



# Briefcase

February 2021 Vol. 54, No. 2

A Publication of the OKLAHOMA COUNTY BAR ASSOCIATION

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YLD Chair Kristin Meloni and Chair-Elect Cami Ruff present a \$20,000 check to the Regional Food Bank of Oklahoma. 2020 was a difficult year. The Young Lawyers Division thanks everyone for their generous donations to make this possible. Photo by Shanda McKenney

## 2020 COURTHOUSE HAPPENINGS

2020 brought a number of changes to the practice of law: virtual hearings, depositions, and even trials; masks color-coordinated to the outfit of the day; the lack of greetings via handshake; the partitions of offices and routine sterilization of every surface touched by human hands.

However, there has been a lot of movement of personnel at the courthouse, primarily due to the appointment of

sitting judges to other judicial offices, but also attributable to the retirement of several long-serving jurists. This article attempts to provide something of a “flow chart” of the various changes to the judges and dockets at the Oklahoma County Courthouse during 2020 “mostly” in chronological order.

### January

- District Judge Ray Elliott is elected Presiding Judge and District Judge Timothy Henderson is elected Vice-Presiding Judge.
- Judge Richard Kirby is transferred to the Criminal

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**BRIEFCASE**

February 2021

Briefcase is a monthly publication of the Oklahoma County Bar Association  
119 North Robinson Ave.  
Oklahoma City, OK 73102  
(405) 236-8421

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Postmaster: Send address changes to OCBA Briefcase, 119 North Robinson Ave., Oklahoma City, Oklahoma 73102.

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From the President

# Freedom of Speech Comes with Responsibility

**Hon. Don Andrews**  
*President, OCBA*



Recent events have prompted a need for me to climb atop my proverbial soapbox and address what I believe is a very important issue. This column begins with a short history lesson, followed by some editorial analysis and problem-solving suggestions. I do not have all the answers, but only ask that you “hear me out.”

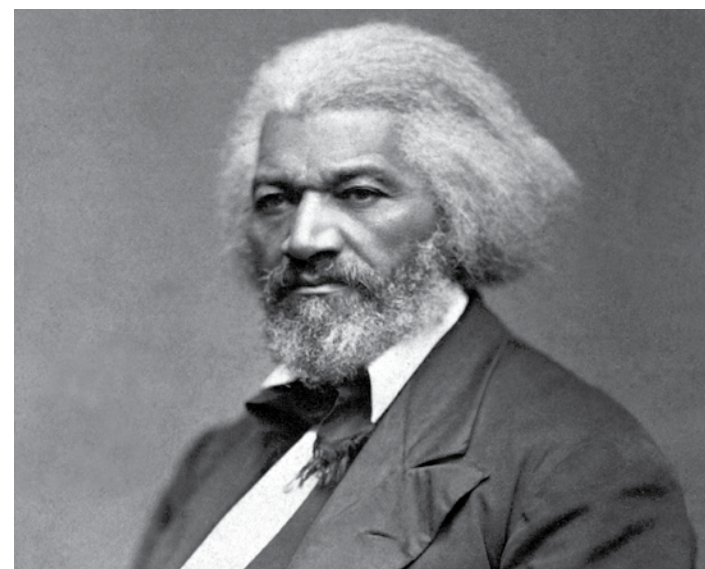
In a speech to the First Congress on June 8, 1789, James Madison proposed twenty amendments to the U.S. Constitution. Ten out of the twenty were ratified by the states and adopted on December 15, 1791. They became known as the Bill of Rights. The first such amendment concerned the right of freedom of speech, ensuring citizens of the new nation would be allowed to speak their minds about political candidates, laws and religion without fear of government censorship. In his address, Madison emphasized, “The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and that the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.”

In December of 1860, Frederick Douglass delivered a speech in Boston, declaring that “liberty is meaningless where the right to utter one’s thoughts and opinions has ceased to exist.” The week before Douglass made his declaration, a meeting was scheduled to occur in Boston to discuss what was, in 1860, a controversial question: How shall slavery be abolished? Before the meeting could occur, however, it was invaded and its participants insulted and captured by an unruly mob seeking to silence the abolitionists. The Mayor of Boston cancelled the meeting, effectively denying the abolitionists their free speech. So, Frederick Douglass did what anyone who seeks to defend free speech should do: He spoke. Douglass said, “No right was deemed by the fathers of the Government more sacred than the right of speech. It was in their eyes, as in the eyes of all thoughtful men, the great moral renovator of society and government.”

Without freedom of speech, there is no defense at a trial, no casting of our votes at the ballot box, no ability to contact our representatives, and no speaking out against inequalities or injustices. Speech based upon good reason is a fortress against an unjust society. As with any freedom, the right of free speech comes with responsibility and in some cases consequences.

We are generally shielded by the First Amendment from government action infringing our our right to free speech. While this freedom allows us to confront injustice, there are plenty of instances when our speech can perpetuate injustice and harm, and social media, since its inception, has contested where free speech ends and hate speech begins. Despite the ugliness, freedom of speech is still vital to the functioning of our democracy.

Today, we have more ways to exercise the freedom of speech



Frederick Douglass

than ever before. The internet allows us to transmit our ideas to an unknowably large audience of social media friends, followers, devoted readers, as well as the disgruntled. Our smartphones let us make this connection anywhere, anytime, at lightning-fast speeds.

The internet exacerbates, but is not fully responsible for a deepening disconnection between people, and a lack of empathy for one another. Anonymity on the internet allows some to spew vitriol with relative impunity. They are emboldened by the fact that their comments do not have consequences for their lives outside the internet. Speech not paired with reason or respect, becomes our disintegration rather than our renovation that Douglass emphasized.

For our freedom of speech to work and to have meaning, we simply need to listen to one another. We have a responsibility to listen, because listening allows us to extend the freedom of speech to others. Perhaps this is why the right to assemble is so closely linked to the right to free speech. A speech without an audience is meaningless. Without a jury of open-minded and engaged listeners, or an attentive judge, or proper accountability, a trial becomes less just.

Is listening a lost art? Have we forgotten how to look someone in the eye and hear what he or she is saying without being distracted by what we plan to say next? Listening is not a passive act of staying quiet; it’s an active choice to engage with others, and to be critical and compassionate in equal measure.

It is essential that we all embrace our own individual responsibility for listening. Listening to others is the kind of daily work that improves our society. Listening gives meaning to speech, gives purpose to voice, and gives dignity to people.

Only when we listen can we find common ground. Only when we listen can we forge compromise and a common future. And only when we listen can we begin to heal the divides throughout this country, and build the bridges that are so desperately needed today.

**Dear Editor:**

Many of you know that the people of Oklahoma County recently lost a strong advocate for families, Mr. Melvin Combs. I am certain that a list of Mr. Combs’ awards or accolades could easily take up two columns of your paper, but that is not what made Melvin Combs special. When I saw that Melvin Combs was representing someone on my docket, I knew that person or that family was going to receive high quality representation. When Melvin Combs handled an estate, I knew that the requirements of the law would be met and the “paperwork” would be in order. I know that many of my fellow Judges would echo these comments. While his work in the law was always top-notch, it was his way with people that made him stand out.

