



Briefcase

September, 2023 Vol. 56, No. 9

A Publication of the OKLAHOMA COUNTY BAR ASSOCIATION

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MEET THE NEW PRESIDENT



2023-24 Oklahoma County Bar Association President Richard Ogden (right) and husband, Nathan, with Cooper and Celie Anne. Check out his first From the President column on Page 2.

Conquering RAGBRAI — or I — more than a bike ride

By: Benjamin Grubb,
Editor-in-Chief, the Briefcase

John Kinsella: Is this heaven?

Ray Kinsella: It's...Iowa.

John Kinsella: Iowa?

Ray Kinsella: Yeah...

John Kinsella: I could have sworn it was heaven.

FIELD OF DREAMS (Universal 1989).

“Why?” “What’s wrong with you?”
“Wow. Good for you. I could never do that.” “You’re talking about a

motorcycle, right?” And, my personal favorite: “Are you in crisis?” These were actual reactions from friends, clients, and colleagues when I told them I would be away from the office for a week in July to ride a bicycle across the state of Iowa. I’ll admit a 500-mile bike ride is not the first, second, or tenth activity anyone expected to accompany a week-long vacation. And to most, Iowa is nowhere near the top of the “bucket list” of places to see before you die—but it should be.

“What’s a RAGBRAI?” was the usual follow-up question to the reactions quoted above. It’s an acronym for the [Des Moines] Register’s Annual Great Bike Ride Across Iowa. But it’s more than that. RAGBRAI is the oldest, largest, and longest multi-day bicycle touring event

in the world. RAGBRAI’s beginnings were simple. Two writers (and cyclists) from the Des Moines Register, John Karras and Don Kaul, decided to ride their bicycles across Iowa. Cleverly disguising their ride as a work trip, the men sought to document in their columns that which they saw and experienced on the road. And RAGBRAI was born. Karras and Kaul started their ride in Sioux City on August 26, 1973 and finished in Davenport on August 31. Over six days, they were joined by friends—and hundreds of folks they had never met—on their adventure. Karras and Kaul wrote about the places they saw and people they met along the way, like the eighty-three-year-old man from Indianola, Iowa who rode the whole route on a used

ladies Schwinn. The columns captured the imagination of the reading public so much the event was repeated in 1974 as SAGBRAI (Second Annual...) and became a perennial event for the next fifty years.

As I’ve mentioned in previous articles, my mother’s people came from Iowa. Arriving in the 1800s, they acquired land from the government and farmed in the Squaw Valley in Warren County for the better part of two centuries until my grandma sold the old farm in the mid 1990s. Growing up, we visited my Grandparents often in Osceola, Iowa (pop. 5,536) sometimes staying for weeks while school was out for the summer. I remember those days fondly; my

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THE BRIEFCASE

September 2023

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OKLAHOMA COUNTY BAR ASSOCIATION

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Volunteer lawyers and judges dedicated to serving the judicial system, their profession, and their community in order to foster the highest ideals of the legal profession, to better the quality of life in Oklahoma County, and to promote justice for all.



From the President

Let's Keep Going OCBA!



By Hon. Richard Ogden
President, Oklahoma County Bar Association

Our new Oklahoma County Bar Association year has begun; we are already off to a great start! To kick off the year, many members joined in celebrating and thanking the leaders from last year. We had an absolutely fabulous time at the Contemporary Arts Museum with a sold

out crowd.

We are unique! Our members enjoy the fellowship of our common interests and share in the fun of so many amazing events throughout the year. Every spring, you send the OCBA President Elect and Young Lawyers Chairperson Elect to the American Bar Association Bar Leadership Institute. Barrett Fuller, the then YLD Chairperson Elect; Debbie Gorden, the OCBA Executive Director; and I (as the then President Elect) attended. To be sure, I learned much that informed me and has inspired me for leadership this coming year. But the biggest takeaway is the fact, not an observation, that the OCBA is thriving and growing at a time when most voluntary bar associations are dwindling if not dying. This begs the question: why?

A few things were readily apparent. The OCBA, out of hundreds of state and local bar associations in attendance, sends its YLD Chairperson Elect to the Bar Leadership Institute. As I counted, only four other bar associations included their YLD leadership. The Young Lawyers have always been such a life force for our Bar. We don't just give that lip service as some do. Our Young Lawyers share in the leadership of our organization. Indeed, if you look at many of our recent OCBA Presidents, they had only recently been young lawyers themselves. We welcome their leadership and their ideas. This is one of the amazing and unique aspects of the OCBA.

