool kit. Early in my career, a mentor told me: "if you were winning everything, you were playing it safe and not taking any risks." I felt like saying then, and now, that just taking a case to a jury trial is enough risk for me. You are putting real issues at risk with jurors for goodness sakes. Do you really want them making significant economic decisions for your client? Having said that you must believe in the jury system and that

it works to work in it for any amount of time. Otherwise, you will have a 2020 Groundhog Day on endless repeat. Another one of his points was well taken: without taking risks, how can you expand your skillset? I also learned that in the crucible of litigation, you can be friends with adversaries. Our local and state bar is relatively small. You will run up against attorneys again, even if years apart. Sometimes those attorneys will be judges on your cases later in life. No room exists for thoughts like "the enemy of my enemy is my friend."

One of the movie quotes I will paraphrase here is: there are lawyers and there are attorneys; what are you? The response was: "I'm just passing through." Are you just passing through simply making a wage or are you a professional? Is being a lawyer a career or just a job? I suggest to you that these are different approaches to practicing law. I'm not talking about your fee and payment structure; instead, my reference is to whether you are concerned with more than just making money. I postulate that if your sole motivation is financial gain, then being a lawyer is not really a profession or career to you it is a job and likely highly stressful. I've heard many attorneys use advocacy as their reason for doing a lot of things that aren't factually or legally supported. I assume their motivation is money and nothing more. I've learned over the years that the OCBA has a lot to offer those who are interested in pursuing a career as an attorney.

The OCBA focus is on improving our profession, not your bank account. In fact, active membership can take away from your time making money. OCBA activities

could include tutoring or reading with children, voluntary representation of minors at court, fundraising for several charitable activities and working on activities intended to improve the local bar association. Many opportunities for social interaction with colleagues and judges are available while actively supporting OCBA causes. Ultimately, we are supporting the rule of law. In 2020, the rule of law needs our support perhaps more now than ever. And It always will. So, are you just passing through, or do you want to fashion a professional career? We have lost a lot of colleagues and friends in recent times. One of them introduced me to the term "gravitas". The Dictionary defines gravitas as a noun meaning dignity, seriousness, or solemnity of manner: a post for which he has the expertise and the gravitas. I suggest that a lawyer "just passing through" cannot achieve any level of gravitas.

Here my friend sized up the gravitas of a lawyer involved in mediation in determining how and whether a case might reach a mutually agreed settlement. This was something he explained that he did at the outset and as the process developed would determine whether his initial analysis needed tweaking. His reasoning was that equally matched represented parties could reach settlement using a different approach than with non-equally matched represented parties. But it seemed that he used the term even more broadly to include numerous other observations like whether they were trustworthy in their negotiations and would stand by their word. Simply put, the professional would almost always have more gravitas which would weigh into the settlement outcome for their client. It was an interesting analysis but also gave me insight into another view of those whom I considered adversaries. Significantly, my friend had an extraordinarily high success rate in settlements. I was instantly interested in increasing my gravitas rating (shouldn't we all be?). What steps can you take now or in the future to do so? I need to start on my 2021 personal and professional goals because my 2020 goals are shot.

While 2020 has been difficult for lots of people for many different reasons, it is not a reason for us to fall into incivility. Being uncivil is too easy of a default position for lawyers in our adversarial system. Lawyers have to step up to increase our gravitas and secure our professional careers. Whatever you do, remember that no matter how terrible the officiating is don't throw things... RIP Billy. This is the way.

Volunteer Opportunities

Have you been cleaning out those closets to make room for the holidays? The Oklahoma County Juvenile Justice Center could use your help. The following is list of needs:

For Detention:

- Books
- Word searches, drawing guides, teen coloring books and other activity books
- Playing cards
- Games (especially card games like Uno)
- Sports equipment
- Art supplies (especially colored pencils


but we will use anything!)

- Individually packaged snacks
- White crew socks (only new, please)

For Court Services' Clothing Closet:

- New or gently used, clean, and teen-friendly clothing, especially...
- Shoes (dress, athletic, and casual)
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- Jeans and pants
- Socks and underwear (only new, please)

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An Assassin and a Boxer Walk Into A Bar...