Always pleasant. Always on time. Always courteous. My staff loved him. He was a long-term appointee of the Oklahoma County Judges to the Oklahoma County Board of Equalization, to which he provided such exceptional service that when a question was raised about his continued appointment to the Board due to failing health, key Oklahoma County employees that rely on the work of the Board of Equalization offered to pick him up and drive him to meetings so that he could continue his service. They knew that with Melvin, the work would be done and it would be done the right way.

On behalf of my office and the present and former members of my staff, and on behalf of the Judges of Oklahoma County I would simply say this: Thank you Mr. Combs. God bless you Sir. You will be missed. Rest well, my friend.

Respectfully,  
Judge Richard W. Kirby

## Stump Roscoe

By Roscoe X. Pound

**Dear Roscoe:** I have a client whose mother is in an assisted living center. The monthly charge is "\$695 for Room and Board." Because of COVID and her being a very private person, she has not eaten a meal provided by the center since she moved in. She prepares her own mail in her apartment and buys her own food. Shouldn't she be able to deduct the "Board" part of the costs since they provide her no meals? T.H. OKC

**Dear T.H.:** Of course, "shouldn't she be able" is not the same as "is she able." It seems logical to assume that she should be but, as Mr. Justice Holmes observed so long ago, the life of the law is not always logical. In part, the problem arises from usage in modern times of a phrase having a meaning hailing from the past. When contracts for "room and board" became popular in the 19th Century, they meant just that: a room to sleep in and meals served on — you guessed it — a board. The phrase really has little application in a modern rental relation offering a self-contained living such as an apartment or house. Unless the contract provides a different definition, it is almost universally deemed synonymous with "rent." Other sources tend to define it as "anything other than rent." These would include amenities, utilities, and privileges of tenants such as exercise space, social activities, or, as in your case, meal privileges. Again, unless specifically bargained for, usage and frequency of usage do not affect the rental.

**Dear Roscoe:** Do lawyers ever get in trouble for giving advice over social media sent out to the public in general with no actual client? JD, OKC

**Dear JD:** Do they ever! When you go, for example, to a law firm's web site, you'll most likely see a disclaimer regarding the info there not to be interpreted as legal advice but merely for informational purpose. Still, some people can't seem to help themselves. Case in point: *In re Sitton*, [https://www.tncourts.gov/sites/default/files/in\\_rewinstonbranshawsitton.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/in_rewinstonbranshawsitton.opn_.pdf). In this case a Tennessee lawyer whose Facebook profile identified him as a lawyer, a lady complained of the abuse and harassment she was experiencing courtesy of her ex. She threw out the following question: "I need to always carry my gun with me now, don't I? Is it legal to carry in TN in your car without paying the damn state?" Mr. Sitton responded, in part:

If you want to kill him, then lure him into your house and claim he broke in with intent to do you bodily harm and that you feared for your life. Even with the new stand your ground law, the castle doctrine is a far safer basis for use of deadly force.

He followed this up with a warning:

As a lawyer, I advise you to keep mum about this if you are remotely serious. Delete this thread and keep quiet. Your defense is that you are afraid for your life — revenge or premeditation of any sort will be used against you at trial.

The prospective victim became aware of the exchange and filed a complaint. The Tennessee Supreme Court was not amused. It ruled, in part:

Lawyers may of course offer advice on the legal consequences of a proposed course of conduct and may offer counsel on the meaning or application of the law. See Tenn. Sup. Ct. R. 8, RPC 1.2(d). That is not what Mr. Sitton did here. In his capacity as a lawyer, Mr. Sitton offered specific legal advice on how to orchestrate a killing in a way calculated to provide the perpetrator a fabricated defense to criminal charges. Then, in an ultimately unsuccessful effort to conceal the conversation, he directed Ms. Houston to delete the comment thread. Our rules do not permit lawyers to offer advice on how to commit crime with impunity.

The court did not buy Mr. Sitton's efforts to excuse the advice as "sarcasm" or "dark humor." It went on to hold:

We agree with Mr. Sitton that it is hard to conceive of any reason why a lawyer, any lawyer, would offer instructions on how to commit murder and stage a concocted defense. But we disagree with Mr. Sitton that his publication of the advice on a public platform such as Facebook cuts in favor of his position. To the contrary, as discussed in detail below in our analysis of the aggravating and mitigating factors, Mr. Sitton's decision to publish these comments on a public forum made his situation exponentially worse.

I highly recommend reading the opinion, not for entertainment but for education. The thorough analysis provides some examples of where an attorney may or may not go in on-line behavior as well as the requirement that attorneys not act in such a way as to bring disrepute on the profession.

\*\*\*\*\*

Tony Segar left my office with that one word: "useless." A casual reader might think he meant that talking out my differences with this rogue health inspector and/or his near anonymous tutelary would lead nowhere. That still may be the case. But when people here mention "useless" in terms of political hooks, it could only mean our County Freeholder Barry Hughes. He maintained a shaky lead in the polls mostly by producing more pork than Seaboard. I remembered him from when we were kids and his mother used to drag him down the block by the hand and



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force the rest of us to play with him. The only kid in our high school class who had his own credit card, when he went out to eat with us, he'd pick up the cash from the table and say he'd put it all on the card. This went on for a few weeks until we noticed that various restaurants treated us with distinct hostility. A bit of sleuthing turned up that Barry had pocketed the money we left while pocketing the tips for himself.

He did seem to make something of himself, parlaying a couple of panel trucks into a freight business operating all over the Mid-Atlantic area. He had a nice suite of offices in Edgewater, overlooking the Hudson. He had grown larger and balder over the years and looked like a bad Victor Buono imitator. He stood and offered his hand I took it and I shook it. Doesn't cost me to be nice. Like an outsized kid in a grade school desk, his bodyguard and general flunky Billy Woods sat in his own corner of the room. He came towards for whatever reason. I backed him down with my devastating glare.

"So Roscoe, what brings you?" Barry said.

"Pest control," I replied.

"More specificity if you please."

"A weasel with a health inspector's badge."

"Perhaps you mean Anthony Basile. I heard you interfered with one of his inspections. That's a crime you know."

"So's shaking down business owners."

Barry shook his head. "He has nothing to do with either bail bonds or auto parts."

"We're not talking about them."

"Then you're talking about something that's none of your business. Look, OK so first round goes to you. The strings you can pull go closer to the roof than mine. This time. I was gonna let it go. But you insist on interfering and the costs will mount far

higher than some chick you had the hots for in high school is worth."

I stood. Billy came out from behind his desk and tried to intercept me. He reached towards me with his right hand, his left plunging into his pocket for his set of knuckles. I took his thumb to places no human digit had gone before. He went down, brass accessories flying. Barry frantically pressed the panic button for building security. Seems Tony was right anyway you looked at it. Useless.

