On August 24th, 2017, the Oklahoma County Law Library was renamed. From the generic name that has existed since the beginning of time, the name was changed by resolution of the Oklahoma County Commissioners. Motion was made by County Commissioner, Ray Vaughn, a longtime member of the Oklahoma County Bar Association, to rename the library as the Judge Bryan C. Dixon Oklahoma County Law Library.

Now, the library name will honor Judge Bryan C. Dixon whose retirement began August 31, 2017 after almost three and one half decades as an Oklahoma County jurist. A reception was hosted by the county bar and many of the lawyers in Oklahoma County who practiced before Judge Dixon and know his place and reputation as a Judge's Judge. Inside the library there is now a plaque with Judge Dixon’s juridical history, as well as a photo of Judge Dixon. We will all fondly recall Judge Dixon’s excellent judicial demeanor when we see the library name, the plaque and the photograph.

There is another article in this issue of the Briefcase that sets out Judge Dixon’s history as a judge. Please read it. As for me, I remember a day long ago when Bryan Dixon, lawyer, and I stood before Judge Carmen C. Harris after completing a motion docket. Judge Harris was also a Judge’s Judge; he was kind and wise, and looked over the bench at Bryan Dixon and told him that the District Judges were taking applications for Special Judge, and Bryan should submit his name. He did, and he was selected, and that was the beginning of a great career as a jurist.

Happy Retirement, Judge Dixon!
I Am Your OCBA President

by David A. Cheek

For those that do not know me, and for those that have not seen me in some time, let me explain who I am and why I sought this position.

I started practicing law in 1974. I went to law school because my father and his father were both lawyers. It was the thing to do. I was married, had one child and little money. I needed a job, and there was a family law firm that I presumed would hire me. Easy decision, right?

Wrong! After “interviewing” with other members of my father’s firm, it became clear that the environment of that firm was not right for me. I remember looking at the portrait of my grandfather looking down on me as I exited the “interview” and thinking, “Is this really the right place for me?” My grandfather moved his family from Tennessee at the turn of the century after giving up a teaching job. He did not go to law school and “wrote onto” the bar. His bar certificate hangs on my office wall today to remind me of that achievement.

I concluded that I needed to look around for other opportunities. I was fortunate enough to cross paths with Martin Stringer, Ken McKinney and Ken Webster. They took a chance and hired a young, naïve and broke lawyer with a family law practice.

As my practice evolved, I joined with my first partner, Warren Jones, and we became friends, who regularly seek my advice and are glad to pay a reasonable fee for that advice. In the process, I have learned about businesses, personal needs, goals, and desires of clients. I like to think my current advice is less clinical and more “sage”.

The County Bar is a place where giving back takes center stage in multiple ways. It is time to give back. I have made a really good living. It is time to give back.

The David Cheek Family Reunion – Spring 2017

The David Cheek Family Reunion – Spring 2017

DECEMBER 7, 2017

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On December 7, the Oklahoma Journal Record will publish a special in-paper section that will recognize Oklahoma City’s Best Lawyers®. Published exclusively in Oklahoma City by the Journal Record, this section will identify attorneys who have been selected, through a peer-review methodology, to be on the list of the Best Lawyers in America® 2018.

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STUMP ROSCOE

By Roscoe X. Pound

Dear Roscoe:

What started out in divorce court in a custody battle has since found its way to juvenile court, the Court of Civil Appeals, and both municipal and civil criminal dockets. Recently, my client suffered a heart attack from the stress. We’ve been playing defense all along. Given that he has had to defend himself against two criminal charges as well as a boatload of civil litigation, it has become obvious she is using the judicial system as a club to beat him to death. Would that be enough for a civil rights complaint? BT, Warr Acres, OK.

Dear BT:

Remember when we were kids and used to hear our parents say stuff like: “OK. You don’t have to make a federal case out of it.” Well, if you’ve practiced long enough you probably have found, among other things that it’s not as easy to make a federal case out of something as you once thought. Private individuals generally are not considered to act under color of law,” Ballard v. Wall, 413 F.3d 510, 518 (5th Cir. 2005), but “private action may be deemed state action when the defendant’s conduct is fairly attributable to the State” if deprivation was caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state, or by a person for whom the state is responsible, and that the party charged with the deprivation may fairly be said to be a state actor. One way to do this is to establish a conspiracy or joint activity so that the private person’s wrongfull acts can be attributed to the State. Evidence that a private citizen reported criminal activity or signed a criminal complaint does not suffice to show state action on the part of the complainant in a false arrest case. The plaintiff must further provide enough specificity to say whether the police in effecting the arrest acted in accordance with a ‘preconceived plan’ to arrest a person merely because he was designated for arrest by the private party, without independent investigation.” Your question does not provide enough specificity to say whether an independent investigation as to the charges was made. In addition, there needs to be some evidence of action in aid of a preconceived plan. This is not a difficult standard for a defendant to meet.

It becomes particularly difficult for the plaintiff if, for example, the accused had been bound over, an ADA independently reviewed and agrees to the charges, or where a judge found probable cause to issue an arrest warrant.

This is not to say that other torts may not have occurred but, based on what you’ve given me, I wouldn’t try to make a federal case out of it.

Dear Roscoe:

Two part question: Does the failure of a judge to gain re-election moot a disciplinary proceeding under the Code of Judicial Conduct? Can a disciplinary body “tack on” the judicial complaint acts which occurred in private practice? KM, OKC.

Dear KM:

Talk about cutting edge, the Supreme Judicial Court of Maine addressed these issues earlier this summer in In re Nadeau. In that case, a disciplinary panel a condition suspension. On appeal, the Supreme Judicial Court upgraded the sanction to an absolute two year suspension. Nadeau sought rehearing that because he did the end game, or returned to private practice, the judicial disciplinary proceeding was moot. The Court rejected this argument, citing prior decisions of which Nadeau, as both judge and lawyer should have known. In essence, the court held that sanctions could carry over to his private practice as he remained a member of the Bar, and subject to the court’s disciplinary power. As to the issue of “tack on,” the court didn’t specifically use that term. It did note, however, that records going back to 1980 show that no other attorney had been referred to the court for disciplinary proceedings than Mr. Nadeau. There followed a summary of this actions, cataloguing his prior indiscretions and the lesser sanctions which apparently lacked corrective effect. One of many takeaways: The evil we do tends to live on, and the reputation we lose is hard to regain.

Well, this summer’s fishing was great and I once again have a garage freezer filled to capacity with bluefish. Fortunately, they don’t last long around here, particularly during the Last Weekend of Summer Bash I usually throw at my place. I’d send you all an invite, but even a seafood junkie like me might not make a 1400 mile pilgrimage for what promises to be the best fish, crab, and slaw on the Eastern Seaboard.

I forced myself into motion, and set out for the office. The calendar showed everyone to be where he or she should be, I tuned my radio to The Bridge, and began sorting through the accumulated mail, both of the electronic and the snail kind. I weeded the pure junk out, and made it about halfway through the rest when the phone buzzed.

“Mr. P.,” said Rae, “it’s Lt. Orenstein on 3.”

I punched the extension to life.

“Roscoe, this is Buddy you need to get over to St. Mary’s.”

“St. Mary’s what?” I asked. “Hospital. ER. They’re wheeling in Father Auggie.”

I felt my stomach turn cold and drop.

“What happened?”

“Not sure yet. Probable concussion. Talk to ya when you get here.”

He hung up. I made the trek to Hoboken in what probably would turn out to be record time. I arrived at the hospital without really remembering the drive. I parked and made my way to Emergency at a jog, pausing only at the insistence of the traffic. Buddy Orenstein and a uniformed officer stood in the waiting area chatting with a paramedic. The patrolman took notes. I hesitated, not wanting to break in on the debriefing. Eventually, the detective saw me and waved me over.

“What’s the word?” I asked.

“Bad,” he answered. “Looks like Auggie drew the milkman’s service this week. Left after the Mass, as the altar boys had gone. Don’t know who, or how many, but he took a beat down. Father Thad came to look for him, and figured he might have wandered over to the school or a store. Then he found him unconscious down in the exterior stairwell that leads to the church basement. Auggie’s keys were out and on the ground next to him.”

“Meaning?”

