



Briefcase

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THE PAIN THAT BINDS

By: J. Renley Dennis

There are certain events in life that people do not only recall but they remember where they were and what they were doing when it happened. Often called “flashbulb” memories, these events are so extraordinary they fix an image in your head of that exact moment. Like VE-Day, September 11, 2001, the sinking of the *Titanic*, and the moon landing, these events are eternal in our collective memory—some tragic and some triumphant. But not all flashbulb moments occur on the middle of the world stage.

When I was fifteen years old, I learned that an ambush attack in Afghanistan killed my brother. I remember every breath, every glance, and every heartbeat of that day.

That single instant of news would change my family forever. Even eighteen years later, I cannot say we ever fully recovered.

That flashbulb moment for my family was a microcosm of what happened on April 19, 1995, twenty-six years ago this month. I had the honor and pleasure of speaking with many great Oklahomans over the past week about that day and the time that has passed since. Each one of them, save one, can tell you with vivid recount where they were and what they saw the day the Alfred P. Murrah Federal Building was bombed in downtown Oklahoma City. For each of them and for people across the nation, the Oklahoma City bombing has been the defining flashbulb moment in their lifetime.

Governor Frank Keating had been in

Office just over three months on the morning of April 19, 1995. After a prayer breakfast downtown with Mayor Ron Norick, he was in his office at the Capitol when the windows shuddered. That was unusual, given that bullet proof windows do not have the tendency to shudder—even in Oklahoma winds. His first thoughts were of Will Rogers International Airport and Tinker Air Force Base. Then he received reports of a gas line explosion downtown. When he saw the first footage of the Alfred P. Murrah Federal Building from a news helicopter, he knew it was not a gas line. Governor Keating realized instantly this was an intentional act.

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From the President

VOLUNTEERISM: THE JOY OF GIVING



Hon. Don Andrews
President, OCBA

Many countries adopt causes or special interest groups to highlight and promote during a given calendar month. In the United States, we are prolific at creating “national _____ day/week/month” events to promote businesses, non-profits, and other interests. Although there are a good many “national _____” observances in the spring, April is one of the few months that does not have a long list of observations.

Some unusual causes observed in April are Florida tomatoes, cannabis, celery, Irritable Bowel Syndrome, pecans, soft pretzels, and straw hats, among others. Some of the worthier causes observed in April include keeping America beautiful, child abuse awareness and prevention, distracted driving awareness and prevention, and prevention of cruelty to animals. These worthy causes, no doubt, deserve our attention, and it just so happens that April is National Volunteer Month.

Do you volunteer? If so, congratulations! Volunteerism is one of the most cherished of American values. You are one of the nearly 77.4 million Americans who volunteered in recent years, turning in 6.9 billion hours valued at \$167 billion.

Although volunteers make all of our lives better, volunteerism also benefits the volunteer, who is typically happier, healthier, and more likely to be employed. Studies have shown that if you are unemployed and volunteer, you have a 27% better chance of finding a job.

Do you have passion about a particular problem or issue? If you feel strongly about some cause, then that is an excellent start to a pleasant volunteer experience. If you are uncertain what your passion is, then give several charities a try by volunteering on specific days throughout the year that feature volunteering. Some of the more popular upcoming events are: Earth Day on April 22; Endangered Species Day on May 21; and World Blood Donor Day on June 14. The Oklahoma Blood Institute is always in need of more blood.

Were you aware that the Oklahoma County Bar Association has a Community Service Committee? Our committee is currently focusing on environmental projects. You can participate and volunteer some of your time with events established by our Community Service Committee, which has an upcoming “litter blitz” for OKC Beautiful on Saturday, April 24. Other possible upcoming events include a “work day” on the courtyards at the Oklahoma County Courthouse.

Additionally, there are a number of worthy charitable organizations that do some amazing work in our community. It is easy to contact these organizations and inquire whether they have any volunteer opportunities. Some local recommended worthy causes include:

- Central Oklahoma Humane Society (<https://okhumane.org/get-involved/volunteer>);
- Legal Aid of Western Oklahoma (<https://www.legalaidok.org/volunteers>);
- Oklahoma Cleats for Kids (<https://okc.cleatsforkids.org/get-involved>);
- Palomar (<https://palomarokc.org/volunteer-application>);
- Neighborhood Services Organization (<https://nsookc.org/volunteer>); and

- Restore OKC (<https://www.restoreokc.org/volunteer>).

If you are unable to volunteer your time, then you can *always* donate your resources to the organizations listed above, as well some others in our community, including:

- City Rescue Mission (<https://cityrescue.org/donate>);
- Fields and Futures (<https://fieldsandfutures.org/donate>);
- Parent Promise OKC (<https://parentpromise.org/give>);
- Skyline Urban Ministries (<https://www.okcskyline.org/give>); and
- Upward Transitions OKC (<https://upwardtransitions.kindful.com>).

This list of charitable organization is, by no means, exhaustive. There are many other worthy charitable organizations throughout the Metropolitan area that are deserving of your time and resources.

All you have to do is a little research on the Internet to find what works best for you.

Finally, another option is to become of member of certain organizations that are designed to benefit local charities, including Exchange Club, Kiwanis Club, Lions Club and Rotary Clubs. These organizations have chapters located throughout the Oklahoma City metropolitan area. Joining these organizations provides you with more voluntary opportunities, along with socialization with others who enjoy the gift of giving.

I am fortunate to serve on the Board of Directors for Oklahoma Cleats for Kids (C4K), an organization created ten years ago by fellow lawyers, Mark and Stacy McDaniel. Mark and Stacy, when con-

fronted with what to do with their children’s outgrown sporting equipment (primarily shoes or cleats), cleaned-up and restored the used sporting equipment so that it could be donated to children in need. Thus, C4K was born!

Needless to say, in the short ten years of its existence, C4K has made a significant impact on youth throughout the State of Oklahoma. I can only imagine the positive impact that C4K has had on our court system. When you keep kids active in sports, they tend to do better academically and are less likely to get in trouble. This is why I serve on the Board of C4K!

I am also fortunate to be a founding member of committee of lawyers that was formed to assist the Palomar Legal Network. Palomar Legal Network, which began last year, is a coordinated network of lawyers, licensed legal interns, law school representatives and law students who provide high quality free and/or low-cost legal support services to clients of Palomar Family Justice Center. Palomar Family Justice Center, with other community partner agencies, provides a multitude of services to victims of domestic violence, child abuse, sexual assault, stalking, elder abuse and human trafficking.

As lawyers, is there not a more noble way of serving our community then by volunteering to provide free or low-costs legal services to victims of domestic violence or child abuse? This is why I continue to support the Palomar Legal Network.

There are many quality non-profit organizations throughout the Oklahoma City area. I hope you decide to volunteer soon and can experience the joy of giving your time, talents and resources. More importantly, we can all make a positive impact on our community by volunteering.



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Quote of the MONTH

“Change is the law of life. And those who look only to the past or the present are certain to miss the future.”

- John F. Kennedy

Stump Roscoe

By Roscoe X. Pound

Dear Roscoe: What is the “reptile brain” as used in relation to litigation? **W.Z., OKC, OK**

Dear W.Z.: The reptile theory has become the darling of the plaintiff attorney’s nursery. I have no statistical evidence to back this prediction, but I see this little darling adopted by the prosecution bar as well. The theory holds that by speaking to, and scaring, the primitive part of jurors’ brains, the part of the brain they share with reptiles, you stand a greater chance of persuasion. In essence, the reptile brain is programmed, and so skewed, toward safety and survival, akin to the more familiar fight or flight response. Targeting this portion of jurors’ brains, plaintiffs and prosecutors can influence their decisions based on their desire to protect their families and community through their verdict. Thus, the focus of the plaintiff’s case is on the conduct of the defendant, not the injuries of the plaintiff. The jurors are not so much interested in the nature and severity of the plaintiff or victim’s injury and suffering, as they are in how defendant’s conduct endangers the jurors and their families.