Yet another unique characteristic of the OCBA is the active

involvement of the state judiciary of Oklahoma County. As a member of the judiciary, I can tell you we not only value the honor of serving in leadership, but we thoroughly enjoy the comradery with you all. We love going the YLD events such as the Chili Cook Off and the Trivia Night and so many other events which benefit the Oklahoma City Food Bank.

And we can't leave out the CLE. Our OCBA has built other great traditions as well that make getting CLE fun and affordable. Every other year, the Bench and Bar Committee puts together a great weekend event at a state lodge so we all can get away and relax. This year, the Bench and Bar Conference will be at the newly remodeled Quart Mountain Resort on March 8th and 9th, 2023. Debbie reports from her scouting trip that it is very nicely redone. I'm excited about the move to Quartz Mountain and hope many of you will be able to join us. Also, we have our annual Santa Fe trip in February. The dates are being firmed up now. The Santa Fe CLE is a great experience all around and also an affordable and fun CLE excursion!

At the Bar Leadership Institute, we were told that for voluntary bar associations in this busy age there must be the "what's in it for me?" element for a successful formula. Well, I think you can see that not only does the OCBA have that element, but we also have the "what's in it for others?" The YLD's efforts and energy in literally feeding thousands of our fellow citizens inspires our better Angels and feeds our very own souls.

I am honored to serve as your OCBA President this bar year just as I was so honored to serve as the YLD Chairperson in the 1995-1996. In future articles, I will share with you how the OCBA helped to form me and nourish me as a young lawyer but also how it continues to do so this day. I will also share some specific plans to continue the success of our very unique Oklahoma County Bar Association. Thanks to everyone for your membership! Thank you for your service! Thank you for making the OCBA so very unique!

RAGBRAI
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Tire Dip in the Mississippi River – Day 7



Courthouse – Jefferson, Greene County, IA



Day 5 - Newton Rest Stop

brother, Jon, my cousin Joe, and I spent days exploring the town and its outskirts. I remember vividly 4th of July parades (in which I participated as a passenger in my Papa's 1923 Model T), carnivals on the square, and community only found in small towns generally. And I remember watching RAGBRAI riders ride through Osceola or nearby towns in the summer.

"Why?" Indeed. The reasons are many. First, I turned forty the second week of August. I remember celebrating the end of my twenties in the Dominican Republic after sitting for the bar exam. More than a year ago, I decided the best way to celebrate the end of my thirties was to ride RAGBRAI. Second, RAGBRAI was turning fifty and following mostly the same route as its inaugural course in 1973. The fiftieth anniversary ride was longer than usual at 500 miles and the daily distances reflected it. Third,

it's hard. I didn't even know if I could do it. Fourth, fifth, and sixth, it would be an adventure, with family and friends, in a place dear to my heart. And so, in November 2022, I convinced brother Jon, wife Lauren, and our good friends Matt and Jenny to join me on this "rolling festival." I even convinced my Dad to accompany us with his camper as our tactical support vehicle.

We registered. Then, we started training. I recall our first outdoor training ride in January 2023 was a whopping 12 miles. We trained in the warmest parts of the days then. While it's still difficult to recall what it felt like to be cold on the bike from warm Oklahoma September, I remember some frigid, windy outings as our training built. Eventually, we logged well over 1,000 miles, working our way up to 50-80-mile rides as spring turned into summer. We even rode a two-day

"dry run" at the Peddler's Jamboree in Missouri over Memorial Day weekend—complete with Dad, support vehicle, and four kids for good measure. We planned as hard as we trained, ironing out the smallest details over weekly Teams meetings. And when July rolled around, we were ready.

I thought I was no stranger to small town life in Iowa when I set out for base-camp in Osceola (Grandma graciously and enthusiastically agreed to allow us to use her home as a launch and landing area) on Thursday, July 20, 2023. When we got to town, we began executing our well-plotted logistics strategy, positioning a vehicle in Davenport, Jon ferrying Matt back to Osceola on his way from St. Louis, and retrieving a U-Haul from the next town over to carry our bags, bikes and two of us to the starting line in Sioux

See RAGBRAI, page 3

Stump Roscoe

By Roscoe X. Pound

Dear Roscoe: *If I don't raise a point in my initial appellate brief does that forfeit the issue for good? C.P., OKC*

Dear C.P.: I'm not one to kick someone when they're down but failure to raise and argue an issue in your Brief usually means curtains for that issue. You didn't mention which court you're in and, of course, different courts have different rules. Usually, however, one puts forth all their arguments in their brief-in-chief to which, in the ordinary course of proceedings, the Appellee responds. Yes, you get to file a reply in most instances, but technically that response is directed to the arguments made in the answer brief. Sometimes, however, some hope remains. For example, in Federal practice the traditional rule whereby a party forfeits an issue on appeal by failing to address it in his opening brief governs. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 682-83 (11th Cir. 2014). However, the court may yet review an issue sua sponte in extraordinary circumstances, including when:

(1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party lacked an opportunity to raise the issue at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; or (5) the issue presents significant questions of general impact or of great public concern.

