President-Elect Barbara G. Swinton, serving as Chair of this year’s Nominations & Election Committee, has announced the slate of candidates approved by the Board of Directors.

Ballots will be mailed the first week in July and should be returned no later than July 31, 2016. Election results will be announced in August and elected officials will take office September 1, 2016. The candidates and their qualifications are listed here:

**PRESIDENT-ELECT**

David A. Cheek, Cheek & Falcone, P.L.L.C. J.D. – University of Oklahoma 1974. **OCBA activities include:** Vice President 2015-16; Board of Directors; Fee Grievance & Ethics Committee 1978 – present, Chair 1984-86; Bankruptcy Section. **OBA activities include:** Member.

**VICE PRESIDENT**

Sheila Stinson, Stinson Law Group. J.D. – University of Oklahoma 2002. **OCBA activities include:** Board of Directors, Law Library Trustee 4 years; CLE Committee, Past Chair; Bench & Bar Committee; Young Lawyers Division Director; Law Related Education Volunteer. **OBA activities include:** Budget Committee; Bench & Bar Committee; Ask A Lawyer Volunteer 14 years. **Other Legal or Community Activities include:** Rotary Club of North OKC, Past President; UCO Foundation Board, Legal Education Coordinator, Oklahoma Girls’ State.

**LAW LIBRARY TRUSTEE**

Brad Davenport, Andrews Davis. J.D. – Vanderbilt University 2000. **OCBA activities include:** Law Day Ask A Lawyer Volunteer. **OBA activities include:** Bench & Bar Committee. **Other Legal or Community activities include:** Downtown Exchange Club of Oklahoma City, President; Parent Promise Board of Directors.

See **NOMINEES, PAGE 19**
From the President

By Angela Ailles Bahm

I hope you are all having a wonderful summer. You know how it goes...so quickly. Before you know it, we’ll be talking football. As of the writing of this article, the Thunder just lost their spot in the playoffs. I am despondent. I rooted as loudly as I could. (I wondered if they could hear me in Cali-form-i-a.) Much to my surprise, and my family’s dismay, I am a loud, sometimes obnoxious, Thunder fan. I LOVE rooting for my team. It has been an exciting, heart-pounding play-off and I am proud to call The Thunder my hometown team!! Can’t wait for next season!!

On to something just as heart-pounding...our legislature. My hope is to have engaged you in this important conversation. My goal was to give you some tools you will continue to use and share with others. Using the legislative website will allow you to stay on top of issues of importance as they move through the legislature. Keeping yourself, your friends and family informed will give you an opportunity to educate decision makers and influence the process. HB 3162 (election of appellate judges) did in fact die. The Senate exerted their rights under Article 7, Section 1 of the State Constitution and the bill never made its way out of conference committee. But I have no doubt the issue of politicizing and electing all judges is going to be an ongoing issue. An effort to start an initiative petition was already discussed but the general thought is there would not be enough time to accomplish it for the November ballot. The next target is 2018.

Fellow lawyer and State Chamber of Commerce employee Jonathan Buxton, and attorney David Slane were recently on Mitchell in the Morning, KOKC 1520, debating the issue of election of judges versus the JNC process. Both gentlemen were respectful and I appreciated the manner in which they handled the “debate.” You can hear the pod cast for May 4, 2016. The argument raised by Mr. Buxton was essentially the same argument I have heard from other proponents for political elections of all judicial candidates, and it is basically “whose voice will be heard in the courts of the State of Oklahoma?” The people and business owners of Oklahoma, or the lawyers? During the “closing” remarks he opined, in part, that, “As long as we have the JNC lawyers will continue to control the judiciary. They’ll continue to have a disproportionate voice. They’ll continue to have more sway. More of an opportunity to have their opinions heard, and that is a problem.” He also stated, “It’s vital that we work together to find a solution where the people and their representatives can choose the judges that will determine how to interpret the constitution of the State of Oklahoma...” “The people’s voices are not being heard. There is a bias in our judiciary. There is a bias in how they decide cases....” “It is important that as we move forward we find a way so that everyone’s voice can be heard.”

As one of those “people of the State of Oklahoma”, and a lawyer, my position is that I want a fair and independent judiciary. I want women and men making decisions based on the law, not on what some might think the law ought to be. I want an even playing field. I want a fair and independent judiciary which is not swayed by special interest PACs or big business which can contribute gobs of money to judicial campaigns; as opposed to the individual who might be able to muster up a hundred bucks – because that will buy some sway with a judge. I want a fair and independent judiciary which is not controlled by or dictated to by the executive branch because that would be an oligarchy like China, or any other form of government in which the judiciary is not independent. I want an independent judiciary not swayed by the whims of “the people” - That’s what politics is for. Thank goodness for a fair and independent judiciary or we might still be drinking from separate fountains or having to use separate bathrooms or not be able to marry the person we love, regardless of their race, religion or sex.

To suggest that with the current JNC system, the decision about who becomes the next appellate judge is not at least to some degree political, fails to acknowledge that a politician, the Governor ultimately chooses the appointee. To suggest that the lawyers have all the power on the JNC, fails to acknowledge the 60% layperson majority of the JNC. To suggest that with political elections of judges the voices of the men, women, children, and business owners of Oklahoma will be heard, fails to acknowledge the reality of where the money to buy those campaigns will come from. Please keep paying attention; keep the conversation going. I 110% agree this is an important, necessary and appropriate conversation. I would also remind you that many of you are businesses. Each law firm, whether big or small, is a business with employees, a client or customer, and a stake in the prosperity and health of our State. While you’re making calls to the legislature, you might also let the State Chamber know what you think, because “we mean business.”

As always, let me know your thoughts and suggestions. Please email or give me a call, 405-475-9707. Have a great summer. Go Thunder!!
A Sampling of Legislative Enactments

by James B. Croy

As your correspondent pens these words, the legislature has been out of session for a week. Many bills still remain on the governor’s desk, awaiting her action. Even though a veto is still a possibility on those bills, it is not likely. Governor Fallin cannot be described as ‘veto happy.’

Therefore, it is safe to look at a few of the bills of interest to the Oklahoma County legal profession. The first observation is that this was not a year for substantive legislation. The dire fiscal reality seemed to suck all of the oxygen out of the room. Looking at the legislation by title in the statutes, one is struck that there is not one bill enacted dealing with Title 15—Attorneys and the State Bar. Several bills, dealing with making bar dues optional and judicial conduct, among other things, were considered but did not receive favorable action.

Several bills were enacted amending sections of Title 10 and Title 10A. These affect guardianships (HB2431), termination of parental rights (HB2483), adoption expenses (HB2963) and juvenile detention (SB1200).

Also, a bill concerning receiver immunity from liability was passed (HB1964). There were also a series of bills passed amending sections of Title 20—Courts. While these are of vital interest to a limited number of people, including your correspondent, they are not of interest to most lawyers, except to the extent that they keep the courts up and running. However, there were amendments to Title 28 (Fees) which do impact on lawyers and their clients. Summons fees have been increased by $5.00. Divorce filing fees have been increased by $40.00. Early dispute fees have increased by $5.00. And with respect to the numerous assessments by the courts for executive agencies, a fifteen percent administrative fee has been added. All of these fee increases are found in HB3220.

Fees were also raised by SB1610. That bills increases the court costs assessed in every traffic case other than DUI cases from $10 to $20. The measure increases the court costs assessed in every misdemeanor case from $15 to $30. The measure increases the court costs assessed in every misdemeanor case from $15 to $30. The measure increases the court costs assessed in every felony case from $25 to $50. The measure increases the court costs assessed in every felony case from $25 to $50. None of these fee increases goes to the courts. Rather they go to the District Attorneys Council.

Another bill which increases criminal court costs is HB3140, the so-called IDEA act, relating to drinking and driving. The measure directs the Commissioner of Public Safety to create a statewide impaired driver database with the assistance of the Office of Management and Enterprise Services. The state completely occupies the ability to prosecute DUI offenses other than those prosecuted in municipal courts of record. It decreases the amount the arresting agency receives for state DUI prosecution from 50% to 25% and gives the other 25% to the District Attorneys Council. It requires the Department of Public Safety to create a data base for DUI’s and funds that endeavor by a $15.00 assessment on the defendants.

Domestic attorneys should be cognizant of SB1249, which requires a final order to be granted or denied within six months of service on the defendant. This will impact those cases in which a VPO is trailing the tempo- rary order as the divorce case works its way through the system. Also, HB2399 changes the definition of members of the immediate family for domestic abuse and places venue in a VPO case in the county in which a divorce, separate maintenance, guardianship or other custody hearing is set.

Criminal lawyers might be interested in HB2443, which gives the DA latitude to file misdemeanors rather than felonies if the crime is not an 85% crime. And HB2443 increases the time for seeking a modification of sentence from 2 years to 5 years. At least two bills relate to child support: HB2757 permits income adjustment for children born after the child in the support order and provides child support and suit money court-ordered payments will not draw interest. SB1237 relates to the Uniform Interstate Family Support Act.