“Apparently the good Father fell back of the streetfighter and Golden Gloves days of his youth. We found a tooth up on the lawn, and the keys have blood on them, indicating he used them between his fingers as a makeshift weapon. His knuckles were scraped and bleeding and he may have even administered a head butt or two. He didn’t go down easy.”

“He wouldn’t,” I said. “What’s his condition?”

“Not sure yet. Probable concussion. A couple broken ribs. Also bite marks. I figure multiple assailants who continued to beat on him even after he was down and out. They also left a note: ‘Why stir up trouble that will only bring disaster on you and the peple of Judah?’ “ Sounds Biblical,” I said.

“It is,” said Buddy, “Second Kings.”

I looked at him, somewhat surprised. He shrugged. “It’s one of ours,” he remarked.

“But what does it mean here?” I answered.

Buddy shrugged. “I’m just a humble civil servant. You’re the guy who deals with the stumpers.”

Quote of the MONTH

“Dance like no one is watching; email like you’ll be reading it in a deposition someday.”

—Jim Calloway, Oklahoma Bar Association Management Assistance Program Director (1956-)
And the Court Said

AN OIL OF COURT THINKING
by Jim Croy

September 15, 1917
One Hundred Years Ago

[Excerpted from: Lewis v State; 1917 OK CR 226, 174 P. 1094.]

The plaintiff in error, G. A. Lewis, was convicted in the district court of Bryan county on a charge of assault with intent to kill, and his punishment fixed at imprisonment in the state penitentiary for one year.

The information charges the plaintiff in error with shooting his wife, Sydney Lewis, with a pistol, in Durant, in Bryan County, Okla., on the 13th day of March, 1915.

It appears from the evidence that the plaintiff and his wife had separated; that divorce proceedings were pending in the district court of Bryan county; that counsel had advised the accused that the result of his divorce suit depended largely upon the conduct of his wife; that he was warned not to shoot his wife; that the question went from his home in the northwest part of the city of Durant to the business district to buy some groceries, and from the grocery store went to the Union depot; that he was armed with a pistol; that he saw his wife, Sydney Lewis, a Mrs. Moody, and a Mrs. Moody, and two men walking on the platform, and that Mrs. Moody and Mrs. Lewis, was convicted in the district court of Bryan county; Okla., on the 13th day of March, 1915.

The testimony on behalf of the state was that the plaintiff shot at Mrs. Lewis, but shot at Rowsey; that he was not attempting to injure her. Ill feeling, therefore, between the two would not have been material to his defense, which was the contention that he shot at Rowsey in self-defense. Even though the testimony contended for was admissible, it would not be sufficient to reverse this judgment, for the reason that the plaintiff in error himself testified to all the facts, and no one denied it. There is no evidence that the plaintiff in error shot at Mrs. Lewis, but he shot at Rowsey; that he was not attempting to injure her. Ill feeling, therefore, between the two would not have been material to his defense, which was the contention that he shot at Rowsey in self-defense.

September 29, 1942
Seventy-Five Years Ago

[Excerpted from In re Cabaniss’ Estate, 1942 OK 311, 129 P.2d 1003.]

William F. Cabaniss died testate and his will was duly admitted to probate in the county court of Tulsa county, Okla., and the objections thereto and sustaining the petition, the objections devises appealed to the district court. ***

The first question presented is this: Is a provision in a will made by one spouse in favor of the other spouse revoked by the subsequent divorce of the parties in which the devise is awarded and collects judgment for alimony? We think this question must be answered in the negative.

84 O. S. 1941 § 101 provides: “Except in the cases in this article mentioned no written will, nor any part thereof, can be revoked or altered otherwise than in the manner provided by law.***

The section then provides that a will may be revoked by the testator by another instrument properly executed, or by being burnt, torn, canceled, obliterated, or destroyed. The next five sections of the statute elaborate on the methods of revocation by the testator as provided in section 101. Section 107 provides that, with certain exceptions, the subsequent marriage, or the subsequent marriage and birth of a child as a result of such marriage, revokes the will. Section 108 provides that a will of an unmarried woman is revoked by her subsequent marriage. Our statutes make provision for the revocation of a will by operation of law in only two instances indicated. Many states have statutes containing a general provision for the revocation of wills “implied by law” without limitation, and subsequent changes in the condition or circumstances of the testator,” or similar provisions... but our statute contains no such provision.

Section 101 of our statute, above, contains no ambiguity. It makes the specified methods of revocation exclusive. The test is, whether the words of the will is as follows: “Second: To my wife Ada Cabaniss I will and bequeath the home place which contains one hundred forty-five acres or about, until her death or until she marries again. This does not include any live stock.”

The will contained several specific devises and bequests, and a residuary clause in favor of his three sons and one daughter. After the will was executed Ada Cabaniss secured a divorce from testator together with judgment for alimony, which was paid. About two months after the divorce decree was entered William F. Cabaniss died without having changed his will. The will was duly admitted to probate, and thereafter Ada Cabaniss filed petition for distribution to her of the property covered by the will.

This is an original proceeding whereby petitioner seeks his release from the penitentiary by filing an application for a writ of habeas corpus.

He contends that he was misled by the county attorney and entered a plea of guilty in exchange for a promise of an 18 months sentence. When he entered his plea before the trial judge, a sentence of 7 years was imposed, the last 5 of which was suspended upon good behavior. The record before us reflects that petitioner was charged with “Obtaining Money Under False Pretenses” in Pontotoc County. The charge arose out of a scheme by petitioner whereby he was obtaining money from lawyers to obtain fictitious or legatee. 84 O. S. 1941 § 45 specifies the persons capable of taking property by will, and it does not prohibit a divorced spouse from so taking.

And the Court Said

An Olio of Court Thinking

Fifty Years Ago
September 13, 1967


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And the Court Said
No doubt, the state was most anxious to work out some kind of a deal with petitioner rather than get the attorney involved.

Petitioner was represented by W.B. Ward, Jr., a capable attorney from Ada, who has filed with this Court a statement wherein he negotiated a deal with the county attorney, Francis Mayhue, whereby petitioner would plead guilty and accept a sentence of 18 months in the penitentiary. Upon this promise of his attorney and the county attorney, he agreed to plead guilty. Attached to the petition is a statement by Francis Mayhue, the then county attorney, who verifies the transaction and states that the petitioner agreed to withdraw his plea of not guilty and plead guilty in exchange for a sentence of 18 months. However, as hereuntofore stated, when petitioner appeared before the trial judge and withdrew his plea of not guilty and entered a plea of guilty, he was sentenced to 7 years in the penitentiary, with the last 5 suspended.

Petitioner testified that when sentence was pronounced, he was shocked, and turned to his attorney and said “Do something”, and his attorney replied “Be quiet, we will take care of it later”. The following August petitioner was transported to the penitentiary at McAlester. Nothing more was done in the case. Petitioner served the 2 years and was released as per the judgment and sentence, to do the balance of 5 years on the outside — pending good behavior. Petitioner was arrested in Midwest City on a charge of Driving while Intoxicated. Thus, the District Judge of Pontotoc County revoked his suspended sentence, and petitioner is now doing time in the penitentiary doing the balance of the 7 years. Defendant has served approximately 37 months of the sentence, or twice as much time as he had originally agreed to serve.

A plea of guilty should be freely and voluntarily given. It is not likely that the plea entered in this case at bar was freely given where there was such a misunderstanding as to what sentence would be imposed.

In view of the county attorney’s statement, we feel that petitioner had a right to rely upon his promise. Of course, he should have attempted to withdraw his plea after he had discovered the sentence was not as he was promised, but evidently he was advised to keep quiet, and it would be taken care of later.

The State did not attempt to re-but the facts as related by petitioner, therefore, the court has no alternative but to take them as true.

We, therefore, are of the opinion that petitioner was denied a fundamental right and justice would be best served by considering the sentence as reduced to time served, and that petitioner be discharged from his imprisonment.

It is hereby ordered that the Warden of the State Penitentiary at McAlester, Oklahoma, is commanded to immediately release petitioner, William “Bill” Davis, #72762, from custody.

August 11, 1992
Twenty-Five Years Ago
[Excerpted from Bechtel v State, 1992 OK CR 55, 840 P.2d 1.]

