GOLF TOURNAMENT RETURNS TO RIVER OAKS GOLF CLUB

The rolling hills, lush fairways and tree-lined fairways of the challenging River Oaks Golf Club is the site of the 2019 OCBA Golf Tournament sponsored by instaScript Court Reporting on Monday, September 30, 2019. Built on a hilltop east of I-35 off Hefner Road, this private golf club offers championship golf for players of all levels. The tournament is a 4-person scramble. You can bring your own team or sign up as a single and we’ll put you on a team. GableGotwals is bringing back its championship team and its Grand Champion traveling trophy. They’ve thrown down the gauntlet and said no one is moving the Championship trophy out of their reception area.

See GOLF, PAGE 4
By Michael W. Brewer

September 1, 2019 began my term as President of the Oklahoma County Bar Association, your local volunteer Bar Association. I am a trial lawyer at Hilgten & Brewer, P.C. I began my lawyering career in October of 1986, at a law firm then known as McKinney, Stringer & Webster. Like young associates in many OKC law firms of the time, we were encouraged to be active in the local Bar Association, make connections and get to know other lawyers and judges. In the beginning, this was mostly through social connections via the Young Lawyers Division, which was very active. Beyond social gatherings like the Myriad Gardens Swamp Race and community commitments, the OCBA Young Lawyers had softball and basketball leagues. In 1993, I was encouraged to run for the OCBA Board of Directors and served a three-year term that overlapped the Murrah Building bombing. I witnessed your Bar actively serving the injured community of OKC. Later OCBA Past President, the late Judge Vicki Robertson, selected me for a five-year term as the Chair of the Fee Grievance Committee. I have served the OCBA on that committee and the Briefcase Committee since then. A problem with practicing law for 33 years is that you have stories to tell and experiences to relate. Over the next twelve months, you will get an ear (eye) full.

Before I get too far off the rails, I must thank 2018-2019 President Special Judge Sheila Stinson. Judge Stinson has been a stellar President for the OCBA and a steady rudder for your Bar during the past year. She will be a hard act to follow, but if Debbie, Pam, Connie, and the amazing staff triplets of your new Board, Officers, Committee Chairs, Vice Chairs, Co-Chairs, Committee Members and the amazing staff triplets of Debbie, Pam, and Connie, we will get things done. If I make any mistakes or screw up, then I may be in trouble in more venues than I can handle.

Each President of the OCBA has a theme on which their year is built. I can’t proceed on the theme of “Don’t Mess It Up.” So instead, and given the current culture polarization on politics and volume of noise and misinformation on social media and in the news, I considered it important to reinforce something we all already know. Simply put, the theme is “Built On A Firm Foundation”. The By-Laws of the OCBA, in summary, state that the OCBA exists to promote the legal profession. My belief is that our profession exists only upon the firm foundations of the American Civil and Criminal Jury Trial system. The OCBA, through CEUs, community service projects, and programs, will emphasize the firm and solid foundations of the independent judiciary, the jury trial system, and our commitment to social justice through community activities. In many cases, the only time that non-attorneys see lawyers is when they are volunteering and providing social justice for those with greater needs. This will be a fun and educational journey.

For those of you who do not know me from social media or the practice of law, I have been married to Kelly for 35 years. We enjoy traveling the 50 states and searching for good places to eat. We have two adult daughters, Allison Hernandez, who is a lawyer in Sacramento, California and is married to Jorge; and Jessica Holcomb back who is a Campus Minister for CRU at North Texas University in Denton, Texas and is married to Nick. Kelly and I attend the Vine Community Church which is a small non-denominational evangelical church with an active urban ministry.

My path to law school and lawyering was anything but straight. In my family, I was a first generation college attendee and one of the first to obtain a professional degree. I went to OU on an Engineering Scholarship and received a Mechanical Engineering Degree. However, my age group graduated during a bust cycle, which pretty much left Oklahoma as a waste land. Comparing it to the current Oklahoma, it seems unlikely that we would have the population and all the restaurant and entertainment opportunities that we have, including the Thunder, even though that brings with it the scourge of poor big-league officiating. In any event, with the job offers rescinded and Oklahoma energy companies going out of business, I did what all recent graduates did that wanted to continue going to Sooners football games and not start paying on their student loans and I applied to graduate school. I spent a year working at Tinker as a jet engine engineer while going to night school for my MBA at OU before getting into law school at OU. I had no idea what law school was about, or what lawyers did, but it was three more years of Barry and Billy and holding my student loan in abeyance. Similarly, I had no idea what litigation was, until I interned for now-retired United States District Judge Ralph Thompson during the second semester of my second year of law school.

