Law Day 2018 celebrates the separation of powers within the United States Constitution. The U.S. Constitution set up our government with three distinct branches of government.

OCBA CELEBRATES LAW DAY 2018
WITH DEAN JOSEPH HARROZ, JR. FROM THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW TO SPEAK AT THE LAW DAY LUNCHEON

By Amber Martin, OCBA Law Day Chair

Law Day 2018 celebrates the separation of powers within the United States Constitution. The U.S. Constitution set up our government with three distinct branches of government.

Did We Just See A Judicial Lynching?
OP ED BY Rex Travis

(Edited’s Note: The opinions expressed here are those of the writer, and not of the Oklahoma County Bar Association, or the Briefcase Committee)

We have just seen in the Oklahoman relentless criticism of Judge Wallace Coppedge, a judge in southern Oklahoma. The subject of the criticism was that he was

See JUDICIAL LYNCHING, PAGE 7

Election time is coming and nominations for all offices are due by April 15, 2018.

Nominations for President-Elect are by signed petition of 20 members.

Candidates for Vice President, Law Library Trustee, OCBA Board of Directors and OBA House of Delegates can be nominated by petition with signatures of 10 members.

Additionally, the Board of Directors may nominate any candidate until May 1, 2017.

Ballots will be mailed in July and the results will be announced in the August Briefcase.

Nomination petitions will be mailed upon request by calling Debbie Gorden at 236-8421.

OCBA Election Nominations Needed
From the President

Growing the OCBA

by President David A. Cheek

For those of you who did not attend the ski trip/CLE that Justin Meek and John Heaty put together, you missed a really great event. Not only was it well attended by a group of OCBA members and their spouses, the attendees were diverse in age and practice areas. The CLE was insightful and did not infringe on the opportunity to enjoy the special venue that Santa Fe always offers.

I had the opportunity to mingle with some of the younger members of our association and experienced firsthand some of the diversity of our organization. It was time well spent.

Among our existing members, we seem to have good interaction. The organization is well run due to quality, long-term staff (affectionately referred to as the “Trumvirates”), and is well funded, due in no small part to the proximity access card program. My frustration is that, of the lawyers in Oklahoma County, only about one-third of them are members of OCBA.

If we are here to serve the County Bar members, why can we not get greater participation? One hundred dollars a year is not a burdensome sum of money. I have challenged the Board of Directors to informally inquire of non-members what the OCBA could be doing differently to entice involvement of more Oklahoma County lawyers. If we are not doing something that could make a difference, we need to know that that might be. It would be good to have broader participation from all local lawyers.

I encourage all members to seek out non-members and ask the same question. Let me, or any of the members of the Board of Directors, know what you find out. We really would like to know.

On a different note, at the ABA leadership conference last March, which is attended annually by Debbie Gordon and the incoming president, an interesting concept was presented by the Cincinnati Bar Association. They are a voluntary bar organization, as is OCBA. They have a much larger membership base, generally due to the population diversity, and they have opened the association membership to non-lawyers professionals that are what I will term “legal related” professionals. It includes bankers, accountants, real estate brokers, insurance brokers, and healthcare professionals, to name a few. Cincinnati provides for a limited number of voting positions on their Board of Directors dedicated to non-lawyer members. The exact qualifications for membership were not clear, but are not necessary for purposes of this article. The point is, their association is more expansive and outward-focused in providing community support and assistance. This stands in contrast to an inward, or limited attorney-only focus of most bar associations, including the OCBA.

Cincinnati’s focus is to involve a broader range of community participants, without losing the goal of keeping the association focused on law-related activities. It was conceded that the executive directors must continually ensure that sponsored activities were law-related. However, their reported overall experience was positive, and the non-lawyers contributed meaningful insight and participation into the association’s projects and overall goals.

Last month, I reported on the activities and experiences of the Fee Grievance and Ethics Committee of the OCBA. That Committee has had non-lawyer members for the 39 years I have served on it. Their insights have always been welcome and helpful. They serve on arbitration panels, as voting members. The arbitrations I have handled have always demonstrated the benefit of having a layperson’s point of view, which enhances the deliberations.

I would like to explore the possibility of involving non-lawyers in OCBA, in some capacity. I believe it has the possibility of broadening our contacts within the community generally, and along with other professionals with whom we regularly interact. I am not advocating for or against Board of Directors membership for non-lawyers, as Cincinnati does, but rather for increased exposure to the community, which has some obvious advantages. The biggest downside is that our community efforts may lose some of their focus on the legal community and law-related goals. That would have to be closely monitored, but should not be overly difficult to regulate.

Each month, I assign to the Board of Directors a topic to be discussed at the next meeting. Non-lawyer membership will be the topic for April’s Board of Directors meeting. Please share your thoughts, concerns and constructive comments with the current board members so that we can have a meaningful discussion in April.

April is also the month in which nominations are solicited for the election of next year’s Board members and Vice President. All members are encouraged to participate. Our President-Elect, The Honorable Sheila Stinson, is chairing the nominating committee. Please let her know if you, or any other lawyer willing to join OCBA, would be interested in being considered for the slate of candidates.

ASK-A-LAWYER VOLUNTEERS NEEDED FOR 2018

Date: Thursday, May 3, 2018

Place: OETA, 7430 North Kelley Avenue, Oklahoma City, OK 73111 • Phone: 848-8501

Directions: OETA is behind Channel 9, off of Kelley, between Wilshire and NE 63rd (Go west off Kelley on NE 73rd, which is the parking lot of Channel 9)

I want to volunteer to answer phones on Thursday, May 3, 2018, during the OCBA’s Ask-A-Lawyer program with OETA. I would like my shift to be:

8:45 a.m. – 11:00 a.m. __ __ 11:00 a.m. – 1:00 p.m. __ __ 1:00 p.m. – 3:00 p.m. __ __
3:00 p.m. – 5:00 p.m. __ __ 5:00 p.m. – 7:00 p.m. __ __ 7:00 p.m. – 9:00 p.m. __ __

Name of Ask-A-Lawyer Volunteer: __________________________

Address: __________________________

Phone: __________________________ Fax: _____________ E-mail: ______________________

Fill out this form and return it to the OCBA by Fax 405-232-2210, e-mail connie@okcbart.org or call the bar office at 236-8421.