Appellant defended this case on the theory of self-defense. In Oklahoma, self-defense is the subject of statutory and case law. The relevant portions of 21 O.S. 1981 § 733 state:

Homicide is also justifiable when committed by any person in either of the following cases:

2. When committed in the lawful defense of such person, ____, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished; . . .

This Court has held that the bare belief that one is about to suffer death or great personal injury will not, in itself, justify taking the life of one’s adversary. There must exist reasonable grounds for such belief at the time of the killing. (Emphasis added). Further, the right to take another’s life in self-defense is not to be tested by the honesty or good faith of the defendant’s belief in the necessity of the killing, but by the fact whether he had reasonable grounds for such belief. See Hood v. State, 106 P.2d 271 (Okl. Cr. 1940). Fear alone never justifies one person to take the life of another. Such fear must have been induced by some overt act, gesture or word spoken by the deceased at the time of, or at some reasonable period of time prior to, his statement by Francis Mayhue, whereby petitioner would plead guilty and accept a sentence of 18 months in the penitentiary. Upon this promise of his attorney and the county attorney, he agreed to plead guilty. Attached to the petition is a statement by Francis Mayhue, the then county attorney, who verifies the transaction and states that the petitioner agreed to withdraw his plea of not guilty and plead guilty in exchange for a sentence of 18 months. However, as hereuntofore stated, when petitioner appeared before the trial judge and withdrew his plea of not guilty and entered a plea of guilty, he was sentenced to 7 years in the penitentiary, with the last 5 suspended.

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Behind every successful person is something that motivates them. Whether it’s money, opportunity, recognition, altruism, or something else, we have all reached the places in our lives that we stand today because we have had something to work hard for. The youth served by the Oklahoma County Juvenile Bureau (OCJB), a juvenile justice agency that provides probation and diversion services for juvenile offenders, are no different; they are most willing to put in the work involved to be successful when an appealing incentive is on the table. Since July 2015, the Oklahoma County Bar Association (OCBA) Community Service Committee has given OCJB officers the ability to offer youth one of the things they desire most—money. Incentives in the form of gift cards have been used over the past two years to encourage and reward positive behaviors such as school attendance, abstinence from drugs and alcohol, completion of skill building programs, and other achievements, big and small. The OCBA has provided gift cards to Sonic, McDonalds, Walmart, and Target, allowing officers to tailor incentives to individuals based on what is meaningful to them. The OCJB appreciates the generosity of the OCBA and the opportunity the organization has given us to motivate our clients and acknowledge their successes.

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Bill Blackstone had represented the Sixth National Bank and Trust Company for several years, largely because he was a close friend of its President, Joe Jackstone.

Joe called one day to say that the Bank had been sued on some kind of a crazy deal, and that Joe was sending the papers over to Bill’s office. Joe said that he was getting ready for an important Board meeting and didn’t have time to talk about the case but that he would get back with Bill later.

Bill received the papers and found that the Bank was being sued for $150,000 and the matter sounded rather serious. Answer day was approaching so Bill filed an Entry of Appearance and asked for thirty days within which to plead.

The Board meeting proved to be a very important one for Joe Jackstone, for his services with the Bank were terminated at that meeting. This was sad news indeed for Bill, but the dimensions of the tragedy did not fully appear until Bill learned that Fred Firestone had been named as the new President of Sixth National. Fred had always had a noticeable allergic reaction to Bill’s personality, so it came as no surprise when Bill was notified that his services would no longer be required. After he withdrew from the case he noticed that the firm of Viper and Anaconda, his fiercest competitors, entered the case.

Imagine Bill Blackstone’s glee when Lawrence Lightweight, the lawyer for the plaintiff in the same case, called and said that he had heard the news and he would like very much to associate Bill with him on the case. Here was Bill’s chance to show the Bank and those snakes who represented it what a mistake they made in letting Bill go! He could do this, he explained to his secretary, because fortunately he never received any confidential information of any kind about the suit from his former client.

**QUESTION:** Is Bill Blackstone on solid ground?

**ANSWER:** The ground is a little sandy. It is true that the danger of using confidentially acquired information against a client is one of the principle reasons for the strict rule against taking cases against a former client. See Ethical Consideration 4-5. Opinion #165 of the American Bar Association (1936) held that “an attorney must not accept professional employment against a client or former client which will or even may require him to use confidential information obtained by the attorney in the course of his professional relations with such client regarding the subject matter of the employment.

While it is clear that no confidential information was obtained in Bill’s case, the matter would appear to be governed by the Oklahoma case of Northeastern Oklahoma Community Development Corporation v. Adams, 510 P.2d 939, Okl. (1973), in which our Court quoted with approval from a Kansas case, as follows:

It is the honor of the legal profession that its fidelity to its clients can be depended upon, that a person may safely turn to a lawyer and counsel with him upon personal and confidential matters with the absolute assurance that the lawyer’s tongue is tied from ever divulging it, and strict enforcement of this rule requires that an attorney, on terminating his employment, cannot thereafter act as counsel against his client in the same general matter, even though, while acting for his former client, he acquired no knowledge which could operate to the client’s disadvantage in the subsequent adverse employment.
Maynard Petersen – Accidental Court Reporter

by Rex Travis

Maynard Peterson, long-time Oklahoma City court reporter, died August 15. He was 84 years-old. He was a court reporter for many years and came to Oklahoma City in the early 1960’s to be the courtroom reporter for U.S. District Judge Luther Eubanks. In 1975, he left the federal courthouse to become a freelance court reporter. He continued that business until his retirement in 2008.

Maynard sort of became a court reporter by accident. He was drafted into the army during the Korean War, He was assigned as an army medic in Trieste, Italy. It turned out that Maynard had learned Gregg shorthand in high school. There was a desperate shortage of court reporters at the army base where he was assigned. So, the hospital “loaned” him to the Judge Advocate General’s office to work as a court reporter, taking down court martial proceedings.

While assigned in Europe, Maynard caught tuberculosis, which was then rampant in Europe in the wake of World War II. He was shipped home to the United States where he ended up being treated at the VA hospital in Kansas City. There, he met his wife of 60 years, Dorothy, who worked at the hospital. He also went to school in Kansas City to learn machine stenotyping. He became really good at it and won numerous competitions over the years for speed and accuracy in court reporting.

When he left the federal building and went into private practice, Dorothy worked in his office. They worked together until his retirement, following which she died in 2016.

Before computers became available to provide daily copy of court proceedings, Maynard worked with other reporters to do real-time translation, beginning with a trial before Judge David Russell, in the Oklahoma City federal court.

Maynard was a favorite among Oklahoma City lawyers, not just because of his speed and accuracy in court reporting but because he was always a thoroughly decent fellow. He will be missed.

Maynard’s family suggests contributions in lieu of flowers to the Alzheimer’s Association, Attention: OKC Walk Team “Peterson Family,” 2123 N. Classen Blvd., Oklahoma City, OK 73106 or the Norman Veterans Center, P.O. Box 1668, Norman, OK 73070, which cared for Maynard in his final months.
Typically, I address lawyers making a difference in their community, our profession, and among family and friends. Today, I’m going to take a different look from the perspective of litigation outcomes. This discussion was prompted by an article I ran across online in Slate entitled, “Do Court Room Lawyers Make a Difference?” The premise of that article was a pair of well-known judges debating the importance of attorneys in trial outcomes. The article began with a statement:

Slate is running a series of monthly dialogues between two of the nations’ most esteemed jurists, Richard A. Posner and Jed S. Rakoff. These conversations are moderated by Joel Cohen author of the book Blindfolds Off: Judges on How They Decide.

This discussion is one near and dear to my heart. I was not surprised that these two distinguished jurists reached the conclusion that case results stand on their facts and not upon a particular lawyer’s skills. Please read that discussion as I use it only for an introduction to my topic, which I’m sure will lead to more discussion among lawyers. To be fair, the discussion seems to focus on criminal cases more than civil.

Most trial lawyers I know have a little bit of ego. Seemingly, the more successful the lawyer, the larger the ego. I think many if polled, would disagree with those judges’ view of the effect of lawyers on a case result. Also, these judges did say that in a close case the skill of a lawyer could make a difference. I read with great interest that the average law firm partner now charges well over $500 per hour. I also read an article in the local newspaper quoting an Oklahoma City law firm partner’s rates at $800 per hour to represent a local independent trust authority. This information immediately sent me back to renegotiating fees with clients supporting those requests with claims of superior lawyering skills.