Personally, I’m not yet sold on either the novelty or efficacy of the theory. Attorneys have argued for jurors to “send a message” to various defendants that this community will not tolerate X’s conduct; urged that they put themselves in the position of the victims or their families; and extrapolated the conduct of the defendant to its worst possible magnitude. In other words, both trial and appellate litigators have long appreciated the power of slippery slope arguments, and personalized the harm argued against to give the court or jury some “skin in the game.” A great example of the latter, on the appellate level, comes from a comparative reading of the briefs and opinions of *Bowers v. Hardwick* and *Lawrence v. Texas*. In the former, the argument centered on the right of consenting adults to engage in homosexual activity. The notion could not gain traction with a majority of the Court. In *Lawrence*, though, the issue became government intrusion into the most intimate affairs of people, a thought-provoking matter of interest to people regardless of orientation. Thematic and presentation choices affect the outcome of a case every bit as much as the evidentiary basis for the action.

While the Reptile theory may sway a jury, it might fail to move a judge deciding a Motion for New Trial or survive appellate review. Representative of the latter, *Westbrook v. General Tire and Rubber Co.*, 754 F.2d 1233 (5th Circuit 1985):

“A review of the entire argument reveals that while General Tire objected to just one community conscience statement, similar statements pervaded Westbrook’s argument. When viewed with the size of the verdict, these statements were of inescapable influence. For the reasons previously discussed, such appeals to local bias against an outsider are prejudicial, and a large verdict

accompanied by such appeals leads us to conclude they had an influential impact upon the jury’s deliberations.

“When a jury verdict results from passion or prejudice, a new trial is the proper remedy rather than remittitur. Although decisions have deviated from this rule, the better approach is to require a new trial on any issue infected by passion and prejudice and employ remittitur for those verdicts which are excessive, that is, so large as to be contrary to right reason. Because this jury was influenced by erroneous argument, it is appropriate for us to order a new trial rather than remittitur.” (Citations deleted).

If you face the prospect of dealing with reptile brain strategy, I’d say my first approach would be to seek to limit evidence and argument on this point prior to trial. Being able to anticipate an attack places you in that much better a position to meet and repel it. Please share your stories. I’d like to know whether this has risen to the level of “a thing” in Oklahoma.

Dear Roscoe: The FETV network on cable out here is running reruns of the old TV series *Maude*, and it’s got me to wondering: Was Isadora, in fact, the first bra burner and, if so, who was she? **P.W., OKC.**

Dear P.W.: Really? A question about a 70’s sitcom? For more than a decade now, I’ve worked for credibility for this column as a venue for legal and law-related discussion. Oh sure, I’ve got some clunkers along the way, but for the most part they at least had a legal reference point. And besides, if you’re up and around at midnight your time, I should hope you could find something more productive to do than watch reruns. Never fear tho. At least this time, the Great and Powerful Ros has every intention of granting your request.

Actually, the reference most likely, and erroneously refers to Isadora Duncan (1877 – 1927). The “mother of modern dance” gained worldwide fame for her daring and avant-garde lifestyle as well as her brilliant and (then) cutting-edge choreography. For example, she became a close associate of the self-proclaimed “Wickedest Man in the World” Alistair Crowley, as an émigré in Europe she publicly embraced communism and, planning to return from abroad, narrowly missed booking passage on the doomed passenger liner *Lusitania*. Unfortunately, composers Marilyn and Alan Bergman and Dave Grusin didn’t quite do enough research. While Ms. Isadora never, insofar as I can discover, actually burned a bra, she did on occasion, doff the article, sometimes on purpose and sometimes due to what we call today “wardrobe malfunctions.” On these occasions, she would also sometimes call attention to her anatomy providing her audiences with detailed description. Unfortunately, she also died of a wardrobe malfunction when her scarf became caught in the spokes of her bicycle, breaking her neck. I’d hasten to add that this show began in the early Seventies, a time in which, for about five years, urban myths about bar-burning feminists made runs to the



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media. Finally, I’ve tried to find a legal tie-in for this piece and I believe I’ve succeeded. Ms. Duncan had a short-lived marriage to the Russian poet Sergei Alexandrovich Yesenin. Following his death in 1923, Ms. Duncan offered his will for probate in New York, the first will probated in the United States drawn up under the laws of the relatively young Soviet Union.

The waiters brought me my food and I dug in enthusiastically. The others at the table merely watched. Feeling a bit self-conscious, I asked “Am I the only one eating?”

“We’ve already dined,” Paddy said, “unless you believe the old saw about not killing someone with whom you break bread.”

“Didn’t seem to work that well for guests at the House of Borgia,” I replied.

“Sometimes I feel this is more like the House of Atreus,” Paddy deadpanned. He then turned to one of his guys and said, “Box up Mr. Pound’s food to go. And don’t forget the soda bread. He’s already come a long way for nothing, and I don’t want him unnecessarily delayed.”

“So the answer to whether you can help rein in your two Jersey guys is no”.

“The answer is ‘can’t.’”

This took me by surprise. “And that would be because--?” I prompted.

“That would be because, as the song goes, they have a lot of pretty, pretty boys they call friends. New friends. Friends who remain outside my current sphere of influence. Friends who me make believe I’d best keep my head down and my own borders secure rather involve myself in the intrigues of others.”

This sounded distressingly close to my conversation with Tony Segar. “Do these pretty, pretty boys have names?”

“Mr. Pound, I like you. I like what I’ve heard about you. Oh sure, we’re not on the same side and all, but I can do this. I can grant safe conduct out of The City. That’s the outer limit of my power here. And once you get back to the Garden State, I hope it’s your own garden that you’ll be tending.”

A guy came out of the kitchen with a plastic sack containing two Styrofoam boxes and a loaf of soda bread. Paddy Hughes and I exchanged our goodbyes

with a slight nod of the head. I walked to the front door. An obliging hood held it open for me.

“Let me tell you something, friend. Mr. Hughes don’t give his word lightly. Still, I’d keep my gun handy until you get across the river. Maybe even all the way home.” He finished up with a wink and a smile which I returned as I stepped outside. I carried the take-out in my left hand, my .38 close to my leg on the right. If anyone noticed, they didn’t say. I pulled away from the curb and made a right. Soon, I could see the river ahead of me. Home lay right on the opposite shore. I really wished I could get there as the crow flies without all that water in between.

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Post-Pandemic Musings

By Katherine Mazaheri

It is undeniable that the COVID-19 pandemic shattered the normalcy we had prior to 2019, no matter who you are or where you are. Through the fast workings of science, a lot of people have chosen to receive the vaccines to reduce the chances of becoming ill with the virus. Now that I have fully received both vaccine shots, I've done some self-reflecting on the past year, and realized that I have conquered some valleys to get past the whirlwind of 2020. In fact, we have all been through a shift, and much like the many stages of grief, my friends and family have found ourselves going through different stages to process the pandemic, and how to move on and move forward with our life after this. For me personally, I can clearly identify the impact COVID left on me and I've chosen to look at some of these changes positively.

1. Seize the Day!

Surviving through a pandemic has led to thriving. I've taken the phrase *carpe diem* to heart and am learning to seize each and every day. As a firm owner and mom of four, seizing the day was not always an option I gave myself prior to the pandemic. In fact, I would typically weigh out competing interests when invited out for social events, and would ultimately have to weigh being too tired, too busy, too overcommitted, too ... everything. The 2020 year of isolation has flipped my perspective, and



I find myself craving this quality time for family gatherings and parties with friends. I feel like I have a year's worth of socializing to catch up on, and I've been teaching myself that saying yes is not a bad word. Social interaction is not only needed in my life, but I crave it. My relationships with my friends have transformed, as we can bond over the struggles we overcame in 2020. At the office, I've noticed a change in my clients, many of which are eager to come in and make a personal connection rather than discussing by phone and zoom. Of course *carpe diem* in 2021 comes with a matching mask and a few extra feet of space when

talking to others, but it has been seared into my mind and calendar.

While I have taken a *carpe diem* approach in my everyday life, others have turned to more of a hermitic lifestyle. Many of my close friends and family have found solace in the 2020 year of isolation and find it hard to leave the house. This is a very real change that should be acknowledged, and understood, as being a recluse was the requisite for an entire year. Remember to treat your homebody friends with grace, as their COVID experience and realizations may be very different from yours. As for me, you will find me at all the parties.

2. Flexibility is Key

Prior to 2019, I was not very forgiving of last-minute changes and cancellations. Having lived through a pandemic, I've found myself become more flexible with my plans, and understanding at last minute changes. Whether it is in the office or in my personal life, I've learned that being accommodating is the new requisite. Tentative is now a prefix to the word plan, as any given moment someone may be quarantining or sick. Everyone is experiencing something that has thrown their life off balance. I find that focusing on what I can control helps me be more understanding when plans need to change, whether it is a fully-charged phone, a spare outfit in the car in case plans change, or a clean environment.