United States v. Campbell, 26 F.4th 860, 872-73 (11th Cir.) (en banc) (addressing abandonment in a criminal matter), cert. denied, (U.S. Oct. 3, 2022) (No. 21-1468).

Obviously, much depends on the discretion of the court. In addition, study the answer brief well. On occasion, it may provide a way back in. It could be appellee's counsel allows himself to go off on a rhetorical or she cites a case or policy that will provide a road back in. Good luck to you.

Dear Roscoe: *I know you've written about "benchslaps" and kooky purge requirements issued to lawyers in contempt cases. I can't tell if you're a fan or not. M.D., OKC*

Dear M.D.: There are fine lines separating "just desserts," "punishment fits the crime," and "lawyer bashing" zones. Sometimes the "piss and vinegar" in the opinion or sentence does more of a disservice to the justice system and professionalism than the lawyer's conduct being addressed. There's a lot of power packed into the judicial office, including courts of so-called "limited jurisdiction" like federal district courts. We've all taken a bit of guilty pleasure chuckling over bench slaps and offbeat orders aimed at a lawyer or litigant's conduct. I suspect a lot of laughter carries a bit of relief, a sort of professional schadenfreude that we're not "that guy."

Oklahoma's own Senior District Judge Wayne Alley was a master of what I'd call poetic justice. In one case he lamented: "If there is a hell to which disputations, uncivil, vituperative lawyers go let it be one in which the damned are eternally locked in discovery disputes with other lawyers of equally repugnant attributes." In another matter he observed: "This case makes me lament the demise of dueling [which might bring about] a salubrious reduction in the num-

ber of counsel to put up with." Erudite. Elegant. Clear. Yet he achieves these with without resort to score a needlessly acerbic sting. And on top of that, the guy was not afraid of ending a sentence with a proposition. I tell ya, this guy was one class act of judicial decorum during his active years. Another favorite of mine was the late James Robertson of the DC District Court. In a case called *Citizen's Coal Counsel v. Babbitt*, (CIV Action No. 00-0274, Judge Robertson faced an apparently endless wrangling over motions he'd already ruled on. He noted that behavior of counsel "betrays a startling lack of sense of humor, sense of proportion, or both." He ended by ordering the parties and their counsel "to lighten up." If you ask me, a clause to that effect should appear in all pretrial orders.

It was my first day back from vacation and, as usual, I arrived at the office late. The fishing was good and, in addition to my usual take of bluefish, striped bass, and fluke, I managed to land a decent size thresher. Take that Megalodon. I arrived at work about 10:30 and found the staff working feverishly on important matters such as where to go for lunch. In addition to Junior, Daddy Mike, Rae, and Chips, Captain Joe Innocenti of the Secaucus P.D. also sat in on the deliberations.

"How about the new place where Spachi's used to be?" the Captain asked.

"The new kosher deli?" asked Daddy Mike. "I could go for that."

Junior sighed. "I don't know," he rumbled. "When it comes to delis I think we ought to stay loyal to Chips' mom."

"She wouldn't mind," Rae said. "If

she didn't have to work at her own place she'd probably come too. The food is really good and the portions are great."

"Wait," I said. "You've been there? What's it called?"

"Robyn's of Lox-ly." Rae replied.

"I went in there the other day," Innocenti said. "It smelled kinda funny."

"Funny how?" Chips asked.

"Well, not bad. Clean actually. But I couldn't help noticing."

"It does smell clean," Rae agreed. "It's kinda like during the summer when you're at the computer, and those crazy ants start crawling around your screen and keyboard so you smush them with your thumb and then you smell your thumb? It's like that."

I could tell from Junior and Innocenti's expression they had no more clue than I did. Daddy Mike had this faraway, wistful sort of look, nodding slightly to himself.

"Citronella," said Chips.

"What?" I asked.

"Citronella," Chips repeated. "That's what you're smelling from the ants. They have over 100 scent glands and the citronella smell is a distress signal from the dying ants to their comrades."

