OCBA 2014 Awards Luncheon

A Success for All Ages

President Patricia Parrish greeted, presented awards and entertained a crowd of over 250 at this year’s Annual Award Luncheon on June 20 at the Tower Hotel. Past President and Awards Committee Chair John Heatly assisted in the presentation of this year’s OCBA awards. The 50- and 60-year OBA Service Awards were handed out to the recipients by the Honorable Tom Colbert, Chief Justice of the Oklahoma Supreme Court, and M. Joe Croswait, Past OBA and OCBA President.

OCBA Award recipients include:

Robert H. Gilliland, Professional Service Award
Edward & Tom Goldman, Goldman Law Firm, Community Service Award
Don Holladay & James Warner, Jr., Pro Bono Award
Gretchen Harris, Chair of Lawyers Against Domestic Abuse Committee
Editor Geary Walke presents the Briefcase Award to Alissa Shaddix White
Charles Geister accepted the Bobby G. Knapp Leadership Award on behalf of Laura McConnell-Corbyn
Seth Day, President’s Courageous Lawyer Award; Susanna Gattini was also a recipient of this award, but was unable to attend
YLD Chair Drew Mildren presents the Outstanding YLD Director Award to Curtis Thomas
Dawn Rahme, representing the firm of Phillips Murrah, received the YLD Friends of the Young Lawyers Award
Judge Lisa Hammond, YLD Beacon Award

See AWARDS, PAGE 16
Taking a Moment to Help our Seniors

We may never know how much our smallest acts of kindness are appreciated - but they greatly are.

By Judge Patricia Parrish

OCBA President

Mother Teresa once said, “Loneliness and the feeling of being unwanted is the most terrible poverty.”

Perhaps the greatest enemy for our elderly is loneliness. Although we may know many seniors who are healthy and active, and involved with friends and family, some are not so fortunate. These seniors may live alone and have little or no contact with others. They are the ones that easily go unnoticed and unattended.

How do we help end this loneliness? The answer is simple. We must reach out to our elderly friends and neighbors. Our effort can be as simple as bringing a trash can up the drive for an elderly woman or changing a light bulb in a ceiling fixture for a senior neighbor. When we spend time with the elderly, we reinforce their value and worth as people. We, too, benefit in unexpected ways from the interaction.

This upcoming year, the OCBA Community Service Committee will be focusing on the needs of the elderly. A summer event is being planned at a nursing facility, and the committee is looking for “hands-on” projects to help the elderly in our community. Please submit your suggestions and/or needs of an elderly person who needs assistance in completing a project, such as yard work or a home project, to Connie at the OCBA at (405) 236-8421.

The Senior Law Resource Center, a non-profit organization, provides another opportunity for attorneys to assist our seniors. Their mission statement reads: “To empower Oklahomans to age with independence, dignity, and security by providing high-quality, affordable legal information, resources, and services.” If you are interested in representing the elderly on a pro bono basis, particularly in areas involving social security matters, please contact Jill Watskey at jillwatskey@senior-law.org.

I challenge each of our members to spend some time helping an elderly person. You might just find that your gift of giving becomes a marvelous blessing to you!

From the President

Profiles in Professionalism

Edward A. Goldman

By Robert M. Goldman

Many brothers have attempted to practice law together. Some have been successful, but many have not. I have been asked* to write this article on my brother and will attempt to do him, and the article, justice. I have been practicing law with my older brother (emphasis on "older") since 1977. Through it all, it has been a wonderful ride.

Countless times fellow attorneys pass me in the hall of the courthouse and call me "Eddie" and then give me an immediate apology.

Edward Goldman was born in Bayonne, New Jersey, a peninsula town approximately seven miles from New York City. It is three miles by a mile and a half and has approximately 70,000 people. The experience growing up in Bayonne was incredible. It was a true melting pot of ethnicity and race. It was impossible not to be touched by the multicultural experience.

Eddie is the middle child and we had exceptional parents who provided love, humor, nurturing and a few of the finer things in life. “The finer things in life” wasn’t just a proverb for us; we actually lived across from the railroad tracks. I feel like our mother invented Hamburger Helper as we never had hamburger that wasn’t extended by adding lots of breadcrumb and eggs.

In high school, Eddie played football and baseball. On an eventful day, he was roaming the halls of school with a pack of other football players when he was intercepted by a teacher inquiring why he wasn’t in class. He responded that he did not have a class that period. She said “You do now. You’re taking typing!” More on this later.

After finishing high school, he came to Oklahoma City to attend Oklahoma City University undergraduate and play baseball. After a summer of indecision and goodbying by his mother, Eddie’s father, who is now 97 years old, removed any doubt by packing Eddie’s bags and providing him a one-way airplane ticket to Oklahoma City. So following Horace Greeley’s advice, Eddie went west to uncharted land. Paul Hansen met him at the airport and from that day a personal relationship between our families existed. He couldn’t have asked for more, than to be adopted by Paul and Carol Hansen.

One day Jack Dawson came back into the

See PROFILES, PAGE 14
Externship with Oklahoma County

By Abigail Patten

Time in the courtroom is very limited for most law students just finishing up their first year. Throughout the year, we devote time to reading case after case to learn the rules and laws as they theoretically apply in each case. We learn procedures and the way the law works through studying Property, Torts, Contracts, Criminal Law, and Civil Procedure, as well as how to draft legal papers and research pertinent cases, statutes, and the like. Although we learn an abundant amount about the law and how it works throughout the school year, we are rarely able to actually see it applied before our eyes to real life situations.

I am currently one of the students who have just finished the first year of law school at Oklahoma City University. Sure, by the end of the year, I knew what I had learned in class and read throughout the year, but I was not so confident in actually being able to apply it. However, upon completing the first year I was accepted to participate in the Judicial Externship Internship program with the Oklahoma County judges, in which environment I could actually see live cases in the courtroom daily. I was selected for an externship in the Special Trial Division with Judges Easter, Croy and Walke.

For those of you who may be questioning the similarities and differences between an extern and an intern, it is simple. First, the main similarity in an externship and internship is that a student in both programs has an opportunity to see the law applied which allows them to increase their knowledge of areas of the law and gain exposure to real life situations as well as having a supervisor to provide valuable support and advice. The externship program allows students to voluntarily work for an organization, as well as participate in class sessions and assignments. If the program is successfully completed, per the requirements, the student will then receive credit toward their degree for their work. An internship on the other hand can be done either for pay or voluntarily, but it is not for class credit. Another program available is the Licensed Legal Intern, which is an Oklahoma Bar Association program, administered through the law schools. A Licensed Legal Intern can be either an extern or intern. After the student has completed certain, specified requirements, they are eligible to obtain a license which gives the intern opportunities in which they are actually allowed to do more than a student can within the workplace.

Exterior for judges at Oklahoma County this summer has been a wonderful experience. Not only have I become more confident in my knowledge of the law, but it has also given me the opportunity to learn a wide array of new things. Every day is something different. The Special Trial Division hears a variety of cases such as Small Claims, Forcible Entry & Detainer, Department of Human Services Child Support Enforcement, motions, and Misdemeanors, just to name a few. In addition, each judge has his own special docket, including Mental Health Court, Cost Collection Court, Traffic Court, and so on. I have also had the opportunity to observe different types of cases with other judges, including felony trials, divorce proceedings and victim protection hearings. Observation has been the biggest learning opportunity because not only does it expose externs to matters we have specifically learned about in class, but also to see how subjects cross reference and fit together in any given case.

In addition to observation, as externs, we also research the law and statutes pertaining to specific cases, and present to our judges the possible findings in order to help out on cases, while also furthering our knowledge of the law and how it applies.

In addition to the invaluable knowledge I have gained so far from observation and participation in the externship program, I have also met numerous wonderful people, many of whom have given me priceless information and advice about anything from school right now to my career years in the future. These individuals base their advice on prior knowledge and experience, and that I find is just magnificent! After all why “recreate the wheel?” Especially when many before me have been there, done, and seen things that I can only imagine, but I may very well be faced with similar obstacles in my career as well.

To current students who may be considering externing or interning for any organization, I would highly recommend the experience, as the knowledge you will gain is completely irreplaceable and helpful for your future education and career. Likewise, to any current judges or lawyers, I would recommend that you allow an extern or intern to learn from you. If it were not for Judges Easter, Croy and Walke giving me the opportunity to come learn from them this summer, I probably would not have received half the time I have in the courtroom, and I would not have all the knowledge I have gained through the program and live situations!

