You are cordially invited to

THE 2019 OCBA HOLIDAY RECEPTION

Thursday, December 5, 2019
4:30 – 6:30 p.m.
Oklahoma County Bar Offices
119 North Robinson, Food Court Basement Level
Hosted by the Oklahoma County Bar Association

THE OCBA LAWYERS FOR CHILDREN COMMITTEE WILL BE COLLECTING STOCKING CAPS, MITTENS & GLOVES FOR THE CARVER-MARK TWAIN HEADSTART PROGRAM. PLEASE BE GENEROUS!

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NEW PIVOT LEADER
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It’s That Time of Year Again

by Michael W. Brewer

So, we’re barely into November and through seven games of the NBA season. Dare I say it, but NBA refs are the worst. There. I’ve said it. They can’t get it right, even with replay. But they’re not alone; our Big Twelve refs tried to get in the act telling us what we saw on video replay was not what we really saw. Even the MLB World Series umps joined in the clown show conspiring against the Nats but to no avail, as the Nats came back even stronger to win the World Series. Maybe this whole thing started in the NFL when they decided a catch wasn’t a catch, changing rules to take away covering wide receivers and tackling quarterbacks. Even with a team of replay officials (in NY) with a hundred different camera angles to look at, they can’t get it right (just ask Saints’ fans). Okay; I feel better now and my rant is over. At least until another bum call against one of my favorite teams. What is a referee anyway? The dictionary defines a referee as:

• “A person to whom any matter or question in dispute is referred for decision; an arbiter.”¹

• “An official who supervises a game or match in order to ensure that the rules are adhered to.”²

• “A sports official usually having final authority in administering a game.”³

At your OCBA, we are professionals in a arena where judges seemingly get to call balls and strikes on evidence and others get to review facts and law on appeal. But we cannot treat our judges like sport officials. A judge under Oklahoma law is required to:

• “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety.”⁴

In Oklahoma, our state judges are elected unless they are appointed to a Special judge position by the District judges in that district or they are appointed by the Governor to fill a vacancy. We have a system for the Executive Branch to make judicial appointments to the Appellate Branches of the judiciary and to fill District Court vacancies with the Judicial Nominating Committee (JNC) process in place. The Oklahoma JNC has been in place since the 1960’s Supreme Court bribery scandal. Appellate court judges come up on a retention ballot, which is open to public voting and no appellate justice has ever lost a retention vote. Other states select state court judges in different ways. Some are straight-up political elections and others are Governor appointees. However, a primary goal of our Oklahoma system for state court judge selection has been to protect judicial independence and maintain the integrity of the court system in Oklahoma.⁵ For these reasons, we cannot treat judges like sports officials. We do make judicial surveys available for attorney input during election years but typically don’t air our grievances against judges on social media, in the news and around town. As lawyers working in the court system, we cannot afford to undermine the system to the public or allow special interests to control judicial selection. The judicial oversight function exists at the Council on Judicial Complaints.⁶

Recent polls concerning the U.S. Supreme Court reflect a view that they now exist as politicized and celebrity justices. These polls indicate that 75% of Americans identify Supreme Court justices with certain political party positions.⁷ This was never intended to be the case, nor should it be. As judges make decisions that sound and look inherently produces a political result which we now know is polarizing. Remember: that these people also make up our jury panels. Also contributing to the celebrity status of some Supreme Court justices hold considering their blogs, books, speaking engagements (more than just CLE and Bar Convention appearances), TV show appearances, and even movies about their life. With that kind of celebrity focus, we are not far from what we all laughed at as the Kim Kardashian Law Office profile. In the eyes of non-lawyers, this is apparently closer to reality than you might think. While judges are certainly allowed to do what they wish within appropriate ethical confines, my position is that such excess liberty with notoriety is not good for the American judicial system. I am not saying that our local or state judiciary has sought that sort of celebrity. But the same result could come from politicizing the election of District judges or Appellate judges. Currently, District judges run independent of party affiliation. It seems better that way, as they should not be seen as beholden to any group or platform other than the statutory law and legal precedent. This would hold true for Appellate justices in Oklahoma and our current system involving the JNC retention ballots and Governor appointments, which seems to maintain that standard of fairness, integrity, and transparency. In short, my observation in watching the courthouse and appellate positions turn over multiple times during my career, the current system works. If it’s not broke, don’t tinker with it. If you want a politicized system you will get politicized results, which are fine until majority politics flip and are against you rather than with you. “Be careful what you ask for” is a motto that has significant teeth in this situation.

For those who want to get CLE credit and hear a discussion of the solid foundations supporting our judicial and trial system in Oklahoma, we invite you to the Oklahoma County Bar Association (OCBA) seminars going on during the end of 2019 and beginning of 2020. Among those CLEs available, on December 3, 2019, we have three offerings. First, Chief Justice Noma Gurich will highlight the morning seminar at the OCBA with a discussion of the Independent Judiciary and Constitutional Guarantees of a jury trial and certain aspects of the Oklahoma Constitution that make our system work well. That same day at noon, retired Oklahoma County District Judge Bryan Dixon will lead a discussion of the value of civil trials, common trial themes and trial procedures. Later that afternoon, Mark Burget, the General Counsel to the Governor, will present the CLE discussion on the Executive role in the Independent Judiciary and our state Constitutional Guarantees of our judicial and trial systems. These are going to be very informative discussions and valuable CLEs, but you will likely not achieve celebrity by attending. We hope to see you at the OCBA then. Remember, sometimes even when you use replay for a booth review, the result is not overturned despite what to our eyes is clear evidence to the contrary.

Michael W. Brewer is an attorney, founder, and partner of Hilgen & Brewer, P.C. in Oklahoma City, Oklahoma. To contact Mike, email mbrewer@hbokc.law, call (405) 605-9500 or tweet him @atty_mikeb. For more information, please visit www.hbokc.law.

