GOLF TOURNEY RETURNS TO TWIN HILLS WITH NEW FORMAT

The 2018 OCBA Golf Tournament is returning to one of its favorite venues, the exclusive and upscale Gaillardia Golf and Country Club. The revised 4-person scramble tournament is scheduled for Monday, July 16, 2018, with a cool, crisp summer tee-off time of 9:00 a.m. We’ll be finished playing the tournament and sipping on the City’s finest Club Specials in the air-conditioned 55,000 square foot Clubhouse before the summer heat gets cranked up. Get your 4-person team together and register early with the OCBA since tournaments at Gaillardia fill up quickly. Tournament Chairman, Gary Chilton, said “It’s always exciting to go back to Gaillardia. It’s a true championship caliber golf course and one of the most beautiful courses in the City. Whenever we hold the tournament at Gaillardia, we have a great turnout. OCBA President, David Cheek, has promised us perfect weather.”

This year, we are not using handicap. All ringers welcome! The only restriction is that golfers must be attorneys, judges, law clerks, court clerks, or legal assistants. Teams will be flighted after the tournament into three flights based on that day’s scores. The Grand Champion of Championship Flight will get a large traveling trophy to display in your law office or judicial chambers until the following year. Winners of each flight will get trophies and gift certificates. Second and third place finishers will get gift certificates.

Founded in 1998, Gaillardia was designed by legendary golf course architect Arthur Hills. It has been voted one of the Top 100 Best Residential Golf Courses in the United States. Gaillardia hosted the Senior Tour Championship in 2001 and 2002 won by Bob Gilder and Tom Watson. The entry fee is $185 per player for OCBA Members and $215 for non-members, which includes 18-holes at Gaillardia, golf cart, and lunch. There will be hole-in-one and closest to the pin contests, drawings and more. Entry deadline is July 2, 2018. You may register online at www.okcbar.org or use the registration form on page 17. Checks should be made payable to OCBA and mailed to 119 N. Robinson, Ste. 240, Oklahoma City, OK, 73102. Proceeds benefit Family Junction Youth Shelter.

OCBA Nominations & Election Committee Announces Candidates for 2018-2019

President-Elect Sheila Stinson, 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, 2018. Election results will be announced in August and elected officials will take office September 1, 2018. The candidates and their qualifications are listed here: See OCBA NOMINATIONS, PAGE 10
**New Thoughts on an Old Topic**

by David Cheek

Your Board of Directors had a lively discussion this month on a topic that generated some strong emotional responses and certainly no consensus of opinion.

The topic is: “Should the association allow/solicit non-lawyers to join the association and participate in some capacity?” Before going further, please understand the narrow scope of the topic at this point. We have had limited discussions as to whether the concept of non-lawyers being involved in some capacity is worthy of being explored. This is not the time to debate the details of how, to what extent, who, voting/non-voting, and all of the details that would have to be addressed if the ultimate decision is made to pursue the concept further. Rather, the simple question currently being debated is, should the association consider having “non-lawyer members”? If the answer is “no,” we move on. If the answer is “yes,” or “maybe,” then there would be a lot of work to do to flesh out the details.

By way of background, at the leadership conference in Chicago, I was introduced to the Executive Director of the Cincinnati Bar. It is a volunteer bar association for the city that has approximately 12,000 members. They have opened their association to a limited number of non-lawyer professionals, with full membership status. Examples of the type of professionals that might be included are realtors, bankers, appraisers, financial advisors, and CPAs, among others. The list could go on and on, and these examples are representative of only a few. The point is that we, as lawyers, interact regularly with other professions in the community. Why not let those professions participate in our association? Stated a little differently, the association is, at least in part, community service oriented, so let us include the community. The advantages would include: (1) a broader, more diverse view on legal issues and potential solutions that the association already addresses; (2) an increase in revenue from memberships, which would, in turn, increase the opportunity to fund more projects; and (3) a more robust community footprint in the name of the OCBA, which would expand the role of lawyers and the association as a whole in a positive light.

Some disadvantages include: (1) degradation of the association into a networking/solicitation/political venture, in lieu of an informal interaction between peers; (2) diversion from the stated mission of promoting the legal community; and (3) hesitating to tackle, or even discuss, sensitive issues facing the legal profession, due to the involvement of others outside of that profession.

I personally draw heavily from my experience on the Fee Grievance and Ethics Committee for the last 39 years. We have always had lay members, not only as participating members, but as arbitrators with full voting rights during deliberations. My experience has always been that their input has been insightful and beneficial. Their presence has never been a detriment to the mission of promoting the legal community; and (3) hesitating to tackle, or even discuss, sensitive issues facing the legal profession, due to the involvement of others outside of that profession.

Implementation could not be accomplished without a huge effort over a considerable amount of time. However, that effort need not be undertaken if the concept is unacceptable to the membership at large. The Board of Directors has made no decision on this issue, and will not do so without a lot more deliberation. Ultimately, the final decision should reflect the will and desire of the majority of the membership. My goal here is to solicit input on this issue from all current and prospective members, but only as to the concept itself, not as to any prospective implementation. I encourage all members to contact any member of the Board of Directors and express your thoughts and concerns, or provide other input. It is your organization. Let us know what you think.

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**Quote of the MONTH**

*A prince who is not wise himself will never take good advice.*

— Niccolo Machiavelli, political philosopher and author (1469-1527)
Dear Roscoe: I hope you don’t mind. I’m not a member of OCBA but close friends who are suggested I try. Nearly 20 years ago, while still in law school, I had the opportunity to intern each summer with a well-respected lawyer. He also helped me to work with him as a volunteer at the Bar Complaint, and I wouldn’t want to speculate on whether a violation has requiring a lawyer to withdraw/decline representation of “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client”) is violated in many cases where an impaired lawyer continues representing clients. That Rule violation may trigger a reporting duty under Rule 8.3(a) since a “material impairment” in a lawyer’s ability to represent the client almost by definition raises a question of fitness to practice law. There may be cases where a lawyer believes it is clear that another lawyer is mildly impaired, placing clients at risk in the future unless is taken, although there is no evidence that lawyer’s ability to represent clients is currently compromised. In these circumstances, IMHO, lawyers have no duty to take any action to address the solo lawyer’s impairment. That said, some intervention may be appropriate. I believe I would keep track of the situation, and perhaps steering him, as diplomatically as possible, to Lawyers Helping Lawyers or similar aid.

Dear Roscoe: While driving through the Panhandle, my client and her boyfriend got into a fight. Admittedly, both had been drinking. He struck her with his hand. She laughed and bailed out. He stopped the car to get her. She threw his cell phone at him, but missed. He turned around to get the phone. My client ran back into the car and drove away, running him over in the process. I have no idea what he’s doing. I’d like to call him as a witness to testify about his violent behavior during “black-out” states he gets after drinking, that he had already entered such state when he came after my client, and, according to what he’s heard, he becomes violent in that state. Would that not inflict further harm. The court sustained a Motion in Limine by the DA to exclude this testimony I feel he’s unfairly limiting my defense. What do I cite? Due Process? How about confrontation? .S.W., El Reno, OK.

Dear S.W.: I can see why these two fell in love. What a pair of catches. I’ll try to give you my best answer, ignoring any comment on the fact that she apparently defended herself by running over someone walking away from her. Of course, stranger things can happen. If we’re talking U.S. Constitutional Law, the Fifth and Sixth Amendments grant a defendant the “right to testify, present witnesses in his own defense, and [ ] cross-examine witnesses against him—often collectively referred to as the right to present a defense.” United States v. Markey, 393 F.3d 1132, 1135 (10th Cir. 2004). But this right is not absolute; a defendant must still “abide the rules of evidence and procedure.” United States v. Devlin, 408 F.3d 647, 659 (10th Cir. 2005). See also: Taylor v. Illinois, 484 U.S. 400, 410 (1988) (“The accused does not have an unfettered right to offer testimony that is . . . inadmissible under standard rules of evidence.”). Now here’s the problem as I see it. You say he had already entered the blackout state. Okay, I guess you don’t see any logical discourse in a blacked out person testifying about being blacked out. Fair enough. But it sounds to me like the victim’s proffered testimony might reasonably appear unreasonably speculative to the good judge, warranting exclusion under the Federal Rules of Evidence, and, likely, under Oklahoma’s similar statutory rules as well. A witness can testify about something only if he or she has personal knowledge. Fed. R. Evid. 602; see Fed. R. Evid. 701 (stating that a witness may give an opinion only if it is “rationally based on the witness’s perception”). Accordingly, inconsistency is inadmissible when it is speculative. See Hill v. J.B. Hunt Transp., Inc., 815 F.3d 651, 666 n.10 (10th Cir. 2016). You state he’s heard about how he acts during the blackout. Nothing in your question indicates first-hand knowledge about what he’s done. See Lowry v. City of San Diego, 858 F.3d 1248, 1255-56 (9th Cir. 2017) (en banc) (upholding the district court’s exclusion of testimony because the witness was sleeping at the time of the event, preventing the “personal knowledge” required by the Federal Rules of Evidence). In other words, the testimony in question appears more like hearsay or guesswork than fact. The good news? I’m not the judge and jury you’ll be facing.