THANKS!!
It is also contended that the court erred in instructing the jury that the time of the commission of the alleged intercourse of his with the prosecuting witness occurred during the period from September 1st to September 15th, 1915, both days inclusive. The information did not charge that the crime occurred during that period, but merely charged that the crime was committed on or before the 1st day of September, 1915. Therefore, if the state was compelled to rely upon the evidence of the prosecuting witness, which occurred in the latter part of the year 1913, or the first part of the year 1914, nearly two years prior to the time stated in the information, and limited the proof to have been committed on or before the 1st day of September, 1915, it would have been entirely competent evidence, . . .

The information alleged that the crime was committed on or before the 1st day of September, 1915. Therefore, if the state was compelled to rely upon the evidence of the prosecuting witness, which occurred in the latter part of the year 1913, or the first part of the year 1914, nearly two years prior to the time stated in the information, and limited the proof to have been committed on or before the 1st day of September, 1915, it would have been entirely competent evidence, . . .

The information alleged that the crime was committed on or before the 1st day of September, 1915. Therefore, if the state was compelled to rely upon the evidence of the prosecuting witness, which occurred in the latter part of the year 1913, or the first part of the year 1914, nearly two years prior to the time stated in the information, and limited the proof to have been committed on or before the 1st day of September, 1915, it would have been entirely competent evidence, . . .

March 17, 1943
Seventy-Five Years Ago

The prosecutrix, Christine Allison, testified that the codefendant, Preston McDowell, for about a year and a half before the rape is alleged to have occurred on March 9, 1941, that during this period of time she had been keeping company with McDowell; that on March 9, 1941, she went to the Rainbow Night Club, about two miles southwest of Clinton, with some other friends; that she saw McDowell at the night club and sat in a booth and visited with him; that about 1:30 a.m., she wanted to go home, but the friends who had brought her were not ready to go and she asked McDowell to take her home; that McDowell did not have an automobile but he offered to get in the car, when she refused; that in a few minutes he drove her home, and then left the car and while he was gone he had sexual intercourse with the prosecutrix with her consent; after they had finished he honked the horn and Duggins came back and drove them home; that he got out of the car, walked to the door with his hands and knees in the jar, and that Duggins was gone. McDowell tried to force her to have sexual intercourse with him, but she refused; that in a few minutes Duggins returned to the car, and, at the request of McDowell, held the hands of prosecutrix while McDowell had sexual intercourse with her across the front seat of the automobile.

At no place in the examination of prosecutrix did she give her age, but her testimony showed that she had been working at various cafes in and around Clinton. There is no evidence in the record as to her size, but considering the work that she had been doing and the age of the codefendant and her height, it seems reasonable to assume that she was a girl between 18 and 21 years of age. She admitted that when she was taken home after the act was committed McDowell accompanied her to the door and kissed her goodnight. She testified that when she got in the house her mother asked what had happened and that Duggins was torn in front and that they notified the officers immediately what had happened. That it was then about 3:30 or 4 o’clock in the morning.

Preston McDowell testified for the defense that he had been in the U.S. Army at Clinton. That about 2 o’clock a.m. the prosecutrix came to him at the nightclub and asked if he would take her to town; that he spoke to Duggins, and Duggins offered to let him have his automobile to take her to town; that he, and prosecutrix got in the back of Duggins car and commenced taking each other over. That Duggins was torn in front and that they notified the officers immediately what had happened. She was a boy named Winkleback and told him to tell the defendant, Duggins, to come on out and drive them to town; that they stopped at a filling station in Clinton and got a half-gallon of oil; that they drove out east of town and stopped beside the road and she held the horn while McDowell got in the car, and, at the request of McDowell, held the hands of prosecutrix while McDowell had sexual intercourse with her across the front seat of the automobile.

The testimony of defendant, Duggins, was in substance the same as McDowell’s. He was 21 years of age.
All of the boys and girls who accompanied the prosecutrix to the Rainbow Night Club testified on behalf of defendant to refute the statements of the prosecutrix that she was wanting to go home but that they were not ready. They each denied that this occurred. It is insisted that the court erred in not sustaining the motion of the defendant for an instructed verdict of not guilty for the reason that there was no proof that the prosecutrix was not the wife of Preston McDowell, the alleged perpetrator of the crime.

Section 2515, O. S. 1931, 21 O. S. 1941, § 1111, provides: “Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:” Here follows eight separate grounds for rape but all of the listed circumstances come under the enacting clause where the phrase “not the wife of the perpetrator” appears.

Under this statute it would not be possible for the person who actually commits the act of sexual intercourse with the prosecutrix to be guilty if he were the husband.

* * *

In the brief of the state the Attorney General concedes that the information must contain the negative averment that the prosecutrix “was not the wife of the perpetrator,” and that the proof of the state must sustain this material ingredient of the offense. He asserts that the court would have to be reversed because of the failure of the state to make proof of this fact had it not been that defendant took the witness stand and swore that he was not married and never had been and this cured the error.

In the first place, as we construe the testimony of defendant, he did not testify that he was not married and never had been. The testimony on this point is as follows:

“Q. (By County Attorney) Do you go out in the country that way quite frequent? A. I have been out in the country, yes. Q. You live in the country? A. Yes, sir. Q. Not married and never have been? A. Yes.”

It would appear from the affirmative answer to this double-barreled question that the defendant was testifying that he was married. Regardless of the interpretation which may be given to this testimony, it is evident that counsel for the state are confused concerning the application of the statute. It is wholly immaterial as to whether the defendant was married, but, his guilt rests solely upon the question as to whether or not he aided and assisted Preston McDowell in making the alleged felony. If McDowell was the husband, there would be no rape, even though defendant held prosecutrix’s hands as alleged. It is conceded that the record is wholly silent as to any direct proof that prosecutrix was not the wife of McDowell. This proof may be made by circumstantial evidence. There are no facts in this case such as to compel the assumption that there was no valid marriage between McDowell and the prosecutrix. There was ample opportunity for the prosecution to prove this element of the crime directly. But not only did they not offer direct proof that prosecutrix was not wife of McDowell, but there were not sufficient circumstances to justify the submission of this question to the jury.