[Part 2 of 2]

By: Jeffery W. Massey, Assistant District Attorney-Oklahoma County

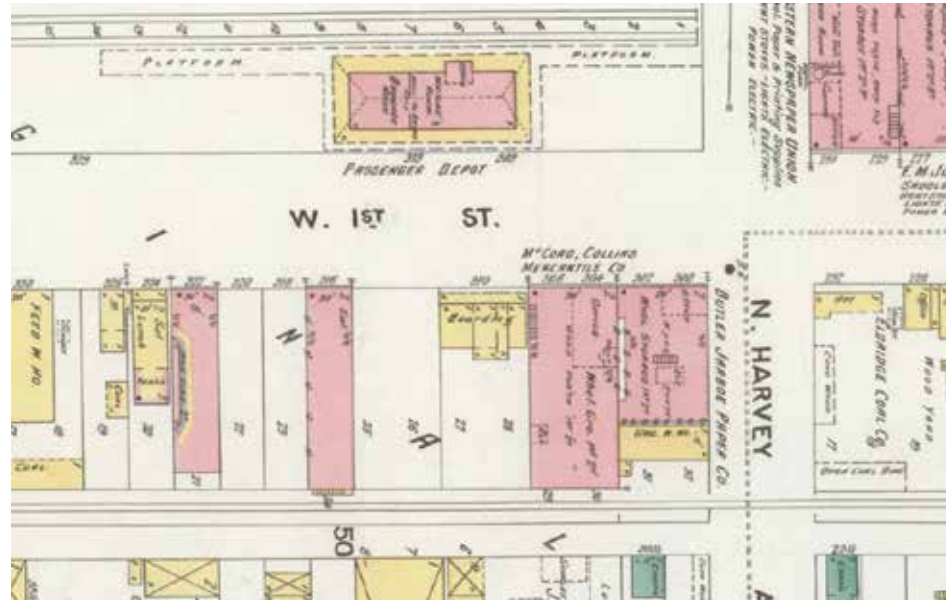
They say prison changes a man. That adage may be inappropriate for Edward Capehart O'Kelly. The 6-foot-tall killer was a hard, mean ruffian long before he exited the rainbow granite walls of the Colorado State Penitentiary at Canon City. Robert Ford's murderer had been sentenced to 99 years for the Second-Degree Murder in July 1892. The sentencing Judge had excoriated O'Kelly for his cowardice for shooting Ford in the side of the neck, eschewing fair play. O'Kelly's sentence was later commuted to 18 years. However, his criminal cronies and Missouri family would not let O'Kelly languish. Colorado's Democratic Governor James Bradley Orman paroled O'Kelly after receiving a 7,000 name petition for his release and hearing that O'Kelly was in poor health.

On October 3, 1902, Ed O'Kelly walked away from the turreted granite walls of prison a free man. However, it didn't take O'Kelly long to get back into trouble. On January 30, 1903, he was arrested for drunkenness and vagrancy in Pueblo, Colorado. It was Pueblo where he first tried his hand at being a 'peace officer,' but was fired for excessive brutality on the job. As O'Kelly bounced around Colorado and northern New Mexico, his reputation and demeanor followed him; he would be asked to leave each town in short order. Ultimately, O'Kelly decided to seek his fortune in one of the few remaining territories in the United States: the Oklahoma Territory.

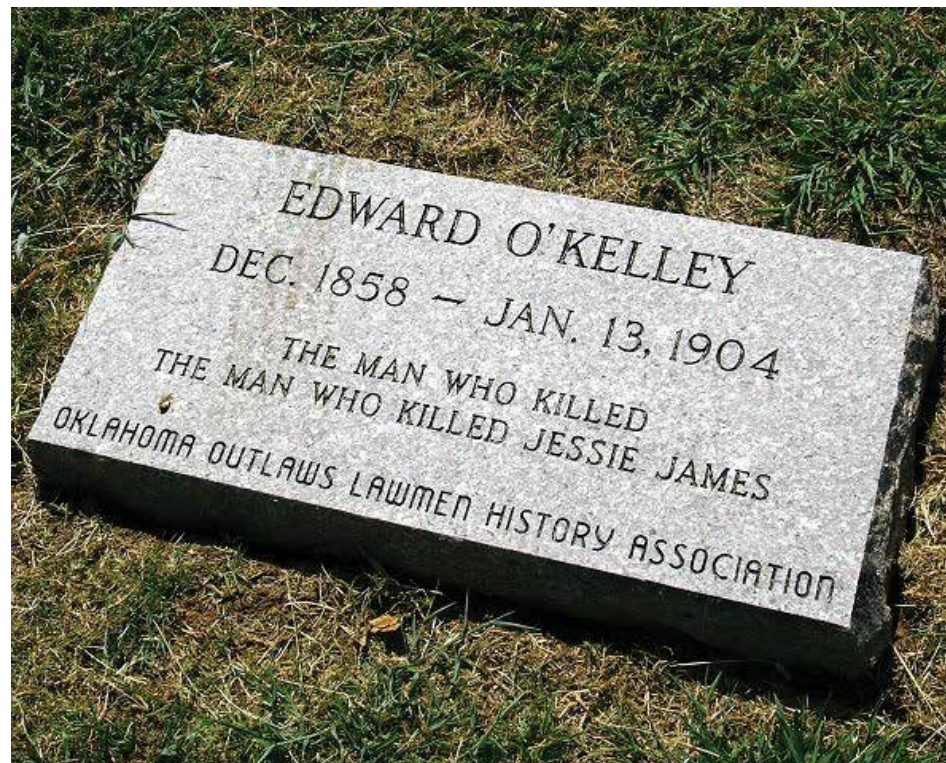
In the summer of 1903, O'Kelly arrived in Oklahoma City. O'Kelly worked intermittently as a railroad section hand and/or for the city sanitation department. O'Kelly was recognized by local bartender Otto Ewing of the Southern Club. By happenstance, Otto had been a bartender for Bob Ford at Creede and instantly recognized the tall, red-headed O'Kelly. Ewing put the word on the street that O'Kelly was a dangerous man and to be avoided.