Finally, SB1095 limits liability of a volunteer operating a motor vehicle with insurance to policy limits for ordinary negligence. For those of you who wish to read the text of these or other enactments, go to http://www.oklegislature.gov/index.aspx. Then enter the bill number in the ‘find legislation’ box using the syntax as it appears here. (No space between the HB or SB and the bill number.) That will take you to that bill’s page, and you will use the ‘version’ drop down menu to find the final version of the bill. While it is possible to search the legislative website in several ways, they are all sufficiently complicated and obtuse that they do not lend themselves to a description here.

Events & Seminars

JULY 9, 2016
OCBA Night at the Dodgers
7 p.m., Bricktown Ballpark

AUGUST 18, 2016
Striking Out Hunger Bowling Tournament
6 p.m., Heritage Lanes

SEPTEMBER 16, 2016
Annual Dinner Dance
6:30 p.m., Skirvin Hotel Grand Ballroom

FEBRUARY 11-15, 2017
Annual Ski Trip Seminar
Santa Fe, New Mexico

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BRIEFCASE 3
June 10, 1941

Seynt-Five-Years Ago
[Excerpted from Powell v. Durant Milling Co., 1941 OK 211, 136 P.2d 904.]

This action was instituted in district court by plaintiff in error on behalf of herself and her minor children to recover damages for the alleged wrongful death of her husband. At the close of all the evidence the court instructed a verdict for defendant, and plaintiff appeals.

The issue of actionable negligence was the alleged failure of defendant to furnish and maintain for the deceased a safe place in which to work. The allegations in this connection were in substance that the deceased had been employed in defendant’s mill and grain elevator under conditions dangerous and detrimental to his health and life, in that the atmosphere in the building was allowed to become and remain laden with dust, chaff, and particles arising from the process of milling grain, hay, and ear corn; that the defendant, or should have known, the possible deleterious effect of such dust and chaff upon the human system, but negligently and in disregard of its duty to deceased permitted the condition to continue in violation of its duty to remove the dust and chaff by means of proper ventilation, exhaust fans or devices, or to furnish deceased with a proper dust mask or other protective device; that as a result of such negligence deceased’s lungs became congested with the dust and chaff aforesaid, resulting in infection and death.

The evidence shows that the atmosphere in the place where deceased worked was constantly filled with dust and chaff as a result of the milling process; the defendant did not instruct the workmen to use dust masks. There is medical testimony that decedent died as a result of breathing the dust and chaff. Defendant did not warn against the dangers incident to the dust and chaff. There is some testimony concerning the nature of the ventilation of the building. There is testimony that one of a number of dust masks was not in good repair.

There is no evidence that the mill was operated independently or in any manner different from the way in which such mills are ordinarily operated; there is no evidence that the alleged dangers were latent, or that the deceased was not aware of the general conditions surrounding his employment. There is no evidence that the ventilation was below the ordinary standard in such a case. There was no evidence for the use of the workmen. Plaintiff’s evidence proves this fact. There is no evidence to indicate that more than one mask was unsuitable.

The question here is whether under this state of facts the trial court was justified in saying as a matter of law that the defendant had violated no legal duty toward in servant, the deceased.

Plaintiff says that to take this case from the jury would be to hold that the operator of a mill and elevator may place a servant in the most particle filled atmosphere within in order to create and escape liability for injuries resulting from inhaling the particles. She asserts in this connection that the question whether the mill was operated in a dangerous manner with respect to the dust and chaff was a question for the jury. Counsel cite Joy v. Pope, 175 Okla. 540, 3, P2d 683, wherein it was held that while a court in a case as involving a dangerous instrumentality was a question for the jury.

We may agree that such questions are ordinarily for the jury’s determination. But it is not within the province of the jury in every case to say whether the particular conditions and circumstances surrounding the employment and from which the servant received his injury indicated that the servant was given an unsafe place in which to work or was required to adopt an unsafe method of operation. Whether a place or method may be considered unsafe and, if unsafe, whether the master has supplied the servant with proper safeguards, is ordinarily a matter to be determined by way of comparing the same with places, methods, and safeguards put to similar uses and commonly looked upon as safe or unsafe in the light of custom or of legal standards.

We realize, however, that where the standard of duty is not fixed by law or usage, but is variable, and shifts with the circumstances of the case, such standard is incapable of being determined as a matter of law, and where there is sufficient evidence, the jury must fix the standard and determine whether it has been complied with. Interstate Compress Co. v. Arthur, 53 Okla. 212, 135 P. 861. But where there is a fixed standard of duty, there must be evidence, the jury must find the standard fixed by custom, and failed to adopt a method of operation. Whether a place or method may be considered unsafe and, if unsafe, whether the master has supplied the servant with proper safeguards, is ordinarily a matter to be determined by way of comparing the same with places, methods, and safeguards put to similar uses and commonly looked upon as safe or unsafe in the light of custom or of legal standards.

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In the instant case the defendant brought forth proof that its mill was operated in every way, including ventilation and supplying of dust masks, according to long established custom and usage. This evidence remained uncontradicted. Plaintiff’s evidence gives some information concerning the character of the ventilation, but we find no competent record to show that the mill did not conform to the standard fixed by custom and usage adopted in the milling industry. It is not within the province of juries to fix a standard of duty in such case where a standard of duty already exists.

Plaintiff cites numerous cases bearing on the general rules to be applied in cases of this character, but places considerable reliance on Beasley v. Bond, supra, as supporting authority for her argument on the particular question now under consideration. That and other cases are adequately distinguished in Stephen v. Apartment Hotels, Inc., supra. The language of the court in that case is applied here.

We are aware of the statement in the Beasley Case that “a master is not necessarily absolved from negligence liability by showing that he used the method customarily used by others performing similar tasks. The fact that others engaged in the same or similar methods is only some evidence of the safeness of that method.” The rule based on this language is stated in the syllabus of that case as follows:

“On the issue of whether master has failed to provide a safe and proper method of accomplishing the work in which injured employee was engaged, evidence of other and better methods is admissible, even though master has shown he used the method customarily adopted by others in same business.”

The real meaning of the foregoing language is that if there is evidence that a given custom has been modified or overturned, the custom may no longer be the only criterion for determining the extent of the master’s legal duties toward the servant, but is only some evidence of those duties.

Plaintiff failed to show that the defendant operated its mill in any manner below the standard fixed by custom, and failed to show that such custom was no longer recognized as the best method of operation. It was necessary to show one or the other of these circumstances in order to make out a case of primary negligence for the jury.

June 15, 1966

Fifty Years Ago
[Excerpted from Lester v. State, 1966 OK CR 85, 416 P2d 52.]

Plaintiff in Error, Lyman David Lester, hereinafter referred to as defendant was charged in the District Court of Oklahoma County with the crime of Burglary Second Degree. He was tried, found guilty, and his punishment fixed in the penitentiary. From that judgment and sentence he has perfected his appeal to this Court.

The evidence on behalf of the state revealed that Dr. Lawrence E. Silvey, who resides in Bethany, testified that on October 31, 1963, he drove his 1960 Nash Stambler in the dusk of the night to 10:30 p.m. and parked it in the rear of his home in the driveway. He stated that when he awoke the next morning at 6:30 and started to leave the house, he found the right front door of his car ajar. He noted the back seat...
had been ripped out, and his medical bag emptied of its contents. Since this was the third time in two weeks that this had happened, he immediately called the police, and didn’t disturb the car. He testified that the articles missing from his medical bag were: 1-30cc. vial of dilaudid; and 1 partially used vial of demerol which had originally contained 30cc. The Bethany police arrived and took a fingerprint from the right door handle, which was turned over to the State Crime Bureau at a later date. This fingerprint was identified as belonging to the defendant.

Defendant’s second assignment, shown as four, five and six, is that the State’s Exhibit #2 was improperly admitted into evidence; alleging that it was obtained from the defendant and subsequently used against him in violation of his rights against self-incrimination.

The Constitutional provision that a person need not give evidence which would tend to incriminate himself has been greatly enlarged upon in recent years. However, we do not find that this particular question has ever been passed upon in Oklahoma, wherein a defendant has sought to include the taking of fingerprints in this realm of self-incrimination; and we will, therefore, treat it as a case of first impression.

One early Oklahoma case, Stacy v. State, 49 Okl.Cr. 154, 292 P. 885, deals with the admissibility of fingerprints as evidence, and gives a brief history of fingerprinting.

This writer has found, after analyzing many cases from different jurisdictions — some of which will be quoted later — that fingerprint evidence is uniformly held or recognized to be admissible to prove identity.

While recognized as being circumstantial or opinion evidence, the basic reason for the universal recognition of the admission of fingerprint evidence to prove identity, is its so-called ‘infallibility’ or conclusiveness; and we do not consider it necessary to go into a detailed discussion of the facts on which the science of identification by means of fingerprint impressions are based. Its accuracy and reliability are too well established to require any further confirmation by this Court, and we will go on to the main question of self-incrimination.

It has always, at common law and in the practice prevailing under the Constitution and the laws of our State, been permissible to put in evidence, for the purpose of identification of the defendant, testimony as to his personal appearance, his hair, his eyes, his complexion, marks, scars, teeth, his hands, and the like. Fingerprints are but the tracings of physical characteristics or the lines upon the fingers. Nothing further is required in fingerprinting than has been sustained herebefore by the courts in making proof of identification. The steps are to exhibit the fingers of the hands and to permit a record of their impressions to be taken.

