OCBA YLD Stamps Out Hunger

By: Nicole Jones

Saturday, May 13, 2023, members of our OCBA YLD Board participated in the “Stamp Out Hunger” Community Service event hosted by the Oklahoma Regional Food Bank. YLD members volunteered at the Midwest City Post office Location and sorted and loaded 16,580 pounds of food for Oklahoma residents in need! Regional Food Bank staff members worked side-by-side with the YLD’s own Randy Gordon, Cami Ruff, Genni Ellis, Maggie Lanier, Anamayan Narendran, Braden Hoffman, and Nicole Jones. The heavy rainfall during the last few loads did its best to deter resolve, but the YLD persevered and our members stayed until the last truck was unloaded. GREAT WORK, OCBA YLD! The Regional Food Bank has already requested our services again for next year.

THE LAWYER POET

By James B. Croy

People have always loved David and Goliath stories, and usually they have rooted for David. Not many folks name their kids Goliath, while David is one of the most popular names ever.

History and the arts constantly repeat the theme of the small outsider vanquishing the large, powerful opponent. Characters from Rambo to the Scarlet Pimpernel mirror David. Humorous books, such as The Mouse That Roared, retell the story.

We see it in real time daily in current events as Russia’s invasion of Ukraine has turned into a quagmire.

In civil trials during voir dire, lawyers begin educating jurors that their poor, small client is David, and the opposing side is a powerful Goliath with endless resources. And juries do not fail to notice when the plaintiff is represented by a single, somewhat harried, lawyer, while the defense has too many lawyers to fit at counsel table. The victories in these cases are recounted by the lawyers over celebratory glasses of wine.

There is even the off chance that the tales of the chase and case might be a little slanted in David’s favor. Sometimes the cases are the subject of articles and essays. But almost never are they put into verse.

Lawyers live in prose. They read it and they write it. However, the difference between the essay and the poem is that the former comes from the pen, and the latter comes from the heart.

Such was the case when, during one of our several wars, a civilian lawyer was sent by the United States into the heart of an enemy camp to attempt to secure the release of an elderly prisoner of war on humanitarian grounds.

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From the President

Maintaining Work-Life Balance

By: Cody Cooper
President, OCBA

Regardless of your profession, work-life balance is always a challenge. Being a lawyer, however, can present unique challenges when trying to balance your work schedule with client or court-mandated deadlines and personal commitments. I think it is incredibly important to try to focus on maintaining some semblance of balance while also recognizing that this balance may change day-by-day but ultimately it is important to make time for the things that are most important to you.

As a father to a five-year-old and a two-year-old, my life is hectic and fast moving. Oftentimes, I feel like there are not enough hours in the day to get everything done. Thankfully, I have an amazing wife, and we work together to make sure that everyone and everything is taken care of. But my favorite time of day is coming home and getting to see my children and spending time with them. My focus is always on trying to be present for them and making sure they know that I care about them and want to spend time with them. The pressure to be all things to all people can be stressful and draining, but I try to constantly remind myself that this time in life passes quickly, and I do not want to look back and feel like I missed anything with my children or wife for the sake of work.

It is not easy but at the end of the day, we all have jobs to do that require significant time and attention, and sometimes what feels like never-ending engagement. Ultimately, we should all remember to focus on the people we care about and make them a priority and be sure to be present for them, because you will never regret spending too much time with family and friends, but you may regret not spending enough time with them.

Law Day in the Law Library

By: Venita Hoover
Oklahoma County Law Librarian

On Wednesday, May 10, 2023, the Oklahoma County Law Library in conjunction with the Oklahoma County Bar Association celebrated Law Day with Lawyers in the Library.

With two clinics and this Law Day, over 400 people came through the law library doors and approximately 30 pro se Oklahomans were assisted by volunteer attorneys.

It was a splendid day featuring top-notch volunteerism and delightful snacks including muffins, pizza, drinks and popcorn prepared by Chaz from Judge Hafar’s office. Thank you to all who helped! Special thanks to Melissa Brooks, chair of the Lawyers in the Library Committee of the OCBA Law Day Committee.

Special thanks to the following assisting attorneys:
- Beatriz Martinez
- Christine Hoffman
- Brittany Jewett
- Todd Blasdell
- Lorenzo Banks
- Roland Combs
- Annie Rischard Davis
- Elise Houston
- Carla Robey Harcourt and
- Kara Didier
By Roscoe X. Pound

**Dear Roscoe:** “Time theft.” What is it and does it apply in the Law Firm-Associate context? J.G., OKC.

**Dear J.G.**:

Time theft. A person actually should be working, and they’re not only not working but actively doing something else. One of the simplest, time theft occurs when a person actually should be working, and they’re not only not working but actively doing something else.