It was not long before O'Kelly popped up to local police as a suspicious character. Long before 'probable cause' was a legal requirement, police officers patrolled with a night stick and a nose for troublemakers. Oklahoma City Policeman Joseph Burnett had just such a run in with O'Kelly in early December 1903. Burnett had been on the force for two years but could smell trouble. Burnett had caught O'Kelly hanging out at several saloons and boozing 'til close. Burnett lectured O'Kelly about "loafing around saloons."

Soon thereafter, it was noted that



Map of McCord Collins Mercantile



Edward Capehart O'Kelly's gravestone.

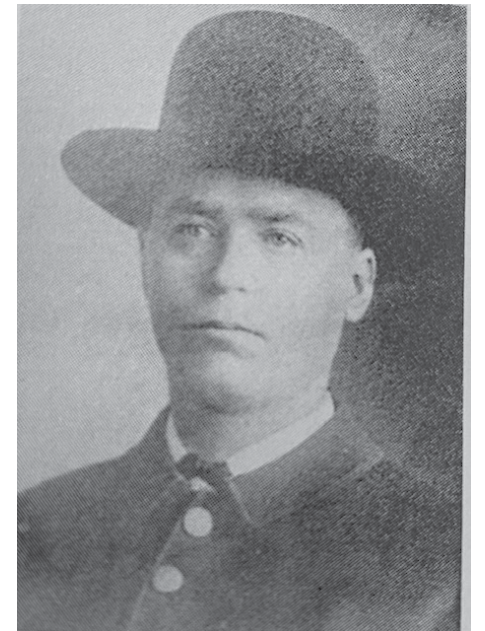
O'Kelly began to wear a long overcoat. O'Kelly told confidants that he had two loaded .45's in his pocket. At the time, it was unlawful to openly carry firearms in the Oklahoma City limits. Word spread of O'Kelly's armaments. Oklahoma City police visited the Lewis Hotel (O'Kelly's residence) on several occasions but O'Kelly always managed to escape.

On January 13, 1904, the cat-and-mouse pursuit of O'Kelly would come to a dramatic conclusion. O'Kelly was suspected of organizing a local group of thieves and burglars. This group allegedly robbed a local brothel and several properties, including a nearby grocery warehouse. But O'Kelly was tiring of the police harassment. He told local bartender N.B.

Pierpont that "the police had better not try to arrest me."

On the afternoon of the January 13, 1904, O'Kelly again was brought to police headquarters for questioning. A couple of intrepid officers had located O'Kelly having lunch, and not wearing his overcoat. After spending the afternoon being interrogated, an aggravated O'Kelly was released. He quickly traveled to the Lewis Hotel and adorned his overcoat. He then went out and met up with an accomplice to go out "gunning for a policeman."

Officer Burnett was on the lookout for O'Kelly as he had slipped away from another officer earlier in the day. As Burnett crossed Harvey Avenue, he stepped onto the wooden sidewalk in front of the



Officer Joseph Grant Burnett

McCord-Collins Mercantile building. It was almost 8:30PM. Suddenly, looming from the dim walkway, Burnett spied O'Kelly and his accomplice. In the dim gas light, Burnett said "Hello Kelly" while tightly gripping his nightstick. O'Kelly answered by pulling his revolvers and yelling "How do you do?! Now, you son of a bitch; I have you now!" Seeing O'Kelly's actions, Burnett charged into the assassin, striking O'Kelly sharply with the police nightstick. The two men grappled. Local thug and accomplice Bob Jackson pulled his pistol and pulled the trigger 4 times in rapid succession, but the pistol failed to fire each time. Afraid of an honest fight, Jackson ran from the scene with O'Kelly yelling after him, "Come back and we'll murder this son of a bitch!"