Not surprisingly, those judges believe that the judge has a big role in the jury trial. I was brought along in my practice with the thought that the judges were the unbiased protectors of the law, juries, and justice. Experience, none the less, tells me that some judges believe they have to level the playing field or allow all sorts of advocacy (skilled or not) in order to give the parties equal opportunity for justice to be done. Somehow, that does not square with the idea that the lawyer’s relative skill set is unimportant in more than 90% of results (the not close cases). Moreover, most lawyers I know that do marketing are selling themselves, their trial record, and their skill set to potential clients. A common belief among non-lawyers is that the party with the deepest pockets and most expensive law firm can win or at least delay a negative outcome. Also, the premise of the Slate blog installment seems to fly in the face of those who pay money for titles such as “Best”, “Super”, “Superior Rated”, etc. I regularly hear on the local radio and see on TV, lawyers who include in their advertising recovery amounts for clients in the past and cumulative recovery numbers for all times. Doesn’t all of this marketing infer that the lawyer’s skill makes some difference in the outcome?

I’m not criticizing the judiciary for being hands on, hands off, experienced, or even inexperienced. I have seen trials where judges are ultra-protective of jurors and the civil jury process while others essentially let everything go, allowing the attorneys to build into the case their own error should they dare to cross those lines. But, I do argue that all of these types of judicial conduct, just by the fact they are taking one position or another, lend credence to the point that the lawyer’s skill level does affect outcome.

At the very least, a lawyers negotiating skill can affect settlement terms and amounts. Many cases that result in litigation, began as a client’s failure to engage lawyers at the outset of a transaction or deal. Maybe the contract writing and negotiation skills lawyers have at the time of the transaction will impact the ultimate result. I would ask our ADR professionals their thoughts on the issue but I am betting that they hear too many lawyer value added arguments and war stories intended to influence settlements to argue the point. It seems a common occurrence to overhear a lawyer talk about making something out of nothing or holding the verdict amount down despite everything being against them. Lawyers now even attach their strategies to a successful mentor in hopes of elevating their position based on that mentor’s achievements.

Surely all of this talk is not baseless chest pounding. I simply can’t think of a scenario where the lawyer’s skill level does not impact the outcome. Some skill is certainly required in making and arguing evidentiary objections, presenting testimony, and obtaining a set of jury instructions. I can’t imagine that any judge would allow the use of a defective set of jury instructions; however, many cases I see reversed on appeal are done so on the basis of jury instructions given at trial. Maybe all of this is just ego speak? After all, most clients already know, if you have dragons, you need to use them. But it does not hurt to also have facts, law, and a lawyer who knows their case.

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

End Notes:
Crowe & Dunlevy is proud to announce that it has opened an office in **Dallas**. This expansion will help us serve our clients in **Texas** and the Southwest.

**Randy Gordon** and **Luke Wohlford**, established Texas attorneys, will form the initial core of our office. They will be joined by **Christopher M. Staine** who is expanding his Oklahoma City practice to the Dallas office. We invite you to learn more about Randy, Luke and Christopher, and Crowe & Dunlevy, at crowedunlevy.com.
Young Lawyers Division “Striking Out Hunger” Bowling Tournament Full of Firsts!

This was a tournament of firsts and loads of fun. Twenty-one teams made up of 85 bowlers made the 2017 “Striking Out Hunger” Bowling Tournament a huge success! There was a strong competition among some of the teams, even amongst team members. The team of Brown & Gould won the Most Spirited Team, while the team of Tomlinson McKinstry won the Best Dressed Team Award. Each group won a gift card for S&B Burgers. The First Place Team was Crowe & Dunlevy, Second Place Team was Nelson Terry Morton De Witt & Paruolo, with Third Place Team Chesapeake Energy. A consolation prize was given to the National Litigation Law Group #3 consisting of a toy bowling ball set to help them win next year.

- First time to have five judges participating in the tournament
- First time an Inn of Court (Robert J. Turner) participated (with 2 teams).
- First time a firm (NLLG – National Litigation Law Group) fielded 5 teams.
- First time the Strike Pot was won on the very first roll.
- First time the First Place Team donated their prize money back to the Regional Food Bank.

All of this fun and competition netted over $3,400 to the Harvest Food Drive Kick-Off for the Regional Food Bank of Oklahoma. The next event for this group will be in February with the Chili Cook-Off and Silent Auction. Be sure to watch for upcoming announcements as to time and place!
Please join the Oklahoma Lawyers for Children for its 20th Anniversary Celebration:

**Venetian Ball**

Saturday, October 21, 2017

The Skirvin Hilton

Celebrity Roast of Co-founders, Don Nicholson & D. Kent Meyers

Roast Masters: Mayor Mick Cornett & Mike Turpen, joined by Andy Coats

Cocktails | Dinner | Dancing | Casino Tables | Live & Silent Auction

Black Tie Optional | Masquerade Masks Encouraged

Valet Service Available at Ballroom Entrance

Dontè | Sponsor | Attend: www.olfc.org/venetianball
University of Oklahoma College of Law students provided Pro Bono services to Oklahoma National Guard men and women recently returning from the Ukraine. These soldiers had been deployed in that region as a part of a rotating U.S. Military Training element.

The students, Daniel Sloat, Katie Wilmes, Jared Harsha, and Stephan Owings spent a Saturday advising soldiers and taking data for follow-up by Oklahoma volunteer lawyers. The students participated in an Oklahoma State Bar Association (OBA) sponsored program called “Oklahoma Lawyers for America’s Heroes.”

The University College of Law has asked their law students do at least 50 hours of Pro Bono work as a part of their commitment to community while studying at OU Law. As long as they are supervised by an Oklahoma licensed attorney, there are a wide range of options for student Pro Bono.

The “Oklahoma Lawyers for America’s Heroes” program provides many opportunities for law students to assist soldiers, veterans, and their families. They can directly assist attorneys working on cases, they can do research, they can screen clients, and they can provide administrative legal support. At this Yellow Ribbon event, the students were assisting Assistant Dean Stanley Evans with interviewing soldiers with legal issues that have come up during their deployment to the Ukraine and concerns presented by their family members while they were overseas. The kinds of problems the students assisted on included:

- Return of stolen property.
- Child visitation, custody, and adoption.
- Retention of employment benefits while deployed overseas.
- Change of divorce conditions.
- Management of a trust.
- Clearing the property title on a proposed mortgage agreement.
- Contract dispute on the repair of a classic automobile.

In addition to providing service to the service members, the students got actual experience in working directly with clients and crafting solutions to their issues.

The Yellow Ribbon events are a part of the Oklahoma National Guard’s deployment and post-deployment preparations to prepare soldiers for their assignments and to re-integrate them into society once they return. The free assistance provided by Oklahoma Lawyers for America’s Heroes helps them with any legal issues that might come up that are not handled by their JAG officers. If the issue cannot be resolved during the initial interview, the case is referred out to one of the 724 attorneys who volunteer their Pro Bono services from around the state of Oklahoma. These lawyers and law students have helped over 4332 Heroes since the program started in 2010 and have provided over $2,796,000 in free legal services.

The Pro Bono program at OU College of Law is managed by Ms. Rebecca Hamrin.

Soldiers and veterans needing assistance may apply at 800-522-2065 or 405-416-7000. Attorneys wishing to volunteer may use the same number.

Statement Written by Stanley L. Evans
405-325-7789 or stanevans@ou.edu

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I thought I deserved it; I thought that when you married, your husband became your world. That it was normal to be slapped around, screamed at and degraded. My mother was abusive to me growing up, so I thought this is how it is supposed to be.

One by one, my friends and family members became distant memories. He made certain of that. Every penny I made went to him. I had no control over finances, no control over my life. I was thankful when his fist went into the wall as opposed to my face. My daughter was born in 1997, and she became my reason to get up in the morning. He never hit her, thank God. But he came close...

One day, with my baby in my arms, he came at me. I could hear the blood pounding in my ears, my heart going into overdrive. I could already taste the blood in my mouth. The fear was not for me, but for my child. He shoved me across the room with her still clutched to my breast. Thankfully, we landed on a pile of laundry. That was the last time he laid a hand on me. Ever. That was the final straw.

