Misconceptions and Recognition of Domestic Violence

by Sharity D. Nichols and Christina McCarthy

The foregoing are examples of the misconceptions and common comments made concerning domestic violence. These statements blame the victim and fail to recognize “she” could have been “he.” In the United States, 20 people are physically abused by intimate partners every minute. In 2015, 111 murders were directly attributed to domestic violence in Oklahoma alone. In 21 of those cases, 24 children were killed. Domestic violence may not impact you directly, but it is a subject that should be discussed. Awareness is key for prevention, as Awareness of the dynamics and dangers of domestic abuse is crucial to competently and effectively representing a client in a domestic matter, as well as necessary to keep your client and law office safe.

The first issue to understand is that domestic violence is about “POWER & CONTROL,” which is exercised by the abuser through emotional, physical, financial, religious, sexual and/or psychological control methods. Some common tactics include ridiculing the appearance, intelligence, or economic status of the victim. Some people believe that if the victim is wealthy, she will leave. Others believe that she has a good job, so she must be content in her situation. Many believe that she needs to stay for the children. The truth is that domestic violence is a complex issue, and it takes a multidisciplinary approach to effectively address it.

OCTOBER IS DOMESTIC VIOLENCE AWARENESS MONTH

by G. Gail Stricklin

Awareness of the dynamics and dangers of domestic abuse is crucial to competently and effectively representing a client in a domestic matter, as well as necessary to keep your client and law office safe. The first issue to understand is that domestic violence is about “POWER & CONTROL,” which is exercised by the abuser through emotional, physical, financial, religious, sexual and/or psychological control methods. Some common tactics include ridiculing the appearance, intelligence, or economic status of the victim. Some people believe that if the victim is wealthy, she will leave. Others believe that she has a good job, so she must be content in her situation. Many believe that she needs to stay for the children. The truth is that domestic violence is a complex issue, and it takes a multidisciplinary approach to effectively address it.
From the President

Leadership

by David Cheek

The role of President is to lead the organization in a direction consistent with the OCBA’s mission, with emphasis on the current President’s focus. The OCBA’s mission statement includes “Volunteer lawyers and judges dedicated to serving the judicial system, their profession and their community . . . to better the quality of life in Oklahoma County . . . [“]” Over the forty-plus years that I have been a member, and in particular over the last three years as an executive officer, I perceive the OCBA’s significant focus, although unwritten, has been on community service. It is my belief that my role this year is to foster that part of the mission. While trying to ascertain how to lead, I ran into a quote recently that caught my eye.

“Most leaders spend time trying to get others to think highly of them; when instead they should try to get their people to think more highly of themselves.”
— Booker T. Washington

Courthouse Updates

Courthouse Closed November 10th for Veterans Day Observance
Courthouse Closed November 23rd and 24th for the Thanksgiving Day Holiday
Judge Davis has taken over Judge Dixon’s civil docket and is located in Room 201. Her office phone is 713-1107. Court dates may be obtained and pleadings dropped off for Judge Stuart’s docket in Room 821. The phone number for that office is 713-1460.

Special Judge-select Kathryn Savage will be sworn in on November 1, 2017 in the Ceremonial Courtroom 809. Judge-select Savage will be assigned to Judge Roma McElwee’s former docket and courtroom.

Oklahoma County Bar Auxiliary Annual Fundraiser

Benefiting Children’s Nonprofit Organizations in Oklahoma County

OCBA is offering beautiful live poinsettias and gift certificates from TLC. Decorate your home or office with our LOCALLY-GROWN, HAND-SELECTED PLANTS, sleeved for protection, with an attractive foil pot cover.

Order 10 or more Large Poinsettias &/or 20 or more Small Poinsettias and receive free delivery in downtown OKC!

PICK UP: TUESDAY, DECEMBER 5, 2017 from 10:00 am to 6:00 pm at
39 NE 24th Street, Oklahoma City, OK

8” pots, Red Poinsettias only $26.00 each

6” pots, 3 varieties $16.00 each

Red White Pink

TLC $20 Gift Cards – Never Expire!

Total Quantity Subtotal: $ _________

Grand Total: $ _________

Name ____________________________
Address ____________________________
Phone ____________________________
Email ____________________________

Order by WEDNESDAY, NOVEMBER 22, 2017 5:00pm

WANT TO PLACE AN ORDER? Email your order form to beckytaylor527@gmail.com and mail your check to OCBA, c/o Becky Taylor, 745 NE 18th St, OKC, OK 73105 (405) 778-7608

QUESTIONS? Contact Tsinena Thompson, TThompson@OLFC.org (405) 232-4453 OR Janet Rayburn, janetrayburn@cox.net (405) 615-6045
Dear Roscoe: I’ve represented a family for a number of years. One of the children of my clients has become pen pals with for a number of years. One of the children
the DOC or whatever they call it in Ohio
must be added to the analytical mix.

Right to marry enjoyed by a non-inmate
now, because we don’t know what restric-
tions you might find something to hang your

The OCBA has many opportunities to volunteer with their Community Service Committee, Law Related Education Committee,
and Law Students Committee. Of course, one has to assess the quality and
accuracy of any legal information, espe-
cially that provided by a non-lawyer. If
you want to use me as the gold standard
for the latter, I won’t mind a bit.

They wouldn’t let us see Father Auggie.
He remained a work in progress. I caught
enough of a glimpse to see him on a
stretchers as they wheeled him out for an

**VOLUNTEER OPPORTUNITIES**

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 opportuni-
ties 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.

**INFANT CRISIS CENTER**

Weekly Volunteer Opportunities include: Client Intake Specialists, Warehouse Assistance or Spanish Translation. Flexible
Volunteer Opportunities include: Volunteers, On Call/Disaster Relief/Special Events, or Saturday Volunteers.

Income of my clients has become pen pals with
for a number of years. One of the children
the DOC or whatever they call it in Ohio
must be added to the analytical mix.

Dear Roscoe: Doesn’t this column involve the unauthorized practice of law?
just sayin’. HJC, OKC.