I heard two car doors slam shut outside. Customers perhaps? Maybe I could coax an hour's worth of work from the crew just to help them bide the time between break and lunch. From the window I could see portions of two Cadillacs. One belonged to Father Thad from Our Lady's. The other belonged to John Sgorano. They both entered. Now I had the good and the bad. Could the ugly be far behind? Unfortunately it was not, and nothing prepared me for how ugly it would get.

RAGBRAI

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City (Dad hauled the rest of us). When we arrived in Sioux City on Saturday, we attended the Expo, dipped our rear tires in the Missouri River, and prepared our gear and ourselves for the next day's 5:00 a.m. departure toward Davenport. Over the next week, we rode.

Over the ensuing 512 miles and more than 14,000 feet of climb, we learned Iowa was "flat like a waffle." Every day presented its own unique challenges and experiences. Day one, mile two: brother Jon has a low-speed collision with a traffic cone, falling dramatically in a large group of riders (luckily, the only part of him worse for wear was his pride.) On day two, we saw a man ambitiously riding Iowa's hills on an 1880's style bicycle, sat atop a massive front wheel with a smaller one trailing behind. We used many cornfield latrines. We found out, through changing 4 flats in a single day, it is necessary to account for rising temperatures when inflating bike tires. We rode 100 miles on day 3, finishing with a triumphant jaunt through Jack Trice Stadium in Ames. A short, hot day 4 was punctuated with lots of water from hoses and squirt guns as we rode past the homes of eager spectators in the Des Moines metro. Day 5's relentless, 4,000+ foot climb was matched by Day



Rear Tire Dip in the Missouri River – Sioux City, IA

6's 109-degree heat index. After our grueling day in the heat, we endured severe thunderstorms at camp (which, of course, rolled in after we had set tents up for the night). The storms made the 76 miles to the finish line on Day 7 far more pleasant than the preceding three days.

Dipping our front tires in the Mississippi and hoisting our bikes overhead felt amazing. The best part of RAGBRAI, though, was the people we met in the places we visited along the way. Excepting Ames and Des Moines (and the suburbs of Iowa City), we experienced rural Iowa. We met Leon and Monica in Carroll, who allowed us



Day 4 - Des Moines

to camp in their yard and shared homemade deer jerky and homemade whiskey with us. Steve and Nancy in Ames opened their home to us after our century day, providing (much needed) showers, juicy burgers from their grill, and actual beds for the evening. In Marengo, we ate baked potatoes in the basement of the Lutheran church with a man who traveled all the way from South Africa to ride RAGBRAI. We shot the breeze with the locals over Busch Lights (in cans that looked like ears of corn) in Polk City. The Amana colonies felt like more like riding through Germany than Iowa, if only for a few miles. I geeked



Courthouse – Newton, Jasper County, IA

out and photographed ornate courthouses on squares in places like Jefferson and Newton, imagining what it would be like to try a case inside. I even met up with other Oklahoma City lawyers riding through Luther and Ankeny. I took a selfie with my brother in front of the Des Moines Capitol, where Papa took us on a self-guided tour thirty years prior. We enjoyed shade and hospitality in the yards of complete strangers with farms along the route. And after a late dinner and a truck stop shower (which was not nearly as bad as it sounds), we arrived back in Osceola late Saturday night, reunited with

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BACK IN ACTION

Lawyers for Learning is gearing up for the 2023-2024 school year

For our readers who are not aware, Lawyers for Learning is a group of volunteers who work one-on-one with 2nd and 3rd grade students who need a little extra help with their reading skills. Currently we work with Adelaide Lee Elementary and Adams Elementary, both in the Oklahoma City school district. The process is simple: pick a school, determine the dates and times that work for you, and listen to a child read.

Some volunteers participate once a month, some once a week or every two weeks.

Is your firm considering community service work? One local firm adopted a school and formed two reading teams who go alternate weeks. If one can't make it during their regular time, they know they have a backup and can go a different time. Going solo? We can put you with a team. Each school has a team liaison who works with

the principal or reading specialist. This way we know the readers are working on material that is appropriate to their reading level and volunteers can work on specific issues with the student.

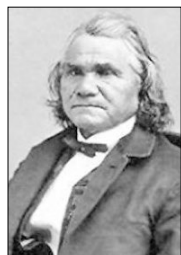
Ask anyone who is currently a Lawyers for Learning member and they will tell you they believe the reward they get working with these students is possibly greater than what the students receive. The majority of

these students show marked improvement over the year, giving them a great advantage when it's time for their third grade testing.

