The OCBA YLD is pleased to announce the 2018 Chili Cook-Off & Silent Auction will return to Anthem Brewing Company on Friday, February 9, 2018. The competition formally kicks off the YLD’s year-long commitment to the Regional Food Bank of Oklahoma, raising funds and awareness within our community to support the mission of the Regional Food Bank and the Oklahomans who rely on its services. Many teams are expected to compete in 2018 and Oklahoma County Judges will renew their roles as the final adjudicators of the County’s best chili. Awards are at stake for best traditional, non-traditional, and hottest chili, as well as the coveted best overall award.
By President David A. Cheek

Your Oklahoma County Bar Association ended 2017 on a strong note. The Christmas gathering was well attended, both by practicing bar and the judiciary. Not only was it a good time to renew acquaintances, but it also presented another opportunity to interact informally with judges from not only the trial bench, but also the appellate bench. It appeared that a good time was had by all who attended.

On a community service level, OCBA accumulated hundreds of gloves, hats and winter coats, which were delivered to Carver Mark Twain Head Start program for distribution to their students and family members of the students. It is a simple gesture, but has a huge impact on our community, particularly given the weather we had in December.

As we start another new year, it is common to: 1) reflect on the past years, and 2) resolve to do better.

I have always enjoyed country music because it seems to get to the heart of our experiences in a meaningful, down-home way. Tim McGraw has a song titled “My Next 30 Years,” which seems appropriate. His advice is to “find a world of happiness without hate and fear;” “cry a little less, laugh a little more;” and “spend precious moments with ones we hold dear.” Billy Dean reminds us “saying goodbye to a friend who seemed so young; He spent his life working hard to chase a dollar; What’s the hurry, why the running? Gonna change my style; Take my time, cause we’re only here for a little while.”

The practice of law is a stressful adversarial, environment that can make these simple thoughts get lost in the daily confrontations. The U.S. political divide, at both the state and national level, and the world geo-political confrontations, all further obscure these simple principles. In reflecting on the past year(s), I encourage everyone to remember that ultimately it is the role of the lawyers to rise above the conflict and to ultimately solve the client’s problems, hopefully as quickly (and economically) as possible. Keeping a focus on the bigger picture without losing sight of the client’s immediate needs is a delicate balance and takes a constant, conscious effort. The lawyers that serve our profession by keeping that balance are the ones that ultimately excel as true professionals.

It is not easy to keep our perspective under the adversarial system that serves us so well. A few have a natural talent for keeping proper focus. The rest of us must work at achieving that goal. James A. Garfield, the 20th President of the United States, once said, “If the power to do hard work is not talent, it is the best possible substitute for it.”

Because I am one of those who has to substitute hard work for talent, I have resolved to renew my efforts to do the right thing more often.

I encourage everyone to resolve to either dedicate their talent or their hard work, whichever is applicable, in the coming year to make our profession and our association a better profession. We will all benefit from those efforts.

Happy 2018 to all!
Dear Roscoe: While watching various versions of Scrooge, my kids asked me about what he meant by the “treadmill and the poor law.” Care to help us out? E.H., Edmond, OK.

Dear E.H. Glad to. Hope one of the “various versions” you watched was the Alstair Sims one from the 50’s. That’s the best as far as I’m concerned. That’s followed by the Sir Seymour Hicks version from the 30’s and, sentimental fav, the Mr. Magoo version from the ’60’s.

The New Poor Laws were influenced by the ideas of three writers of the day. The first was Thomas Robert Malthus, who advocated limiting population growth so it wouldn’t increase faster than food production. Families were split up in the workhouses into three separate barracks to discourage conception; David Ricardo, who argued that wages would naturally tend toward a subsistence level. This view, called the “Iron Law of Wages,” influenced Karl Marx’s dim view of the prospects of workers benefiting from capitalism.; and Jeremy Bentham, whose idea was utilitarianism, the notion that the moral or ethical thing to do was to do what would bring the greatest happiness to the greatest number of people. Similarly, laws ought to be structured to discourage what hurts society and encourage what helps society. That these principles be put into place with draconian authoritarians is irrelevant to his view of ethics.

The Poor Law of 1834 sought to take beggars off the street and feed and clothe them in exchange for forced labor. The treadmill, in turn, was a machine used to grind flour or other things needing grinding, including, on occasion, one of the poor persons who powered the machine by walking upon it. The Poor Law grew out of the theory that poverty was the fault of the impoverished and therefore they should be made to fix it. Sure it sucks, but it beats the Poor Law of 1601 which included both floggings and hangings for the “habitually idle.”

Dear Roscoe: A client came in to speak to me about a bankruptcy. She has recently deployed to Oklahoma from Maryland. She had fallen into the trap of trying to borrow her way out of debt. While in Maryland, she employed the services of “debt resolution spec-

Dear F.S.: If the question is do I think the issue is unauthorized practice of law, hell yeah. All 50 states and D.C. prohibit the unauthorized practice of law. Each State regulates its own. SCOTUS says that’s kosher. Our decisions

Typically, debit cards that are used as “credit” receive the same protections as credit cards. This means that if you use your debit card in a store and choose “credit” instead of entering your PIN number, you should receive the same protections as if you used an actual credit card. But here’s a scenario where your debit card is riskier than your credit card. If you withdraw money at an ATM, you can use your debit card as long as you follow proper procedures. If you use your debit card at an ATM, then he has direct access to your account. A skimmer traditionally has two components. The first is a small device that’s generally inserted over the card slot. When you insert your card, the device creates a copy of the data on the magnetic strip of your card. The card passes through the device and enters the machine, so everything appears normal—but your card data has just been copied. The second part of the device is a camera. A small camera is placed somewhere it can see the keypad—perhaps at the top of an ATM’s screen, just above the number pad, or to the side of the pad. The camera is pointed at the keypad and it captures you entering your PIN. The terminal continues to function normally, but attackers just copied your card’s magnetic strip and stole your PIN. The attackers use this data to program a bogus card with the magnetic strip data and use it in other ATMs, entering your PIN and withdrawing money from your bank accounts.