Judge David M. Cook

Judge David Cook died May 29th at the age of 95. He had a long life and a long and distinguished career. He graduated from Central High School in Oklahoma City, where he excelled in oratory and debate. While in undergraduate school at OU, in 1940, he married Mary Jean Carver. The marriage was a long and good one and lasted until her death in 1965. They had two children, a daughter, Cynthia, who died in 1973 and a son, David T. Cook, an Oklahoma County lawyer.

His wife’s father was a lawyer in Seminole County. Judge Cook practiced law in Wewoka with his father-in-law and served three years as County Judge (which would now be called Associate District Judge) in Seminole County. He worked in the legal department of Skelly Oil Company in Tulsa for six years. He then practiced in Oklahoma County until he was appointed to the Oklahoma County District Court bench, spending in all, 25 years as a lawyer and County Judge before taking the District Court bench.

He received an award from the Oklahoma Bar Association for having been a lawyer and judge for 70 years. He retired from the bench in 1991 but remained in active retired status from 1991 to 2007. During that time, Judge Cook conducted Supreme Court settlement conferences and took assignments to hear cases and conduct trials throughout Oklahoma.

He collected almost all of the awards the legal profession had to offer in his long career. He was a charter member of the Order of the Barristers of the Bench of the United States. He served the Inn as a Master of the Bench, the highest position available.

Perhaps his proudest award was the Journal Record Award, for which he was selected by the Oklahoma County Bar Association and which is awarded by the Journal Record Publishing Co. It is generally considered the highest award made by the County Bar.

During the whole time Judge Cook was on the bench, he also taught as an Adjunct Professor of Law at the Oklahoma City University School of Law. He taught a wide range of courses, including Contracts, Creditors Rights and Property Law. However, what he really relished teaching was Evidence, which he taught to a huge number of future lawyers over a lot of years.

His teaching of Evidence carried over to his work on the bench. Woe be unto the lawyer who made an objection without really knowing the precise legal basis for the objection! He would look over his glasses and say something like: “Mr. Travis, upon what section of the evidence code are you basing that objection?” You really had better know, or you were in for a lecture at the next recess.

After the death of his first wife, Mary Jean, in 1965, Judge Cook was a widower for several years until, in 1981, he married his second wife, Gayle. They remained happily married until his death.

Judge Cook’s wartime service developed the sort of patriotism which defined him, as it did many of what Tom Brokaw called “The Greatest Generation.” Judge Cook spoke often of duty and obligation to country. Judge John Amick (now retired) likes to tell the story of a case Judge Amick tried while Judge Cook was serving as Presiding Judge. One of the duties of the Presiding Judge was to welcome the jury panel and hear requests to be excused from jury duty.

An obviously older woman was called for duty in Judge Amick’s court one day during the Iraq war. She couldn’t hear when the clerk called her name and couldn’t hear Judge Amick’s instructions as to which seat in the jury box she should take. Judge Amick suggested she was likely of an age at which the law allowed her to be excused from the jury. She said she had told Judge Cook that.

Judge Amick asked her what Judge Cook suggested she was likely of an age at which the law allowed her to be excused from the jury. She said she had told Judge Cook that. Judge Amick asked her what Judge Cook had said. She said: “Well, as I understood him, my choices were to serve on this jury or go to Iraq.” Judge Amick excused her.

In Remembrance

Judge David M. Cook

Quote of the MONTH

“In the republic of mediocrity, genius is dangerous.”
~ Robert G. Ingersoll

lawyer and orator (1833-1899)
and, though the complaint might have been the court jurisdiction of the subject-matter, the father of such child; and the affidavit is of the bastard child, and that J.W. Libby is dentist of Craig county, that she is the mother of her bastard child of whom she alleged and affidavit of Anna May Kiser of Craig county, that she is the mother of such child beyond a reasonable doubt, the evidence in this case is sufficient; if the law had required the jury to find the defendant guilty beyond a reasonable doubt, and they had so found under this record, and the issue had been fairly submitted to the jury, we would not disturb the verdict. Complaint, however, is made in the court error in giving certain instructions and in refusing to give certain instructions. However, we have examined the instructions set out in plaintiff's error's brief and in the bill of exceptions, and find no error or failure in giving the instructions given by the court or in refusing those offered by defendant.

By Jim Croy

July 28, 1914
One Hundred Years Ago
[Excerpted from, Libby v. State, 1914 OK 356, 142 P. 406.]

This action was begun upon the complaint and affidavit of Anna May Kiser of Craig County against J. W. Libby for the support of her bastard child of whom she alleged J.W. Libby was the father. The cause was tried and judgment rendered against J.W. Libby requiring him to pay the sum of $75 into court and the sum of $5 per month thereafter until such child arrived at the age of twelve years, unless further ordered by the court, and from such judgment, and the order overruling motion in arrest of judgment and motion for new trial, defendant appealed to this court.

This cause was first filed in the Criminal Court of Appeals and the question is raised as to the jurisdiction of that court to decide the questions involved. But such contentions are answered by the fact that it has been transferred from the Criminal Court of Appeals to this court for determination.

The first assignment of error presented and argued is that the lower court erred in overruling defendant’s demurrer to the complaint. One of the questions presented in this proposition is that prior to statehood there was no bastardy statute in force in the Indian Territory; that, the child having been born April 14, 1908, conception must have taken place prior to statehood and at a time when there was no bastardy statute in force in the Indian Territory, and therefore this statute, as to that offense, is ex post facto. But that is neither the object nor the effect of the statute. Section 4401, Rev. Laws 1910, which is the same as section 2979 of the territory statute, reads as follows: “Whenever any woman residing in any county of this state is delivered of a bastard child, or is pregnant with a child which it born alive will be a bastard, complaint may be made to the district court of the county where the same is conceived, by any person to the county court of the county where such woman resides, stating that fact and charging the proper person with being the father thereof. The proceeding shall be entailed in the name of the state against the accused as defendant.” It will be observed that the state of pregnancy or birth of the child is the fact which fixes the responsibility for support upon the father, and not the date of conception. Hence the statute is in no sense ex post facto.

The next material question argued is that the complaint neither states facts sufficient to constitute a cause of action or sufficient to give the court jurisdiction of the subject-matter. With this contention we cannot agree.

Within the transcript, and as a part of the record, is a statement of the closing argument of the county attorney. A part of the same is as follows: “If it please the court, gentlemen of the jury: I am just a hired hand up here working for the county of Marshall for the sum of $125 a month. You are just working for the county the same as I am. It is my duty to prosecute this defendant. I try to earn my money and I think I do. You are paid to act as jurors and it is your duty to enforce the law and to convict criminals like this defendant, the same as it is my duty to prosecute them. I earn my money and you earn your money when you convict these defendants.

“Gentlemen of the jury, it is time to break up this dope ring in this county, and you can break it up or you can let it go. The defendant is down there selling dope to the young men and women of the county and it is up to you to send him to the penitentiary to get rid of him.

“Gentlemen of the jury, look at that court-room of crowded people! What do they think about this case? What do the mothers out there who have sons who are going to be reared in this county think about this defendant? Yes, gentlemen of the jury, if that audience out there could pass on the guilt of this defendant, they would answer with one accord ‘guilty.’ I say, ‘Give the doctor a dose of his own medicine.’

“Gentlemen of the jury, the doctor did not employ any lawyer in this case, although, as you well know, he is amply able to employ a lawyer. He expects to come into court without a lawyer, without a witness, not even taking the witness stand on his own behalf, and without anything, expects you gentlemen to return a verdict in his favor.

“Part of the statement which says: “Gentlemen of the jury, the doctor did not employ any lawyer in this case, although, as you well know, he is amply able to employ a lawyer. He expects to come into court without a lawyer, without a witness, not even taking the witness stand on his own behalf, and without anything, expects you gentlemen to return a verdict in his favor,” is in direct conflict with the statute, Oklahoma Statutes, 1931, section 3006, 22 Okla. St. Ann. § 701, which provides: “In the trial of all indictments, informations, complaints and other proceedings against persons charged with the commission of a crime, offense or misdemeanor before any court or committing magistrate in this state, the person charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any preemption to his right to testify in his own behalf, or in the case of a minor, the court shall grant to such person the opportunity to be heard.” It cannot now be argued that the county attorney did not make the statement. The record was presented to him in person, which contained this statement. If he did not make it, the question should have been presented to the trial court, and settled by him. If the defendant subsequently to that statement, a demurrer or hold order, was filed with the Warden of the State Penitentiary. This demurrer, or hold order, was from Tulsa County, and arose out of a preliminary information, filed on March 21, 1962. Said preliminary information was filed in the court of Common Pleas of Tulsa County, and charged the petitioner and one Orrville Davis with the crime of “robbery with firearms,” and that subsequent to this, a detainer or hold order, was filed with the Warden of the State Penitentiary. This detainer, or hold order, was from Tulsa County, and arose out of a preliminary information, filed on March 21, 1962.