Dear HJC: Nice one H. I’ve waited
almost eight years for someone to bring
this up. All 50 States forbid the unli-
censed practice of law. Many States make
it a crime. However, there is a
huge difference between “legal advice”
(universal no-no) and offering an
opinion (OK and arguably protected by
the First Amendment). Unfortunately,
the line between the two is somewhat
unclear. The key to avoiding UPL is to
limit information provided to others to
decisional information only, not legal advice.
Information, such as the factual status
of the law, can be provided for educu-
tional purposes or discussion. Such
information is available to the general
public, if only they were equipped to do
the research. However, the act of pro-
viding legal information becomes legal
advising when the professional applies
such information to a factual scenario
relevant to the legal stakes of the person
receiving the information. For example,
it is not UPL for a law student to explain
to his friends what he learned about
search and seizure in criminal law class,
but if he goes on to advise his recently
arrested friend how to use that informa-
tion to exclude evidence in his case,
the law student has committed UPL.
In addition, if a non-lawyer holds himself
out to the public as a lawyer, he commits
UPL. I make no claim to lawyerhood,
and limit my opinions and information
to this venerable publication published
for lawyers, to lawyers. Of

**INFANT CRISIS CENTER**

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Volunteer Opportunities include: Volunteers, On Call/Disaster Relief/Special Events, or Saturday Volunteers.

Host A Drive at Your Office – formula, diapers & other baby essentials are always needed. Contact Volunteer Program
Coordinator Danielle Morgan, 778-7603.

**VOICES FOR CHILDREN**

This committee will begin reading to Pre-K students at Lee Elementary, 424 SW 29, once a month at 8:30 a.m. This program will
begin on Tuesday, November 7, 2017. If you are interested in participating, contact Pam Bennett at pam@okbar.org.

**Quote of the MONTH**

Of all the preposterous assumptions of humanity over humanity, nothing exceeds most of the criticisms made on the habits of the
poor by the well-housed, well-warmed, and well-fed.

—Herman Melville, novelist and poet (1819-1891)
October 9, 1917
One Hundred Years Ago

[Excerpted from: Ex parte Adams, 1917 OK 491, 168 P. 1004.]

This is an action by F. Buel Adams, Sr., who will be referred to as petitioner, to obtain custody of his infant son F. Buel Adams, Jr. The respondent, Mrs. Julia G. Campbell, is the maternal grandmother of the child. Its mother died in 1916, and the grandmother has had custody of the child since her death, and had the care of it to a large extent even during the lifetime of its mother, and she resists the petitioner having the custody and control of the child on the ground that he is unfit, and we think the record bears out this contention.

The father of the child began courting a woman within three months after the death of the child’s mother, and in about four months thereafter married her. Whether she was the wife of another man at the time this courtship began or not is not clear, and the petitioner states he does not know whether she had been divorced from her former husband at the time he began courting her or not. But at any rate it was only about a month from the time the courtship began till he married her, and the record shows she had been divorced only about a month before her marriage to the petitioner. And he asks that the child be taken from the grandmother, and turned over to him and his newly found spouse.

The mother of this child, from the testimony of the petitioner and letters introduced, seems to have been most tenderly devoted to the petitioner. And while he may think it was only a matter of taste that he and the child, as a boy and young man, spent within the three months or three days after the death of this tenderly affectionate wife, yet the writer of this opinion thinks it goes further, and exhibits a character deficient in appreciation of the higher, better, nobler sentiments of life—sentiments which this child is entitled to have instilled into his young and plastic mind. And a man who can so soon forget the tender caresses of a most affectionate and faithful wife could hardly be expected to have a more abiding interest in her infant child.

Again, one witness testifies that within a few months of the death of his faithful wife, petitioner told him that he and one of his brothers-in-law took two lewd women to a hotel at Wynnewood in the small hours of the night, and there coursed with them. The petitioner denies having made this statement, but admits that he and his brothers-in-law were at the hotel, and the hotel register which he admits carries the genuine signatures of himself ari brothe-in-law shows the name of the brother-in-law registered, then immediately under his name, apparently in his handwriting, the names of the two women, and immediately under their names, the name of the petitioner appears. And the two men and the two women were assigned adjoining rooms. Petitioner says, however, that he and his brother-in-law then went to the hotel for the morning of that day, and not at night, and only remained in the town for a few hours; that his brother-in-law registered and took a room immediately upon their arrival; that he went to see an attorney for a few minutes on business, and did not register until he returned from the office; that the room was slatted by the last name on the register for that day; and afterwards his brother-in-law left to wash and clean up. His brother-in-law certainly would have permitted him to use the room for this purpose without his registering. And it is also remarkable that the names of the petitioner and his brother-in-law and the two women were the last names on the register for that day, if they arrived in the morning. The register would indicate that they were the last to arrive on that day. At least it is clear they were the last to register for that day. The petitioner’s testimony, admissions, and explanations, in clearing him of the charge that he and his brother-in-law were in the hotel with these women, tends to confirm it. Instead of his testimony strengthening his denial, it tends to confirm the truth of the statement the witness swears he made to him, that he was there with these women. And that only within a few days after the death of this child’s mother.

It is in evidence that the petitioner has another child by a former marriage, which he has never taken to his home since his last marriage. And it is insisted by the respondent that the petitioner and his brother-in-law and the petitioner’s wife did not intermarry until March 14, 1931, and that said marriage had been reasonably happy for some time thereafter, and of said union there was born one child about November, 1935; that the father, Mac A. Eagle, a wealthy member of the Osage Nation, had made the acquaintance of plaintiff’s husband sometime unknown to plaintiff and had begun and continued a course of conduct calculated to alienate the affections of plaintiff’s said husband and to transfer the same to the defendant; that by gifts of money and clothes and by the extension of personal favors, defendant had over a period of years succeeded in depriving plaintiff of her husband’s affections and in acquiring the same for whatever they may be worth. The evidence of plaintiff clearly established that defendant had very effectually deprived plaintiff of whatever affection her husband may have had for her and had succeeded in getting him to bestow such affections for whatever they may have been worth on the defendant. The evidence also established that defendant appeared to place considerable value upon the custody of the infant child of plaintiff’s said husband, and irrespective of what others might consider such affections to be worth, the defendant is in no position to urge that the same were of no value to the plaintiff. The contention of the defendant relative to the sole right to the custody of child is wholly untenable. In an action of this nature the damages recoverable by the injured party are pecuniary only within the province of the jury. It is next urged that the trial court

And The Court Said

An Olio of Court Thinking

by Jim Crox

October 27, 1942
Seventy-Five Years Ago

[Excerpted from Red Eagle v. Free, 1942 OK 362, 130 P.2d 308]

Magdalene Free, hereinafter referred to as plaintiff, instituted this action on September 30, 1940, against Mrs. Ada Free, hereinafter referred to as defendant, to recover the sum of $40,000 as actual damages and the sum of $20,000 as punitive damages for the alienation of her husband’s affections by the defendant.