As O'Kelly yelled at Jackson, Officer Burnett saw his opening and drew his side-arm. For almost 15 minutes the wrestling duo made their way eastward to Harvey, and turned the corner southward. Each man intermittently firing his black-powder pistol and pummeling his opponent. O'Kelly was kicking, screaming and biting Burnett. The shooting and ruckus brings nearby tenants to the windows to watch fray but no one renders assistance. Nearby pedestrians saw the struggle, heard shots, and heard Burnett yelling for help, but no one went down the dim street to help the imperiled police officer.

Albert George Paul was a plucky 33-year-old born Iowan. He moved to Oklahoma City and was working in the passenger baggage room at the St. Louis and San Francisco Railroad depot. At 8:30PM, while closing up the baggage room for the night, Mr. Paul heard shots. As additional shots rang out, Paul opened

See ASSASSIN, PAGE 10



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THE GLOVE

By: Hon. James B. Croy

Santa was filled with an inner warmth as he walked out of the Christmas party at Children’s Hospital. Of all the parties and events he visited during “the season,” this was always his favorite. He knew he brought joy to each child able to attend the annual Christmas party. The secret was to give each child his absolute undivided attention as they lined up to tell him what they wanted for Christmas. He would tune the others out to make each one knew they were special. And, of course, they also sang carols and had warm punch and cookies. And giggled. And got presents.

He was walking down the corridor, smiling slightly and admittedly feeling somewhat self-satisfied when he saw a nurse guiding a doctor in his direction. Santa extended his hand to the unsmiling physician with a hearty “Merry Christmas!” The greeting was not returned, and the doctor’s face was creased with weary worry. “Santa,” she started. “I’m sorry. I don’t know what your name really is. I don’t know what to call you.”

“Santa will do nicely,” he smiled. “It is simpler that way.”

She nodded. “Santa, could you visit one more child? She couldn’t be moved to the party, and . . . Her voice trailed off.

“Certainly,” he nodded his head vigorously. “I would love to.”

With no more explanation the doctor

turned and started down the hall. He followed. They came to a set of doors proclaiming PEDIATRIC INTENSIVE CARE UNIT. He stopped smiling, and a feeling of terrible unease twisted in his stomach. The doctor, sensing his hesitancy, placed her hand on his arm and stared imploringly in his eyes. “Santa, today—this evening—needs to be her Christmas. Next week might be fine, or it might not. Her name is Amber.”

He looked through the glass walls of the ICU room at the tiny figure in the huge hospital bed, said a prayer, and silently entered the room. She could not have been more than six years old. She lay there, with tubes in her throat, in her nose, in her arm. Tubes everywhere. And she stared at the ceiling, at first not even realizing he was in the room with her. Then, as she turned her head to where she could see him, her eyes grew large and round in surprise. She couldn’t talk because of the tube in her throat, but her eyes said it all. Santa! And, as all kids do, she lifted her tiny hand and tugged weakly on his beard. Just to see if it was real. Usually there were fake beards on fake Santas, but this one was the real thing, and her eyes got rounder. Santa thought maybe there was the hint of a smile at the edge of her mouth.

He lowered his ample body into a chair by her bed and, in very soft tones that only she could hear, told her stories about Christmas. He told her the story

of a third-century Turkish Bishop named Nicholas. He told her how the beloved queen of a mighty country across the sea made the Christmas tree the centerpiece of the Christmas season. And that Santa’s sleigh isn’t always pulled by reindeer. And that Christmas presents have always been a part of Christmas. He recited Moore’s “A Visit by Saint Nicholas.”

It was during the poem that her tiny hand grasped his finger in its white glove. She held on with all of her strength and stared intently into his old eyes as he told her the story of Santa’s visit. They each gathered strength and warmth from the other. Then, Amber first and then Santa, each of them closed their eyes and rested in the comfort of the other. The young sick girl and the aged Santa.

After some time, the nurse came into the room and saw the tiny hand gripping his large glove, giving and receiving peace and serenity through the entwined fingers. The nurse gently shook Santa’s shoulder and he roused. She whispered to him that it was time to end the visit. He looked at Amber’s grip on his glove and then very gently slipped his hand out of the glove, careful not to wake her, leaving the glove firmly in her grasp. He stood for a few seconds staring at her and then bent down to her again and whispered a secret. He did not make eye contact with the nurse as he left the bedside.

As he stepped out of the room, he

looked up to see a distraught young couple, clutching each other, their red-rimmed eyes telling him that they were Amber’s parents. An older couple, the grandparents no doubt, was with them. The young mother smiled a sad smile and tried to say something to him by way of thanks, but she just could not make the words. The grandfather, wearing the blue baseball cap of a military veteran, approached him.

“Thank you, Padre. Thank you. You gave her . . . well, I don’t reckon I know just what it was, but it was more than anyone else could give her now. It was the best present she could have, and . . .”