We remain in Mars, PA. Buddy Orenstein and I kept watch on the disconsolate young William while Captain Bressler of the Pennsylvania State Police made a flurry of calls to his superiors, the Attorney General’s office, and the local DA. None of the dogs in this hunt wanted to forego any opportunity to piss on their fair share of the trees. We had one semi-tense moment when Billy suddenly went to open a locked drawer in a desk. Buddy moved faster than I’d ever seen him without lead in the air. From where I sat, the drawer didn’t look deep enough to hold a gun, and our charge didn’t seem the sort to get up close and personal for knife work, unless his exit strategy was suicide by cop.

Seeing no threat, Buddy shook his head, shrugged and stepped away. Billy began rolling a blunt the size of a small burrito. He went about this task with a focus and precision that would do a Japanese tea ceremony master proud. He lit it up and relaxed visibility, basking in both the bust and the satisfaction of job well done. Bressler returned.

“Really, gentlemen?” he said.

“That which doesn’t kill us makes at least one of us more complacent,” I replied.

“Nice workmanship,” the Trooper observed, “but lose it. We gotta go.”

Billy shrugged a regretful c’est la vie as he replaced the remnant in the drawer. Which he then relocked. “It’s good stuff,” he said, “and unlike chewing gum won’t lose its flavor on the bedpost overnight.”

We piled into Bressler’s cruiser headed for the Butler State Police Station. Orenstein rode shotgun in the front, Billy and I crawled into the rear. Always by the book, Bressler handcuffed and buckled his prisoner in. The experience seemed to harsh his new found mellow not a bit. We had gone less than a mile when I noticed the tail. Bressler saw it too, and began making random turns and evasions. The veteran cop knew the trailing driver matched him turn for turn. Bressler returned to the main road, requesting assistance as he worked for distance from the pursuing SUV.

“Maybe we all should have taken a toke or two,” Buddy remarked.
And the Court Said . . .

**An Olio of Court Thinking**

by Jim Croy

June 4, 1918

One Hundred Years Ago

[Excerpted from Hughes v. Kano, 1918 OK 332, 173 P. 447.]

This action was brought in the district court of Tulsa county, by Jonas Kano, to try title to certain lands in the Creek Nation allotted to Susan Billy, who died in 1914, leaving a minor child. The child died in 1915. The issue is as to whether Kano, the father of the child, or Lumber Billy, father of Susan Billy and grandfather of the child, inherited the land at the child’s death. Plaintiff in error claims through the child. It appears that Jonas Kano, a Creek Indian boy between 16 and 17 years of age, agreed with Susan Billy, a Creek Indian girl, to assume the relation of husband and wife, and that they lived together, cohabited, and held themselves out as husband and wife for something like 18 months prior to the death of Susan Billy. They lived in the home of Lumber Billy for something like one year, and until Kano was arrested on a criminal charge and placed in jail. Prior to his arrest they attended public gatherings of the Indians, traveled to the nearby towns together, and on different occasions held themselves out to the world as husband and wife. In passing upon rape cases that have come before appellate courts for review, it is often said that cases of this character should not be tried in the court below on the representations that she was his wife. She advised with the attorneys who represented Kano in his trial, and visited him from time to time, securing permission from the officials to do so on the representations that she was his wife. After he was convicted and sentenced to the penitentiary, she visited him on several occasions, and a short time prior to her death wrote him a letter addressing him as “Dearest Husband.” From this testimony the trial court found that Kano was the lawful husband of Susan Billy, the legitimate father of her child, and for that reason inherited the land. It is a settled rule of this court that, where a party has been fraudulently induced to marry, and has done so without the consent of the person whom he supposed to be lawfully entitled to marry. Under the common law a male over the age of 14 years and a female over the age of 12 years are capable of entering into a marital relation. . . .

It appears incidentally from the evidence that Jonas Kano was arrested, charged with the crime of raping, and convicted, and confined in the penitentiary. Counsel argues that, since the punishment for murder prescribed by section 2319 of the statute is death or life imprisonment, Kano must have been confined in the penitentiary for life, and that because under the common law a person sentenced to imprisonment in the penitentiary for life is deemed to be dead civilly, Kano could not inherit the land in controversy. This issue does not appear to have been presented in the pleadings or by the evidence offered. The case appears to have been tried in the court below on the theory that Kano was not the lawful husband of Susan Billy, therefore not the legitimate father of her child, and for that reason did not inherit the land. It is a settled rule of this court that, where a party tries his case upon one theory in the trial court, he will not be permitted in this court to prevail on another theory not presented to the trial court.

June 9, 1943

Seventy-Five Years Ago

[Excerpted from Weston v. State, 1943 OK CR 69, 138 P.2d 553.]

J. Defendant, Bill Weston, was charged in the district court of Creek county with the crime of statutory rape of Betty Lou Hames, “a female under the age of 14 years, to wit, of the age of 11 years.” He was convicted and sentenced to imprison himself for life under section 2834, Rev. Laws 1910, a penalty not then provided for in the laws of Oklahoma. . . .

This is what we mean when we say that cases of this character should not be decided upon technicalities, based upon a fixed policy that the verdict of the jury is final and absolutely correct on every proposition of fact. The doctrine that one may be convicted on the uncorroborated testimony of the prosecutrix has an appeal to the imagination, but no more grounds than the rule that a statute is to be construed as the legislature intended it to be construed when it was passed. The rule should be applied whether the evidence is conflicting, the appellate court is that where there is any evidence to support the verdict, or where the evidence is conflicting, the appellate court will not examine the record for the purpose of ascertaining or determining the weight of such evidence, and the verdict rendered by the trial court will be allowed to stand; but cases of the character of the one at bar have always been held an exception to such rule, and even exceptional, in this and other particulars, from the rules of procedure in ordinary criminal cases. See Marquess v. State, Pleas of the Crown (Ed. 1778) p. 363, distinguishes this character of case and the procedure from other criminal cases, and lays down certain rules and admontory advice that have been approved by the courts from that day. He says: ‘It is true that rape is a most detestable crime, and therefore severely to be punished, with death; but it must be remembered that it is an accusation easily to be made, and harder to be defended by the party accused, though never so innocent.’ He then mentions some unfounded malicious prosecutions for rape, among them a case tried before himself, where the prosecutrix swore positively to two instances of the offense. He adds: ‘I only mention these instances because we may be led to think that there are other cases of offenses of this nature, wherein the court and jury may with so much ease be imposed upon without great care and vigilance, the heinousness of the offense many times transporting the judge and the jury with so much indignation that they are hastily carried to the conviction of the person accused thereof, by the confident testimony sometimes of malicious and false witnesses.’

An Olio of Court Thinking

by this court is that where there is any evidence to support the verdict, or where the evidence is conflicting, the appellate court will not examine the record for the purpose of ascertaining or determining the weight of such evidence, and the verdict rendered by the trial court will be allowed to stand; but cases of the character of the one at bar have always been held an exception to such rule, and even exceptional, in this and other particulars, from the rules of procedure in ordinary criminal cases. See Marquess v. State, Pleas of the Crown (Ed. 1778) p. 363, distinguishes this character of case and the procedure from other criminal cases, and lays down certain rules and admontory advice that have been approved by the courts from that day. He says: ‘It is true that rape is a most detestable crime, and therefore severely to be punished, with death; but it must be remembered that it is an accusation easily to be made, and harder to be defended by the party accused, though never so innocent.’ He then mentions some unfounded malicious prosecutions for rape, among them a case tried before himself, where the prosecutrix swore positively to two instances of the offense. He adds: ‘I only mention these instances because we may be led to think that there are other cases of offenses of this nature, wherein the court and jury may with so much ease be imposed upon without great care and vigilance, the heinousness of the offense many times transporting the judge and the jury with so much indignation that they are hastily carried to the conviction of the person accused thereof, by the confident testimony sometimes of malicious and false witnesses.’

We realize the disadvantage the trial courts are put to in the trial of this class of cases. There is generally strong feeling in the community by reason of the nature of the crime, and often of the person involved. These charges are often the outgrowth of alleged attacks upon children of tender age, and are often the result of a double as to the wide publicity in the local communities. If a verdict of guilty is rendered by the jury, the only relief that can be given by the trial court is the granting of a new trial at a great expense to the county. In the appellate court we have art opportunity to survey the whole record, after it has been preserved and briefed by attorneys for both the state and the defendant. It is no pleasant task to reverse a rape case, and it is no pleasant memory to send a man to the penitentiary even for a minimum of 15 years when there is grave doubt of his guilt, and by evidence of one whom the defendant has no right to charge with corroboration. The corroboration is not sufficient. But our sworn duty demands that the law be followed, and that justice shall prevail.

The facts as revealed by the record in this case are that defendant, Bill Weston, was charged in Creek county with the crime of statutory rape of Betty Lou Hames, “a female under the age of 14 years, to wit, of the age of 11 years.” The date relied upon by the state was on or about March 15, 1939. Both defendant and prosecutrix resided in the city of Sapulpa, in the same block, about 150 feet apart. Back of defendant’s house 15 or 20 feet was a garage in which he worked as a mechanic, on automobiles. It was a public garage, although only one car could be placed therein at a time. Two large doors opened to the west, and toward defendant’s residence.