ENDNOTES

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And next time you sign on as an advocate the court in appropriate circumstances. Sanctions on attorneys appearing before impose relatively minor non-compensatory relevant here, these include the power to inherent sanctioning powers. And, as cy courts, like Article III courts, possess III court. We therefore hold that bankrupt existence of the power does not necessarily 501 U.S. 32, 43 (1991). Therefore, the (5th Cir. 1991); Chambers v. NASCO, Inc., (In re Charbono), 790 F.3d 80, 87 (1st Cir. 2015) (collecting cases). The power to back up its orders and police the Bar to back up its orders and police the Bar by virtue and nature of institutions admin...united States. We really need a greater understanding of people with autism by police, prosecutors and defense attorneys In general, people persons affected with autism avoid physical contact. Others evince an inability to detect visual or verbal cues rendering them prone to deception or miscalculation in “reading” persons or situations. A problem you may run into, is that the autistic spectrum is, as the term implies, not monolithic: It’s manifestation and degree varies from individual to individual...We really need a greater understanding of people with autism by police, prosecutors and defense attorneys...This seems to be a ripe area for multi-disciplinary studies. We really need a greater understanding of people with autism by police, prosecutors and defense attorneys...Crossing and re-direct of Peter Kearny continued. While brother Joseph testi...ed. Carl Coleman dismantling his defense on cross, only Peter’s wife seemed to show him anything in the way of care or passion. By the midpoint in the cross, I found myself distracted and wondering how – aside from family connections did he attain or maintain his high status within the State Department. By the midpoint of re-direct, as his attorney sought to install a spine in him, I wondered why the hell he was allowed to testify in the first place. Finally, the ball returned to Carl’s court for re-direct. As he rose to begin ques...tioning, Judge Ohara told him to wait. “Mr. Coleman, do you anticipate a lengthy cross?” “I wouldn’t consider it lengthy, No.” “The reason I ask is that it’s Friday, and it’s 5:45, and I’m inclined to adjourn and pick it up again on Monday rather than starting something new right now.” Some of the jurors showed enthusiastic agreement with the Court. “Much as I’d like to start while the testimony is still fresh....” “We want the jurors to stay fresh as well. Mr. Coleman,” the judge interjected. Carl favored both Bench and the Jury Box with a smile. “No objection.” The Court adjourned. The Judge had just about reached her chamber’s door when commotion at the defense table pulled her back. Peter Kearney struggled against two bailiffs. His wife screamed and sobbed. Judge Ohara called for order. I stood protectively in front of Sandy. At last, a semblance of order returned. “What’s going on?” the judge demand...ed. “Your Honor,” said one of the bailiffs, “the defendant tried to break away from, apparently to pass this note to his wife.” The judge held out her hand. The bailiff handed her a scrap of legal paper. “So much trouble for such a minor thing. Ms. Kearney, your husband wants fresh cloth...ing for Monday. You may bring it during the visiting hours on Sunday.” “Your Honor, my counsel for the parties see the note?” Carl asked. “I don’t see why not.” The three lawyers huddled around the Bench. The two defense counsel shook their heads. Carl said: “Your Honor, I ask that this note be preserved for potential use at trial.”

**Quote of the MONTH**

A fine is a tax for doing wrong. A tax is a fine for doing well.

— Mark Twain, author and humorist (1835-1910)
In teaching the U.S. Constitution, should a law professor direct his students to any particular guides to instill in future lawyers and judges a more accurate understanding of the Constitution? This question has not been asked in the Academy, but is brought to the reader’s notice for the purpose of attracting a verdict of the Constitution.

1. The Constitution Not a “Living” Document

Justice Wm. O. Douglas based his decision on “gut reactions.” Justice William Brennan concluded through his “overarching principles” that he mysteriously found in the Constitution that “the evolutionary process is inevitable and, indeed, is the true interpretative genius of the Constitution’s text.” Hence, the Constitution is a “living” document and evolving. No, it is not. There is no reference made in the Constitution’s text to “gut reactions,” evolutionary processes or a “living” document, nor were they mentioned in the 1787 Constitutional Convention. The Supreme Court held in South Carolina vs. United States in 1803 (165 U.S. 150, 160 (1897)) that the Constitution’s meaning does not alter. That which it meant when adopted, it means now.

2. Madison & Jefferson’s Best Guides

Both Madison and Jefferson believed the Declaration of Independence was the best guide for understanding the Constitution. Madison, Jefferson, and the University’s Board of Trustees held that the Declaration, America’s first and foremost founding document, was “the first of the best of four enumerated guides to understanding the Constitution and our republican form of government.” Moreover, Madison said the Declaration was “the fundamental act of union.” Jefferson said the Declaration was an “expression of the American mind.” Both Madison and Jefferson said the Declaration’s principles ought to be the norma docendi of the University’s faculty as to teaching the Constitution.

3. Lincoln and the Declaration

It is also notable that President Abraham Lincoln clearly agreed with Madison and Jefferson that the Declaration of Independence is the best guide to understanding the Constitution. Lincoln stated in his second inaugural address that “all men are created equal.” This equality is not defined or discussed but is followed by the words: “that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.” Thus, was the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration.

Then, Justice Brewer states, “yet the (organic law) is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration.” However, since Justice Brewer’s ruling above, the U.S. Congress declared in The United States Code Annotated, that “the Declaration of Independence, along with the Articles of Confederation and the Northwest Ordinance, all now have the force of “organic law.”

5. Chief Justice Taney’s Egregious Exclusion

Chief Justice Roger Taney concluded that “all men are created equal” as the “self-evident” truth that determined the meaning of the American Constitution. Moreover, had the Supreme Court concluded as Jefferson had written in the Declaration that there is a Creator and our rights come from him—not Government, and that America’s founding was based on the “laws of nature and of nature’s God” which meant God’s law as revealed through nature and His moral law revealed in the Bible, the Supreme Court hopefully would not have excluded God from public schools and the public square.