With the help of my grandmother, I took my daughter and fled an abusive marriage. I had an amazing attorney who was classy, kind and hell on heels in the courtroom. I was terrified of losing my daughter, of what he would do to us. My lawyer understood my fear; she told me what to expect every step of the way.

At that time in my life, I was taking 21 hours of college at OU and working three jobs. I was hard at work getting my power back. I was determined to make a good life for my daughter and myself. Watching my lawyer in action, fighting for me, fighting for my daughter, inspired me to become a lawyer.

It wasn’t until law school that I learned about what domestic abuse is; what the cycle of violence is. I was stunned. I never considered myself a victim. I still don’t: I am a survivor. The biggest question most ask is Why don’t you leave? It is not that simple. Leaving is the most dangerous time. Generally, the abuser is crafty, manipulative and possessive. He (or she) will make it to where you feel you are completely dependent on him or her. Controlling finances, relationships with family and friends, etc. He or she will threaten to take your children from you, to get you fired from your job, to have you arrested, to humiliate you. They are good at making you feel that no one will ever believe what you say about the abuser. You feel ashamed that you allowed yourself to become involved in such a relationship. See how it is not so easy to leave an abusive relationship when you have no money, friends, family, scared of losing your children, and so on and so forth?

Domestic abuse can happen to anyone, regardless of gender, race, class or education. It comes in many forms besides physical abuse: emotional abuse, sexual abuse and financial abuse are a few examples. As representatives of the law, we need to educate ourselves on domestic violence, even if your area of practice is outside of family law. As human beings, we need to educate ourselves to be able to recognize it within our own relationships as well as in loved ones’ relationships so that we may help or get help.
Battered Woman Syndrome, and the State’s witness, Dr. Herbert C. Modlin, a licensed, practicing psychiatrist. Dr. Walker discussed the methodology used by her in diagnosing such syndrome and related that this is taught in the graduate schools and accepted in the entire scientific community of research. On refusing to allow the testimony, the trial judge offered the following three reasons:

1. The lack of general acceptance of this theory in the psychological community based on the fact that the syndrome is not listed in the Diagnostic and Statistical Manual of Mental Disorders-3-R (DSM-3R), a publication of the American Psychiatric Association.

2. The testimony did not appear to be necessary or helpful to the jury since the jury was capable of making a decision based on all of the evidence.

3. The lapse of time between the incident and the psychological testing, which “would certainly permit time for manufacturing of a defense or for the healing of whatever emotional and personality abnormalities or wounds had been caused by the relationship.”

We find no support for the trial court’s first reason. The relevant scientific community in this case is the psychological community and not the psychiatric community. Moreover, both experts acknowledged that the syndrome is considered a sub-category of Post-traumatic Stress Disorder, which is generally accepted and is listed in the DSM-3R. Based upon our independent review of the available sources on the subject, we believe that the syndrome is a mixture of both psychological and physiological symptoms but is not a mental disease in the context of insanity. Further, we believe that because psychologists see more battered women than psychiatrists, the psychological community has had the opportunity to be and, indeed, have been more responsive to the problems or symptoms experienced by those suffering from the syndrome.

Furthermore, we believe that because the syndrome is not recognized as a scientific theory. To date, thirty-one (31) states and the District of Columbia allow the use of expert testimony on the subject. Five (5) states acknowledged its validity, but held the testimony inadmissible based on the facts of the particular case. In addition, hundreds of books, articles and commentaries have been written and numerous studies have been done on the subject. Based on the aforesaid, we find that the Battered Woman Syndrome is a substantially scientifically accepted theory.

We next address the trial court’s ruling that expert testimony does not appear to be necessary or helpful to the jury since Appellant’s testimony concerning numerous drunken assaults and threats, including the vicious assaults and threat to kill her on the night of the offense, are in the nature of common opinion, “easily within the common understanding of all the jurors and easily come[s] within the legal definition of self-defense.” The jury may consider all the rest of the evidence offered and yet to be offered in conjunction with the Defendant’s statement of the events and they can make the decision. We do not agree, especially in light of the two inquiries submitted by the jury during its deliberation (See footnote 14 and “Instructions on Burden of Proof in Self-Defense”).

These inquiries demonstrate the lack of common understanding of the elements of self-defense, particularly where the defendant is a battered woman.

Expert testimony in Oklahoma is admissible if it will assist the trier of fact in search of the truth and augment the normal experience of the juror by helping him or her to understand concerning particular behavior of a victim in a particular circumstance or circumstances. See Davenport v. State, 806 P.2d 655 (Okl.Cr. 1991), where this Court allowed expert testimony concerning the “Child Accommodation Syndrome.” 12 O.S. 1981 § 2702 provide that if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as and expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise. The Court may not allow expert testimony on the subject. We believe that the Battered Woman Syndrome is necessary to counter these misconceptions.

We next address the trial court’s third reason for not allowing the expert testimony, i.e., that the 3 1/2 years lapse of time between the commission of the offense and the psychological examination would allow for the manufacturing of a defense. Both the trial judge and the State, in support of said reason, rely on McKee v. State, 372 P.2d 243 (Okl.Cr. 1962) and Jones v. State, Okl.Cr., 542 P.2d 1316. In McKee, this Court held that the trial court properly rejected the defendant’s offer of expert testimony that she was motivated by mental apprehension of fear in slaying her husband. We stated:

“The state of mind of the accused is the proper subject for expert testimony when the defense is based on the elements of insanity at the time of commission of the act, but it is not a proper subject for expert testimony when the defense is not based on a plea of insanity at the time of commission of the act for which the defendant stands accused.”

In the McKee case, this Court’s concern clearly had to do with an expert testifying as to the ultimate issue, i.e., whether or not the accused acted in necessary self-defense, and not the thirty days lapse of time between the offense and the examination.

In Jones, supra, the expert testimony sought to be admitted was based on an examination conducted eight months after the commission of the crime. The defendant’s examination by his expert consisted of one interview where he was under hypnosis. The defendant was not asked to have admitted his exculpatory declarations while in hypnosis together with the expert witness’ opinion of the defendant’s truthfulness in making those assertions. The Court recognized that truth serum or hypnosis may be employed as an accepted analytical tool in psychological or psychiatric evaluation and diagnosis. This Court held that the defendant failed to establish proper foundation for such testimony.

Thus, we distinguish and clarify the decisions in McKee and Jones. Further, we hold that the lapse of time between the commission of the offense and the examination of the accused is not per se grounds to exclude evidence by the expert. The Court may not allow the expert to testify to the ultimate fact and further, must determine the reasonableness of the testimony based upon the passage of time.

We believe that the Battered Woman Syndrome has gained substantial scientific acceptance and will aid the trier of fact in determining facts in issue, i.e., reasonableness and imminence . . ., when testimony on the same is offered in cases of self-defense. However, before such testimony may be admitted, this Court today sets forth the following guidelines:

1. The defendant must offer evidence which establishes herself as a “battered woman.” We believe that the trier of fact can draw from her own experience or common myths, which may lead to a wholly incorrect conclusion. Thus, we believe that the testimony on the syndrome is necessary to counter these misconceptions.

2. The trial court shall give in its charge to the jury the specific instruction on standard of reasonableness, i.e., reasonableness and imminence . . ., that the accused be in imminent danger and whether or not the accused acted in necessary self-defense. Both the trial judge and the State, in support of said reason, rely on McKee v. State, 372 P.2d 243 (Okl.Cr. 1962) and Jones v. State, Okl.Cr., 542 P.2d 1316. In McKee, this Court held that the trial court properly rejected the defendant’s offer of expert testimony that she was motivated by mental apprehension of fear in slaying her husband. We stated:

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2. The trial court shall give in its charge to the jury the specific instruction on standard of reasonableness, i.e., reasonableness and imminence . . ., that the accused be in imminent danger and whether or not the accused acted in necessary self-defense.
David Pomeroy’s funny piece in August about his first jury trial reminded me with horror of mine. In December 1975 I was fresh-faced, three months from being sworn in and two months into my job as an associate at King & Roberts, an insurance defense firm.