We feel particularly inclined to this view as applied to the immediate case, because the unsatisfactory proof as reflected by the record and admissions of counsel. When this case was called for trial, counsel for the defendants, Duggins and McDowell, asked for severance. The state elected to try Duggins first. Since he was not the man who actually committed the act of sexual intercourse but was only a minor character under the strongest view of the evidence, we are at a loss to understand why this preference was made by the state. Although the record is silent as to what disposition was made of the case against McDowell, upon inquiry by this court the Assistant Attorney General has informed us that they did not entertain the idea that they would have to be reversed because of the failure of the state to make proof of this fact had it not been that defendant took the witness stand and swore that he was not married and never had been and this cured the error.

March 12, 1968

Fifty Years Ago

[Excerpted from Turman v. Turman, 1968 OK 33, 438 P.2d 488.]

The question presented in this case is whether or not a discharge in bankruptcy releases the debtor from the obligation of paying the attorney’s fee he was ordered to pay to an attorney for representing his former wife in a divorce action she instituted, and in which she obtained a decree of divorce from him, as well as for custody of the couple’s minor children, and support for them, and was awarded part of the couple’s property, “as and for property settlement, in lieu of alimony * * *.” The divorce decree was rendered in June, 1965, directing defendant in error, hereinafter referred to as “defendant Duggins,” to pay the sum of one hundred and fifty dollar attorney’s fee on July 1st of that year. After more than two months had elapsed without the fee being paid, defendant was cited in September, 1965, to appear before the divorce and trial court, and show cause why he should not be punished for contempt. In his answer to the citation, defendant Duggins alleged that he had taken bankruptcy in a certain cited proceeding in the United States District Court, and that said attorney’s fee was listed in the bankruptcy claim filed therein. He prayed the trial court to dismiss the contempt citation.

Upon a hearing of the matter, said court’s judgment was in his favor, after finding that a contempt citation should be denied against him, because the fee was a proper item for discharge, and had been discharged, in the bankruptcy proceeding. For reversal, it is urged that said judgment was error, because, under Oklahoma Statutes, there is no material difference, in respect to the present question, between such an attorney’s fee, and the divorced wife’s alimony, to which latter the Federal Bankrupt Statute, 32 Stat. 798, as amended by subsequent Acts, including the Act of Congress of July 12, 1960, 74 Stat. 409 (11 U.S.C.A. § 35) provided:

“(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, * * * except such as (1) are due as a tax * * * * * * (2) are (sic) liabilities * * * for alimony due or to become due, or for maintenance or support of wife or child, * * *.”

It is conceded that the question of whether an obligation for such an attorney fee is dischargeable in bankruptcy is one of first impression in this jurisdiction. In support of her position, plaintiff in error, hereinafter referred to as “plaintiff,” cites cases from other jurisdictions, in which, she says, such obligations are no different in character than they are under the Oklahoma Statute, Tit. 12 O.S. 1961 § 1276, by whose authority they are fixed by court order. Said statute reads as follows:

“ORDERS CONCERNING PROPERTY, CHILDREN, SUPPORT AND EXPENSES. - After a petition has been filed in an action for divorce and alimony, or for alimony alone, the court, or a judge thereof in vacation, may make and enforce by attachment such order to restrain the disposition of the property of the parties or of either of them, and for the use, management and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and on granting a divorce in favor of the wife or refusing one on the application of the husband, the court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper, considering the respective parties and the means and property of each.”

While there may be a distinction between [See OLIO, PAGE 21]
Dear Roscoe: My client has a transgendered female employee. My client did not fire her but “took her out of the public eye”, so to speak, when she began her change-over. EEOC issued a right to sue letter. Do you feel this is discrimination? D.M., Edmond, OK.

Dear D.M.: I don’t know whether my feelings on the matter have anything to do with it or not. Times are a-changing and the law has got to keep up as best it can. On the face of your question, I think Title VII prohibits employers from “discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Discrimination based on a failure to conform to stereotypical gender norms was no less prohibited under Title VII than discrimination based on “the biological differences between men and women.”  Smith v. City of Salem, 378 F.3d 566, 573 (6th Cir. 2004). There the Court found no “reason to exclude Title VII coverage for non-sex-stereotypical behavior simply because the person is a transsexual.” Id. at 575. Thus, per Smith, a transgender plaintiff (born male) who suffered adverse employment consequences after “he began to express a more feminine appearance and manner on a regular basis” could file an employment discrimination suit under Title VII, id. at 572, because such “discrimination would not [have] occur[red] but for the victim’s sex,” id. at 574.

Dear Roscoe: Can litigation commenced by an heir against the grantor prior to the latter’s death trigger an in terrorem clause in a trust or will? T.H. Edmond, OK.

Dear T.H.: Perhaps surprisingly, it may. Last week, in EGW v. First Federal Bank of Wyoming, that State’s Supreme Court declared that a broad in terrorem clause, unlimited by modifying language in the instrument itself, The appellate court put little stock in the argument that the challengers were not officially disinherited by subsequent amendment at the close of the challenge. The Court also distinguished cases from other jurisdictions on the issue. Holding that “We must interpret the intent of the settlor according to provisions contained in the trust,” the court took the “any challenge” clause at face value and gave it controlling effect.

It heartened me that Ernie and the Lieutenant responded to my call so quickly. Buddy Orenstein arrived in an Army surplus parka and about eighteen sweaters underneath. Ernie came in a little behind him. He wore his long camel hair coat open, displaying a silk T-shirt and designer jeans underneath. Throw in his boots and the whole ensemble probably cost him the GNP of Belgium. As usual, the tension between the two grew quickly palpable.

“How exactly is he on our side?” Buddy asked me as he began divesting.