And his words had run out. He grasped Santa’s ungloved hand and shook it fervently, then turned to go back to his daughter and her husband.

Santa passed by the elevator and took the stairs down to the ground floor so that he wouldn’t have to meet anyone. ‘Padre.’ The man had called him ‘Padre.’ He wondered how the man could have known. It had been thirty years since he had been an Army Chaplain.

As he reached the main doors of the hospital, Santa stepped into the frigid darkness of the cold December winter, consumed with Amber and the gifts they had given each other. She had given him wisdom, dignity and strength. In return, he had given her peace and belief—and a white glove from Santa to hold onto.



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In Memoriam – Judge Frank Miskovsky

By: Robert Gifford

Judge Frank Miskovsky, II (July 24, 1907 – June 13, 1968) was a first-generation American of Bohemian-speaking parents Frank and Mary (Bourek) Miskovsky who emigrated from Czech-Bohemia. Judge Miskovsky was the eldest of seven children and grew up in an industrious family that founded the Miskovsky grocery store on 23rd and Drexel in Oklahoma City. He took on great responsibility in helping raise his siblings when his father died at a young age.

Judge Miskovsky was a graduate of Central High School (the building that now houses the Oklahoma City School of Law) in 1925 and graduated from the University of Oklahoma with a degree in History in 1928. After college, he took on many occupations to help his widowed-mother help raise his younger siblings during the Depression by working in ranching, oil, and becoming a bailiff for Oklahoma County Judge George Giddings. As a Bailiff in the mid-1930s, Miskovsky's duties included milking the cows of deliberating jurors who brought them to the lawn of the courthouse, transcending what is known nowadays in modern courts. This experience led Miskovsky to working as a claims investigator with the law firm of Looney, Watts & Fenton and studying law at night at the Oklahoma City University



Judge Frank Miskovsky II

College of Law in 1936.

In 1942, after the bombing of Pearl Harbor, Miskovsky was called to active duty and served in the Army Air Corp (predecessor to the U.S. Air Force) as a military lawyer in the Judge Advocate General's Corps (JAG Corps) until 1946. After his war-time service, Miskovsky returned to private practice and remained

as a Reserve Judge Advocate in the newly formed Air Force until he left military service in 1954 with the rank of Major. During this time, he served as the National Secretary of the Air Reserve Association.

In 1950, he joined his brother, a State Senator and future candidate for Governor, George Miskovsky and established the firm of Miskovsky & Miskovsky, and

continued to maintain both his ranching and oil interests. In 1960, Miskovsky started his own firm, and at times served as co-counsel with his good friend and future Oklahoma Supreme Court Justice Marion Opala. An early supporter of tribal sovereignty, Frank Miskovsky represented the Kiowa, Comanche, and Apache tribes against the U.S. Government in one of the biggest court victories for a tribe at the time. While running his own firm, Miskovsky also served as a Special Judge in Oklahoma County, until later being elected to District Judge for Division 5 of the Oklahoma-Canadian County judicial district in 1967.

A life-long Democrat and longtime member of the Nichols Hills Methodist Church, Judge Miskovsky also served as the Post Commander for the American Legion in Oklahoma City, the American Bar Association, the Law Science Academy of America, Vice President of the American Trial Lawyers Associate of Oklahoma, was a member of the Oklahoma City Masonic Lodge #36, the Knights of Pythias, Knight Templar, and the India Temple Shrine.

He married the love of his life, Goldie ("GoGo") B. Miskovsky in 1931 in Chickasha, OK and owned one of the first homes in Nichols Hills, a ranch in Piedmont, and a home in Crested Butte, Colorado.

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OCU Law: Law School in the Time of COVID

Jennifer Prilliman,
Associate Dean for Administration

Last March, on the Thursday before spring break, Dean Roth and other OCU Law administrators gathered the available student body, faculty, and staff in the law school's McLaughlin Hall to explain that, "out of an abundance of caution" we would be closing the building for spring break. We asked students to gather what they needed to study over the break and to prepare for a potential move to online classes for an unknown period of time after spring break. It was a surreal moment that I will always remember. At the time, we knew so little about COVID-19. We were still optimistic that this would soon pass, but we really did not know what to expect or could we have anticipated a how long we would find ourselves in this new normal. Fast forward to May, and all classes had transitioned online; finals were online; due to the significant disruption to our students' and faculty's daily lives, grades were changed to pass/fail (something many law schools across the country did); and we were all trying to figure out our new normal. The world began learning more about how this virus works, and we learned that masks and social distancing do in fact help mitigate the spread of the virus. Throughout the summer, the building remained closed to students and most staff. Classes were online, the law library developed touchless printing and material delivery systems, and only essential personnel were allowed at the law school. As the law school community worked and

learned remotely, we began planning for a very different fall that was unlike one any of us have experienced.