In those days, insurance companies actually litigated automobile property damage subrogation claims instead of arbitrating. Since they didn’t pay an hourly rate for subrogation, it was a win-win. The carriers got some chump change back and the baby lawyers in the insurance defense world got some on their feet trial experience. My first trial was over a $1200 property damage claim filed in Marshall county. Don’t laugh—Charlie Alden and I once tried an $800 case to a jury.

The insurance company was too cheap to send me down the night before and spring for a $30 motel room. So, I called the insured, who was obligated under the policy to appear as a witness and told him I would meet him “at the courthouse” Monday at 7:30 the morning of trial. The defendant was uninsured and was represented by a local lawyer. I realized on Sunday night that the defendant’s attorney was not going to stipulate to the reasonableness of the repair charge—no courtesy could be expected for an Oklahoma City insurance lawyer. In a panic, I called my boss, Tom King, who suggested that perhaps my insured had at one time or another worked in a garage or salvage yard and using the repair bill could testify that it was reasonable. I couldn’t get hold of the guy that night and so had to just go and take my chances.

Sleepless the night before as any newly minted lawyer would be, I finally got out of bed exhausted at around four, dressed in my new trial suit, purchased from Harold’s, and headed south. I was as nervous as if I were arguing before the Supreme Court of the United States. However, somewhere between Friday and Monday morning I got my “M’s” confused.

Driving in a cold, pouring rain I zipped past Ardmore on my way to Marietta. My windshield wipers were lousy, big trucks sent huge waves splashing over me, but I trekked on. About two miles from the Marietta exit, a bolt of lightning struck. The county seat of Marshall county seat is Madill. My windshield wipers were lousy, big trucks sent huge waves splashing over me, but I trekked on. About two miles from the Marietta exit, a bolt of lightning struck. The county seat of Marshall county seat is Madill. Not Marietta, dummy!

I turned around, went back to Ardmore, and sped east as fast as I dared on slick roads. All the while I was thinking that the case would be dismissed, costs taxed, and bar complaints filed. And how would I word my resignation letter?

I made it to Madill five minutes before 9:00 and sure enough my young insured/client assured me he knew a lot about fixing cars. A jury was promptly impaneled and I made a stirring opening statement. Then I put the insured on the stand and had him tell about the accident (it was a rear-ender). I showed him the repair bill and asked if that was a fair and reasonable amount, based on his “experience.” Playing it over the top, the guy said, “Absolutely, in fact it should have been a whole lot more than that. At least $500 more.”

On cross examination, the local lawyer swiftly pointed out that the witness’s insurance company had paid considerably less—probably a valid point on cross. Having learned perhaps little else in my short time as a defense lawyer, I did know you are supposed to move for a mistrial if somebody injects insurance into the proceedings. So, I jumped up and moved for a mistrial. The judge stared at me a moment and asked if I really wanted a mistrial. With utter determination I said, “Absolutely, your Honor.” No small town lawyer was going to take advantage of me.

With great solemnity he declared a mistrial. I eagerly waited over the next months for a resetting and further adventures in Madill. But, as time passed I remembered the sly smile on the judge’s face as he dismissed the jury, a smile directed at the defense lawyer. Undoubtedly, the judge decided that a local man did not need to reimburse a company in New York for a property damage claim that was less than a drop in its ocean of money and the company had had its chance to get a judgement.

After several letters and Motions to Enter over the next couple of years, I moved on to slightly bigger things and the case eventually disappeared down the rat hole of forgotten litigation. Perhaps in the grand scheme of things it was a fair result.

The moral of the story? Know where the court house is.

The Courthouse is Where?

by Steven E. Clark

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Mulinix Goerke & Meyer, P.L.L.C. is pleased to announce Kevin Krahl and John Krahl have joined the firm. The main office of Mulinix Goerke & Meyer, P.L.L.C. is located at 210 Park Avenue, Suite 3030, Oklahoma City, Oklahoma 73102. The office phone number is (405)232-3800, and the website is www.lawokc.com.

Kevin Krahl is a trial lawyer and mediator who has over 30 years of trial experience in civil and criminal cases in city, state, and federal court. Kevin has litigated cases in 10 different states.

Kevin received his law degree from Oklahoma City University in 1984. He began his career in the Oklahoma County District Attorney’s Office, serving as an assistant district attorney from 1984 to 1988. Kevin joined Abowitz and Welch in 1988, where his practice primarily focused on insurance defense. In 1993, Kevin formed Hornbeek, Krahl, Vitali & Braun, where he was partner until 2007. Kevin was a member of Fuller, Tabb, Bickford & Krahl for a decade, from 2007 to 2017.

John Krahl is a trial lawyer with experience in city, state, and federal courts, as well as experience with various administrative bodies. John’s practice encompasses both civil and criminal law. John received his law degree from the University of Oklahoma in 2012. John has litigation experience in a variety of areas, including real estate, bad faith insurance, oil and gas, medical malpractice, personal injury, and products liability.

John draws on his experience in the fields in which many of his clients conduct business. Prior to obtaining his law degree, John worked in the land administration and gas marketing departments of a major energy company; worked for the general counsel’s office of the oil and gas division of the Oklahoma Corporation Commission; and worked for a commercial real estate company.

John was born and raised in Oklahoma City, and remains active in the Oklahoma City community. John serves as co-chairman for the Wes Welker Foundation’s 7-on-7 camp; serves as a board member of the Redbud Classic; and coaches 8th grade football.

Mulinix Goerke & Meyer, P.L.L.C. maintains its office in Oklahoma City on the 30th floor of the Oklahoma Tower. The firm maintains diverse practice areas and a diverse make-up of attorneys. For more information, please visit the firm website at www.lawokc.com or call us at 405-232-3800.

Litigation Counsel of America names Reid Robison a Senior Fellow

Reid E. Robison has been named a Senior Fellow of the Litigation Counsel of America (LCA). Robison is a veteran trial lawyer whose practice is concentrated in business-related litigation, including antitrust, securities, products liability, tax, white collar criminal cases, contract and insurance disputes, and multi-district and other complex litigation in courts throughout the United States.

The LCA is an invitation-only trial lawyer honorary society composed of less than one-half of one percent of American lawyers. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. Senior Fellow status in the society is reserved for advanced commitment to and support of the LCA, Diversity Law Institute, and Trial Law Institute.

Robison is a member of the Oklahoma County Bar Association, Oklahoma Bar Association, American Bar Association, and Luther Bohanon American Inn of Court. He is also a Fellow and state chairman of the International Academy of Trial Lawyers.

Managing Directors Announce Formation of Chansolme Harroz Schnebel

Managing Directors Gregory P. Chansolme, Andrew Ralph Harroz, and Chase H. Schnebel announce the formation of their new law practice, Chansolme Harroz Schnebel (CHS), located in the Oklahoma Tower at 100 N. Broadway Ave. Suite 1800 in Oklahoma City.

The law firm consists of a comprehensive team of lawyers, who specialize in handling all their clients’ business legal needs. This includes wealth and estate planning, corporate and transactional, litigation & dispute resolution, healthcare, securities & corporate finance, real estate, and tax law.

For corporate, contract or tax counsel, call CHS at: 405-602-8098, visit: thefirmokc.com or email: info@thefirmokc.com.

Robert Black joins Miller & Johnson

Miller & Johnson welcomes Robert Black to the firm.

Robert graduated from OU with a degree in Business Administration, and from OCU with his JD. Robert brings many years of trial practice to the firm, at one time having tried cases before 4 of the 9 sitting Supreme Court justices. As a member of the Oklahoma County Bar Association, Robert has served on the Bench and Bar Committee, spoken in schools for the Law Related Education Committee, and participated in the Lawyers for Learning program. He also served as Chairman of the Association of Black Lawyers CLE Committee for several years. Robert is currently a member of the Board of Bar Examiners.

Crowe & Dunlevy opens Dallas office

Oklahoma-based Crowe & Dunlevy law firm has expanded its presence by opening an office in Dallas, located at 1919 McKinney Avenue, Suite 100 at Spaces McKinney Avenue. Headquartered in Oklahoma City, with offices in Tulsa as well, the firm’s 130 attorneys serve national and international clients in nearly 30 practice areas. Three attorneys, Randy Gordon, Luke Wohlford and Christopher M. Staine, will be present in the office immediately.