Prosecutrix testified that she came often to defendant’s house, staying from several days to several weeks, and that at various times he had made different articles and given her, and at one time had fixed her skates. The prosecutrix lived with her mother, who was divorced.

Her mother died on April 25, 1939, and
immediately thereafter her father and his wife, her stepmother, came and took prosecutrix and the other children away. She testified that she had intercourse with the defendant in his garage about the middle of March, 1939, before her mother died. That she had intercourse with him "twelve or thirty times" before that in the garage; and at one time on a creek by the side of the road when he was taking her and her five-year old brother to the country home of her sister, and stopped to get water for his car. She did not know the date of the first act, but that the first time he did it, he did it with his finger, and the next day she went back to the garage and he had intercourse with her. Her testimony was that these different acts were every day or so, but that no act was committed after April 25, 1939, the date of her mother's death. With reference to how the acts occurred he said:

"Q. And you say you had intercourse with him in March, about the middle of March, 1939? A. Yes, sir. Q. How did he accomplish this act, Betty Lou? A. Well be had me hunker down on him. Q. And which position was he lying there or standing? A. He was kind of squatting down."

She testified that each act was in the same manner, except the one in the creek and the one in the garage. The place where defendant had intercourse with her "twenty or thirty times" was in a public garage where the public came and went at any time. There was no evidence that the doors were closed at any time these acts took place, and the evidence of every witness was that you could see in this garage from the back steps of defendant's residence, which was only a distance of 15 or 20 feet from the garage. Pictures of the garage are attached to the case-made, and they reveal that when these doors are open you can see the entire inner part of the garage.

According to defendant and his wife both testified that she assisted him with his work in the garage, and also did her household duties, but that she was in the garage working at different times every day; and that she at no time saw any of the acts testified to by the prosecutrix. The defendant denied the testimony of the prosecutrix.

According to the evidence of the prosecutrix, she never at any time before the death of her mother told her of the acts of the defendant, nor did she at any time tell anyone until her stepmother claimed that she detected something wrong with her clothing and sent for them, and made threats if she did not tell her the truth. It was then for the first time that prosecutrix told the acts of the defendant. The evidence is uncertain as to when she first told her stepmother, but it certainly was not until in the late summer or early fall of 1939, at least six or eight months after the acts occurred.

Several witnesses testified to the reputation of the prosecutrix for truth and veracity in the community in which she lived, and that it was bad. This was especially brought out by the witness Ben Rictor, who testified that he kept a store for a number of years in that neighborhood, and that she often came to his store to get articles for the family, and would order things and say they had sent for them, and on investigation he would find that this was not true. From the above statement of the evidence in this case, on the part of the state, it will be readily observed that it comes clearly within the exception to the rule that one may be convicted upon the uncorroborated testimony of the prosecutrix.

We now come to the consideration of the evidence of the witness Mr. W., in part, which it is contended corroborates the testimony of the prosecutrix. It is of the following witnesses:

Freddy Hames, seven-year-old brother of the prosecutrix, who was five years of age at the time of the alleged crime; Dr. B. C. Schwab, Dr. J. F. Curry, Leona Hames, and Goldie Bryan.

Freddy Hames testified that he was seven years of age at the time of the trial, which was on the 28th day of May, 1941. When asked if he knew what it was to tell the truth: "A. (No answer.) Q. Do you know what it is to tell a lie? A. (No answer.) Q. What would your mother and father do if you told a lie? A. Whip me."

He testified the defendant took him and the prosecutrix to their sister's home in the country; that they stopped to get some water, and defendant told him to stay in the automobile. That he stayed in the automobile; that the defendant and Betty Lou went down to get the water and were gone about an hour. He testified that they stayed at her sister's one night and the defendant came and got them and took them home the next day.

The prosecutrix testified that they stayed in the automobile; that the defendant did not come back for them, but that an uncle took them home.

It will be noted that this testimony does not corroborate the prosecutrix as to the time alleged in the information. It at best only presents evidence of an opportunity at a different time.

Doctor Schwab testified that he had examined the prosecutrix "a year or more ago;" that the purpose of his examination was to determine whether or not she had intercourse, and from his examination the hymen was ruptured, and "all evidence that she had had intercourse." He was indefinite as to the date he made this examination, but he thought it was in August, 1939. This was about five or six months after the time charged in the information. He could not tell the length of time, but if it had been within the last week or two, and she had been "in the act" for several days, and she had been "in the act" for several days, her hymen would have been ruptured and was not present. There are numerous ways, for this to be ruined other than by intercourse. This is especially true where the examination is not made until some six or eight months after the time of the alleged intercourse, as in the instant case.

Doctor Curry's evidence was to the same effect. He did not know the exact date of his examination, but he thought it was in the summer of 1939. It was at the same time the examination was made by Doctor Schwab and Mr. W. by the same rule of law.

Leona Hames was the second wife of the father of prosecutrix. They had married on July 13, 1937. She took the prosecutrix to the offices of Doctor Schwab and Doctor Curry to have her examined. This was just before school started in 1939. Her testimony was in part:

"Q. When about when you took her to the doctor's office? A. I don't know just exactly the day, but it was a while before school started. Q. You mean the year 1939? A. Well no. They come up there in 1939 and she had been there right close to a year when she told me that. ***

Mrs. Trotter, a neighbor, testified to having heard a conversation between the prosecutrix and her stepmother in which prosecutrix told her she did not want to testify against the defendant, and her stepmother told her that she had to. This conversation occurred sometime in June, 1939. She testified:

"Q. How did this conversation occur-what brought it up, if you know? A. This is the way I remember: about the time I sat down there,. Barbara, Jean began to listen. Hannah, she was the middle one, and she stopped to feed the baby Betty Lou and Mrs. Hames were washing and when she stopped to feed the baby, she called Betty Lou. Q. Who called Betty Lou? A. The second Mrs. Hames. She said, 'Come here,' and she says, 'What do you want?' and she says, 'I want you to, go over this story again we are going to tell Everett S. Collins (the county attorney),' and that stirred up my curiosity and she says, 'I can't, Leona,' and Leona says, 'You are going to- Leona used curse word, I don't tell that she says, 'You will have to help me.' Mr. Collins: I object to any voluntary statement, outside of the question that was propounded to her. Q. I am asking you to give the conversation between the stepmother and this girl. Q. Don't put anything else in. A. It wasn't only that she cursed at this time. She says, 'You will have to help me,' and she called her, and Betty Lou says, 'What do you want?' and Leona said, 'Come over,' and she says, 'You have to help me.' "

It further appears from the record in this case that after the original information was filed in the district court the county attorney, for some reason which the record does not disclose, dismissed the charge against this defendant, presumably for the reason that he did not have sufficient evidence to, convict him. Afterwards there was some trouble in the community where these parties resided, and in which this defendant and probably the father of prosecutrix were involved, but the record does not disclose the nature thereof; and it seems a petition was circulated directed to the county attorney, evidently for the purpose of having him re-file the rape charge which had been previously dismissed. This was done, and the new charge started by the filing of an information against the defendant on February 17, 1941, 23 months after the time charged in the information.

With this record as above stated, what is the duty of this court? We think the court was justified in overruling the objection made to this question in the case of Sowers v. Territory, heretofore quoted from, and also from many of the decisions in this court heretofore cited. We have reread all of these decisions, and while there is apparent conflict, we have come to the conclusion that those cases which support

See OLIO, PAGE 14
Old News

Excerpts from OCBA News:

DECEMBER 1978, PART 4

Half Astute Views: Headline Writers’ Views of History

By Gene A. Castleberry
Retyped and Republished By Gary L. Walke

I don’t know about the rest of you but I was dumbfounded when Ron Shotts lost the race for Governor. I thought he was going to walk away with it.

I had been awfully busy in the last few weeks leading up to the election and had time only to scan the headlines in The Oklahoman and The Times. They indicated that Shotts was gaining momentum and finding increasing support in the polls. Poor old George (Nigh), I figured, was going to have to quit running for office and start running for the border.

Mystified by the outcome of the election, I went back to some old newspapers and finally read the stories under the headline: “I had been awfully busy in the last few weeks leading up to the election and had time only to scan the headlines in The Oklahoman and The Times. They indicated that Shotts was gaining momentum and finding increasing support in the polls. Poor old George (Nigh), I figured, was going to have to quit running for office and start running for the border.”

I realized then that political reporting, like all scholarly work, does contain all the information. You simply have to read carefully and completely to find it.

It then occurred to me that it would be interesting to see how some past events could have been headline and reported in the local press. SUCH AS:

French Influx Perks Up Channel Reports

– Hasting, England. October 14, 1066

Merchants in the English channel resort towns are pleased with increased economic activity due to the sudden arrival of visitors from France. While, admittedly, most of the visitors are Normans bent upon conquest – and seemingly successful at it – the merchants are confident that much of the money in the pockets of the gala throng will find its way into English coffers. By the way, our gracious monarch, good King Hal, is the first English sovereign who, when he says, “I’ll keep an eye out for you!” means it!

