What is the Future of Your Local Bar Associations?

By Michael W. Brewer

Along with OCBA Executive Director Debbie Gorden and OCBA Young Lawyers Division Vice Chair Amber Martin, I recently attended the ABA Business Leadership Institute (“BLI”) in Chicago, Illinois. Other Oklahoma Bar leaders from the OBA and the Tulsa County Bar Association were also in attendance. Bar Associations from every state, local, and affiliated associations across the United States were represented.

Upon arrival, we quickly determined that seating charts for that session were identified by region. The map identified Oklahoma as a southern state. I am not objecting or arguing with that, but from a quick view of the map, it was clearly drawn from the viewpoint of somebody who lives north of the Mason-Dixon line and east of the Mississippi River. Be that as it may, we looked for our colleagues from Tulsa and the OBA and spied OBA Executive Director John Morris.

See LOCAL BAR, PAGE 6
Hope & Resilience

By Judge Sheila Stinson

I just returned from the Bench & Bar Conference. As one of my favorite weekends, I am thankful for everyone that attended and made presentations. Special thanks go to the Bench & Bar Committee, chaired by Luke Abel, and the three ladies who make all OCBA things possible, Debbie Gorden, Pam Bennett, and Connie Creed. They oversaw every detail which resulted in a fantastic conference. I hope to see everyone there in 2021.

Last month I talked about my family’s journey. Just like I used my “panhandle family” to demonstrate commitment, this month I’m using my mother’s family to demonstrate something I see in almost every attorney I know—hope and resilience.

In 1950, my maternal grandparents lived in Soviet-occupied Hungary. They had just survived World War II and German occupation, and they were then living under Joseph Stalin’s regime. It was then that they decided to move their family to America. My mother was born in Austria during their yearlong journey. They ultimately arrived at the Port of New Orleans, with few funds and three small children. Thanks to the help of a married couple and a small church close to Ada, Oklahoma, my mom and her family relocated to Oklahoma, became United States citizens, and never left. I was fortunate to grow up with both my Hungarian grandma as well as my other “grandma” who had sponsored my mom’s family to Oklahoma.

I admire my maternal grandparents for two major qualities: hope and resilience. Those are both traits that I suggest carry over into the legal field. It’s really hard to be a good attorney without a lot of hope, and ever more resilience.

Starting in law school, hope is a necessity. After law school, you have hope for a good job, for a good career, for good clients, for financial success, and for more victories than losses. A recent study by Kevin Rand in the Journal of Research in Personality found that students with hope do better on the LSAT and with grades as opposed to those students with just optimism, or just the thought they’ll do well. So having the will, desire, and plan to do well gets you farther than just having the confidence you will do well.

As far as resilience, it takes fortitude to be a lawyer, judge or professor. It takes resilience and drive to not only get through law school and pass the bar, it then takes resilience day after day to represent clients, to run a law firm, to prepare for trial, to write legal briefs and contracts, to celebrate with clients after victories and comfort them after defeats. Answering interrogatories alone is a true showing of fortitude. It took fortitude to overcome my disappointment in the 6th grade when I learned my mom would never be President of the United States as a naturalized citizen, because what 6th grader doesn’t think their mom should be President?

In closing, as I am now out of grandparents to talk about, next month I will pose the question of when in history has been the hardest time to practice law. I have posed that question to members of the bar and will discuss their answers next month. I hope my grandparents’ history shows the need to get to know our fellow lawyers better. We all need to ask and to share our stories, which is why I only hope the Oklahoma County Bar Association helps facilitate. It just takes resilience to keep asking. See what I did there?

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Quote of the MONTH

I refuse to answer that question on the grounds that I don’t know the answer.

—Douglas Adams, author (1952-2001)
Dear Roscoe:

My clients, an elderly couple on a fixed income, lost their son in a one-car accident due to a defective seatbelt. I know a couple of persons who would make good experts and I probably could convince one of them to take the case on a contingency given my clients’ limited means. I’m told that Rule 3.4 prohibits that, but my motive is not buying testimony but saving money: (A) What kind of trouble can I get in if I enter into such an arrangement and (B) Would the evidence be admissible?

T.H. Oklahoma City

Dear T.H.

You have rightly consulted Rule 3.4. While the Rule doesn’t specifically forbid payment or address the issue in the light you describe, the Commentary notes that common law generally prohibits fee arrangements for any witnesses contingent upon success at trial.

In Massachusetts, an expert may not be paid a fee contingent on the outcome of a case because it might improperly induce the expert to testify falsely in order to earn a higher fee. (See New England Tel. & Tel. Co. v. Bd. of Assessors, 468 N.E.2d 263 (Mass. 1984)). The court held that “[i]f he majority rule in this country is that an expert witness may not collect compensation which by agreement was contingent on the outcome of a controversy.” In Tennessee, a contingency fee contract for services of a physician acting as a medical-legal expert is void as against public policy. (See Swafford v. Harris, 987 S.W.2d 319 ( Tenn. 1999)). The Colorado Supreme Court declared it “a settled principle of American law [that] expert witnesses should not receive contingent fees.” That court went on to say, noting a lack of case law regarding the question, that “case law on the subject is sparse because this precept has such wide acceptance.” (City and County of Denver, Colo. v. Board of Assessment Appeals of State of Colo., 753 P.2d 909 (Colo. 1987)). The Restatement (Third) of the Law Governing Lawyers (2000) also forbids paying any witness on a contingency basis. You may feel comfortable arguing the nuanced motives in your particular case, but I don’t envy you if called upon to do so.