I was able to watch Judge Thompson rule from the bench and watch and listen to experienced litigators, who appeared in front of him. It was so different than patent law, engineering, corporate law, or anything else I had been focused on, and I was immediately attracted to it. Fortunately, during law school I had several legal internship/law clerk jobs at excellent litigation firms in Oklahoma City, all of which gave me great experiences. I was hooked on litigation. One thing that most trial lawyers will tell you is that they have to believe that the jury system works, whether they win, lose, or draw. Ultimately, lawyers have to make the system work, as it provides an important function in American society. Without the commitment of professionals like you, and volunteer organizations like the OCBA, this part of the essential foundation created by the Constitutions (both Federal and Oklahoma) could fail. That alternative is simply not an option.

On May 1, 2020, which is the OCBA celebration of Law Day, we will have special events and the annual Law Day luncheon marking the 100th Anniversary of the 19th Amendment, which gave women the right to vote in all states. In sum, we will spend the year promoting the public perception of our profession and ensuring that the American jury system, along with independent judges, and legislators and the executive enacting laws for the common good, continues to thrive. No other system of justice like it exists on the planet. I cannot think of a better combination of programs to promote lawyers, judges and the American Justice System than we will roll out during the coming year. Ultimately, you will get to read the rest of my story, hear about great places to eat, and maybe even see pictures of pie in Briefcase articles to come. I look forward to serving alongside each of you at your OCBA.
Dear Roscoe:

I’ve been contacted by an elderly couple who live in senior housing. She is wheelchair bound, and he gets around only with difficulty. They live on the sixth floor. The building’s only elevator is busted. It broke down in May. Management said it MAY be fixed by next month. Shouldn’t there be a law covering this? Constructive eviction maybe? J.M., OKC.

Dear J.M.:

There ought to be a law. The question is: where do you find it? Most people would be shocked to learn there are no federal laws regulating elevator repairs in federally managed or sponsored elder housing. I know I was. HUD regulations require only the most basic life safety features in elder housing, such as smoke detectors. Most state and local laws covering elevators require that they be inspected and remain in good repair. It is always hard to search for the absence of a law or a case, but I have found nothing in the United States that regulates how long a repair may take. If there’s a legal theory at all it will probably be found under State landlord-tenant law, or perhaps the Americans with Disability Act (ADA). The timing of this problem suxcks because we now have the elements of a perfect storm: 1) Aging persons comprise a rapidly growing demographic; 2) Experts and advocates encourage “Aging in Place”; and 3) Complexes built in the 60′s and 70′s are aging themselves, and often deteriorating. Oklahoma law has recognized an action in tort for constructive eviction where a landlord renders the apartment unliveable, and the tenant moves out within a reasonable time after the injury occurs. Unfortunately, most Oklahoma cases pre-date the passage of the Oklahoma Landlord and Tenant Act (10A). Whether any common law remedy survives ORTLA’s exclusivity remain subject to question. In your case, it sounds like your clients may have become prisoners in their own home. Unfortunately, this space is not adequate for an exhaustive treatment worthy of the import of the issue. Best of luck to you and your client. Keep me in the info loop if you can.