Plaintiff in her petition alleged, in substance, that her ex-husband had married her, and that he and the defendant had intermarried March 14, 1931, and that said marriage had been reasonably happy for some time thereafter, and of said union there was born one child about November, 1935; that the defendant, Mae Red Eagle, a wealthy member of the Osage Nation, had made the acquaintance of plaintiff’s husband sometime unknown to plaintiff and had begun and continued a course of conduct calculated to alienate the affections of plaintiff’s said husband and to transfer the same to the defendant; that by gifts of money and clothes and by the extension of personal favors, defendant had over a period of years succeeded in depriving plaintiff of her husband’s affections and in acquiring the same for whatever they may be worth.

The evidence of plaintiff clearly established that defendant had very effectually deprived plaintiff of whatever affection her husband may have had for her and had succeeded in getting him to bestow such affections for whatever they may have been worth on the defendant. The evidence also established that defendant appeared to place considerable value upon the custody of the infant child of plaintiff’s said husband, and irrespective of what others might consider such affections to be worth, the defendant is in no position to urge that the same were of no value to the plaintiff. The contention of the defendant relative to the sole right to the custody of child is wholly untenable. In an action of this nature the damages recoverable by the injured party are pecuniary only within the province of the jury. It is next urged that the trial court

Nature and extent of personal favors defendant had over a period of years succeeded in depriving plaintiff of her husband’s affections and in acquiring the same for whatever they may be worth. The evidence of plaintiff clearly established that defendant had very effectually deprived plaintiff of whatever affection her husband may have had for her and had succeeded in getting him to bestow such affections for whatever they may have been worth on the defendant. The evidence also established that defendant appeared to place considerable value upon the custody of the infant child of plaintiff’s said husband, and irrespective of what others might consider such affections to be worth, the defendant is in no position to urge that the same were of no value to the plaintiff. The contention of the defendant relative to the sole right to the custody of child is wholly untenable. In an action of this nature the damages recoverable by the injured party are pecuniary only within the province of the jury. It is next urged that the trial court
admitted improperly certain incompetent evidence. The evidence concerning which complaint is made being that offered in connection with the action which plaintiff had brought against her husband for wife and child desertion and in connection with a divorce action which her husband had subsequently instituted, all of which were incident to certain allegations made in the petition of the plaintiff; and, while said evidence was to a certain extent collateral, it was not wholly immaterial, since it tended to explain the effect which defendant's conduct had had upon the marital relation of plaintiff and her husband. As heretofore pointed out, in cases involving alienation of affections the rules governing the admissibility of evidence are to a certain extent sui generis.

October 10, 1967
Fifty Years Ago


This is an action to cancel a deed. After the case had been set for trial on May 8, 1964, the plaintiffs filed a motion to disqualify the trial judge which was heard on May 8th and denied. The parties were thereupon ordered to proceed to trial. Plaintiffs declined to introduce testimony and the case was dismissed without prejudice for want of prosecution. Plaintiffs have appealed from the order overruling their motion for a new trial.

Defendant filed a motion to dismiss on jurisdictional grounds. We have examined the record and find this appeal was properly perfected and that this Court does have jurisdiction. The motion to dismiss is denied and the appeal will be considered on its merits.

Plaintiffs contend that the failure of the trial judge to disqualify; in refusing to allow additional time in which to bring mandamus; and in refusing to allow appeal will be considered on its merits.

The issues presented by the defendant in this post-divorce modification and contempt proceeding are these: Whether the trial judge erred when he (1) found that the plaintiff was not guilty of indirect contempt of court; (2) failed to pass on the defendant's request to reduce unpaid medical expenses to judgment; and (3) modified the child support in the manner he did.

We hold that he did and vacate his order.

The operative facts are these. Plaintiff Stacie Smith and defendant Robert Smith were granted a divorce on September 4, 1987. The woman was awarded custody of their two minor children and the man was ordered to pay child support and alimony. He was also obligated to purchase health insurance for the children and to pay one-half of the insurance policy deductible.

On February 12, 1988, the parties entered a written settlement of a series of pending modification and contempt court applications. The trial court approved the settlement which, among other things, eliminated the man's responsibility for future alimony and made both parties responsible for the payment of one-half of the children's "unreimbursed" medical and dental expenses, including deductibles and co-payments.

On July 19, 1989, the man filed a motion to modify child support due to a reduced income, and an application for contempt of court citation against the man for failure to pay his share of the unpaid medical expenses. He also asked for a judgment against the woman for such expenses.

On July 21, 1989, the woman responded by also filing a motion to modify and a contempt of court application seeking to restrict the man's conduct. She also charged that he was delinquent on his child support payments.

All matters were consolidated for trial on September 8, 1989. On that date the attorneys presented opening
My Friend, Dale Reneau
By Judge John M. Amick, Retired

I was saddened recently by the passing of an old friend of mine, Dale Reneau. He was a widely known and respected member in the firm of Fenton, Fenton, Smith, Reneau and Moon. While I was an active judge it was my custom to hold my motion docket on Friday morning. Dale called me one day and asked to come over for a conversation with me. I assured him that he was welcome. Dale said that word had come back to the Fenton firm that a young lawyer from their firm had argued with me after I made a ruling on his motion.

It was the philosophy of the Fenton firm (as well as most trial lawyers) to argue forcefully in support of their motion until the judge indicated a definite ruling and then to cease all argument. I said that while there was some truth in the report, it was not sufficiently offensive to be concerned about. It was, I said, simply the conduct of a new attorney. I told him an older and more experienced attorney would discern that the decision was made, fold up his file and mutter to himself as he left the courtroom, “. . . that damn judge!”