As to its practical effect, in Strouhal v. Usher, 2011 U.S. Dist. LEXIS 53195 (C.D. Cal. May 9, 2011), an expert was retained by plaintiff’s first counsel, paid a retainer, and compensated at an hourly rate. A solo lawyer took over, but could not advance the expert’s costs. Plaintiff asked if she would work on a “contingency percentage fee arrangement.” She agreed. The new lawyer drafted an agreement. Defendants moved to exclude and/or strike her reports, opinions and testimony. Plaintiff and the expert voided their contingent-fee agreement and returned to an hourly fee arrangement. Plaintiff explained his financial hardship. To secure his obligation, plaintiff provided a lien on all of his assets “including any recovery he may obtain in this action.” The court held the agreements both improper and unethical, excluding them. It found no Ninth Circuit authority, noted that some courts allow it, but held the “better course of action” is to exclude the testimony. The expert’s direct financial interest in the outcome of the action raised “serious questions about the integrity of her expert testimony.” I agree.

Dear Roscoe:

Correct me if I’m wrong but the Eighth Amendment prohibition against excessive fines controls in state and municipal courts, right? A.S., OKC.

Dear A.S.

Actually, you’re not wrong, and SCOTUS corrected a lot of folks who seemed to think otherwise in Timbs v. Indiana (dec. 2/20/19). RBG noted: “[T]he historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause, its overwhelming.” Writing for an eight-justice majority she went on to state that: “‘For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies, as the Stuarts’ critics learned several centuries ago. Even absent a political motive, fines may be employed ‘as a measure of accord with the penal goals of retribution and deterrence,’ for ‘fines are a source of revenue,’ while other forms of punishment ‘cost a State money.’ This concern is scarcely hypothetical” (Citations). Mr. Justice Thomas, questioned the manner in which the Court reached its conclusion, though he had no doubt as to the Eighth Amendment binding the States. Timbs’ case dealt with the federal forfeiture of a $40,000.00 SUV for a drug conviction carrying a $1200.00 fine. Timbs had paid the fine and complied with all other requirements the conviction placed upon him.

Buddy Orenstein testified next for the prosecution. He had become involved shortly after Sandy moved to Secaucus as the feud had already spilled out of the family court and into the street. Buddy recounted his initial involvement with the case, responding to a 911 call from a neighbor of Sandy’s. She had seen two men attempt to drag Katie into a car. A man came rushing from Sandy’s house (who the neighbor mistakenly presumed to be Katie’s dad). He told Katie to get in the house and an altercation ensued. The guy turned out to be Sandy’s then boyfriend who came over to help Katie cook a surprise dinner. By the time Buddy and the uniforms arrived, the guy lay on the curb with a concussion and several busted ribs. By now you’ve probably figured that the alleged kidnapper was Kearny himself, who brought a bodyguard along for the occasion as well. Buddy testified that, as he arrested the pair, Kearny warned him that he knew people in Trenton.”

“Nothing further,” [the somewhat deflated counselor declared]

THE COURT: Redict Mr. Coleman. CARL COLEMAN: Just briefly, Lieutenant I’m curious. Without knowing all the things Counsel asked you about, how could you be so sure of the facts you uncovered?

A: I based it on the things I knew for sure about, how could you be so sure of the things I didn’t know.

Q: You’ve been a police officer for two decades, correct?

A: Yes.

Q: You’ve developed expertise in the area of criminal investigation.

A: I’d say so.

Q: As an expert in criminal investigation, would you really consider a report from an officer with so little knowledge of the case to be thoroughly investigated?

A: As an expert in criminal investigation-

Q: Yes or no Mr. Orenstein.

A: Yes.

Q: Really? No doubts?

A: None

Q: “Nothing further,” [the somewhat deflated counselor declared]

THE COURT: Redict Mr. Coleman.

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John Patterson died. Unless you were in law school with him or did oil and gas work, you may not have known him. I knew him because we served together in the same fighter squadron in the Air National Guard. He was 87 years-old.

John was from Ardmore and went to OU for about a year and a half before entering the Air Force. After he trained as an aircraft mechanic, he got accepted to the Aviation Cadet Program and became a pilot. Like almost everybody in the Air Force, John wanted to be a fighter pilot. Instead, he got assigned to a photo reconnaissance squadron.

There he flew the reconnaissance version of the hottest fighter of the day. He flew an RF-86. The “R” stood for reconnaissance and the F-86 was a fighter. It flew just sub-sonic (just below the speed of sound) in level flight. In a dive, however, it would break the sound barrier and go supersonic. Of course, John promptly did that.