“How many sweaters you got there Buddy?” asked Ernie. “Christ, you look one of those Russian doll thingies.”

“So settle down,” I said. “Class is about to come into session. Professor?”

Chips took that as his cue to begin. “Well, gentlemen, as I was telling Mr. Pound, that the Internet has a thriving market in revenge sites. These are sites on the internet from which users may initiate cyber-attacks on the reputations of others. This usually occurs through the posting of private information, actual or altered photos of a person, and so on. They might also take darker turns. Hacking, cyber-stalking, demonstrative videos of what a potential attacker might do the victim, in some instances even posting pictures of the killing the family pets.”

“The stuff this Kearney gal had done to her,” Ernie said.

“Right,” Chips replied.

“And this is legal?”

“Probably more accurate to say it’s not illegal in many places. And in many of the places – and I’m talking about here in the States – where it’s illegal, it’s only a misdemeanor.”

“How’s that work?” Ernie asked.

“Well, in many ways the law hasn’t quite caught up with technology. This information or items posted may be true or false, genuine or doctored, defamatory or embarrassing, but as long as the web site does not author or validate the information, they stay within the legal bounds of the Communication Decency Act section 230(c)(1). That provides: No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. Essentially, the law allows all sites to allow user generated content, and protects them from liability for third party actions. Facebook, and other social media and blogs benefit from this legal provision and users are allowed to write and post comments and media online as they see fit.”

“Kinds like that Cat Stevens lyric about how a lot of nice things turn bad out there,” I mused.

“Hey, I hear he’s making a come-back,” Buddy remarked.

“Am I gonna have to separate you two,” Ernie growled. “Class is still in session.”

“Well, in addition to some online research, I’ve been working with Ms. Kearney to try to determine the source of the postings. I believe I now have the point of origin for the cyber-attacks anyway.”

“So we’re, what? Sitting here waiting for a drum roll?”

Chips rummaged through his backpack. With some difficulty, he pulled out three sets of papers, each held together with one of those jumbo-sized black clips. He handed one to each of us. Buddy looked confused.

Ernie placed his on my desk and seemed vaguely uncertain about touching it.

“I thought I’d start out by explaining the algorithms...”


“Maybe even fortune cookie version,” added Buddy. He looked at the packet from a variety of angles as if he expected it to contain an IED of some sort.

“Well,” said Chips, obviously disappointed at not getting to tell us in detail how exactly he pulled the plum from the pie, “let’s just say that with a little help from a couple friends, I’ve traced most of the emails and hacks to a site called Wraakhonds – literally “the hounds of vengeance” in Dutch. You’ll find information about it under Tab 17 of your handouts.”

“Dutch?” asked Ernie. “These guys over in Europe. Big help.”

“Actually,” said Chips, “the actual name of the site is Dutch, as is the Home Page and information posted on-line. At first glance it would look like a European site, but various downloads would allow you to translate over to a dozen other languages, including English.”

“So do we know where to find these particular trolls?” asked Buddy. “Trolls” actually came very close to a techno-term. I’m impressed he knew it.

“Mars,” Chips answered guilelessly. Ernie’s voice came softly and dangerously: “No one’s laughing kid.”

“Hmmm? Oh. I didn’t think you’d think I meant—I mean no, not Mars the planet. Mars, PA.”

“I suppose we’re talking misdemeanor down there too huh?”

Having spent the past few minutes perusing not only Tab 17 but also 18-20 I was able to state: “I think we can do much better than that.”

Events & Seminars

MAY 1, 2018
Law Day Luncheon
Skitvin Hotel Grand
Ballroom
12 Noon

MAY 3, 2018
Ask A Lawyer Program
8:45 a.m. – 9 p.m.
OETA Studios

JUNE 15, 2018
Annual Awards Luncheon
12 Noon, Jim Thorpe Room

JULY 16, 2018
OCBA Annual Golf Tournament
Gaillardia Golf Club
JUDICIAL LYNCHING from PAGE 1

the defendant was a foster parent. In that case, there was concern that if there was no conviction and no probation, the alleged rapist would be free to continue being a foster parent. We can all agree that’s a really bad idea.

The public does not understand that judges do not “make” plea agreements. Plea agreements are made through negotiations between the prosecutor and the defense attorney, and usually involve input from the victim and/or the victim’s family. The agreement is then presented to the judge with a “take it or leave it” option — either the Court accepts the deal and imposes the agreed-upon sentence, or it rejects the deal, in which case the case must be typically be tried or dismissed.

These are tough decisions for everyone involved, including the prosecutors and the judge, as well as the victims and their families. Intemperate criticism by newspaper reporters who appear not to understand the problem don’t make the decisions any easier.

I don’t know Judge Coppperde. I have never appeared before him.

I can virtually guarantee you that, after all this bad press, he will certainly face an opponent for reelection, and may lose. Fortunately for him, he is, according to the newspaper, in his second four-year term, so if he finishes this term, he will have eight years of service and will qualify for a small pension (32% of his salary) which he can then draw upon after reaching retirement age.

At least we, as lawyers, need to be sure we understand and communicate to the non-lawyers we know that judges don’t “make” plea deals. But they DO have to sometimes make incredibly difficult decisions, and then we have to live with them. That is what we pay them to do.
Excerpts from OCBA News: DECEMBER 1978, PART 1

THREE TO BEGIN DISTRICT JUDGE DUTIES

By Judge Ed Dycus
Retyped and Republished By Geary L. Walke*

When your reporter was assigned to write a story about the judicial elections, it appeared there might be some new faces on the District Court bench. Not only were two incumbents being challenged but the newly created 14th and 15th District Judgeships were being filled and a new Associate Judge guaranteed.

When the smoke cleared, however, Judges Jack Parr and Floyd Martin had retained their seats by comfortable margins and the other three winners didn’t exactly require extensive introductions to County lawyers.

In fact, they already have almost 15 years of District Court experience between them, and all with a high degree of acceptance by the Bar.

John Amick, most of you will recall, resigned in 1973 after five years on the bench to seek his fortune, or at least enough of a fortune to send his children through college.