“No,” Dale said, “the older attorney would take his file and mutter to himself as he left the courtroom, “. . . that damn DUMB judge!”

I am inclined to believe that Dale, with all his experience, as almost certainly correct.

We all take our work seriously, but sometimes others don’t think we should take ourselves as seriously as we think we should.

David Kirk – My Friend
By Jeff Curran

David Kirk was a friend of mine, and I hate the fact that I’m writing this. Dave and I played music together for over 30 years. I met him in law school—he was a third year and I was a first year. We played a law school Gridiron party (along with Robert Mansell and Don Funnell). I knew all the women in his life. I remember when his kids were babies. I helped him move into one of his houses, where I helped him put plastic protectors into the outlets because his son Ford (who was maybe 2 at that time) liked to stick forks into the outlets. The point being, Dave was more than I can put into words. I can’t really “objectify” him.

I’ve been through the whole “death is a part of life” thing, and I still hate that I’m writing this. I expect to walk into the Robinson Renaissance in downtown OKC and see Dave coming off the elevator, and of course I’ll invite him to join me for lunch. Dave was one of the smartest guys I knew, and I learned a lot from him. He knew a ton about music generally, and even more about guitars. You could ask him about serial numbers on a Fender Stratocaster, and he’d give you a 30-minute diatribe about the history of how the guitars were made. And he made it interesting.

The standard stuff: Dave was born in January 1957 in Okmulgee. His Mom and Dad were two of the nicest people ever. He had a sister (Mary) and a brother (Tom), both of whom he loved very much. Dave went to John Marshall High and then graduated from William & Mary in Williamsburg Virginia with a degree in history and philosophy (which explains a lot about him, frankly). He then went to OU Law, getting out in 1985. He practiced at a few places - McKinney Stringer, Carter & Kirk, and then Lyle Soule and Curlee. Dave was by everyone’s account a really good lawyer.

The not-so-standard stuff: Dave was really smart and very funny. Dave was friends with a lot of lawyers he practiced with, and stayed that way even when they didn’t practice together anymore (Mike Carter being one of several that come to mind). Dave, Mike and I had a band together off and on for 30 years, and we always enjoyed playing. I can’t talk about Dave without talking about his music—he was an outstanding guitar player, and played a variety of styles. Dave could play Hendrix, Clapton, all the classic rock guitar styles. But he also played blues, jazz, you name it. He could really just play any style (I know, because I heard all of it). Dave could play a lot of instruments, and he was really good at all of them.

I didn’t know Dave as well as some, but better than most. Dave was at my wedding, where I talked him and the band into playing for free. Dave was with Mike and me in Muskogee at a gig where a guy slashed his wrist accidentally on a broken beer glass, then bled all over the speakers. We spent many a night away back when playing at PE’s on 64th Street, where we’d make $20 (maybe), and then later brothers in Norman which became our music home away from home for years. I could always call Dave with a guitar or amp question (and did on many occasions), and he would know the answer.

Dave would always (and I do mean always) talk about his kids, and he was so proud of all of them—Ford, Anna and Callie. He would always tell us about how smart they were and how talented they were (and he was right). He loved his kids enormously. Later in life, he was also blessed with two stepsons — Ted and Mark Prince, whom he also loved (and talked about).

Dave went through some serious cancer treatment later in his life. He was down for awhile, but always seemed to approach it semi-analytically and philosophically. He knew what he was dealing with, researched his treatments, and faced everything head on with a lot of class. He had beaten it and was back to the “old Dave” (or “Grouchy Dave”, as he referred to himself on occasion). But then he left us all pretty suddenly – even the Monday before he passed that Thursday, I was texting him to see what he wanted me to bring when I came to see him, and he texted back “Strippers!” (Yes, he was kidding – at least I think he was anyway). Of course, the point is that he was still “funny Dave”, even while in the hospital.

I bought a guitar from Dave once — a pink Strat. I will never, ever, sell it — I will treasure it the rest of my life. I’m going to miss Dave. I’ll miss seeing him, talking to him, eating lunch with him, playing with him, learning something from him, all of it. And I know I’m not alone in that feeling.

Dear Roger:

Time certainly flies my friend. It seems like only yesterday when I first walked through the doors of the Oklahoma County Juvenile Justice Center. I knew that I would have some difficult times ahead. My predecessor had forged many strong relationships, and I was concerned how things would go when I met the local “expert” on juvenile law. I quickly realized that everyone that sees your plaque at the juvenile center realizes how fortunate Oklahoma County was as well.

It is OK to hand out a sucker or a toy to a child that is standing before you when that child is there through no fault of his or her own – a practice many Judges across the state now employ. It is OK to demand professionalism from Child Welfare Workers that appear in your Courtroom, while at the same time demanding that people treat the same worker with courtesy and respect at all times. It is OK to laugh in chambers about some of the odd “juvenile-court stories” about unusual names, or unusual antics of parents, children and attorneys. It is OK to be proud of your Faith, even as a Judge.

Never settle. If things can be done better, do it, and if it can’t, find out why. You are truly a great Judge, an outstanding man and a good friend. As I have told you before, I thank God every day that you were there when I first put on the robe. I hope that everyone that sees your plaque at the juvenile center realizes how fortunate Oklahoma County was as well.

Thanks my friend, and happy trails.

Richard W. Kirby, Associate District Judge

AN OPEN LETTER TO MY FRIEND, THE HONORABLE ROGER STUART

Obituaries
Leonard Court named to Who’s Who Legal for labor & employment law

Crowe & Dunlevy attorney Leonard Court has been recognized as the only Oklahoman listed in Who’s Who Legal for his work in labor and employment law for 2017. This international designation recognizes the world’s foremost legal practitioners in areas of business law, as nominated by peers and reviewed by an independent counsel.*

A founding member of Crowe & Dunlevy’s Labor & Employment Practice Group, Court received his bachelor’s degree from Oklahoma State University and his law degree from Harvard University Law School before joining the firm in 1972. He also served as a U.S. Air Force judge advocate general for four years before returning to the firm.

An active member of the human resources industry, Court has served as a member of the United States Chamber of Commerce Labor Relations Committee for 20 years and has received the Oklahoma City Human Resources Society HR Legend Award and the Oklahoma Human Resources Council Annual Excellence in Human Resources Award, among other recognitions. He is also a member of the American Bar Association’s Equal Employment Opportunity Committee.