3. What You Think of Me is None of My Business

After being able to spend a year in isolation, away from the critical comments of others, I am now very comfortable with who I am. As such, I am less worried about what other people think of me. Blocking out negative energy has helped me to focus on what I value, and be braver in the world. With this new found energy and confidence, I've been able to take risks in my business, focus on my passion in law by writing more articles, spent time raising my kids without uninvited input, and even picked up some new hobbies. What others think about me is none of my business and life without the critical cloud of toxic people has been freeing. I've become more true to myself by thinking out of the box in my business and everyday life.

4. Get. It. Done

I'm more motivated to work than ever. In

the practice of law, things can get mundane, and sometimes you need a spark to fire up the engines at the office. Spending a year in isolation and transitioning to being back in the office has made me value working. I've become more purposeful about the service I want my practice to focus on, and energetic at our office. It's important to bring this light and motivation to my staff, who are suffering through their own hardships and the pandemic. I've also learned the importance of bringing positive energy to the workplace, ensuring that my staff knows I believe in them and the good work we are doing for the community. We are all motivated as a team and family to do as much as we can, and to ensure we are able to help our clients with their issues, but do it with our firm values in mind.

5. Accept Yourself

Surviving a pandemic means accepting yourself no matter what, and despite changes that may have occurred through the past year. For me, this is in the form of the inevitable COVID weight I put on. I'm less motivated to work out than ever, especially with the uncertainty of the schedule of each day. Coupled with stress eating and abrupt gym closures, I've had to learn to accept myself for who I am today. I've also learned that surviving through a pandemic, and getting COVID means that sometimes a few extra pounds isn't the worst thing I could go through. I'll be applying my *carpe diem* motto to the gym, and I encourage anyone struggling with their weight to be more sympathetic to themselves. We survived a pandemic, we got through that and we will get past a few extra pounds too (at least that's what I keep telling myself).

6. Show Love When it Counts

While a lot of people collect coins, antiques, or cars, I've been coined as a collector of relationships. Building connections with people I meet, both in and out of the office, is one of my passions, and I love hearing their stories. When my family and I got sick with COVID, I realized that those relationships had blossomed. Friends near and far showed up for me in different ways; calling, texting, bringing food, sending gift cards, or bringing medicine. Realizing that the people I had collected as my friends were making these efforts for me made me value the true meaning of friendship, and identity the efforts they made. Those kind gestures won't be forgotten, and I feel more appreciative of those friends in my life now.

7. Sanitize, Sanitize, and Repeat

Let's be real, who hasn't turned into a consistent sanitizer after this pandemic? I found myself become much cleaner when our world turned to hand sanitizer as our savior and solace. If you ask my husband, he would boldly disagree with this statement, but my focus isn't solely on the house. I am more concerned with what my kids interact with, touch, and where their hands go. This is a shift in me that is here to stay, as I find myself becoming anxious when going to the grocery store or restaurant. Our world view on germs has changed, and I've learned to take it in stride with various hand sanitizers and cleaning products.



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There's Nothing Sexy About Sexual Harassment

By Katherine Mazaheri

Dear Esteemed Colleagues:

It's past time for a reboot to our workplace ethics. In light of recent events, I feel compelled to remind my professional colleagues that we may need to take heed to ourselves when entering the workplace. At times, we have all fallen short of our best behavior at work. I'm not calling for perfection, but simply R.E.S.P.E.C.T. for one another other regardless of gender or sex.

To be clear, gender is not an open invitation for "harmless" comments, which teeter on the line between sexism and harassment. Honey, sweetheart, or princess may be well intended as endearing, but in a professional context, we now know that such comments could be unwarranted and sound condescending. The silent pandemic infecting our workplace is the existence of continuous and unreported sexual harassment and gender discrimination inside our firms or between colleagues, while simply making professional connections. Non-offending Attorneys: we look to you to assist us in keeping our colleagues accountable and not turning a blind eye to a toxic work environment. To those suffering at the hands of practitioners to whom this letter is addressed: we ask that you remain vigilant identifying and speaking out against harassment even among each other and treating your female and male colleagues with nothing but professionalism and respect. We are all bound by a professional and ethical duty to minimize gender discrimination at work,



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no matter the form it takes. The *Mad Men* days are over, and it's time for the good ol' boys to take a seat and start taking notes.

As our community and profession modernizes, the lines of sexual harassment have become clearer and the list of behavior that is no longer tolerated in the workplace has grown. As we all know, sexual harassment has run rampant among some of the most influential individuals in our country, with the form of harassment varying. Allegations of President Joe Biden's long hugs, hair smelling, and lingering touches have been criticized as sexual harassment.¹ Former President Donald Trump's

infamous statements regarding grabbing women by their genitals, as well as several claims of unwanted touches and groping, have been heavily criticized.² Former politician Anthony Weiner faced time in prison due to allegations of texting lewd pictures to women and underage girls.³ Filmmaker Harvey Weinstein faced numerous accusations of sexual harassment, sexual assault, and rape, due to the sexual harassment he had conducted against female actresses who worked with him.⁴ Although these are just a few of the many examples we've heard through the news, our colleagues should be cautious of their behavior in the

workplace because something as innocuous as lengthy inappropriate staring, standing over an associate and micromanaging to the extent that it is intimidating, invasion of personal space, and "off color jokes" can be evidence of gender discrimination and sexual harassment in the workplace. Workplace sexual bullying from both male and female employees, often called "slut shaming" is another form of sexual harassment that can lead to a hostile work environment.

While sexual harassment cannot easily be isolated to one specific type of behavior, the Equal Employment Opportunity Commission (EEOC) has provided guidance on obvious forms of sexual harassment, such as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature."⁵ Sexual misconduct in the workplace has evolved past the *Mad Men* era of "outright sexism and cigarette smoking."⁶ The world has mostly moved past the 1959 workplace where slapping a secretary on the behind was completely socially acceptable.⁷ In our modern world, sexual harassment has shapeshifted into different forms of conduct. Pet names, such as baby, honey, or sweetheart can be evidence of sexual harassment and gender discrimination. In the office, sharing sexual jokes or stories with your staff, or bringing up an employee's sex life or how their anatomical parts work is also sexual harassment.⁸ Unwanted touches, such as

See HARASSMENT, PAGE 10

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Presumptive Thinking

By: Hon. James B. Croy

Most lawyers came to the law from some other vocation. Some were teachers, or soldiers, or nurses, or bureaucrats. Of the many Judges I know, one had been a beer distributor, another was once an electrician, and several were in law enforcement. As for myself, during the last quarter of the last century of the last millennium, I was a researcher for the staffing agency of the Oklahoma Legislature known as the Legislative Council. The Legislative Council provided research services for both houses of the legislature and staffed all of the committees for both houses.

Each committee was staffed by a researcher, an accountant and a lawyer. The researchers all had advanced degrees in political science, the accountants had business degrees, and of course the lawyers were all members of the Oklahoma Bar. Over the years I worked with numerous lawyers, and by far the most prominent staff attorney at the Legislative Council was Duchess Bartmess. Many of you know Duchess for her decades of distinguished practice in the public and private sectors. And in this case the word ‘prominent’ might be translated as ‘formidable’ insofar as the researchers were concerned. She did not suffer the non-lawyer researchers on the staff well. One of her main criticisms was that we did not “think like a lawyer.” For our part, we were not completely certain what that meant, but we were fairly sure it was a compliment.

Ironically, a few years later I found myself in law school where, although I was unaware of it at the time, the main goal was to train—not teach—me to ‘think like a lawyer.’ This was accomplished through

the endless study of nuanced cases and statutes, through moments of panic when I realized that the professor indeed did know my name and had just used it, through writing, and through intense studying for the finals. This effort to get the students to think like lawyers was often couched in terms of elements and holdings and dicta and definitions and hundreds of other aspects of the law. Sometimes the effort was successful; sometimes it was not. Sometimes the reward was the bar license number, and other times the consolation prize was for the student to return to his or her previous vocation.