The requirement that the defendant’s fingerprints be taken for the purpose of establishing identity, is not objectionable in principle. In this requirement, there is neither torture, volition, nor chance of error involved. No volition on the part of the defendant is required. That is, no act of willingness, or positive action on defendant’s part is necessary. Fingerprints taken, for identification purposes, from an unconscious person, or even a dead person, are as accurate as those taken from a living person.

The requirement that defendant’s fingerprints be taken, causes no danger that the defendant will be required to give false testimony. The witness does not testify. The defendant, whose fingerprints are exhibited, does not testify. The prints speak for themselves. No action, or will on the part of the defendant could falsify, exaggerate, produce, or create a resemblance of his fingerprints to any others; nor could he change one line in them. Therefore, there is no danger of error being committed or false testimony being offered.

Both upon sound reason and upon the authority of the cases cited herein, I am of the opinion that the taking of the defendant’s fingerprints and their introduction in evidence was not a violation of the Constitution of the United States or of this State.

The proof was not the defendant’s proof. He was not called as a witness. It was the proof of a competent witness based upon the record of identity as it pertained to the defendant. The Constitutional prohibition may not be used to prevent the establishment of the truth as to the existence or non-existence of certain marks of identity upon the defendant’s fingers.

It should be pointed out that fingerprinting is not a punishment. It is a means of identification which is useful in many circumstances, some of which relate to the enforcement of our laws. Unless the burdens that this procedure places on the individual are unreasonable, therefore, it will be upheld as one of those annoyances that must be suffered for the common good.

To attempt to restrict the police from fingerprinting prisoners would be a ridiculous position for this Court to assume.

The police are charged with the duty of preventing crime, apprehending criminals, and gathering evidence upon which they may be brought to trial. In the performance of this duty, they may use any apt and reasonable means which do not invade the rights of the accused or of other persons. Fanciful rights of accused persons cannot be allowed to prevent the functioning of the police and so jeopardize the safety of the public.

Such police measures are a strong protection for the innocent; they may prove that a person was not present at the time of the burglary, or whatever crime he is suspected of.

The right of the police to fingerprint and photograph is powerfully supported by the argument from convenience and from public interest in permitting the courts to learn the truth of the questions at issue. The right is also upheld by custom. The police in large cities of this State and throughout the country for years have measured, photographed, or fingerprinted prisoners before trial; and their authority to do so has been seldom questioned, and, so far as this Court can determine, only once denied by the judgment of a court.

Just the thought of a malpractice claim can be unnerving and may often emit a series of unwanted emotions such as embarrassment, shock or revenge.

At OAMIC, we make this process easy and painless so that you can get back to work as soon as possible.

Experienced in-house counsel, working with outside counsel in handling your legal malpractice claim, means you can rest assured our team will provide an effective strategy to resolve your case.

OUR POLICY IS RIGHT FOR YOU.
Excerpts from OCBA News:
December, 1973, Part 3

NEW BAR LEADERS

The President-Elect for 1973, John L. Belt, will become President at the Annual Meeting of the Association set for January 10, 1974.

Mr. Belt, a member of the McClelland, Collins, Sheehan, Bailey, Bailey & Belt firm, is a 1963 graduate of the University of Oklahoma. A past member of the Board of Directors, he has also served as Program Chairman for the monthly luncheons, Treasurer in 1969 and as President of the Oklahoma County Bar Foundation in 1972. Mr. Belt was named Outstanding Young Lawyer in 1970 by the Association.

Also active in community affairs, Mr. Belt was instrumental in organizing the Oklahoma Theatre Center and has served as President of the OTC since its inception. He is on the Board of Directors of the Lyric Theater and the Allied Arts Foundation and Vice-President of the Oklahoma City Arts Council.

In a recent Run-Off election John H. Halley, Jr. and Leslie L. Conner, Jr. were elected to the office of President-Elect and Vice-President respectively.

John H. Halley, Jr., who will serve as President in 1975, received his law degree from the University of Oklahoma in 1947. Halley has been on the Board of Directors and has served as Chairman of the Budget and Finance Committee the past several years. He is the current Chairman of the United Appeal Committee and was Vice-President of the County Bar in 1971. Halley served on the Oklahoma Bar Association Board of Governors in 1969-72 and is a current member of the OBA Foundation Board.

Mr. Halley is a member of the firm of Halley, Spradling, Stagner and Alpern.

Leslie L. Conner Jr., the new Vice-President for 1974, has been active on the Board of Directors of the County Bar Association since 1971. He is chairing the Program Committee for 1973. He was Chairman of the Membership Committee that increased the membership to 1,000 qualifying the County Bar for a delegate in the American Bar Association House of Delegates for the first time.

Mr. Conner is a 1963 graduate of the University of Oklahoma, School of Law. Mr. Conner is a partner in the firm of Conner, Little & Conner.

The current Treasurer of the Association, N. Martin Stringer, McKinney, Stringer & Webster, was reappointed by incoming President Belt to serve as Treasurer for 1974. Mr. Stringer is a 1964 graduate of the University of Oklahoma. He served as Assistant District Attorney in 1964. Mr. Stringer is also a member of the Oklahoma Bar Association and member of the Corporation, Banking & Business Law Section of the American Bar Association.

New members selected to serve on the Board of Directors are: Bryce A. Baggett, Page Dobson, Elliott Fenton, Clarence F. Green, Andrew L. Hamilton and Ralph G. Thompson. The new directors will serve a three year term beginning in 1974.

A High Return on a Low Investment, Guaranteed!

By Warren E. Jones

First, my apologies. I referred in my recent article (on losing weight and gaining lean mass) to micrograms of protein (mg) when I should have been referring to grams of protein (g). I’m sorry. Thank You, Joe S.

For those of you who are not exercising, and for those of you who are doing a little bit of exercise, the newest Mayo Clinic Proceedings (June) contains an encouraging study. Here is the essence of it (I’ll explain in more detail below): An individual going from no exercise to some (defined below) lifelong exercise achieves huge benefits in reduced risks of cardiovascular disease (CVD) . . . . and huge benefits in reduced risk of cardiovascular risk factors (CVD RF), and an individual who is already achieving some lifelong exercise but who increases his lifelong exercise to a moderate (defined below) level achieves even more benefits in CVD and CVD RF, and, finally, an individual already achieving a moderate level of lifelong exercise does NOT achieve greater benefits relative to CVD and to CVD RF by increasing his level of lifelong exercise.

Of course, there are many other benefits of exercise beyond CVD and CVD RF, not the least of which is body composition, and then there is the ability, with higher levels of exercise, to consume more calories, but if one is looking for CVD protection and CVD RF from higher levels of exercise, he or she should look elsewhere.

It so happens, from the study data, that those people who were lifelong exercising at the lowest level, when compared to those not exercising at all, enjoyed a 45% reduced risk of CVD and a 43% reduced risk of CVD RF. Those at the lowest level, were achieving, on average, 297 MET minutes per week.

I’ve used the MET concept in many of my articles, and some of you have explained that it is difficult to understand. MET stands for Metabolic Equivalent Task. That means that the INTENSITY of swimming and running and mowing your lawn and playing tennis and dancing and every physical activity is measurable by METS. For example running at X speed can be the same MET as swimming at Y speed or hiking up a mountain at Z speed.

The MET levels can be found at the Compendium of Physical Activities. Let’s say you have done a 5.0 MET level activity for 30 minutes on only two days for the week, but then you do no more exercise for the entire week. Then, for that week, you will have done 300 (5.0 X 30 mins X 2 days) MET minutes for the week.

That would be enough, per this study, to get you into the first (and, therefore, better) level above no exercise at all. If you could achieve only 924 MET minutes per week, you would achieve the most protection against CVD and CVD RF. You would achieve a 69% reduced risk of CVD and a 64% reduced risk of CVD RF.

Note that the benefits of SOME exercise “kick in” at levels below the current Public Health recommendations. They recommend a minimum weekly exercise dose of 675 MET minutes per week (e.g., five days of moderate intensity [4.5 Mets] for 30 minutes per day). This present study reveals benefits at only 290. Yes, more is better, but doing SOMETHING is better than doing nothing at all.

Quoting the study authors, “The high return on investment of low exercise doses could encourage inactive and vulnerable populations to start exercise and gain subsequent cardiovascular benefits.”

The optimal exercise dose, per this study, (and again, just relative to CVD and CVD RF) is a feasible goal for many individuals and includes 170 to 242 minutes per week of moderate intensity exercise.

So, the take home? For those not MOVING, move some; for those moving some, move more; for those who are moving adequately, you may be moving just enough to achieve optimal protection from CVD and CVD RF.

For those who want added benefits related to diabetes, body weight, body composition, calorie consumption, stress relief, depression, cancer, maximum oxygen consumption, arthritis, and your immune system, KEEP ON keeping on!

Warren E. Jones, J.D., HFS, CSCS, CEQ, is an American College of Sports Medicine (ACSM) Health Fitness Specialist, a National Strength and Conditioning Association Certified Strength and Conditioning Specialist and a holder of an ACSM Certificate of Enhanced Qualification.