The fortune did not materialize during three years on the Oklahoma City University Law Faculty, or two years as the Oklahoma Bar Association General Counsel and one year as President of the Oklahoma County Bar, but in the meantime, at least, a son has finished Yale and a daughter Missouri.

Judge Amick has been looking forward to returning to the bench as a full District Judge in January, but has “quite a few loose ends to tie up” from his present practice. The grapevine has it that he will be assigned to the Family Division.

Judge Joe Cannon, also due to become a District Judge early in 1979, has been a Special Judge, District Judge, or Presiding Judge ever since August 1, 1973, except for a brief flight of fancy which took him to Florida and a Federal Administrative Judgeship. He was elected District Judge in 1974.

When he returned from the Sunshine State at a pay cut of some $13,000 per annum, Andy Hamilton warned this act proved him “conclusively incompetent to be a judge.” The voters disagreed, however, apparently feeling that no sacrifice is too great to get back to God’s country.

Judge Cannon, naturally, is looking forward to getting his own docket of civil and criminal cases again. “Some of my friends won’t let me forget,” he says, “that I am still just a Special Judge until January 8. I’m glad to be on the District Bench again because this is where I want to make my career.”

Judge Cannon has been hearing mostly CSC cases and helping out on the felony dockets.

Judge Charlie Wier has already ascended to the new post of Associate District Judge since that seat was vacant at the time of his election. He has already plunged into his assigned Domestic Relations dockets and after his first week opined, “It’s going to be all right.”

Judge Wier noted that “these cases have more personal aspect than the general run of Special Judges’ duties.

Since being appointed a Special Judge in May, 1974 Judge Wier recalls small claims cases, jury trials, both felony and misdemeanor, and civil cases of less than $5,000 have been his regular fare.

Before taking the bench he served a year as a law assistant to Oklahoma Supreme Court Justice Robert E. Lavender. Elevation of Judge Cannon and Wier mean two more openings in the ranks of the Special Judgeships.

* I had the pleasure of many adversarial battles before each of these judges, and sometimes there were lawyers on the other side. Judge Amick has been appropriately nominated in 2018 for the Oklahoma Hall of Fame. Judge Cannon was the subject of many newspaper and media stories and loved the attention. Lawyers either loved him or hated him. Judge Wier was a retired Colonel in the USAF, and went on to become Mayor of Midwest City. All fine men, dedicated to the law.
THANK YOU TO ALL OF THE SUPPORTERS FOR JUDGE DON ANDREWS’ RE-ELECTION.
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The Chicken Rebellion!

By Geary Walke

Six years ago we published the story of a grocer in Hollis, Oklahoma who was sued by the state for selling eggs that were collected from folks in the community, but were not submitted to the regulatory inspections and packaging (See July, 2012 Briefcase). That grocer won at trial and won on appeal to the Oklahoma Supreme Court in a published opinion at 1958 OK 245. That grocer’s son is Judge Michael Warren, Associate District Judge in Harmon County. Judge Warren has that same rogue personality as his dad.

Judge Warren’s wife, Melissa, won’t let him live that down and now raises chickens as evidenced by these photographs. She says they’re currently getting 4 to 10 eggs per day but the chickens associate together, make a lot of noise, and seem to always be on the edge of rebellion.

The Washington Post carried a story on March 5, 2018 about Silicon Valley elites who are raising chickens and it has even become something of a status symbol. These photos show conclusively why chickens are the next big fad!
We Support
JUDGE LISA TIPPING DAVIS
Keep District Judge
TOMMY R. HENDERSON

We are pleased to announce Judge Tommy R. Henderson's bid for re-election to the Seventh Judicial District, Office No. 6, of Oklahoma County.

A fair and impartial Judge

Broad range of legal experience in Criminal and Civil Litigation

Former Police Officer and Oklahoma County Assistant District Attorney

History of Public Service

Owned and Operated Law Firm for over 16 years

Experienced Trial Judge having served Oklahoma County since 1983

Authorized and Paid for by the Committee to Keep Judge Timothy Henderson 2018
2018 Santa Fe Ski Seminar

Kelli Stump & Michelle Edstrom

Ski Trip Captains Justin Meek and John Heatly on each end; Garvin Isaacs & Hal Stratton leading the panel.

David Echols presenting on Family Law

Ski Santa Fe
Cato begins this letter with a reference to a plague in France. Actually, it was another financial bubble to which he refers. The Mississippi Bubble would make the Wolf of Wall Street blush. John Law was a Scottish adventurer who eventually came to control both France’s foreign trade and its finances. By 1719 John Law’s tentacles monopolized the French territories of the Mississippi River, the French tobacco trade and the African slave trades.

The value of stock in his companies skyrocketed well beyond the earnings. Like the English monopoly this French company was trying to retire royal debt, and endless speculation led to printing vast amounts of more money simply so more stock could be bought. Inflation and reality crashed in 1720 along with the value of the company shares.

“Sir, the terrible circumstances of our French neighbors under the plague in some places expecting it in others and dreading it in all is a loud warning to us to take all expedients and possible precautions against such a formidable calamity.

“We have already had and still have, a contagion of another sort, more universal, and less merciful, than that at Marseilles. The latter has destroyed we are told, about sixty thousand lives, ours has done worse, it has rendered a much greater number of lives miserable who want but the sickness to finish their calamity, either by rendering it complete or by putting an end to them and that together.

“Indeed, had the alternative been offered us half a year ago, I think it would have been a symptom of wisdom in us to have chosen rather to fall by the hand of God than by the execrable arts of stock-jobbers. . . . Complaining does not mend the matter yet what sensible heart can avoid complaining when he hears his country, a whole country, a potent nation, a nation happy in its climate, in its prince and in its laws, groaning under mighty evils brought upon it by mean and contemptible hands and apprehending evils still more mighty?

“It is both prudent and religious in private persons to stifle the notions of revenge and calmly expect reparation from God and the law. But jealousy and revenge in a whole people when they are abused are laudable and politic virtues without which they will never thrive. . . . Keen resentment ought to be shown and some punishment or punishments inflicted. When the dignity or interest of a nation is at stake mercy may be cruelty.