Quick action is key. The client’s liability is as follows:

$0 if you report the loss or fraud immediately and the card has not been used,

Up to $50 if you notify your bank within 48 hours of your lost or stolen card,

Up to $500 if you notify the bank within 60 days of your lost or stolen card, and All of the fraudulent charges if you don’t notify the bank until after 60 days.

Of course there will be investigations and delays, but we closed out Friday and Saturday thinking we had a pretty good handle on things. “But wait,” as the TV pitchmen say, “there’s more.”

quote of the month

What do we live for, if it is not to make life less difficult to each other?

— George Eliot (pen name of Mary Ann Evans), novelist (1819-1880)
An Olio of Court Thinking

by Jim Croy

January 5, 1918
One Hundred Years Ago
[Excerpted from Lynn v State, 1918 OK CR 85, 168 P.2d 426.]

The plaintiff in error, Teddy Lynn, was convicted at the July, 1913, term of the county court of Kay county on a charge of having unlawful possession of intoxicating liquor with intent to sell the same, and his punishment fixed at a fine of $500 and imprisonment in the county jail for five months.

Numerous assignments are set out in the petition in error and argued in the brief as grounds for reversal of the judgment of conviction. Many of the assignments are well founded. Included in objections to the instructions of the court is an assignment based upon the proposition that the court, in its instructions, called the attention of the jury to the fact that the plaintiff in error failed to show or prove that he was not guilty beyond doubt. The punishment inflicted by the jury, however, is the maximum imprisonment provided by the statute.

This punishment was fixed by the jury, having before it and under consideration the prejudicial instructions of the court. It is our conclusion that substantial justice warrants the reduction of the punishment imposed. It is therefore ordered that the judgment be modified to a fine of $100 and imprisonment in the county jail for 60 days, and, as so modified, affirmed.

January 12, 1943
Seventy-Five Years Ago
[Excerpted from City of Holdenville v. Deer, 1943 OK 9, 132 P.2d 928.]

This is an action against the city of Holdenville to recover damages for the pollution of a stream. Verdict for defendant was set aside and new trial granted on plaintiff’s motion, and defendant appeals.

According to the record and the briefs, the motion was sustained on the sole ground that plaintiff was prevented from having a fair trial as a result of the alleged irregular or illegal selection of additional jurors to supplement the regular panel for the trial.

The record shows that immediately prior to the trial the regular panel was found to be insufficient, and the court, by oral order and without the knowledge of the plaintiff, directed the court clerk and the sheriff to summon ten additional jurors, their selection to be made by drawing their names from the box containing the duly prepared jury lists. But only those jurors residing in or around the city of Holdenville were to be summoned.

The ten additional jurors were selected accordingly. In the process of selecting the names of jurors who did not reside in or near Holdenville were drawn, but these names were replaced in the box and not used. The result was that all the ten additional jurors were residents of the defendant city.

The plaintiff charged that the process so adopted was irregular and contrary to the statute in that the clerk and sheriff should have selected the first ten names drawn and summoned those only, instead of deliberately selecting only the names of jurors residing in or near Holdenville and not from those residing elsewhere in the county.

In restricting the additional jurors to be called to those residing in or near Holdenville, the court was prompted by the condition of the roads, which were then impassable on account of heavy rainfall. Plaintiff charged that as a result of the alleged illegal drawing she was compelled to try her cause before a jury made up of an unwarranted number of citizens of the defendant city; that had the names been selected from the county at large, a lesser number would have been called from Holdenville, and as a result she could have made her peremptory challenges more effective in decreasing the number of such citizens on the jury. She charged that by reason of the unusual number of Holdenville citizens called, her peremptory challenges were used up in an attempt to remove as many thereof as possible, but was unable to so reach five of such citizens, all of whom remained on the trial jury. All of these circumstances, it is alleged, resulted in undue prejudice to plaintiff's cause.

The authority of the trial court to have additional jurors summoned is controlled by 38 O. S. 1941 § 4, 5. Section 4, which deals with the drawing of jurors, provides that additional and other drawing as of many names as the court may order may be had at any time for the completion of the jury panel during any term of court where, for any cause, the court in its discretion shall deem other jurors necessary.

And said section 5 provides that when, for the trial of any cause, the regular panel shall not be sufficient, the jury may be selected from the plaintiff's or the court may direct an open venire to the proper officer for such number of jurors as may be deemed necessary, to be selected from the body of the county or from such portion of the county as the court may order.

The above sections provide three methods for obtaining jurors in addition to the original regular panel. First, additional names are drawn from the box by the clerk and the sheriff in the manner provided by section 4, supra. In this method the clerk and the sheriff select members of the regular panel for the term. Second, jurors may be summoned by direction of the court. These jurors come from bystanders and may be used to make up the regular panel. 35 C. J. 290-291, § 270. In restricting the additional jurors to be called to those residing in or near Holdenville, the court did no more than the law authorized it to do.

The Criminal Court of Appeals has held that under the above statutes it is within the discretion of the trial court to enlarge the panel by an additional method. It has been held that the court may order jurors to be called to those residing in the county to augment the original regular panel. 35 C. J. 257, § 203. The court may order may be had at any time for the completion of the jury panel during any term of court where, for any cause, the court in its discretion shall deem other jurors necessary.