His clients range from competitive athletes to the morbidly obese. He can be reached at wejones65@gmail.com or at 405-812-7612.
Michele McElwee appointed Oklahoma County District Judge

By C. Scott Jones

Michele McElwee was appointed by Governor Mary Fallin in March to fill the District Judge position in Oklahoma County that opened when Bernard Jones resigned to become a federal magistrate judge in July of 2015. McElwee, who previously worked as a prosecutor for Oklahoma County, was sworn in as a member of the bench in April.

McElwee is the second judge in her family. Her mother, Roma McElwee has been a special judge in Oklahoma County since 1995. Her father, William McElwee, was a long-time teacher and coach in Oklahoma City schools before he passed away in 2011.

McElwee was born and raised in Oklahoma City. She attended Millwood High School where she was a member of the school’s 1990 3A state champion girls’ basketball team. She obtained her undergraduate degree in education from the University of Oklahoma. She then spent several years as a teacher and coached basketball and softball at Southeast High School in Oklahoma City before she decided to pursue a career in law.

McElwee then received her law degree from Oklahoma City University in 2004. She worked as an assistant to Oklahoma Court of Criminal Appeals Judge Reta Strubhar during law school. Upon completion of law school, McElwee spent one year with the Oklahoma County Public Defender’s office before leaving to join the Oklahoma County District Attorney’s office, where she prosecuted sex crimes and crimes against children as part of the special victims unit.

McElwee said her experience in the public defender’s office and as an educator and coach helped her as a prosecutor. “I was to see the human side of defendants and realize that people need to be treated as individuals based upon the situation and circumstances they are facing,” she said. I hope to carry this same experience with me as a judge.”

McElwee said she does not have many expectations for her courtroom, but she says she does expect lawyers to be on time, be prepared and “in proper attire.” She said she believes “lawyers should have respect for their position as officers of the court and respect for the courtroom.”

McElwee said Judge Strubhar was one of her role models, but that she learned and picked up things from other judges that she believes will help her in her new position. In fact, McElwee said she started her career doing preliminary hearings with former district judge Carol Hubbard in the very same courtroom she was assigned after her appointment.

In her free time, Judge McElwee enjoys listening to music and watching sports, especially games involving her favorite teams the Oklahoma City Thunder, Dallas Cowboys and New York Yankees.

McElwee’s docket includes drug court and youthful offender cases that were previously assigned to Judge Martha Oakes. She has also assumed the mental health cases previously handled by Judge Geary Walke.

Judge McElwee’s courtroom is on the fifth floor at the Oklahoma County Courthouse. Her chambers are in room 543. Her office number is 713-1147.
NEW OVERTIME RULES MAY AFFECT YOUR CLIENTS

By Miles Pringle

Attorneys advising businesses should be aware that the U.S. Department of Labor (“DOL”) has greatly modified an exemption to the Fair Labor Standards Act (“FLSA”) relating to overtime pay. In general, FLSA requires that employees of enterprises with an annual gross profit over $500,000 are entitled to overtime pay for working in excess of 40 hours per week; however, there are some exceptions. The DOL has modified one such exception contained in 29 C.F.R. Part 541, which provides FLSA overtime requirements do not apply to employees employed in a bona fide executive, administrative, or professional capacity who are paid an annual salary above an amount set by the DOL. This exemption is often referred to as the “White Collar” or the “EAP” exemption.

At the outset it should be noted that the rule changes are unlikely to affect law firm employees because overtime rules do not apply to practicing attorneys1, and paralegals and legal assistants generally do not qualify for the White Collar exemption addressed by the DOL. Thus, whether or not a law firm’s employee is entitled to overtime pay will likely remain the same. Previous to the rule change, the White Collar exemption applied to covered employees making more than $23,660 per year. The DOL has raised that minimum salary to $47,476 per year effective December 1, 2016. This new dollar figure was pegged in relation to “the 40th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage Census Region [the South].” 2 The DOL anticipates this move will extend overtime pay to 4.2 million Americans, and that others will receive pay bumps to bring their salaries over minimum threshold. In Oklahoma the DOL expects the new rules to affect almost 48,000 workers. Affected employees are those who meet the duties test(s) for executive, administrative, or professional positions. To meet the White Collar exemption now, an executive employee must: 1) make $47,476 or more; 2) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; 3) who customarily and regularly directs the work of two or more other employees; and, 4) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.3

For an administrative employee that means: 1) making $47,476 or more; 2) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and, 3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 4 Examples of administrative employees include insurance claims adjusters if their duties involve interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.5 Another example is human resources managers “who formulate, interpret or implement employment policies and management consultants who study the operations of a business and propose changes in organization generally meet the duties requirements for the administrative exemption. However, personnel clerks who ‘screen’ applicants to obtain data regarding their minimum qualifications and fitness for employment generally do not meet the duties requirements for the administrative exemption.”6

A qualifying professional employee is one who makes $47,476 or more, and whose primary duty is the performance of work: i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.7 Examples of professional include accountants, registered nurses, physician assistants, executive chefs and sous chefs (but not cooks who perform predominantly routine mental, manual, mechanical or physical work).8

Thus, employees who meet these tests, but are paid less than $47,476 per year, are now entitled to overtime pay for work in excess of 40 hours per week. It should be noted that the DOL also amended the rules so that bonuses and incentive payments can count up to 10 percent an employee’s salary, if the bonus or incentive is paid at least quarterly. Employers will need to keep track of employees’ hours to ensure that they are complying with the FLSA.

The reasoning for doubling the qualifying amount for the white collar exemption appears to be twofold. First, the DOL and the Obama Administration are attempting to boost wages for lower and middle class workers. The administration put out a press release stating that the new rule “is expected to boost wages for workers by $12 billion over the next ten years”, and quotes President Obama: “We’re making more workers eligible for the overtime that you’ve earned. And its one of the single most important steps we can take to grow middle-class wages.”9 It should be noted that there are several pundits and academics who dispute whether this policy accomplishes the goals set out by the administration.

The second goal appears to be to reinforce the 40-hour work week as the standard for American work life. In its press release, the Administration states: “the 40-hour workweek was a pillar of economic security for working families… This left most Americans with more money in their pockets, more time to balance obligations at home and at work, and the opportunity to get ahead with more time outside of work for school or additional training.” Whether the 40-hour workweek needs protecting is an open question. According to DOL numbers, the average weekly hours on private nonfarm payrolls are 34.5 hours;10 however, American workers report to pollsters that they are working “an average of 47 hours per week.”11

Attorneys advising businesses may need to alert their clients to the change in the overtime exemption. As a resource, the DOL has many publications addressing the rule change and other rules relating to the FLSA. Application to a business’ employees may need to be performed on a case-by-case basis.

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1 See e.g. 29 C.F.R. § 541.203.
2 See e.g. 29 C.F.R. § 541.100.
3 Id.
4 29 C.F.R. § 541.200.
5 29 C.F.R. § 541.203.
6 Id.
7 79 C.F.R. § 541.300.
8 79 C.F.R. § 541.301.

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**Quote of the MONTH**

*Humankind is made up of two sexes, women and men. Is it possible for humankind to grow by the improvement of only one part while the other part is ignored?*

— Mustafa Kemal Ataturk, founder and the first president of Turkey (19 May 1881-1938)
**Stump Roscoe**

By Roscoe X. Pound

**Dear Roscoe:** Interesting piece on the GOP last month. But now I’m wondering: If Bernie Sanders is an independent, how is it he gets to run for the Democratic nomination? K.G., Edmond, OK

**Dear K.G.:** For most of the same reasons described in the last issue, parties can let whomever they want run in their internal election. Membership has mostly become a matter of self-identification. Remember, nothing in the Constitution or the various statutes impacting election mandate political parties, and state and local rules vary.

Hence, some State parties allow cross-over voting in their primaries, others do not. Bernie’s coy about his own affiliation, seeming to prefer “democratic socialist.” The Democratic Party itself will pass on the question should be come to the contention with enough delegates to turn the tide. Both sides have come too far to change the rules this late in the game. I’m not talking about something like estoppel here. I’m just saying that pragmatically Bernie needs the Party and the Party needs Bernie for success in November. Besides, nominating a non-party member is not without precedent. In 1952, the Republicans nominated Ike prior to his becoming a member. In 1872, Horace Greeley, an anti-Grant Republican, received the Democratic nomination in addition to that of his own breakaway Liberal Republican candidacy.

**Dear Roscoe:** OK, so The Donald posts pictures of Cruz’ dad and regurgitates its story of the elder Cruz involvement in killing JFK. Even assuming “public figure” provides a defense against defamation, what about false light? E.W., OKC

**Dear E.W.:** If you’re talking about suing Citizen Trump, he simply cited a story and about something like estoppel here. I’m just saying that pragmatically Bernie needs the Party and the Party needs Bernie for success in November. Besides, nominating a non-party member is not without precedent. In 1952, the Republicans nominated Ike prior to his becoming a member. In 1872, Horace Greeley, an anti-Grant Republican, received the Democratic nomination in addition to that of his own breakaway Liberal Republican candidacy.