“. . . If any crimes against the public may be committed with impunity men will be tempted to commit the greatest of all, and by that I mean making themselves masters of the state. And, where liberty ends in servitude is owing to this neglect. Caesar thought that he might do what he had seen Marius and Sulla do before him, and so enslaved his country. Whereas had they been hanged he would, perhaps, never have attempted it.

“I bring these examples to prove that nations should be quick in their resentments and severe in their judgments. A nation has never been more abused than ours has been by the dirty race of money-changers. Never could a nation with better grace, more justice or greater security, take its full vengeance than ours can upon its detested foes. Sometimes the greatness and popularity of the offenders make strict justice unadvisable because unsafe, but here it is not so. You may load every gallows in England with directors and stock-jobbers without the assistance of a sheriff’s guard or so much as a sigh from an old woman, though accustomed perhaps to shed tears at the untimely demise of a common felon or murderer. A thousand stock-jobbers, well trussed up, besides the diverting sight, would be a cheap sacrifice to the Manes of trade. It would be one certain expedient to soften the rage of the people and to convince them that the future direction of their wealth and estates shall be put into the hands of those who will as effectually study to promote the general benefit and public good. . . . The resurrection of honesty and industry can never be hoped for while this sort of vermin is suffered to crawl about tainting our air and putting everything out of course, subsisting by lies and practicing vile tricks, low in their nature, and mischievous in their consequences.

“That a multitude of families are ruined and suddenly sunk from plentiful circumstances to abject poverty is affecting and lamentable, though perhaps all owing to their own rash confidence in the management of known knaves. That innocent children, born, as they imagined to fair fortunes and brought up accordingly must now want bread, or beg it, is a catastrophe that must pierce every tender heart, and produce pity and tears. But to see one’s country laboring under all the sad symptoms of distress without the violence of war, without the diabolical refinements of able politicians, but purely from the dull cunning of inferior rogues, void of bravery, void of abilities, wretches that would run away in the field and be despised in assemblies, this is what should turn pity into rage and grief into vengeance.
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OU Law Professor Emeritus To Receive Prestigious Homer Kripke Achievement Award

Frederick H. Miller, professor emeritus at the University of Oklahoma College of Law, is this year’s recipient of the lifetime achievement award from the American College of Commercial Finance Lawyers. The Homer Kripke Achievement Award recognizes a career of noteworthy leadership and a history of exceptional dedication to the improvement of commercial finance law and practice. Award recipients have contributed to, and often changed the course of, commercial finance law and practice through activities that have had a lasting and significant impact.

Miller will be formally honored at the American College of Commercial Finance Lawyers’ annual meeting in April in Orlando, Florida.

Miller joined the OU Law faculty in 1966. He taught courses on commercial law, consumer law, contracts, and real estate finance transactions.

He is a member of the Order of the Coif, Phi Beta Kappa, the American Law Institute, the Oklahoma Bar Association and the American Bar Association. He has been of counsel to several Oklahoma law firms.

Miller is a Commissioner from Oklahoma to the National Conference of Commissioners on Uniform State Laws (NCCUSL), and served as its Executive Director and chair of its Executive Committee. Miller also served as a past president of the NCCUSL, as chair of the Permanent Editorial Board for Uniform Commercial Code, as chair of the ABA’s Business Law Section Uniform Commercial Code Committee, as a member of the Council of that Section, and as a member of the Section’s Publications Board. He has authored or co-authored over 100 articles and books or book chapters.

The Kripke Award honors the memory of Homer Kripke, a former assistant general counsel at The CITI Group Inc. who was appointed the Chester Rohrlich Professor and books or book chapters.

Kaci L. Trojan becomes a New Partner at Durbin, Larimore, & Bialick

Kaci L. Trojan has become a new partner at the Oklahoma City-based law firm Durbin, Larimore, & Bialick. In her nine years at the firm, Ms. Trojan has both successfully defended and prosecuted cases as a first-chair trial lawyer. She’s a member of the Oklahoma Bar Association, Oklahoma County Bar Association, Young Lawyers Division of the Oklahoma Bar Association and Oklahoma Lawyers for Children. She also provides lectures on tort reform, insurance claims handling, the Demise of Parret and legislative updates. The firm is located at 920 North Harvey Avenue, and can be reached at 405-235-9584.

Crowe & Dunlevy achieves Certified Healthy Business status

Crowe & Dunlevy recently earned the designation of Certified Healthy Business for its commitment to improving and making a positive impact on the health and wellness of firm employees. This award is given by the Certified Healthy Oklahoma program, which recognizes entities who go above and beyond to provide healthy environments for Oklahomans.

In the medium-large business category, Crowe & Dunlevy implemented and upgraded several healthy facets of the firm’s business environment. Certified Healthy Oklahoma applicants are rated on several factors, including organizational supports, tobacco control, nutrition, physical activity, stress management, mental health, chronic disease prevention and management, occupational health and safety as well as health promotion.

By meeting most or all of these criteria, the firm provides an environment to foster healthy behaviors. The policies, programs and procedures that Crowe & Dunlevy has implemented are designed to continue to positively impact not only employees, but visitors and employees’ families, as well.

Crowe & Dunlevy was honored along with other Certified Healthy Businesses at a recognition event held March 1.

Crowe & Dunlevy attorney named to 2018 Leadership Native Oklahoma class

The American Indian Chamber of Commerce of Oklahoma recently named the 2018 Leadership Native Oklahoma (LNO) class, including Crowe & Dunlevy attorney Ryan K. Wilson. LNO brings together a diverse group of community leaders who are committed to improving Oklahoma’s future for native and non-native communities alike.

Wilson is an associate in the firm’s Oklahoma City office and serves in the Administrative & Regulatory, Criminal Defense, Compliance & Investigations, Indian Law & Gaming and Litigation & Trial Practice Groups. He earned his bachelor’s degree in political science from Yale University and received his Juris Doctor from the University of Oklahoma College of Law. He consistently focused on Native American affairs throughout his education, serving as an intern at the Chickasaw Nation Judicial Department and publishing a law review article titled “Closing Time: Removing the State of Oklahoma from Alcohol Regulation in Indian Country.”