Here, the court directed the clerk and sheriff to supply ten jurors by drawing their names from the jury box, but to call, only those who resided in or near Holdenville. In so doing the court did not overstep its discretionary power conferred by statute. It did not order a special venire, summon such number of jurors as the court may designate, to be selected from the body of the county, or from such portion of the county as the writ may order. These special veniremen may also be used to make up the regular panel. 35 C. J. 257, § 203. It appears that the verdict in this case was set aside solely on the ground that the additional jurors were improperly selected and that such selection resulted in an unwarranted number of Holdenville citizens on the jury whose interest as taxpayers was assumed to be that of the county, and not of the city of Holdenville.

It was not improper, and the condition thereby brought about is not a legal detriment to a fair trial. Citizens of a municipality are not disqualified as jurors in an action against the municipality merely by reason of such citizen's interest in the city, as the conditions in this case. It appears that in calling the jurors for as above said the court did no more than the law authorized it to do.

The record in this case shows a substantial compliance by the court and officers with the statutes pertaining to the selection of additional jurors, and that fulfills the requirements of the law, unless there was some irregularity in calling the jurors for the same, and may be used to make up the regular panel. 35 C. J. 290-291, § 270. It appears that in calling the jurors for as above said the court did no more than the law authorized it to do.
January 23, 1968
Fifty Years Ago

This appeal concerns the correctness of the trial court's action sustaining a motion for directed verdict and entering judgment for defendant in error, in an action brought by plaintiff in error as beneficiary, to recover upon an insurance policy issued by the defendant company.

Defendant issued a group life insurance policy to the Oklahoma Bar Association Group Insurance Trust. Under this group policy insurance coverage was extended to active members of the Oklahoma Bar who were medical examination. On May 10, 1961, plaintiff's decedent, an active lawyer 69 years of age, made written application and paid the required premium for a $5,000.00 policy. The application was approved and the policy issued effective June 1, 1961.

The written application for insurance contained the following matter:

1. (a) Are you now in sound health? Yes.

2. (a) Have you had any ailment, injury or disease within the last five years which has resulted in absence from work ten days or more? No.

(b) Have you ever been told you had blood or sugar in your urine, any heart trouble or disease of the coronary arteries, high blood pressure or cancer or any other malignant disease? No.

(c) Have you ever been declined or postponed for Life or Health Insurance? No.

Insured died of coronary thrombosis on July 21, 1961, while the policy was in force and effect. The beneficiary furnished proof of loss and requested payment of policy benefits. The demand for payment was refused and the beneficiary brought suit to recover the proceeds of the policy.

The trial court's ruling was for defendant company. The court held that the evidence was insufficient to sustain a motion for directed verdict and entering judgment for defendant in error as beneficiary. The judgment of the trial court was affirmed by the Supreme Court of Oklahoma.

This appeal concerns the correctness of the trial court's action sustaining a motion for directed verdict and entering judgment for defendant in error, in an action brought by plaintiff in error as beneficiary, to recover upon an insurance policy issued by the defendant company.

January 11, 1993
Twenty-Five Years Ago

Appellant Donald Ray Davis was charged with Possession of a Controlled Substance (Count I), violations of 63 O.S. 1981 § 2-402, and Possession of a Firearm While Committing a Felony (Count II), in violation of 21 O.S. 1981 § 1287, in Case No. CRF-89-443, in the District Court of Oklahoma County. Pursuant to an agreement with the prosecutor, Appellant pled guilty during a preliminary hearing on February 15, 1989, to Counts I and II in exchange for two five-year suspended sentences to run concurrently and 80 hours of community service. The trial court accepted the plea and sentenced accordingly.

On the same day, the State discovered the Appellant had six prior felony convictions and filed a motion vacating the judgment and sentence, contending Appellant's prior convictions justified the imposition of the suspended sentences according to 22 O.S.Supp. 1988 § 991A. The record reflects that the judgment and sentence were vacated by the court. On May 3, 1989, the trial court held a second preliminary hearing and ordered Appellant to stand trial on each of the charges, after former conviction of two or more felonies.

Prior to the second preliminary hearing, Appellant filed a petition for writ of habeas corpus in the trial court on May 2, 1989, alleging the judge had not set aside the judgment and sentence and that the vacation of the judgment and sentence violated Appellant's constitutional rights. Before the trial court rendered a decision on the petition, Appellant filed a separate petition for writ of habeas corpus in this Court on May 10, 1989, asserting the same grounds contained in the petition filed with the trial court.

On June 14, 1989, the trial court denied Appellant's petition for writ of habeas corpus, arguing that it lacked jurisdiction to resolve the question. Appellant was not present at this hearing and the trial court took no evidence on an order for an evidentiary hearing. On June 20, 1989, we reversed the trial court's order denying Appellant's petition for writ of habeas corpus, finding that the trial court did possess jurisdiction to set aside the judgment and sentence. However, after further review of the issues raised, and the briefs and evidentiary hearing presented, the Court of Criminal Appeals determined that our previous order was incorrect.

A jury trial was held on September 13 and 14, 1989. Appellant objected to the commencement of a new trial by filing a plea of former jeopardy which was denied. In that trial, the jury convicted Appellant of Possession of a Controlled Substance, in violation of 63 O.S. 1981 § 2-402, and Former Conviction of Two or More Felonies, and Possession of a Firearm While Committing a Felony (Count II), after Former Conviction of Two or More Felonies, and recommended as punishment imprisonment on一辈子 each of the charges, after former conviction of two or more felonies, and recommended as punishment imprisonment on the two counts. The trial court sentenced accordingly, ordering the sentences to run concurrently. It is from this judgment and sentence that Appellant appeals. Because of the limited scope of the alleged errors, only facts relevant to the resolution of the issues presented are addressed.