### Postscript:

Just to let all the guys and gals of the OCBA know, we just past the 10-year marker, and, for my part, I've enjoyed every bit of it. Thanks for the questions, the readership, and the ability to work with the *Briefcase* Board of Editors and the great OCBA staff.



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## Quote of the MONTH

*Find your passion and follow it. You won't find that passion in things or money. Your passion must come from what fuels you . . . it will be grounded in the relationships you have with people and what they think of you when your time comes.*

- Randy Pausch



## Letter from the Editor:

## Falling (and Staying) in Love with Law and the Legal Profession

By: Benjamin Grubb

To paraphrase—and appropriate—perhaps one of the greatest opening lines in film:<sup>1</sup>

“As far back as I can remember, I always wanted to be a [lawyer].”

Well, maybe not quite *as far back as I can remember*; due credit to my (yet unrealized) aspirations in professional sports and/or aerospace, *et al.* The desire honestly manifested not long after I (thought) I learned what it meant to be a lawyer. My very first perceptions came from books, film, television. I first read “To Kill a Mockingbird” in the fourth grade. And my Mom watched “L.A. Law.” But my people were immigrant farmers from England and Germany. They acquired land and they worked their lands as Americans for several generations before me. My grandparents were not lawyers. My parents are not lawyers. Some of my friends and acquaintances are professional legacies of their own forebearers. I can certainly understand why they followed their paths toward law—it was very simply in their blood. I doubt I can say I am the first lawyer in my family (my 98-year-old Grandfather would disagree and has spent years telling anyone who will listen otherwise). Well; how did I get here?<sup>2</sup> I guess I fell in love.

Not *that* kind of love. But I will say

“lawyer” would still be on the list with “astronaut” and “professional baseball/football player (like Bo Jackson)” without the love, support, and urging of my wife.<sup>3</sup> Fire is a better analogy. It burns. It warms. It consumes. It requires fuel. It requires attention. If it is not tended, it could burn out of control or burn out. My fire was (and is) built with words. Reading. Language. Writing. Rhetoric. Advocacy. I recognized lawyers were versed in these trades. Lawyers were smart. Lawyers could use these tools to earn a living, while helping people who can’t help themselves. Lawyers were respected in their communities. And being a lawyer also meant, someday, maybe, I could be a Judge. Or the Mayor of a City. Or in Congress—never mind. But fine examples of all of these a lawyer could also make! These were the reasons for my first pings of attraction to the law. I was alight with what our late friend Steve Barghols called “the possibilities.”

Alas, my path to law school was not a straight one. Some of my friends and colleagues<sup>4</sup> had similar notions and acted upon them. They studied hard. They set goals. They went straight from high school to college to law school in a few short years. Not I. By the time I got to college, all I knew about what I wanted “to do” was as nebulous as “something in business.” So I chose “International Business Management” as a major.<sup>5</sup> My junior year, I got a mailer from a law school in Oklahoma called “Oklahoma City

*Alas, my path to law school was not a straight one. Some of my friends and colleagues had similar notions and acted upon them. They studied hard. They set goals. They went straight from high school to college to law school in a few short years. Not I.*

University.” I read it. It was then I thought, “could I actually do this? Should I?” As it turns out, I was content to leave these (rhetorical) questions unanswered, and I earned my degree.<sup>6</sup> After college, I embarked on a (not fledgling) career in sales. My girlfriend got into Graduate School . . . in Oklahoma. We moved there. We got married. We bought our first house. I did all these things; none of them unexpected of “respectable” folks my age. And while I was not unhappy, I was unfulfilled, at least in my career. When discussing these feelings with my lovely wife, she asked: “what do you want to do?” I replied, “I want to go to law school” (as if it were *that* simple). Her reply was just as simple: “so, do it.”


As it turns out, it wasn’t *that* simple. It turns out there was a process for getting into law school. It turns out there was an admission test: The LSAT. I signed up for it and prepared for it the best way I knew how (a book entitled *LSAT for Dummies*).<sup>7</sup> I received an admittable score. I visited the Law School, which sent me a flier all those years ago. I spoke to the Dean of Admissions, someone named Bernard Jones, who encouraged me to apply. I applied. I got in. Law School began. Day one, class one, case one, like so many before me, I was initiated in the Socratic method—headfirst (and without a helmet). I knew preparation mattered. I came to learn presentation also mattered. My choice of words mattered. No matter how well I knew the material, if I chose my words poorly, I *would pay*.<sup>8</sup> Fear and embarrassment are still two of the greatest motivators on planet earth.

As time wore on, my fire was fueled by these exercises and by the chance to apply

the legal concepts I learned in my classes. I wanted “my turn.” During this time, I also became *even more* enamored the sound of my voice.<sup>9</sup> My 2L and 3L summers were spent as an intern, assisting actual lawyers doing actual legal work for actual clients. I loved this. And they paid me! At this juncture, I knew I loved this work and was sure it was well worth the time, effort, and associated costs. After law school, I spent the requisite agonizing summer testing this self-professed love studying for—and passing—the bar.

Through the years of my practice, I’ve been fortunate enough to work with some amazing people. I’ve learned a great deal from them,<sup>10</sup> the least of which is understanding the practice of law is literal and deserving of nothing less than my best. Perhaps the most surprising part of my legal journey has been the “loss” of colleagues along the way to other endeavors. Some of them did not practice long. Some of them never practiced. More than one noted they never would have pursued a career in law “had they known . . .”<sup>11</sup> a sentiment I did not and cannot understand. High or low, thin or flush, I look back on my own winding road certain that once I started down this path, I never wanted to be *anything other* than a lawyer. I wanted that which I now have. Whether or not I understood it, the fact is our shared profession and experiences just wasn’t the same for these colleagues. Maybe they didn’t feel the same way about being a lawyer as I did. Maybe they didn’t feel the same way about being a lawyer they once did. Maybe they never had those feelings in the first place. I also know at least one person who pivoted *completely* out of a legal career only to find her way back some years later. I can only surmise something reignited; she’s back nevertheless.

I’m not one to impart advice, as it would be grounded in my own experience. Ask yourself: “why did I start down my own path?” To be sure, life as an Attorney has its rewards and its challenges alike. Some days are great. Other days are grueling. I am certain our chosen profession is not unique in that regard. We are all the directors of the films of our own lives; If we get too caught up in the “how” it’s easy to lose sight of the “why.” As a lawyer, are there embers in place of flames? Ashes in place of embers? Flames consuming other aspects of your life? Perhaps it’s high time for reflection on your own journey and motivations as lawyers. Tend your fires.



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1. I hereby pledge to send, via mail, a token of my respect to the first person who a) reads this article; b) reads this footnote; and c) correctly (and without googling it—on his/ her honor) identifies via e-mail to bgrubb@46legal.com the referenced film’s:

1. Title  
2. Director; and  
3. Year of release

2. Talking Heads, *Once in a Lifetime*, Remain in the Light (Sire Records 1980).

3. I love you, Lauren!

4. *i.e.*, the many smarter than me.