In this regard, modern moral relativists argue that the Declaration’s assertion as to “the Laws of Nature and of Nature’s God” may not have been taken seriously. To the contrary, Mr. Madison did take it seriously and justified ratification of the Constitution by lack unanimity or by only 9 States of 13 States, on “the great principle of self-preservation, to the transcendental law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim and to which all such institutions must be sacrificed.” In assessing the arguments of Madison, Jefferson, and Lincoln, the date of separation of the United Colonies from Great Britain was not July 4, 1776, the date of the Declaration, but the actual date of separation was July 2, 1776, when Richard Henry Lee’s Resolution for separation was passed by Congress. Thus, it has been argued that Jefferson and Lincoln, the date of separation of the United Colonies from Great Britain was not July 4, 1776, the date of the Declaration, but the actual date of separation was July 2, 1776, when Richard Henry Lee’s Resolution for separation was passed by Congress. Thus, it has been argued that the Constitution was written and ratified, there is no security for a Bill of Rights, said “if the Constitution is not a ‘living’ document, nor were they mentioned in the Constitution’s text to reference is made in the Constitution’s text to reality not guides, but roads to perversion of the Constitution. Lincoln and judges a more accurate understanding of the Constitution. A law professor direct his students to any particular guides to instill in future lawyers and judges a more accurate understanding of the Constitution.

ENDNOTES

1 Bill Graves is both a former State Legislator and District Judge.
4 Professor Madison’s Guide to the Constitution, by J. David Gowdy, The Washington, Jefferson & Madison Institute 2011, 2nd Revised Edition. Madison and Jefferson listed three other “best guides” after the Declaration. They were, 2nd The Federalist by Alexander Hamilton, James Madison and John Jay as “an authority to which appeal is habitually made by all, and rarely denied or denied by any as evidence of the general opinion of those who framed, and of those accepted by the Constitution as guides on questions as to its genuine meaning.” Third on the list were the Resolutions of the General “Assembly of Virginia in 1799 on the subject of the alien and sedition laws, which appeared to accord with the predominant sense of the people of the United States. Fourth on the list is the Farewell Address of President George Washington, as conveying political lessons of peculiar value.
6 165 U.S. 150, 160 (1897).
7 40 U.S. 393 (1856).
9 Walter Berns holds that the Constitution was written to safeguard the noble principles of the Declaration of Independence. Prof. Walter Berns holds that the Constitution should be explained “by reference” to the Declaration. He further argued that the Constitution was written to safeguard the noble principles of the Declaration of Independence. Prof. Walter Berns holds that the Constitution should be explained “by reference” to the Declaration. He further argued that the Constitution was written to safeguard the noble principles of the Declaration of Independence. Prof. Walter Berns holds that the Constitution should be explained “by reference” to the Declaration.
Impeachment Part 2: Precedent in the House

by Renley Dennis

In the October edition, the House’s impeachment process was summarily outlined based on the House rules and practice. This month’s edition intends to outline the precedent set by previous House impeachment proceedings to define what is an impeachable offense and the success rate of charging those offenses. This article will use House precedent from past impeachments to outline impeachable offenses and how the House usually charges those offenses. Thus, the conviction or acquittal by the Senate is irrelevant for purposes of this article but will be the focus of next month’s edition.

When it comes to impeachment, some offenses are easy to spot, like the Judge improperly seeking financial gain, and others are not so easy, like the president who refuses to pay her taxes. Given the lack of clarity within the Constitution, precedent from past impeachments may be the only guidance for such proceedings. If a federal Judge leverages his courtroom to induce personal, financial gain, is that impeachable? While certainly a bad act, is it impeachable? If a President evades taxes while in office, is it impeachable? It is criminal, but is it impeachable? Though the definition of impeachable is not so easily identified. Is Russia or China an “Enemy”? If so, any cooperation with Russia is impeachable? If not, and Russia is deemed a “friend” is Treason. Then would it be Treason if the president aided the Olympics hosted by both?

To that point, during the Civil War, Judge West Humphreys, a federal judge in Tennessee, was an outspoken advocate for succession and eventually accepted a judicial appointment in the Confederacy. However, he never resigned from his Union judgeship before joining the Confederacy. It may surprise you to learn Humphreys was never impeached for Treason. Instead, the House sought to dispense with the higher burdens of proof that accompany charges of Treason, and impeached Humphreys for treachery under a separate provision, “high Crimes and Misdemeanors.” This allowed the Senate to try Humphreys without once mentioning his intent or motives. Although Humphreys’ activities may have fit nicely with the definition of Treason, the House instead passed articles that made his conviction easier and less time consuming by defining them as treachery.

Bribery. Bribery can mean that the official being impeached either was allegedly taking or giving a bribe. Bribery, like Treason, requires the managers to prove motive or intent during the Senate trial. When drafting future articles, the House may avoid the burden of proof associated with Bribery as they did with the case of Judge Humphreys.

Before Oklahoma Statehood and before the establishment of the Bureau of Indian Affairs, the Secretary of War’s was the head of Indian affairs. In that authority, he was to appoint the post traders in Indian Territory. These roles were highly sought after as they were very profitable. In 1876, William Belknap, the Secretary of War, appointed his friend, Caleb P. Marsh, as the post trader in Fort Sill, Indian Territory. Through concealment, Belknap received money from Marsh and others connected to Marsh’s appointment. When the House began the impeachment proceeding against Belknap, again, they deferred to their cautionary practice of basing impeachment not on Bribery but instead on “high Crimes and Misdemeanors.” The resolutions that passed the House could easily be seen as defining bribery, but the House managers would not have to fight the burdens of proof necessary for Bribery in the Senate.

More recently, Judge Walter Nixon, chief judge for the Southern District of Mississippi, presided over the criminal trial of a wealthy businessman’s son. Judge Nixon accepted a bribe from the businessman in exchange for a lenient ruling against the son. The House passed a resolution with articles against Nixon for financial misconduct and abusing the office for personal gain by accepting bribes. Those charges were either “high Crimes and Misdemeanors” or “impeachable offenses”—not Bribery. The House again avoided the necessity to prove intent or motive.

Other high Crimes and Misdemeanors. While Treason and Bribery are both crimes, whether committed by the president or a common citizen, what are we supposed to make of “other high Crimes and Misdemeanors?” This catchall was added to Article II by a vote of eight to three. It replaced the term “maladministration” because the four-year term limit of the President already protected against “maladministration.” The debate on this phrasing arose with George Mason indicating his desire that impeachable conduct shall cover “many great and dangerous offences” which are not covered by Treason.