In his first assignment of error, Appellant contends the trial court violated his privilege against double jeopardy by vacating the judgment

See OLIO, PAGE 14
Old News
Excerpts from OCBA News:

October 1978, Part 4
The Kratchlovian Chronicles

Half Astute Views
By Gene Castleberry
Retyped and Republished By Geary L. Walke

It is generally acknowledged that one of the finest films ever produced was “Jesse James” starring Tyrone Power, Henry Fonda, Randolph Scott, Ward Bond, John Carradine, Henry Hull and a covey of Hollywood’s fugible females. Henry Hull played the part of a crusading newspaper editor whose crusades took the form of editorials castigating his current target, whether it be the head of the sheriff, bankers, notaries public, or whoever. The editorials invariably began: “There will never be law and order in the West until all (whoever) are taken out into the street and shot down like dogs!”

This recollection came to mind last week when I read that the Highway Department is closing down an important portion of the Northwest Expressway in the same area is already shut down for two years. Just as everyone else, I have fumed impotently through the years at the absurd road situation in and around Oklahoma City, and as everyone else, had attributed it to the traditional American bureaucratic “CICIS Factor” (rhymes with “kick-us”): Corruption, Indifference, Cronyism, Incompetence, Stupidity.” The CICIS Factor is not everywhere, of course; just everywhere in government. I think it must be a fringe benefit or something.

However, I have learned that I was wrong—terribly wrong—about the Highway Department. A few days ago a muffled, heavily disguised voice on the telephone asked me to meet him for some startling information. He said he had become aware of my hard-hitting, no-holds-barred, truth-is-beside-the-point brand of journalism and decided I was the man. He wanted to meet in some deserted place where we would be safe from discovery, so I suggested one of the downtown churches at lunch hour or any of the county judges’ chambers after 4 pm. He turned down the latter, fearing that we might be surprised by some attorney who had failed to waken at the close of court, so we agreed on a church.

I arrived at the darkened vestibule at noon, waited alone for a while, and was just about to leave, concluding that I had been the victim of a prank, when a figure shuffled out of the shadows. He wore a raincoat with the collar turned up, and deep into his coat pockets. Instinctively, I drew away and said, “Please, Rex, not now. I’m busy.” The figure came closer and said in a whisper, “No, it’s me! The guy that just called you!” Being very relieved (the devil you know is not always preferable to the devil you don’t), I asked him what he wanted to see me about.

He began a story which, if believed—bizarre as it may be, exonerates totally the former members of the Highway Department. “Former” I say, because “former” I mean. A startling, unimaginable, horrifying process is at work which urgently needs to brought to the attention of the citizenry immediately! I shall do so now!

(Book Notes)

By Bill Gorden

The Storm Before the Storm
Mike Duncan,
Public Affairs, 2017, 352 pages, Kindle, $15.99

During the 1950s to the 1980s it was a common theme in American Conservative circles to liken the “decline” of the American polity to the decline of the Roman Empire. Immigration, de-segregation, a broad tax base, and state engendered benefit programs were likened to the issues besetting Ancient Rome.

Rome, however, was made up of more than one era. It was a Republic first, for a lengthy time, and then slid, over a period of a hundred to a hundred-fifty years, into dictatorship and then Imperialism. This is the slide that Mike Duncan sees as being informative of the current American position.

The important families in Rome were on the wane, and other new comers, literally in Latin “New Men” sought to take their place. Both groups sought to buy off the lower classes, both groups resorted to violence, ballot stuffing, and at the end to private armies vying for control. Exchange the names Scipios, Marius and Julians for Bushes and Clintons and Trumps, and the underlying meaning of this book becomes clear. To be fair, the author himself does not explicitly do this. However, the lesson is front and center Romans did not lose freedoms with the fall of the Empire, they lost many with the fall of the Republic.

Romans themselves were complicit in this loss. Scared of ever intensifying “revolts” in foreign places, which called for ever increased presence of Roman soldiers overseas, they saw strong men as the answer. The lower membership of the differing sides were inflamed by the leaders through fear and loathing. Riots at the time of elections, and election abnormalities were instigated at the top, but it took the masses to carry out those transgressions. All of this began roughly after Rome defeated its largest competitor, Carthage, and was faced with smaller nations around it. Think: the fall of Soviet Communism.

The flow of this book is a little sluggish, as most of us are not as familiar with Marius or Gaius as we are with Augustus and Julius. One does get a sense of the inevitability of the outcome, which might be a bit over, as the people of the time did not see the outcomes in advance. However, that can be said of any time. There is an annoying tic in this book which is also found in other recent histories, namely the use of modern, out-of-place terms in describing the action. “Gaining steam” is an instance, and other references that tie to our electronic age are used to describe the political action of another time. This is a small thing in a good book.

Events & Seminars

FEBRUARY 6, 2018
CLE Luncheon Seminar
12 Noon, Bar Office

FEBRUARY 23-27, 2018
2018 OCBA Santa Fe Ski Seminar
Santa Fe, New Mexico

MARCH 16, 2018
OCBA Night with The Thunder
OKC v. LA CLIPPERS
To us, it’s personal.

Dobson Technologies gets it. When your network, Internet service, or phones are down, so is your business - and your productivity, and your plans for the day, and probably your revenue too. Keeping you up and running is why we get up every morning.

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— VoIP Phone Solutions

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The event is open to the public (21+). Teams of 4 or 5 are encouraged to pre-register; the entry fee is a $15 donation per person. Attendees can sample as much chili as they would like and enjoy complimentary coffee, tea, soft drinks, and sides. Cold libations will also be available for cash purchase courtesy of Anthem Brewing Company.

For more information, please visit www.okcbar.org or call (405) 236-8421.