5. I made the mistake of assuming career prospects in “business,” in Missouri, for students who had a minor in French, were nothing short of plentiful.

6. I am glossing over much with this sentence. I also worked during college. And I’ll admit I was also quite amenable to distractions of a vibrant social life and exaggerated sense of place in the so-called college party “scene.”

7. Blackwell, Amy Hackney, *LSAT for Dummies* (2005).

8. And pay I did. Art LeFrancois, *et al.* counted coup. But I always rode again.

9. I was broken of this and taught the value of appropriate silence very early in my career, thankfully.

10. Some of those lessons, like in law school, had a price.

11. I know lots of lawyers who earn a wonderful living. Some of them are wealthy even. Others are not (and may never be). Wealth doesn’t always correlate to legal proficiency. And don’t get me started on the distinction between “wealthy” and “rich.” But I caution anyone considering law school “because lawyers make lots of money and you want lots of money:” *you are going to have a bad time.*

# To my father, the Judge, on his retirement.

By Jeremiah Buettner

On December 31, 2020, an era quietly (very quietly) ended with the retirement of Oklahoma Court of Oklahoma Civil Appeals Judge Kenneth Buettner. Judge Buettner served the State, the Bar and – without getting too heavy-handed about it, *Justice* – for twenty-five years. In the interest of full disclosure, my opinion of him *may* be a bit biased, because in addition to his other great attributes and accomplishments, he also happens to be my father.

Judge Buettner is a born Oklahoman, graduating from Oklahoma City's John Marshal High School before travelling down to Fort Worth to begin his undergraduate career at Texas Christian University. Judge Buettner's Horned Frog period was clearly pivotal in his personal development, even beyond the continued propensity to wear purple with regal regularity. He obviously learned a lot, made a few lifelong friends, and – most importantly from my perspective – met my mother. In July of this year, they celebrated forty-five years of marriage, so that apparently worked out well for all concerned.

After graduation, Judge Buettner began his legal journey by attending law school at Southern Methodist University in Dallas, after which he served in the Air Force Judge Advocate General Corps. In 1980, my family (which by this point included my sister Amy, but did not yet include me) retired from the Air Force, and my father pondered



his professional options from their house in Colorado.

One day, Judge Buettner spoke to his mother, who was employed in the library and records room of a then-small Oklahoma City firm called McAfee & Taft, encouraging him to apply there and return to Oklahoma City. He did so, and worked as a litigator until February 1996, when Governor Frank Keating appointed him to the Court of Civil Appeals.

In the past forty years, Judge Buettner has participated in Leadership Oklahoma, Leadership Edmond, acted as a trustee for the Oklahoma Foundation for Excellence, was a trustee and President of the Edmond Public Schools Foundation, a member of

the Parish Council and various boards and committees at St. John the Baptist Catholic Church, and was active in the Oklahoma County Bar Association (including serving as its Vice President).

## Legacy

It is difficult to get a handle on a judge's legacy. Notable judicial legacies have been crafted by promoting controversial jurisprudential or political positions, or writing groundbreaking decisions altering the course of extant case law. This is not exactly my father's style.

When asked in 2012 why voters should retain him as a judge, he responded:

"Our job is to review the trial court

judgment and the record of the case to determine whether an error has occurred in the trial court process or the application of law to the case. In performing that duty, we put on the blindfold of Lady Justice to disregard the status of the parties, or the reputation of the attorneys, or the winds of public opinion, and apply the law to the case. ... That has been my operating principle."

This response is all well and good, but is not exactly a hot take.

Nor is it easy to distill his legacy from a summary of his opinions. Unofficial statistics put the number of his authored opinions at well over 1,600, which expands to nearly 5,000 if you include concurrences and dissents. Needless to say, reviewing even a representative sample of these opinions to extract a unifying principle is daunting.

However, based on my knowledge of him, plus some key insights from a few co-workers, I can break my father's judicial philosophy down into our parts.

## 1) *Be Right (Follow the Law).*

One may be tempted to dismiss my father's statement above as a generic response befitting election season, but here is the secret of Judge Buettner's success: that opinion is not only honestly, but *fervently* held. To my father, even the toughest decisions come down to the simplest

See RETIREMENT, page 10

According to the ABA, an attorney in private practice should expect two to three claims during their career. Even claims without merit are costly and time-consuming to defend.

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# 2021: Groundhog Day 365

By: Mike Brewer  
Past President, OCBA

In years past I typically wrote a column satirically looking back at the prior year's calamities month-by-month. I did not endeavor to create such a painful review for 2020. Many people lost much in 2020. Yet somehow, we looked forward to the calendar turning to 2021 because things would get better. In retrospect every Year in Review from the past carries the same theme of the past year being painful and looking toward the calendar changing with hope for something better. So maybe 2020 wasn't so different than other years except that we were able to see it every day on our televisions, computers, and phones. There was a time in 2020 when many people shared that every day was like Groundhog Day without any sense of what day of the week or month that it was. We looked toward 2021 with hope and prayers for unity.

I read that most New Year's resolutions are abandoned by January 19th each year. I'm not even sure how you track such things, but it does sound right. I'm not big on resolutions but I am big on goal setting in your personal life, business life, and in relationships. One of the giant-sized problems with working from home or being quarantined is that you lose touch with relationships. As we return to the new normal each of us needs to reach out and reestablish those relationships that fell by the wayside and to also establish new relationships. Even if this is accomplished by making a call or sending a note because we still cannot meet for coffee, do it. It is important to your wellbeing and you don't know how significant an impact making contact can have on the receiver. We are in the high stress legal business and going all gas and no brakes usually ends up with you in the ditch. I'm borrowing from a social media meme and I'm not sure who to attribute authorship to, but I thought it was perfect for our profession:

Being a lawyer is really just having everyone mad at you, all the time. Opposing party. Opposing counsel. Your client. Your client's mom. The judge. Clerks. Random people on the street asking for legal advice that is out of your practice area. Your dog. Basically everyone.

That does sum up our situation some of the time, but it is those other times when you have just won a victory for the client, wrote the perfect brief, negotiated the best deal, or received the unconditional love of your pet, that we celebrate and take a deep breath. We need to better recognize the victories we should celebrate and breathe a bit more easily. If you are having issues



*The U.S. Supreme Court opinions from last term were primarily issued unanimously. The rule of law remains constant, is foundational to our system of government, and always needs your support.*

don't hesitate to reach out to someone for help. The OBA Lawyers Helping Lawyers provides support to our profession for these types of needs.<sup>1</sup>

As I write this article, Groundhog Day just happened—the real one—and now have more winter to look forward to. We are also preparing for the attack of the polar vortex. It really does always seem to be something coming just around the next corner. COVID-19 continues to be a real issue even as the vaccination roll out continues. We are wearily watching as three mutated strains of the virus spread, not knowing what those effects will bring to us. Last year at this time it seems like we viewed COVID-19 in the same manner. We have an impeachment trial ongoing, same as last year. Unity lasted for one day during the inauguration and now everyone is back to the partisan politics, same as last year. Russia and China seem to be showing that they are not our friends, same as last year. We have a border security and immigration crisis, same as last year. Several extremist groups on both political flanks are acting out, same as last year. The government continues to print money which eventually must lead to inflation unless economic cycles are somehow undone. The U.S. Supreme Court opinions from last term were primarily issued unanimously. The rule of law remains constant, is foundational to our system of government, and always needs your support. We are resilient and continue to move forward, even with

pains and sorrow.

