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A Death at Crooked Creek: The Case of the Cowboy, the Cigarmaker, and the Love Letter, by Marianne Wesson (book review)

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Coyle examines the players behind the four cases she discusses: the litigants and their lawyers.

The subjects of Coyle's four cases—health care, race, guns, and money—are volatile and divisive, but *The Roberts Court* reminds us that flesh and blood human beings brought these issues to the Court. For example, Coyle goes into great detail about the motives behind the parents in Seattle and Louisville who brought lawsuits against their school districts. They were simply parents who wanted the best education for their children; racial politics was the last thing on their minds. Similarly, Coyle brings us close to the lawyers behind the gun litigation. The story is a simple one: two lawyers having a cocktail one night in Washington, D.C., talking about their favorite issue, gun ownership, and brainstorming about the perfect plaintiffs to challenge the District's gun ban and, ultimately, to get the Supreme Court to rule that the Second Amendment protects an individual's right to possess a firearm.

We learn about the odysseys of these cases through the lower courts, the litigation strategies behind them, and how the Supreme Court arrived at its decisions. We learn much about how the Court really works—how it decides which cases to hear, whether oral arguments make a difference, and other details. We even learn a bit about the professional relationships between the justices:

Another justice asked, "Who on the Court is the sort of person who is going to carry a grudge? Nino Scalia isn't going to carry a grudge. Clarence Thomas is going to pat you on the back and give you a hearty laugh all the time. That's a big part of it." In general, one justice explained, "There's a lot of mutual esteem and mutual affection. There have been times on the Court when that hasn't been true, but I don't find it surprising that it is true now when I think about it. We have to live with each other for a long time. It's a lot more enjoyable if you like the people you work with, and this is a likable set of people."

In *The Roberts Court*, Marcia Coyle notes, "The late Justice Harry Blackmun, after being interviewed on C-SPAN many

years ago, told me that he did not think the Supreme Court should be a great mystery to the American people." Although Coyle as well as Toobin have indeed made the Court less mysterious, it is its very air of mystery that makes the Court and its nine justices topics of which we never tire. ☉

Elizabeth Kelley is a criminal defense lawyer based in Spokane, Wash. She has a special commitment to representing individuals with mental illness and developmental or intellectual disabilities who are accused of crimes. She has served two terms on the board of the National Association of Criminal Defense Lawyers, has served as the chair of the Mental Health and Corrections Committees, and is currently the chair of the Membership Committee. She hosts two radio shows, "Celebrity Court" and "Celebrity Court: Author Chats." She can be contacted at zealousadvocacy@aol.com.

A DEATH AT CROOKED CREEK: THE CASE OF THE COWBOY, THE CIGARMAKER, AND THE LOVE LETTER

BY MARIANNE WESSON

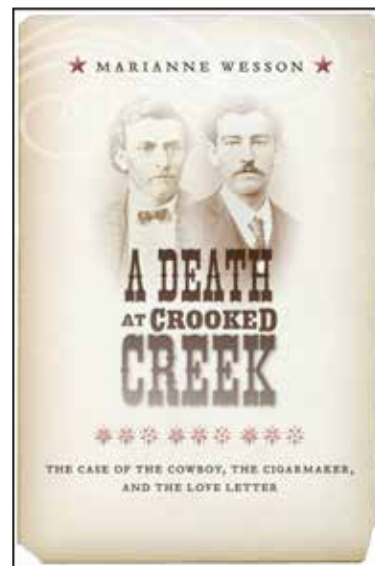
New York University Press, New York, NY, 2013. 378 pages, \$29.95.

Reviewed by Michael Ariens

The "whodunit" lives in law professor Marianne Wesson's *A Death at Crooked Creek*. Her book tells the story of one of the most intriguing mysteries in American legal history: who was shot and killed at Crooked Creek, Kan., on a late winter's day in 1879? For evidence teachers (among whom Wesson is one), and possibly even law students slogging their way through hearsay and its exceptions, *Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285 (1892), is a classic 19th-century mystery story. The case, in which the Supreme Court adopted an exception to hearsay for statements of present intention (now found in Federal Rule of Evidence 803(3)), raises the question: Was the deceased John W. Hillmon, who had recently taken out the extraordinary sum of \$25,000 in life insurance, or was it Frederick Adolph Walters, an itinerant who had left Iowa a year earlier, and who had wandered about much of

the middle of the United States, including Kansas, during that time? Wesson, who first became intrigued by the mystery when taking an evidence course, became obsessed (in a good way, it appears) with solving this enduring mystery, and to my mind, does so. As should always be the case when reviewing a whodunit, I shall not spill her solution. Instead, I will offer some background of the case, and describe Wesson's interesting and provocative approach to writing about *Hillmon*.