Throughout the pandemic, we have remained committed to providing quality legal education. For the fall, we were specifically committed to providing face-to-face classes when possible but also allowing the flexibility and safeguards to keep our community healthy during the pandemic. We enhanced our cleaning protocols and have strict measures in place to the limit the spread of COVID-19. Classes are offered both in person and online. Most class sizes have been limited to 25 students to allow for social distancing. McLaughlin Hall, a space typically used as a common study area and event space, has been transitioned into a temporary classroom with individual desks spaced apart to allow for social distancing in our larger classes. The semester was shortened and will end at Thanksgiving. The early end to the semester will allow students, faculty, and staff to travel and see family for the holidays without exposing our law school community to the virus. However, ending the semester early does not mean hours in the classroom and studying have been shortened. Instead, a normal semester's work was compressed into the shortened semester. We have worked to help control the flow of traffic in the building with directional signage. Cleaning supplies and hand sanitization stations are strategically placed throughout the building to allow for quick disinfecting. The law library adopted new policies and proce-



The semester was shortened and will end at Thanksgiving. The early end to the semester will allow students, faculty, and staff to travel and see family for the holidays without exposing our law school community to the virus.

dures for handling materials and added more online study aids. Student Services and other student touching offices have been conducting most meetings via Zoom or Skype. Employees have staggered schedules and masks are required at all times.

This fall, we had several learning curves to overcome and we have been able to apply lessons learned to the spring semester. We

are starting the first week of spring online to allow everyone a chance to get back to Oklahoma City and quarantine if needed. Spring break has been replaced with a few days off scattered throughout the semester instead of one long week. The schedule has been designed to allow for social distancing and flexibility while still providing students the legal education they need and want.

For students, the stress of law school has been compounded by the stress of figuring out daily life during a pandemic. Many of our students are also care-givers for children, spouses, parents and other family members. In March, students lost summer employment opportunities as the uncertainty of the length of the pandemic loomed large. The financial and personal stresses is definitely taking its toll on the entire law school community. To assist students in need, OCU Law set up a Covid-19 relief fund to support . In all of this, we remain hopeful that by this time next year, this will be a memory . . . something we learned and grew from, but never have to do again. We couldn't be prouder of our students, faculty, and staff. They have risen to the occasion time and time again and continue to prove their resilience and resourcefulness. These traits will serve our students well when they formally enter the legal profession. We know that soon, we will be on the other side of this. In the meantime, we will stay focused on our mission to develop servant leaders and prepare students to be ethical and civil members of our legal community.

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Bar Observer

Attorneys, Paralegal Join Crowe & Dunlevy

Attorneys Jaycee Booth, Greg Buzzard, Katie Campbell, Garrett D. Lessman, Baxter Lewallen and paralegal Shana McHaffey have joined Crowe & Dunlevy in the firm's Oklahoma City and Tulsa offices.

Booth is an attorney in the firm's Oklahoma City office, assisting clients with matters in the Labor & Employment and Litigation & Trial Practice Groups. She graduated with honors from Oklahoma City University School of Law as a Merit Scholar and was inducted into the Order of Barristers. A member of the William J. Holloway Inn of Court, international legal honor society, Phi Delta Phi, and Organization for the Advancement of Women in the Law, she served as a judicial intern with the United States District Court for the Northern District of Texas. Booth received her Bachelor of Science in biology from West Texas A&M University.

Buzzard is an attorney in the firm's Tulsa office. A citizen of the Cherokee Nation, he is a member of the Indian Law & Gaming Practice Group. Buzzard received his Juris Doctor from Yale Law School where he served as president of the Native American Law Students Association. Prior to law school, he attended Dartmouth College where he graduated cum laude, served as president of the Native Americans at Dartmouth student organization and was a recipient of the Bill and Melinda Gates Millennium Scholarship. Before joining the firm, Buzzard clerked for the Honorable Jeffrey L. Viken of the United States District Court for the District of South Dakota.

Campbell is an attorney in the firm's Oklahoma City office. A member of the Labor & Employment Practice Group, she assists clients with general litigation matters. Campbell received her Juris Doctor from Oklahoma City University School

of Law where she graduated magna cum laude and was a Merit Scholar. During law school, Katie received CALI awards in Legal Research and Writing, Income Tax Law and Employment Discrimination and was a member of the Phi Alpha Delta legal fraternity and the William J. Holloway Inn of Court. She also holds a Bachelor of Business Administration degree in accounting from the University of Oklahoma.

Lessman is an attorney and member of the Private Wealth & Closely-Held Business, Corporate & Securities and Taxation Practice Groups in the firm's Oklahoma City office. He received a law degree and a Master of Laws in Taxation from Boston University School of Law where he graduated as an Edward F. Hennessey Distinguished Scholar. A National Merit Scholar, Lessman received his undergraduate degree from Baylor University.