The defendant was entitled to be informed of his own medicine.” * * *

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The County Attorney of Tulsa County has filed a response herein, and states that at no time since the filing of the preliminary information has the petitioner been within the jurisdiction of the Court of Common Pleas of Tulsa County, and therefore said court has been unable to hold a preliminary examination for the petitioner or to see if he chooses to waive such examination.

The petitioner states that several requests have been made by him to the county attorney of Tulsa County, to expedite the preliminary hearing and these requests have been ignored.

The petitioner also states that on January 14, 1964 he filed a petition for a writ of habeas corpus ad prosequendum in the district court of Tulsa County; and, further, that on April 14, 1964 he filed a second petition for a writ of habeas corpus ad prosequendum, and that neither of these petitions has been ruled on by the district court of Tulsa

And the Court Said

An Olio of Court Thinking

July 15, 1964
Fifty Years Ago
[Excerpted from Drey v. County Attorney, Tulsa County, 1964 OK CR 75, 394 P.2d 246.]

It appears from the records that the petitioner, Carl D. Drew, was on the 28th day of November, 1962 sentenced to the State Penitentiary from Muskogee County for the crime of robbery with firearms, to serve a term of seven years, and that subsequent to this, a detainer or hold order, was filed with the Warden of the State Penitentiary. This detainer, or hold order, was from Tulsa County, and arose out of a preliminary information, filed on March 21, 1962. Said preliminary information was filed in the court of Common Pleas of Tulsa County, and charged the petitioner and one Orrville Davis with the crime of “robbery with firearms,” and is listed as case #112544.

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See Olio, Page 18
By Chris Deason and Judge Don Deason

At 8:30 most Sunday mornings in our home a digital device plays Kasey Kasem’s American Top 40, the ’70s while I shower. The show is broadcast from radio stations all over the world, but no longer from Oklahoma. Kasem counts down each week’s most popular songs from the 1970s on stations located in Vermont or Sacramento and sometimes in Madrid. My initial thought was that Chris intended to torment me with hit singles I had mostly managed to avoid for the last 40 years. After months of tolerating Kasem’s tidbits of biography and trivia about songs he played and artists whose work he showcased I realized we were listening to a form of compressed music history. For about three hours, he confirmed facts about artists that I already knew and then outlined connections between singers and bands that were unknown to me. None of the information is earth shattering and Kasem’s show is every bit as saccharine-soaked as I remember. Much of the music has to be turned down (way down) until Kasem’s distinct trademark voice returns with a teaser for the hits that “don’t stop ‘til we reach the top.” The Carpenters’ Close To You was No. 1 on July 25, 1970. On the upside, The Who’s Summertime Blues was No. 33 and hopefully climbing up the chart. I’ve also had to hear Edgar Winter’s Frankenstein repeatedly for what seems like dozens of consecutive weekends while it was on the charts.

One would think the show had become irrelevant with the onslaught of entertainment news and advent of the internet. Not so. In 2006 Sirius XM and Premiere Networks acquired the rights to broadcast episodes of AT40 from the 1970s and 1980s. This insures Kasem will continue to have a presence on both terrestrial and satellite radio. Lucky me.

The tawdry events surrounding his illness garnered national attention. Announcements of Kasem’s passing last month all concluded with his most notable catchphrase, “Keep your feet on the ground and keep reaching for the stars.” On a personal level I’ll always associate Kasem with forcible listening on Sunday mornings to his show—“I’ll listen to the Captain and Tennille’s Muskrat Love, and smile.

Amber Godfrey: Amber is a graduate of both OSU and OU. While most of us were happy to obtain a single undergraduate degree, Amber doubled up while at OSU and earned a B.S. in 2003 and a B.A. in 2005. Apparently even that wasn’t enough, so she obtained a J.D. from OU College of Law in 2008. Amber does not consider her loyalties divided between schools. However, she reports spending twice as much money at OU for only half of the education. Her husband Stuart works with developmental delayed kiddos for the State of Oklahoma. Together they have a daughter, Ireland, and three “fur-children.” They happily have another child (fur-less) on the way! Amber works at The Tucker Law Firm in Edmond practicing family law.

Collin Walke: Collin graduated from OCU School of Law in 2008, magna cum laude. We wonder why he didn’t try a little harder. He has settled in with Mulinix Ogden Hall & Ludlam where he practices primarily in the areas of business litigation, family law, and estate planning. Of some importance is the fact that Collin is currently running for the State House of Representatives. When he isn’t practicing law or campaigning, he can be found at a coffee shop with his wife, Lori.
OU Law Students Host

“Objecting to Cancer” Fundraiser

Inspired by one of their classmates who is battling breast cancer for the third time, first-year summer law students at The University of Oklahoma College of Law kicked off its commitment to public service by raising money for The Stephenson Cancer Center.

1L student Kelsi Moore, is currently going through chemotherapy. She is two-time breast cancer survivor. “Cancer affects many people in some way at some point in life, whether it be a personal diagnosis or the diagnosis of a family member,” says Moore. “As a class we felt like it would be a great cause to support since it’s so relatable.”

The idea for the fundraiser started when Legal Methods Professor Connie Smothermon encouraged her students to raise money for an organization of their choice. “We are committed to our responsibility to help the community,” says Smothermon, “and we are pleased to be able to sponsor a fundraiser for The Stephenson Cancer Center.”

Moore’s classmate Leann Farha said the choice was easy. “We have been inspired by her perseverance, and we wanted to find a way to contribute to her fight.”

The Stephenson Cancer Center, located at the Oklahoma Health Sciences Center Campus in Oklahoma City, works to improve and extend the lives of cancer patients. The funds raised will be used by the cancer center to help patients with unexpected and burdensome expenses.

Ideally, You Want Both: A Low Resting Heart Rate, and High Cardio Fitness

By Warren E. Jones

In a recent issue of Mayo Clinic Procedings, researchers from the Aerobics Center for Longitudinal Studies (commonly merely called The Cooper Clinic) reported their findings when they assessed the relationship between resting heart rate (RHR) and cardiovascular disease (CVD) mortality, and the relationship between RHR and all-cause mortality (e.g., cancers, kidney disease, lung diseases, etc.). They hypothesized, of course, that a low RHR would be protective in both cases.

In addition, they studied those relationships in “fit” and “unfit” persons. They finally studied those relationships in study participants with and without high blood pressure (hypertension) (HTN).

If you want to see what YOUR RHR is, be sure to follow the protocol the Cooper researchers did. Measure your RHR only after five minutes of recumbent (lying on your back) rest.

Likewise, if you want to see if you have HTN, take your blood pressure only after five minutes of rest in a seated position, with your back supported and your feet flat on the floor. Take at least two BP readings (3 or 4 or more is acceptable), and take the average of at least two readings that are NOT more than five millimeters of mercury (mm Hg) apart. For example, if your first reading is 140/25, and your second reading is 136/25, don’t average those two: keep taking additional readings until at least two are within five mm Hg apart. It appears to me that if you can get multiple readings within the five mm Hg difference, the more likely you are to getting an accurate BP (and therefore HTN) result.

The researchers divided the participants in the study (men AND women... more than 50,000 participants) into four RHR categories: 1) less than 50 beats per minute; 2) 50-69; 3) 70-79; 4) 80 or more. All the findings were “controlled” (I’ll explain what that means in a minute) for all of the following: age, sex, body mass index, smoking status, alcohol use, physical activity (PA), parental CVD, diabetes, BP, high cholesterol, and cardiorespiratory fitness (CRF). That is, the researchers compared apples with apples (on all those possible confounders) among participants with different RHR. So, for example, Harry and Bob are both 45 years old, have an identical BMI, smoking status, alcohol consumption, PA, and everything else, but they differ ONLY in their respective RHRs.

What were the findings? First, before we discuss the relationships about which the researchers hypothesized, let me just tell you (no surprise here, probably) that the participants with an RHR of less than sixty had the highest level of PA, and the lowest level of HTN, diabetes, and high cholesterol... as compared to each of the remaining RHR groups, even the ones with an RHR of 60-69.

The findings: individuals with higher RHRs had greater risk of CVD mortality. Individuals with higher RHRs had greater risk of all cause mortality. The relationship was “positive” and “linear.” That is, at every increasing RHRs were ever increasing risks of mortality from CVD and all causes.

How about the relationship of RHR and mortality when we throw HTN into the picture? For those with HTN and an RHR at 80 or above, there was a 52 percent greater risk of CVD mortality compared to those with an RHR of less than 60 but who, nonetheless, had HTN. For those with HTN and an RHR at 80 or above, there was a 38 percent greater risk of all cause mortality vs. those with HTN but a low RHR.