The motto of the recon squadrons was “Unarmed, alone and unafraid.” John always said that the “unafraid” part was BS. It certainly spoke well of the skill of recon pilots that they were able to survive in combat. While a fighter can go supersonic. Of course, John promptly did that. The day fighter version of the F-86 was the top of the line fighter of the United States in the Korean War. That aircraft racked up a very high percentage of kills of the MiG-15, the Soviet front-line fighter of the time. The MiG’s in those contests were often flown by Russian pilots.

But John and I became good friends as I was only a couple of years behind him at the OU law school. We remained friends long after the cold war moved on to other aircraft and missions. We both retired as Lieutenant Colonels, him from the Air Guard and I from the Air Force Reserve.

John did an oil and gas title practice for most of his legal career. He retired from the Air Force in mid-1970’s and from his law practice in 2010. He and his wife, Mary, had two daughters, to whom he was devoted.

Not many people knew we were providing actual, armed, alert aircraft. We didn’t get to talk about it much. But John and I became good friends as I was only a couple of years behind him at the OU law school. We remained friends long after the cold war moved on to other aircraft and missions. We both retired as Lieutenant Colonels, him from the Air Guard and I from the Air Force Reserve.

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The OCBA 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 here, please contact the Bar Office at 236-8421 and we will add it to this new monthly Briefcase column.

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- Motivated go-getter? Organize a fundraising event at your office, school, scout troop, civic group or place of worship to help collect donations that support our mission
- Like to plan parties? Serve on our event planning committee

Want to volunteer, but don’t have a lot of time? Here are few things you can do to help:
- Like us on Facebook, follow us on Twitter, LinkedIn or Instagram
- Share our posts on your social media
- Out grocery shopping? Purchase a few items from our pantry wish list which include microwaveable meals, hygiene items, khaki’s and red or blue polo shirts in all men and women sizes
- Be a volunteer for special events

For more information, please call or email us at 405.235.7537 or contact@pivotok.org.

Finding Pax
Kaci Cronkwhite, Adlard Coles, 2018, Paper, 208 pages, $17.95

Over the course of the past few years the number of sailboats and others at Lake Hefner slips seem to have dwindled sharply. This is probably the result of a couple of deep droughts in Summer, which nearly eliminated sailing for the casual boater. Prudence has probably led a lot of owners to lodge their boats on larger lakes, or to sell. While this could be expected, it is too bad, as many among us have that nautical urge.

So if you want to scratch that itch, this is a good book for you. If you want to be excited that the author squarely and consistently pursues a calling once pretty much limited to men, this is also that book. One should be prepared, however, that this is a decidedly bigger boat than those plying Hefner water. It is also a quiet one.

The boat is seagoing, twenty-eight feet long, and made of wood. It originated in Norway, created by a famous builder. Very few of its type were built, fewer remain. This is not a book about sailing per se, but rather about re-constructing something beautiful and rare. The reason for that activity is the thrill of sail.

One should be warned that there is much detail in the repair/re-creation of the boat, and the author does not translate nautical or shipcraft terms. The audience for this book probably does not need such translation, but for the rest of us, have a dictionary of some sort available. All that said, it is good reading, if you catch the fever that an infatuation begets.

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Ned Christie: The Creation of an Outlaw and Cherokee Hero

If one has lived in both Tulsa and Oklahoma City, or Tuleahq and Enid, one is aware of the double nature of our state. Our state seal has at its center a farmer and a Native American shaking hands, and with different contexts. One of those contexts was whether events pre-dated or post-dated the Civil War.

The early measure of governance in the eastern part of the state sometimes led to two viewpoints. The same event might be legal under a tribal viewpoint, or just a non event, while being seen as illegal in the Caucasian view. Thus, there are legend akin to Robin Hood, with predictable outcomes. Add in a lively influx of Caucasian outlaws, trying to make the eastern half of the state a hideaway, or post-dated the Civil War. The same event might be legal under a tribal viewpoint, or post-dated the Civil War.

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A large part of this is the older settlement of the eastern part of the state, and its deeper Native American connections. Promised self-government, later largely taken away, and property ownership, again largely stripped, had deeper roots in that culture. Some of the same things happened west of I-35, but later, and with different contexts. One of those contexts was whether events pre-dated or post-dated the Civil War.

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Hence, the subtitle of this book. Christie is considered outlaw by some, hero by others. Each has a tale to tell, but in different contexts. We have some conflicts in our society today that have the same underpinnings.

Ned Christie had more than one wife, several children, and many friends and allies. He killed people. He stood up for some people who could not understand the changes taking place around them, and they liked him for that. They even hid him, if simply not answering questions about him is hiding him. This can be a troubling book to read, especially if one has no life experience on the east side of the state. This is good solid history, which sometimes comes with a “troubling” tag.
Oklahoma Association of Black Lawyers honors civil rights attorney Melvin C. Hall

Riggs Abney attorney, Melvin C. Hall, was presented with the Opio Toure Champion of Justice Award at the Oklahoma Association of Black Lawyers (ABL) Annual Scholarship & Awards Dinner on April 24 in Oklahoma City. Hall is among six award recipients who will be honored for their philanthropic efforts.