1 “Precedent” does not mean binding, for our purposes here, but rather the common political practice of the House throughout impeachment history.
3 Id.
4 Id.
6 Citizen’s Guide at 44.
7 Today, the “Secretary of Defense.”
8 Fort Sill was established in 1869, when Oklahoma was Indian Territory. In 1890, Oklahoma Territory was established and encompassed the western half(ish) of modern Oklahoma until statehood.
9 Id. at 49-50.
10 Id.
11 Belknap resigned before the House passed the articles against him and the Senate was not sure if they still had jurisdiction to impeach a resigned civil officer at the time. See Citizen’s Guide at 49-50. That question has yet to be clearly resolved, but one argument is that removal is just one sanction of impeachment with another being disqualification. See Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis, S3-S4 (3rd ed. 2019).
12 Id. at 66-70.
13 Id.
14 Id.

MUNICIPAL JUDGE: Salary $99,174.40. The City of Oklahoma City seeks a full-time Municipal Judge. Must be a resident of Oklahoma City with a minimum of four years’ experience in Oklahoma as a licensed, practicing attorney. Additional requirements are listed in the application. All interested applicants should apply at www.okc.gov/departments/personnel/careers. Please direct all inquiries to Court Administrator, LaShawn R. Thompson at (405) 297-2673. Applications with resumes will be accepted until December 16, 2019.

See IMPEACHMENT, PAGE 9
We’re not just bringing you the information that you need.
We’re bringing it to you where you need it.

IN PRINT. ONLINE. IN PERSON.

THE JOURNAL RECORD
By Bill Gorden

**Gifts for Kids Time!**

A Beautiful Day in the Neighborhood: The Poems of Mister Rogers

What more is there to say? While Mr. Rogers has passed, he is an icon, and his works always timely. Most of what is here comes directly from the television series. The depiction of Rogers and his puppets are spot-on. For whatever reason, the other human characters from the show are not included here, but that is OK, as the origins of the Mr. Rogers mystique are simply him and his creations.

The art is probably watercolor of some type, the stories at once familiar and yet apt for everyone, today.

**Sarge: The Veterans Best Friend** by John Otto and Payton Otto, Illustrated by Charlotte Strickland, Full Circle Books, 2018, Hardback, 42 pages, $17.95

This local story by local creators and a local publisher, is just right. Sarge the dog was discarded on Oklahoma City streets, and was so terrified that he had trouble fitting in with fostering families. Finally a warm human calms him, and he transitions to a local Vet Center, where he illuminates everyone’s days. All this is told in first person by Sarge.

Illustrations in watercolor, very bright, and action oriented. A great read for little ones (By the way, if you can foster or adopt a rescue, give it a try.)

Some Day is Now: Clara Luper & the 1958 Oklahoma City Sit-ins. by Olugbemisola Rhuday-Perkovich, Illustrated by Jade Johnson, SeaGrass, 2018, Hardback, 35 pages, $17.95

Another local story, with national import. It is an old theme, about standing up for something, although there is danger in doing so. This work will introduce youngsters to the days of the first unravelling of segregation, and the remarkable way some other youngsters paved the way for a freer future. Sometimes this tale is light, but of necessity there are parts that perhaps only slightly older kids will fully grasp. Probably best if read by a grandparent to the litter ones.

Illustrations are probably pastels, well done, well defined ideally matched to the subjects.


The theme of inclusiveness is still strong in children’s works, perhaps because we have become so divided in society. This is a book of subtle inclusion. It embraces many actions and settings, such as championships, wind, rain, ladders, hugs, a footrace. The illustrations are straightforward, though action filled. Perhaps the best summation of the result is from the book: “I’m not meant to be like you, You’re not meant to be like me, Sometimes we will get along, and sometimes we will disagree.”

Illustrations are Acrylic on Board, scanned into Adobe Photoshop with digital chalk background. Vibrant.

Lily’s Story by Bruce Cameron, Starscape, 2019, Hardback, 218 pages, $16.99

This is for young readers, by an author with a proven track record among them. Lily is a rescue dog that lives, for now, at a shelter, waiting to be fostered. She is cared for by the daughter of the owners of the rescue center. When the time comes for Lily to be fostered, she and the daughter come to realize how much they care for each other. This is easy, breezy reading for kids, largely told from the dog’s viewpoint, as with Sarge, above. The heart tugs are all there, but it is not overwhelming.

A few illustrations, pen and ink or heavy pencil, are helpful to the narrative.

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**Book Notes**

OCBA Night at the Thunder takes place on Sunday, February 23 at 6 p.m. at the Chesapeake Arena. Our Oklahoma City Thunder will be taking on the San Antonio Spurs. Tickets are only $72 each. Seats are located in the Summit I Suite located on the Press Level. With plenty of room to mingle, you can enjoy bottomless popcorn, hot dogs, cookies, and your choice of water or Coca-Cola products. To purchase tickets, call the Bar Office at 236-8421.
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.

CONTACT US TO LEARN MORE
WE’RE HERE TO MAKE A FRESH START AS EASY AND EFFORTLESS AS POSSIBLE.
Rose, Gramps, and Grace

By Jeff Massey

As Bryan Adams wrote, “it was the Summer of ’69.” The war in Vietnam dominated the news and I had traumatically concluded the newest version of kindergarten. Arkansas was not noted for its education regimens back then, but it retrospect I am amazed at the quality of education afforded to us. I grew up in one of the poorest counties in the state, per capita. The Ozark mountains of north central Arkansas are beautiful; as my dad would attest, “God’s Country.” My father had been a state Forest Ranger before enlisting in the U.S. Army in 1969. He was forty years old—much older than the average enlistee—but had fourteen years of National Guard experience. The Army made him a sergeant, gave him a clip board, and shipped him directly to Vietnam Army made him a sergeant, gave him a clip board, and shipped him directly to Vietnam. While my family was slightly above the poverty line, we were dirt poor. Literally, dirt poor.