At Dobson, our only business is caring for your business.
February 19, 2018

Presidents Day. The day on which we honor our country’s leaders of the past. We immediately think of Washington, Jefferson and Lincoln. Some think of Hamilton, but those thoughts do not survive the prism of reality, for although he was a signatory of the Declaration of Independence, and has a musical to his credit, he was never president. In addition to the “Big Three” presidents, one might mention a Roosevelt or Reagan from the twentieth century. But there have been forty-five presidents to honor this February 19th, and several from the 19th century merit a brief mention.

Millard Fillmore was the final Whig to be US President. He was vice president and assumed the presidency with the death of Zachary Taylor in 1850. In his brief time as president, he championed the 1850 Compromise, including the Fugitive Slave Act. This law required slaves who had escaped their captivity to be returned to their masters, even if they had reached a free state. He also dispatched Commodore Matthew C. Perry to Japan with instructions to “open” Japan to western trade. The tale of Perry’s successful venture to Japan makes exciting reading in its own right. However, by the time Perry anchored in Japanese waters, Fillmore had been defeated in his effort to be elected president in his own right.

Fillmore is reputed to have said, “May God Save the country, for it is evident that the people will not.” But then, he also opined, “The nourishment from barbecue is palatable.”

John Tyler, also a Whig, is possibly most famous for his campaign song, “Tippecanoe and Tyler Too” or for his attempts to annex Texas to the United States. But to the constitutional historian—among whose ranks is not included your correspondent—the most interesting aspect of his presidency is that it is referred to as a ‘presidency’ at all. Tyler was not elected president. Rather, he was William Henry Harrison’s vice president, and at that time the vice president had no duties other than just to be available. Before Harrison, no president had failed to complete his term. But the aging Harrison took ill and died shortly after assuming office, and the meaning of the presidential succession clause of the Constitution was sorely tested. While Tyler was sworn in as president, many politicians refused to accept him in that capacity, believing that under the circumstances Tyler should be some sort of regent and that his title should be Acting President. Tyler ultimately prevailed and moved into the White House. His own Whig Party disavowed him and attempted to impeach him after he vetoed a tariff bill. He later did sign a tariff bill.

Although he was a president without a party, he was intent on expanding the nation, signing the Log Cabin Bill, which gave settlers the right to claim 160 acres of land before it was for sale and then purchased it for $1.25 per acre. And on his last day in office he signed a bill making Florida the 27th state in the union.

Franklin Pierce, the 14th president, is possibly best known for his support of the Kansas-Nebraska Act, which led to the Bleeding Kansas border war. With all efforts to expand the country in the twenty years before the Civil War, the question of whether new states would be pro- or anti-slavery states was paramount. The Kansas-Nebraska Act repealed the prohibition to slavery in Kansas Territory, and in 1855 a proslavery legislature was elected in Kansas and the anti-slavery free states formed a rival government. Pierce failed to send in federal troops or take any other action to quell the violence. He not only brought down his presidency, and he is credited with the demise of the Whig Party and the severe weakening of the Democratic Party.

After he lost three sons, including one which he saw killed in a train wreck, and with a wife who refused to act as First Lady (spending most of her time writing letters to the spirit of the son killed in the train wreck), Pierce is reputed to have stated, “There is nothing left to do but get drunk.” In this enterprise, at least, he was a renowned success.

James Garfield is probably best known for being the second president in less than two decades to be assassinated. He was nominated to be the Republican candidate as a dark horse compromise between the Stalwarts and the Half-Breeds. The Republican infighting followed him into the White House, where he attempted civil service reform, ordering the prosecution of governmental officials for corruption. Garfield worked to increase the rights of freedmen, appointing Frederick Douglass recorder of deeds. After only a few months in office, Garfield was shot by a disgruntled, mentally deranged, lawyer on July 2, 1881. He died on September 19.

There are two kinds of people who read the last paragraph: those who have no idea what Stalwarts and Half-Breeds are, and, on the other hand, history geeks. To, elucidate, a Stalwart was a Republican who was in favor of the patronage system and waving the bloody shirt, and a Half-Breed was a Republican who was in favor of a merit system for federal hiring. Garfield’s assassin, Charles Guiteau, was a Stalwart.

James Polk, at age 49 when inaugurated, was the youngest president to that point. One of his goals was to annex Texas, which was at the time an independent republic. Polk’s success in having Texas become the 28th state inflamed relations with Mexico, leading to the Mexican-American War. The war lasted two years and ranged as far west as contemporary California. It resulted in Mexico ceding parts or all of present day California, Utah, New Mexico, Nevada, Arizona, Colorado, Texas, Oklahoma, Kansas, and Wyoming to the United States.

Polk had a reputation for diligence and long hours. Obviously, he was not a golfing president because he wrote, “No President who performs his duty faithfully and conscientiously can have any leisure. I prefer to supervise the whole operations of the government myself rather than entrust the public business to subordinates, and this makes my duties very great.” In 1848 Polk made good his promise to serve only one term, and he declined to seek reelection.

And who among us could forget William Henry Harrison? Frankly, most of us could forget him. If called on to name some of the significant accomplishments of President Harrison, we would be hard pressed to come up with even one, since he was only in office one month. He did call congress into special session. But then he caught a cold and died nine days later, being succeeded by his vice president, John Tyler. However, there is no truth to the legend that, with death near, President Harrison sat up in bed and, gesturing toward his vice president, proclaimed the now famous, “Here’s Johnny!”