Primogeniture No Problem For Danish Royalty

– Elsinore Castle, Denmark. May 1, 1426

Hambled, late Prince of Denmark, speaking informally in his waning moments said that problems of succession, descent and distribution were a thing of the past in the Danish Royal Family. Fluent in English due to his Oxford education, the prince told his reporter, “Well now, that’s it then innit! I mean wiff me mam croaked and me ‘avin’ guv ol’ Claudius wot for, and all. That pair won’t be ‘avin’ no more brats now, will they? That bugger Laertes struck ‘is bleedin’ epee inna my gizzard, poisoned tip and all, so that’s me done for. Thit twit Ophelia’s gone and deep-sixed ‘erself. We should ‘ave packed ‘er off to the looney bin years ago. So there ain’t nobody left to tyke the bleedin’ crown nor nothing, is there? I guess they’ll tuck everythin’ into some bloody museum or somethin’ and let the bloomin’ lumpen-proletariat see ‘ow they can run thin’s.”

White Star Lifeboats Prove Safe and Stable


A spokesman for the White Star Lines proudly announced today that the safety and reliability of their lifeboats had been established beyond doubt. “Of course,” he stated, “all things considered, we’d rather not have had the Titanic go down in order to prove our point, but, at least Cunard will have to carp about something other than the safety of our lifeboats!” When asked to comment about the fact that a shortage of lifeboats caused the loss of 1,513 of the 2,224 passengers and crew, he said, “Anyone who deals with the public knows that they will always find some thing to grumble about. But White Star is more concerned with quality than quantity. Each lifeboat is superbly crafted to provide service with dignity for the user. Besides, it would be rather foolish to go hauling a great bunch of expensive lifeboats about, when they’re hardly ever used!”

Hindenburg Sets New Safety Record Coast-To-Coast

– Lakehurst, New Jersey. May 6, 1937

Count von Tuten, Delag representa
tive, called a press conference today to give details of the excellent performance of the Zeppelin Hindenburg on the coast-to-coast portion of its recent flight from Germany to the United States. “Es war wunderbar!” he exclaimed. “Alles der vant from der French coast to der Hess coast vas notink but gemutlich. Mit erschped und beer-drinken and songsingen und thigh-schlappen altogether. Ve got von liddle problem, however. Der trip after ve reach New Chersey vas for der birds; ein grosse bummer! Ve got to figure out how to get der verdammte blimpen down mitout der fireburnen and der throatscreamen and der boomcrashen.”

Overpopulation and Arms Race No Longer Problems

– Lake Success, New York. April 1, 1984

Fears of the population explosion have abated now that the United States, Russia, China, Western Europe and Uganda have engaged in a thermonuclear arms race. Another beneficial result has been the total cessation of the insane arms race which has so terrified sensible people everywhere and caused the curtailment of worthy social programs. Since the countries mentioned have shot off everything that moves, we have lived to see total, multi-lateral disarmament. Not many of us have lived to see it, but sure, I am scratching these words on the remaining wall of the U.N. Building with a rock, confident that someone will come along sometime and read them. Meanwhile, some suspicious-looking fellow in a heap of rubble down at the end of what used to be the next block seems to be gathering a pile of rocks. I don’t know what he has in mind, but, just in case, I think I’ll start stockpiling some rocks myself.

Events & Seminars

JULY 16, 2018

OCBA Annual Golf Tournament

Gaillardia Golf Club

AUGUST 16, 2018

YLD “Striking Out Hunger” Bowling Tournament

6 p.m., Heritage Lanes

SEPTEMBER 28, 2018

Raising The Bar 2018

Gaylord Pickens Museum
Sir, as under the best princes it is safe to speak what is true of the worst; so, according to my former promise to the public I shall take advantage of our excellent King’s most gentle government and the virtuous administration of an uncorrupt ministry, to warn mankind against the mischiefs which may hereafter be dreaded from corrupt ministries. It is too true that every country in the world has sometimes groaned under that heavy misfortune and our own as much as any, though I cannot allow it to be true, that the English court has always been the most thievish court in Europe. Few men have been desperate enough to attack openly ... the liberties of a free people. Such avowed conspirators can rarely succeed: The attempt would destroy itself. Even when the enterprise is begun and visible the end must be hid or denied. It is the business and policy of traitors to disguise their treason with plausible names and so recommend it with popular and bewitching colors, so that they themselves shall be adored while their work is detested and yet carried on by those who detest it. Thus, the nation is surrendered to another under the fair name of mutual alliance. The fortresses of a nation have been given up or attempted to be given up under the frugal notion of saving charges to a nation. Commonwealths have been trepanned into slavery by troops raised or attempted to be given up or attempted to be given up by those who detest it.

It may therefore be of service to the world to show what measures have been taken by corrupt minister in some of our neighboring countries to ruin and enslave the people over whom they presided. To show by what steps and gradations of mischief nations have been undone; and consequently what methods may be hereafter taken to undo others. And this subject I rather choose because my countrymen may be the more sensible of and know how to value the inestimable blessing of living under the best prince, and the best established government in the world; we have none of these things to fear.

Such traitors will probably endeavor first to get their prince into their possession, and like Sejanus (note: an ambitious soldier, friend and confidant of the Roman Emperor Tiberius, most feared and influential person in Rome, who was left in complete control when the emperor traveled to Capri), shut him up in a little island and agree to make him always crown in his court, while they devour his dominions and plunder his subjects. When he is thus secluded from the access of his friends and the knowledge of his affairs, he must be content with such misrepresentations as they shall find expedient to give him. False persons will be raised to justify wicked counsel, and wicked counsel will be given to procure unjust orders. He will be made to mistake his foes for his friends and his friends for his foes, and to believe that his affairs are in the highest prosperity when they are in the greatest disorders, and the contrary happens in the greatest harmony when they are in the utmost confusion.

They will be ever contriving and forming wicked and dangerous projects to make the people poor and themselves rich. With what success and in what manner their projects go on in the greatest harmony when they are in the utmost confusion. They will squander away the public money to creatures of pleasure, and will put men into employment without regard to discovering their intrigues, or void of credit and inclination to disappoint them.

They will promote luxury, idleness, expense and a general deprivation of manners by their own example as well as by representing the reverse of it. They will disgrace men of virtue and ridicule virtue itself, and laugh at public spirit. They will put men into employment without any regard to the qualification of those employed, or indeed to any qualifications at all, as long as they contribute to their designs and show a stupid alacrity to do any thing that is intended for their own ends. They will be ever contriving and encouraging their projects, upon the public money and women for vile ends and traitorous purposes.

They will engage their country in contributions and subscriptions, and the public money for vile purposes, for the public money for vile purposes, in order to enjoy a post under them. They will put men into employment to enjoy a post under them. They will endeavor to bribe the electors for that employment, to enjoy a post under them. They will endeavor to bribe the electors for that employment, to enjoy a post under them.

In order to do this they will bring into fashion gaming, drunkenness, licence and sloth, to wear them out in debts and to draw into the perpetration of their crimes. And, when they have thus disposed of the people, they will endeavor to corrupt the deputies after they are chosen with the money given for the public defense, and to draw into the perpetration of their crimes those very men from whom they enjoy the public money and who have been the redress of their grievances and the punishment of those crimes. And, when they have thus disposed of the representatives of the people, and the people afraid of their representatives, they will endeavor to persuade those deputies to seize the government to themselves and not to trust their principals any longer with the power of resenting their treachery and ill-usage, and of sending more honest and wiser men in their room.

But if the constitution should be so stubbornly framed that it will still preserve itself and the people’s liberties, in spite of all villainous contrivances to destroy both, then must the constitution itself be attacked and broken, because it will not bend. There must be an endeavor under some pretense of public good to alter a balance of the government and to get it into the sole power of their enemies, and whose posts will have constant an interest distinct from that of the body of the people.

But if all these schemes for the ruin of the public and their own impunity should fail them, and the worthy patriots of a free country should prove obstinate in defense of their country and resolve to call its betrayers to a strict account, then there is but one thing left for such traitors to do: to veer about, and by joining with the enemy of their prince and country, complete their treason.

I have somewhere read of a favorable chance offered to a neighboring prince, long since dead, who played his part so well that, though he had by his evil counsels raised a rebellion and a contest for the crown, yet he preserved himself a resource whoever got the better. If his old master succeeded then this Achitophel (satirical poem by John Dryden, in 1681 of the Biblical tale of the rebellion of Absalom against King David, as well as contemporary story of King Charles II) by the help of a baffled rebellion, ever favorable to princes, had the glory of fixing his master in absolute power. But, as his brave rival won the day, Achitophel had the merit of betraying his old master to plead and was accordingly taken into favor.

Happy therefore, thrice happy are we who can be unconcerned spectators of the miseries which the greatest part of Europe is reduced to suffer, having both secured the integrity and the redress of their grievances and the punishment of those crimes. And, when they have thus disposed of the representatives of the people afraid of the people, and the people afraid of their representatives, then they will endeavor to persuade those deputies to seize the government to themselves and not to trust their principals any longer with the power of resenting their treachery and ill-usage, and of sending more honest and wiser men in their room.

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The Oklahoma County Bar Association recently conducted a poll of Oklahoma County Bar Association members to obtain their opinion on the qualifications of district judge candidates in Oklahoma County as well as statewide judges on the retention ballot. Oklahoma County Bar Association Bench & Bar Committee Chair, Luke Abel, stated: “The Oklahoma County Bar Association believes it is important for voters to obtain as much information as possible about the candidates for district judge and appellate judge. This judicial candidate poll was conducted to assist voters in making their decision by providing some additional information from other members of the Oklahoma County Bar. This is not an endorsement of any candidate by the Oklahoma County Bar Association.”