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RIMKUS, one of this year’s Special Sponsors

NALS gals, Penny & Glenda, raised funds for Family Junction on Hole #2.

OCBA Golf Chair Gary Chilton

1st Place Gross – Gary Higginbotham, Ed Blau, Tommy Adler & Derek Chance

2nd Place Gross – Skeeter Jordan, Ben Davis, Zane Anderson & Allen Hutson

1st Place Net – Max Thodes, Russell Wantland, Benjamin Russ & Reagan Bradford

2nd Place Net – Dan Zorn, Henry Litchfield, Trey Tipton & Kevin Blaney

Phil Mickelson Flight
Bubba Watson Flight

1st Place Gross – Kyle Spencer, Jerry Green, Robert Lafferrandre & Jerrod Geiger

2nd Place Gross – Patrick Hullum, Drew Mildren, Juston Givens & Robert O’Bannon

1st Place Net – Bruce Robertson, Michael Whaley, Grant Lucky & Mark Coldiron

2nd Place Net – Nicholas Farha, Eric Huddleston, Tyler Worten & Brian Cramer

Charles Barkley Flight

1st Place Gross – Jeff Curran, Nick Merkley, Rob Robertson & Leo Portman

2nd Place Gross – Bob Kalsu, John Thompson, Jay Larimore & Sandy Coats

1st Place Net – Andy Gunn, Jennifer Christian & Jim Larimore

2nd Place Net – Caroline Lewis, Dan Thompson, Erin Renegar & Andy Dark
The University of Oklahoma College of Law is pleased to announce the selection of three of its 2016 graduates to the inaugural class of the Gallogly Family Foundation Public Interest Fellowship Program. Students Ge’Andra Johnson, Jordan K. Field and Shandy McAfee (also known by the surname of Williams) are the first to receive the fellowship. The Program supports recent graduates of a select number of leading law schools across the country. In its first year, the Gallogly Family Foundation selected the OU College of Law to serve as the pilot school for the Foundation’s fellowships.

At a time when funding for public interest legal services is in great need, the Gallogly Program exists to increase interest legal services is in great need, the Gallogly Program exists to increase

The American Arbitration Association (AAA) has named Chris S. Thrutchley as Oklahoma’s AAA Employment Arbitrator. Thrutchley is a shareholder with the law firm of GableGotwals. A nonprofit organization, AAA provides alternative dispute resolution services to parties, including individuals and organizations, who wish to resolve legal conflicts outside of the courtroom. AAA serves in an administrative role, moving cases through the process in a fair and impartial manner. As a member of AAA’s national panel of employment law arbitrators, Thrutchley arbitrates and mediates employment disputes around the country. Arbitrators are chosen for their expertise, integrity and impartiality.

Thrutchley, a graduate of the University of Tulsa College of Law and Graceland University, is the only Oklahoma attorney serving on the panel.

Three OU Law Graduates Selected As First Gallogly Public Interest Fellows

Joshua Solberg and Paul Ross become new members of the Employers Counsel Network

McAfee & Taft labor and employment attorneys Joshua Solberg and Paul Ross have been named members of the Employers Counsel Network (ECN), an exclusive affiliation of leading lawyers and law firms across the United States and Canada dedicated to advising and representing employers in all facets of labor and employment law and workplace disputes. McAfee & Taft is the sole member law firm to represent Oklahoma in the network.

In this new role, they also join fellow McAfee & Taft employment law attorneys Charlie Plumb, Courtney Bru and Sam Fulkerson in serving as co-editors of the Oklahoma Employment Law Letter, a monthly review of new court decisions, regulations and laws that affect state employers.

Josh Solberg represents businesses in all areas of labor and employment law, including litigation in both federal and state courts and in mediation and arbitration.

Paul Ross also represents employers exclusively in labor and employment and previously served as leader of the firm’s Labor and Employment Group, one of the largest of its kind in the region. In 2011, he was appointed to serve as an administrative law judge for the Oklahoma Department of Labor.

Crowe & Dunlevy announces directors

Crowe & Dunlevy recently announced Andrew B. Caldwell, Jordan K. Field, Donald K. Shandy and Evan G.E. Vincent have been named directors. Caldwell is a member of the firm’s Litigation & Trial and Criminal Defense, Compliance & Investigations Practice Groups in Oklahoma City. He represents public and private companies in a variety of commercial litigation, preparing criminal compliance guidelines and conduct corporate criminal risk assessments. Caldwell served as an assistant U.S. attorney at the Western District of Oklahoma’s U.S. Attorney’s Office assigned to the Violent Crimes/Organized Crime Drug Enforcement Task Force where he received an FBI Director’s award for his outstanding prosecutorial skills. Caldwell received his Juris Doctor from the University of Oklahoma College of Law and his bachelor’s degree in aerospace engineering from the University of Oklahoma.

C. Morgan Dodd Joins Andrews Davis

Morgan Dodd joined Andrews Davis in May 2016. His practice focuses on oil and gas law and the rendering of title opinions. Morgan is admitted to practice in the Oklahoma Supreme Court, all Oklahoma District Courts and in the State of Illinois. He is a member of the Young Professionals in Energy, the Oklahoma Independent Petroleum Association, the Rocky Mountain Mineral Law Foundation, and the Oklahoma City Real Property Lawyers Association.

Morgan graduated cum laude from the University of Oklahoma in 2008 with a Bachelor of Business Administration degree in International Business and General Management and a minor in Finance from the University of Washington in St. Louis in 2011. While in law school, Morgan was active in the Student Bar Association, the Faculty Appointments Committee, and Wash U’s Big Brothers-Big Sisters program mentoring local youth from north St. Louis.
Hey! You! Get Off of My Cloud… 1

By Michael W. Brewer

Just the other day my biggest storage problem was sufficient storage space, maintaining files for five (5) years after closure and what to do with file storage during the occasional flood or tornado. Recently, our firm’s business manager asked me if we could do something about the stacks and stacks of DVDs, CDs and thumb drives we were going through sending documents to clients, consultants, experts and opposing parties. Apparently, we send those out and never get them back. Adding to the expense issue, we also receive them from outside sources, print them, upload them to our hard drive, put them in the file and leave them there. This is not a paperless office by any stretch of the imagination even though our IT consultant regularly advises us to purchase more hard drive space. All this leads me to purchasing my little piece of the cloud.

But how do I go about it, everyone has heard the horror stories of placing their client files and work product in the cloud and having the cloud owner (who knew before now that humans could create and own clouds) delete those files unintentionally during a “purge”. I note that our firm has a couple of 2 terabyte external hard drives on the shelf that have been used for various past significant e-discovery projects. Those cost money. Also, shortly after hurricane Katrina we developed with our IT provider a disaster backup system that is double redundant. More added cost. Our firm and clients have retained e-discovery experts who allowed us for a short time to rent a piece of their cloud for e-discovery projects. Even more expense added to the bottom line. Can owning a piece of the cloud really provide a less expensive alternative? I am not sure if these issues present the same expense problems for big law that they do for middle, small and solo firm practitioners but here is some guidance on the way to your cloud from those you can trust. Rather than the Stones, let’s begin with the ABA.

The ABA Legal Technology Resource Center on their cloud computing for lawyers page broadly defines cloud computing as a category of software and services delivered over the internet rather than installed locally on a user’s computer. 2 The cloud offers a variety of potential advantages including:

• Low upfront costs
• Easy mobile access
• Simple setup and configuration
• Built-in disaster preparedness

This seems to solve a lot of the expense problems earlier identified. The ABA Legal Technology Resource Center has also collected a variety of resources easily accessible from their site for you to review. Next, we look to the OBRA for some guidance. Please do a search at okbar.org/members/search for cloud computing. You will find references to Ethics counsel articles by Travis Pickens, former Ethics counsel and practice management tips from Jim Calloway and Debbie Foster.

1Jagger/Richards, Decca 1965

While instructive on this issue, please keep in mind these were published before any security standards were being considered and prior to many states providing ethical guidance for cloud use by attorneys.

Always quick to jump on a blog for information, I turn to Jeff Bennion’s blog article on Above the Law. 3 Jeff, a practicing San Diego solo attorney, writes “I think that cloud computing is one of the biggest technology revolutions in recent history. It gives us the ability to share large files, backup and sync files across multiple computers, and undelete things. As a solo, it’s not just convenience, but it has huge implications for me. I can grow my practice or shrink my practice without having to buy storage servers and enter into IT maintenance contracts…as we all know, the way lawyers store our confidential files is highly regulated. Cloud storage means that your files are stored on someone else’s server in some other location and you remotely access those files. So, can you or should you do that?” 4 Jeff’s answer is that it is mostly ethical and he refers to the ABA guide chart of ethics opinions. About half the states have said yes with caveats such as, attorneys must use “reasonable care” in using the cloud. By the way, Oklahoma has not yet provided an ethics opinion in this regard.

Jeff looks at an Ohio ethics opinion for an example, as it provides four factors to evaluate the appropriateness of the cloud including:

• Competently select a vendor.
• Preserve confidentiality.
• Supervise cloud vendors.
• Communication with the client.