The history of our presidents is the history of our country. For better or worse, each of our bygone leaders has left his stamp on the United States. Some of those stamps have been bold and significant. Some of them have been faint and of lesser consequence. This February holiday is the time to examine each of these stamps for what we can gain from them.
Don’t ask me how it happened, but the Briefcase got behind on articles about new judges in 2017, and we know there will be more to come. Nevertheless, we owe big apologies to Judge Lydia Green for not covering her ascension to the bench prior to this. She was officially sworn in February 13th, 2017. By now, she’s combat-tested and all the new has worn off, as she has gone about her duties in Juvenile Court.

Judge Green’s greatest fear upon her appointment and assignment to Juvenile Court was that she thought she would be expected to know “everything.” While most of us judges claim to be omniscient and clairvoyant, she quickly learned that was not really the norm. Her previous experience in Juvenile Court has served her well from when she represented parents before Judges Ken Watson and Susan Johnson.

She does, however, still acknowledge the awesome responsibilities that come with the job. She has the ability, for better or for worse, to change young lives. Her intent is to relate to each child as an individual in specifically individual circumstances, and do what is in their best interests. For juvenile delinquents she wishes to imprint on them that there are bigger and better things in their future. She tries to direct their attention to positive goals and building constructive lives. For the deprived children she buys journals for the girls and footballs, etc., for the boys. She’s not being sexist as she’ll offer up either to any child appearing before her.

Born in Dallas, Baja Oklahoma, she enjoyed a wonderful childhood of her own with a warm and loving family. She wishes she could duplicate that for her own wards. She majored in biology and chemistry at Texas Tech with plans to attend medical school at Baylor. Unfortunately, she learned that the smell of formaldehyde or blood was completely unacceptable. That planned career in pediatrics lost out, but a career helping children remained. She attended Oklahoma City School of Law, maintained a solo practice and represented the Metropolitan Fair Housing Council on housing discrimination cases. She also worked with the OCU Law Alumni, mentoring new OCU Law students and connecting with fellow alums. In that same vein, she has been a member of the OCU Law Executive Board since 2016.

She claims she never gave much thought to becoming a judge, but said the Lord puts us in places and she loves working with children. Judge Green is the eldest of two girls whose superlative parents were from Detroit and had the good sense to move south. Her baby sister Leah is in Nursing School. Her mother, Linda, is a professional realtor; her father, Frederick, is her first love and has always been so wise, always telling her, “You can do it.” He never said, “No.” She says she is blessed to have a wonderful family and wants to instill the same feeling, as much as is possible, in the children in her court.

We look forward to Judge Green’s long and rewarding career on the bench.
Community Service Committee Celebrates Christmas at Edwards Redeemer Nursing Home

By Monica Ybarra, Community Service Committee Chairperson

OCBA Community Service Committee & friends hosted another fun Christmas party at St. Edwards Redeemer Nursing Center. Committee members provided treats and Christmas cards for all of the residents. The highlight of the party was the fantastic performance by The Elderly Brothers. The residents, staff members, and community service committee members showed off their dance moves and joined in the Christmas caroling.

Throughout the year, the Community Service Committee hosts various parties and events for the residents at Edwards. All OCBA members are welcome.

BACK TO SANTA FE

By: Ryan Dean

In February, the Oklahoma County Bar Association returns to Santa Fe, New Mexico for its Annual Ski Seminar from February 23-26, 2018. In addition to thought-provoking CLE courses, great shopping, fine dining and the best company, this year’s trip will include opportunities for a more intimate exploration of Santa Fe at a reasonable cost. These excursions include a Canyon Road Art Tour, a red chile cooking class and a tour of Santa Fe Brewing Company, to name a few.

For more information contact Bentley Hedges Travel Service – Angie Hendricks (angie@bhtravel.com) or trip captains John Healy (jhealy@fellersnider.com) and Justin Meek (jmeek@ntmdlaw.com).
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After 20 years as Helms & Underwood, the partners are dissolving the partnership. Conner L. Helms is pleased to announce the formation of the Helms Law Firm at One NE 2nd Street, Suite 202, Oklahoma City, OK 73104. (405) 319-0700. Email is conner@helmslegal.com.

McAfee & Taft elects six new shareholders

The shareholders of McAfee & Taft have elected attorneys Sasha L. Beling, Jessica John Bowman, Emily Wilson Bunting, Brian A. Burget, Terra Lord Parten and Christopher M. Scaperlanda as fellow shareholders, effective January 1, 2018. The announcement was made by managing director Michael Lauderdale.

Sasha L. Beling is a patent lawyer whose practice encompasses all aspects of intellectual property law, including patents, trademarks, copyrights, licensing, Internet law, unfair competition, and trade secrets. Her experience includes the representation of clients in federal courts and before the Patent Trial and Appeal Board (PTAB) and the Trademark Trial and Appeal Board (TTAB) of the U.S. Patent and Trademark Office.

Jessica John Bowman is a patent and trial lawyer whose practice is focused on intellectual property, environmental, and appellate litigation. Her experience includes maintaining an active practice before the Trademark Trial and Appeals Board, assisting numerous retailers, manufacturers, and banking institutions in opposition and cancellation proceedings.

Emily Wilson Bunting is a tax lawyer whose practice covers federal and local tax planning for businesses as well as individuals, wealth transfer tax planning, tax structuring of business transactions, and local, state and federal taxation. She also represents clients in proceedings before the Oklahoma Tax Commission and the Internal Revenue Service.

Brian A. Burget is an aviation lawyer who represents aircraft lenders, lessors, purchasers and sellers in relation to commercial, corporate and regional aircraft. He is also a member of the firm’s Cybersecurity and Data Privacy Group, representing clients facing complex cybersecurity, privacy and data challenges. He counsels corporations on privacy and security program management, cyber incident response, and surveillance and information sharing.