An advocate for civil liberties, Hall practices civil law and teaches classes on the civil rights movement and civil rights law as an adjunct professor at the University of Oklahoma. He has been recognized for his dedication to justice by entities including the Oklahoma Bar Association, the Oklahoma Legal Black Caucus, the University of Oklahoma Black Alumni Society and Langston University. Hall was also nominated by former President Bill Clinton to serve as Federal Judge in the United States District Court for the Western District of Oklahoma.

The award is presented annually to a person or entity who exhibits integrity and an adherence to the highest principles and traditions of the legal profession, in addition to superior professional competence and extraordinary professional accomplishments which benefit the nation, state and local community.

Hall has been an essential member of Oklahoma’s legal community for nearly 40 years, practicing employment law in addition to civil rights law. He served as the executive director of the Oklahoma Human Rights Commission for four years, then used his civil rights background to bring a unique perspective to his role as an enforcement supervisor for the U.S. Equal Employment Opportunity Commission.

Hall graduated from the University of Oklahoma College of Law in 1981. He currently works in the firm’s Oklahoma City office where he serves as partner and shareholder.

By Shanda McKenney

March went out like a lion the weekend of March 29 as OCBA members gathered for the biannual Bench & Bar Conference, held this year at Sequoyah State Lodge on Fort Gibson Lake. Despite the abnormal wet and cold weather hampering many of the planned outdoor activities, rousing fun was had by all and some CLE was even earned in the process. Attendees of note included Chief Justice Noma Gurich, Court of Civil Appeals Judge Barbara Swinton, current District Judges Don Andrews, Trevor Pemberton, Tom Prince, Richard Ogden, and Ken Stoner; and Special Judge, April Collins. Federal District Judge Tim DeGiusti and Magistrate Suzanne Mitchell also attended.

Conference registrants had several options for earning CLE credit following an opening presentation and remarks by Chief Justice Gurich. There was a panel of State Court Judges, as well as a panel of Federal Court Judges that permitted attendees an opportunity to engage in a small group setting. Judge Ken Stoner presented a program on understanding substance abuse and how to handle clients with substance abuse issues, and Steve Barghols gave a talk on mediation processes.

Following the CLE tracks on Saturday morning, social events were planned that included a hiking trip, horseback riding, and a guided wine tasting with Sommelier Heather Ezell. Following the group dinner on Saturday evening, the OCBA YLD presented an hour on ethics addressing issues involving social media with judges and with clients. The meals for the event were catered by the Lodge, which also offered a family game room and, in warmer weather, a swimming pool.

Those who attended universally enjoyed themselves, with at least one member proclaiming the event to be “the best bar meeting ever been to.” The casual and relaxed atmosphere was perfect for getting to know other local lawyers and for honing one’s practice in Oklahoma County, at all levels. Those who missed out on this excellent event should mark their calendars now for the end of March, 2021, and definitely plan to be there.
Lawyers in the Library

By Jovanna Johnson

On Tuesday March 26, 2019 Terrell Monks and his team (Shanika Chapman and Joy Robison), Estate and Probate Attorneys, teamed with The Oklahoma County Law Library and the Downtown Metro Library to provide free Legal information regarding Holographic Wills, Medical Power of Attorneys, and Advance Directives. The class on March 26th did an outstanding job assisting the community with the correct information and documentation in the event of an unexpected passing or healthcare emergency.

The main topic discussed was, if you do not have a will, who will decide how your assets are distributed, and would that distribution be to your liking? If you wish to have specific people or organizations inherit some of your property, or if you want to decide the proportions of your gifts, a will can make sure your wishes are followed. Mr. Monks and his staff also made it clear that a will makes the management of your assets clear and simple for everyone involved. The same applies to a Medical Power of Attorney; it allows people who become unable to make their own decisions exercise their beliefs and wishes regarding medical procedures ahead of time.

Statistics show that over 60% of American adults lack a will or any type of emergency planning. That means 4 out of 10 adults don’t have a written out plan for their loved ones if something drastic was to happen to them. Terrell Monks and his team are on a mission to provide the community with the opportunity to receive legal information. In the words of Mr. Monks, “I believe that you have the right and the moral responsibility to plan and direct how your power will be used when you are no longer here to control and use that power yourself.”

Due to the positive feedback from the March 26th event, Mr. Monks, his team of Attorneys, and the Law Library are currently in the process of planning the next workshop to assist the first twelve people that sign up, followed by sessions throughout the county in conjunction with the Metro Library System. We would like to thank all of the attorneys who volunteered their time and services - you are very much appreciated. A special “thank you” also goes to the Metro Library and the Oklahoma County Law Library for being a part of this great movement.

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President Sheila Stinson welcomes everyone to the conference.

Presley Butcher (Kendall Syke’s daughter) won the Best Sport Award for being the only “kid” in attendance.