So, in some ways 2020 and 2021 aren't that different and don't deviate much from other historical events. Having said that I do want to make a point that the COVID-19 virus is real. You need to continue to socially distance, wash your hands with soap often, wear a mask, and get the vaccine when it is your turn. 2021 brought COVID-19 into my home, so for me the new year was already no better than 2020. We were fortunate, were not hospitalized, and are mostly back too normal. We took precautions and did all the right things, but it only takes one exposure to blow it all up. The road back was not that easy, and I hope you don't have to go through it. My sense of smell still has not returned. You don't sufficiently appreciate the role that smell plays with your sense of taste until you try things like peanut butter, grilled onions, red wine, whiskey, and chocolate without the sense of smell. COVID-19 caused me to miss National Pie Day for goodness sakes. Really folks, don't let your guard down and please continue to take COVID-19 precautions.

During my COVID-induced downtime, I watched the movie *Twister*, which was released 25 years ago<sup>2</sup>. This movie introduced the world to life as an Okie, storm chasing, weather lord Gary England, Bill, Joe, the Fujita scale, and a young Phillip Seymour Hoffman wearing the iconic block OU cap. This reminded me of the Oklahoma standard. Regardless of whether it was 1996, 2001, 2020 or 2021, we help

our neighbors and even strangers. I also watched/listened to some Garth Brooks Facebook live<sup>3</sup>. As always, his music and wisdom grounded me on some happier thoughts. It wasn't blame it on my roots or thanking God for unanswered prayers that caught my attention, but it was his commentary on the song *American Pie* which was released 51 years ago<sup>4</sup>. His words were something to the effect of this is a classic song because whether you are 10 or 80, you can sing along with these lyrics at the top of your voice and it just makes things better. So, give it a try. Stay hopeful, maintain the course, and keep the faith. It is the way:

*So bye-bye, Miss American Pie  
Drove my Chevy to the levee, but the  
levee was dry  
And them good ol' boys were drinkin'  
whiskey and rye  
Singin', "This'll be the day that I die"*<sup>4</sup>

*Michael W. Brewer is an attorney, founder, and partner of Hiltgen & Brewer, P.C. in Oklahoma City, Oklahoma. To contact Mike, email [mbrewer@hbokc.law](mailto:mbrewer@hbokc.law), call (405) 605-9000 or tweet him at @atty-mikeb. For more information, please visit [www.hbokc.law](http://www.hbokc.law).*

1. [www.okbar.org/lhl](http://www.okbar.org/lhl). 800-364-7886

2. *Twister*. Directed by Jan de Bont, Universal Pictures/ Warner Bros/ Amblin Entertainment, 1996.

3. Brooks, Garth (2021). *Facebook Live*, <https://www.facebook.com/GarthBrooks/>. Accessed February 5, 2021.

4. McLean, Don. "American Pie." *American Pie*, Ed Freeman for The Rainbow Collection, Ltd., 1971.

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# The Right to “Bare Arms?”

By Katherine Mazaheri  
and Mary Rahimi

As we start seeing more sunlight in our days, the many signs of Spring include attorneys shedding their layers and trading winter coats for blazers. But with a bar card comes the great responsibility of limiting your wardrobe with a professional and conservative balance that meets each district’s required dress code. In this COVID-conscious world, many of us have been in WFH (“work from home”) mode for so long that putting on a suit or dress shoes now seems like a foreign concept.

You may be surprised to learn that many counties have their own rules regarding appropriate courtroom attire. Oklahoma County Local Court Rule No. 40 governs Courtroom Conduct, specifying certain standards of professionalism required in our County.<sup>1</sup> These rules include dress codes for attorneys. For men, attire is specified to include coats and ties.<sup>2</sup> For women, attire is advised to be “professional,” such as conservative dresses, suits, and pantsuits.<sup>3</sup> The letter of these rules also specifically exclude jeans, warmups, jogging suits, sweats, shorts, or other casual or athletic clothing, including athletic shoes.<sup>4</sup> If you, like us, found yourself recently inspired by our new Vice President Kamala Harris’s suit and converse look, be advised the rules direct you to leave your converse at home; such a look is proscribed inside the bar.

While these rules appear to be specif-



Katherine  
Mazaheri

ic enough, experience has shown what may be considered fashionable and professional may not be within the County’s interpretation of the latter. Our practice in and out of state and federal courtrooms quickly showed us sleeveless tops are a “no-go” in the courtroom. In Oklahoma County, we learned the hard way that exposed shoulders will earn you a ticket out of the courtroom. So, if you have a sleeveless top or dress that has been collecting dust in your closet throughout winter, do not make the mistake of forgetting to pair it with a smart jacket or blazer prior to entering the courtroom. Modest and conservative dress is the best way to navigate the courthouse; leave your Michelle Obama inspired sheath dress for a business casual day at the office.

Tulsa County also has specific rules regarding courtroom attire.<sup>5</sup> For men, it is specified they shall wear coats and ties, and women shall wear “suitable attire.”<sup>6</sup> Interestingly, Tulsa County has specific rules regarding a modified dress code from Memorial Day through Labor Day, which modifies acceptable professional wear for summer months. The “summer rules” dress code is altered to include short-collared sleeves without ties and business casual slacks.<sup>7</sup> The rules fur-

ther specify exclusions to the dress code, stating that casual shirts without collars, sweatshirts, T-shirts, sweat suits, shorts, athletic wear, and denim are still prohibited, despite the altered dress code.<sup>8</sup> For women, the same exclusions apply, with the addition that tight, sheer, low-cut clothing, spaghetti straps, open back, tank tops, yoga pants, dress shorts, and miniskirts are also excluded.<sup>9</sup> Women are also prohibited from wearing athletic shoes, moccasins, flip-flops, and platform heels.<sup>10</sup> If you’re frequenting Tulsa County this summer, you can leave your suit coats at home so long as you meet the other requirements. While these summer rules are more inclusive for women’s wardrobes, allowing sleeveless tops or sheath dresses, to be safe we advise opting for short-sleeve blouses paired with suit pants, a knee-length skirt, or a dress.