We invite both attorneys and office staff to join. To learn more, you're welcome to contact Rebecca McCaslin, the LFL coordinator at RMcCaslin@mahaffeygore.com or Pam Bennett at the OCBA, pam@okcbar.org or 405-236-8421.

The Cherokee Chief vs. The SCOTUS [Part II]

By: Asst. Dist. Attorney Jeff W. Massey



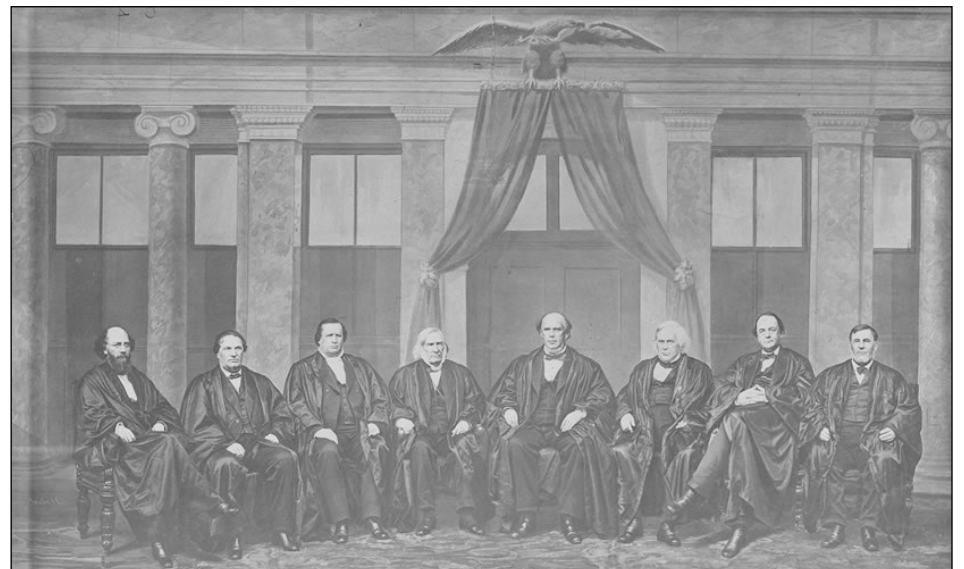
Stand Watie

unleashed its deadly volley. Ridge slumped in his saddle, his head and body pierced by five bullets.

John Ridge was likewise brutally murdered at his home. A large party of 25 men reached John's house in the morning. They broke into his home and while he was still in bed, fired a gun at John's head. The gun failed to fire. He was then dragged outside and stabbed 26 times in the torso and neck. While still alive, he was then stomped on and kicked, all in front of his wife, mother and son, John Rollin Ridge.

Stand Watie (half-brother of Elias Boudinot) was also targeted that day. However, Mrs. Boudinot sent a word of warning following the slaying of her husband. Watie escaped on a fast horse and soon discovered he was the de-facto leader of the Treaty Party.

Despite a superficial agreement for no new killings, the feud ran deep with many in the tribe. On May 14, 1842, Watie and two companions made their way south along the Arkansas/Indian Lands border. Watie chose to stop at David England's grocery store, located three miles south of Maysville, Arkansas. As he prepared to leave England's store, three Ross Party Cherokees confronted him. James C. Foreman and Isaac Springston had both been part of the assassination squads of June 22. Foreman had been the leader of the hit squad that killed Major Ridge. Foreman attempted to bullwhip Watie to death in the store. The fight moved into the yard where Foreman struck Watie with a plank board after losing control of the whip. Watie stabbed Foreman and as Foreman charged him, Watie finally shot him dead. The Cherokees demanded Watie be tried for murder in Cherokee lands, but Watie turned himself in to the Benton County, Arkansas authorities. A year later in May 1843, a Benton County jury took 5 minutes to find Watie Not Guilty of Foreman's murder. Ross partisans also murdered Stand Watie's brother Thomas Watie in 1845. At least 34 politically related murders were committed among the Cherokee in 1845 and 1846. Watie would constantly struggle with threats of assassination. Chief John Ross did little to



actually impede the animosity between the rival factions. With the coming of the Civil War, again the Cherokees split between the warring factions.