Shanda McKenney won the Happiest Attendee Award.

Oklahoma Supreme Court Chief Justice Noma Gurich was this year’s featured speaker.

Paige Masters lead off the Young Lawyers’ Troupe on Ethics.

Paige Masters lead off the Young Lawyers’ Troupe on Ethics.

Luke Abel presented Angela Ailles Bahm the Award for Most Discerning Wine Taster.

Ben Grubb wrapped up the presentation on Ethics for the YLD Troupe.

Derek Cowan won Runner-Up in Wine Tasting.

Presley Butcher (Kendall Syke’s daughter) won the Best Sport Award for being the only “kid” in attendance.
Amber Martin presented at the YLD Ethics presentation.

Steve Barghols presented on Best Practices in Mediation.

Judge Ken Stoner gave a presentation on Understanding Addiction: How to Work with a Client/Litigant with a Substance Abuse Disorder.

Dan & Lacey Couch won Best Hikers Award.

The State Court Panelists were: Judge Sheila Stinson, Chief Justice Noma Gurich, Judge Tim Henderson, Judge Trevor Pemberton & Judge Richard Ogden.

The Federal Court Panel members were Judge Timothy DeGiusti & Magistrate Judge Suzanne Mitchell.

Sommelier Heather Ezell presented a Wine Tasting class.
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OCBA Reception for Oklahoma County Judges & Legislators:

Board members Rachel Morris, Kristie Scivally & Chris Deason

Board members David Dobson, Stan Evans & Bob Jackson

Board members Monica Ybarra, David Cheek & Michael Brewer

Judges Barry Hafar, Trevor Pemberton & Lynn McGuire

Board members Justin Meek, Ben Grubb & Judge Sheila Stinson

Judges Trent Pipes, Richard Ogden, Elizabeth Kerr & Richard Kirby

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The redbud and dogwood had bloomed. The azalea has come and gone. The rhythm of army life had settled into summer fire watches, soldiers’ leave, field exercises, and the usual parties that followed a winter of absence and training. It was the beginning of summer for the Second Battalion, 9th Infantry, a mechanized infantry battalion in the Second Infantry Division. Garrisoned at Fort Benning, Georgia, the battalion had spent January through April of 1964 training in Germany as a part of a series of exercises named Long Thrust - in this case, Long Thrust IX. Transportation of an infantry battalion to the wintery environment of Germany was intended to act as a training exercise in reinforcing NATO in the event of a conflict with the Soviet Union or any other potential enemy. The weather had been bitterly cold, a potentially dangerous condition for soldiers from the south of the United States.

It was an army composed of draftees, many of whom were not high school graduates, and was led by a corps of older NCOs and officers. A mostly minority army led by white officers and NCOs. In my infantry company, Company A, there were only two black NCOs, and in my entire division, only two black officers. The officers’ corps itself was composed of graduates of West Point, college ROTC, and officers’ candidate school. My company commander, CPT Raymond Celeste, was a 1956 graduate of West Point. As a 25-year-old ROTC graduate, I felt fortunate to be assigned to a combat unit and to have the opportunity to spend a winter in Germany. It had been a formidable challenge to spend those months leading my platoon, navigating in the woods, and maintaining the equipment of a mechanized infantry. Upon returning to Georgia, the battalion lost many of its enlisted men whose enlistments were up. Officers were reassigned to new jobs or transferred to other units. I was subsequently sent to communication officers school to be trained to manage the battalion’s wire and radio communications and would return to lead the battalion’s communication platoon, or as we referred to it, the “commo platoon.”

In May of 1965, an edict came down from the battalion’s headquarters that all senior NCOs and officers were to report to the Sand Hill Golf Course club house for a “prayer luncheon.” It was the army’s way to ensure appropriate attendance at a function. Most of us groaned in silent agony. The rule “never volunteer for anything” ran through our shorn heads, but we weren’t volunteering, we were being commandemented.

The main room at the Sand Hill Golf Course club house was full of my uniformed colleagues. At the front of the room, I spotted LTC John White, our battalion commander, and a two-war veteran. He was joined by SGM Scott, the battalion sergeant major, the battalion chaplain, and someone in civilian clothes. “Civilian clothes” was the leader of a Columbus, Georgia church. His name and Christian identification have long since departed my memory, but the loss of this information is irrelevant to the message he carried. I sat at a table with Ray Celeste, by then my former company commander, Lieutenants John Fesmire, Jack Branch, and Ed Janzen. The chatter was light and collegial. The camaraderie was apparent. Many in the room were graduates of the Army’s Ranger and Airborne schools. They were purportedly the “best of the best” and trained to lead their soldiers in combat.

After a recognition of the presence of senior leadership, the chaplain introduced the speaker. There was irony that so many were present at the behest of the chaplain, since the battalion commander had earlier in the year insisted that his subordinate leaders make mandatory appearances at the chaplain’s Sunday services in dress blues, no less. I was seated facing the speaker, while many had their backs to him. He was a cherubic man. Definitely not military, but like many in Columbus, his church relied on the many gratuitous that a military installation with fifty thousand soldiers could afford on a community.