Court has worked as an adjunct professor at the University of Oklahoma College of Law and Oklahoma City University School of Law. A proud supporter of his alma mater, he previously served as president of the Oklahoma State University Alumni Association and has received that organization’s Distinguished Alumni Award.

*Crowe & Dunlevy has no input in the rating methodologies used by Who’s Who Legal.

Phillips Murrah welcomes new litigation attorney

Phillips Murrah is proud to welcome Mark E. Hornbeek to our Firm.

Phillips Murrah welcomed Mark to the Firm’s Litigation Practice Group as an associate attorney.

As a recent graduate of the University of Oklahoma School of Law, Mark earned the American Jurisprudence Award for Civil Procedure I, Torts I and Criminal Law. He served as Symposium Editor of the Oklahoma Law Review, was a member of the Phi Delta Phi Legal Honor Society, the Board of Advocates, and the Student Bar Association Board of Governors.

Mark also received the Welcome D. Pierson Award for excellence in the fields of Evidence and Civil Procedure, the Gene and Jo Ann Sharp Award for his contributions to the Oklahoma Law Review, the William T. and James Comfort Scholarship, and was selected as a Dean’s Leadership Fellow.

In his role at Phillips Murrah, Mark represents individuals and both privately-held and public companies in a wide range of civil litigation matters.

Simon Bright, Hannah Cline Shoss and Andrew King join Oklahoma’s largest law firm

McAfee & Taft has announced the addition of Simon W. Bright, Hannah Cline Shoss and Andrew M. King as associates.

Simon Bright is a corporate attorney whose transactional practice encompasses a broad range of complex business matters including mergers and acquisitions, divestitures, entity formation, securities offerings, and real estate acquisition, development, sales and financing. As a member of the firm’s Energy and Oil & Gas Industry Group, Bright leverages his prior career experience in the industry to represent clients engaged in energy exploration and production, transportation and marketing in a broad range of matters, including oil and gas property sales and acquisitions, leases, title work, securities offerings, development and operating contracts, and exploration, participation, joint venture agreements.

Bright is a 2017 honors graduate from the University of Oklahoma College of Law. While pursuing his Juris Doctor, he served as executive articles editor of the Oklahoma Law Review; was a member of the Energy Resources Law Student Association and Phi Delta Phi honor society, and was the recipient of four American Jurisprudence Awards.

Hannah Cline Shoss is a corporate attorney whose transactional and business counseling practice is focused on mergers and acquisitions, divestitures, entity selection and business formation, contract drafting and negotiations, corporate governance and compliance, and real estate sales, leasing, financing and development.

Shoss graduated magna cum laude from the SMU Dedman School of Law in 2017, where she served as articles editor of the SMU Law Review and was named to the Order of the Coif. While pursuing her Juris Doctor, she served as a judicial intern for The Honorable Martin J. Hoffman of the 68th Civil District Court in Dallas, TX.

Her prior career experience includes working as a business manager for a Texas-based medical practice, where she developed valuable hands-on experience and understanding of the healthcare industry and was involved in matters dealing with strategic planning, business succession, asset protection, human resources, provider credentialing, HIPAA compliance, the transition to electronic health records in accordance with Medicare regulations, and the construction, financing and development of a second practice location.

King is a transactional lawyer whose practice encompasses a broad range of business and commercial matters, including business entity formation and organization, mergers and acquisitions, divestitures, real estate transactions, contract negotiations, business taxation, and family wealth planning.

King earned his bachelor’s degree from Oklahoma State University and graduated with highest honors from the University of Tulsa College of Law in 2017. While in law school, he worked for the Immigration Rights Project at the Boesche Legal Clinic, was a member of the Board of Advocates, and received the CALI Award for Advanced Legal Research.

Prior to embarking on his legal career, Andrew served in the Oklahoma Army National Guard for six years and led a mortar fire team in Afghanistan during Operation Enduring Freedom.

Events & Seminars

OCTOBER 27, 2017
Corporate Counsel Section CLE
“Hot Topics in Employment Law”
12 Noon, Bar Office

DECEMBER 7, 2017
OCBA Holiday Reception, 4:30 – 6:30 p.m.
Robinson Renaissance

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

MARCH 16, 2018
OCBA Night with The Thunder
OKC v. LA CLIPPER

Old News

Excerpts from OCBA News:

November 1978, Part 1

President’s Column

United We Stand ... Divided?

By Robert J. Turner

Retyped and Republished By Geary L. Walk

I truly believe that the freedom of this country and its people rests with the individual efforts of lawyers who have no fear — whether it be of the local newspaper, the Federal Bench, or Bigfoot!

However, this strong individualistic trait found in the best of lawyers can be a problem in regard to unifying for the common good of the bar and community; and a unified voice in this increasingly complex and sophisticated world of ours simply packs more power. I doubt seriously that the downtown area would be in the mess it’s in if the County Bar had exercised the voice it should be exercising in civic affairs. What a shame! What a waste!

More importantly, no single lawyer can halt the present threat to our profession. Already the Federal Trade Commission is looking for the legal authority to license and control lawyers. Washington can then tell us who and what to defend! Are we to go blindly our separate ways or Bigfoot?

Even our local bench orders wholesale dismissals of cases without so much as a considerate aside in advance, treating lawyers as bastard children to be dealt with but not recognized.

Others are proposing specialization and accreditation, wide open advertising, and the reform list goes on. Perhaps a change is in order, but are you willing to alter your professional way of life without a voice? We may all be relegated to a specialty — if allowed to persist aside in advance, treating lawyers as bastard children to be dealt with but not recognized.

We may all be relegated to a specialty — if allowed to persist
gence, capacity or parenting ability of the victim; isolation from friends, family and other third parties; restricting access to education or employment; forced sex; coercion and threats to harm self, partner and children; (fe)male privilege; using children; and failing to take responsibility by minimizing, denying and blaming victim. See, Power and Control Wheel.