How about the relationship of RHR and all cause mortality when we throw CRF (fitness) into the picture? Using the “fit AND low RHR” group as the reference group (the group against which the other groups were compared), the unfit but with a low RHR had a 48 percent increased risk; the unfit with the high RHR had a 221 percent greater risk (that is, more than twice as much); and the fit with the high RHR had a 50 percent greater risk. Yes, that’s right. Those who were “fit” but with a high RHR had a much greater risk than those “fit” with a low RHR.

And the relationship of RHR and CVD mortality with fitness thrown in? The unfit and high RHR group had a 2.34 times greater risk (yes, more than twice as much) of CVD mortality compared with the fit and low RHR group. The fit and high RHR group was a 1.73 times higher risk, and the unfit and low RHR was at 1.48 times higher risk for CVD mortality.

You may have already gleaned this disconcerting finding: even though low RHR and high CRF significantly reduce all cause mortality and CVD mortality, high CRF does not completely eliminate the negative side effects of high RHR on mortality. If that describes YOU, I recommend you increase the frequency and/or the duration and/or the intensity of your aerobic exercise. Your doing so will have the effect of INCREASING your CRF and DECREASING your RHR.

Warren E. Jones, JD, HFS, CSCS, CEQ, is an American College of Sports Medicine (ACSM) Health Fitness Specialist, a National Strength and Conditioning Association Certified Strength and Conditioning Specialist, and a holder of an ACSM Certificate of Enhanced Qualification. His clients range from competitive athletes to the morbidly obese. He can be reached at wejones65@gmail.com or at 405-812-7612.
Effective Mediation Statements — A Lost Opportunity for Advocacy

By Joe Paulk
President, Dispute Resolution Consultants

The typical mediation statement is written trying to convince the mediator of the correctness of one side’s position. Lost opportunity. After reviewing over 10,000 mediation/position statements over 22 years it seems the composition of the statements is now often treated as a routine, if not painful task.

Too many submissions are simply a recycling of a report to a client or cut and paste of a pleading. Drafting mediation statements with due respect to who will be the true decision maker is critical. The unique opportunity to address the decision maker on the other side of a dispute is therefore lost forever.

With the virtual elimination of joint sessions, the use of the mediation/position paper is usually the only unfiltered way to “communicate” to the other party directly. Embrace the opportunity to put forth a truly persuasive, informative, well written and enlightening analysis of your position in the dispute. If done correctly, it can be both constructive and effective. If done poorly, it can be both unhelpful and offensive.

While some points are unpleasant for the other party too, it can be done in a way that is neither abusive nor rude. Be factual and draw conclusions, but most of all be practical. If there are problems, identify them and recognize they are considered in your client’s analysis of the entirety of the dispute. Sometimes seeking input from your client in a manner can assist the manner of presentation of the issues.

Some considerations to remember when drafting a mediation statement are:

• Who is the decision maker and what is their background?
• What issues do I believe the other party is NOT considering?
• How do I communicate my position without writing like a lawyer submitting a brief?
• In addition to identifying contested issues in the dispute, it is often useful to define the points of agreement.
• Of those issues still in disagreement, define the positions of both sides and why you believe you have the better side of the issue in a factual/legal supportive fashion.
• When embroiled in a contractual dispute, attaching the entire contract where only a small part is at issue can overwhelm and confuse the decision maker and sometimes the mediator as to the actual issues in controversy.
• If crucial issues of case law or statutes need to be discussed, put the information as often as possible in a footnote and do not feel it necessary to put it in the body of the position paper.
• Admit your case weaknesses... it is refreshing and allows the other side to know they are considered in your analysis. Acknowledge that a risk assessment on those troubling issues has been conducted prior to the mediation.
• Offer an apology, if appropriate. It is powerful and cannot be used in trial or subsequent pleadings.
• Reaffirm your willingness to listen and appreciate the complexity of the dispute.
• Keep it short — statements over 10 pages, even if well written, are less effective.
• It is advisable to have your client review the statement before sending to the opponent if they have an ongoing relationship.
• Send your mediation statement to the opposing side two weeks before the session is to take place. If there are discrepancies of information causing reconsideration of past positions, then this can be undertaken before the session.

A mediator may need additional information before the session other than what was included in the mediation statement. A pre-mediation conference by phone can be extremely useful to assist the mediator with issues that are better not put in writing. Separate email or letter only to the mediator are also common. A joint pre-mediation conference with just the attorneys present is often productive and streamlines the actual mediation with the clients in attendance.

The days of not exchanging the mediation statements should stop. They are useful and powerful tools. A properly written position/mediation statement exchanged with your opponent will enhance your credibility with all concerned including your own client. It should be thoughtful, respectful and appropriate for the decision maker.

If these suggestions are utilized, the chances of a successful resolution for your client are tremendously enhanced.

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ALL APPLICATIONS AND POSITIONS KEPT CONFIDENTIAL
By Lori D. Fagan

Being a reading buddy for a 2nd or 3rd grader who is struggling with reading is an incredibly rewarding experience. I have been fortunate enough to have this experience the past two years with the Lawyers for Learning Committee. No matter how my day was going, after my hour as a reading buddy, my day would be better. My student would always be so excited that I was there, and the look on his face when he was able to sound out a particularly difficult word filled me with joy. By joining the Lawyers for Learning Committee, you, too, can have this experience.

The Lawyers for Learning Committee has been in existence for two years. We have been having reading buddies at two Oklahoma City Public Schools – Adams Elementary and Lee Elementary. Next year, the committee will be taking over coordinating the readers who have been going to Rockwood Elementary. Adams Elementary is located at 3416 S.W. 37th; the majority of the students are Hispanic, and nearly 99 percent of the students are on free/reduced lunch. In the spring of 2013, only 47 percent of the 3rd graders scored satisfactory or above in reading. Lee Elementary is located at 424 S.W. 29th; the majority of the students are Hispanic, and approximately 95 percent of the students are on free/reduced lunch. In the spring of 2013, only 53 percent of the 3rd graders scored satisfactory or above in reading. Rockwood Elementary is located at 3101 S.W. 24th; the majority of the students are Hispanic, and 100 percent of the students are on free/reduced lunch. In the spring of 2013, only 25 percent of the 3rd graders scored satisfactory or above in reading.

As you can see, these schools definitely need reading buddies, and the Lawyers for Learning Committee NEEDS YOU to become a reading buddy. It is simple to join; it is simple to be a reading buddy; and the benefits are endless. You can join the Lawyers for Learning Committee any time. To become a reading buddy, you just have to fill out a form, have a background check completed by Oklahoma City Public Schools, and complete some simple training. As a reading buddy, you go to your school on the same day, at the same time, every other week for an hour and help a 2nd grader who is struggling with reading, learn to read. Your contribution of a small amount of your time makes a HUGE impact in a child’s life. Don’t put it off. Join the Lawyers For Learning committee today by calling 236-8421!

Book Notes

By Bill Gorden

Time for the semi-annual kids books roundup, the back-to-school edition.

Charlie Goes to School

Charlie is a dog, perhaps a basset, perhaps a beagle. Local author Drummond has him “helping” around the ranch, when he takes a yen to go to school. In this case, the twist is that the school is a home school. Charlie likes the idea, and during recess starts his own school among the farm animals. Predictable chaos ends in everyone taking a nap. The illustrations are watercolor over digital art, something increasingly common. They are very involved, but not too busy, more dynamic than anything. The main character is pretty lovable.

Rufus Goes to School
Kim T. Griswell, Illustrated by Valeri Gorbachev Sterling Children’s Books, 2013, Hardcover, 33 Pages, $14.95

This book details the travails of Rufus, a Pig who wants to learn to read. Early on, he mistakes the accoutrements of going to school, backpacks, lunch boxes, a blanket for nap time, as the pre-requisites for going to school. The Principal on multiple occasions puts him right, lists the things a pig might do wrong in school, and shows him the door. Eventually he gets to the point with the Principal, telling him that he really wants to learn, and specifically to read a book. The Principal takes his pledge to heart, and Rufus is in business, learning at school. The ink and watercolor drawings are soft and understated, the message clear, and surprisingly on point, summed up in Rufus’ love of books, because they give him room to dream.

Ball

The credits for the book say: “Word and Pictures by Mary Sullivan.” There is only one word, Ball. Because that is what dogs think and dream about. Ball. And their little girl owners understand this. Multiple illustrations indicate almost every possible placement and use of a ball with a dog, to the clear enjoyment of both girl and dog. She goes off to school, dog naps, dreams of: Ball. Then the cycle begins to repeat. This is a great book for a house with kids and dogs. It rings true. The only ones who are too busy to get the message are the older siblings and adults. Illustrations are pencil on Strathmore paper, scanned digital-ly and colored. They are very busy but very appropriate to a dog/ball story.