However, the minister’s opening words grabbed my attention. He began by expressing his appreciation for the opportunity to be present on National Prayer Day, and said that he particularly appreciated the appearance of so many fine young men “who were ready to lay down their lives for the sake of their country!” I suddenly sat erect. I was startled by his statement. My immediate thought was, “I don’t know who in the hell he is talking to.” I immediately glanced over my right shoulder to see if anyone else was acknowledging his statement. Who would raise their hand or say “I am ready?” I saw none. I felt a flood of emotional response to his radical statement. No individual, much less an infantry man, is willing and ready to die for his country. Not that my fellow soldiers and I weren’t patriotic, for we were. We just weren’t ready to depart from this life so freely.

With the conclusion of the lunch, we exited the building chatting with friends and NCOs. As we walked down the hill toward the battalion area, I was still perplexed at the minister’s comments. His statements of willful giving of life simply made no sense. 23 year college educated male. Why would anyone be ready to lay down their life for their country or anyone else? I simply couldn’t get my head wrapped around his statement. I soon parked my concern in a remote part of my brain, not even intending it to be available for future reference. I was soon occupied with other duties involving reorganization of the communications platoon, developing a training plan for the wire crews, and ensuring that the radios were always working.

The previous summer, the battalion had deployed to the woods of North Carolina to conduct counter insurgency training while aggressing against an ad hoc division called the 11th Air Assault, which soon morphed into the 1st Cavalry Division (Airmobile). It was the advent of the helicopter as a part of modern warfare.

In August of 1965, I was reassigned to the 508th ASA Group Headquarters in Seoul, Korea, my two years of duty in an infantry unit having been completed. The army brought home from Korea the colors of the 1st Cavalry, replacing its unit designation with those of the 2nd Infantry Division. Units of the 11th Air Assault and the 2nd Infantry Division now became a part of the 1st Cavalry Division and morphed into a deadly combat force complete with hundreds of Huey troops and Chinook heavy lift helicopters, along with Cobra gunships. Cavalry troops have a historic place in Army history. Visions of horse mounted cavalry galloping across the plains in pursuit of Pancho Villa and, more poignantly, Native Americans, are a strong piece of America’s folklore. The helicopter now replaced the horse and most wheeled vehicles using the same unit designations. Hence the 2/9 became the 2nd Battalion, 7th Cavalry.

In September 1965, the 1st Cavalry began its deployment to a new war zone in South Vietnam. It was the beginning of an escalation of the war. In November, the 1/7 Cav. fought the seminal battle of the war in the Ia Drang Valley, where the North Vietnamese and the Americans learned how to deploy their forces against one another. The 1/7 was led by then LTC, and later LTG, Al Moore. The story of the celebrated battle is documented in We Were Soldiers Once, as is the subsequent ambush of the 2/7. While many American soldiers died in both battles, the 2/7 suffered an egregious number of dead and wounded after being surrounded in the jungle by a North Vietnamese regiment. It was January 1966 when I first learned of the battle in an article in Stars & Stripes, an overseas publication of the Department of Defense, which in addition to the story, also contained a list of casualties. The list contained the names of enlisted soldiers and officers alike with whom I had trained, and with whom I attended the National Prayer Day luncheon.

I have told and retold my story of the May prayer luncheon until the haze of time has filtered through the tale, leaving it colorless and grey. Each telling still comes with the flash of faces, the sound of voices past, the staccato of gun fire, the bursting of mortar rounds, and exploding grenades. There may be a special day in May set aside for prayer, but my prayers are always for the dead, the grievously wounded, and faded memories of young faces gone forever.

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Prayers for the Soldiers: A Remembrance

By Herb Graves
AL&A OKC Board of Directors

The Oklahoma City Chapter of the Association of Legal Administrators proudly announces the election of its 2019-2020 Board of Directors: Suzy Klepac, President; Kirk & Chaney; Kara Mitchell, President-Elect, Christensen Law Group; DeAnna Carter, Secretary, Fellers Snider; Danita Jones, Treasurer, Chubbuck Duncan & Robey; and, Trent Corken, Immediate Past President, Hall Estill.

Crowe & Dunley recognized as a Certified Healthy Business

For the second consecutive year, Crowe & Dunley has achieved the designation of a Certified Healthy Business, recognizing the firm’s commitment to making a positive impact on the health of employees and patrons, as well as its contribution in creating a healthy environment for the future of Oklahoma.

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 & Dunley has implemented are designed to continue to positively impact the health of employees and patrons, as well as its contribution in creating a healthy environment for the future of Oklahoma.

GableGotwals represents a diversified client base across the nation including Fortune 500 corporations, privately owned companies, entrepreneurs, foundations, and individuals. Though Oklahoma-based, our connections and reach are global. Our clients entrust us every day with the stewardship and strategic management of their legal challenges.

GableGotwals is well known for high quality legal services provided by experienced litigators and transactional lawyers who have been recognized by Chambers USA, Best Lawyers In America, Oklahoma Super Lawyers, and a number of federal, state and county bar associations.