According to Fashion Psychologist, Dawnn Karen, “The clothes enter first.”<sup>11</sup> When you enter a room, your clothes tell people who you are before you open your mouth to speak. Even while you are silent, your clothes are sending signals that are not only representative of yourself, but of your client as well.<sup>12</sup> When you appear in court, your knowledge, preparation, and your look are all part of your presentation before the judge, opposing counsel, the jury, and your client. Make a conscious effort in your clothing as it signals professionalism and competence to your client and the Judge; visual cues are

certainly a component of the presentation of your case. Similarly, showing up in violation of the courtroom-required attire can convey disrespect to the Court—and attendant disservice to your client. When we wear our pantsuit “uniforms,” we remember that when we walk into a room representing a client, we want that client to feel reassured that they have hired the right person for the job. The right to bare arms may be exercised in Tulsa during summer months. In Oklahoma County, shoulders are still “concealed carry.” In either venue, we will stand and professionally deliver! On a serious note, even if courtroom dress codes can be interpreted as restrictive (especially during the warmer seasons), remember the rules remain effective and deserving of respect and observance.

For more on acceptable professional looks, see MazModern.com, where I strive to empower professional women to create fashion forward looks that are practical, inspirational—and situationally appropriate.

1. Rules for the Seventh and Twenty-Sixth Judicial Districts, Rule 40.13

2. Id.

3. Id.

4. Id.

5. Rules for the District Court of Tulsa County, Rule 10.

6. Id.

7. Id.

8. Id.

9. Id.

10. Id.

11. Dawnn Karen, *Dress Your Best Life* 35 (2020).

12. Id. at 20.

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## Old News

OLD NEWS – Vol. 13, No. 2 November, 1980

## KRAMER v. KRAMER NOT MURDER?

By Honorable Ed Dycus

Since Kramer vs. Kramer is the first academy-award-winning film in a long time to be named after a law suit, it seems somehow appropriate to have a review of it in The Briefcase, a law-related publication.

I kept expecting someone else to do it, but no one did. Since the time is growing short (in a few more months even appellate judges won't remember it), I decided to offer a volunteer account.

Naturally, my first intent was to go see the film. But then I learned that while I had been sitting at home watching Monday Night Football, the price of movie tickets has soared to \$3 or \$4.

After gulping a few times, I decided quickly it would be more appropriate to cross-examine a few chumps – I mean people – who had already seen the film and write the review from these accounts.

I wouldn't mind 75 cents for a good movie, but four dollars? Actually, the

last picture I saw worth the money was "Adventure of Roxie Hart". It didn't win many awards and did not have the ABA seal of approval, but it was funny. And that Ginger Rogers!

But back to the Kramers. As all of us legal-trained minds can tell at a flash, it is not about a murder trial. My witnesses weren't sure whether it was a divorce or merely a child custody case, but it was certainly domestic relations.

The story begins with this man, woman and child living in New York. He goes to the office each day while she stays home to take care of the kid and tries to remember her middle name.

One day she loses her identity completely and so when Dustin Hoffman comes home (as either Kramer of the first part or Kramer of the second part) she tells him she is leaving to recover it. He suggests she looks at the ID cards in her wallet, but she leaves for San Francisco.

Why, you may ask, did she go to San

Francisco to look for what she lost in New York? That is the way of the world, my friend.

People trying to find themselves never look in Keokuk, Iowa, or Enid, Oklahoma. What is lost there will just have to stay put.

After a few months in therapy she not only finds herself but gets a wonderful job and enough annual leave to go back and get her kid. This is lightning speed for finding yourself in California (some people have looked for decades fruitlessly) and casts doubt on the reality factor of Kramer vs. Kramer.

Meanwhile, Kramer has been struggling with raising his son, whom my witnesses thought was the real star of the movie.

The father's problems are great, because, while the kid's face is familiar, he never bothered to get acquainted. He also is a bungler, like virtually all fathers and husbands in films and on TV. Well, there wouldn't be much of a story if Kramer were really competent, I guess.

He loses his job because he goes to pieces when the boy is injured slightly at school.

At this juncture, Ms. Kramer comes flying out of the west with her custody suit.

My witnesses felt the courtroom scenes were fairly realistic, but they didn't like the way the case turned out. They were sparse on details about the actual evidence, but I secretly began to feel I could have pulled it out if only Kramer had come to me.

The judge not only gives Ms. Kramer custody, but orders Kramer, who by this time is making less than Ms. Kramer, to pay child support.

Then there is the obligatory surprise twist at the end which I would rather not tell you about.

The fact this movie won so many awards makes one wonder about the competition, which one has not seen either, or even questioned anyone about.

I'm just glad I saved the \$4, though I do wonder what happened to it. I don't seem to have it on me at the moment.

## 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.*

## NEIGHBORHOOD SERVICES ORGANIZATION

NSO volunteers are essential in carrying out our mission of transforming lives and encouraging independence through safe, healthy homes, dental care and nutrition. Our priority is to provide volunteer experiences while ensuring the safety of our clients, volunteers and staff.

To ensure the safety of our residents, volunteers and staff, we have modified some of our volunteer opportunities. When applicable, volunteers will be required to follow COVID safety guidelines including, but not limited to wearing a mask, social distancing, temperature checks and completing applicable waivers. If you have any questions, please contact [volunteer@nsookc.org](mailto:volunteer@nsookc.org).

## HOMELESS ALLIANCE

The Homeless Alliance has a variety of volunteer opportunities throughout the year. To find out more about the latest needs and to sign-up, visit our volunteer website. We have imple-

mented new volunteer procedures to help limit the spread of the COVID-19 virus and protect clients, volunteers, and staff.

## OKLAHOMA HUMANE SOCIETY

Get started at [foster@okhumane.org](mailto:foster@okhumane.org). Our foster team would love to get you started on your life saving journey. OK Humane provides all veterinarian approved medical care and high quality food for your fosters. Bottle baby fosters will receive a baby bag kit that contains additional supplies to take home. We will provide an on-site orientation to discuss how our program works and we can help you decide what animals will work best for your household.

## HAPPENINGS

continued from page 1

Docket previously assigned to Judge Kendra Coleman.

- Judge Coleman is assigned to the VPO/MH Docket.

## March

- James Siderias is appointed as Special Judge and assigned to the Probate

Docket previously assigned to Judge Kirby.

## July

- District Judge Trevor Pemberton is appointed to the Court of Civil Appeals

## August

- Special Judge Sheila Stinson is appointed to the District Court and assumes the role of Chief Judge of the Juvenile

Division (replacing Judge Pemberton)

- District Judge Kendra Coleman is removed from office by the Court on the Judiciary
- Judges begin rotating the VPO dockets and retired Judges Don Easter and James Croy start hearing the MH (Emergency Detention) docket.
- Judge Stoner assumes responsibility over Veteran's Court.

## September

- Special Judge Geary Walke retired.
- District Judge Susan Stallings took over the criminal docket previously assigned to Judge Natalie Mai and continues to maintain her civil docket.
- District Judge Kenneth M. Stoner was assigned to the ReMerge Docket previously heard by Retired District Judge Jerry Bass.

## November

- Special Judge Elizabeth Kerr is assigned to the FD docket previously heard by Judge Sheila Stinson.
- Perry Hudson is appointed as Special Judge and is assigned the criminal misdemeanor docket previously heard by Judge Kerr.
- The Guardianship cases heard by Judge Kerr are reassigned to Judges Allen

Welch Jr. and Judge Siderias.