STUMP ROSCOE

By Roscoe X. Pound

STUMP ROSCOE

Dear Roscoe:

I begin collection and conduct a hearing on assets. Two months later I learn that not only has my client filed a release of all claims or judgments against the Defendant and has, in fact, married him. Now, I’m as romantic as the next fellow but really, can they do this? B.R., OKC

Dear B.R.:

Wow, talk about “the wedding bell blues.” It sounds to me like you may have an interference with contract claim, particularly if the Defendant was the prime mover in this whirlwind romance. In the OSCN docket sheet you so helpfully included, I note that Defendant was present at trial, knew of the judgment against him, and, in fact, appealed that judgment. I also note that the Journal Entry notes that you also received a judgment for fees, in an amount to be determined. Taking one step further, my OSCN check also shows a marriage license procured within a week of the HOA you mentioned, a marriage license application a week later, and the release filed nine days from the nuptials. In order to establish a claim of tortious interference with contractual relationships, you must prove: first, that you had an existing business/contractual right that was interfered with; second, that the interference was intentional and wrongful, and neither justified, privileged, nor excusable; and, third, that the interference proximately caused damage. Wilspec Technologies, Inc. v. DunAn Holding Group Co., 2009 OK 12, 15, 204 P3d 69, 74.

Here, looking at things from your perspective, Defendant knew you had a fee agreement with your client, and that he intentionally and wrongfully interfered to avoid paying the attorney fees and costs. He was present during trial of the underlying litigation, received the judgment, and knew that the trial court separately awarded you attorney fees. He also knew that you represented Plaintiff throughout trial. Post-judgment, he knew you were attempting to collect the judgment. He appeared at the HOA, and the attorney fee awarded by the court was an issue in the appeal. The text of the release sets out no consideration other than “love and affection” and “a desire to resolve all issues between them.” This, it seems to me, has the makings of a claim both viable and plausible. Now go prove it, and good luck.

I arrived at the Hudson County Courthouse early with Sandy Kearny. The courthouse watchers and the Fourth Estate still turned out in force. I hadn’t missed any real fireworks. The defense, particularly Joseph Kearny’s attorney, was about to wrap up his cross of Dr. Rielings. Apparently, Peter Kearny’s attorney, Mr. Comer, had done the heavy lifting in his cross on behalf of Peter. Mr. Comer assumed his position at the podium, gripping its edges. It looked like some director in his head had called for everyone to take their place, and he waited for his cue. In my own observations, Stanley T. Comer stood poised to save himself the embarrassment of rising for this diminutive, yellow woman who dared presume to judge his work and words.

Mr. Comer: And once again Dr. Reisling, you testified as to your experiences with Mr. Peter Kearny?

Dr. Reisling: Yes sir.

Q: You’ve never worked with Joseph Kearny, have you?

A: No sir.

Q: In fact you’ve never even heard of Joseph Kearny prior to the State hiring you as its expert. Isn’t that correct?

A: Well, it’d be more--

Q: That’s a yes or no question.

A: Yes.

Q: To be clear, Doctor, you’re ‘yes’ is in response to the fact you’ve never heard of Mr. Joseph Kearny before the State purchased your services as its expert in this case?

Mr. Coleman: Objection to the use of the word “purchased.”

THE COURT: Overruled. That’s what redirect is for. Witness may answer.

A: Correct. Yes.

Q: Thank you. Now, this business about the East Germans, it’s not a one-man show, right?

A: I’m afraid I don’t understand--

Q: Well, you’ve previously stated that Zeretzinger operations were conducted by teams, correct?

A: Yes.

Q: Would I be correct in saying, that these teams required persons with diverse skills in order to pull them off?

A: Yes.

Q: Sometimes, they’d even press friends and neighbors into service?

A: Yes.

Q: And of course, being in East Germany, they’d never disclose their participation would they?

A: Not likely. No.

Q: According to your CV, you have extensive experience conducting investigations and interrogations, true?

A: True.

Q: In fact you’ve testified about some of those experiences.

A: Yes.

Q: Now, you’ve just stated that this job, if the State’s theory is correct, is bigger than one or even two men can possibly manage?

A: Yes.

Q: Discounting trained operatives, in your experience does concealment of those experiences in the field of covert act become more difficult the more people who are in on the secret for?

A: That’s generally true.

Q: In the course of your investigation, have you come across any evidence of anyone else involved in the alleged illegal activity?

A: Well, there was a guy called Billy Hurl who--

Q: Yes, the fellow testifying as part of his plea bargain. Anyone else?

A: No sir.

Q: Have you seen the indictment in this case?

A: I have.