Journey
Aaron Becker, Candlewick Press, 2013, Hardcover, 40 pages, $15.99

This lavishly illustrated piece is beautiful. A bored girl, ignored by busy siblings and adults, (all in grays), takes out a red crayon and draws a door on her bedroom wall, and slips through it to amazing adventures. She goes through a magnificent park, all in greens, to a beautiful and intricate castle, with M.C. Escher-like water paths. She tumbles from one off the side, but not to worry, she has a crayon and draws a hot air balloon in which to escape. She’s captured by air pirates, but escapes on a magic carpet drawn by crayon. This brings her home, or something like it, where she meets a boy with a blue crayon, they each draw a wheel to a bicycle, and off they go. The adventure is not ended, but the book is. There are no words in the book, but the drawings might be inclined to slightly older youngsters.

Read to your kids, grandkids, or any that stand still for a while.
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OCBA Golf Tournament at Gaillardia

A Real Hit!

This year’s Annual Golf Tournament was held on Monday, June 23, at Gaillardia Golf & Country Club. Orchestrated by Gary Chilton, the tournament’s 97 golfers enjoyed the afternoon of golf and tall tales. Due to the large number of players, there were three flights and the first and second place winners were:

**Phil Mickelson Flight**

1st Place Low Gross – Derek Burch, Brett Burch, Kirk Olson & Joe White

2nd Place Low Gross – Gary Chilton, Don Easter, Tim DeGiusti & Michael McClintok

1st Place Low Net – Mark McAlester, Brion Hitt, Todd Ward & Mike McMillin

2nd Place Low Net – Clay Hasbrook, Mike Fagin, Howard Berry III, HK Berry & David Hasbrook

**Bubba Watson Flight**

1st Place Low Gross – Derek Chance, Greg Mitchell, David Ogle & Ed Blau

2nd Place Low Gross – Lance Phillips, Joel Porter, Michael Johnson & Ken Watson

1st Place Low Net – Jeff Loy, Jim Larimore, David Donchin & Andy Gunn

2nd Place Net – Terry Tippens, Greg Castro, Nick Merkley & Lincoln McElroy
Charles Barkley Flight

1st Place Low Gross – Blaine Schwabe, Leo Portman, Patrick Wyrick & David Kearney

1st Place Low Net – Kari Hawthorne, Sean Snider, Byron Knox, Dan Melynky & Matt Dobson

2nd Place Low Gross – Spencer Smith, Thomas Morrato, Reagan Bradford & Ben Russ

2nd Place Low Net – Mike Betts, Matt Felty, Mark Engel & Steve Mansell

Special Contest Winners

Straightest Drive - Patrick Wyrick
Closest to the Pin #9 - Derek Chance
Closest to the Pin #13 - Joe White
Longest Drive - Patrick Wyrick
Longest Putt - Brett Burch

Other Participating Teams

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Bar Observer

ERISA Attorney Brandon Long Elected to Board of Directors of SouthWest Benefits Association

Brandon Long, a shareholder and ERISA attorney with the law firm of McAfee & Taft, has been elected to serve a three-year term on the board of directors of Southwest Benefits Association. Founded in 1975 and based in Dallas, TX, SWBA is the region’s premier industry organization for benefits professionals.

In addition to concentrating his practice on qualified retirement plans, health and welfare plans, and executive compensation matters, Long oversees one of the nation’s largest and most experienced teams of employee benefits lawyers as leader of McAfee & Taft’s Employee Benefits and Executive Compensation Group.

Crowe & Dunley Awards $8,000 in Minority Scholarships to OU Law Students

Crowe & Dunley has selected two first-year University of Oklahoma College of Law students as the 2014 Minority Scholars Program scholarship recipients in the amount of $4,000 each.

Caitlin A. Buxton and Marcus David Alexander Pacheco recently accepted the scholarships at an OU College of Law reception. The Minority Scholars Program at Crowe & Dunley provides assistance for minority students who qualify based on academic achievement, financial need and commitment to the law.

Buxton is involved in the Organization for the Advancement of Women in Law, the Public Interest Law Student Association, the Phi Alpha Delta Fraternity and the Art & Cultural Heritage Law Student Association. She has professional experience volunteering at the Cleveland County Courthouse, serving as a legal intern for a law office in Iowa and as an assistant registrar at an art museum in Georgia. She has a bachelor’s degree in history from Wofford College and a Master of Arts in public history from Appalachian State University.

Pacheco is a recipient of the Frank & Edna Asper-Elkouri Scholarship and is a member of the Sports and Entertainment Law Society. His professional experience includes serving as a swim instructor and lifeguard for the Recreational Fitness Center and as a resident assistant for Housing and Residential Life at California State University and interning for Assemblmen Paul Cook and Mike Morrell. He has a bachelor’s degree in political science from California State University, where he graduated with department honors and was on the Dean’s List.

The Minority Scholars Program scholarships may be renewed for a recipient in each of the two remaining years of law school, based on satisfactory progress and performance. Crowe & Dunley plans to award scholarships each year, resulting in multiple recipients simultaneously receiving assistance from the program.

Diana Vermeire Named to Lawyers of Color’s 2014 Hot List

Diana Vermeire, an Of Counsel attorney with GableGotwals has been named to Lawyers of Color’s Second Annual Hot List, which recognizes early- to mid-career minority attorneys working as in-house counsel, government attorneys, and law firm associates and partners.

Ms. Vermeire is an attorney with extensive experience in the corporate and non-profit sectors. Her practice includes state and federal litigation; administrative, regulatory and legislative advocacy; policy analysis and management for a diverse client group. Ms. Vermeire has experience representing clients in the area of compliance review and providing external reviews for companies that includes an analysis of work place policies and procedures, identifying areas of exposure for potential litigation, and offering solutions that not only ensure compliance, but also the adoption of better corporate practices.

Ms. Vermeire’s practice also involves issues related to Privacy and First Amendment matters as well as Government Relations and representing clients with policy makers in order to negotiate compromises that are best for all parties.

The honorees were chosen through a two-pronged process. The selection committee spent months reviewing nominations and researching bar association publications and legal blogs in order to identify promising candidates. Nominations from mentors, peers, and colleagues were accepted. The selection committee also made editorial picks of attorneys who had noteworthy accomplishments, especially those active in legal pipeline initiatives.

Lawyers of Color was initially founded as On Being A Black Lawyer but now also produces publications for lawyers of South Asian American, Pacific Asian American, Hispanic, and Native American heritage. LOC has been recognized by the American Bar Association, National Black Law Students Association, and National Association of Black Journalists. LOC provides research, career development, and brand marketing opportunities to clients. With a core readership of 35,000, nearly 200,000 unique blog visitors, and nearly 4,000 followers and fans, LOC has the largest social media presence of any minority legal organization.

Paralegal Tammy Dalbom Joins McAfee & Taft

Tammy M. Dalbom, a veteran paralegal whose legal career has spanned more than 30 years, has joined McAfee & Taft, providing support to the firm’s Intellectual Property lawyers.

Dalbom’s responsibilities include preparation of and filing U.S. and foreign patent applications, trademark applications, patent and trademark responses, renewals and copyright applications; handling maintenance fee payments for U.S. patents and annuities for foreign patents and applications; coordinating and preparing documents for intellectual property litigation in both federal court and the U.S. Patent and Trademark Office; and handling research projects relating to all aspects of intellectual property law.

Dalbom holds a bachelor’s degree in communications from Lamar University in Beaumont, TX, and is a graduate of Southwestern Paralegal Institute in Houston, TX. She is also a certified shorthand reporter.

The University of Oklahoma Law Center Opens Enrollment for Fall Paralegal Program

The University of Oklahoma Department of Legal Assistant Education at is gearing up for its fall program. The enrollment deadline for new students is August 18.

The two-year program is designed to prepare students for careers in law firms as well as in corporate and government law-related businesses. It teaches the skills necessary to perform a variety of law-related tasks, including legal research and drafting legal documents.

Classes are offered on Saturdays in order to allow students to continue working while studying for their certificate which is approved by the American Bar Association.

If you are interested in finding out more, the Department of Legal Assistant Education is hosting a FREE Legal Assistant Seminar Saturday, August 16th from 9 AM to 11:30 AM. It will be held at The University of Oklahoma Law Center located at 300 Timberdell Road in Norman.

For more information or an application, call (405) 352-1726 or visit www.law.ou.edu/ead.