As Christmas approached, we drew names for a Christmas exchange. I was excited with avarice in my heart. I knew I might get lucky and have one of the “rich kids” in my classes draw my name. I had been to the birthday parties. I had seen their toys, bikes, and gifts! Oh boy! My patient mother bought a gift for whichever classmate’s name I drew. As Christmas break was upon us, the gifts under the class tree were distributed! I tore open the wrapper of my gift, hoping for a GI Joe or military model! My eyes blinked unbelievingly. There inside the paper was a homemade, crudely painted limberjack doll. (Google this if you have not seen one). I was horrified on multiple levels! First, I had gotten a doll! Second, it was apparent that new girl, Rose, had drawn my name. Third, I got jeered again by the wealthy kids for receiving a lackluster gift. I was crushed. At recess, Rose told me her grandfather had made the doll and showed me how to make the stick figure dance on the little board. But I wanted none of it. I took my gift and hid it in my desk. I hoped everyone would forget the gift and stop teasing me about it.

Eventually, I brought the gift home. As I rode to our house with my grandfather, he asked me about the present in my hands. I am sure I told the truth about my childish perceptions. About Rose. About her family. About her gift. About poverty. My wise grandfather (a public school teacher, principal and county school superintendent) listened quietly to my childish whining. I remember the warmth of his truck as we drove home. As he parked the truck in front of the house, he turned to me and said words which I still recall, “Jeff, you didn’t get the gift you wanted. But she gave you the best gift she could give. You will come to appreciate that it’s the giver and not the gift that matters.”

Rose moved away the next year. We never saw her again. But her gift has outlasted every other gift I got in school. Her meager present was from circumstance. My grandfather’s gift was from his Godly wisdom. Thanks Gramps. And thank you Rose. It was a wonderful gift.

IMPEACHMENT from PAGE 5

and Bribery. Thus, “other high Crimes and Misdemeanors” was recognized as broad enough by the Founders.15 But the pending question is still: does “high Crime and Misdemeanor” require the conduct to be criminal to be impeachable?16 While this debate is still open, the most reasonable answer is probably no.16 The abuse of office may not always be a crime punishable under a criminal statute, but it may rise to an impeachable offense. Take the impeachment of Judge Alcee Hastings, who’s conduct was acquitted in a criminal trial for a conspiracy to accept a bribe but subsequently impeached for that exact offense.

The Founders did intend that the catchall be distinguished from “maladministration.” An administration’s ineffectiveness or inadequacy in the eyes of the Congress was not impeachable in itself. Instead, they intended to reach conduct that had a tinge of criminality to it. Though the conduct need not be criminal, it must be more than mere “maladministration.”

Judge Robert Archibald, in 1913, and Judge Halsted Ritter, in 1936, were impeached for financial misconduct, “misbehavior,” and other “high Crimes and Misdemeanors” that were below the threshold for criminal punishment.17 Likewise, President Nixon may have never been impeachable if criminality was requirement. The leading explanation for this is “high Crimes and Misdemeanors” was intended to reach abuse of power even other “high Crimes and Misdemeanors” that were below the threshold for criminal punishment.17 Likewise, President Nixon may have never been impeachable if criminality was requirement. The leading explanation for this is “high Crimes and Misdemeanors” was intended to reach abuse of power even

The Great Pumpkin Hunt
by Debbie Gorden

It all began on Halloween eve, a blustery cold day. Word got out that there were no pumpkins at Family Junction Youth Shelter. How could the kids survive Halloween without carving pumpkins?!?

Having heard that Aldi was the “place” for pumpkins this year (at $2.99 each), Connie and I headed that way. No one had told Aldi that pumpkins will not survive a freeze and all but three of their crop had succumbed to mushy pulp. For those of you who have not been to Aldi, they protect their grocery carts with certain locks that have to be opened by placing quarters in the lock, but that’s another story. We grabbed the three pumpkins and continued our search.

Sam’s was just down the street and surely they would have a few of the big orange guys around. But alas, they did not have any in sight nor in the stock room. This was the perfect place to get Halloween cupcakes and candy though, so it was not a complete bust!

The hunt continued on to Lowe’s, WinCo and the super Wal-Mart. By now, the weather was freezing both of us. I would drive as close to the front door as I could and Connie would hop out and check inside for anything resembling a pumpkin. There were not even any small “pie” pumpkins in sight!

We decided to try one more store, Homeland on Classen Boulevard. On the way, we passed a few houses with their harvest looking assemblies of pumpkins, gourds and hay bales. Things were getting close to going from Pumpkin Search to Pumpkin Pirates! We figured we could go to the porches that had lots of stuff and just take one pumpkin until we had accumulated a dozen. After all, Connie’s fast and in good shape. We were concerned how we would explain our arrest to Judge James at Municipal Court.

The pumpkin gods looked down on us however and Homeland was packed with a big stash of the goodies as we walked in the front door. We loaded up the dozen pumpkins and headed out to Family Junction. Relieved that we had escaped lock-up, it was back to the office and just another day at the OCBA.

It was just another day at the OCBA.

Oklahoma County Bar Foundation Awards Annual Grants

Through the generosity of OCBA members and the interest received from the Foundation’s endowed account at the Oklahoma City Community Foundation, the Directors of the OCBF were able to grant $20,000 this year to ten non-profit organizations. Receiving grants this year were:

• CASA of Oklahoma County
• The Innocence Project at Oklahoma City University School of Law
• Legal Aid Services of Oklahoma
• Oklahoma County Court
• Oklahoma Lawyers for Children
• Palomar Family Justice Center
• Pivot
• ReMerge
• Trinity Legal Clinic

OCBA members are able to make donations to the Foundation on their membership renewal forms each year. Donations are also received throughout the year in honor or memory of special persons or causes. If you are interested in making a contribution, please contact Debbie Gorden, OCBF Executive Director, at 236-8421 or debbie@okcbar.org.

I WAS WITH A BIG, NATIONAL COMPANY THAT OFFERED CHEAP RATES AND MADE A LOT OF PROMISES. AFTER A FEW MONTHS, I REALIZED NONE OF THOSE PROMISES HELD TRUE. I SWITCHED BACK TO OAMIC AND AM SO GLAD I DID.

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Crowe & Dunlevy Names New Associate Attorneys; Kiefner, Scrivner, Sine Join Firm’s Oklahoma City Office

Lauren Kiefner, Khaki A. Scrivner and Meg Sine have been named Associate Attorneys in Crowe & Dunlevy’s Oklahoma City office.