The participating attorneys were given eight factors to consider in arriving at an opinion: honesty, intelligence, legal ability and experience, freedom from bias, impartiality, temperament, courtesy, and diligence and dedication. The lawyers were asked to rate each judicial candidate only if they knew that candidate well enough to have a fair and intelligent opinion as to their qualifications. Otherwise, the lawyers were asked to mark the survey “no opinion.”

There are 2,380 members of the Oklahoma County Bar Association who received the questionnaire poll. 483 responses rating candidates in contested races, as well as retention ballot judges, as “no opinion,” “not qualified,” “qualified,” or ‘well qualified” were returned. Abel emphasized that this poll is the opinion of the 483 attorneys responding to the questionnaire, and the results are not scientific.

### OKLAHOMA COUNTY DISTRICT COURT RACES

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<td>87 (28%)</td>
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<td>Mark K. Bailey</td>
<td>57 (63%)</td>
<td>29 (32%)</td>
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<td>Amy Palumbo</td>
<td>115 (62%)</td>
<td>57 (31%)</td>
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<td>Natalie Mai</td>
<td>46 (37%)</td>
<td>44 (35%)</td>
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<td>Erik Motsinger</td>
<td>60 (57%)</td>
<td>38 (36%)</td>
<td>7 (7%)</td>
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<td>Hank Young</td>
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<td>97 (41%)</td>
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<td>Rand Eddy</td>
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<td>Michelle McElwee</td>
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<td>117 (38%)</td>
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<td>Kendra Coleman</td>
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<td>151 (40%)</td>
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<tr>
<td>Susan Stallings</td>
<td>58 (37%)</td>
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### RETENTION BALLOT

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<td>Patrick Wyrick</td>
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<td>101 (34%)</td>
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<td>Noma D. Gurich</td>
<td>35 (8%)</td>
<td>115 (27%)</td>
<td>277 (65%)</td>
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<tr>
<td>Yvonne Kauger</td>
<td>35 (9%)</td>
<td>121 (31%)</td>
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<td>James E. Edmondson</td>
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<td>95 (56%)</td>
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<td>Scott Rowland</td>
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<td>95 (36%)</td>
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<tr>
<td>David B. Lewis</td>
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<td>77 (35%)</td>
<td>126 (57%)</td>
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<td>Kenneth L. Buettner</td>
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<td>E. Bay Mitchell III</td>
<td>17 (6%)</td>
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<td>Brian Jack Goree</td>
<td>12 (6%)</td>
<td>84 (43%)</td>
<td>98 (51%)</td>
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**Book Notes**

**In the Enemies House**

Is this book a summer read? Well, kind of. Is it a spy story? Well, Kind of. Is it ground breaking? Maybe. The sum of all these parts is greater. And this is a pretty good book.

Blum writes about the Rosenberg case, wherein the defendants were tried, convicted and sentenced to death for giving away the secrets to the first and second American Nuclear bombs. However, the Rosenbergs are hardly mentioned in most of the book. The reason is that the author takes us to the origins of the case, when it was just a bunch of encrypted intercepts of Russian messages. The Russians were our allies, and not many were paying attention. There were, however, two men who were. One was what we would call an electronic geek today, the other a fedora wearing authentic FBI guy. The story of their cooperation in breaking the biggest espionage case is a good story. It is also sometimes tedious, because good spy work is often tedious. The driving to the result, however, gives the book resonance, and keeps one turning pages.

The writing is as light, and as well done, for such a work, as may be, and so it may be beach read. Again, cryptography is a puzzle, so the author is doing the best job possible to keep us engaged.

Is the book ground breaking? In a way, yes. The Rosenberg trials were controversial. At times the evidence was seen as slim. However, one must understand that covert agencies may have large amounts of material that is not admissible in court, but which clearly indicates a subject’s guilt. This book lets us in on a large part of that. This may be familiar territory for our readers.

Was it all worth it? The principals, in the end, may not have thought so. History still unfolds.
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 opportunities for our members to help the community. If you know of something that should be listed here, please contact the Bar Office at 236-8421 and we will add it to this new monthly Briefcase column.

ReadOKC is Looking for Little Library Champions & Stewards

ReadOKC is an initiative of the OKCPS Compact. Our mission is to create a love of reading in our community, with specific interest in OKCPS Elementary schools. Our key focus areas are to:

- Plan and implement reading challenges, offering fun competitions and incentives for our kids to read at least 20 minutes per day
- Increasing access to reading.
- Increasing involvement of the community in schools as Reading Buddies.

ReadOKC Little Libraries are a way to address access to reading. These structures are being placed outside of schools and in City parks to allow families and kids to have books during times when schools aren’t open. The premise is “take a book and leave a book”.

ReadOKC is looking for Champions to fund the ReadOKC Little Libraries (materials plus installation) at the cost of $750 and Steward the ReadOKC Little Libraries, which entails checking and restocking the structure when needed.

The OCBA and The Foundation for Oklahoma City Public Schools are sharing the Champion/Steward model at Adams Elementary School, where both organizations currently work as Reading Buddies.

For more information, please contact ReadOKC Chair Mary Melon at mary@okckids.com or ReadOKC Coordinator Abbie Dedmon at abbie@okckids.com. Both can also be reached at 405-604-5977.

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- Find call logs, text messages, videos and photos
- Reduce the cost by $100 (available for new cases)

Avansic E-Discovery & Digital Forensics

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Oklahoma, Make a Will Workshop.
Oklahoma City Chapter, Association of Black Lawyers; Board of Directors; Ruth Bader Ginsburg Inn of Court; Oklahoma Judges' Association, President Member; Board of Trustees for the OK County Law Vice President Member; Young Lawyers Division Board, Past Member. ABA activities include: Litigation Section, Member.

Vice President
Don Andrews, Oklahoma County District Courthouse. J.D. – Oklahoma City University 1989. OCBA activities include: Board of Directors, 2016-2019; OK County Delegate to OBA House of Delegates, 2015-2018; Lawyers Against Domestic Abuse, Founding Member; Board of Trustees for the OK County Law Library, 2018. Other Legal/Community Activities include: Oklahoma Judges' Association, President 2016-2018; Kiwanis Club of Downtown OKC, President 2018-2019; Downtown OKC Exchange Club, President 2016-2017.

Law Library Trustees
Stephen Louis Cortes, Cortes Law Firm. J.D. – Oklahoma City University 1999. OBA activities include: Governor & Administrative Law Section Member. Other Legal/Community activities include: City Rescue Mission, Board of Directors.


Zane Anderson, Crowe & Dunlevy. J.D. – Oklahoma City University 2012. OCBA activities include: Young Lawyers Division Board of Directors. OBA activities include: Young Lawyers Division, Member. Other Legal/Community activities include: Phi Delta Phi Legal Fraternity; Phi Kappa Honor Society; Commercial Real Estate Council.

Cody J. Cooper, Phillips Murrah P.C. J.D. – University of Oklahoma 2012. OCBA activities include: Young Lawyers Division Board of Directors, Chair 2017-2018; Awards & Nominations Committee; Nominations & Election Committee. OBA activities include: Young Lawyers Division; Technology Committee.

Chris Deason, Chris Deason, PLLC. J.D. – University of Oklahoma 2000. OCBA activities include: Fee Grievance & Ethics Committee; Family Law Section; Briefcase Committee, former member & contributor. OBA activities include: Family Law Section, Delegate to the OBA House of Delegates. Other Legal/Community activities include: OK County Pro Se Waiver Docket Project; Ruth Bader Ginsburg Inn of Court, President; OCU College of Law, Adjunct Professor 2012-2016; Journal Record Leadership in Law Award 2017; OCBA Briefcase Award 2016; OBA Alma Wilson Award 2015.

Philippa James, Presiding Judge, Oklahoma City Municipal Court. J.D. – Oklahoma City University 1992. OCBA activities include: Law Related Education Committee. OBA activities include: Law Related Education Committee. Other Legal/Community activities include: OK County Criminal Justice Advisory Council Member; Board Member.

C. Scott Jones, Pierce Couch Hendrickson Baysinger & Green. J.D. – Oklahoma City University 2006. OCBA activities include: Briefcase Committee 2011-present; CLE Committee, 2015 – present; Co-Chair 2017-2018; Bench & Bar Committee 2012. OBA activities include: OBA Journal Board of Editors 2017 – present; Employment & Labor Law Section, Vice Chair 2017. Other Legal/Community activities include: OADC CLE Committee, 2015 – present; OADC Legislative Committee 2016-prenent; DRI Employment & Labor Law Committee 2009 – present.

Chris Stump, Stump PLLC. J.D. – LSU College of Law 2003. OCBA activities include: Asbestos Litigation Committee; ABA Tort Section, Member; CLE Committee, 2015 – present; Education Committee, Chair 2017-18, Vice Chair 2015-16; Women in the Law Section, Chair 2016-17, Member 2012-present; OADC Legislative Committee 2016-present; DRI Employment & Labor Law Committee 2009 – present.