These seem to be vague factors and interestingly, California says you can store client data on the cloud without taking additional precautions only if it is urgent. Jeff’s article seems to indicate that there are certain cloud storage providers that are not going to satisfy an attorney’s ethical requirements for storing client data in the cloud. From Jeff’s blog I learned about the Legal Cloud Computing Association (LCCA) 5 which in March of 2016 after a comment and discussion period, published a set of standards for how lawyers should handle cloud computing issues. Keep in mind the LCCA guidelines are not mandatory but they are definitely something you should consider. The LCCA security standard table of contents is a good starting point before taking on the standard themselves. Don’t worry they are not that long. 6

These Cloud Security Standards were also announced at the 2016 ABA TechShow in March of 2016. According to Fiona Finn, a cloud blogger at Ciio the twenty-one (21) security standards were expertly crafted and vetted based on current and future needs of lawyers and their clients. Based on impending and current issues and threats, the version now available online addresses cyber security, client data management, encryption techniques and other constructive information for lawyers. 7 Understand that the LCCA was formed in 2010 by leading cloud computing software providers but not by all of them. Consequently, some of those highly marketed names we see in our email inbox, do not meet the LCCA requirements and/or are not part of this group. I cannot comment on how competition has affected who does and who does not belong. It seems like the best path to proceed is for a legal practitioner to first check for a state ethics opinion, then look for a vendor who is compliant with LCCA security standards, and then cost shop vendors. A LCCA certification for vendors does not seem to exist in this regard. Is this a complete and inexpensive solution to the issues facing legal practitioners who tire of killing trees; mostly but not completely. The more our small firms attempt to go paperless, it seems like the more paper we create. As I worked out this draft article, I am reminded the other expense I hope to cut is the secure paper shredding and file storage vendor costs. I am not sure we will ever get to a best practices level on file storage, but cloud storage seems to be a step in the right direction. Now, don’t hang around “cause two’s a crowd, on my cloud baby.” 8 Get your own cloud, before they are all taken.

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

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6www.legalcloudcomputingassociation.org/standards
7www.goclio.com/blog/legal-cloud-computing-associa-
8Jagger/Richards, Decca 1965
"The Occasional Speeches of Justice Oliver Wendell Holmes,"
compiled by Mark DeWolf Howe,

By Philip Hart

What a pleasure to find, on the editorial page in The Oklahoman’s Memorial Day issue, extracted portions of Oliver Wendell Holmes, Jr.’s 1884 Memorial Day address. Aside from the sentiments expressed there, it is a reminder of what a superlative writer he was in his preparation of the speeches he made from time to time to various groups. They are collected in the slim volume referenced above.

But back to Holmes 1884 Memorial address for a moment. It reveals a great deal about Holmes himself. Simply one example:

“[Memorial Day] ... embodies in the most impressive form our belief that to act with enthusiasm and faith is the condition of acting greatly. To fight out a war, you must believe something and want something with all your might. So must you do to carry anything else to an end worth reaching. More than that, you must be willing to commit yourself to a cause, perhaps a long and hard course, without being able to foresee exactly where you will come out. All that is required of you is that you should go somewhither as hard as ever you can. The rest belongs to fate. One may fall - at the beginning of the charge or at the top of the earthworks; but in no other way can he reach the rewards of victory.”

Clearly an expression of the standard by which Holmes lived his life.

The occasion for many of Holmes speeches were bar association or law school gatherings and others were memorial tributes to lawyers and judges Holmes had known - speeches of particular interest to lawyers. One caveat if you read this collection of Holmes occasional speeches. If you read one after another, the magic of his selection of Holmes occasional speeches. If you read one after another, the magic of his...
THE BEST DEAL IN TOWN FOR 35 YEARS!

Since 1981 the Oklahoma County Bar has offered placement services exclusive to the legal community. Nowhere else will you find a service devoted totally to Oklahoma City metropolitan law firms, or with such reasonable fees. Anyone who has hired an employee (and who hasn’t) no doubt has had “sticker shock” after finding out the cost of using other companies. For a one-time flat fee of 7.5% of the annual salary, LPS offers well qualified candidates at a fraction of the cost, and it includes a guarantee!

The Legal Placement Service director, Pam Bennett, has been with the OCBA for 19 years and has worked with an extensive group of paralegals, legal secretaries, administrators, receptionists, and many other types of applicants. She only works with candidates who have legal experience and/or education and have a desire to further their career in the law field.

If you haven’t tried the Legal Placement Service, or if you haven’t used it for a while, please give Pam a call at 405-235-4399, or e-mail her at pam@okcbar.org. She’ll be glad to give you more details, discuss your staffing needs, give you salary advice, or answer questions.

You may check out both the Legal Placement Service and the Attorney Placement Service on our website. Yes, we place attorneys too! The OCBA website is www.okcbar.org.

We’ve Got Spirit, Yes We Do!

By: Monica Y. Ybarra

OKC Thunder fans come in all sizes, but they all have one thing in common—they love showing their Thunder spirit! Some of the smallest OKC Thunder fans will now have a chance to Thunder Up in a big way, thanks to the OCBA community.

For several years, the OCBA has supplied Juvenile Court judges with toys and other goodies to give to children involved in custody matters. Each child is given the opportunity to select an item, and it makes a big difference. “There are currently more than 1,900 kids in DHS custody in Oklahoma County. They range in age from infant to 18 years old. Kids are often traumatized by the idea of coming to court. Having toys and other items on hand allows us to offer them something to make the experience less stressful,” said Judge Lisa Davis. “We also give some of the bigger items to those children who are being adopted. Last year, we had 718 adoptions in Oklahoma County, so you can see how we go through so many toys!”

After learning from the judges that the most sought-after items are Thunder-related goodies, the OCBA Community Service Committee organized the “Thunder Up! Day @ OCBA” event to collect OKC Thunder gear for children involved in the turmoil of custody battles. Thanks to you, it was a huge success! The shelves are fully stocked with cool Thunder gear of all varieties and even the smallest Thunder fans can Thunder Up!

As always, the OCBA Community Service Committee is open to service project ideas. Contact Chance Pearson or Monica Y. Ybarra with any ideas for expanding our reach in Oklahoma County.
William Jefferson Legg was born on August 20, 1925 in Enid, Oklahoma in the home of his parents, Zelia Mabel (Gensman) Legg and Gart Paul Legg both of whom came to Oklahoma Territory as children before Statehood. Bill was the youngest child of their four children, his siblings being Theodore Gensman Legg, Dora Belle Legg and Zelia Jean (Legg) Walker. He passed away at age 90, on May 16, 2016.

In addition to the usual boyhood recreational activity, Bill, as a teenager, helped in family business enterprises and farming, and on Saturdays he was employed, for about three years, in a grocery store. He attended Enid Public Schools, skipping the third grade, and graduating at age 16 in 1942, the third youngest in a graduating class of over 500 at Enid High School. In 1942-43, he attended and graduated from Enid Business College, with honors.

At the age of 17, Bill was in the United States Navy and served on active duty for 32 months during World War II and thereafter. Selected as a Naval officer candidate in the Navy’s V-5 (aviation) and V-12 (deck) officer training programs, he was stationed at Hutchinson Naval Air Station and the Naval training units at Pittsburg State University and at the University of Texas at Austin. He completed officer training at age 20 and college in just 2 years, graduating at UT in 1946 with the degree of Bachelor of Business Administration and being commissioned Ensign, and later Lieutenant JG, in the Navy Supply Corps, the logistics branch of the Navy. He remained in the Naval Reserve for 20 years.

After college and his Navy years, Bill met Eva Imogene Hill in 1948 in Bartlesville while both were employed there. They were married in Bartlesville while both were in their 20 years. Bill remained in the Naval Reserve for over 30 years. They were married in 1948 after college and his Navy years, both of whom came to Oklahoma from different parts of the country. They had three daughters and two sons-in-law. Besides his immediate family, Bill leaves behind many close friends and colleagues who will miss him dearly.

Bill entered private law practice in 1962, being especially proud of his eventual law partnership with L. K. Mostellar, then regarded as the best business/taxation counsel in Oklahoma and beyond, then forming an Oklahoma City professional corporation, which became more lawyers plus as many other employees during the 1980’s. Bill was a “name-partner” in the Firm for about 30 years. He served thirce as a Director and, for a time, was President of the Firm from 1982-86.

During his law practice of over 50 years, he also taught law frequently, for five years as an Adjunct Professor of oil and gas law and Oklahoma real estate law in the Oklahoma City University School of Law. He made numerous presentations in law profession-and industry-seminars coast to coast, as well as writing several legal articles for various national law publications. He was the editor-author of two legal casebooks used in law classes. At family repeated urgings, he wrote and privately distributed in the mid-1990’s his 500 page memoirs, “My Time and Space”, which is now held for use by future historians in the Oklahoma State Historical Department, from which much of the contents here have been extracted.

In his law practice, Bill was primarily engaged as a petroleum specialist, but his practice also significantly included Oklahoma real estate, local estate planning, and contested hearings before administrative agencies involving petrochemical industry regulation and Oil and Gas Litigation. He was included trial and appellate practice in federal and state courts, and once arguing a case before the United States Supreme Court, all nine Justices sitting.