In March 1879, a man was shot and killed when a bullet discharged from a Sharps rifle in Barbour (now Barber) County, Kan., in the frontier southwestern part of the state. John Brown (apparently no relation to the abolitionist) admitted that he was holding the rifle when it accidentally discharged and a bullet struck John Hillmon in the face, killing him instantly. Hillmon had recently taken out three life insurance policies totaling \$25,000, payable to his new bride, Sallie Hillmon, including one policy he had bought just two weeks before his death. The insurance companies refused to pay on the ground of fraud. Given the circumstances of the case, including Hillmon's relative impecuniosity, the high amount of the insurance, the manner of death, the interest of Sallie's cousin and Hillmon's sometime employer, Levi Baldwin, in both the litigation and the insurance proceeds, and the modest inquest in Barbour County—as well as several notorious instances of life insurance fraud that had come to light at about this time—the insurance companies refused to pay Sallie Hillmon. The insurance compa-



nies sought to obtain a release from Sallie Hillmon (they did, but the courts found it unenforceable for a lack of consideration), and eventually agents for the companies began to search for a substitute victim. In early 1880, they learned of a missing person from Iowa named Frederick Adolph Walters. More intriguingly, they learned of the existence of a letter written by Walters to his fiancée in Iowa, Alvina Kasten, in which Walters stated that he was headed to “a part of the Country that I never expected to see when I left home as I am going with a man by the name of Hillmon. ...” This letter was dated March 1, 1879, and was the last letter that Walters ever sent. In the view of the insurance companies, the date of the letter, its contents, and disappearance of Walters were strong circumstantial evidence that the body found in Crooked Creek was Walters’. Even more damning, though still circumstantial evidence, was that Walters spelled Hillmon’s name correctly in his letter to Alvina.

Sallie Hillmon sued the insurance companies in federal court, commencing a Dickensian lawsuit spanning nearly a quarter-century, including six (!) trials and two trips to the Supreme Court of the United States. After the third trial and the first verdict (for Sallie Hillmon), the Supreme Court reversed and remanded the case for a new trial. The Court held that the trial court had erred in refusing to admit the March 1, 1879, letter from Walters to his fiancée. It held that the letter, though hearsay, was admissible as a statement of present intention. After three more trials, the last again resulting in a verdict for Hillmon, the Supreme Court again heard and reversed the verdict in 1903. But there was no seventh trial: the last remaining insurance company settled with Hillmon, possibly with each side paying its own costs.

In addition to teaching at the University of Colorado School of Law, Wesson is the author of three mystery novels. (I have read one, which I enjoyed.) Possibly for that reason, Wesson is interested in writing something other than a legal history of this extraordinary case, or a legal history of the development of hearsay and its exceptions in the 19th century, or even a legal history of late 19th-century law and lawyering on or near the Kansas frontier. Instead, Wesson is interested in a character study, in the people, particularly Sallie Hillmon, who plodded their way through trial after

trial, as well as in the story of whose body it was. Wesson thus creates something of a triptych in *A Death at Crooked Creek*. One thread of her story is a recounting of the six trials and two decisions of the Supreme Court. Interestingly, Wesson spends much more time on the trials than on either decision of the Supreme Court, a choice made more difficult by the absence of a transcript in any of the trials (although local papers covered them extensively). A second thread of her story concerns her efforts to exhume the body buried in Lawrence to attempt to determine whether John Hillmon or Walters lies there. Her third thread, generated by her interest in the participants, provides fictional conversations among the real-life actors in this long-running saga. In these conversations, Wesson uses the present tense.

In general, the approach works. Wesson interweaves these three stories throughout each chapter. It is not until the final chapter that she tells the reader whodunit. Her big “reveal” is done cleverly and with brio. And Wesson does not break the rules of the whodunit. She introduces no new characters at the end, and she faithfully provides the reader all the information those investigating the mystery possessed, so the reader can make up his or her own mind.

At the sixth and final trial, Sallie Hillmon’s lawyers (who had a significant financial interest in the case) called a witness, Arthur Simmons, who testified that he employed Walters in April and May 1879, which was after the defense had said he’d been killed (that is, after March 17, 1879). This was the first time Simmons testified, and it was the first time anyone had testified to having seen Walters after the middle of March. Wesson also notes that some persons testified to having seen Hillmon after March 1879, usually in New Mexico or farther west, though their testimony was quite suspect. What the reader knows is that, other than Simmons’ testimony, we have little or no evidence of either Hillmon or Walters’ surfacing after 1879. The one who did not die simply disappeared.

Though the one who disappeared may have died without ever having contacted family or friends, it seems fair to speculate that others may have assisted in his disappearance. This allows one to consider the possibility of a conspiracy by Sallie, John Brown, and her cousin Levi Baldwin, if Hillmon disappeared, or one by agents for

the insurance companies if Walters disappeared. Wesson first chooses to believe that a conspiracy took place. She then creates a fictional dialogue regarding that possible conspiracy. This is the least successful aspect of *A Death at Crooked Creek*.

Wesson writes well and the stories, despite the numbing nature of trial after trial, move quickly along. *A Death at Crooked Creek* is a productive mélange of fact and fiction, of then and now, of mystery and science, and an enjoyable meditation on law and persons. ☉

Michael Ariens is a professor of law at St. Mary’s University in San Antonio, Texas, where he teaches American legal history, constitutional law, evidence, and other courses. He is the author of Lone Star Law: A Legal History of Texas (2011) and other books.

BLACK SHEEP

BY ROBERT COVELLI

Luna Court Press, Santa Fe, NM, 2013. 356 pages, \$18.50.

Reviewed by Christopher Faille

Robert Covelli’s new novel takes a look at organized crime, politics, and the decay of old-line industry in the United States. These aren’t unusual themes for contemporary fiction, but *Black Sheep’s* setting is somewhat off the beaten literary path. Our story unfolds in Buffalo, N.Y., in the mid-1990s.