Kelli Stump, Kelli J. Stump PLLC. J.D. – Oklahoma City University 2006. OCBA activities include: Ski Trip Seminar Speaker 2017 & 2018. OBA activities include: Women in Law Conference 2017, Speaker. Other Legal/Community activities include: AILA Books Committee Member; DJO National Executive Office for Immigration Review, Chair, Liaison 2017-2018. AILA Conference, Frequent Speaker; AILA Books Committee Editor.

Curtis J. Thomas, McAfee & Taft. J.D. – University of Oklahoma 2009. OCBA activities include: Young Lawyers Division 2012-2017, includes Past Chair; Law Day Committee Past Chair; Ask A Lawyer Volunteer. OBA activities include: Law Day Committee Volunteer.

Monica Ybarra – Phillips Murrah, PC. J.D. – Oklahoma City University 2014. OCBA activities include: Community Service Committee, Chair 2017-18, Vice Chair 2015-2016; Leadership in Law Award Recipient 2018; Family Law Section. OBA activities include: Family Law Section; Business & Corporate Law Section; Litigation Section. ABA activities include: Member. Other Legal/Community activities include: Ruth Bader Ginsburg Inn of Court; Exchange Club of Downtown OKC, President; Leadership Oklahoma City LOYAL Class XII; Salvation Army Bell Ringer.
Students at Oak Ridge Elementary School recently spent a day learning about careers at the University of Oklahoma College of Law. For the past school year, law students from OU acted as mentors to the 4th grade class at Oak Ridge Elementary School in the Oklahoma City Public Schools System. The volunteer law students visited the 4th graders monthly and created a focused mentoring program. The law students acted as older “brothers” and “sisters” and talked with the 4th graders about opportunities available to them outside of what they see every day within their community. This mentoring program culminated in a field trip to the OU College of Law.

The goal of this program, called a “Pipe-Line Initiative,” was to offer the 4th graders a grander view into a professional life outside of what these students see every day within their own community and to give them a concrete vision of what they can become. The law students’ objective was to provide real life models and to demonstrate a viable path which can lead the youngsters to becoming a lawyer or getting into a major university. A secondary goal was to get these 4th graders to understand why it is important to starting a career in law.

The 4th graders received vivid success stories from law students, who recently came from environments similar to those of the 4th graders. The law students told their stories of having to overcome various obstacles and how they are now very close to setting up such a program for their school. Ms. Cotton previously worked with Dean Evans on a similar project which brought students from Muskogee to the OU College of Law. When Ms. Cotton moved her school. Ms. Cotton previously worked with Dean Evans on a similar project which brought students from Muskogee to the OU College of Law. When Ms. Cotton moved to Oak Ridge Elementary, she contacted the law school again. Dean Evans reached out to Ms. Fling and Ms. Skelton, who then found law students eager to serve as mentors. Oak Ridge has a very diverse student body, and Ms. Fling and Ms. Skelton were able to find law students with similar backgrounds and ethnicities to enhance the experience for these 4th graders.

OU Law Dean Joe Harroz encourages the law students at OU Law to volunteer, to seek out opportunities to give back, and to find Pro Bono opportunities which help Oklahomans. This Pipe-Line Program is just one of many at the University that puts volunteer OU Law students back into the communities and connects OU Law in a way that fills a void. This past school year, OU Law students contributed over 15,000 hours to Pro Bono work and service projects in Oklahoma.

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Murray Abowitz died at the age of 77. He continued to vigorously practice law until the very end of his life. He was truly a lawyers’ lawyer. It was not at all unusual to find Murray representing other lawyers in various contexts in which his lawyer clients needed legal representation. Murray specialized in “the law of lawyers” well before that term became a recognized concept.

Murray was educationally very well prepared for the practice of law. He grew up and was educated in West Philadelphia, following which he graduated from the Wharton School of Business at the University of Pennsylvania.

He then went to work for Mobil Oil Company and attended Seton Hall Law School at the same time. Mobil wanted to transfer him and offered him a choice of being transferred to Oklahoma or Indonesia. He prudently chose Oklahoma, where he worked for Mobil and transferred to the Oklahoma City University School of Law.

One would think Murray would have become an oil and gas lawyer with that background, but he had other plans. He went to work for Don Manners, who had an active trial practice in which he both represented and sued insurance companies. Murray started with that litigation practice and branched out from there to try all kinds of cases, always competently.

Along the way, he practiced with a number of firms of which he was a prominent member. I first remember Murray in the firm of Abowitz and Welch, where he practiced with a great insurance coverage lawyer, Mort Welch. He then moved on to practice with a firm he founded, which became Abowitz, Timberlake and Dahnke, with Sarah Timberlake and George Dahnke. Just within recent years, Murray merged that firm with the Tulsa firm of Doerner, Saunders, Daniel & Anderson, in which he practiced until his death.

A memorial service for Murray was well-attended, to say the least. I arrived about 20 minutes early for the service (really unusual for me) and was sent to an overflow room at the funeral home because the chapel was filled.

Two of his former colleagues, Sarah Timberlake and Rick Hornbeek, spoke at the service. They spoke at length about his professional accomplishments and abilities. However, they spoke most movingly about Murray as a person - apart from his law practice. Both remembered Murray’s wide ranging interests and activities outside of the office.

Both also spoke movingly of Murray’s wife of 52 years, Elizabeth, and of his relationship with his two daughters and grandson. He truly was a complete person with a good work-life balance, again before that became a common buzzword in the law practice.

Reflective of Murray’s wide range of interests, his family suggests memorial contributions to either Free to Live Animal Sanctuary, 9150 S. Western Ave., Guthrie, OK 73044 or Oklahoma City Boathouse Foundation, 725 S. Lincoln Blvd, Oklahoma City, 73129.
This Briefcase article began with me researching legal decisions on whether lawyers should have smart devices such as those sold by Google and Amazon in their offices because those devices are on, listening to everything said and phone call you have with clients, opposing counsel, and others. This could include private confidential information, attorney strategy, HIPAA-protected information and other private identifying information. Lawyers must be aware, more now than ever, of the need to protect and secure this information, as well as other client information. However, I was sidetracked by multiple other items, and life in general.

President begins one and a half years from now, I started to write down some notes and plans based upon things I heard at these two events. I was then sidelined by a shoulder surgery and related anesthesia reaction that put me in a recliner for an extended period of time, even though we don’t own a recliner. My wife banned recliners from our home, despite my statements about how nice these new man cave game room recliners are, with built-in massage, heat, USB ports, and multiple cup holders. However, I was told that people recovering from shoulder surgery had to sleep in recliners, and this proved to be a true statement. So, we went to my mother-in-law’s house and borrowed a recliner. I got as far as jotting down notes for a plan and determining some metrics for your current County Bar Board. Here is the rough make-up of the current Board:*

It is incredible to me that in this busy merry-go-round world of practicing law that this Board, this executive committee, and 35 past presidents would gather to work out ways to help improve our profession and provide all lawyers, not just young lawyers, with great mentoring, support, and social justice outreach. The current board pretty closely reflects the composition of the overall Bar. So, I have less than 2 years to work out the plan for getting those non-members in our local Bar to become members. In the meantime, I suspect that Amazon and Google will be replaced by some other thorny client confidence problem that future Briefcase contributors can write op-eds about.

Back to the recliner, which happens to be placed in front of the TV. When you are not totally consumed with practicing law, managing a law firm, and writing down your billable time, it’s amazing to see what is going on in the world. Amazing and tragic at the same time. Significantly, NBA referees are not any better in the conference playoffs’ 6th or 7th game when they were during the season. Then came NBA championship game 1, where they really showed out. I also watched Women’s College Softball. I watched Men’s College Golf. Then there was PGA golf, car racing, a horse race, and NCAA Baseball. No MLB for me.

I learned that Las Vegas has a hockey team that I didn’t know existed and they are playing for the Stanley Cup. I watched a night of all-local television stations following the Lake Hefner restaurant shooting, and easily determined that coverage of that incident was worse than any weather-related coverage they regularly produce.

The national news provided coverage of on-again-off-again talks with North Korea, how Italy’s economy might take the entire global economy down, and I learned that there was a new, highly-rated Roseanne show that was already cancelled. Having not watched Roseanne the first time around, and not aware that Roseanne was back, you can imagine my surprise in finding that it was already cancelled.

It’s also interesting to be in a recliner in front of the TV during political commercial season. If you were ever concerned about the public’s perception of lawyers, just watch the current advertising of politicians who also happen to be attorneys. Suddenly, it came to me that if you spent all your time observing the problems and solutions of our culture, society, and the world at large as depicted on TV, you could certainly have a biased perspective that could cause a preexisting glass-mostly-empty outlook to be hypercritical of anything positive.

But the television focused world view comes crashing down when compared to what I recently witnessed from OCBA lawyer leaders. Then I hit upon it – the reason so many lawyers are willing to volunteer their time and energy to support and energize our profession was obvious. The people who take the time to work for the sake of the whole and overall good find that the overall fabric of our profession and psychological health of its members (including themselves), is improved. This satisfaction comes when people work for the advancement of civil justice, as well as social justice. If your mindset is limited to only your own advancement and doing things solely for the dollar, then you’ll never know that freedom and peace. Basically, you’ve got to get out of the recliner and away from the TV to do some good. Get involved and invite a non-member to get involved. Until then, I’m searching through seasons 1-7 of Game of Thrones – “You know nothing, Jon Snow.”