Kiefner is a graduate of Washington University School of Law where she also earned a Certificate in Business Law and served as a reporter for the Washington University Law Review. She received her undergraduate degree from Baylor University. Kiefner is a member of the firm’s Appellate, Bankruptcy & Financial Institutions and Litigation & Trial Practice Groups. Scrivner, a member of the firm’s Corporate & Securities and Real Estate Practice Groups, is a graduate of Oklahoma City University School of Law. She was a member of the Oklahoma City Law Review and was awarded the Judge Tom Brett Award for Excellence in Criminal Law. She received her undergraduate degree from Texas Tech University where she was a member of the Rawls Business Leadership Program and received her undergraduate degree from Baylor University cum laude in Political Science with Pre-Law emphasis and Minor in Business Entrepreneurship.

Local Attorneys Selected for Leadership Academy

Ten Oklahoma City Attorneys are among 18 future leaders of Oklahoma’s legal community who have been selected to receive training in leadership, motivation and communication as members of the Oklahoma Bar Association Leadership Academy class of 2019-2020. The academy participants were chosen from a pool of applicants spanning the state.

Oklahoma City participants are Myriah Downs, Dewitti Paro & Meek; Celeste England, Celeste J. England, Attorney at Law; Ashley Forrester, Forrester Law Firm; Emily Harrelson, Oklahoma Tax Commission; Janet Johnson, Department of Human Services, Child Support; Telena McCullough, Oklahoma State Department of Education; Robin Murphy-Clemendon, Oklahoma Department of Corrections; Camal Pennington, OU College of Law; Wyatt Stanford, Elias, Books, Brown & Nelson PC; and Jessica Ward, Oklahoma Department of Human Services.

Tulsa-area participants in the 2019-2020 academy are June Stanley, Stanley Law Firm PLLC; Stacy Brlakcic, Ascension Health/ St. John Health System; Jeffrey Krigel, Jeff Krigel Law Firm PLLC; Thomas Landrum, The Firm on Baltimore PLLC; James Rea, Tulsa County District Attorney’s Office; and Sara Schmook of Fry & Elder.

Other participants are Kyle Moon, Raptor Petroleum, Guthrie; and Amanda Lilley, Legal Aid Services of Oklahoma, Stillwater.

Originating from the OBA’s Leadership Conference in 2007, the academy is aimed at developing the future leaders of the OBA by giving Oklahoma attorneys training in the core principles of effective leadership and how to communicate, motivate and succeed in their legal careers and also as community leaders.

The OBA Leadership Academy includes four sessions, the first of which took place Sept. 13. The academy will conclude in April 2020. Each session will be led by experienced leaders from various backgrounds including military officers, former OBA presidents, leadership experts and high-profile public officials.

The 18,000-member Oklahoma Bar Association, headquartered in Oklahoma City, was created by the Oklahoma Supreme Court to advance the administration of justice and to foster and maintain learning, integrity, competence, public service and high standards of conduct among Oklahoma’s legal community.

Mahaffey & Gore Welcomes New Associates

Eminent energy law firm Mahaffey & Gore, P.C. has announced the addition of Myranda Hancock and Scott Verplank as associate attorneys in oil and gas litigation. Myranda Hancock earned her Juris Doctorate degree from the University of Oklahoma College of Law in 2019. Hancock received the Phillips Allen Porta Memorial Award for Legal Ethics in 2018. Hancock also earned the American Jurisprudence Award in Professional Responsibility. Hancock attended a semester at the faculty of Law, University of Oxford. Hancock worked as a law clerk for Mahaffey & Gore while attending law school. A member of the American Association of Professional Landmen, Hancock is also a Certified Professional Landman. Hancock earned a Bachelor of Arts degree in Organizational Communications from the University of Oklahoma in 1997. Scott Verplank earned his Juris Doctorate degree from the University of Oklahoma College of Law in 2019. Verplank graduated with honors and was awarded The Order of the Coif. Verplank also earned American Jurisprudence Awards in Civil Procedure 1, Civil Procedure 2, Contracts, Legislation and Regulation, Mineral Title Examination, and Trial Techniques. Verplank attended a semester at the faculty of Law, University of Oxford. Verplank worked as a law clerk for Mahaffey & Gore while attending law school. Verplank earned a Bachelor of Arts degree from the Oklahoma City University cum laude in Political Science with Pre-Law emphasis and Minor in Business Entrepreneurship in 2016.

Crowe & Dunlevy Again Tops Oklahoma Tier 1 Rankings Of Best Law Firms; Firm Leads U.S. News & World Report And Best Lawyers® State Rankings For 10 Years

U.S. News & World Report and Best Lawyers® has awarded Crowe & Dunlevy the most Tier 1 rankings in Oklahoma for the 10th straight year. With 81 Metropolitan Tier 1 rankings in the publication’s 2020 report of Best Law Firms*, Crowe & Dunlevy has topped the Oklahoma list each year for a decade.

In the publication’s 2020 Best Law Firms rankings, Crowe & Dunlevy received 61 Metropolitan Tier 1 rankings in Oklahoma City and 20 in Tulsa. The firm increased its Metropolitan Tier 1 rankings this year, adding Aviation Law and Bet-the-Company Litigation practices to the list.

Additionally, the firm received eight Metropolitan Tier 2 rankings in Oklahoma City and five in Tulsa. The firm also received one Metropolitan Tier 3 ranking in Oklahoma City and one in Dallas/Fort Worth.

In total, Crowe & Dunlevy received 96 tier rankings across five offices and three tiers.

The rankings methodology is designed to capture the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical region and legal practice area. Rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys and review of additional information provided by law firms as part of the formal submission process.