The second issue to understand is that separation, estrangement or threat of separation from an abuser puts the victim at a very high risk of harm, including sexual assault, stalking and death. Why? Because the abuser perceives the loss of control and power over the victim. Dangerous behavior may escalate in an attempt to re-establish control over the victim. The legal system must understand the safety implications of leaving or staying and recognize that where children are involved, the decision to leave or to stay is complicated. It may be that the sacrifice of staying is more protective of the children than an unplanned or ill-prepared exit. The legal community should be sensitive to these issues and not re-victimize the client by blaming them for not leaving.

The third and most important issue is SAFETY and this is determined by screening the client, reviewing lethality factors and, where indicated, referring to an Oklahoma Attorney General certified domestic abuse program for safety planning (1-800-522SAFE) and other services for the adult and child(ren), including the address confidentiality program & counseling. In Oklahoma County, clients are welcomed at Palomar, Oklahoma City’s Family Justice Center, Monday-Friday, 8-5, located at 1140 Hudson, Oklahoma City, OK (405) 522-1010. Certified DV specialists, lawyers and other professionals are available to address the needs of domestic violence adult and child victims.

Screening tools are available on the web, and specifically on the ABA Commission on Domestic Violence website. Why screen? Because the ethical duty of competency requires you be aware that victims of violence are quite often trauma victims who react differently than other clients; they may not readily volunteer information due to shame, embarrassment, or confused recall due to the trauma. Knowing the vulnerability of the client’s situation helps the practitioner to utilize specific laws that apply to victims of violence.

While abusers usually do not focus on their victim’s attorney, there have been cases where attorneys have been targeted. When domestic violence is present and safety is at issue, the practitioner can take the following measures to secure the law office and personnel: Be alert to abuser “losing control”, i.e. escalating anger, intimidation, threats towards third parties; multiple hearings and court appearances; if abuser is pro se, consider meeting at courthouse; give picture and car description to staff; lock door if necessary; establish safe means of communication with client: do not disclose client location or phone number, and block caller id when calling.

Domestic violence is learned behavior and is an epidemic-passed on from generation to generation. It is a crime and not the act of a good parent or partner. Oklahoma continues to be in the top 10 of handgun murders by men on women and we can do our part in screening for it, understanding lethality, referring for appropriate services and applying laws designed to keep children and victims safe, breaking the cycle of violence and, perhaps, saving a life. G. Gail Stricklin has been involved in the area of domestic violence since 1984, providing legal counseling and services to victims & children, writing and running legislation, educating through seminars and serving as the OBA’s representative on the DV Fatality Review Board and Child Death Review Board and is a member of the Oklahoma County Domestic Violence Post Adjudicatory Review Board.
IN-PAPER SECTION: DECEMBER 7, 2017

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2017 ANNUAL DINNER DANCE HIGHLIGHTS

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Outgoing President Barbara Swinton & Incoming President David Cheek

Kyle Endicott, Jonathan Echols, Amy Howe, David Echols, Ashley Rahill

Preston Stinson, Cindy & Judge Allen Welch, Judge Sheila Stinson

Adam & Lauren Hanna with Steve Barghols

Ben Grubb, Amber Martin, Jason Strassner & Gabe Herald

Judge Don & Mollie Andrews with Margaret & Judge Bryan Dixon

John & Christina Cupp with John Healy
Burt & Lou Johnson started the dancing again this year!

President Cheek cutting the rug.

Mark & Angela Bahm

Evan King & Nichole Solimano

Shanda & Chad Mckenney

Sam Merchant & Kelly Dillow

OCU Dean Lee Peoples and wife, Emma Rolls

Judge Barbara & Charlie Swinton

Helen & Ron Stakem

Vicki & Mack Martin

Caleb & Beth Muckala

Bob & Freddie Nelon

Bob & Rebecca Thompson

Bob Jackson & Merideth Herald
Recognizing domestic abuse is critical. Some warning signs of an abuser may include verbal abuse, extremely controlling behavior, cruelty to animals, blaming the victim for anything bad that happens, controlling all the finances, embarrassment of the victim in front of others, and/or accusations of the victim flir"
If you have been following my Briefcase Op/Eds or the Open and Obvious blog, you may recall that in March of 2017 I penned an installment entitled MY OCBA IS ALREADY GREAT!. If you choose, you can find that on the OCBA Briefcase archive or on the Open and Obvious blog site at https://openobvious.wordpress.com/

The reason for this reference is that County Bar President David Cheek has asked your County Bar Board two questions at the recent board meeting. The first is why do you belong to the OCBA and the second is why do others not belong to the OCBA. These are great questions for every member. Back in March I tried to point out in a succinct manner all the great benefits of OCBA membership including, but not limited to, mentoring, social interaction with Judges and other lawyers giving back to the profession, proximity card courthouse access, CLE and being part of a social justice and community service initiative of the County Bar. Apparently, this article did little to motivate an increase in membership. My pen/keyboard now meets reality and it begs the question, WHY NOT?

I realize that the likelihood of a non-member reading this publication is slim, so I am relying on you members to circulate the Briefcase to non-member lawyers you know. Better yet, ask them why they do not belong to the OCBA and let the OCBA know what we can do to increase membership in your professional association. First off, I am not listening to any complaints that County Bar dues are too expensive. The Oklahoma County Bar dues rate has not been increased in forever and is probably the cheapest bar membership you will ever have, certainly much cheaper than your gym membership that if you are like me you do not use. Save your email or phone call if that is your beef.

Moving on, the demographics of non-membership are hard to pin down. Many young lawyers straight out of law school and passing the bar exam get involved in Young Lawyer’s Committees of our Bar and others. These always seem to be a draw as these groups are both social and usually have a community service/social justice return involved. Another big hint, new admittee membership is free. From there, the Young Lawyers jump into regular Bar service mostly because they are forced out by age. Then the picture gets murky.

Interest in belonging seems to wane across all age groups of attorneys. I have already listed some really good reasons and benefits of OCBA membership. Tell your law partners, colleagues and other attorneys that you know about the OCBA. Encourage others to join. Take an active part in OCBA events, CLEs and social gatherings. Enhance your practice and work life satisfaction through OCBA membership. Inform your board of some tasks or perks to consider for the future mix of OCBA membership benefits. Share your Briefcase or blog or the Open and Obvious blog with others. It is not just about dues, it is about professionalism.