Old News

Excerpts from OCBA News:
April, 1973, Part 2

Video Replay of Trials for Appellate Courts is Luncheon Topic

By George Davis

Winfrey E. Houston, a practicing attorney from Stillwater, Oklahoma, will highlight the April 19, OCBA Noon Luncheon to be held at the Imperial Ball Room of the Skirvin Hotel. His topic will concern the advantages of using mechanical recording devices in conjunction with a court reporter to update and streamline the appeals process. The speaker co-authored an article in the February, 1973 American Bar Association Journal on this same subject.

There are several major problems faced by appellate courts that would render a video replay beneficial according to Mr. Houston. All non-verbal communication (mood, accent, etc.) that can subly (sic), yet significantly, affect the outcome of a trial is presently lost to the appellate courts. Based upon observation of videotape “records” six of the present Oklahoma Supreme Court Justices have expressed the view that the availability of videotape recordings would be helpful to appellate judges. Videotape appears to make a more lasting impression on a viewer than a written transcript and such factors as speed of preparation of the record for appellate review and indirect restraint of unruy defendants are also cited as advantages of video recordation.

Mr. Houston was president of the Oklahoma Bar Association in 1969. He received his B.A. degree from Oklahoma State University and his J.D. degree from the University of Oklahoma College of Law in 1950. From 1968 to 1970 he served in the House of Delegates of the American Bar Association.
By Roscoe X. Pound

I want to thank all the OCBA members who emailed me to say how much they enjoyed last month’s issue. I really appreciate that, and I’ll update you in just a sec.

First, mea culpa. I was wr... I was wr... I was perfectly correct last month when I cited Jones v. Barnes, 463 P.3d 48. Underneath the eagle-eyed readers who pointed out that the citation should have been “U.S.,” not “P.3d.” I expect visits from the ghosts of Marian Opala, Edward Re, and Ruggero Aldisert some night after the clock tolls one. OK, Judge Aldisert’s still alive at 95 and, as far as I know, still active on sen- tor status, God bless him. So, I guess he’d have to have an out-of-body experi- ence or something. Hey, I’ve invoked him enough times it just might happen.

Second, I said I have more to say about narrowing appellate issues. To the faint of heart who dare not drop weak arguments lest their client sue or file a bar complaint, I have two things to say. Embazon this in red, followed by exclama- tion points (it’ll never be emphatic enough): YOU WRITE TO PERSUADE THE COURT AND, POSSIBLY, ITS CLERKS. YOU DO NOT WRITE TO IMPRESS OR ENTERTAIN YOUR CLIENT. Also, the “attorney judgment” rule holds that attorneys do not breach their duty to clients, as a matter of law, by making informed strategic choices. Professional decisions, as such, which issues to keep or discard fall within the purview of the rule. In Manley v. Brown, 1999 OK 79, 989 P.2d 448, former clients sued attorneys for “substandard perfor- mance” at trial and on appeal. As to the lat- ter, clients asserted failure to raise a defense which the trial court rejected on a pre-trial motion. Affirming the trial court’s grant of summary judgment for the defendants, the Supreme Court ruled that an attorney “cannot be declared neg- liable in having failed to press on appeal arguments that lie in an arena of unsettled law or in making substandard strategy choices. Failure repeatedly to advocate a questionable theory of defense rejected earlier at nisi prius does not constitute a lawyer’s breach of due care.”

More recently, the Oklahoma Court of Criminal Appeals considered the issue from a “reflective of a court’s per- spective. It recognized that “The Smith v. Robbins Court [SCOTUS] emphasized that even though appellate attorneys are not required to raise every arguable issue or every possible ‘non-trivial clause’ (not to mention specif- ically requested by the defendant) and are expected to select the claims most likely to succeed on appeal — it is still possible to bring a Strickland claim based on [appellate] counsel’s failure to raise a particular claim.” Id. at 288, 120 S.Ct. at 765 (citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)). The Robbins Court also recog- nized that the relative merit of the omit- ted issue(s) - in relation to any appealed issues - must be evaluated in order to determine whether appellate counsel’s performance was adequate.” Logan v. State, 2013 OK CR 2, 8, 293 P.3d 969.

The Court then recognized qualitative poles (failure to raise “dead bang win- ners” on the one hand and “clearly merit- less” on the other). In between, the analy- sis becomes more difficult: “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” The Tenth Circuit Court of Appeals has likewise stated: “If the omitted issue has merit, but is not so compelling, the case for deficient perfor- mance is more complicated, requiring an assessment of the issue relative to the rest of the appeal, and deferential consider- ation must be given to any professional judgment involved in its omission.” 2013 OK CR 2 at 13 (citations omitted).

Now let me catch you up.

We arrived at Meadowlands. I had Jeff pull right up to the ER door and hopped out before he came to a complete stop. I must have made some picture. One old gent I passed shoved his wife behind him and brandished his cane defensively. An off-duty cop working security dropped his clipboard over to the side of his sidewalk. I didn’t blame them. I came in at a run sweating buckets despite the outside chill, my own piece visible, carrying a snake in plastic bag from off of Jeff’s boardroom. Probably lucky Father Auggie intercepted me before I caused a general panic.

My family and friends sat together like circled wolves, the Mom was abstruse of course. So were Chips and Rae. The stricken looks on their faces as I approached confirmed that I probably looked like a Lovecraftian horror. Distantly, I heard something else Father Auggie said: “She’s gonna be alright — under control; — antivenin.” Chips stood. I thought he wanted to offer me a seat. His attention went directly to the snake.

“Copperhead, Good.”

I broke stride, looking at him like he was the elderly creature. In a moment, his computer like brain caught up with his mouth. He turned white. “What I mean is that all of possible snakes, a cop- perhead is one of the least venomous.” “I’ll take whoever sent it,” I said.

A nurse buzzed me in. Another led me to a curtained-off partition where Penny lay. Her right hand and arm were black- ened and blots of black wound around her arms. Between her paled and the white sheets and pillow- cases, her red hair blazed. She smiled weakly and raised her hand a little. I took it.

“Nice arm,” I said.

She said softly: “Rae already men- tioned a copperhead, I think? It must have raised its head, came at me from off of Jeff’s floorboard. Probably some Z’s,” she said.

I kissed her gently. After a brief chat with the ER doc to make sure everything was under control I went back out to the waiting room. In the meantime and the Hobbop cop Seery had also shown up, innocente reached me first.

“Anything you’d like to share with your friendly local constabulary?” he asked.

I handed him the snake which I just now realized was still held. “He did it,” I said.

“Fine,” Joe replied, “but who’d he work for?”

“Good question,” I said.

“Goddammit Roscoe!” he exclaimed.

I walked over to where my people sat. Seery moved as if to check me but the Captain warned him off. “You sure this guy’s on our side?” I heard him ask. Fair question. Sometimes I wonder myself.

“So what do we do to find these guys?” my dad asked.

“There is no we here, Pop. You take care of Mom while she takes care of Penny. I’ll take care of the rest of it.”

Father Auggie was gone and now Henry Kissinger shutting between the cops and my old man. My daughter and son showed up with Penny’s mom and sister. I turned from Dad to give them a sit rep. Chips and Rae came over to me, Rae piloting him my way. She urged him to ask questions.

“Listen, Mr. Pound, you’re like two of my favorite flicks. The brains of the guy in A Beautiful Mind and the social skills of Rain Man.

“I just wanted you to know I’ve down- loaded crimes involving the use of snakes, from the Synanon case in the 70’s to last year in Buhl, Idaho,”

“I’d say,” I said.

“Yes. In 2013 a snake was placed in the mailbox of a woman who won a personal injury judgment against a church called ‘St. Michael’s of the Lily.’ Interestingly, in 2009 a journalist doing a story on that same church and snake story.

He handed me his IPAD. It showed the logo of the church, a shield with a cross formed by an inverted sword. A white lily snaked around the blade. A flame hov- ered above it and, below, three drops of blood.

“Khan?” I asked.

“Nazi,” he replied.
The French Connection

Bastille Day and the Fourth of July

By Justin Hirsche

I do not know what has always fascinated me about Bastille Day. I have no connection with the French. I am not of French descent. I am an American who revels in the history of our country and the absolute wisdom of our founding fathers in creating this great experiment in democracy. I even named my daughter America (okay, her middle name, but that was my wife’s mandate). The decision to name my daughter after the country, the ideals of which I am so proud of, was made long before I found out I was going to be a father. But as a student of history, the more I learned about Bastille Day and the French Revolution, the more intrigued I became with this similar holiday celebrated by our democratic neighbors.