Lewallen is an attorney in the firm's Oklahoma City office and assists in general litigation matters and in the representation of broker-dealers and financial institutions on matters of compliance as a member of the Litigation & Trial and Securities Litigation, Enforcement & Compliance Practice Groups. He received his Juris Doctor from Oklahoma City University where he graduated summa cum laude and was inducted into the Order of the Barristers and was named the OCU Law Outstanding Graduate for 2020. Prior to law school, Lewallen attended Washington and Lee University graduating with a Bachelor of Arts in English before serving as a field representative in the United States Senate.

McHaffey is a paralegal in the firm's Oklahoma City office and a member of the Securities Litigation, Enforcement & Compliance Practice Group. She brings more than 16 years of experience in the securities industry to assist attorneys representing securities firms, individual secu-

rities agents and investment advisors. She also supports attorneys in their drafting of core pleadings, reviews matters for early case resolution and collects, organizes and analyzes document production. A Certified Financial Planner, McHaffey graduated from Arkansas State University with a Bachelor of Science in health administration.

University of Oklahoma College of Law Named a Top 5 "Best Value" Law School

The University of Oklahoma College of Law has been ranked fifth in the nation out of more than 200 law schools as a "Best Value" law school, according to National Jurist magazine. OU Law is the only Oklahoma law school in the top 10.

In its methodology for the Best Value rankings, National Jurist based its findings on several factors, including percentage of graduates who pass the bar exam, employment rate, tuition, cost of living and average indebtedness upon graduation.

The Top 5 Best Value ranking is the latest in a series of recent major honors for OU Law, which include:

- No. 31 out of Top 50 law school rankings, Above the Law
- 94% bar exam passage rate for first-time exam takers – the highest in the state
- No. 16 in the nation for employment, American Bar Association

Hall Estill Welcomes Nicole Longwell As Special Counsel and Two New Associates in Oklahoma

Hall Estill has announced that **Nicole Longwell** has joined as special counsel in the Tulsa office and **Bryan Lynch** and **Natalie Sears** have joined as associates in the Oklahoma City and Tulsa offices

respectively.

Prior to joining Hall Estill, Longwell served as in-house counsel for the last eight years with Magellan Midstream Partners, LP and T.D. Williamson, Inc. managing commercial, employment, operations, engineering and construction matters. She also worked in private practice for twelve years gaining significant experience in complex litigation matters after graduating law school. Longwell focuses her practice in the areas of commercial, services and procurement contracting, construction, civil litigation and energy law. She earned her J.D. from the University of Tulsa College of Law, with highest honors, where she was part of the Order of Curule Chair, Order of Barristers and the Tulsa Law Review. She earned her bachelor's degree in criminal justice from Northeastern State University.

Lynch focuses his practice in commercial litigation, corporate and employment law. He received his undergraduate degree, summa cum laude, from the University of Oklahoma and his J.D., with honors, from the University of Oklahoma College of Law. Lynch is a member of the Order of the Coif, Order of the Barristers, and Phi Beta Kappa, and served as a Cortez A.M. Ewing Public Service Fellow. While in law school, Lynch served as an assistant executive editor of the American Indian Law Review and was two-time member of the University of Oklahoma College of Law National Moot Court Team.

Sears focuses her practice in general civil litigation, family law, and trusts and estate litigation. She graduated, with honors, from the University of Oklahoma and obtained her J.D. from the University of Tulsa College of Law. Sears has been recognized as a Rising Star in family law by Super Lawyers since 2017. In addition, she was named the Tulsa County Bar Association Young Lawyer in 2017 and received the Tulsa County Bar Association President's Award in 2019.

ASSASSIN

continued from page 5

the exterior door to see two men grappling and shooting in front of the McCord-Collins Mercantile Building on the south side of First Street.

In the semi-darkness, he watched as they turned the corner south on Harvey. Mr. Paul hurriedly secured the depot and made his way along the wooden sidewalk of First Street. As he crossed the street heard additional shots and the fatiguing voice of Officer Burnett yelling for help. Paul recognized Burnett's voice and ran to his assistance. Grabbing one of O'Kellys guns, Paul was rewarded flame and smoke as the gun discharged into the air. Paul yelled at Burnett asking if O'Kelly's gun was empty of bullets. O'Kelly fired again taking a plug of flesh from Burnett's thigh. O'Kelly roared, "Does that sound like it's empty!?" The struggle of the three men intensified with O'Kelly firing his pistols and using the handles like brass-knuckles. Burnett lost portions of both ears to O'Kelly's bites and a small chunk of his thigh from a bullet. Burnett's fatigue was starting to tell in the melee. Only adrenaline preserved his life until Paul had

So, the next time you stand on the SW corner of Harvey and Park, looking at the Ron Norrick library, imagine Officer Joe Burnett and Bob Ford's assassin in mortal combat.

arrived. Now the three men fiercely grappled in the dark into an empty lot behind the mercantile building. Burnett's adrenaline rush was fading as he death gripped O'Kelly's gun hand. Burnett's wool coat was smoldering and eventually afire from the blasts of O'Kellys pistol. With the last his energy, and as Paul grabbed O'Kelly's gun hand, Burnett flaggingly pulled his other sidearm and shot O'Kelly, both in the leg and the temple.