In 1861, Principal Chief John Ross signed an alliance with the Confederate States to avoid disunity in Indian Territory. Within less than a year, Ross and part of the National Council abrogated the alliance. In the summer of 1862, Ross removed the tribal records to Union-held Kansas and then proceeded to Washington, D.C., to meet with President Lincoln. After Ross fled to Federal-controlled territory, Watie replaced him as principal chief. Watie would be commissioned a brigadier general in the Confederate Army and be the only Native American to hold a field grade commission and command. Watie is noted as the only Confederate General to fully comply with the strategic orders from Richmond; keeping the Kansas Federal Army out of Texas.

After the war, Watie tried to return to a normal life of farming near Maysville. He was still strongly associated with Treaty Party, but the war had exhausted him financially, personally and politically. Watie tried several business ventures, including one with his nephew Elias Cornelius Boudinot, son of Elias. When Elias was ambushed in 1838, EC was only 2 years old. EC was sent to live with his aunt in Connecticut. He became educated in the east but returned to Indian Territory when the Civil War began. He became a major in his uncle's command with the First Cherokee Mounted Rifles. Following the American Civil War, Boudinot participated in negotiations on behalf of the Southern Cherokees.

The Court Case

In 1868 EC Boudinot and his uncle Stand Watie opened a tobacco factory near Maysville. The venture took advantage of Article 10 of the Indian Treaty of 1866. That section exempted Cherokees from federal tax laws on farm goods/manufactured products made/sold within their nation. The factory also benefited from an 1868 law imposing a 32 cent per pound federal tax on tobacco. Boudinot believed these provisions would provide plug tobacco at a greatly discounted price over the other Southern tobacco producers. The Cherokee entrepreneur obtained an opinion from the local U.S. tax collector confirming his interpretation of the tax provisions. Purchasing equipment in Hannibal, Missouri, Boudinot established his business at Boudville, just within the border of the Cherokee Nation. In total, his tobacco works cost an investment of about \$5,000 [approximately \$108,000 today]. The plug tobacco bore the name "Boudinot & Watie." Ulysses S. Grant was sworn in as president in 1869. Grant replaced the collector of internal revenue at the treasury department. However, the new official, Columbus Delano, also assured Boudinot that the interpretation of the treaty and the tax law had not changed. By Aug. 15, 1869, the tobacco establishment was "in a prosperous condition."

A little more than four months later, without warning, federal revenue agents from the Western District of Arkansas descended on the Boudville plant. The armed agents confiscated the hydraulic press, pumps, scales, molds, 4,500 pounds of leaf tobacco,

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Raising the Bar 2023

By: Todd Blasdel,
Oklahoma County Bar Association Board of Directors

OCBA's annual Raising the Bar event took place on September 8, 2023, to celebrate outgoing OCBA President Cody Cooper and incoming OCBA President Judge Richard Ogden, as well as outgoing YLD chair Randy Gordon and incom-

ing YLD chair Barrett Fuller. The event was held for the first time at Oklahoma Contemporary, which hosted a huge crowd of over 150 attendees.

Outgoing YLD chair Randy Gordon gave a heartfelt speech acknowledging the help and support he received during his tenure. Randy gave special thanks to his father, who was in attendance, for encouraging him to take the path to becoming a lawyer.

Incoming YLD chair Barrett Fuller listed a number of upcoming YLD events that continue to keep young lawyers engaged in the OCBA through fun and service-oriented ways.

Outgoing OCBA president Cody Cooper reflected on a year of OCBA achievements. Cody will stay on the OCBA board both as immediate past president and as treasurer, replacing Bob Nelson, who diligently served

as treasurer for many, many years.

Incoming OCBA president Judge Richard Ogden outlined some of his goals for the next year, which included a push for inclusion of all eligible attorneys into the OCBA. Judge Ogden also praised past OCBA leadership for building such a strong organization and announced that he will be forming a committee to examine and preserve the strengths and successes of the OCBA.