This discussion lead me to the top 10 Why Nots of October 2017 (most difficult to not be political or cynical here):

1. Why Not have fast access to the courthouse with a County Bar proximity card
2. Why Not socialize with other lawyers at the OCBA golf tournament, chili cook off, or Holiday Reception
3. Why Not meet Judges at the Bench and Bar Conference
4. Why Not get inexpensive content filled CLE at the OCBA
5. Why Not get involved in community service through any of the OCBA projects
6. Why Not join and encourage all Oklahoma County lawyers to join your OCBA
7. Why Not do something nice for a stranger
8. Why Not treat each other civilly in all things
9. Why Not be the best you can be; and
Why not the Brodie forever!

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.
Sometimes we owe a lot to people we don’t know or even know about. I was reminded of this recently because Lieutenant Colonel Stanislav Petrov died in Russia at the age of 77, on a date which is not totally clear. The Russians announced his death on September 18, 2017. He is famous for having saved the world from an almost certain nuclear war.

Petrov was the duty officer inside a massive bunker south of Moscow on September 26, 1983. That bunker was roughly the functional equivalent of the U.S. North American Air Defense Command Center at Cheyenne Mountain, Colorado.

His task was to monitor a system code-named “Oko” or “eye.” This system tied together satellites, radars and computers to give the Soviets early warning of a launch of intercontinental ballistic missiles (ICBM’s) from the U.S. against the Soviet Union.

Tensions were high. Just three weeks before, Soviet Air Defense fighters had shot down Korean Air Flight 007 off the Kamchatka Peninsula in Asiatic Russia. Americans, including a congressman, were killed. Now, the system told Colonel Petrov that first one, then two and finally five ICBM’s had been launched in the direction of Russia. He did not believe the system.

Petrov knew that the American war plan for MAD (mutually assured destruction – the way we planned to avoid World War III) would be to launch not five missiles but rather hundreds of missiles to hit every Soviet ICBM site and nuclear bomber base before those installations could launch a retaliatory strike. The time from launch of missile in the U.S. to detonation in Russia was 33 minutes.

Think a moment about his dilemma. If he failed to give the command to launch the Soviet missiles, and the attack was real, he was a dead man. If he was not killed in the nuclear attack (he was in the bunker), he certainly would have been after the Soviet authorities got through with him.

He held his fire. The minutes ticked by. There were no U.S. missiles hitting Russia.

It turned out the false alarm resulted from the satellite observing the sun shining on the tops of some unusually tall cumulus clouds. The resulting red glow down-linked from the satellite looked to the computer like what the computer was programed to recognize as the glow of missiles lifting off. So, we lived another day.

The United States had its own similar near-miss with a sophisticated missile launch detection system. That occurred much earlier, on October 5, 1960. The U.S. had set up a system for detecting Soviet missile launches called BMEWS (for Ballistic Missile Early Warning System).

That system involved long-range radar using what was known as tropospheric scatter radar. Huge radar sets in northern Greenland and Canada bounced radar signals off the troposphere (immediately above the atmosphere) and then read the radar returns coming back.

On this occasion, the radar return indicated a very high probability of a massive Soviet missile launch. The Norad commander on duty was Gen Laurence Kuter, who kept a cool head. He concluded there was no intelligence supporting the likelihood of such an attack and declined to launch retaliatory missiles.

It turned out the problem was that the moon rose in a direct line with the Thule, Greenland radar set and the radar signal bounced of the troposphere and then off the moon and returned, giving the computers the wrong data. The U.S. reprogrammed the computers to recognize that the 2 second delay in the return was way too long to be an indication of a missile launch from Russia.

And that’s the story of why we did not have an accidental nuclear war. Let’s hope we likewise live through the current fear of an equally senseless nuclear disaster!
My First Jury Trial

By James C. Shaw

Who knows the year; it’s irrelevant. I do think that our mutual friend, Bud Winterstein, was still with the Miller Dollarhide firm, so it had to be in the early 1980’s when we had about 6 lawyers. At any rate, I was the newest lawyer at the firm, and we all know what flows downhill to the low person. One day, George Miller called me to his office and told me that I was going to try a case to collect the whopping sum of about $1,500, and that it would be a jury trial. Heck, I hadn’t tried a case, much less a jury trial. I’ve had plenty of trial and courtroom experience foreclosing hundreds of mortgages, pursuing deficiencies on judgments, and bringing probate and trust-related cases; however, those experiences came later. In any event, the assigned judge was the Honorable Leonard Geb, an Abraham Lincoln look alike if there ever were one. Defense counsel was an experienced lawyer from out of town. I studied about trying jury cases, the voir dire process, the opening statement, etc. I had all of my voir dire questions written on a legal pad. By dang, I was prepared! Then came the trial. I meticulously went through my questions to prospective jurors and made the appropriate challenges. Then, it was defense counsel’s turn. He stood there and had a friendly conversation with the folks in the jury box. He had them smiling, nodding in agreement to what he said. I realized right then, before I had called my first witness: “I’ve lost this case!”

Well, the trial began. I called my first witness, the owner of the business. At the conclusion of his testimony, Judge Geb called a recess for lunch. I have no clue what happened between then and court being back in session, but as we took our seats, I noticed that what had been a 6-person jury was now a 5-person jury. Judge Geb asked his clerk if she knew where the other juror might be. She did not know and had not heard from the juror. Judge Geb called a recess and contacted the Sheriff’s office to see if the missing juror could be located. After some considerable time, Judge Geb reconvened the trial and informed those in the courtroom that the missing person had returned to his job at the Oklahoma Tax Commission. I guess he found reviewing filed tax returns more interesting than listening to the remainder of the riveting testimony. In any event, Judge Geb looked at me and said something like: “Mr. Shaw, this is your case. We can proceed with the 5 remaining jurors or I can declare a mistrial.” Thinking about that question for the entire second that it took me to rise and respond, I asked that he declare a mistrial, which he did. Whew!! Disaster avoided. Ultimately,

the case settled. It later dawned on me that George Miller knew that even if I lost what should have been/could have been a winnable case that the firm would not lose the client. Fortunately for my career at the firm, we did not lose the client.