Q: And it doesn’t name any specific conspirators either, does it.

A: No, it does not.
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.

**PIVOT – FORMERLY KNOWN AS YOUTH SERVICES OF OKLAHOMA**

Established in 1972 by a group of visionary leaders, Pivot’s original services included crisis intervention, individual and family counseling and referrals. In addition to our founding services, programs and services now include an emergency shelter for homeless or displaced youth, independent living services, education support and job assistance, life skills training and practice, mentoring, as well as prevention and intervention programs that are provided to youth and families.

**Volunteer/Intern:**
Volunteers are vital to Pivot! They are instrumental in helping us meet the needs of the teens in our community. Please consider becoming a volunteer for Pivot! We need volunteers in many different areas, which include:

1. **An administrative whiz?** Consider donating your time to help with administrative tasks like data entry.
2. **Are you a local chef or cook?** Volunteer to lead a cooking class at Café 29, Pivot’s teaching kitchen.
3. **Motivated go-getter?** Organize a fund-raising event at your office, school, scout troop, civic group or place of worship to help collect donations that support our mission.
4. **Like to plan parties?** Serve on our event planning committee.

Want to volunteer, but don’t have a lot of time? Here are a few things you can do to help:

1. **Like us on Facebook, follow us on Twitter, LinkedIn or Instagram**
2. **Share our posts on your social media**
3. **Out grocery shopping?** Purchase a few items from our pantry wish list which include microwaveable meals, hygiene items, khaki’s and red or blue polo shirts in all men and women sizes.
4. **Be a volunteer for special events**

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

**GOLF, Continued from PAGE 1**

“We moved the tournament to September 30 because the average temp in Oklahoma City on that date is 79 degrees, instead of the sweltering heat of July,” said Gary Chilton, tournament chairman. “It should be a beautiful fall day on a gorgeous golf course,” he said.

Under the new format, the tournament is not using any handicaps. The only restrictions are that golfers must be attorneys, judges, law clerks, court clerks, legal assistants, or paralegals. Teams will be flighted after the tournament into three flights based on that day’s scores. The Grand Champion of Championship Flight will win the 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.

The entry fee is $125 per player for OCBA members and $155 for non-members, which includes 18-holes of golf, golf cart, lunch, food after the tournament, and all beverages while on the golf course (including domestic beer, sport drinks, soda and water). Check-in begins at 11:00 a.m. and there will be a shotgun start at 1:00 p.m. Entry deadline is September 26, 2019. Proceeds of this year’s tournament are being donated to Oklahoma Lawyers for Children.
FED TO DEVELOP REAL-TIME PAYMENTS

By Miles Pringle

Real-time payments is the ability to transfer funds between accounts almost instantaneously. Currently, there is only one real-time payment rail in the U.S., which is provided by The Clearing House. The Clearing house is a private firm owned by 24 of the nation’s largest banks. As one may expect, many people are wary of The Clearing House having a monopoly on real-time payments infrastructure.

Rebecca Rainey, President of the Independent Community Bankers of America (“ICBA”), wrote a letter to Jerome H. Powell, Chair of the Board of Governors of the Federal Reserve System on July 24, 2019. In her letter Rainey stated that “Extending [the Federal Reserve’s] long-standing roles in the payments system to real-time payments would avoid the risk of having only one, for-profit, private-sector settlement service run by the nation’s largest and riskiest financial institutions.” She went on to argue that “Without the Federal Reserve providing [real-time payment] services, access to the payments system becomes fragmented and left in the hands of a private-sector monopoly and subject to the whims of third-party processors.”

As a highly developed economy, the U.S. has established several payment methods. In addition to cash and checks, there are ACHs, wires, card networks (credit and debit), and private networks. These networks often overlap with one another, creating a variety of complex payment networks. For example, Venmo – a Paypal service – links an account (credit/debit card or checking) to a user’s Venmo account, where the user can exchange funds with other Venmo users. If a user wants to transfer funds from her Venmo account to her checking account, then the funds are sent via an ACH transfer. Mapping out the entire system would look like an infinity loop maze.