Crowd enjoying the event



Incoming President Richard Ogden presents a President's Award to Cody Cooper



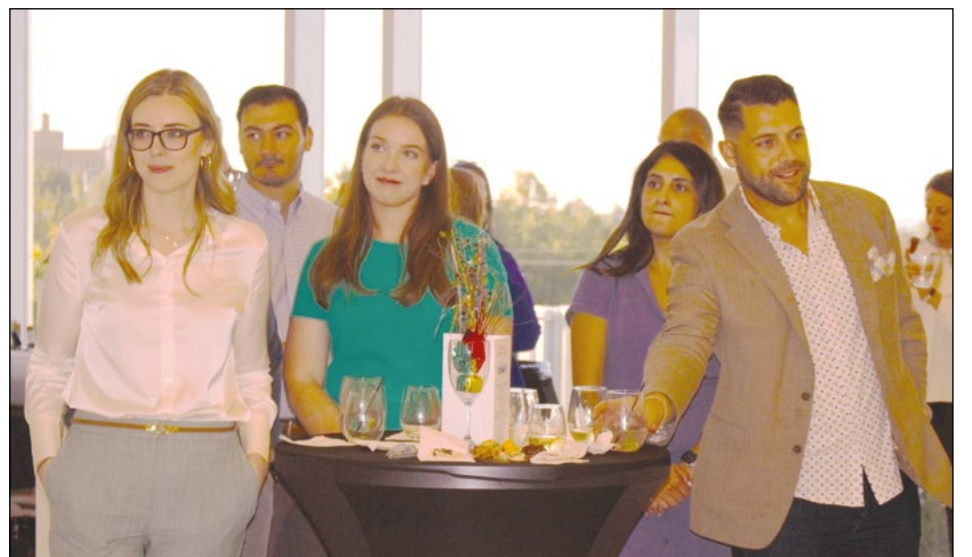
Outgoing President Cody Cooper



Outgoing YLD Chair Randy Gordon



Incoming YLD Chair Barrett Fuller



Raising the Bar Crowd



Special Judge Sharon Wigdor Byers was sworn in on Aug. 14.



Everyone seemed to enjoy Raising the Bar 2023

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sugar, licorice, and grape juice. Boudinot was charged with violating the tax revenue laws of the United States. Mere months after receiving federal assurance of non-interference and compliance, Boudinot was arrested. Many suggested the arrest was the work of vengeful pro-Union authorities and sycophants who despised to see the former-Confederates prospering. Others suggested it was no more than punitive acts of rival tobacco manufacturers who had bribed the revenue commissioners. It is noteworthy that Commissioner Delano only included the Maysville area in the revenue map for collection some months after Boudinot's arrest.

In 1868, the state of Arkansas was again placed under martial law as part of the Reconstruction Act of 1867. As such the jury assembled in November 1870 for the Boudinot trial were all pro-unionists (ex-Confederates being banned from judicial proceedings pursuant to a suspect Constitution being passed during military occupation). The trial was held at the Federal Court in Van Buren, Arkansas. At his trial Boudinot argued that the law levying a tax on tobacco products did not apply to the Cherokee Nation because of the exemption granted in the Cherokee Treaty of 1866. Both the federal judge and pro-Northern jurors rejected the ex-Confederate Boudinot's argument. Boudinot's attorneys appealed to the United States Supreme Court on a writ of error.

Foreseeing the district court loss, Boudinot had gathered support and funding of \$1,500 from the Cherokee council for a Supreme Court Appeal. Boudinot gathered a trifec-

ta of the heaviest legal hitters of the day. His legal team included former Confederate General/Confederate Commissioner to the Indian Territory, Albert Pike; the sitting U.S. Democratic Senator from Arkansas, Robert W. Johnson; and finally one of the most hated men in the Southland, former Union General turned politician, Benjamin Franklin Butler, Republican congressman from Massachusetts.

The United States Supreme Court heard the case on April 11, 1871. The Washington City power-elite had been abuzz for weeks over this pending legal case. The case had much to be examined: taxes, ex-Confederates, Indians, Money, the Reconstruction Acts. Each defense counsel presented compelling arguments: Pike concentrated on the Indian treaties; Johnson hit the legislative intent. Butler argued that acts of Congress apply to Indian Territory only if they were mentioned "in so many words." Arguing the government's case, Attorney General Amos T. Akerman compared treaties with Indian tribes to municipal laws that could be repealed by Congress if the subject matter fell within its legislative power. He reasoned that levying federal tax on manufactured goods was clearly within the authority of Congress.

On May 1, 1871 the Court rendered a sweeping decision which greatly impacted future tribal sovereignty issues. For a highly fractured court (3-2-3), Associate Justice Noah H. Swayne reasoned that the Congressional Act of 1868 extended the revenue laws on liquor and tobacco into Indian country. This statutory enactment effectively trumped the previous independent treaty with the Cherokees. Regarding the broader question of the conflict between negotiated

treaties and statutory laws, Swayne claimed that the courts had previously ruled that Acts of Congress superseded treaties negotiated at an earlier date. Based on this precedent, the court reasoned, "In the case under consideration the Act of Congress must prevail." Justices Nathan Clifford, Samuel F. Miller and William Strong joined in the opinion.