As a practicing attorney, Bill represented oil and gas producer and interstate natural gas pipeline companies in the United States, serving on several corporate Boards of Directors and holding executive positions, all as outside counsel. These, among others, included New Jersey Natural Resources Company of Wall, New Jersey, as Director and General Counsel, and three international subsidiaries of Woods Petroleum Company as Director and Vice President, representing these three companies internationally in the Middle East, Australia, and Borneo. Other international clients included several from Hong Kong, Canada, and the Channel Islands off Normandy. As part of much international travel, he circled the globe on three separate occasions, and flew British Concorde four times at twice the speed of sound, all on business.

As a business lawyer, Bill had numerous unusual experiences and visited many unusual places, such as traveling the Turkish Bosphorus by private yacht while thousands of jellyfish floated between the Black Sea and the Sea of Marmara; being held for two days in Tehran, Iran just weeks before U.S. Embassy hostages were taken and held for 444 days; walking the trading floor at the New York Stock Exchange, already in destabilization six days before the 1987 market collapse; staying at the historically famous Raffles Hotel in Singapore and at the European top-rated Le Grand Hotel in Rome, and others east and west; riding the Bullet Train from Tokyo to Kyoto, Japan back again, being squeezed in by the Pushers and Pullers; having dinner on the 1017th floor at the World Trade Center in New York years before the 9/11 tragedy, and dinner in Washington in the infamous Watergate Complex after the Nixon debacle; attending a corporate Directors Meeting on the island of Bermuda hundreds of miles far out in the Atlantic Ocean; and personally conferring with Communist government officials in Beijing who absolutely-controlled all of China’s petroleum potential both on-shore and off-shore; and many, many other good and bad experiences, all on business trips.

In addition to practicing law, Bill held a number of ordained offices through the years in the Community of Christ whose world headquarters are in Independence, Missouri. He held Oklahoma statewide and local administrative positions in the Church for many years. He also traveled extensively for the Church in the United States coast to coast, Canada, Europe, Australia, and the South Pacific Islands. In all of this, he was totally self-sustaining, and always felt honored to participate in the Church Ministry.

He served on the Board of Trustees of GraceLand University in Lamoni, Iowa, for 14 years; the Southwestern Legal Foundation (now the Center for American and International Law) Advisory Board for continuing legal education of Dallas, Texas, for 8 years; the Board of Trustees of the OKC Metropolitan Library System Endowment Trust for 12 years; and the Board of Trustees of the American Institute of Discussion for 30 years. In addition, Bill was an active, participating member of numerous community, business, legal, and Church organizations for decades, and was included in a number of national “Who’s Who” publications such as “Who’s Who in the World” and “The Best Lawyers in America”.

Bill loved participation sports, including one shortened-season of college football; several years of AAU competitive volleyball and AAU competitive badminton; whitewater rafting and camping alongside several Western rivers, as for example, 188 miles through the Grand Canyon of Arizona; and a lifetime of table tennis and billiards competition. For 10 years, as a volunteer Physical Instructor for the OKC YMCA, he led a physical fitness class, emphasizing jogging long distances. Multi-day fishing expeditions were in western U.S. states and several in far north Canada.

Bill and Imogene were joyously married for 55 years until her death in 2006. The family grew to include their three daughters and two sons-in-law Melissa and Robert Walker, Eva Osborne, Janet and Scott Borison; six grandchildren, Eva Ashley (and husband Brian), Graham (and wife Kristie), Cole (and wife Christina), Ian (and fiancee Becca), Madison, and Adam; and seven great grandchildren Eva Isabel, Sterling, Max, Frederick, Kylle, Emma, and Matthew, all of whom survive him. Memorial Services were held Saturday, June 4, 2016 at Hahn-Cook/ Street & Draper Funeral Directors. Memorial contributions are suggested for the William and Imogene Legg Endowed Scholarship Fund at Graceland University, One University Place, Lamoni, Iowa 50140; or to the William and Imogene Legg Endowed Scholarship Fund at the University of Tulsa College of Law, 3120 East Fourth Place, Tulsa, OK 74104-2499.
Obituaries

JUDGE CHARLES OWENS

By Rex Travis

Retired long-time Judge Charles Owens died May 24th at the age of 86. He was a District Judge in Oklahoma County for 30 years.

Judge Owens was originally from Tulsa. After serving in the army, he got an undergraduate degree from Lincoln University in Jefferson City, Missouri. He then worked as a Tulsa police officer while going to night law school at Tulsa University. He was the first African-American to get a law degree from TU and later was the first African-American to serve as an Assistant Attorney General. He later became the first African-American judge in Oklahoma County.

Most of his career dealt with criminal law. He handled prosecutions throughout the state as an Assistant Attorney General. He did his time as a civil judge in Oklahoma County, but when he got sufficient seniority to choose, he became a judge on the criminal docket. Over the years, he developed a great deal of expertise in criminal law.

Judge Owens tried, among many noted cases, the Sirloin Stockade murder case in which Roger Dale Stafford was ultimately executed for killing six steakhouse employees in a robbery. At the conclusion of the trial, after Judge Owens sentenced Stafford to the death penalty, Stafford thanked Judge Owens for giving him a fair trial. (That’s probably not something recommended by appellate counsel as a prelude to a successful appeal.) Judge Owens said he found that kind of weird.

Retired Judge John Amick, who served with Judge Owens for many years remembers him as always cooperative and willing to carry his share of the case-load. He recalls Judge Owens keeping a low profile and carefully not seeking publicity.

My observation of Judge Owens was that he was almost too nice a guy to be a good judge. He appeared to always hate to rule against anyone but, of course, one side or the other was going to lose every issue which came before the court. He was known to take rulings under advisement for sometimes great lengths of time while agonizing to avoid having to rule against someone. There are worse faults for a judge to have.

Judge Owens leaves surviving him a wife of 59 years, Edythe and a daughter Melanie. They suggest in lieu of flowers contributions to the Oklahoma Foundation for the Disabled, 8421 N. Walker Ave., Oklahoma City, OK 73114.

Quote of the Month

Humans think they are smarter than dolphins because we build cars and buildings and start wars, etc., and all that dolphins do is swim in the water, eat fish, and play around. Dolphins believe that they are smarter for exactly the same reasons.

— Douglas Adams, writer, dramatist, and musician (1952-2001)
June 27, 1991 Twenty-Five Years Ago 
[Excerpted from State ex rel. Oklahoma Bar Ass’n v. Miskovsky, 1991 OK 60, 813 P.2d 1019 (Okla. 1991)]

On May 31, 1991 respondent filed a Motion for Direction and an Affidavit of Respondent. The Motion for Direction essentially requests us to inform respondent of the amount he owes as costs in this matter and to set a time certain for payment of these costs. The Affidavit of Respondent, although not citing any rule, appears to be an attempt by respondent to comply with Rule 11.8 of the Rules Governing Disciplinary Proceedings, 5 O.S.Supp. 1989, Ch. 1, App. 1-A, so that he may presume the practice of law after serving a three month suspension imposed in State ex rel., Oklahoma Bar Association v. Miskovsky, 813 P.2d 434 (Okl. 1991). Complainant has responded to the submissions and asks us to enter an order to the effect respondent remains suspended pursuant to Rule 6.16 of the Rules Governing Disciplinary Proceedings, 5 O.S. 1981, Ch. 1, App. 1-A, for failure to pay the costs of this disciplinary proceeding in a timely manner and to rule the Affidavit of Respondent does not comply with Rule 11.8 and, thus, respondent is not authorized to resume the practice of law.

An opinion in a Rule 6 disciplinary matter issued on October 30, 1990 in State ex rel., Oklahoma Bar Association v. Miskovsky, supra, suspended respondent from the practice of law and publicly reprimanded him. In the opinion respondent was ordered to pay the costs of the disciplinary proceedings within 30 days of the date the opinion became final. An Application to Assess Costs in the amount of $2,169.31 had previously been filed by complainant on March 19, 1990. Respondent did not respond to the Application nor did he object to the amount of the costs or his liability to pay them prior to our October 30, 1990 opinion. The suspension became final and effective on January 21, 1991, the date of the effective date of suspension by Order of the same date. On March 8, 1991 respondent requested an extension of time to pay the costs, wherein he assumed the costs he owed were those set forth in the March 19, 1990 costs of complaint of complainant. The motion for extension of time was denied on March 19, 1991.

Respondeent now essentially contends in his Motion for Direction he does not know the amount of costs he should pay or when he should pay them. He supports his position by the following arguments. The Professional Responsibility Tribunal (PRT) did not recommend one way or the other in its December 14, 1989 Report of PRT whether costs should be assessed against him as required by Rule 6.13 of the Rules Governing Disciplinary Proceedings, 5 O.S. 1981, Ch. 1, App. 1-A, for failure to pay the costs of complaint. Secondly he asserts, we have never specifically ruled on respondent’s March 19, 1990, Application to Assess Costs.

The first argument of respondent has been waived by respondent’s failure to raise the matter previously and, in fact, until after the date for payment of costs had expired. The second argument of respondent is frivolous, as we will explain.