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) 605-9090 or tweet him at @attymikeb. For more information, please visit www.hbokc.law.

This Briefcase article was contributed by Michael W. Brewer.

MUSINGS FROM THE RECLINER

by Michael W. Brewer

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By-election comes crashing down when compared to what I recently witnessed from OCBA lawyer leaders. Then I hit upon it – the reason so many lawyers are willing to volunteer their time and energy to support and energize our profession was obvious. The people who take the time to work for the sake of the whole and overall good find that the overall fabric of our profession and psychological health of its members (including themselves), is improved. This satisfaction comes when people work for the advancement of civil justice, as well as social justice. If your mindset is limited to only your own advancement and doing things solely for the dollar, then you’ll never know that freedom and peace. Basically, you’ve got to get out of the recliner and away from the TV to do some good. Get involved and invite a non-member to get involved. Until then, I’m searching through seasons 1-7 of Game of Thrones – “You know nothing, Jon Snow.”

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the doctrine as announced in the Sowers Case are the soundest in reason and should be followed by this Court. Those decisions which have not followed the rule as there announced have based their holding upon the doctrine that has been applied to other criminal cases, that where a question of fact is passed upon by a jury, that verdict will not be set aside if there is any evidence to support it. The court in the Sowers Case, after stating the rule, says: “But cases of the character of the one at bar have always been held an exception to such rule, and even exceptional, in this and other particulars, from the rules of procedure in ordinary criminal cases.”

This statement is sound, and is in complete accord with decisions from many other cases of this character, which hold that each case finally rests upon the facts of that individual case, after a careful survey by the court of the whole record. This rule is now adhered to by the great weight of authority, and by the best reasoned cases. Our experiences as prosecuting attorneys or as trial judges and our experience upon the bench and the examination of many cases have led us to come to this conclusion in cases of this character.

Here there is absolutely no corroborration of the prosecutrix as to the act charged and it clearly occurs that if these acts had occurred “twenty or thirty” times in a public place, where the wife of defendant and her nephew were continually working, that they or someone else would have seen so that they could have corroborated the prosecutrix. They might not have observed one or more occasions, but in the number testified to by the prosecutrix it is inconceivable that someone would not have seen them. The county attorney seemed to have realized this or he would have not dismissed the original information filed against this defendant.

The defendant in this case made a motion for continuance by reason of the absence of a witness, J. B. Wells, and set up what he would testify if present. The county attorney, for the purpose of not having a continuance of the case, admitted that the witness’ statement did not tend to the facts set up in the affidavit for continuance, but that he would not admit the statements made were true. With this agreement, the evidence was presented. The witness, according to the affidavit, would have testified that he was in the army at Marchfield, California, and that he had recently been inducted and could not get a furlough to return to the state and testify; that he was a nephew by marriage to the defendant and that he had been convicted of a crime and sentenced to a period of 15 years.

There is only one matter revealed by this record to which we have not heretofore referred. The defendant offered several witnesses who testified to his good character and reputation. The county attorney on cross-examination did not ask any of them if they had knowledge of defendant having been convicted of a crime, though he would have had a perfect right to so question them, when defendant put his character in issue, but when defendant took the witness stand he was asked by the county attorney: “Q. Have you ever been convicted of a felony? A. Yes, sir.” “Then was that? A. I believe the first time I was convicted was in 1921. Q. When was the second time you were convicted? A. I was convicted I believe the second time about 1936 or 1937.”

No other questions were asked in reference to this witness, and the record does not show that the prosecution was aware of this, which he was convicted. The answer to these questions of his previous convictions was in all probability the cause of his conviction. This evidence was clearly admissible under the law, and of course was for the consideration of the jury, although the other evidence of the workdays and the night of the occurrence, it only went to his character and credibility as a witness and not to the corroborration of the prosecutrix. The defendant should not be convicted in this case unless the evidence justified it under the law, even though he had been previously convicted on two different occasions.

For the reasons above stated, the judgment and sentence of the district court of Creek county is reversed and remanded.
15, 1968 at 5:00 p.m., * * *

but, as we view this case, it is not now necessary to deal with plaintiffs' prayer in further detail.

In the hearing of the oral arguments before this Court on May 28th, 1968, arguments pro and con of plaintiffs' petition were advanced on their behalf and on behalf of defendants, and also parties, who are said to have applied, as citizens, for the aforementioned public hearing before the Secretary of State. On that occasion, the latter, who now appear herein as intervenor and amicus curiae, represented that they, or at least some of them, were in the process of filing an appeal to this Court from the hereinafore described decision and certification of the Secretary of State.

This Court takes judicial knowledge of its own records showing that on June 7, 1968, a purported petition for mandamus was filed, and will be properly prosecuted, to the end that the parties involved will obtain an appellate determination of the merits of all complaints properly advanced against the Secretary of State's decision and certification. And it should be strictly understood that nothing herein said, or done, will be permitted to deprive plaintiffs of the right to vote, nor will they be hampered, or hindered, by letters such as the said State Board's so-called "written application", and decision. They suggest, however, that the Secretary of State's letter, if not rescinded, thereby nullify the State Election Board's letter, thereby depriving plaintiffs of the right of vote to the Party in the regular primary to be held this year on the 4th Tuesday of August, and any election held subsequent thereto, under the provisions of Tit. 26 O.S. 1967 Supp. § 171.

In view of the foregoing, we proceed to determine whether or not we should issue a writ reasonably calculated to nullify the State Election Board's letter, considering the effect it has undisputedly had in inducing county election boards to postpone, until Causes Nos. 43047 and 171 supra, discharge the burden of showing that it is in error, we think plaintiffs' desire to register as electors of the American Party should not be hampered, or hindered, by letters such as the said State Board's so-called "written application", and decision. And it should be strictly understood that nothing herein said, or done, will be permitted to deprive plaintiffs of the right to vote, nor will they be hampered, or hindered, by letters such as the said State Board's so-called "written application", and decision. They suggest, however, that the Secretary of State's letter, if not rescinded, thereby nullify the State Election Board's letter, thereby depriving plaintiffs of the right of vote to the Party in the regular primary to be held this year on the 4th Tuesday of August, and any election held subsequent thereto, under the provisions of Tit. 26 O.S. 1967 Supp. § 171.

In view of this development, we decline to consider herein any argument relating to the merits, or demerits, of Secretary Rogers' determination, and herein described decision and certification of the Secretary of State, which are inconsistent with today's holding, these and any other cases not specifically cited are inconsistent with today's holding.

As plaintiffs’ complaints against the said State Board’s so-called “written directive” are lodged both as prospective voters, and as claimed nominees of The American Party for Presidential Electors, it is unnecessary to determine whether they are entitled to any relief such as nominees, if their rights as qualified electors are being jeopardized, or abrogated, by that Board’s action. Thus, we disregard the intervenor’s arguments to the effect that the said letter of May 15, 1968, is void on its face, or of the citation of any authority to the effect that it is necessary for plaintiffs to apply for registration of voters, and registration thereof. We have no authority to grant such an application. Accordingly, this case must be reversed and remanded for a new trial.

June 30, 1993

 Twenty-Five Years Ago

Willie Ray Green was tried by a jury and convicted of two counts of Robbery with Firearms (21 O.S.Supp. § 894-D.P.L. 1979), one of which relates to the crime of shooting with intent to kill (21 O.S.Supp. 1987 § 652), both after Former Conviction of a Felony (21 O.S.Supp. 1985 § 51), in Oklahoma County District Court, Case No. CRF-89-4865, before the Honorable James B. Blevins, District Judge. The trial judge in this case apparently used of one of these peremptory challenges to object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.” Id. at 96, 106 S.Ct. at 1075. We held that a defendant could object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.” Id. at 111 S.Ct. at 1366 (emphasis added).

Accordingly, this case must be reversed and remanded for a new trial.

As the couple neared Broadnax, they saw Green running after him. Green shot at the couple, Broadnax and the getaway car, while Broadnax exited their car near a wooded area. The couple found and arrested them shortly thereafter.

When Green and Broadnax testified at trial, they both admitted to participating in the alleged offenses. Each claimed the other “forced” him to commit the crimes. The jury found both guilty on all three counts alleged in the information.

We need only address Green’s second proposition because it raises a trial error which warrants reversal. Green claims three of the State’s peremptory challenges were racially motivated and thus violative of the Equal Protection Clause of the Fourteenth Amendment. See Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1985). We hold that the trial court’s failure to require the State to provide a race-neutral explanation for the exercise of one of these peremptory challenges violated the principles set forth in Powers v. Oklahoma, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 41 (1991). Accordingly, this case must be reversed and remanded for a new trial.

The peremptory challenge at issue was exercised to remove Juror Draper from the panel. The judge thought prospective Juror Draper was Hispanic. The State claimed he was dissatisfied with the defendant’s race.” Id. at 96, 106 S.Ct. at 1075. We held that a defendant could object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.” Id. at 96, 106 S.Ct. at 1075. We held that a defendant could object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.” Id. at 111 S.Ct. at 1366 (emphasis added).