Although Justice Swayne opined against dissent stating, "further discussion...unnecessary." However, two justices strongly disagreed and submitted a dissenting opinion anyway. Justice Bradley wrote that there was no legislative history on the matter and "it was not the intention of Congress to extend the internal revenue law to the Indian Territory." Echoing the argument of the Cherokees, Bradley agreed that federal laws apply to Indian Territory only if expressly stated by Congress. He further asserted that the good faith of the United States was in question because the government had entered into a "solemn treaty" with the Cherokee Nation. Finally, he observed that the 1868 revenue law could not be extended to Indian Territory "without an implied abrogation of the Treaty" of 1866. Justice David Davis agreed with the clear dissent. Interestingly, Chief Justice Salmon P. Chase, Justice Field and Justice Samuel Nelson absented themselves from the decision. Consequently, the final vote was 3-2 with 3 abstentions.

The treatment of Boudinot and Watie was so manifestly unfair that even the federal government belatedly compensated the men for the seizure of their property. However, the Red Fox of the Confederacy, Stand Watie, would not live to see any compensation. Watie would die on September 9, 1871, alone at his cabin near Maysville. He died

having lost almost the entirety of his family to war, disease, and the maladies of living in the 19th Century.

EC Boudinot would take the stinging rebuke from the court and apply the well-learned lessons of the internecine tribal feuds. He became a moving force for Native Americans to be granted United States citizenship. He was active in politics and high society in the Indian Territory and Washington, D.C. He supported the construction of railroads all over the territories. He openly advocated the termination of Cherokee sovereignty and urged the allotment of communal land to individual tribal members [known as the Dawes Act]. The federal government declared any remaining land as "surplus" and allowed its sale to non-Native Americans. Boudinot also founded the city of Vinita, Oklahoma.

Boudinot frequently spoke on the lecture circuit about Cherokee issues and development in the West, and was considered a prominent orator. Boudinot contributed to the eventual formation of the territories of Oklahoma and the Indian Territory. He lived to see the land run in 1889. He continued his work as an attorney and assisted on the Oklahoma Organic Act of 1890, which provided the path for statehood. However, on September 27, 1890 Boudinot died of dysentery in Fort Smith at the age of 55. His work toward statehood for the territories was achieved in 1907 with the admission of the 46th State: Oklahoma.

The author is the past president of Oklahoma City Civil War Roundtable and guest speaker on historical, constitutional, and legal topics. He is history nerd extraordinaire and is a voracious bibliophile.

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Notice of vacancies Oklahoma County District Court

Applications are now being accepted to fill two special judge positions.

Applicants must submit an original and two copies of the following:

1. A one page letter expressing the applicant's reasons for applying for the position;

2. A resume, including employment history and residential address (Title 20 O.S. § 122 (1));

3. Three references one from each category is suggested:

a. A current or former employer, indicating whether we may contact them;

b. A judge or hearing officer, not in Oklahoma County District Court, before whom the applicant has appeared;

c. An attorney on the opposing side of a case.

4. An OSBI background report including, name based, sex offender, and Marry Rippy violent offender reports.

5. A photograph of the applicant is helpful and appreciated but not mandatory.

Applications must be received at the

office of the Trial Court Administrator, Room 322, Oklahoma County Courthouse by 4 p.m. on Oct. 26.

Salary and benefits are paid pursuant to State Law and/or Supreme Court order.

Appointment Date is December 1, 2023, subject to compliance with Title 20 O.S. § 122 (1).

RAGBRAI
continued from page 3

our kids, and spent the next day visiting with Grandma and wondering if our legs would ever feel the same again.

RAGBRAI was challenging. No doubt

about it; that was more or less the point, originally. At the expo, I happened by a building with an inscription. It read, "There is no greater conquest than that of self." That's damn right. During RAGBRAI, the inscription became an unintended mantra, I truly believe it

got me up some of those hills that just kept coming. Now, it's a reminder that perception bears on challenges of all types and sizes. It's amazing what can be accomplished through simple perseverance. I'll keep those words in a pocket of my mind for my next forty years. In

the end, the week melts together in hindsight. The fun parts are easy to recall. The hard parts, less so. My memories of RAGBRAI dwell with the scores of other happy memories of a place I only thought I knew. Iowa turned out to be an adventure I wasn't expecting.

Quote of the MONTH

"Determine what area of law you are truly passionate about, and then refuse to do anything other than that. A law degree is merely a vehicle that allows us to help and serve others in the midst of a dire situation in their lives; and when lawyers are practicing in a field they truly care about it benefits the clients, the lawyer, and our justice system as a whole."

Tommy Adler



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