## December

- District Judge Thomas Prince is appointed to the Court of Civil Appeals
- Catherine Burton is appointed Special Judge and takes over the Sixth floor dockets previously assigned to Judge Walke, including the Anna McBride Mental Health Court.

## January 2021

- District Judge Don Andrews begins hearing the MH (Emergency Detention) docket until a new judge is appointed.

Oklahoma County is currently operating short of three District Judges, pending appointments by the Governor. According to the Judicial Nominating Commission's website, the application period for two of those openings has closed, and they are in the process of scheduling interviews. The third position, for Office 2 of the Seventh Judicial District (Judge Prince's former seat), just opened for applications recently. More changes to assigned dockets are anticipated as the District Judge seats are filled. Please direct any questions regarding docket assignments to the Trial Court Administrator, Renee Troxel.



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## Bar Observer

### GABLE GOTWALS TO RELOCATE TULSA AND OKLAHOMA CITY OFFICE

In March, GableGotwals' Tulsa office will relocate to the Vast Bank building located at 110 N. Elgin Ave. in the historic Greenwood District and will occupy approximately 42,000 sq. ft. among the 2nd, 3rd, and 4th floors. Later this summer, the Firm's Oklahoma City office will also relocate to the new BOK Park Plaza building located at 499 W. Sheridan Ave. and will occupy approximately 20,000 sq. ft. on the 22nd floor. As the Firm recently celebrated its 75th anniversary, these new locations will allow GableGotwals to be well positioned for many years to continue providing excellent client service and allowing for future growth.

### CROWE & DUNLEVY LAUNCHES LEGAL PODCAST

Crowe & Dunlevy has launched Briefly Legal, a new podcast featuring conversations about important legal issues and considerations.

Four episodes are currently available. Topics covered include employment law under the Biden Administration, OSHA pitfalls to avoid, how to handle COVID-19 vaccinations in the workplace and tax impli-

cations of the U.S. Department of Labor's latest rule on independent contractors.

Briefly Legal is available on popular podcast platforms including Apple Podcasts, Spotify and Google Podcasts.

Listeners who subscribe to Briefly Legal will receive links to new episodes as they are released. To subscribe or suggest topics for upcoming episodes, visit [crowedunlevy.com/brieflylegal/](http://crowedunlevy.com/brieflylegal/).

### OKLAHOMA ATTORNEY LEZEL SAFI JOINS BEDLAM LAW IN YUKON OKLAHOMA

John A. Alberts is happy to announce the addition of a new attorney to the practice.

**Lezel Safi**, both an Oklahoma State University and OCU Law graduate, will be joining the firm to handle Family Law, including, but not limited to, Divorce, Custody, Paternity, and Guardianships.

A fourth generation Oklahoman, Safi is proud of her Oklahoma heritage. She attended Edmond Public Schools, graduating from Edmond Memorial in 1991. After graduation, Oklahoma State University served as her home while earning her Bachelor of Science in Design, Housing, and Merchandising. While attending OSU, Safi was a President's Leadership Council

scholarship recipient, active member of Pi Beta Phi International Fraternity, and participated in numerous campus steering committees. After graduating from Oklahoma State, Safi was selected as a Traveling Graduate Consultant for Pi Beta Phi International Fraternity.

In 2004, she made the decision to step away from corporate America to raise her family, Safi kept busy with PTA, becoming a dedicated volunteer and Partner in Hope with the Regional Food Bank of Oklahoma and an active member of the Junior League of Oklahoma City. In fall, 2016, Safi, with her motto, "Purpose, Passion, Progress," in mind, decided to chase her life-long dream of becoming a lawyer and attended Oklahoma City University School of Law. She was a Merit Scholar, OCU School of Law Admissions Ambassador, Duke Law LENS Scholar, Vice President of Communication for Federal Bar Association, Oklahoma Indian Legal Services Wills Clinic Volunteer and selected as a student member of the William J. Holloway, Jr. American Inn of Courts. Safi earned a CALI award for the highest grade in the Law of Armed Conflict, was awarded Dean's Honor Roll and was named William J. Holloway, Jr. Student Award recipient

in 2019. After graduating from OCU Law and successfully passing the Oklahoma Bar Exam in 2019, and completing a year-long internship with Gilchrist Aviation Law, she then practiced as an associate attorney with Gilchrist Aviation Law, P.C.

Safi is an active member of the Oklahoma City Non-Profit community which entails The CARE Center of Oklahoma County Board of Directors, Rainbow Fleet Child Care Resource Center and Early Childhood Center Board of Directors, member of Class 38 Leadership Oklahoma City, United Way Women's Leadership Council, Club 29 Downtown OKC Rotary International member. Safi proudly joined Bedlam Law in September 2020, as an Attorney at Law. She focuses her practice on issues regarding family law, where she is able to provide resolution and advocate fearlessly, yet gracefully, for all clients.

She builds and expands her legal knowledge with continuing education and serving as Program Administrator for the William J. Holloway, Jr. American Inn of Courts, as well as a licensed member of the Oklahoma Bar Association and the OBA Family Law Section, Oklahoma County Bar Association, American Bar Association and the Federal Bar Association.

### RETIREMENT

continued from page 5

process: Understand the facts. Understand the law. Apply the law to the facts. Be exceedingly conscientious for each step, because whether the case is a landmark decision or an unpublished, non-precedential decision, every case impacts real people's lives.

This directive was well known to his staff attorneys, who confirmed Judge Buettner's dedication to following the law. One of Judge Buettner's former staff attorneys, Bevan Stockdell, notes "he was absolutely dedicated to his work at the Court of Civil Appeals, and gave every case the contemplation it deserved, and took pride in each opinion."

His position on this was also appreciated by his colleagues on the bench. Long-time friend and colleague Judge Larry Joplin noted that "[o]ne of the highlights of my time at the court has having Ken Buettner as a colleague. Not only does he have a deep knowledge of the law, but more importantly, he deeply appreciates the role the law plays in all activities, individually and collectively. Those are two qualities every appellate judge should have."

My father's legacy, then, is not some arcane philosophical explanation synthesizing historical arguments of the law's role in an ordered society; rather, it is the fact that every day, Judge Buettner *manifested* the law's role in our ordered society. His legacy is the corpus of thousands of cases that he has participated in over twenty-five years. Those opinions mattered not just in the moment, but continue to form part of the legal landscape with impacts echoing throughout the future. And for Judge Buettner, each represented the best he had to offer.

#### 2) *Be Instructive.*

As his career long-time staff attorney

*My father's legacy, then, is not some arcane philosophical explanation synthesizing historical arguments of the law's role in an ordered society; rather, it is the fact that every day, Judge Buettner manifested the law's role in our ordered society.*

Susan Beaty states, in addition to following the law "one thing that stands out is his interest in opinions being helpful and instructive to lawyers and judges."