Broadnax, committed an armed robbery at the Buy Fast Foods convenience store. A couple drove their truck into the store parking lot as the robbery was completed. Batson to allow a criminal defendant to object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.” Id. at 96, 106 S.Ct. at 1075. We held that a defendant could object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.” Id. at 96, 106 S.Ct. at 1075. We held that a defendant could object to race-based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race.”
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2018 OCBA Annual Golf Tournament--Monday July 16, 2018--
Gaillardia Golf & Country Club

FORMAT:

- Hole-in-one Prizes
- Team and Player Awards
- No Handicaps – Flights will be set at the end of tournament
- 8:00 AM Registration
- 9:00 AM Shotgun Start
- 4 Player Scramble
  (Lawyers, Judges or Law Clerks)

ENTRY DEADLINE—July 12, 2018.

PLAYER #1 _______________________________
ADDRESS ____________________________________________
PHONE ______________________________
E-MAIL_____________________________________
PLAYER #2 _______________________________
ADDRESS ____________________________________________
PHONE ______________________________
E-MAIL_____________________________________
PLAYER #3 _______________________________
ADDRESS ____________________________________________
PHONE ______________________________
E-MAIL_____________________________________
PLAYER #4 _______________________________
ADDRESS ____________________________________________
PHONE ______________________________
E-MAIL_____________________________________

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FAMILY JUNCTION YOUTH SHELTER

A non-profit organization that provides a safe 24-hour home for children between the ages of 12 and 17 who need temporary care while in crisis or transition living situations. While at the shelter, residents receive valuable life skill training and counseling and attend public school. This shelter is a program of Youth Services of Oklahoma County.

Entry Fee: $185 OCBA Members/$215 Non-Members

Mulligans: $10 each – Maximum of 2 per player

[ ] CHECK [ ] VISA [ ] MASTERCARD

Total Amount: ____________

Card #: _____________________________
Exp. Date: ______________
CVV#: ________ (3-Digit Security Code)

Signature: __________________________

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Johnson Hanan Vosler Hawthorne & Snider announce new partners

Alexandra G. Ab Loy and Erin Blohm were named partners with Johnson Hanan Vosler Hawthorne & Snider. Allie and Erin are talented advocates for the firm’s clients, and their experience extends across all of the firm’s practice areas with a focus in medical malpractice defense, civil rights defense, civil litigation, and various in-house matters for corporate clients. Their litigation background includes representing clients in state and federal courts across the State of Oklahoma.

Brandon Long elected president of SouthWest Benefits Association

Brandon Long, a shareholder and ERISA attorney with the law firm of McAfee & Taft, took over the reins as president of the SouthWest Benefits Association, the region’s premier industry organization for benefits professionals, at its annual conference held last week in Austin, TX.

Long was first elected to the SWBA’s board of directors in 2014 and has previously served in a number of leadership roles, including president-elect, treasurer, chair of the audit and budget committee, director on its education committee, and chair of the organization’s 43rd annual conference this year.

As the leader of McAfee & Taft’s Employee Benefits and Executive Compensation Group, Long oversees one of the Southwest’s largest and most experienced teams of employee benefits lawyers. In addition to advising and representing clients in matters involving qualified retirement plans, health and welfare plans, and executive compensation, he also frequently speaks on employee benefits issues before state, regional and national audiences.

The SouthWest Benefits Association was founded in 1975 to foster relationships and support the educational development of employee benefits professionals. Members represent a wide range of specialties, including corporate human resources, benefit plan administration, financial management, investment counseling, third party administration, health insurance, law, accounting, actuarial, and benefits consulting.

Walker to lead Crowe & Dunlevy’s energy practice

Crowe & Dunlevy recently announced the appointment of attorney L. Mark Walker as chair of the firm’s Energy, Environment & Natural Resources Practice Group. He will lead a team of more than 30 attorneys regarding energy and environmental matters, including litigation, transaction and contract services, representation before state and federal administrative agencies, environmental permitting, compliance and defense, labor and employment and tax and corporate management.

Walker graduated with special distinction with a bachelor’s degree from the University of Oklahoma in 1980 before going on to receive his law degree from the University of Oklahoma College of Law in 1983. Today, he focuses his practice in the areas of energy, natural resources and environmental law, which includes litigation in both federal and state courts, as well as practicing before the Oklahoma Water Resources Board, Oklahoma Department of Environmental Quality and Oklahoma Corporation Commission. He is listed by the Chambers USA publication as a leading individual in Energy and Natural Resources, in addition to his rankings in the Best Lawyers and Super Lawyers publications.

Walker is the immediate past chair of the Oklahoma Bar Association Energy and Natural Resources Section and past president of the Mineral Lawyers Society of Oklahoma City. He is also a Fellow and former Regent in the American College of Environmental Lawyers.

Walker serves on the board of Trinity Legal Clinic of Oklahoma, which provides pro bono legal services in the greater metro area.

Kay Floyd Elected as Senate Democratic Leader

The Senate Democratic Caucus announced today they have elected Sen. Kay Floyd (D-Oklahoma City) to serve as Senate Democratic Leader for the 57th Oklahoma Legislature.

Floyd, who currently serves as Senate Democratic Caucus Chair, will succeed Sen. John Sparks (D-Norman) in January of 2019. Sen. Floyd will be the first woman to lead a caucus in the Oklahoma Senate.

Sen. Floyd was elected to the Oklahoma Senate in 2014 after serving one term in the Oklahoma House of Representatives. She previously served as an Administrative Law Judge for the State of Oklahoma, a Municipal Court Judge for the City of Oklahoma City, as Deputy Executive Director of the Oklahoma Horse Racing Commission, and as an Assistant Attorney General for Oklahoma. Sen. Floyd is a graduate of Oklahoma State University and the University of Oklahoma College of Law. She grew up in Ada, Oklahoma.

Andrews Davis Closing After 77 Years

After 77 years of consistently providing quality legal services to a broad range of clients, Andrews Davis Law Firm has decided to close its doors effective June 30, 2018.

Steps are being taken to ensure that all client matters and claims of creditors are properly handled. We will be communicating with clients regarding the handling of their matters going forward.

The firm had its beginnings in 1941 and has spawned outstanding lawyers, jurists and other public servants. The full service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service law firm took deep pride in providing excellent, innovative and efficient service 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Awards Committee
This committee is responsible for both the OCBA Award nominations, the OBA Award nominations and the Leadership in Law Awards.

Bench & Bar Committee
Working to improve relations between the bench and the bar, this committee has two major projects. During election years, judicial candidate opinion polls are taken with results being released to the public in an effort to provide public information. This committee is also responsible for the bi-yearly Bench & Bar Conference.

Briefcase Committee
This committee is responsible for the monthly publication Briefcase. They recruit articles, write articles, edit and proof each month.

Continuing Legal Education Committee
Responsible for providing quality CLE programs to OCBA members at discounted prices, this committee plans sessions each year through the months of October and February.

Community Services Committee
This committee plans community services projects such as assisting the local youth shelter. They also coordinate clothing drives for the drug court participants. This committee works with the Juvenile Justice Center in providing incentives for their teens on probation as well as providing parties for nursing home residents.

Fee Grievance & Ethics Committee
Comprised of both lawyer and non-lawyer members, this committee investigates complaints of clients against attorneys who are OCBA members. They are deputized through the OBA to investigate and recommend disposition of such cases.

Law Day Committee
This committee is responsible for all Law Day activities which include the Law Day Luncheon, Ask A Lawyer Program, student mentoring program and civic group speakers.

Law Related Education Committee
This committee provides support for the OCBA Law Related Education program. The committee works to update current materials and generate new ideas for classroom presentations.

Lawyers Against Domestic Abuse
This committee works to raise awareness of domestic abuse. Working with the YWCA and Attorney General’s Office, the committee provides training of attorneys & judges in dealing with domestic abuse situations and provides resources online and on the 1st floor of the Oklahoma County Courthouse for victims. They also work to provide victim advocates and a Bench Book on Domestic Violence Cases for Oklahoma County judges.

Lawyers for Learning
This committee is involved as mentors/tutors in the OKC Public School’s Community Involvement initiative working with Adams, Buchanan, Lee and Hillcrest Elementary Schools.

Veterans’ Issues Committee
Works closely with the OBA Oklahoma Lawyers for America’s Heroes Program in providing legal assistance to veterans. This committee is new and is also trying to find ways to assist veterans in other ways.

Voices for Children Committee
The main focus for this committee is the Carver-Mark Twain Head Start Program and Lee Elementary Pre-K. This group plans parties, provides books and readers and helps with a winter clothing drive each year.

Bankruptcy Section
This section meets 10 months a year at the U.S. Bankruptcy Court to discuss current issues in the bankruptcy area. There is a membership fee of $120 which provides for lunch at these meetings.

Corporate Counsel Section
This section involves in-house corporate attorneys and offers a chance for them to network with each other in a social setting.

Family Law Section
This section works with the judges of the Family Law Division in providing up-to-date information to those attorneys practicing in the family law area.

Young Lawyers Division
This hard-working group of young lawyers takes on many projects each year. Some of these projects include the Harvest Food Drive, Striking Out Hunger Bowling Tournament in the summer and Chili Cook-off in the winter. The Community Service Subcommittee plans 3 community service projects each year.
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