Hall Estill Ranked as “Best Law Firm” In 2020 U.S. News And Best Lawyers

Hall Estill, Oklahoma’s leading law firm, with offices in Tulsa, Oklahoma City, Denver and Northwest Arkansas, has been named in the 2020 edition of U.S. News & World Report – Best Lawyers’ “Best Law Firms in America.” Since 2011, Hall Estill has been recognized in both the first and second tiers in multiple practice areas. The “Best Law Firms in America” are chosen through a rigorous evaluation process that includes client and lawyer evaluations, peer review from leading attorneys in each field and review of additional information provided by law firms as part of the formal submission process. To be eligible for a ranking, each firm must have at least one lawyer who is listed in the “Best Lawyers in America.” After this thorough selection process, only a select number of firms received first-tier national and/or metropolitan rankings.

The first-tier rankings are featured in U.S. News & World Report’s Money Issue and in the “Best Law Firms” stand-alone publication, as well as on its website and bestlawfirms.usnews.com. This year marks the tenth edition of this highly-anticipated annual analysis.
Events & Seminars

**NOVEMBER 19, 2019**

**CLE Breakfast Seminar, “Expungement: 2020 Update”**
Gary W. Wood, Riggs Abney
7:30 a.m., Bar Office

**CLE Luncheon Seminar, “Criminal Jurisdiction Issues – Murphy & the Muscogee (Creek) Nation, Prof. Casey Ross, OCU School of Law**
12 Noon, Bar Office

**CLE Evening Seminar, “Guardians Ad Litem in OK County & the New Standard Operating Manual for OK Guardians Ad Litem Under Title 43,” Sharon Byers, OK Guardian Ad Litem Institute, 5:30 p.m., Bar Office**

**NOVEMBER 28 & 29, 2019**

Thanksgiving Holidays – Bar Office Closed

**DECEMBER 3, 2019**

**CLE Breakfast Seminar, “Judicial Independence/Oklahoma Constitution,” Chief Justice Noma Gurich, OK Supreme Court**
7:30 a.m., Bar Office

**CLE Luncheon Seminar, “Trial & Error: Tips for Improving Your Trial Skills,” Judge Bryan Dixon, Retired, OK County Court**
12 Noon, Bar Office

**CLE Evening Seminar, “The Executive Branch & the Judiciary,” Mark Burget, General Counsel to the Governor, State of Oklahoma**
5:30 p.m., Bar Office

**DECEMBER 5, 2019**

OCBA Holiday Reception
5-7 p.m., Robinson Renaissance Food Court

**DECEMBER 10, 2019**

**CLE Breakfast Seminar, “Myth Buster: The Reality of Seeking Asylum in America,” Kelli Stump & Breanna Cary, Stump Immigration**
7:30 a.m., Bar Office

**CLE Luncheon Seminar, “Practicing Family Law in Oklahoma County Court,” Judge Sheila Stinson & Chris Deason, 12 Noon, Bar Office**

**CLE Evening Seminar, DPS/DUI, Sunne Day, OK Dept. of Public Safety, 5:30 p.m., Bar Office**

**DECEMBER 17, 2019**

**CLE Breakfast Seminar, CyberSecurity/Data Privacy**
John Graves, National Litigation
7:30 a.m., Bar Office

**CLE Luncheon Seminar, “Juvenile Law: The Latest, Even If Not the Greatest”, Judge Trevor Pemberton, OK County Court**
12 Noon, Bar Office

5:30 p.m., Bar Office

**DECEMBER 23-25, 2019**

Christmas Holidays – Bar Office Closed

**JANUARY 1, 2019**

New Year’s Day – Bar Office Closed

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Ron Buckelew: A Fond Remembrance

By Daniel J. Gamino

The final gavel sounded for our colleague Ron Buckelew on October 14, 2019. He was 70. Many will recall Ron as a stalwart advocate in the never-ending tumult of family law. Ron labored long amid all the raw emotions, human egotism and score-settling that arise in that venue. Yet Ron always brought light and clarity to that difficult arena. And he did it with his keen understanding of the law and its limits and the human spirits and its unlimited strength. To put it simply, Ron embodied the prayer of Francis of Assisi, “Lord, make me an instrument of your peace.”

I will always recall one case where I opposed Ron. I represented a very young wife. He represented the equally young husband. Depositions were set in Ron’s office. I prepared my young client. At the deposition on the record Ron asked my client her name, and she immediately dissolved in tears. Her intense weeping persisted for a time. We fairly settled the case. Thereafter for several months whenever Ron saw me in the courthouse he always apologized for that incident. I responded that he had nothing to apologize for. His question was routine. His voice and demeanor were not angry or accusatory in any manner.

The Oklahoma County bench and bar were blessed that Ron practiced more than 50 years. Clearly Ron mentored his son attorney Daniel Buckelew who now displays many traits learned from a wise father. Ron overcame some health challenges in recent years. And Daniel ably shouldered more of the load in their family law practice.

By pure luck of the draw it turns out I attended the same grade school (Bishop John Carole) and high school (Oklahoma City Bishop McGuinness) and college (UCO) where Ron graduated a handful of years ahead of me. Yet clearly he learned the lessons so much better than me.

We are richer for knowing Ron Buckelew and now poorer that he is no longer with us. May he rest in peace.
New Pivot Leader Affirms Importance of Partnership with OCBA

By: Monica Ybarra

The Oklahoma County Bar Association has a long and valued relationship with Family Junction Youth Shelter, now under the umbrella of Pivot. The Community Service Committee supports the youth shelter and the children temporarily housed there through a variety of service-oriented activities and support for shelter operations. Pivot’s new President and CEO, Jennifer Goodrich, looks forward to strengthening the relationship. “While our program and our staff meet immediate food, shelter, education, and other needs of the youth we serve, the OCBA offers opportunities for fun and important ‘extras.’ From providing fun backpacks and school supplies to catering pizza parties and spending one-on-one time with our kids, OCBA gives them a chance to relax, enjoy life and just be kids,” says Goodrich. “In addition, they provide funding that allows us to treat our kids to fun summer activities and seasonal activities such as the annual Christmas party and Back to School Bash.”

Goodrich has over 25 years of professional experience in non-profit, mental health and substance abuse counseling, including 20 years at Pivot as a therapist, Clinical Director, Vice President of Programs, and now as President and CEO. She is a Licensed Professional Counselor, Licensed Alcohol and Drug Counselor, and an approved supervisor for both. Her training includes TF-CBT and EMDR, and she is a TBRI (trust-based relational intervention) practitioner. She is responsible for overseeing Pivot’s clinical functions, national accreditation, and overall operations of the organization.