As a practitioner, I had the opportunity to see my father in action (well, in that I was reading something that he wrote) in a way many sons likely don't get to experience. And I have to say, his opinions are excellent, and exactly what one wants as a litigator doing research. I say this without regard to whether I agreed with the decision itself, indeed, as I was never before my father as an attorney, my interaction was largely research, and the point in research is trying to determine what the law *is*. And there are no better judges for this purpose.

I recall my early, associate years reading decision after decision trying to discern the holding from dicta to the (quite-honestly) frequent tangents of the author. And while ambiguity can be helpful (depending on your position), finding the clearly set forth, expertly articulated answer is something practitioners appreciate. If your job was to answer a legal question, and you were fortunate enough to find a Judge Buettner opinion on the issue, you had your answer.

#### 3) *Be Productive.*

Ms. Stockdell notes that Judge Buettner was an early bird at the Court, often arriving before his colleagues and greeting

them when they came in with an infectious smile. Ms. Beaty notes his dedication to "judicial economy and having a productive chambers." In the same response in 2012, Judge Buettner noted the importance of not just being judicious but expeditious, noting that "if we do [our job] in a timely manner, all parties should feel that the appellate review of their case has been fair."

Judging by his stats, there can be little argument that he succeeded in this respect.

#### 4) *Be Happy.*

A final aspect of Judge Buettner's tenure that bears noting is his personal impact. He is a people person that knows the importance of a leader's disposition on his team, and that creating a joyful working environment was not just a good thing to do professionally, but something that was his responsibility as a good human being.

To Ms. Stockdell, he was a mentor that challenged her intellectually and always supported her professionally. "Working for Judge Buettner was truly a pleasure." She recalls that his magnanimity and support started immediately. "I didn't even have my bar exam results when I started [at COCA]," she recalls, with another telling detail about Judge Buettner's ability to read people, "he went out on a limb and hired me right out of law school." Judge Buettner's ability to read people, and then support and encourage them was undoubtedly a key strength. Ms. Beaty reflects

that "his commitment to doing good work, being productive, and making the court a happy place to work have made a lasting impression on COCA and Oklahoma Jurisprudence."

Finally, it would be remiss of me not to touch on one of my father's greatest achievements, at least from the point of his son: setting the absolute model of work-life balance. Nobody can question his dedication to his position, and yet his co-workers also could not help but note his dedication to his family. From his ascension to the bench (and, honestly, for as long as I can remember), my father's arrival at home was consistently in time for family dinner. He is devoted to my mother, and was the epitome father. Like his opinions, his parental rulings were focused on the rule of the household, with that same attention to being instructive. Indeed, even when those rulings went against me, my father was never so much mad as concerned that I had learned why any misbehavior was wrong and, especially when it resulted in negative consequences, that I did not leave the issue without learning from it.

I expect my father to be mortified at the existence of an article of this length doting on him. Of all his qualities, his humility is an obvious one, but a thematically difficult one to praise and honor. So, instead of describing the near saint-like lack of arrogance and presumption, I'll honor him by doing what he would do in this situation: diffusing praise on others. Over the past 25 years, he has worked with several highly qualified staff attorneys, which he insists (enthusiastically) were instrumental in his job. He would also want me to honor his colleagues on the bench, whom he always speaks of with warmth and respect. And, of course, he would want to point out the love and support of his wife, Barb Buettner.

Congratulations on retirement, Dad.





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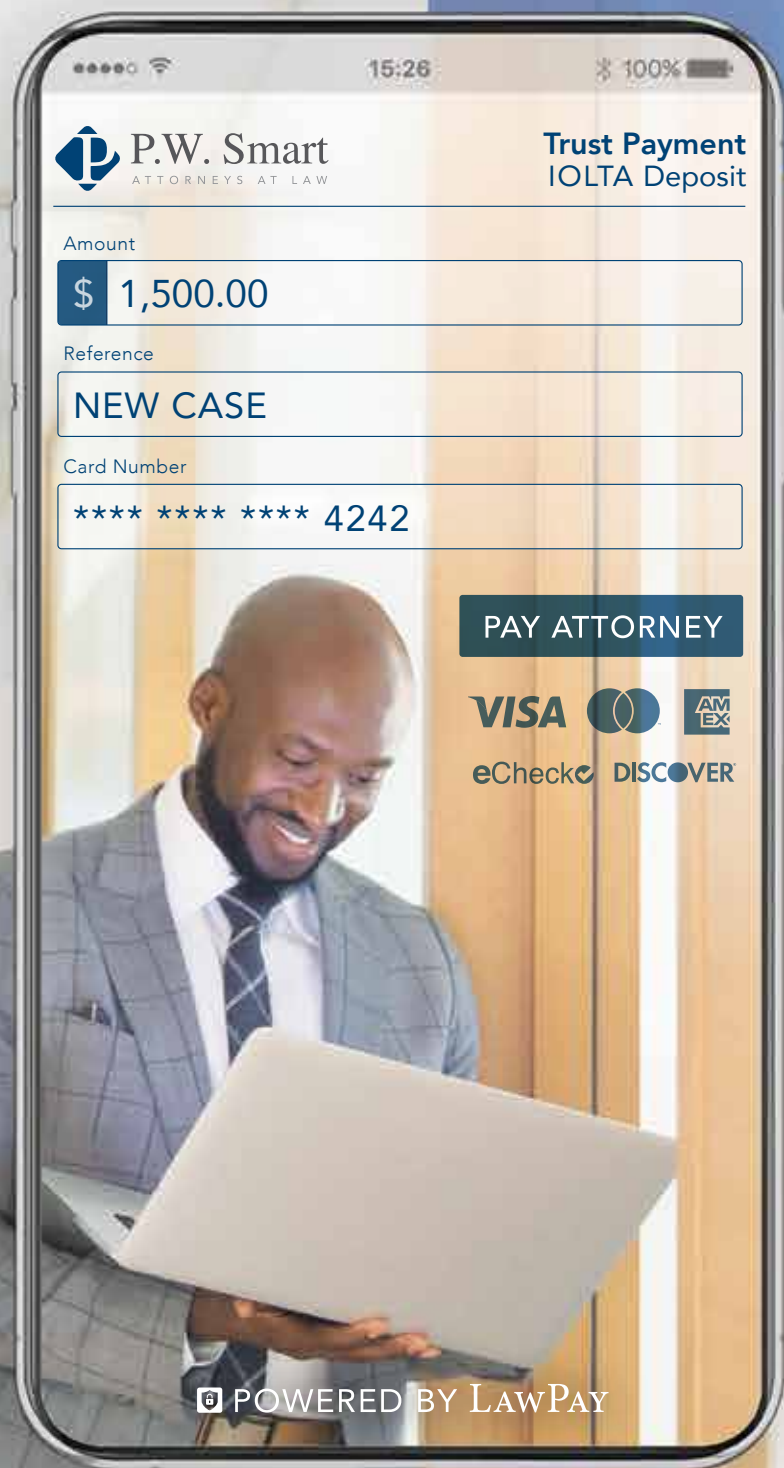
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