My late father-in-law, who practiced law for several decades and later served as a Special District Judge and then District Judge in Oklahoma County, said many times: “A lawyer who hasn’t tried a jury trial doesn’t know his butt from a hole in the ground.” Well, I thought that I knew the difference before my jury trial experience, but at least I could check off that item from my To-Do list.

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<td>Standard upgraded to Terraza King or Double</td>
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<td>2 persons sharing a room</td>
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<td>3 persons sharing a room</td>
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<td>1 person in room – sole occupancy</td>
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<td>Vista King (shared or private balcony):</td>
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<td>1 person in room – sole occupancy</td>
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<td>Vista Grande/Junior Suite King (shared or private balcony):</td>
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<td>2 persons sharing a room</td>
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<td>1 person in room – sole occupancy</td>
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<td>Six hours of CLE</td>
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statement concerning the positions of the parties on the issues. According to a post-appeal narrative statement order entered by the trial court on February 9, 1990, four exhibits were admitted as evidence but no oral testimony or any other competent evidence was heard or received.

It was on the basis of such evidence that the court found that neither party was guilty of indirect contempt of court, reduced the man’s child support payments by $50 per month, and adjusted the man’s visitation schedule, but rendered no judgment on the man’s request for unpaid medical expenses. And, finally, the journal entry contained the following: On April 15, 1990, and annually thereafter on April 15th, the parties are hereby ordered to exchange copies of their Federal Income Tax returns and child support shall be modified annually . . . using the gross income figures on each parties’ tax return.

From this ruling the man timely appeals.

It is necessary, as a preliminary matter, to determine the legal consequences flowing from several significant irregularities in the proceedings and the adjudication on September 8, 1989.

To begin with the trial judge signed a “Journal Entry” in which he recited that he “examined the file and records in this case and [heard] the oral testimony of witnesses examined in open Court” and then proceeded to adjudicate certain matters being heard. (Emphasis added.)

Feeling aggrieved, the man filed this appeal October 9, 1989. On October 27, 1989, the woman filed a response to the petition in error in which she said the appeal should be dismissed because: “Both parties waived jury trial and stipulated all matters be tried to the court. All matters were thereafter tried upon counsel’s [sic] statements and testimony of both parties.”

On November 19, 1989, however, the man, with leave of the trial court, filed a narrative statement of trial court proceedings pursuant to Civil Appellate Procedure Rule 1.22, 12 O.S. 1991, ch. 15, app. 2. In it the man narrated the argument of counsel which he referred to as an “offer of proof.” No actual testimony of any witness was narrated.

On December 6, 1989, the woman filed her objections to the statement along with various “amendments.” Among other things the woman said (1) none of the exhibits attached to the man’s statement were ever offered or admitted into evidence; and (2) the “court heard this matter upon oral argument of the parties only.” Following this the woman sets out some nineteen amendments which, like the man’s “narrative,” are based upon statements of counsel made during oral argument which she likewise characterizes as “offers of proof.”

Following this, on February 9, 1990, the trial court signed an order “of Narrative Statement of Proceedings.” The order recited that four exhibits had been admitted at “trial” and then proceeded to “incorporate” both the man’s “Narrative Statement” and the woman’s “Amendments” in full. The most that can be made out of this confusing order is this: It affirmatively reflects that both parties and the judge agree that (1) no evidence, other than four exhibits, was admitted or heard by the court (and the woman denies that even four exhibits were admitted or considered by the court), (2) the parties did not enter into any stipulation regarding evidence to be considered by the court, and (3) without the express consent of the parties the trial court decided to resolve the factual issues raised by the pleadings on the basis of the opening statement or “argument” of counsel.

Under the facts and circumstances detailed above the only issue for this court to decide is whether the trial judge fostered a fatal irregularity in the proceedings below which resulted in the parties being deprived of a fair trial and caused the man to be the recipient of a court order unsupported by any competent evidence.

We hold he did and grant a new trial.

The law is that a new trial is the proper remedy if the substantial rights of a party have been materially affected by (1) any irregularity in the proceedings of the court which has prevented him from having a fair trial; or (2) a decision of the trial judge which is not sustained by sufficient evidence. 12 O.S. 1991 § 651 (First) and (Sixth); Ingram v. Dunning, 60 Okl. 233, 159 P. 927 (1916). The trial court has a duty to safeguard litigants’ rights to a fair trial.

* * *

The trial judge should not coercively persuade or encourage, or for that matter permit, the parties to submit their lawsuit for adjudication merely on opening statements of counsel where material issues of fact exist. To do so is a fatal irregularity and is disapproved. Before a judge may validly decide an issue of fact, his decision, like that of a jury, must be based on competent evidence received by the court during a hearing, trial of the issues, or on facts stipulated to by the parties. . . . The parties ought not to be made to feel that it is an imposition on the court to insist on their constitutional right to present supporting evidence or cross-examine an opponent.

The journal entry appealed is vacated and the cause is remanded for a new trial on all issues including the man’s request for judgment against the woman for her share of the medical expenses - an issue which was not ruled upon in such journal entry.
DISTRICT COURT

SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA

JUVENILE JUSTICE CENTER

5905 N. CLASSEN COURT

OKLAHOMA CITY, OKLAHOMA 73118

HOWARD R. HARALSON

DISTRICT JUDGE

TELEPHONE:
(405) 713-6796

September 26, 2017

Debbie S. Gordon
Executive Director
Oklahoma County Bar Association
119 N. Robinson, Suite 240
Oklahoma City, OK 73102

Dear Debbie,

I want to personally thank you for your recent contribution of toys from the Oklahoma County Bar Association. Because of your generosity, the Judges at the Oklahoma County Juvenile Justice Center can give a small toy or stuffed animal to each child who enters the courtroom. The courtroom is not a welcoming place for children. These children enter the court system through no fault of their own and have experienced neglect and/or abuse in their young and innocent lives. As a judge, I see the smiles, joy and comfort that these gifts bring to each child despite his/her circumstances.

On behalf of all of the judges at the Juvenile Justice Center of Oklahoma County, we are grateful for your time and care in giving to these children. You lift their spirits, and you lift ours.

We have more than 1,500 deprived children that are subject of the proceedings here at the Oklahoma County Juvenile Justice Center. We could not bring this joy to these children without your generosity. Your donations are truly appreciated!

Sincerely,

[Signature]

Howard R. Haralson

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