Hartzog Conger Cason Welcomes New Attorneys

Hartzog Conger Cason is proud to welcome Sarah B. Edwards & Chris R. Kelly to our firm.

Sarah B. Edwards graduated from the University of Oklahoma College of Law, where she was active in the Luther Bohanan Inn of Court and University of Oklahoma Civil Legal Clinic. She earned her undergraduate degree in business administration from Southern Methodist University. She currently serves on the Board of Directors for Oklahomans for Criminal Justice Reform, Citizens for Children & Families, and Spur Kitchen Foundation. Sarah practices corporate and commercial law. She advises clients in business process outsourcing and related transactions, in addition to corporate risk management and other strategic sourcing issues. She is also experienced in drafting and negotiating various agreements, including vendor agreements, licensing agreements, and terms related to data protection and privacy.

Christopher R. Kelly graduated from the University of Oklahoma College of Law in 1995 and received his Masters Degree (LL.M.) in Health Law from DePaul University College of Law in 1996. While in law school at OU, Chris was a Member of the Order of the Barristers, multiple moot court teams, and the Luther Bohanan American Inn of Court. Chris’s entire legal career has been dedicated to health law and to health care clients. He previously served as the General Counsel to two multi-billion dollar healthcare companies (one public and one private) and has closed more than two hundred health care transactions in his career.

OU Law Team Claims National Championship At Federal Bar Association Moot Court Competition

The University of Oklahoma College of Law was crowned the national champion of this year’s Federal Bar Association Thurgood Marshall Memorial Moot Court Competition. This marks the fourth national competition championship for OU Law in the last two years, demonstrating the college’s place among the top law schools in the nation for moot court.

The OU team of second-year law students Bakhtawar (Becky) Hazfi of Denton, Texas, and Taylor Freeman Pesheshian of Ada, Oklahoma, competed in five rounds, prevailing over 39 other teams. The competition was held March 20-21 in Washington, D.C. They were coached by OU Law alumnus Andrew Morris (’13). The Federal Bar Association competition, designed for two-person teams, focuses on written briefs as well as oral arguments. This year’s topic involved the interpretation and application of the Equal Credit Opportunity Act.

Other competitors in the tournament included teams from SMU Dedmon School of Law, the University of North Carolina School of Law, the University of Virginia School of Law and Villanova University Charles Widge School of Law.

OU Law is ranked a Top 5 Moot Court Program in the Nation by the Blakely Advocacy Institute, and for the last six years, the institute has placed the college in the Top 20. In the American Bar Association’s inaugural Championships Competition, OU Law placed fifth out of 156 law schools nationwide.

In combination with other recent honors, OU Law’s achievements in moot court competitions highlight the college’s commitment to providing a world-class legal education. Other recent accolades include:

Top 10 Best Value Law School (National Jurist)

Named an Apple Distinguished School for 2017-2019 (Apple Inc.)

Top 25 Law School for J.D. Required, Full-Time, Long-Term Employment (American Bar Association) the Oklahoma law school with the highest overall bar passage rate for 16 years running.

OU Law Wins Regional ABA Appellate Advocacy Competition

By Professor Michael Gibson

For the third consecutive year, students from the Oklahoma City University School of Law have either won or placed second in their region for the ABA Appellate Advocacy Competition.


Martinez had the sixth-highest score in the region. An evening student, she placed fourth in last year’s regional competition and fifth the year before. Gillette tied with a student on the other OU team, Baxter Lewallen, ’20, for eighth place. That other team, consisting of Lewallen, Jaycee Booth, ’20, and Alan Taylor, ’20, defeated Harvard before losing in an elimination round.

The team was coached by Prof. Greg Eddington. In 2018, OU placed second in the Portland, Oregon region; in 2017, OU finished first in a regional competition held in San Francisco.
OCBA Community Service Committee Members Making a Difference

By: Monica Y. Ybarra

After a friend lost her child to violent crime, Jennifer Roberts began learning more about child abuse and neglect in Oklahoma and she was blown away by the statistics. “It pained me to think that so many kids were suffering from abuse and neglect, often at the hands of parents who are overwhelmed or in crisis and need a helping hand,” Roberts said. She also discovered that many states have crisis nurseries—safe places where parents in crisis can take their children to be cared for on a short-term basis. As she discussed this with her two friends, Kendra Allen and Lauren Langley, they begin to envision such a place for children in Oklahoma City and Ok City Crisis Nursery was born.

But the idea was only the first step and the journey hasn’t been easy. The women encountered a number of obstacles along the way, but managed to overcome each one with support from the community, including the Oklahoma County Bar Association Community Service Committee members. Recently, OCBA members hosted a workday at Ok City Crisis Nursery and focused on outdoor projects like clearing brush, raking leaves, and collecting trash and debris.

“We knew this needed to be done but were given a quote of $2,000,” Roberts said. “Because these volunteers donated their time, we were able to put that money towards purchasing beds and cribs.”