Nowadays when I think of the bar exam, I realize that the goal of it was to ascertain the degree to which the candidate had not only soaked up facts, but it was also to gauge the examinee’s ability to “think like a lawyer.” The success of the law school was determined by its success in training the graduate to think in that manner sufficiently to pass the bar exam.

And the training worked. Lawyers speak and think in code and shorthand. An employment lawyer may speak of *quid pro quo*, a term often used by civilians in a completely different and somewhat fuzzy context. A commercial lawyer makes a note in a conference with her client abbreviating bona fide purchase for value—itsself a term of mystery to the non-lawyer—with a scribbled “BFP.” A judge shortens *res ipsa loquitur*, also a legal shorthand, to *res ips*. A personal injury attorney worries about “deep pockets.” There are thousands of examples of the thought process that goes on in the world and mind of the lawyer, a process that separates the lawyer from the client and other civilians. Sometimes it can have amusing consequences, such as the time when I encountered ADA

Gayland Geiger on a crowded elevator in the Oklahoma County Courthouse and calmly asked him if he was still doing sex crimes. Our fellow civilian riders were visibly shocked by his placid admission that he indeed still did sex crimes.

All of which brings me to my storage unit. In late 2019 I found it necessary to rent a self-storage unit in Midwest City. I elected to pay the monthly fee by means of an automatic withdrawal from my bank. For two or three months all went well, and the bank sent monthly check to the storage facility without the proverbial hitch. However, January of 2020, the facility did not receive the check from the bank, although the bank had mailed it. This was a mystery which was not solved, but the problem disappeared after a couple of missed checks. Then, in February of 2021, it happened again. The bank had mailed the check, but the storage facility did not receive it. The bank, in the course of its business, produced a proof of payment showing that the check had been mailed to the correct address on the correct date, and the funds had been withdrawn from my account.

A semi-spirited conversation with the facility manager ensued. I shall refer to the manager as Jeff. To each of us the situation was simple: For my part, I had contracted with the bank to mail the check, and the bank had indeed sent it to the same address all previous checks had gone. Money was taken from my account. For Jeff’s part, it was equally simple: He hadn’t received the benefit of the money, and I needed to pay for the monthly storage. I informed him that the law presumed that if something was put in the mail, addressed to the correct address with sufficient postage on it, then it indeed was delivered. To which Jeff countered

derisively that we cannot trust the postal service. And to the civilian, this is a very logical observation. But to the lawyer, the rebuttable presumption contained in the ‘mailbox rule’ makes perfect legal sense.

That was the dilemma. What is logical to the lawyer is somewhere between illogical and insane to the civilian. (I should clarify that by this point my discussion with Jeff was largely academic as we had already determined that the automatic bank draft was not sufficiently dependable to be our method of payment for the storage fee.) I ruminated over the conversation in subsequent days, and I realized that it was not just the mailbox rule which was befuddling to the civilian. Rather, it was the whole concept of the legal presumption itself. With respect to the so-called mailbox rule itself, there are other facets of the rule which are not relevant here. The aspect of the rule with which Jeff and I were concerned was set out succinctly by the United State Supreme Court as early as 1884: “The rule is well settled that if a letter properly directed is proved to have been either put into the post-office or delivered to the postman, it is presumed, from the known course of business in the post-office department, that it reached its destination at the regular time, and was received by the person to whom it was addressed.”¹

With the recent degradation of the postal service, it is not absolutely certain that the courts or legislative bodies would make the presumption that a package mailed is a package received. However, that is the presumption as it exists today. It rebuttable, of course. When the lawyer and the civilian are discussing presumptions, they may

See THINKING, PAGE 10

A Tribute to Judge Carol M. Hansen

By: Judge Robert Bell

Judge Hansen served on our court from July 1985 to January 2012. It is one of the great joys of my life that I was privileged to be able to share Judge Hansen’s friendship for part of this time. I first was aware of Judge Hansen while practicing law but when I became a judge on the Court of Civil Appeals, I really got to know her. She was exceptionally warm and gracious in welcoming me and sharing her wisdom, experiences and critiques about the court. Judge Hansen and I had become fast friends and she became a reliable mentor and instructor.

Judge Hansen was an independent woman who led people by example of integrity and service. She had a remarkable ability to motivate and to inspire people to perform well. She truly led by competitive

example. Judge Hansen was committed to the rule of law and believed in her judicial philosophy. One of Judge Hansen’s former staff attorneys, Debbie Clark, who worked with Judge Hansen for more than 30 years, notes “She was very forthright about her judicial philosophy—decide the case where the law leads us, whether or not you like the outcome.” Judge Hansen’s legacy extends far beyond the years she served. Her opinions have a profound impact on the legal community and will continue to do so for years in the future.

Despite her many legal accomplishments, Judge Hansen is best known for her positive effect that radiated on those around her. Judge Hansen cared not only about justice, but about her family, her co-workers, and the people of Oklahoma.

At work, Judge Hansen would pour her-

self a cup of chicory coffee, so strong that it that could scare away even the most fervent of coffee lovers. In between cases, she would chat about the latest movies she had seen or the never-ending list of books that she had read. She spoke often and reverently about her family. Judge Hansen was a remarkable and devoted mother of five daughters. She gleamed with pride when she spoke of her children and reveled in their various endeavors and accomplishments. She had a tremendous amount of pride for her daughters. Her love and affection for every member of her family were abundantly known.

Judge Hansen also possessed a tremendous sense of adventure. She traveled extensively, visiting all seven continents throughout her lifetime, always bringing back gifts for her colleagues at the court. She was always look-

ing to try something new, always looking for her next big adventure, never letting her age be an impediment. Unsurprisingly, Judge Hansen was also a marvelous hostess. Judge Hansen’s husband used to coach college basketball, and sometimes there were players who wouldn’t have any place to go for Thanksgiving meal, so Carol would host them at her house. Ms. Clark remembers her saying “If I’m going to cook for 10, I might as well cook for 30!”

Judge Hansen’s judicial and personal leadership, her commitment to the principles of justice, and most of all, her strong spirit and loving heart, will continue to live on and impact our community. I am grateful for the opportunity and experience of working with her. I will miss her. Judge Hansen will always remain someone whom I have tremendous respect, admiration, and affection.

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Oklahoma Appeals - The Podcast

By: Miles Pringle

Oklahoma attorneys have an excellent new resource to keep up to date on legal issues with “Oklahoma Appeals – The Podcast”. Available for free on multiple podcast platforms (Apple, Stitcher, Spotify, etc.), the podcast is a conversation between the hosts regarding civil appeals, litigation and issues related to the practice of law in Oklahoma. Some episodes also include appellate law “pro tips” for practitioners.

Launched in September of 2020, the podcast already has 15 episodes under its belt. Several of the episodes summarize recent opinions of the Oklahoma Supreme Court and the Oklahoma Court of Civil Appeals, while others include judicial interviews. The list of interviewees for the podcast is impressive including Justice James R. Winchester, Judge Jane Wiseman, and the Oklahoma County Bar Association’s own Judge Sheila Stinson. Thoughts and tips from the guests are well worth a listen.

Hosts Gabe Bass and Jana Knott are members of Bass Law Firm, P.C. with offices in El Reno and Oklahoma City. Jana is a graduate of Oklahoma City University School of Law and worked for seven years as a staff attorney for Justice Noma D. Gurich. Given the name of the podcast, it is fitting that a good part of her practice involves appellate litigation.

Gabe is graduate of the University of

Oklahoma College of Law and focuses on business law, real estate, oil & gas, and estates and trusts. Prior to law school Gabe worked in California in the tech industry and still uses many of the skills he developed there today. He also serves our country as a marine (a graduate of the U.S. Marine Corps Command and Staff College and the U.S. Air Force Air War College) and has been awarded the Meritorious Service Medal (with gold star in lieu of second award), Navy and Marine Corps Commendation Medal (with combat distinguishing device) and the Navy and Marine Corps Achievement Medal. In fact, it was during a recent deployment in Afghanistan when Gabe raised the idea of starting the Oklahoma Appeals podcast.

The website where you can find the podcast (<http://oklahomaappeals.com>) contains other helpful information. For example, the “Case Alerts” page lists several opinions and are accompanied by a great summary of the case such as the facts, standard of review and a concise analysis. Additionally, you can provide your email address and receive new case alerts and notifications when new episodes are released.