The Federal Reserve System plays a vital role in the U.S. payments system. In addition to printing money, the Federal Reserve processes: i) checks; ii) ACHs; iii) wires; and, iv) government payments. As a result, the Federal Reserve has helped to build out the infrastructure on which our payment systems run. This was not always the case, “before the creation of the Federal Reserve in 1913, the system by which all this money moved was ad hoc, unpredictable, unreliable, and plagued by delays.”

After much anticipation, on August 5th the Federal Reserve Board announced that it would develop a “new round-the-clock real-time payment and settlement service, called the FedNow Service.” It is, simply put, a big deal in the banking industry. Kansas City Federal Reserve Bank President Esther George commented that “[t]he last time the Fed offered a new service, certainly of this magnitude, would have been some 40 years ago,” referring to the automated clearing house network (“ACH”) which comprises approximately 15% of all U.S. payments.

For those who support the Federal Reserve’s move, the biggest criticism is the anticipated availability of FedNow Service (i.e. not until 2023 or 2024). This has led entities from the ICBA to Amazon to advocate that the Federal Reserve shorten its timeline. Cary Whaley, ICBA’s First Vice President or Payments and Technology, Policy, stated to the American Banker that “We need them to move faster… I’m not saying the Fed should move fast and break things. But by the same token, we need this infrastructure now.” The long timeline allows The Clearing House to further entrench itself as the main provider in the marketplace, and could give critics (such as those in Congress) the time to rally support against the Federal Reserve. As with previous payment rails, the Federal Reserve’s involvement in real-time payments will likely serve as a source of strength for the U.S. payments system and the broader economy. The U.S. has long championed competition and this is no different. As explained by the Department of Justice’s Antitrust Division, “Competition in a free market benefits American consumers through lower prices, better quality and greater choice. Competition provides businesses the opportunity to compete on price and quality, in an open market and on a level playing field, unhampered by anti-competitive restraints. Competition also tests and hards American companies at home, the better to succeed abroad.”

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3 Wack, Kevin, “And now, the hard part of the Fed’s path to real-time payments”, American Banker, (Aug. 5, 2019).
5 id.
This year’s Striking Out Hunger Bowling Tournament fielded with over 75 bowlers and 17 sponsors was a big winner for the Regional Food Bank of Oklahoma. Held on August 15 at the Heritage Lanes Bowling Center, there was plenty of friendly competition and chatter. The Young Lawyers Division profited $4,500 in their Harvest Food Drive efforts. Event chairs Randy Gordon and Sarah Beth Hance are to be acknowledged for their tireless efforts in recruiting sponsorships and teams.

Hall & Ludlum won first place in the tournament and team members were Andrea Golden, Randy Gordon, Judge Trevor Pemberton, AJ Redding & Ashley Warshall. Second place went to the team of Crowe & Dunlevy #1, which included Zane Anderson, Jaycee Booth, Lauren Clifton, Jeff Levy & Aimee Majoue. Third place team was Oklahoma County Judges and members of the team were Miles Pringle and Judges Mark McCormick, Tom Riesen, Kathryn Savage & Ken Stoner. Dunlap Codding won the “Most Spirited Team” Award for the second year in a row and the Chris Deason Squad won the “Best Dressed Team.” Winner of this year’s Strike Pot was Sam Merchant.

Second Place Team, Crowe & Dunlevy #1: Aimee Majoue, Jaycee Both, Baxter Lewallen, Zane Anderson, Jeff Levy & Lauren Clifton

First Place Team Hall & Ludlum: Ashley Warshell, AJ Redding, Andrea Golden, Randy Gordon & Judge Trevor Pemberton

Most Spirited Team(s), Dunlap Codding: Top Row: Douglas Sorocco, Jim John, Nick Rouse, Michael Schade, Evan Talley & Jacob Oliphant; 2nd Row: Lori Martin, Kathy Corken, Emma Butler, Paige Talley, Griff Gille (baby) & Gray Gille; Bottom Row: Kristen Gille, Candice Cannon, Alyssa Grooms, Wyatt (toddler)

Best Dressed Team, Deason & Friends: Chris Deason, Judge Patricia Parrish, Judge Jerry Bass, Judge Lisa Hammond & Cathy Christensen
Cyber Security Update

By John Graves

Data security breaches are a daily occurrence. The news is full of private business, governmental entities, and even law enforcement agencies that are victims of ransomware attacks, data breaches, or other cyber-related security events. As law firm’s increasingly gather larger and larger data sets of sensitive information and increasingly store these sets of data on remote servers, the risk profile of even small firms and solo practitioners has increased. Along with the risk profile, the lawyer’s obligations to protect that information, ethically and legally, has also grown.