Ok City Crisis Nursery will open their doors soon, and their landscaping and yard look amazing thanks to OCBA members. When they open, Ok City Crisis Nursery will be the only 24-hour emergency-based child care home in the state. “Crisis and emergency situations can present themselves in a variety of ways. A sudden illness or accident, feelings of helplessness, emotional distress or frustration, domestic violence, and homelessness are just a few,” Roberts said. “If we can provide a safe place for children during these times, we know we can reduce the incidents of abuse and neglect.”

The OCBA Community Service Committee hopes to partner with Ok City Crisis Nursery in the future. Until then, you can visit their website at www.crisisnurseryokc.com to learn more about this important community resource and discover ways to donate or volunteer.

I want to volunteer to answer phones on Thursday, May 2, 2019 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: ______________________

THANKS!!!
The Constitution’s Eighth Amendment provides that “[i]n excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The “cruel and unusual punishment” prohibition was taken verbatim from the English Common Law and the English Bill of Rights of 1689 upon the passage of which “cruixification, boiling in oil were no longer customary.” Nor were those punishments which were barbarous, inhuman, and un-Christian. Nevertheless, Professor Raoul Berger says “none of the cruel” methods “employed in the Bloody Assize” ceased to be used after 1689. Thus, whipping, pillorying and excessive imprisonment were not within the clause. Professor Berger said: “The crowded catalog of (English) statutes decreeing death for trivial offenses explosives the so-called common law ‘doctrine’ that punishment must fit the crime.” Neither was dismembering until it was “eliminated by statute” in 1814. Based on the Common Law, the Supreme Court held in Ex parte Kemmler, 136 U.S. 136, 446 (1890), that burning at the stake, crucifixion, breaking on the wheel, etc., were forbidden as “cruel and unusual,” but the death penalty was not. Punishments involving torture or a lingering death, the Court said, are unconstitutional. Thus, the Court held in Kemmler that “cruel and unusual” punishments were those viewed as cruel and unusual in the English Common Law.

Under the Common Law, “Benefit of clergy” was a defense to capital punishment. That is why Congress, in enacting a death penalty statute, eliminated that defense. This is important in understanding the meaning of “cruel and unusual” punishment. James Madison, the father of the Constitution, as well as architect of the Bill of Rights, said that particular parts of the Common Law may have a sanction from the Constitution, so far as they are necessarily comprehended in the technical phrases which express the powers delegated to the government. Citing Chancellor James Kent’s Commentaries, the Supreme Court noted in Ex parte Kemmler: “The Supreme Court held in Ex parte Kemmler, 195 U.S. 100, 125 (1904) that “[t]o ascertain the meaning of the phrase taken from the Bill of Rights it must be construed with reference to the common law from which it was taken.” It was reiterated by the Court in Ex parte Grossman, 267 U.S. 87, 109 in 1925. In U.S. v. Wong Kim Ark, 169 U.S. 649, 654 (1898), it was held that absent the Common Law, the Constitution could not be rightly understood. Chief Justice Marshall resorted to the Common Law to determine the meaning of the Constitutional terms habeas corpus and treason. Chancellor Kent prophetically said without the Common Law, “the courts would be left free to roam at large in the trackless field of their own imaginations.”

2. The Court Departs From the Common Law

After Kemmler, the Supreme Court ultimately began its departure from the original understanding as to “cruel and unusual” punishment in Weems v. United States, 217 U.S. 349, 366-367 (1910), where, on a conviction for fraud, a defendant was sentenced to 15 years in prison, including being chained from wrist to ankle, and compelled to work.

The concept of evolving standards raises questions which the People, the “ultimate authority,” (as James Madison called them) reserve answers. Madison said the Constitution’s “legitimate meaning…must be derived from the text itself” and if the Constitution is not interpreted in the same sense in which it was written and ratified, “there can be no security for a faithful exercise of its powers.” In South Carolina v. U.S., 199 U.S. 437, 448 (1905), the Supreme Court said the Constitution’s “meaning does not alter. That which it meant when adopted, it means now.” Judicial authority to alter the Constitution’s meaning per “evolving standards of decency that mark the progress of a maturing society” or “the basic mores of society” are legislative matters outside the scope of legitimate judicial power. What is meant by “decency”? How are “evolving standards” determined? It clearly appears to be from the personal beliefs of the Justices and what they personally believe or want the law to be. Justice Holmes, held that “the criterion of constitutionality is not whether we believe the law to be for the public good.” Nevertheless, with “evolving standards” the criterion of constitutionality clearly appears to mean what the Court wants it to mean even if clearly adverse to the Constitution’s text and the original meaning of the Framers. This is a blank check for the Court to make the Constitution mean whatever the Court wants it to mean. Art. I of the Constitution states that all legislative powers reside in the Legislative branch. Thus, Justice Scalia said, the courts were never meant to have legislative, much less super-legislative powers. Madison warned that combining the legislative, executive and judicial powers in one branch of government “is very definition of tyranny.”

By Bill Graves*

1. The Framers’ Meaning of Cruel and Unusual Punishment

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