Oklahoma Appeals – The Podcast is a high-quality resource for Oklahoma attorneys. Whether you are an active litigator, a new attorney, or just want to stay informed on the issues, I highly recommend checking out this podcast.

Old News

OCBA OLD NEWS – Vol. 5 No. 3 March 1, 1973

TELL HER I DON'T HAVE TIME

“Mrs. Webster, please hold all but my very important calls – I must write the President’s letter this morning.

“Come in, Redford. No, I can’t go to the loan closing this morning. I have to attend the opening of the Environmental Law Institute. Have Jack handle it. The file’s in that stack over there. No, the small one behind the large County Bar stack with the “urgent” tag on top.”

“Yes, I’ll talk to Mr. Smith. Hello, Bob. All you can do now is seek an emergency certificate with a pre-granted abandonment provision. Can I help it if the courts knocked out the exemption for small producers? They knocked out our minimum fee schedules, too.”

“That reminds me, Mrs. Webster, make a note to call a meeting of the committee to support increases in judges’ salaries, and bring me my morning vitamins.”

“A reporter? I suppose I must talk to him. Hello. The Nader case? The County Bar as such doesn’t take a position as to whether particular decisions are right or wrong. We accept them. If they are appealed and reversed, we still accept them. We have over one thousand lawyers with highly differing views. We can’t poll the membership

on every controversial case or issue. Now, if you want my individual views on the Nader case, don’t quote me, but I think the court was wrong in holding for the plaintiff. My firm represented the defendant.”

“Hello, Bill. Tee time at 1:52? I really shouldn’t do it. I’ve got a real important meeting this afternoon, but I’ll be there.”

“Mrs. Webster, my compliments to you. That was an important call. Move the Law Day Committee meeting to tomorrow afternoon. Tell Mr. Sargent to attend tomorrow’s merger conference in my place.”

“Hello, Yes, Mr. Thomas. Of course I know what a wrap around mortgage is. We’ll get it out for you. Mrs. Webster, tell Mr. Hill to find out what a wrap around mortgage is, and to draw one. He can get the details from Mr. Thomas.”

“And, Mrs. Webster, bring my tranquilizers, call the lunch counter and order my usual sandwich. I’ll eat it in the car on my way to my 1:52 appointment to inspect some real estate.”

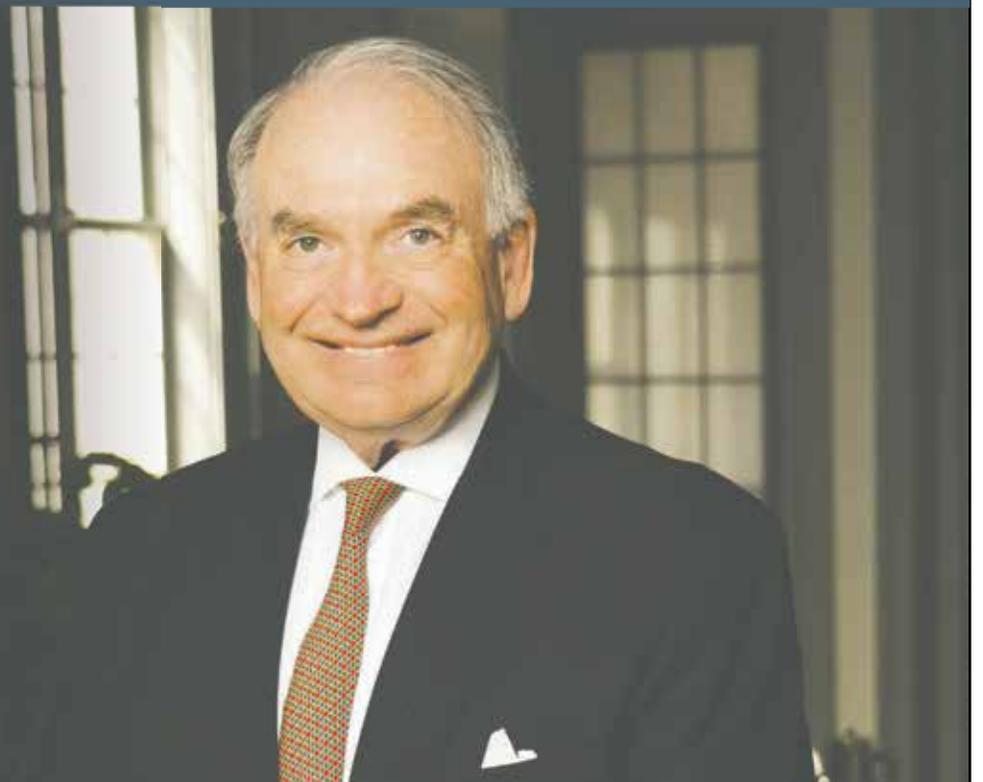
“Carol’s on the phone? Tell her I am sorry, but I won’t have time to write the President’s letter this month.”

Stewart W. Mark, President

Welcome to the panel, Bill!

“Bill Threlkeld is a tenacious advocate whose skills and personality are well suited to help parties resolve their cases.”

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Bar Observer

BENJAMIN K. DAVIS NAMED PARTNER AT HARTZOG CONGER CASON

Hartzog Conger Cason today announced **Benjamin K. Davis** as the firm's newest Partner. Since joining Hartzog Conger Cason in 2019, Davis has concentrated his practice in the areas of real estate transactions, commercial lending and financial transactions, and general corporate and business matters.

Davis earned his law degree from the University of Oklahoma College of Law in 2013 and received a Bachelor of Science in Agricultural Economics and Accounting from Oklahoma State University in 2009.

Davis currently serves on the Board of Directors for the Oklahoma County Bar Association Young Lawyers Division, and on the Leadership Counsel for Oklahoma State University Alumni Association. He previously served as the President of the Sirloin Club of Oklahoma and on the Board of Directors of the Oklahoma Youth Expo.

TWO ATTORNEYS JOIN DOERNER

Doerner, Saunders, Daniel & Anderson, LLP (DSDA) is pleased to announce the addition of two attorneys. **Phillip J. Tucker** and **Brenda R. Fitzpatrick** will join the firm's Oklahoma City office as part of DSDA's Family Law Practice Group.

Phil brings more than 37 years of

family law experience and is the newest partner at DSDA. Prior to his arrival, Phil was an entrepreneur as the founder of his own law firm. He primarily focuses his practice on helping his clients overcome complex challenges relating to all aspects of family law – with an emphasis on adoptions, guardianships and general family matters. Phil graduated magna cum laude from the Oklahoma City University School of Law and earned his B.A. in Sociology from the University of Central Oklahoma.

Brenda joins DSDA as an attorney of counsel. She has extensive experience in divorce, paternity actions, adoptions and guardianships. Brenda also advises clients in modification and enforcement of court orders related to support, custody and visitation. She assists clients in complex and highly contested family law matters related to property division, debt division, spousal support, child custody and visitation, child support, contested adoptions and guardianships. She also represents clients through the mediation process. Brenda received her Juris Doctorate from the Oklahoma City University School of Law and obtained her undergraduate degree in Political Science from the University of Oklahoma.

BURNETT APPOINTED AS LITIGATION COUNSEL OF AMERICA FELLOW

Crowe & Dunlevy attorney **LeAnne Burnett** has been selected as a Fellow of

the Litigation Counsel of America (LCA).

The LCA is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. Fellowship in the LCA is highly selective and by invitation only. Fellows are selected and invited into fellowship after vigorous vetting for effectiveness and accomplishment in litigation, both at the trial and appellate levels, as well as for their ethical reputation.

A director in the firm's Energy, Environment & Natural Resources Practice Group, she is also a Fellow of the American College of Environmental Lawyers and a founding member of the Oklahoma Bar Association's Environmental Law Section. She is the fourth Crowe & Dunlevy attorney selected as a LCA Fellow, joining Kevin D. Gordon, Judy Hamilton Morse and John M. Thompson as members of this prestigious honorary society.

Burnett is a graduate of the University of Oklahoma College of Law and received her undergraduate degree from Southern Methodist University.

NEW EXECUTIVE COMMITTEE NAMED AT CROWE & DUNLEVY

The directors of Crowe & Dunlevy elected attorney **Roger A. Stong** to serve as the firm's president and CEO for 2021 and named four other attorneys to serve on its executive committee.