LNO seeks to foster cohesiveness from current and future tribal leaders of different backgrounds. The 2018 class will aim to identify, evaluate and implement projects that are of value to Native American businesses in Oklahoma. Wilson will join other members of the class for monthly sessions, a team-building workshop and a two-day Indianpreneurship class. A graduation recognition ceremony will be held later in the year.

I’M STILL RIGHT!

By Michael W. Brewer

Recently, I received a link to a New York Times op-ed piece by Nicholas Kristoff. I regularly skim the NYT and read deeper when something catches my eye, but didn’t remember reading this short piece entitled “You’re Wrong! I’m Right!”. In this op-ed, Kristoff discusses a problem that we now encounter daily - the expansion of self-ideological supporting social media called “The Daily Me”. Significantly, Kristoff ends with these sage words: “It should be possible both to believe deeply in the rightness of one’s own cause and to hear out the other side. Civility is not a sign of weakness, but of civilization.”

While these words should receive consideration among the general populace, they should even more so find open minds among our legal peers. Isn’t this what experience and mentors have taught attorneys for years? You have to know the strategy and evidence of your adversary in order to rebut, cross, and refute the other side’s case. It seems like Litigation 101 or basic legal strategy. However, in the cultural swamp we live in, those foundational considerations seem to get bypassed by our profession more and more often. The situation then devolves to a lack of simple courtesies and professionalism. Most of the time this problem is picked up by “The Daily Me” machine of “this is how you even the playing field,” “this is how you maximize settlements or judgments,” or “this is retribution for some perceived game playing.” Does anyone really
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Authorized and Paid for by Committee to Re-Elect Judge Richard Kirby 2018 l Ethics Commission #9193 l judgkirby2018.com
I more fully understand my Grandma’s sentiments and privileges. Having now read through this legal text, and microwaves) and took full advantage of her rights cracks of all doors and windows during the Dust Bowl pointless exercise and keeping wet towels shoved in the ceiling onto your blanket was not “good.”

Snakes dropping through the mattress with scarlet fever, miles from any doctor, with this publication. She used to regularly comment that this booklet. My Grandma was born in a dugout, not a city.” (While I probably would have appreciated the exemption from such dirty work, I am really curious as to what was contained in 1920 newspapers that was so offensive to fair womanhood.)

“All section lines in the state of Oklahoma are declared public highways. The public highway shall not be less than 33 feet wide nor more than 66 feet in width.” (The current standard lane width for state highways is 12 feet, according to Google. I guess wagons were bigger than SUVs.)

“Persons over sixty years of age, ministers of the gospel and county or district officials, practicing physicians, undertakers and carriers of U.S. mails, members of the National Guard and members of an organized fire department” were all exempt from jury duty, at their sole option.

None of these summaries were accompanied by legal citations, so I guess we have to just take the Honorable George’s word for it. Some other interesting tidbits contained in this publication include the fact that clerical workers, farmers, farm hands, railroad workers on inter-state lines and salesmen were not covered by the workers compensation provisions. There is also a statement that the University of Oklahoma is part of the “free” school system of the State and would admit any student who could pass an entrance exam, or who had graduated from an accredited high school. Where was this information when I was applying to college or law school?

There was one very specific provision that most all of us, regardless of political stripe, would probably be okay with to this day. This was a provision which limited the amounts candidates for office could spend on their campaign and made spending in excess of those limits a misdemeanor offense punishable by a $2000 fine and up to 2 years in jail. However, if you were curious, the spending limit for a District Judge campaign was $500.00 and for most other types of offices, it was even less. I’m pretty sure my Grandma wouldn’t mind bringing back THOSE “good ol’ days.”

NAME THAT EVENT AND SAVE THAT DATE!

The Event formerly known as the OCBA Annual Dinner Dance is looking for a new name to go with this year’s “new” format!

Friday, September 28, 6-9 p.m.
Gaylord-Pickens Museum, home of the Oklahoma Hall of Fame 1400 Classen Drive

We are replacing the formal sit-down dinner with more of a reception style gathering to increase opportunities for socializing and visiting with friends and colleagues. While there will not be reserved tables, there will be ample seating and gourmet food catered by Kam’s Kookery. There will be still be entertainment, and an improved bar selection to suit everyone’s tastes. The recommended attire will now be “snappy casual” or “Friday Office casual”; however, anyone who wants to wear their formalwear is still welcome. We will be introducing our new OCBA President and Young Lawyer Chair, but there will not be any formal speeches. etc.

WIN TWO FREE TICKETS IF YOUR SUGGESTION IS CHosen AS THE NAME OF THIS EVENT!

Send your Event Name to debbie@okbar.org. The name will be chosen by the Event Ad Hoc Committee. Deadline is April 1, 2018.
the so-called “property settlement” awarded plaintiff, and those which could not conceivably be considered as anything except “alimony” . . . since the parties herein mention no such distinction, and the bankruptcy discharge issue is presented herein, as if there were no such distinction, we will so treat it.

Defendant merely argues that, in Oklahoma, the attorney’s fee that, in a divorce action, one party may be ordered to pay for his, or her, adversary, is quite different from alimony, or child support money. He points out some of the distinctions between such obligations, and concludes, in substance, that since attorneys’ fees are not specifically mentioned among the various obligations except “alimony” or “support money.” He points out some of the differences between such obligations, and concludes, in substance, that since attorneys’ fees are not specifically mentioned among the various obligations except “alimony” or “support money.”

A few months later, a death occurred. At the time of her death, no will was found and her estate was considered intestate. An Administrator was appointed. According to the court whenever necessary to determine from the four corners of the instrument what type of property, real or personal, and which share, amount or quantity of that property or money each beneficiary is to receive.