The French celebrate Bastille Day in France annually on July 14. The Bastille was a prison in located in Paris where many political prisoners were held under the reign of Louis XVI. The Bastille symbolized the harsh rule under the Bourbon Monarchy. Louis the XVI, although hated by many of his constituents, was a proponent of the American Revolution. France was the first sovereign nation to recognize the North American colonies as one sovereign nation and signed a military alliance with the colonists and waged war against Britain. Many scholars believe that this was a move not so much out of the respect for the colonists of the new world, but rather to weaken Great Britain and repay the Crown of Britain for the defeat in the Seven Years War. The enormous debt that was incurred by the French monarchy during the Seven Years War and the aid to the American colonists seems to be a central factor in the uprising of the citizens against the monarchy. In addition to the crippling debt, other democratic ideals leading to the storming of the Bastille included the common citizen’s right to own land, religious tolerance (mainly in favor of non-Catholics) and the citizen’s right to govern themselves (a/k/a the fight against despotism). If you pick up a copy of our beloved Declaration of Independence beautifully penned by Thomas Jefferson and dutifully revised by John Adams (and others) the very ideas contained within the Declaration against King George III are those same ideas captured by the hearts of the French revolutionists who stormed Bastille.

History tells us that there were merely seven prisoners within the walls of the Bastille at the time it was captured on July 14, 1789. The event is thought of today, (as it was during the capture) not so much as the freeing of political prisoners, but as a symbolic triumph against an over-reaching monarchy with little compassion for its subjects. The act itself was no small task. The Bastille was a significant structure made of steel and iron standing over 100 feet tall. It was encircled by a moat more than 80 feet wide. Its many prison cells were reserved only for the most upper-class of felons, political trouble-makers and spies.

It was reduced to a few stacked blocks in the center of Paris, by order of the newly formed revolutionist republic on February 6, 1790. What actually remains of the Bastille in Paris is shocking when it comes to all of the many other ancient buildings that stand around the world today. I have stood in the very prison where over 2,000 years ago the apostle Paul was said to have been chained to the wall in Rome while he wrote letters to the Ephesians. I have even felt with my own hands the rings that may (but probably not) have held Paul’s chains against those prison walls. That prison is no bigger than many Oklahoma County judge’s chambers and was dug out of tufa rock over two-thousand years ago. It must have been the symbolism for which the Bastille stood that caused the Parisian revolutionaries to harbor such hatred against its very existence. Its capture and fall was the very birth of the first and new republic in France.

You simply cannot discuss (or write a widely read Briefcase article on the French Revolution and the storming of Bastille without coming back to the works of Jean-Jacques Rousseau, much like you cannot think of the Fourth of July without thinking of Thomas Jefferson and those words “when in the course of human events…” Many of the very principles held by Rousseau were embedded within the Bill of Rights. The right of citizens to life, liberty, property and equality were central to Rousseau and America’s founding fathers. How utterly American is the statement “man is born free, and everywhere he is in chains.” There are many Rousseauian principals that were in direct contradiction to the founders such as Thomas Jefferson’s notion that “the government that governs least governs best.” Rousseau was more tolerable of a bigger centralized government that was just, whereas American founders such as Jefferson were much more paranoid of a bigger more controlling central government and relished in the separation of powers as also expressed by John Locke.

The point of this article is not whether the certain principals of either revolution were better or worse for the democratic governments that followed, but with what fervor and passion those revolutionaries embodied the ideals in which they believed. The French citizens paid back Louis XVI – and his infamous wife Marie Antoinette – by removing their heads. King Louis XVI remains today (and presumably for the rest of time) the only French King to be executed by its citizens. It is impossible to miss the passion the French feel for their revolution when you read the lyrics of the opening stanzas to their national anthem

Let’s go children of the fatherland, the day of glory has arrived! Against us tyranny’s Bloody flag is raised! In the countryside, do you hear the roaring of these fierce soldiers? They come right to our arms to slit the throats of our sons, our friends! Grab your weapons, citizens! Form your battalions! Let us march! Let us march! May impure blood water our fields!

Just like Americans, the French were willing to die (and many did) to protect the rights each of them held sacred. Later, in 1886, the French citizens recognized the unity and friendship of our nations by providing the American people one of the most recognized symbols of freedom and friendship on the planet: the Statue of Liberty. And while I do not pretend to understand the language, cussin’, or personal hygiene the French citizens hold so dear, I do understand the unique passion the French revolutionists shared with our own American founders.

So this month while you are celebrating the birth of this great nation, you may throw some escargot on the grill, or replace that hoagie bun with a baguette in a subtle shout-out to those brave Parisians who fought the good fight against despotism.
Oklahoma County Lawyers Rate Judicial Candidates

The Oklahoma County Bar Association recently conducted a poll of Oklahoma County Bar Association members to obtain their opinion on the qualifications of district judge candidates in Oklahoma County as well as statewide judges on the retention ballot.

Oklahoma County Bar Association President-Elect, Jim Webb, stated: “This survey is one of the many benefits the Oklahoma County Bar Association offers. Every lawyer I know has had a non-lawyer friend or family member ask for a recommendation on judicial candidates. The OCBA wants voters to be fully informed as they head to the polls. While the OCBA certainly does not endorse any candidates, this poll is an important part of the voter education process.”

The participating attorneys were given eight factors to consider in arriving at an opinion: honesty, intelligence, legal ability and experience, freedom from bias, impartiality, temperament, courtesy, and diligence and dedication. The lawyers were asked to rate each judicial candidate only if they knew that candidate well enough to have a fair and intelligent opinion as to their qualifications. Otherwise, the lawyers were asked to mark the survey "no opinion."

There are 2,400 members of the Oklahoma County Bar Association who received the questionnaire poll. 419 responses rating candidates in contested races, as well as retention ballot judges, as “not qualified,” “qualified,” “well qualified,” or “no opinion.” Webb emphasized that this poll is the opinion of the 419 attorneys responding to the questionnaire, and the results are not scientific.

The Oklahoma County Bar Association will be hosting a forum among the candidates for District Judge in Oklahoma County on Thursday, October 23, from Noon to 1:30 p.m. at the downtown Metropolitan Library auditorium. The public is invited to attend.
# OKLAHOMA COUNTY BAR ASSOCIATION
## 2014 JUDICIAL CANDIDATE QUALIFICATION POLL

<table>
<thead>
<tr>
<th>OKLAHOMA COUNTY DISTRICT COURT RACES</th>
<th>Not Qualified</th>
<th>Qualified</th>
<th>Well Qualified</th>
<th>No Opinion</th>
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<tr>
<td>OFFICE 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aleitia Haynes Timmons</td>
<td>45 (32%)</td>
<td>64 (45%)</td>
<td>32 (23%)</td>
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<td>Joel Porter</td>
<td>14 (11%)</td>
<td>68 (53%)</td>
<td>44 (36%)</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Tom Prince</td>
<td>3 (1%)</td>
<td>86 (26%)</td>
<td>244 (73%)</td>
<td>86</td>
</tr>
<tr>
<td>K. Williams</td>
<td>61 (71%)</td>
<td>20 (23%)</td>
<td>5 (6%)</td>
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</tr>
<tr>
<td>OFFICE 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Donald L. Deason</td>
<td>15 (4%)</td>
<td>58 (18%)</td>
<td>255 (78%)</td>
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</tr>
<tr>
<td>Orenthel Denson</td>
<td>141 (84%)</td>
<td>17 (10%)</td>
<td>10 (6%)</td>
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<td>OFFICE 13</td>
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<tr>
<td>Roger Stuart</td>
<td>9 (3%)</td>
<td>61 (18%)</td>
<td>265 (79%)</td>
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<td>Amy Palumbo</td>
<td>109 (70%)</td>
<td>22 (21%)</td>
<td>13 (9%)</td>
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<tr>
<td>Jarrod Heath Stevenson</td>
<td>69 (57%)</td>
<td>30 (25%)</td>
<td>22 (18%)</td>
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<td>Don Andrews</td>
<td>5 (2%)</td>
<td>50 (18%)</td>
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## RETENTION BALLOT

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<tr>
<th>SUPREME COURT</th>
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<th>Well Qualified</th>
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<tbody>
<tr>
<td>DISTRICT 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>John F. Reif</td>
<td>17 (6%)</td>
<td>110 (37%)</td>
<td>166 (57%)</td>
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<tr>
<td>DISTRICT 6</td>
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<td></td>
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<tr>
<td>Tom Colbert</td>
<td>38 (12%)</td>
<td>107 (33%)</td>
<td>175 (55%)</td>
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<td>DISTRICT 9</td>
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<td></td>
</tr>
<tr>
<td>Joseph P. Watt</td>
<td>20 (6%)</td>
<td>98 (32%)</td>
<td>190 (62%)</td>
<td>111</td>
</tr>
</tbody>
</table>