In addition to Stong, **James W. Larimore** was reappointed as vice president of economics and **Adam W. Childers**, **Kari Hoffhines** and **Malcolm E. Rosser IV** will serve as members. The executive committee is responsible for managing the firm's business operations.

The firm also named **Cynda C. Ottaway** as chair of the board and **Karen S. Rieger** to serve as the board's vice-chair.

An experienced business lawyer,

Stong's practice focuses on corporate and securities law. Stong is a graduate of Indiana University School of Law. He received his M.B.A. from the University of Oklahoma and his undergraduate degree from the University of Virginia. This is his second tenure as president, having served in that role from 2008 to 2012. Additionally, he chairs the firm's business department.

Larimore's practice focuses on multiple aspects of business, commercial, corporate and securities transactions as well as oil and gas industry transactions. He is a graduate of the University of Texas School of Law and the University of Oklahoma.

Childers serves as co-chair of the firm's Labor & Employment Practice Group. A graduate of the University of Oklahoma College of Law, he received his undergraduate degree from the University of Oklahoma.

Hoffhines is a member of the firm's Real Estate and Banking & Financial Institutions Practice Groups. She is a graduate of Oklahoma City University School of Law and earned her undergraduate degree from the University of Central Oklahoma.

A director in the firm's Tulsa office, Rosser co-chairs the firm's Real Estate Practice Group. He is a graduate of the University of Oklahoma College of Law and Oklahoma State University.

A graduate of the University of Oklahoma College of Law, Ottaway chairs the firm's Private Wealth & Closely-Held Business Practice Group. She earned her undergraduate degree from the University of Oklahoma.

Rieger is chair of the firm's Healthcare Practice Group. She is a graduate of the University of Oklahoma College of Law and earned her undergraduate degree from the University of Oklahoma.

Volunteer Opportunities

Each month in 2021, we will attempt to offer places and sites for you to find volunteer opportunities. Let us know if you have someone/someplace you want to add.

CITY OF OKLAHOMA CITY

The Parks & Recreation Department relies upon the support of community volunteers to assist us in providing green spaces, recreation and cultural services to citizens and visitors alike.

We welcome the help of church, corporate, neighborhood, school and scout groups for projects large and small.

Civic Center STARS

When the curtain goes up at the Civic Center Music Hall, its 300+ volunteer ushers and ticket-takers become the STARS of the show, providing essential front-of-house services to ensure guests have an enjoyable experience. The STARS program requires a long-term commitment and is best suited to individuals who can work one or two nights per month. Candidates must be age 16 or older and go through on-site training.

Call (405) 297-2584 or visit the

Volunteer Page of the Civic Center website for more information.

H.B. Parsons Fish Hatchery

Fishing educators, scout groups and other individuals are welcome to assist with a variety of programs and tasks in partnership with the H.B. Parsons Fish Hatchery. The hatchery welcomes volunteers of all abilities with a keen interest in fishing, fish management and education. For Eagle or other advanced scouting merit projects, call the Hatchery at (405) 297-1426.

Martin Park Nature Center

Volunteers at Martin Park Nature Center assist with trails maintenance, program preparation, serve as visitor liaisons and also help with special events. The park also welcomes groups for specialized projects, including advanced community projects from Eagle Scouts, Girl Scouts, 4H and other groups. The park's year-round youth volunteer program lets boys and girls from ages 6 to 18 get a hands-on education while learning about nature park management from park naturalists.

See VOLUNTEER, PAGE 10

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- The Judge Nan Patton Award for outstanding non-lawyer volunteer to **Ms. Natalie Bruno**
- The Buddy Faye Foster lifetime achievement award honoring **Ms. Susan Agel of Positive Tomorrows**
- A special award for outstanding Educational Guardian AdLitem to **Ms. Cindy Birdwell**

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HARASSMENT

continued from page 5

brushing up against someone, placing your hand on their lower back, or touching their hair could be perceived sexual harassment. To be very clear, any action that could make your staff or opposing counsel even the slightest bit uncomfortable in the workplace should be re-analyzed. This statement applies regardless of gender, as sexual harassment can and is conducted by all genders. Are we still taking notes?

Not only is sexual harassment inappropriate, it is an ethical violation of the rules of conduct for attorneys. The American Bar Association has adopted the Model Rule of Professional Conduct 8.4(g) to make it explicit that sexual harassment is an ethical violation for lawyers.⁹ The rule states that:

It is professional misconduct for a lawyer to . . . engage in conduct that the lawyer

knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.¹⁰

Lawyers who violate this rule can face professional discipline for their misconduct and if that isn't enough of a deterrent, sexual harassment and gender discrimination is also illegal and actionable under Title VII of the Civil Rights Act (Feel free to call me if you need representation – shameless plug).

Sexual harassment often comes from a power imbalance at work, people that have insecure employment under perpetrators that have all the control. Many victims feel pressure to continue the status quo and not report the behavior, even when a work environment has deteriorated and become hostile. Our office often sees cases

in which women have been subjected to uncomfortable and inappropriate working conditions due to a colleague or supervisor's unwillingness to see them as equally worthy of respect. In sum, if you've found yourself rolling your eyes while reading this or scoffing at the #metoo movement, I advise you to tear this article out and keep it in your back pocket. You can change "Dear Esteemed Counsel" to your name because it was specifically written as a primer—for you. It's hard to believe, that in 2021 this is still an issue we have to address. Yes, the times have changed, so it is time to change your behavior and show some restraint, deference, and wisdom (hard-earned as it may be).

(Endnotes)

1. Eliza Relman and Sonam Sheth, *Here are all the times Joe Biden has been accused of acting inappropriately toward women and girls*, Business Insider (May 4, 2020) <https://www.businessinsider.com/joe-biden-allegations-women-2020-campaign-2019-6>
2. Eliza Relman, *The 26 women who have accused Trump of sexual misconduct*, Business Insider (Sept 17, 2020) <https://www.businessinsider.com/women-accused-trump-sexual-misconduct-list-2017-12>
3. Benjamin Weiser, *Anthony Weiner Gets 21 Months in Prison for Sexting With Teenager*, The New York Times (Sept 15, 2017) <https://www.nytimes.com/2017/09/25/nyregion/anthony-weiner-sentencing-prison-sexting-teenager.html?auth=login-google>
4. Anna Watts, *Full Coverage: Harvey Weinstein Is Found Guilty of Rape*, The New York Times (July 14, 2020) <https://www.nytimes.com/2020/02/24/nyregion/harvey-weinstein-verdict.html>
5. What is Sexual Harassment?, EEOC Guidance, <https://www.un.org/womenwatch/osagi/pdf/whatishh.pdf>
6. Olga Mack, *Show's Over: Moving Past Mad Men Policies to Gender Equity in The Workplace*, Take the Lead Women (July 27, 2016) <https://www.taketheleadwomen.com/blog/shows-moving-past-mad-men-policies-gender-equity-workplace>
7. *Mad Men and Rampant Sexual Harassment*, An Everyday Light Worker (Amlie), <https://amlaie.medium.com/mad-men-and-rampant-sexual-harassment-5bd38920821e> (last visited April 9, 2021).
8. What is Sexual Harassment?, EEOC Guidance, <https://www.un.org/womenwatch/osagi/pdf/whatishh.pdf>
9. Model Rules of Prof'l Conduct r. 8.4(g) (Am. Bar Ass'n).
10. *Id.* r. 8.4(g).

THINKING

continued from page 6

not even reach the concept of refutability because the lawyer is concerned with presumptions while her client is thinking in terms of assumptions. To show the difference to the non-lawyer, the attorney may resort to the rather simplistic explanation that an assumption calls for certain facts to be accepted as true in order to answer a question or reach a conclusion,² while a presumption is a rule of law that the trier of fact must accept because other facts have been proven.³ Now *that* clarification should sufficiently confuse the non-lawyer client to the point that he shrugs his shoulders in defeat and utters, "Yeah. Whatever."

Is it important that the lawyer's client understand the concept of a legal presumption? I suggest it is much more important if that presumption results in a negative outcome in the case at bar. When the verdict is in the client's favor, the reasons for the victory fade in importance, but when the case has been lost, the client is interested in every aspect of that loss. If the loss is as a result of a presumption, it is important that the lawyer be able to explain that presumption.