With extensive experience in Texas after practicing with Crowe & Dunlevy in the 1990s, Gordon returns as a director to Crowe & Dunlevy from a Texas firm where he served as the chair of its Antitrust and Trade Regulation practice. Extensively educated, he holds law degrees from Columbia Law School and Washburn University School of Law, as well as doctorates from the University of Edinburgh and the University of Kansas. His practice includes antitrust, the Racketeer Influenced and Corrupt Organizations (RICO) Act, appellate, class action and litigation in the energy, healthcare, and insurance industries. He also serves as lead attorney for a major research university and teaches antitrust as an Executive Professor of Law at Texas A&M University.

Wohlford also joins Crowe & Dunlevy from a Texas law firm, and has practiced in Kansas and worked as a clerk in the United States Court of Appeals for the Tenth Circuit. A graduate of the University of Kansas School of Law, he has experience in complex business litigation, fiduciary litigation, antitrust and trade regulation, appellate and class action lawsuits.

Staine will expand his practice from Crowe & Dunlevy’s Oklahoma City office to Dallas. A graduate of the University of Oklahoma College of Law, Staine serves in the firm’s Bankruptcy & Creditor’s Rights, Energy, Environment & Natural Resources and Litigation & Trial Practice Groups. He leads the firm’s diversity and inclusion efforts, chairing the Diversity Committee. Deeply involved in his industry and community, with membership in the American Bar Association and Oklahoma Bar Association, he will continue to serve on the board of directors for The First Tee of Metropolitan Oklahoma City.

For more information, visit crowe-dunlevy.com or call the Dallas office at 214.420.2163.

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Judge Bryan Dixon, the longest tenured District Judge in Oklahoma County, became a Special Judge in 1983, and a District Judge in 1985. He will retire effective August 31, 2017. Judge Roger Stuart and Judge Roma McElwee assumed the bench in 1995. Both retired effective August 1, 2017. During the month of August 2017, Oklahoma County will consequently lose seventy-eight (78) years of combined judicial experience. Their retirement plans and their pearls of wisdom follow.

**Judge Dixon** has been married for thirty-two years to his wife Margaret. Their daughter Emily has a Master’s Degree in geology from the University of Oklahoma, and works for the Department of Environmental Quality. Their son Bryan has a Juris Doctorate Degree from the University of Oklahoma, and is an associate with Durbin, Larrimore and Bialick.

Judge Dixon has applied for Active Retired Status with the Supreme Court, and will continue to serve in that capacity. He will also continue to serve on State and County Bar Association committees. Margaret and Judge Dixon plan to travel extensively, and have trips to Germany and England scheduled later this year, and trips to Israel, Jordan and Egypt scheduled in 2018. If Judge Dixon can’t stay busy, Margaret has promised to provide him with his Wal-Mart greeter applications.

His most important advice to young lawyers is to recognize that being civil (courteous, honest, respectful, using common sense and being reasonable) will build a “very positive reputation in the legal community that serves you well the rest of your legal career.”

Judge Dixon can identify two significant changes he has witnessed, while serving on the bench. One is the expanded use of the computer. He notes that “email has replaced the letter and, unfortunately, that has led to some rather hasty and nasty communications between parties and attorneys.” He also notes that lawsuits are becoming “more and more complex,” and thus more experts are required. This “has increased the costs of litigation and reduced the number of trials that are feasible to prosecute.”

He will miss the jury trials the most (especially medical malpractice cases), and the “pleasure of watching counsel in action as they present their case and call their expert witnesses to enlighten the court and jury.”

The cases that Judge Dixon will miss the least are the “family and church feuds. These cases nearly always ended in the families being torn apart and a church being divided and destroyed.” The singular most disturbing case Dixon recalls is a Smalls Claim case circa 1984 or 1985. A father sued his son for approximately $40.00 for money he had loaned his son for flowers for the funeral of son’s baby. In the course of the hearing, son pointed to his pregnant wife standing in the back of the courtroom and admonished his father “After that child is born, you will never see your grandson.” There was complete silence in the courtroom. Judge Dixon asked the father if he really wanted to proceed with his case. “Yes,” father said, “it’s a matter of principle.” Judge Dixon has no doubt that he could have passed a hat in the courtroom and easily raised the necessary $40.00, “but, by then, the damage was done, and the family would never be the same again.” He laments that $40.00 worth of “principle” tore that family apart.

Judge Roger Stuart has lived in Oklahoma County his entire life. He graduated from Del City High School in 1969, and received his Juris Doctorate from the University of Oklahoma. He was admitted to the Bar in 1979. He has been married for thirty-seven years, and has three children and five grandchildren.

His retirement plans are not yet formulated. He did volunteer that he intended to go to a matinee movie with his wife mid-Tuesday afternoon, August 1, 2017 (his first day of retirement) and added, “I ain’t that crazy.” (Sources confirm that Judge Stuart and his wife went to see the movie *Dunkirk.*)

He is now unemployed for the first time since he was 13-years old. He plans to travel, and to spend time with his wife and grandchildren. He reports that during his first week of retirement, he also went with grandchildren to the zoo. He described his trip to the zoo as essentially “walking around in circles in very hot weather.”

Judge Stuart advised young lawyers to be patient, and to build a reputation for honesty and integrity. The most significant change he has witnessed during his time on the bench is the “rapid and reckless - and consistent - manner in which the legislature makes statutory changes.”

He will miss good lawyers the most, and bad lawyers the least, but adds that fortunately “there are very few ‘bad lawyers’ in Oklahoma County.” He has heard many judges, lawyers and even law professors described as “tough.” He suggests that he would rather be remembered as “tough but fair.” Mission accomplished, Judge Stuart.

Judge Roma McElwee served as a Judge in Oklahoma County from September 1995 until her retirement effective August 1, 2017. Before taking the bench, she was in private practice for thirteen (13) years, and served as an Assistant Public Defender for two (2) years and as an Assistant District Attorney for five (5) years. She was Chief of the Juvenile Division.

Judge McElwee was married for forty years to William McElwee, a high school math teacher and coach, until his death. There was one child, Michele McElwee. Her Pride and Joy is a District Judge in Oklahoma County. The McElwees were the only mother-daughter team who have ever served on the bench at the same time in the state of Oklahoma, and might have been the only such “team” in the United States.

She plans to “try to do all the things” that she “never had time to do before,” such as volunteering with Meals on Wheels and the Library. She said that she might be heading for a retirement full of “yoga classes and flowers in my hair, just like Roma of the Sixties who was a speech and drama major.”

When asked what advice she would give young lawyers, she answered “Prepare, prepare and prepare, and always be very nice to the important people at the Courthouse - like the clerks and bailiffs! They can teach you many things.” She cites the pervasive use of technology as the most significant change she has witnessed during her tenure. She will miss most the contact with lawyers and other friends that she has enjoyed at the courthouse on a daily basis, over the course of the past twenty-two years.

Judge McElwee can’t forget the most disturbing case she ever heard. “The defendant was convicted of kidnapping his 18-month old child to death. After the death sentence was pronounced, she asked the defendant if he had anything to say. ‘Yes,’ the defendant answered, ‘I want to shake your hand. I’ve been through a lot of judges before and you are the fairest judge of all, and I just want to thank you for that.” But Judge McElwee’s most lasting impression in that case was the testimony that the baby was wearing her favorite “Barney” shoes when she was stumped to death.

Judge Dixon stated that “our legal community and the courts do a great job” insuring that issues are “decided fairly and according to the law. It is the best legal system ever, and we must do all we can to preserve its integrity in this great country of ours.”

The young lawyers who have had the opportunity to appear before these Judges should treasure the experience, and the life lessons, that they have experienced. Lawyers-to-be won’t have that pleasure, but they will surely enjoy the legacy left by our three retiring jurists.