All three men collapsed to the ground. Eventually, other officers arrived as the hue and cry floated back to the police station. Paul was unscathed and Burnett was taken to the Dr. Witten's office for treatment to his leg and ears. Afterwards, there were two bullet holes discovered in the back of Burnett's singed overcoat. His gloves were burned through in several places. An ambulance was called and

O'Kelly's body taken to the morgue at Street and Harpers furniture store. His body had a bullet wound in his left leg just above the knee. The fatal shot entered his head just behind the left temple and exited behind the right ear.

The next day a coroner's jury determined that O'Kelly died from "a gunshot wound inflicted by Joe Burnett in self-defense" and held the officer blameless. Bartender Ewing appeared at the morgue and identified O'Kelly as the man from Creede, Colorado. Warden of Prisons John Cleghorn sent a letter and photograph of O'Kelly in furtherance of the identification process. After being unclaimed for 2 weeks, on January 28, 1904, O'Kelly was interned at Fairlawn Cemetery in north Oklahoma City. The casket was provided by the county at a cost to the taxpayers of \$12.50.

Joseph Grant Burnett would enjoy a noted career with the Oklahoma City Police Department. In 1905, Burnett would become chief of police of Oklahoma City. However, good health did not accompany the promotion. Burnett would pass away on July 20, 1917 in St. Anthony's Hospital after suffering a fatal stroke. He was the longest-serving Oklahoma City policeman at the time of his death. Burnett was 49 years of age and buried in the Fairlawn Cemetery, his grave a mere 500 feet from that of O'Kelly's.

So, the next time you stand on the SW corner of Harvey and Park, looking at the Ron Norrick library, imagine Officer Joe Burnett and Bob Ford's assassin in mortal combat. The library stands on the site of the McCord-Collins Mercantile building and its SE corner is the empty lot where it all ended . . . right here in Oklahoma City.

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OKLAHOMA ELECTION WRAP UP

While the election for President turned into a multiday nail-biter, Oklahoma was able to call most of its elections on election night. It was a good night for Republicans who either maintained or gained on every level. On the federal side, President Trump won Oklahoma 65%-32% and won every county. This is almost the same percentage he received in 2016. Senator Inhofe convincingly won reelection who has held his position since 1994.

At the congressional level, there was only one competitive seat, District 5, which was identified nationally as an important battleground for both parties and saw a record amount of spending. Rep. Kendra Horn had been able to flip the seat to the Democrats in a 2018 waiver election, and the Republicans were looking to take it back. State Senator Stephanie Bice was able to win 52.1%-47.9%.

The State Senate remained the same with Republicans holding a 39-9 majority over Democrats. In the House of Representatives, Republicans gained 5 seats in the 101-member chamber, bringing their super majority to 81. Rep. Matt Meredith (D-Tahlequah), appears to be Oklahoma's last rural Democrat for the time being. Republicans did relatively well in urban/suburban areas as well, for example in House District 83 (NW Oklahoma City) Eric Roberts was able to narrowly knock off first term Democratic incumbent Chelsey



dnewman8 via depositphotos.com

Branham by 766 votes.

Here in Oklahoma County, the Republicans pulled off a sweep winning County Clerk, Sheriff, Court Clerk, and Commissioner. The closest race was for Sheriff where Tommie Johnson III won his race by 6,000 votes (53%-47%).

There were also two State Questions on the ballot which were both defeated. State Question 805 pertained to crimi-

nal justice reform and seeks would have limited the effect of prior felony convictions on sentencing. State Question 814 sought to reallocate funds distributed by the Tobacco Settlement Endowment Trust Fund ("TSET"). SQ 805 failed 61%-39% and SQ814 failed 59%-41%.

While it might not seem possible, Republicans could actually strengthen their hold Oklahoma politics moving for-

ward. As part of the decadal Census, states are required to redraw their districts. In Oklahoma that is done by the State Legislature which, as laid out above, Republicans control by supermajority. While the Governor has a veto, and there has been friction between the two branches, it is hard to imagine that the Governor would object to redrawing lines more favorable to Republicans.

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