As pertinent here, it is impossible to determine from the so-called “property settlement” what was intended by the court in the absence of the word of testamentary intent apparent on the face of the will. As expressed in the will; but not when the effect of inserting the words in the will would alter or defeat such intention, or change the meaning of words that are clear and unequivocal. Nor will words be read into a will unless it is certain beyond a reasonable doubt that the testator has not expressed himself as he intended and supposed he had done; and, it must also appear with equal certainty what particular words were omitted, and, if such certainty does not exist, it is immaterial that a failure to insert words would produce a state of partial intestacy. The mere omission of words by the testator from his will through oversight, on his part, or due to a mistake of the copyist, cannot be remedied by the court in the absence of an intention apparent on the face of the will as written.

The personal Representative of the estate of Louis Paris, deceased (P.R.) was appointed. A few months later, a holographic instrument, purporting to be a will was found among decedent’s papers. The holographic instrument was entirely written, dated and signed in Decedent’s handwriting, and is as follows: Last Will - 7-16-89 Being of sound mind I leave to Sandra Barton the two homes and garage building to be rented if possible - I also leave to the Catholic Church Boys Club Youth Shelter Money for Louis for Kathryn Orlor 25,000 Pat Nickerson Signed Trustee Kathryn Paris

A petition was filed to admit the instrument to probate as the Last Will and Testament of Decedent. There was no contest and it was admitted to prove as her Holographic Will.

Later, the Personal Representative filed a Final Account and petition for Distribution and Discharge. He alleged that the Will failed and the entire estate should be distributed to the estate of the deceased husband. The petition for Distribution was contested. The Court entered an order that the Will was ambiguous and scheduled a hearing for the parties to present evidence relating to the proper construction to be given to the Will.

At the hearing, the issue was presented and tried on a written stipulation as to the known circumstances and conditions. The court held: (1) the instrument was no longer ambiguous; (2) the devise to Sandra Barton of the two homes and garage building failed because the property was owned in joint tenancy by Decedent and her husband; (3) “Orler” was Victor Orler, a friend and associate of the decedent’s husband, (4) the bequest of $25,000 to Victor Orler, failed because he filed a disclaimer, (5) “Kathryn” was Decedent, Kathryn Paris; (6) “Money for Kathryn” should be construed as requiring the payment of all of her debts, obligations, funeral expenses and expenses of administration of her estate; and, (7) that I also leave to the Catholic Church Boys Club Youth Shelter Money for Louis” meant that the Catholic Church of Krebs, Oklahoma, the McAlester Boys Club, the Youth Emergency Shelter, and Decedent’s husband, Louis Paris, were to be beneficiaries. Since the devise to Sandra Barton and the bequest to Victor Orler failed, the estate must be distributed to the four residuary legatees and devisees, with each receiving 25% of the estate remaining after paying Decedent’s debts, obligations, funeral expenses, and expenses of administration.

March 16, 1993 Twenty-Five Years Ago [Excerpted from Matter of Estate of Paris, 1993 OK CIV APP 50, 856 P.2d 583 80] Kathryn Paris (Decedent) died in September, 1990. She was survived by her husband, Louis Paris (Husband). He died in March, 1991. At the time of her death, no will was found and her estate was considered intestate. An Administrator was appointed. A few months later, a holographic instrument, purporting to be a will as expressed in the will; but not when the effect of inserting the words in the will would alter or defeat such intention, or change the meaning of words that are clear and unequivocal. Nor will words be read into a will unless it is certain beyond a reasonable doubt that the testator has not expressed himself as he intended and supposed he had done; and, it must also appear with equal certainty what particular words were omitted, and, if such certainty does not exist, it is immaterial that a failure to insert words would produce a state of partial intestacy. The mere omission of words by the testator from his will through oversight, on his part, or due to a mistake of the copyist, cannot be remedied by the court in the absence of an intention apparent on the face of the will as written.
believe that utilizing Reptile or Rambo tactics will not result in some sort of response on an equal footing? If this line of thinking is acceptable for non-attorneys, then we as a profession should be able to go about our business in much the same way, right?.

Do terms like “fascist,” “libtard,” and “snowflake” translate in our litigation world to plaintiffs and defendants alike? Well, they shouldn’t pursuant to our code of professional ethics. But they do, as similar conduct wrapped in strategies termed “Reptile” or “Rambo” are utilized by plaintiff and defense counsel, alike. We believe it is ok, because courts allow discovery conduct at one level and then expect trial behavior to be something else. However, appellate opinions that send cases back for new trials because of prejudicial and abusive attorney conduct are beginning to pile up. So, let’s return to the one truth we can all agree on with an illustrative example - NBA referees are the worst.

One fan observes a trip down the court where the defending player has hands on the offensive player using one hand to hold down the shooting arm, and the other to tug on the jersey. The referee chooses not to blow his whistle, thereby allowing this aggressive style of defensive play. The fan comments that is a fair ruling, because otherwise the referee would have to blow his whistle on every play. The fan of the other team is screaming, “Hey Ref, You Suck!” at the top of his or her lungs. On the next play back up the court, the player who was previously held makes a play on the ball along with the previously holding player and both of their active moves result in a bump. The referee chooses to blow a whistle on this play, against the previously held player. The one fan observing this exchange comments that was a good call, because it was obvious retaliation for the last trip down the court. The other fan is still screaming, “Hey Ref, You Suck!” even more loudly now. Can both fans be correct? Did either of the players really do anything wrong? Since the referee only penalized the one, maybe only one did wrong.

If a foul is not called, does it really count as a “foul?” While this illustrates my point about NBA referees, we may soon know the answer to who is worse, with an April 1 deadline approaching for the Oklahoma legislature. Consider that civilized debate really is good for society, and for our profession. Knowing your own weaknesses and your opponents’ strong points can only help improve your strategy, as well as your mental health. On March 14th enjoy some Pie! #Whynot!

End Notes:

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

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Quote of the MONTH

(Upon being asked “Should everyone be retired?”) If everyone were lazy, there would be no war. No one would have to go to school because no one would work. Sounds like paradise though I suppose famine might be a problem.

—Retired Oklahoma County Judge Roger Stewart