On the ethics front, the American Bar Association [ABA] has weighed in with two recent formal ethics opinions regarding information security. The first ABA opinion, published in May 2017, addressed preventative security of information and opined that lawyers should be competent in relevant technology, understand and utilize reasonable security measures for themselves and their staff as well as demand reasonable security measures from vendors. This opinion directly addresses information in transit, but is also informative regarding security of information at rest. Comments to both the ABA Model Rules and the Oklahoma Rules of Professional Conduct encourage understanding the “...risk and benefit associated with relevant technology.” The second, relevant ABA formal opinion addresses the obligations of an attorney after a breach; interestingly, the ABA limits their discussion to the obligation accrued upon a breach that “...exposes confidential client information ... and it addresses only data breaches that involve information relating to the representation of a client.” The ABA’s opinion specifically warns that lawyers must use reasonable efforts to monitor their systems, and those of their vendors, for intrusion and loss of data. If a breach is detected, the lawyer must act reasonably and promptly to stop the breach and mitigate the damage. The ABA strongly encourages law firms and lawyers to have a plan in place in advance of a breach in order to systematically approach a resolution. The opinion also has detailed guidance on a lawyer’s responsibility regarding notice to clients. On the legal front, recent state laws have added requirements to the opinion’s general guidance. However, the opinion provides, perhaps, the most informative guidance on “reasonable” conduct. These new legal requirements, including notice to Attorneys General in an expanding number of instances, are applicable to Oklahoma lawyers by dint of the increasingly inter-jurisdictional nature of law practice as well as the legislative activity of our close neighbors. Most lawyers and firms, as well as those entities receiving general guidance from counsel, should consider the following:

1. Start with Security. Security should be a part of every business decision. Update and patch your software! Does the business need this data? What is the necessary lifecycle of this data? Follow industry best practices for securing sensitive data.
2. Trust No One. Data should be compartmentalized so that access is “need to know” only. Strong internal controls should make sure that no one person has unfettered or unmonitored access to sensitive data. Audit yourself to assure internal controls are followed.
3. Identity Authentication. If you or your firm has sensitive information, there should be strong protocols for access that include prevention against brute force attacks. There should be unique credentials traceable to unique individuals. Consider dual factor authentication for any sensitive information.
4. Audit Your Vendors. Any third party that stores, maintains, or processes sensitive data should be audited or provide evidence that their security is appropriate. These artifacts should be systematically retained.
5. Secure Physical Infrastructure. Physical access control, blocking USB ports, limiting access to paper files, etc. should all be considered as part of the overall security scheme.
6. Plan for Failure. You should have a plan to address and mitigate breaches caused by negligence or malicious action.

4. Id. at p. 6.
5. Id. at pp. 10 – 15.
8. E.g.: ISO/IEC 27032, National Institute of Science and Technology [NIST] Publications SP 500, SP 800, SP 1800.

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— Ada attorney and OAMIC insured
Excerpt from OCBA’s Briefcase

April 1, 1973
Vol. 5, No. 4

Video Replay of Trials For Appellate Courts is Luncheon Topic

By George Davis

Winfrey E. Houston, a practicing attorney from Stillwater, Oklahoma, will highlight the April 19, OCBA Noon Luncheon to be held the Imperial Ball Room of the Skirvin Hotel. His topic will concern the advantages of using mechanical recording devices in conjunction with a court reporter to update and streamline the appeals process.

The speaker coauthored an article in the February, 1973 American Bar Association Journal on this same subject. There are several major problems faced by appellate courts that would render a video replay beneficial according to Mr. Houston. All non-verbal communication (mood, accent, etc.) that can subtly yet significantly, affect the outcome of a trial is presently lost to the appellate courts. Based upon observation of videotape “records” six of the present Oklahoma Supreme Court Justices have expressed the view that the availability of videotape recordings would be helpful to appellate judges.