Presumptions are not rare. In Oklahoma we have over one hundred statutory rebuttable presumptions in virtually every facet of the law. We must deal with presumptions in child visitation,⁴ workers' compensation,⁵ criminal procedure,⁶ criminal law,⁷ civil procedure,⁸ juvenile law,⁹ torts,¹⁰ conveyances,¹¹ agricultural law,¹² and tax law,¹³ just to name a few. Also, I would be remiss if I were to fail to mention the most common rebuttable presumption of all. It is one which I personally have explained to civilians hundreds of times—one which every judge who has presided over a criminal jury trial has instructed the jury to follow. As I recall, it goes something like this: "You are instructed that the defendant is presumed innocent of crime

with which he is charged, and that presumption continues unless, at the consideration of all of the evidence, you are convinced of his guilt beyond a reasonable doubt."

Lawyers encounter presumptions almost every day, but to the client the presumption is an alien force. It drives the case in a particular direction. "If this has been shown, then this other thing is the result." That is what the client sees. Enter the other half of the concept: the ability to rebut the presumption—evidence offered to counter the presumption. Going back to the example of the payment of the fee for the storage unit, Jeff was confronted by a proof of payment generated by a neutral third party whose duties included both the mailing of payments and the production of documents proving payment. One might ask what he could possibly offer the court to overcome such evidence.

The answer to this dilemma is simple and sounds like a nonsensical dodge: The evidence necessary to refute the presumption is whatever convinces the trier of fact that the presumption has been overcome. Whether the lawyer stands before a judge, a six-person jury or a twelve-person jury, the task is the same: show that in this case the presumption fails. One case states it this way: "When evidence is introduced rebutting the presumption, the presumption disappears, leaving in evidence the basic facts which are to be weighed. A presumption is a rule of law compelling a conclusion of fact in the absence of evidence against the conclusion."¹⁴

Appellate courts have generally upheld the trial courts on whether or not the presumption has been rebutted. Either the fact-finder was persuaded by the rebuttal evidence, or he was justified in not being persuaded by it. In the latter case, the appellate case invariably reports that the party responding to the presumption did not produce sufficient evidence to overcome it, while in the former case, the appellate court agrees that

the presumption was overcome by sufficient evidence. Thus, a workers' compensation judge was upheld when he found "that the claimant had failed in his burden to refute the presumption by a preponderance of evidence,"¹⁵ while an appellate court agreed with the probate judge "that the presumption of undue influence was contestants' due, but [we] hold that the will proponent's proof was sufficient to rebut the presumption."¹⁶ Sometimes, the court simply stands a presumption on its head and gives us a result which is odd at best: "Since the presumption above discussed arises because of our confidence in the mails, we must likewise apply it conversely, and when a person swears he did not receive a letter, a presumption arises that it was not mailed. It at least raises a doubt on that point."¹⁷

Finally, there is a statute concerning rebuttable presumptions. Title 12 O.S. § 2303 states:

Except when otherwise provided by law, when the basic fact of a presumption has been established as provided in Section 302 of this Code:

1. If the basic fact has any probative value of the existence of the presumed fact, the presumed fact shall be assumed to exist and the burden of persuading the trier of fact of the nonexistence of the presumed fact rests on the party against whom the presumption operates; or

2. If the basic fact does not have any probative value of the existence of the presumed fact, the presumed fact is disregarded when the party against whom the presumption operates introduces evidence which would support a finding of the nonexistence of the presumed fact and the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case.

When the civilian reads this section, she remembers just why it is that she distrusts the legislature . . . and lawyers. It might be

paign-2019-6

1. *Rosenthal v. Walker*, 111 U.S. 1854 (1884).
2. *Owens v. Oklahoma Turnpike Authority*, 1954 OK 345.
3. *Kramer v. Nichols-Chandler Home Bldg. & Brokerage Co.*, 1924 OK 921.
4. 43 OS 150.8, 109.3, 112.2
5. 85A OS 74
6. 22 OS 1355A, 171.2
7. 21 OS 1728
8. 12 OS 2303
9. 10A OS 2-2-401.2
10. 76 OS 57.2
11. 16 OS 53
12. 2 OS 14-43
13. 68 OS 1354.32
14. *Conaghan v. Riverfield Country Day School*, 2007 OK 60.
15. *Davis v. Southwestern Bell Telephone*, 2006 OK 48.
16. *In re Estate of Holcomb*, 2002 OK 90.
17. *Keeling v. Travelers Ins. Co., Hartford, Conn.*, 1937 OK 208.
18. *Oklahoma Aid Association v. Thomas*, 1927 OK 24.

possible to set out the law of the rebuttable presumption in a more obtuse way, but not without a lot of work. More simply put, a presumption is not evidence. Rather, it shifts the burden to the responding party to produce evidence.¹⁸

And so I end by asking you, "Do you think like a lawyer?" When you read the fact situation involving the monthly payment of space rental at the storage unit, did you consciously or subconsciously click off elements of the problem? We do it as a matter of course: *There was an obligation to pay. Payment was made by a neutral third party. The third party was in the business of making these payments. A proof of payment was produced. The payee denied receiving the payment. The payment was never receipted. The bank check was never cashed. Both parties are innocent. Who bears the loss?* The analysis was accomplished by the lawyer in the blink of the eye. It was automatic for the lawyer to think like one. Mission accomplished, Duchess.

I would like to thank Jeff Seabourn, general manager of Tinker Self Storage for his patient contributions to this article. Also I thank retired Judge Geary Walke for his counsel and advice.

(Endnotes)

1. *Rosenthal v. Walker*, 111 U.S. 1854 (1884).
2. *Owens v. Oklahoma Turnpike Authority*, 1954 OK 345.
3. *Kramer v. Nichols-Chandler Home Bldg. & Brokerage Co.*, 1924 OK 921.
4. 43 OS 150.8, 109.3, 112.2
5. 85A OS 74
6. 22 OS 1355A, 171.2
7. 21 OS 1728
8. 12 OS 2303
9. 10A OS 2-2-401.2
10. 76 OS 57.2
11. 16 OS 53
12. 2 OS 14-43
13. 68 OS 1354.32
14. *Conaghan v. Riverfield Country Day School*, 2007 OK 60.
15. *Davis v. Southwestern Bell Telephone*, 2006 OK 48.
16. *In re Estate of Holcomb*, 2002 OK 90.
17. *Keeling v. Travelers Ins. Co., Hartford, Conn.*, 1937 OK 208.
18. *Oklahoma Aid Association v. Thomas*, 1927 OK 24.

VOLUNTEER

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Call (405) 297-1429 or email about volunteer opportunities.

Will Rogers Gardens

Do you have a green thumb or love to spend time in the garden? Then ask about the many ways you or your group can assist with beautification efforts at the Will Rogers

Gardens. This specialty garden welcomes gardening enthusiasts of all ages and ability levels for planting and other outdoor projects, including individuals working on their Master Gardener certification.

Call (405) 297-1392 for more information.

Youth and Adult Recreation

Do you have a skill that would benefit the community? Then sign-up to work at a recreation center, assist as a coach, umpire or director with our youth sports or per-

forming arts programs, or teach a recreation program or class to our youth or seniors.

Call (405) 297-2211 for additional information.

Park Clean-Up and Group Projects

We welcome projects for large groups including corporate, church, neighborhood, scout group and other clean-up efforts. If you have a specific project you would like to complete, please contact us at (405) 297-3882 to coordinate your project with Parks & Recreation staff.



brians101 via depositphotos.com

BINDS
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Newly appointed Federal District Judge Michael Burrage was in a plane heading to Washington, D.C. for training when he received news of a gas line explosion that devastated downtown Oklahoma City. By the time the plane landed, he saw footage of people he knew coming out of the building, including his daughter-in-law as she bled from injuries while carrying a child from the crater that was the Murrah Building.

Judge Don Andrews recalled being an attorney in Judge Clinton Dennis' courtroom, now Judge Martha Oakes' courtroom, when a flash and bang knocked the glass out of the window. "Several other attorneys and myself were standing next to the window and we immediately went to the ground." The court room was wall to wall with people on a contempt citation docket. everyone in the room thought the powerful blast must have come from the alleyway outside the courtroom windows. It was not until Judge Andrews was outside walking his clients to safety that he saw the plume to the north and realized the blast was in the area of the Murrah Building. He later learned that he lost several clients who worked in the Murrah Building.