Terra Lord Parten is a business transactions lawyer whose broad practice encompasses the areas of corporate, regulatory and healthcare matters. She also assists franchisors with negotiating and preparing complex franchise agreements and representing franchisors in compliance with franchise disclosure and registration laws.

Christopher M. Scaperlanda is a trial lawyer whose state and federal litigation practice encompasses a broad range of commercial matters, including those involving insurance disputes, securities claims, directors’ and officers’ liability, contract disputes, and other complex business litigation.

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Volunteer opportunities

The Regional Food Bank of Oklahoma depends on a strong volunteer force to fulfill their mission of “Fighting Hunger...Feeding Hope” in central and western Oklahoma. Every day, volunteers sort, pack or make enough food to fill a semi-truck. Metro-area volunteer opportunities:

The Volunteer Center, where projects include packing boxes to send to agencies, compiling sacks of child-friendly food for their Backpack Program, repackaging large quantities of frozen food into family-sized bags, packing boxes of donated bread and more.

Hope’s Kitchen, our commercial kitchen, where staff help volunteers make and pack complete meals for our Kids’ Cafe and Summer Feeding sites.

The Protein Processing Center is our USDA-certified room where donated protein items, such as ham, are repackaged into family-sized portions and boxed up to send to agencies.

Mobile Markets are outdoors, and volunteers meet a Regional Food Bank truck at a designated location to help bag food, pass it out to residents and clean up afterward. These are a great opportunities for volunteers to help distribute fresh food to underserved populations.

The Moore Food & Resource Center, located at 2635 N. Shields in Moore, is an opportunity for volunteers to have an extremely client-focused experience. At the Moore Food & Resource Center, volunteer roles include client intake, shopping helpers and shelf stockers, among others.

Volunteer at the Regional Food Bank of Oklahoma

The Regional Food Bank of Oklahoma has many opportunities to volunteer with their Community Service Committee, Law Related Education Committee, Lawyers For Learning Committee and Voices for Children Committee. However, this new monthly column will list other opportunities for our members to help the community. If you know of something that should be listed, please contact the Bar Office at 236-8421 and we will add it to this new monthly Briefcase column.

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New Year-New Life:
Graduation from Drug Court

By Geary Walke

It’s appropriate in the beginning
of a new year to be optimistic, hope-
ful and to plan for a better future.
I supervise some of the Oklahoma
County Problem Solving Courts (Drug
Court, DUI Court, Mental Health
Court).

Each graduate of these programs
presents a speech to the rest of the
participants. I have never heard a
disappointing speech. Every one of
them is unique and a wonderful thing
to hear as they address the problems
they’ve had, often for many years, and
the ways they have learned to address
those problems in these programs.
Some are long, some are short, and of
course they fill a wide range of com-
munication ability. Here is a recent
speech we heard. Please read it and
try to understand all that it meant to
this individual:

Hello. My name is Joseph and
today I’m 733 days sober. I’m proud
to say that I’m ready to begin the next
chapter of my life.

Drug Court has been a long and
challenging journey. A journey which
I’m grateful I got to take part in.
Without a doubt it has changed my
life. A life I’m proud to live.

This program has given me time
to find that piece of my soul
which had been missing for
many years. To

me, the greatest thing Drug Court has
given me is time. Time to find a clear
mind, a mind that thinks rationally
and considers the consequences. It
gave me time to pick up my broken
pieces and to start forming a life
which I can be proud of.

You see, I had a wonderful child-
hood (His parents were present). I
had opportunities not many had. I
have caring parents who have only
wanted the best for me, but I still
found myself lost. I took a path that
led me into darkness. A darkness
so black I thought I would never
be able to find my way out. There were
times where I thought I had messed
up so bad I couldn’t see myself being
mended. However, I was wrong.
Despite all of the horrible things I did
to my parents and family they held
onto some hope for me and never
stopped loving me. Their teach-
ings and the small bit of
hope I held for myself
started to finally take hold. I
wanted them to look
at me with some pride. I
wanted to feel some pride
in myself again. I knew I
needed to change.

Drug Court has given
me that time to change. I knew
from almost the beginning that
I was done with that life and so I
surrendered to the tough rules and
regulations we have to follow. I did
this because I wanted to be better. I
wanted to become a good person and
a better man. Slowly I started feeling
time and to roll with punches when
life wasn’t easy. They taught me tools
to handle the stress and the sadness
and to not give up. I am grateful to
them.

I came into drug court living in
an apartment where I was stealing the
electricity to renting my own home
with a wonderful dog. My parents
gave up on me, but our relation-
ship is better than it has been in many
years. I’ve started to rebuild their
trust and I will owe them forever for
their support and help throughout this
program.

My journey in drug court has
come to an end, but I realize that I
have further to grow as a man living
free from drugs. I have high hopes
though. I know that if I continue to
make good choices and work hard for
all I have I will be a success.

I want to thank everyone on the
Drug Court team for their kindness
and help. Without you we would not
have this opportunity to fix our lives.
I would also like to thank Judge
Walke. It is inspiring to see a man
in power care and show respect and
kindness to people like me who are
lost. I wish there were more like you.

Thank you Madison Mélon
(Public Defender) for always having
our backs and fighting for us and this
program. To all of those involved
with treatment, thank you. I know
your jobs aren’t easy and I’m grateful
for the teachings I received at HOPE.
This program has meant a lot to me
and I’ll keep my fingers crossed the
program will be here for many years to
come. The program works! I’m a far
better person today than I’ve been in
many, many years. Thank you.