Mr. Houston was president of the Oklahoma Bar Association in 1969. He received his B.A. degree from Oklahoma State University and his J.D. degree from the University of Oklahoma College of Law in 1950. From 1968 to 1970 he served in the House of Delegates of the American Bar Association.

LAW LIBRARY NEWS

On August 22nd Judge Don Andrews presented a plaque to Ms. Chanda Graham in appreciation for her service to the Oklahoma County Law Library as Secretary/President of the Board of Trustees. Mr. Gary W. Wood will be replacing Ms. Graham as trustee. Ms. Graham will be greatly missed by all, her service was greatly appreciated at the Law Library.
Sooners, Kickers and Dastardly Deeds

By Jeff Massey

Law schools do not spend much time on the case of Smith v. Townsend, 148 U.S. 490 (1893), but its effect upon the development of the future capital city of the 46th State in the Union was profound. Smith was an employee of the Atchison, Topeka and Santa Fe Railroad, residing within the Territory of Oklahoma. When the shot was fired that opened up the Oklahoma Territory to settlement there had been several Congressional enactments, including the easements and right-of-ways for railways and shipping.

Alexander F. Smith had been, for a long time prior to March 2, 1889, in the employ of the Atchison, Topeka and Santa Fe Railroad (A. T. & S.F. R. Co.), as a section hand. He had come to Edmond Station with his family on January 30, 1889. He had not entered the territory with the expectation or intention of taking land in the Oklahoma Territory. He remained in the employ of the railroad company until noon of April 22, 1889, when he removed his family and tent to a point about one hundred and fifty yards distant from the railroad right-of-way.

From January 30, 1889 Smith had lived with his family in his tent on the right-of-way of the A. T. & S.F. R. Co., where it passed through the Oklahoma Territory. Prior to April 22, 1889, Smith sold his fellow workers of his intention to take the land in controversy. However, a notice was posted at the station of Edmond by A. T. & S.F. R. Co., which warned all employees that if they expected to take lands, they must leave the Oklahoma country, and that this fact was called to Smith’s notice.

At approximately 1:30 PM on April 22, 1889, Eddie B. Townsend rode upon Smith and declared his intention to homestead this location. He declared Townsend to be a ‘Sooner’ and therefore did not have a valid claim to the quarter section as claimed. Townsend was a rancher from nearby Iowa reservation east of the Oklahoma District and had ridden his horse over the line when the bugles and guns sounded. Townsend asked the land registrar at Guthrie to cancel Smith’s entry because he had illegally occupied the land between March 2 and April 22, the period during which entry and occupation of the Oklahoma District had been prohibited. The local office upheld Smith’s claim, but Townsend appealed the decision to the commissioner of the U.S. General Land Office. The commissioner overturned the local decision. Townsend’s claim was also upheld by the Secretary of the Interior in March 1891. Two years of legal wrangling would pass until the case was finally heard in the United States Supreme Court on March 5, 1893.

The Court ruled that the “intent of Congress was by this legislation to put a wall around this entire territory, and disqualify from the right to acquire, under the homestead laws, any tract within its limits, everyone who was not outside of that wall on April 22. When the hour came, the wall was thrown down, and it was a race between all outside for the various tracts they might desire to take to themselves as homesteads.” 148 U.S. 500

Tall tales abound about the chicanery and fraud perpetrated in obtaining lands around the previously established rail stations. Republican President Benjamin Harrison signed the legislation necessary to open the lands for mass immigration. President Harrison warned that “...no person entering upon and occupying said lands before the hour of 12:00 Noon of the 22nd day of April, A.D. 1889, hereinafter fixed, will ever be permitted to enter any of said lands or acquire any rights thereto.”

Shortly thereafter, lawyers hastened to Oklahoma City or Guthrie, as the claim, counter-claims and questionable titles abounded. By 1892, according to the register of the Oklahoma Land Office, an estimated five thousand land titles had been or were being contested. Most of these were “Sooner cases” involving persons who had entered the Oklahoma lands between March 2, 1889, and high noon of April 22, 1889.