This Court ruled on the complainant’s Application to Assess Costs in the October 30, 1990 opinion when we ordered respondent to pay the costs of the disciplinary proceeding within 30 days of the opinion’s finality. The costs complained of were the only costs which had been presented to the Court. In that the opinion became final on February 11, 1991 (rehearing denied) respondent had 30 days to pay the costs. He did not. He further failed to pay the costs after his March 8, 1991 request for an extension of time to pay the costs was denied on March 19, 1991, nor have the costs been paid to this day.

Rule 6.16 provides a lawyer who fails to pay costs within 90 days after the effective date of an order requiring payment shall automatically be suspended until further order of the Court. Giving respondent an extension of time to pay costs was not the order of the Court, provided the lawyer files with the Clerk of this Court an affidavit which affirms certain matters. The Rule provides in pertinent part that before practice may be resumed “[A]n affidavit affirming that [he] has not engaged in the unauthorized practice of law during his suspension. The affidavit is deficient for the following reasons. First, respondent has not affirmed that he has not violated the terms of the order of suspension. Not only has he not so affirmed, he has violated the terms of the order by his unauthorized practice of law which he engaged in any event. The affidavit is deficient for the following reasons. First, respondent has not affirmed that he has not violated the terms of the order of suspension. Not only has he not so affirmed, he has violated the terms of the order by his unauthorized practice of law which he engaged in. The affidavit is deficient for the following reasons. First, respondent has not affirmed that he has not violated the terms of the order of suspension. Not only has he not so affirmed, he has violated the terms of the order by his unauthorized practice of law which he engaged in. The affidavit is deficient for the following reasons. First, respondent has not affirmed that he has not violated the terms of the order of suspension. Not only has he not so affirmed, he has violated the terms of the order by his unauthorized practice of law which he engaged in. The affidavit is deficient for the following reasons. First, respondent has not affirmed that he has not violated the terms of the order of suspension. Not only has he not so affirmed, he has violated the terms of the order by his unauthorized practice of law which he engaged in.
BOARD OF DIRECTORS

T. Lake Abel, Abel Law Firm. J.D. – University of Oklahoma 2006. OCBA activities include: Member. OBA activities include: Legislative Monitoring Committee, Vice Chair 2011 – present. ABA activities include: Young Lawyers Division; Litigation Committee; Tort Trial & Insurance Practice Section member. Other Legal or Community activities include: Legal Aid Services of Oklahoma Oklahoma City Fundraising Team Co-Chair.

Michael L. Chitwood, Angela D. Ailles & Associates. J.D. – Oklahoma City University 2004. OCBA activities include: Bench & Bar Committee, Chair; Continuing Legal Education Committee; Community Service Committee; Law Related Education Committee. OBA activities include: Professionalism Committee; Litigation Section. Other Legal or Community activities include: OADC CLE Committee Chair.

David H. Dobson, Andrews Davis. J.D. – Oklahoma City University 1987. Other Legal or Community activities include: Oklahoma Lawyers for Children, Pro Bono Work; OKC Rotary Club 29 member; Positive Tomorrow Schools, prior mentor.

Stanley L. Evans, OU College of Law. J.D. – University of Oklahoma 2003. OCBA activities include: Make-A-Will Coordinator; Law Day Volunteer; Pro Bono Person of the Year 2011. OBA activities include: Military & Veterans Section, Chair; OK Lawyers for America’s Heroes Program Coordinator; OBA Diversity Leadership Award 2014. Other Legal or Community activities include: Assistant Dean, OU Law; Bob Jackson, Robert S. Jackson, Attorney at Law. J.D. – University of Oklahoma 2008. OCBA activities include: Young Lawyers Division, Director 2013 – present, Treasurer 2015-16. OBA activities include: Criminal Law Section; Appellate Practice Section. ABA activities include: Member since 2008; Criminal Law Section. Other Legal or Community activities include: Criminal Justice Act Panels for Western District of Oklahoma and Tenth Circuit.

C. Scott Jones, Pierce Couch Hendrickson, Baysinger & Green. J.D. – Oklahoma City University 2006. OCBA activities include: Briefcase Committee; Continuing Legal Education Committee; Bench & Bar Committee. Other Legal or Community activities include: OADC, DRI. Jake Krattinger, Goble Gotwals. J.D. – University of Oklahoma 2011. OCBA activities include: Lawyers for Learning Committee, Chair; Young Lawyers Division. OBA activities include: Litigation Section, Treasurer. ABA activities include: Young Lawyers Division; Litigation Section. Other Legal or Community activities include: Rotary Club of Oklahoma City; Leadership Oklahoma City; Federal Bar Association; Mineral Lawyers Society of Oklahoma City; DRI, Luther Bohannon American Inns of Court.

Justin Meek, Nelson Terry Morton DeWitt and Paruolo. J.D. – Oklahoma City University 2006. OCBA activities include: Young Lawyers Division 2010-16; Chair 2014-15; Briefcase Committee; Community Service Committee; OCBA Annual Ski Trip Co-Captain. OBA activities include: Young Lawyers Board of Directors 2012-15. ABA activities include: Member. Other Legal or Community activities include: Oklahoma Bar Foundation Fellow; Harvest Food Drive; Oklahoma Lawyers for Children; Salvation Army Christmas Toy Drive.

Chance Pearson, Ryan Whaley Coldiron Jantzen Peters & Webber PLLC. J.D. – University of Oklahoma 2008. OCBA activities include: Community Service Committee, Chair 2015 – present, Vice Chair 2013-15; Rockwood Elementary Reading Mentor. OBA activities include: Oklahoma Lawyers for Heroes. Other Legal or Community activities include: Oklahoma Lawyers for Children; Luther Bohannon American Inn of Court; Federal Bar Association; Big Brother Big Sisters of Oklahoma.

Richard L. Rose, Mahaffey & Gore, P.C. J.D. – Oklahoma City University 2003. OCBA activities include: Young Lawyers Division, 2004-2007, Chair 2006-07; House of Delegates 2008-10. OBA activities include: Young Lawyers Division, Board of Governors Representative/ Governor, Ex-Officio Member 2002-03, Member 2004-10, Secretary 2005-06, Treasurer 2006-07, Chair-Elect 2007-08, Chair 2009-10, Past-Chair & Head of Elections Committee 2010-11; Gift of Life and Wills for Heroes Committees, Co-Chair; Disaster Relief Committee, Vice Chair 2007-08, 2010-11, Chair 2009-10; Leadership Conference 2007; Leadership Academy 2009. Other Legal or Community activities include: Western District Chapter of Federal Bar Association Board Member 2009-10; Western District Pro-Bono Committee Co-Chair; Federal Bar Association Young Lawyers Division Representative 2008-09; Young Life Seeworth Academy Mentor 2012-14.

Kristie Scivally, Kristie D. Scivally, Angela D. Ailles & Associates. J.D. – University of Oklahoma 1992. OBA activities include: Juvenile Section. Other Legal or Community activities include: Oklahoma City Community Foundation.

Christopher M. Staine – Crowe & Dunlevy. P.C. J.D. – University of Oklahoma 2010. OCBA activities include: Bankruptcy Section, Chair 2015-16; Young Lawyers Division. OBA activities include: Bankruptcy Section; Energy and Natural Resources. ABA activities include: Litigation Section, Young Advocates Committee. Other Legal or Community activities include: First Tee of Metropolitan Oklahoma City, Board of Directors; Oklahoma Lawyers for Children, Associate Board Member; William J. Holloway Jr. American Inn of Court; Federal Bar Association; Leadership Oklahoma City, LOYAL Class VII Alumnae; Mineral Lawyers Society of Oklahoma City.

Kenneth M. Stoner, Kenneth M. Stoner, P.C. J.D. – University of Oklahoma 2001. OCBA activities include: Lawyers Against Domestic Abuse Committee; Community Service Committee. OBA activities include: ADR Section 2014-15; Criminal Law Section; Corporate Law Section; Estate Planning Section. Other Legal or Community activities include: OCPLA Contributing Member; EARC Board 2012 – present; Uptown 23rd Association Board Member; Wishing Well Water, Board Member 2012-14; Creative Oklahoma, Board Member 2012-14; TEDXOICC, Curator, Founder 2011; TEDXOU Curator 2012, Executive Committee 2013 – present. Judge Roger Stuart, Oklahoma County District Court. J.D. – University of Oklahoma 1978. Other Legal or Community activities include: Oklahoma Lawyers for Children; CASA.

W. Brett Willis, Jennings Teague. J.D. – University of Oklahoma 1993. OCBA activities include: House of Delegates 2004-05; Law Day Committee 2001-02; Social Committee, Chair 1997-98; Community Outreach Committee 1993-95, Chair 1994-95; Young Lawyers Division 1994-98, Vice Chair 1996-98. OBA activities include: Client Security Fund, Vice Chair 2007-15; Budget Committee 2006-08; Leadership Conference 2007; Young Lawyer Division Board of Directors 1996-98; Mock Trial Committee, Chair 1995-96, Vice Chair 1994-95; Children and the Law Committee 1993-95; New Attorney Orientation Committee 1994. Other Legal or Community activities include: Luther Bohannon Inn of Court, Former Member.

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