Several felony charges were dis-
missed on this date via Assistant
District Attorney, Anne Mulder. An
application to accelerate his deferred
sentence on another case was dis-
missed. As soon as the deferred
sentence is successfully served Joseph
will be felony free. As a young man,
this is truly the start of a new
life.
and sentence rendered on his plea and by ordering a new trial. The Double Jeopardy Clause to the Oklahoma Constitution, art. II, § 21, ensures that no person shall be punished more than once for the same offense, and that no person should be vexed by successive prosecutions for a single crime or criminal transaction. ... Based on our reasoning on this matter in similar cases, we find that jeopardy attaches when the jury is sworn, if an accused elects to be tried by a jury. ... When an accused waives his right to a jury trial, jeopardy attaches once the defendant enters a plea after being advised of his rights and does not seek to withdraw his plea. ...

In the present case, the record reveals the Appellant pled guilty after entering into a plea agreement with the District Attorney at the first preliminary hearing. The Appellant declined to withdraw his plea after being advised of his rights. The trial court thereafter handed down a judgment and sentence was incorrect in setting aside both. However, in each of those cases we left to the discretion of the trial judge whether the suspended sentence should be revoked upon discovery of the prior convictions. Upon further consideration, we find the holdings in Mesmer and Lyda are inconsistent with the intent of the Oklahoma Legislature as expressed in the provisions of 22 O.S.Supp. 1988 § 991a(B) and should be modified to be consistent with our determination that the order suspending was void at the time it was entered.

Based on the above analysis, we disagree with the State that both the judgment and sentence from the plea of guilty were invalid. Jeopardy attached upon the acceptance of the guilty plea and sentencing Appellant. The trial court was without authority to vacate the judgment of guilt and violated Appellant’s protection against double jeopardy by ordering a new trial. Prior to entering into plea agreements, the State should complete its check regarding any prior convictions which would affect the sentencing authority of the court.

Therefore, that portion of the judgment and sentence entered on February 15, 1989, which suspended the execution of the sentence is void. This is consistent with our previous decisions in Mesmer v. Raines, 351 P.2d 1018 (Okla. Cr. 1960) and Lyda v. State, 428 P.2d 347 (Okla. Cr. 1967). However, in each of those cases we left to the discretion of the trial judge whether the suspended sentence should be revoked upon discovery of the prior convictions. Upon further consideration, we find the holdings in Mesmer and Lyda are inconsistent with the intent of the Oklahoma Legislature as expressed in the provisions of 22 O.S.Supp. 1988 § 991a(B) and should be modified to be consistent with our determination that the order suspending was void at the time it was entered.
Do you know a judge or lawyer who should be recognized for their dedication or willingness to go above and beyond their everyday life to better the legal or local community? The Oklahoma County Bar Association is seeking nominations for the following awards to be presented at the Law Day Luncheon on May 1.

The Journal Record Award is presented by the Journal Record Publishing Company to an attorney or judge who has served both the community and legal community in a professional and outstanding way. Based on lifetime achievements, this award recipient is selected by the Law Day Committee and is one of the OCBA’s most prestigious awards. Letters of nomination for this award should be sent to the OCBA, 119 N. Robinson, Suite 240, Oklahoma City, OK 73102, attn: Law Day Committee. Nominations should be received in the bar office no later than April 1, 2018.

Journal Record Leadership in Law Awards are selected by the OCBA Awards Committee. The Awards Committee is looking for outstanding leaders in the legal community who unselfishly give their time and energy to improve the lives of fellow Oklahomans, in addition to juggling their busy legal careers. Only five recipients are selected each year. Letters of nomination should be mailed to: OCBA, 119 N. Robinson, Suite 240, Oklahoma City, OK 73102, attn: Awards Committee. The nomination deadline is April 1, 2018.

Liberty Bell Award is presented at the Law Day Luncheon by the Young Lawyers Division. This award is given to a non-lawyer who has given her/his time to assist the legal community in Oklahoma County. Nominations for this award can be mailed to YLD Chair Cody Cooper, OCBA, 119 N. Robinson, Suite 240, Oklahoma City, OK 73102.

Howard K. Berry, Sr. Award is given to an individual who resides in Oklahoma County or a charitable organization that is located in Oklahoma County to honor that individual’s or organization’s outstanding achievement or contribution to Justice or the Justice System. The winner of the Award will be honored by the presentation and a cash award of $10,000 from the Oklahoma County Bar Foundation. The winner of the Howard K. Berry, Sr. Award is selected by the Board of the Oklahoma County Bar Foundation from the nominations received without any action on the part of the nominee to seek this award or enter the proceedings. One need not be an attorney or a member of the bar to make a nomination, but one must be a resident of Oklahoma County to make the nomination. The winner of the award need not be an attorney or employed in the legal profession or the Justice System, but the winner’s achievement or contribution must advance the charitable purposes of the Foundation to advance the cause of Justice, equal access to justice for all and/or the improvement of the Justice System. No nominee will be disqualified by having been previously nominated for any other award in recognition of his, her or its achievement or contribution to Justice and/or the Justice System or the legal profession. The winner of the Award will not be required to render any substantial future services as a condition to receiving the prize of the Award. This award is made possible through a generous gift of Oklahoma County attorney, Howard K. Berry, Jr., to honor his father and long time Oklahoma County attorney, Howard K. Berry, Sr. Mr. Berry’s gift has established the Howard K. Berry, Sr. Fund at the Oklahoma County Bar Foundation to provide funds for the Howard K. Berry, Sr. Award and support other causes related to law and justice. No special form is required to make the nomination, but a form is available on the OCBA website at WWW.OKCBAR.ORG under the OCBF tab. Please keep the following in mind when making the nomination: The entire nomination – letter, supporting materials, clippings, seconding letters and attachments included may be no longer than five single-sided, 8 ½" x 11" pages. No exceptions. The nomination must contain contact information as to the qualification of the individual to make the nomination and the Nominee’s qualification to receive the Award. Deadline for submission is April 1, 2018.
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