A group of ‘land men’ organized a company of Sooners in Topeka, Kansas under the moniker of the Seminole Land Company, with the acknowledged intention of entering upon the Oklahoma Country before the designated time. The plan was to formulate instant town sites and start selling subdivisions, parcels and lots within the townships at the Oklahoma Station. Entrepreneurship would abound and the weight of the numerous claims and new owners would certainly overwhelm any subsequent legal challenges, so the Seminole Land Company hoped.

By mid-afternoon on April 22nd Oklahoman Station was a flood of humanity. People of “all tongues, in all colors, in all gars, withal all brands of profanity and every imaginable odor” rushed about in wild disorder. They were “toting packs, suitcases, tents and whatnots, wrangling and dickering, surfing aimlessly in search of lots, or something to eat or drink.”

Shortly before 3:00 PM, the swirling, wild confusion turned to utter bedlam when a mounted rider rode through the throngs blowing a trumpet and announcing that Oklahoma City elections were to be held immediately at the Big Tent. The Big Tent was a large circus tent which had been erected by the Oklahoma Colony Company (OCC). The OCC had been organized to do what the Seminole Land Company did, but they intended to use lawful means, the power of the ballot box. By force of circumstances two political parties sprang up: the “Seminoles,” who had gobbled up the lots, and the “Kickers,” dubbed by the Seminoles, that first afternoon. Kicker was a new slang word for protester or rebel. The Kickers adopted the more euphemistic name: the Kickapoo.

The call for elections set the stage for braying and blaming politicians and orators. A keen observer of the scene wrote that there were more politicians and orators to the square acre in Oklahoma City that afternoon than ever assembled on a half section of land before.” The bugler had scarcely made his rounds before a spellbinder on every available vehicle around the Big Tent, shouting at the restless crowd milling about like colonies of addled ants. The whole area resembled a mammoth midway at the county fair.

Both “parties” presented candidates, and after much squawking, the ballots were counted. James Murray was elected Mayor and C.P. Walker was clerk. Neither man ever served their office. As the old saw goes, “And Then The Fight Started.”

The riot between the OCC and the Seminole Sooners lasted well into the darkness. Finally, exhaustion and fatigue caused thousands of hopeful homesteaders to muddle out onto the hard prairie and sleep off the tumultuous day’s events. A single day, April 22, 1889 settled deep into Oklahoma history.

In the coming weeks, a committee was formed and elected to determine the lots and sites within Oklahoma City. This would serve the majority of the populace, but a fair number of litigants were still demanding their day in court. By 1890 most of the more serious disputes had been submitted to Special Agent William Fremont Harn of the General Land Office, U.S. Department of the Interior. Harn was from Ohio and worked closely with the US Attorney for the prosecution of claim jumping and Sooners. The most essential legal requirement for Harn’s prosecutions, was the necessity of two witnesses. Both had to concur with the attestation of the petitioner that the disputed claim had been settled by a ‘Sooner’ and was thus subject to forfeiture. Harn brought over 150 indictments with over 100 convictions against the defending Sooners. Harn was also not without his own ambitions, and soon purchased a large farm several miles northeast of the rail station, out in the country. He continued as special agent/prosecutor until the early 1900’s when he turned his energies into forming a viable street car company for the sprawling downtown Oklahoma City. His business partners would be John Shartel and Anton Classen.
DIVORCING THE HOME

USE, OWNERSHIP, AND CAPITAL GAINS

Some divorcing couples may decide to keep the marital home and then sell it at a later date, for example when their kids finish school. If there’s a possibility of capital gains when the home is sold, your client should consult with you and their financial planner.

The current capital gains tax law allows a $500,000 marital couple exclusion or a $250,000 single exclusion. To qualify for the higher exclusion amount, your client must meet both the ownership and use requirements.

- **Ownership**: Both divorcing spouses must stay on the title.
- **Use**: The marital home must have been used as the primary residence during the marriage. Even if one spouse moved out at any time, they can still comply with the use rule if they lived in the home as their marital residence during the marriage.

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