Larry Ottaway was on his way to work that morning and decided to stop by Brown's Bakery at the urging of his sweet tooth. He was standing in Brown's when the blast went off and shattered the glass windows. Watching the events unfold for the next half hour or more, Larry witnessed pickup trucks of people being shuttled to St. Anthony's for treatment. If Larry had not been hungry for a pastry, he would have been driving to his office next to the bombing as it occurred.

Justice Steven Taylor, the then Chief Judge

of the 18th Judicial District, was about to start the final day of a first-degree murder trial. Justice Taylor was running a few moments behind and was about to walk into the courtroom to begin closing arguments when he was notified that a gas line exploded in downtown Oklahoma City. Deciding not to distract the jury, he carried on with his duties. While the jury deliberated that afternoon, the news broke that the explosion was an intentional act.

Polly Anderson, the Executive Director of Oklahoma Educational Television Authority, was living in Florida at the time and remembered being in her living room emotionally watching for weeks as the story of the bombing unfold.

Seth Paxton, a young attorney from Tuttle, Oklahoma who works at the Capitol on a regular basis, said that the bombing has been a presence in his life since he can remember and the impact of that day is the most obvious thing about Oklahoma City.

The lasting impact is certainly undeniable. But aside from the tragedy, Oklahoman showed the world something that was not expected at the time. Twenty-six years later, each of these people agree that the unity and resilience of Oklahoma is a part of the "Oklahoma Standard." Dorian Quillen wrote:¹

"The Oklahoma Standard" is a great strategy for dealing with the terrible events life often presents in our own lives. We may face challenges which seem beyond our capacity to overcome, yet by choosing a response of resilience we refuse to be defined by the worst things that happen to us.

Just a cursory search of the Oklahoma Standard will give you many examples of the amazing responses born on April 19, 1995. In fact, Governor Keating was later told by a significant Washington figure that

Oklahoma's response and competency in the wake of the explosion was nothing short of expert and was unmatched in its time.

The impact of the response to the bombing, not the bombing itself, has been nothing short of remarkable. Governor Keating remembers a time when Oklahoma City was widely considered to be a lesser city to Tulsa. Today, Oklahoma City is a booming metropolis: both beautiful and historic.

Today, the State of Oklahoma, almost 70,000 square miles in size, feels more like a community rather than a state. The rescue workers from within Oklahoma and beyond set in motion a lasting legacy of kindness and caring that Oklahoma is known by. The meanest thing I have ever heard an Oklahoman say is "bless his heart." Even with an undertone of Southern wit, we cannot even be mean without being kind-hearted at the same time.

I have often been asked why I chose Oklahoma City to as my home. Why not my hometown or Dallas, where I have family. I never could put my finger on what it was until I spoke with these amazing people. There is such a communal feeling in Oklahoma that is a direct result of Oklahoma's reaction to the bombing.

Justice Taylor recalls explaining to the attorneys for both the prosecution and defense in the State's case against Terry Nichols that the trial was going to be fair and impartial "or there would be no trial." He was so impressed and pleased with the "superb job" of the attorneys for both sides at the conclusion of the four-month trial. That trial, according to Justice Taylor, proved that the system worked and that no matter how heinous a crime, each person deserves and can receive a fair and impartial trial. He added that "without defense lawyers upholding their oaths to do their very best, the value of our rights as the citizens of

Oklahoma would be absolutely worthless." I would agree.

"The stark irony that the very government that McVeigh and Nichols sought to undermine was good enough to give them a fair and impartial trial," Justice Taylor recalls. That is an important lesson for everyone to remember, especially lawyers. No matter how traumatic an event, the oath that attorneys in Oklahoma subscribe to is of the utmost importance to maintain.

The Oklahoma Standard is still alive today as Oklahoma as a community is defined with two words: Unity and Resilience. Though that day may have been the most painful the Oklahoma community has ever dealt with collectively; nothing unites like pain shared. Executive Director Anderson reflects that Oklahoma City is a caring and helpful place in a way that she has not seen replicated.

That is the epitome of the Oklahoma Standard. We take care of ourselves, sure enough, but we also just "take care." When the members of the New York City Fire Department arrived to Oklahoma City to assist, they were treated like members of the community. Every night, the local treatment for these men and women who traveled to the heartland to help was a made-up cot, with a piece of candy and a handwritten note on the pillow thanking them. Our rescue workers and volunteers have set the standard in care and kindness. Natural disasters like tornadoes and floods are simply no match for the Oklahoma Standard. Neither is terrorism.

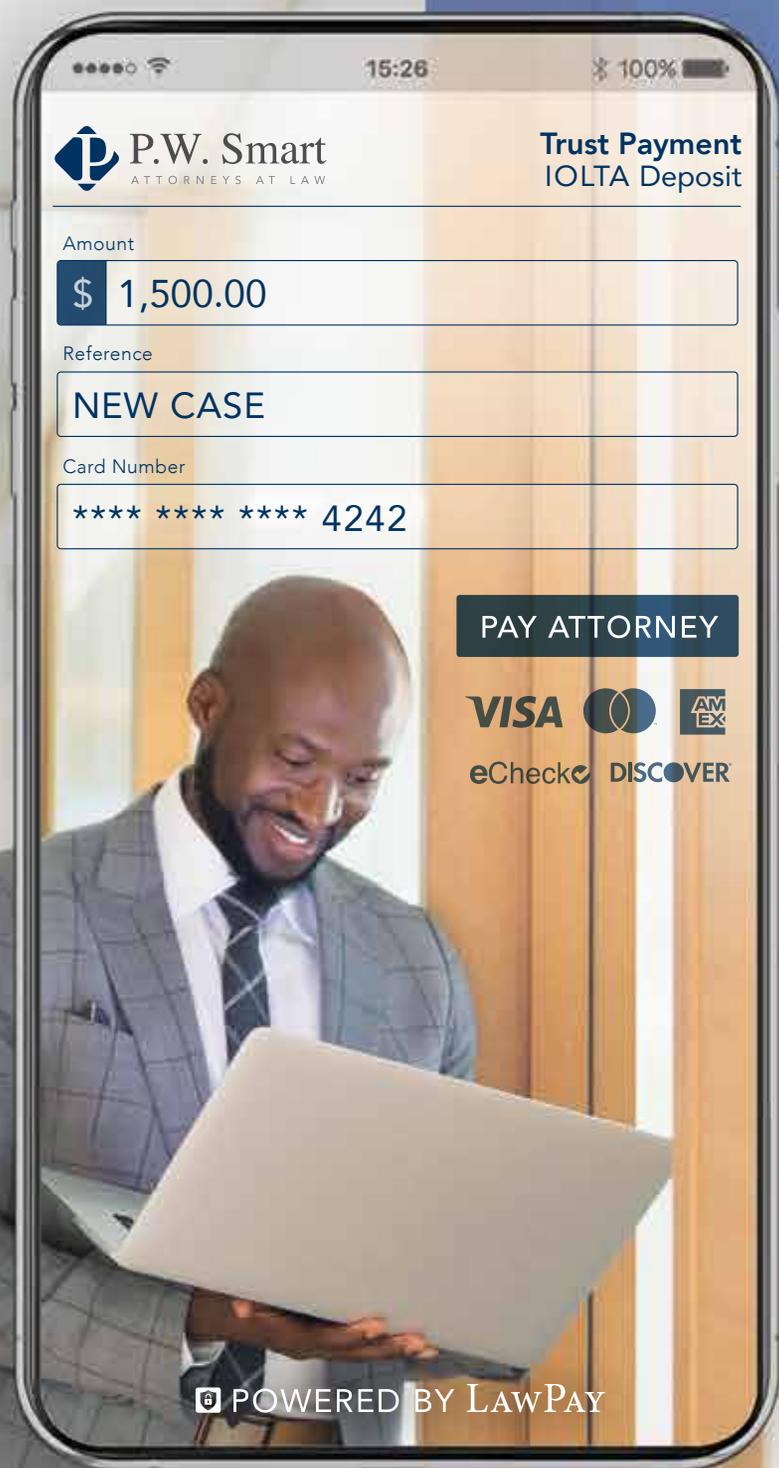
Thank you to Justice Steven Taylor, Governor Frank Keating, Executive Director Polly Anderson, Judge Don Andrews, Michael Burrage, Larry Ottaway and Seth Paxton for taking time to speak with me.

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