Alexander Hamilton (as quoted by Lin-Manuel Miranda) defined a legacy as “planting seeds in a garden you never get to see.” By that definition, Judges Dixon, Stuart and McElwee have left a legacy for generations to come.
The Guardian recently published an article titled: “Oklahoma isn’t working. Can anyone fix this failing American state?” Poverty, police abuse, record prison rates and education cuts that mean a four-day school week. Why are public services failing Oklahomans?”. This appears to be part of a larger project by the author, Professor Russell Cobb of the University of Alberta, who is working on an upcoming book tentatively titled “You Dumb Okie: Race, Class and Lies in Flyover Country”. Regardless of the inflammatory title of his book, Prof. Cobb’s article points to some alarming facts to support his thesis that Oklahoma is a failing state, which even this dumb Okie can understand: “Added up, the facts evoke a social breakdown across the board. Not only does Oklahoma lead the country in cuts to education, it’s also number one in rates of female incarceration, places second in male incarceration, and also leads in school expulsion rates. One in 12 Oklahomans have a felony conviction.”

Prof. Cobb went on to explain that “entry-level employees with a high school diploma at the popular convenience store QuickTrip make more than teachers in Oklahoma.” Even more disheartening, Prof. Cobb illustrated Oklahoma’s social breakdown through the story of Eric Williams, an honorably discharged veteran with bipolar disorder who died in Tulsa County Jail. As you may recall, the final 51 hours of Mr. Williams’ life was recorded in his cell because Jail staff “suspected he was faking [his injury] and thought the video would prove whether he was lying,” Mr. Williams was suffering from a broken neck sustained while in police custody. “In the video, his naked body remains motionless from when the guards dragged him into the cell on a blanket until [days later] the paramedics tried and failed to revive him.”

Prof. Cobb’s points are well taken, although the failing state label is more puffy than a true description. There are many positive attributes about Oklahoma that make it a place where people want to live. For example, the US Census Bureau estimates that Oklahoma’s population grew 4.6% from 2010-2016. So people aren’t fleeing a dire situation, many are seeking out opportunities. In particular, as one who has watched Oklahoma City develop over the past couple decades, I’m hard pressed not to believe that Oklahoma is doing several things right. The Oklahoma state government does not lack legitimacy, it arguably lacks good leadership.

My response to Prof. Cobb is that Oklahoma is more likely a bellwether to a negative national trend, rather than being an outlier. As of 2015, when including federal expenditures, Oklahoma was 30th in overall government spending and 29th per citizen. Oklahoma education needs improving; but, in general, “U.S. students are stagnating in reading and science proficiency while their math performance declined slightly.” The U.S. imprisons more people than any country in the world, almost doubling the next country, China, which has approximately a billion more people than the U.S. Oklahoma is part of a broader U.S. prison problem.

Oklahoma’s recent fiscal troubles, and some longer standing bad policies, have exacerbated an already difficult situation. Instead of investing in our teachers, we are cutting budgets across the board. Instead of addressing mental health and substance abuse issues, we lock people away and force an ill-equipped Department of Correction to “rehabilitate” inmates. Oklahomans sent legislators a message last November when they voted down State Question 779 for a teacher pay raise, which was: “we won’t do your work for you.” Instead of rising to the occasion, many legislators have buried their heads in the sand. For example, as reported in the Oklahoman, Chair of the House Common Education Committee, Michael Rogers of Broken Arrow, “called reports of declining state funding for public schools ‘fake news’ in an email to Republican lawmakers”. The Oklahoman pointed out that “state education allocation, which is what the Legislature is tasked with setting, has declined by $182 per student since 2008. The $128 million increase in school staff health insurance alone has decreased per-pupil spending by $25 each.”

To address our budget shortfalls, the Legislature came up with several smaller fixes, most notably a cigarette fee and a sales tax on new car purchases. Those bills were immediately challenged based on Article V, Section 33 of the Oklahoma Constitution, which provides that: 1) raising revenue bills shall originate in the House; 2) no revenue bill shall be passed in the last five days of session; and 3) that a revenue bill requires a three-fourths majority in both the House and Senate. Neither Bill passed this standard; however, the Oklahoma Supreme Court struck down the cigarette fees, while upholding the car tax. Regarding the cigarette fee, the State argued that the fee was part of a regulatory scheme, and, thus, not a “revenue raising” bill. The Court disagreed, stating that “to hold otherwise, the distinction between fees and taxes—and thus the protections against taxation provided by Article V, Section 33—would be meaningless.” Conversely, in a 5-4 decision the Court distinguished the car tax from a revenue raising bill, because the bill revoked tax exemption. Thus, the tax was not “new”, the exemption was removed. The dissent disagreed stating that the “core issue in this matter is whether the partial removal of a sales tax exemption constitutes the levy of a tax in the strict sense of the word when the principal object of the removal is to raise revenue rather than having the effect of creating revenue incidentally.” The minority thought H.B. 2433 “is a revenue bill because its principal purpose is to raise revenue, it levies a tax in the strict sense of the word and is not a bill for another purpose which incidentally creates revenue.”

Consequently, the Supreme Court has provided the Oklahoma Legislature some guidance on ways to raise revenue without out a three-fourths majority—cutting tax exemptions. No doubt the Legislature will use this tactic in upcoming sessions. As the Court noted, “Article V, Section 33 is but one of several fiscal policies placed in our Constitution by the people.” Oklahoma is also a “pay as we go” State, limited in its ability to incur debt, and any revenue failure requires a special session to raise additional funds or apply pro rata cuts. To make matters worse, our state will require broad political will, and or a jolt to our economy.

The OCBA celebrates Pam Bennett’s 20th anniversary as the OCBA Placement Director. Pam is the head of the attorney and staff placement service which the OCBA has provided to local firms and attorneys since 1983. For those who have not utilized the service, it is an excellent resource for job seekers and a great value to employers.

A lifelong resident of Oklahoma, Pam grew up in Bartlesville. Pam moved to Edmond during high school and then attended Oklahoma State University, where she majored in English. Pam has previously worked in law firms in Elk City, Stillwater, and Oklahoma City. Since joining the OCBA, Pam has created a broad network of contacts with educational institutions, law firms, and legal organizations that assists her in successfully matching job seekers with hiring organizations. Pam loves the immense joy she feels when she gets to telephone a successful job candidate with the news, “I have a job for you!”

According to Pam, finding a “good fit” between candidate and employer is the key to a successful placement. That “fit” depends largely on the culture of the hiring law firm. Pam’s first step with a new potential employer is to understand the firm’s culture, which often necessitates a visit to the office. Pam interviews three or four generations of attorneys with each generation having a unique personality and needs. As such, understanding the culture can often be the most difficult part of the placement process. During her 20 years working with law firms, Pam has noticed a cultural shift as a new generation of attorneys enters the practice of law. That shift includes attitudes toward office attire, greater use of technology, and greater time spent away from the office. In order to attract younger talent, many law firms have followed other industries in relaxing their day-to-day office dress code. This has in a direct impact on the OCBA’s placement service, as the types of employees and skills firms are seeking to attract has changed.
The Oklahoma Innocence Project is happy to announce its Second Annual Wrongful Convictions Day celebration to raise awareness concerning Oklahoma’s wrongfully convicted. We will have food, drinks, and music, but most importantly we will have several Oklahoma exonerees at the event to share their stories. We hope that you will support this event by becoming a sponsor. Sponsors will be recognized in various ways on marketing material and at the event. Sponsorships are available at the following levels:

- **Advocate** $2,500 – T-shirts, Printed Materials, & Signage
- **Mentor** $1,000 – Printed Materials & Signage
- **Supporter** $500 – Signage

We will be following up with you by phone in the next few weeks. We know this will be an extraordinary event, sharing stories from Oklahoma exonerees, increasing public awareness about wrongful convictions, and raising much needed funds for the Oklahoma Innocence Project. We look forward to seeing you on October 7th.

Sincerely,
Vicki Zemp Behenna, Executive Director, Oklahoma Innocence Project

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**SAVE THE DATE**

**IN RECOGNITION OF WRONGFUL CONVICTIONS DAY**

Saturday, October 7, 2017
4:00 PM to 8:00 PM, Plaza District

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Sincerely,
Vicki Zemp Behenna, Executive Director, Oklahoma Innocence Project

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

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- Ed Cunningham, Edmond
- Barry R. Davis, Oklahoma City
- John A. Gladd, Tulsa
- Daniel E. Holeman, Tulsa
- R. Lyle Clemens, Oklahoma City
- Larry D. Ottaway, Oklahoma City
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- Daniel Boudreau, Tulsa
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