## COURT OF CRIMINAL APPEALS

| DISTRICT 2    |               |           |                |            |
| Charles A. Johnson | 15 (6%)       | 83 (34%)  | 145 (60%)      | 176        |
| DISTRICT 3    |               |           |                |            |
| Gary L. Lumpkin | 23 (9%)       | 76 (29%)  | 166 (62%)      | 154        |

## COURT OF CIVIL APPEALS

<table>
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<tr>
<th>DISTRICT 1, OFFICE 1</th>
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<th>Qualified</th>
<th>Well Qualified</th>
<th>No Opinion</th>
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<td>Jerry Goodman</td>
<td>15 (7%)</td>
<td>80 (39%)</td>
<td>112 (54%)</td>
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<td>DISTRICT 1, OFFICE 2</td>
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<tr>
<td>Jane Wiseman</td>
<td>9 (4%)</td>
<td>86 (34%)</td>
<td>154 (62%)</td>
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<tr>
<td>Deborah B. Barnes</td>
<td>13 (6%)</td>
<td>82 (35%)</td>
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<tr>
<td>W. Keith Rapp</td>
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<tr>
<td>DISTRICT 6, OFFICE 2</td>
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</tr>
<tr>
<td>Brian Jack Goree</td>
<td>14 (8%)</td>
<td>69 (39%)</td>
<td>93 (53%)</td>
<td>243</td>
</tr>
</tbody>
</table>
By Honorable Joe Sam Vassar
Creek County District Court Judge

Over 40 years ago I sat in a courtroom in Oklahoma county wanting for an old judge, at least as old as I am now, to finish trying a non-jury case.

It was a driveway dispute. The judge was obviously disinterested and was doodling away on his yellow pad as the witnesses droned on and on. Suddenly the judge looked up with a gleam in his eyes. There was only one explanation: he knew some law in point. Considering this judge, that was a most unusual occurrence.

Interrupting counsel, the judge proudly asked “Gentlemen, isn’t this covered by the decision in Doe v. Smith (case name invented)?”

Both opposing lawyers looked at each other, rather embarrassedly, before one finally replied “Your honor, that precedent was abandoned by the Supreme Court a number of years ago.” The other lawyer nodded his head in agreement.

The judge appeared astounded for a moment before he banged his fist on the bench “Damn it all” he said “the law has just got to stand still.”

**Ohio from PAGE 4**

County. Therefore, he brings this original action for a writ of habeas corpus ad prossequendum in this Court.

For the purpose of investigation of all of the facts surrounding this case, it would seem that this is the only method by which this petitioner can obtain a preliminary hearing and an early trial. He has attempted to have a hearing in the district court of Tulsa County, and these attempts have been ignored. Therefore, we must consider this an original proceeding before this Court, and this Court has often held that either an accused or the State may proceed in the district court of the county where charges are filed by way of habeas corpus ad prossequendum, making the magistrate and the person having custody of the accused parties defendant, so overlook preliminary proceedings, original proceedings may be filed in the Court of Criminal Appeals.

This Court feels that the county attorney and the examining magistrate were acting in good faith, but in thinking that they did not have jurisdiction were acting under a mistaken view of the law. Therefore, in the interest of justice, we would be derelict in our duty if we did not entertain this petition, and order the accused to be delivered to the sheriff of Tulsa County and upon completion of said hearing and trial, to re-delivered to the Warden of the State Penitentiary for the completion of his present sentence.

And we further feel, that as stated by Judge Powell in In re: Zurn, 97 Ok.L.R. Cr. 294, 262 P.2d 725: “It is fundamental that every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction.”

This accused is entitled to every opportunity at the earliest possible moment to clear himself, if innocent, which the law assumes, and places the burden of proof upon the Prosecution. But if the accused is guilty from evidence in the hands of the Prosecution, the State should at the earliest opportunity serve upon him notice that such a hearing is to be held, upon which he may regard as respect for and orderly procedure be expected and maintained.

**Driveaway Dispute**

Q. How much was that check? A. That’s true.

Q. And actually Mr. Benavides helped you get paid from TXO for your royalty didn’t he? A. Well, he told me they hadn’t paid me and it was getting pretty late. I had been fighting with them to get them to pay me. They were awful slow on issuing the first checks but after that they paid pretty well.

Q. After Mr. Benavides called that to the attention of the Commission it wasn’t a day or two until they brought you a big check, wasn’t it? A. That’s true.

Q. How much was that check? A. A hundred thirty-five thousand dollars.

Immediately following this testimony the opposing counsel approached the bench and moved that Mr. Watson be sanctioned for introducing evidence into the record that had been specifically prohibited by the ruling on the motion in limine. In response to the motion Mr. Watson argued that he not only had the testimony on direct examination raised a question as to plaintiff’s income but that the plaintiff was suing Mr. Watson’s client (the defendant below) for punitive damages and the quoted testimony refuted the charges that the plaintiff had been dealt with by the State in a deliberate unfair manner. At the close of this argument the court made the following statement:

The court: I ordered you not to bring up that issue and not to speak directly. You failed to follow that order. I consider that contempt of this court’s order and I think an appropriate sanction in this instance would be a fine of $1,000.00.

Following this Mr. Watson gave notice of his appeal and asked that the fine be stayed to which the court agreed.

On appeal Mr. Watson contends that he did not violate the court’s motion in limine ruling because the testimony elicited on cross-examination was non-specific as to the source of the $135,000 check. He argues in his brief that “there was no evidence showing that the question to be contumacious pertained to production income or income from royalty interests in those offsetting wells. The clear implication of receiving a royalty check from TXO is that this is income from those offsetting wells that TXO operates. There is nothing whatsoever to relate the check to the Grant well in the quoted portion of the transcript. The testimony concerning the specific amount of the $135,000 check was prohibited by the court’s ruling on the motion in limine. We find, therefore, that Mr. Watson, by introducing the evidence, did violate the court’s ruling.

Mr. Watson’s next argument is that, if he did violate the court’s order, it was not violative contemptuously or willfully. Therefore, no punishment for contempt of court is in order. We find this reasoning persuasive.

In Oklahoma contempt of court is governed by the constitution and statutes, not by common law… 21 O.S. 1981 § 565 defines contempt as follows:

Contempt of court shall be divided into direct and indirect contempt. Direct contempt shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view, and presence, and of the unlawful and willful refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for. Indirect contempt of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a court. (Emphasis added.)

It has been decided that the “disorderly or insolent behavior” referred to by the above statute means “conduct that is unruly, tumultuous, or disrespectful.” Fulreader v. State, 408 P.2d 775 (Okla. 1965) quoting Rest. v. Evans, supra. In Fulreader the Supreme Court found the defendant’s conduct free of contempt due to the fact that “although the defendant was persistent in presenting his client’s case no lack of respect for the court was exhibited.” Nine years after the Fulreader decision was handed down this Court formally adopted the American Bar Association Standards Relating to the Function of the Trial Judge as part of the Court Rules of Procedure. State ex rel. Young v. Hixon, 522 P.2d 1035 (Okla. 1974). The second standard sets out the conditions under which sanctions, more severe than censure, are warranted. It reads as follows:

No sanction other than censure should be imposed by the trial judge unless (i) it is clear from the identity of the offender and the character of his acts that disruptive conduct was willfully contumacious, or (ii) the conduct warranting the sanction was precluded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

The facts on appeal do not show any signs of willfully contumacious conduct on the part of Mr. Watson. The single question he asked of the witness in regard to the amount of the check, while technically violating the motion in limine ruling, was not disruptive nor was Mr. Watson’s manner of asking the question in any way defiant. His response to the opposing counsel’s motion for sanctions was nothing less than that of an attorney ardently defending his client’s position. Once the trial court ruled that he had violated the motion in limine ruling, Mr. Watson continued his cross-examination with no show of disrespect and he did not raise the matter again. The question cited by the court in holding Mr. Watson in contempt is not sufficient to warrant any punishment for contempt of court. The situation before us does not contain the necessary elements of contempt as defined by theABA standards and adopted by this Court. We find that without proof of a willful disruption of the court’s proceedings or a showing of a complete disregard for the court and its judicial powers the act complained of cannot fall within the purview of contempt of court that warrants punishment by fine or imprisonment.
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Kent Frates

Judge Nancy Coats

Robert Hall

Magistrate Judge Ronald Howland

Charles Hunnicutt

David Lynn

James (Jim) McCaffrey

John Mee, Jr.

Charles Ming

Phillip (Larry) Savage

Michael Stewart

Martin Stringer

Mike Tesio, Jr.

Jon H. Trudeon

Jerry Tubb