Goodrich says one of her favorite things about this new role is leading such an incredible group of staff members. “Most importantly, I have the opportunity and blessing to lead the most caring, passionate, and dedicated staff who are committed to meeting the needs of our community in both small and significant ways,” she said.

The partnership with OCBA is important, says Goodrich, and she looks forward to working with committee members. “We are honored and appreciative of the long-standing relationship with OCBA. Together we impact the lives of these young people every day.”

Interested in supporting Pivot’s youth shelter alongside the OCBA Community Service Committee? Attend a Community Service Meeting in the coming months, and stay tuned to your email and the OCBA Facebook page for more information about upcoming opportunities.

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Oklahoma County Bar Auxiliary Annual Fundraiser

The Oklahoma County Bar Auxiliary is holding their annual Poinsettia fundraiser. This is an opportunity to purchase beautiful live poinsettias and gift certificates from TLC. Decorate your home or office with our LOCALLY-GROWN, HAND-SELECTED PLANTS, sleeved for protection, with an attractive foil pot cover. Our profits benefit Children’s Nonprofit Organizations in Oklahoma County.

Order forms can be emailed to becky.taylor527@gmail.com or mailed with a check made out to OCBA to OCBA c/o Becky Taylor, 745 NE 18th St, OKC, OK 73105.

For questions contact Tsinena Thompson, TThompson@OLFC.org (405) 232-44543 or Diane Chapel, chapel3804@cox.net (405) 250-9108.

HURRY — Plants and gift cards are available on a first come, first served basis! Order 10 or more Large Poinsettias &/or 20 or more Small Poinsettias and receive free delivery in downtown OKC!

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QUESTIONS? Contact Tsinena Thompson, TThompson@OLFC.org (405) 232-44543 OR Diane Chapel, chapel3804@cox.net (405) 250-9108
IMPEACHMENT from PAGE 9

if that abuse was not criminal at the time.\(^{18}\)

While criminal courts are guided by criminal standards, the court of impeachment was established to patch the insufficiency of criminal courts to deal with great conduct of public figures.\(^{19}\)

Another approach. One strategy commonly employed by the House when drafting articles of impeachment is to include broad sweeping language that the managers can flexibly work with during the Senate trial. A great example of this is the impeachment articles against Alcee Hastings. Not one of the 17 articles passed by the House and tried before the Senate included any mention of “Treason,” “Bribery,” or “high Crimes and Misdemeanors.” Instead, all seventeen specified the alleged conduct and ended “Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.”\(^{20}\)

This tactic proved successful with a conviction on 8 of the 17 articles.

“Mishandling” and the judiciary. As stated above, judges Archibald and Ritter were both impeached by the House for “mishandling.” The House has used mishandling as an added, impeachable offense reserved only for judges. Those in favor argue that since judges receive lifetime appointments while presidents and other impeachable officials do not, the removal of judges who commit misconduct in office is impeachable for that misconduct, even if that misconduct does not rise to the level of an article II impeachable offense but instead violates the “during good Behaviour” clause of Article III, § 1.\(^{21}\)

Official v. Personal Capacity. Another common debate about impeachments has to do with the capacity in which the official was acting: as a citizen or as the president, vice president or a civil officer. If the official was acting in an official capacity when accepting bribes from a foreign power, is that impeachable? That is exactly an example used by delegates to argue in favor of impeachment’s inclusion in the Constitution. But what if the president purged himself in a civil lawsuit that had nothing to do with his official capacity as the president? Some scholars argue this is personal capacity and not formal conduct of the president. However, President Clinton was impeached by the House in 1998 for exactly that.\(^{22}\) But, in 1974, the House Judiciary Committee drafted articles of impeachment against President Nixon but excluded any charges of tax evasion, which is criminal. The House Judiciary Committee determined that Nixon’s evasion of taxes was conduct arising from his personal capacity, not officially as president.\(^{23}\)

So how does the House reconcile this precedent? While complex, the best answer is this: Does the conduct of the impeachable official arise to a level of seriousness and damage that prevents that official from performing her official duties and obligations of the office? Looking at the articles of impeachment that went to the Senate for trial in both presidents Nixon and Clinton’s cases, it is obvious that the House will frame the articles to fit this rhetoric: the official violated his duties in such a way that the duties of the office can no longer be effectively executed. This factor is one of many considered by the House and does not affect the task of considering parsimony and public sentiment which are certainly driving factors, but if the idea is the House will only pass articles that could lead to a conviction in the Senate, the only conduct that is unrelated to the office to be impeachable would be serious misconduct that prevents those official duties from being properly executed.

Final Remarks. The most successful strategies of the House usually include impeachment proceedings that follow public favor. Beyond that, the careful drafting of articles of impeachment tend to lead to articles that allege “high Crimes and Misdemeanors” in order to avoid the burdens of proof associated with Treason and Bribery. Further, a catchall article, such as those in Judge Ritter’s impeachment, helps the House managers’ chances of succeeding on at least one article of impeachment. Remember that the House managers only have to convince the Senate to convict on one article, so a broad, catchall article is likely to accompany any set of articles of impeachment. Finally, though he resigned from office before he could be impeached, the articles of impeachment against President Nixon provide, as one scholar has put it, a “modern guide for charging presidential abuse of power” among other impeachable offenses.\(^{24}\)

The House Judiciary Committee painstakingly drafted the Nixon articles to the point that they included only offenses that were certainly impeachable, setting a framework for modern Congress. Thus, the House recipe for successful and proper impeachment is the careful drafting of the articles to ensure the offense is in fact impeachable, the framing of the conduct as “high Crimes and Misdemeanors” to avoid burdens of proof, and the inclusion of one or more catchall article.


\(^{19}\) Id.


\(^{22}\) Some actually argue that Clinton had undercut the legitimacy of the judiciary with perjury and obstruction of justice. Others argue that the purposes of the Clinton impeachment were motivated by politics and personal morals. However, the debate is not very strong that Clinton committed obviously impeachable offenses.


\(^{24}\) Citizen’s Guide at 55-65.
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