Of course, law firms, like any other business or profession, expect their employees to actually earn their pay. Especially in a law firm, they should expect associates’ reported time to be both accurate and verifiable. We can’t see how failure to report time accurately can fail to violate at least three Rules of Professional Conduct and maybe others depending upon the situation.

Depending on the gravity, the law firm can respond to misreporting in a variety of ways. It can offer counsel to the errant reported, dock subsequent pay checks or fire the lawyer involved. It can offer each such remedy in the event that we are creating violations. Larson Latham Huettl v. Iversen, 2023 ND 16 adds a new, or perhaps previously overlooked, arrow to the employer’s quiver. Mr. Iversen accepted employment with the Latham firm, inking a contract containing the following clause:

“The event that Associate bills out less than the base quota for a three-month period, the Associate’s salary will be reduced appropriately at the discretion of LLH in order to make up for any discrepancy. Any discrepancy where the actual hours billed is less than the base hours required will be considered to be a debt owed by Associate to LLH at the end of the calendar year or at the termination of employment.”

Iversen resigned and went to another firm with better pay. The law firm billed him $35,772.63 for “overpayment of salary, which he declined to pay. Lathan sued.”

Iversen defended primarily on theories of unconscionability because the firm controlled his work and did not provide him with enough clients, and impossibility. This, in turn caused his inability to meet the billable hours requirement. The Supreme Court rejected the unconscionability argument, adopting the trial court’s conclusion that: the agreement does not appear to be substantively unconscionable. The agreement provided a salary for Iversen, gave him benefits, allowed for paid time off, based on billable hours requirement on the salary he received, and was an at-will contract.

Although LLH was permitted to recover the debt if Iversen did not achieve his billable hour requirement, such a clause is not so onerous to be unconscionable. Rather, LLH was seeking to make Iversen’s position profitable for the firm. Such an agreement is clearly distinguishable from an unconscionable agreement as was present in Eberle v. Eberle [2009 ND 107 766 N.W.2d 477]. Under the employment agreement, both parties received benefits and had obligations. Having requirements for one’s employees is not unconscionable.

As to the impossibility defense, the court affirmed the trial court’s opinion that: There is nothing in the contract which states the partners would provide clients for Iversen. “It is the words of the contract and the manifestations of fact which govern, not the secret intentions of the parties.” Aman n v. Frederick, 257 N.W.2d 436, 439 (N.D.1977). When a contract is reduced to writing, it is considered to be ascertained from the writing alone, if possible. N.D.C.C. § 907-04.

**Dear Roscoe:** I often pass folks milling about holding signs asking folks to “Honk If You [Whatever.]” Sometimes I do. My mom tells me I could get arrested. I say it’s protected by the First Amendment. But is it? M.B., OKC.

**Dear M.B.:** A few weeks ago I would have automatically said “yes.” Honking played a vital role in my youth and a staple of my high school youth including dating, football, and draggin Main. I assume the same is true in Oklahoma with the seeming omnipresence of “Boomer Sooner” horns. Then came Porter v. Martinez (9th Cir 2023).

Ms. Porter honked in response to a group of demonstrators. An alert deputy sprung into action – citing her for violation of an anti-noise statute prohibiting horn honking except in cases of traffic emergency or as a component of a car alarm system. Porter, pro se, procured a declarative court order that the ordinance violated a fundamental First Amendment right. Rather, the law prohibits all driver-initiated horn honking.

Thus, while it may be that Section 27001 prohibits some expressive conduct, the primary distinction the statute makes does not depend on the message that might be conveyed. Section 27001 does not single out for differential treatment, for example, political honking, ideological honking, celebratory honking, or honking to summon a carpool rider. Instead, the law “applies evenhandedly to all who wish to” use the horn when a safety hazard is not present. Heffron v. Int’l Soc’y for Krishna Consciousness Inc., 452 U.S. 640, 649 (1981). Section 27001 draws a line based on the surrounding factual situation, not based on the content of expression.

**Iversen,** before you accept Will Smith’s invitation: “So we’d like to ask of you, if you’re in your car, honk your horn to the rhythm,” it might be a good idea to check your local ordinances first.

*********

The 10th of April blessed us with a textbook perfect spring day. The mercury managed to climb to the sixties, though by the time I arrived at Laurel Hill (aka Snake Hill) it had already begun its plunge to the thirties. Just as well. I needed a jacket to cover my M&P 10mm. The park closed in less than an hour, and the number of patrons had already grown past, most engaged in activities on the west side near the river. Laurel Hill itself, a 200’ volcanic promontory, presided over eastern end of the park. Local lore maintains it served as the inspiration for Prudential’s famous rock logo. You could call it “off the beaten path,” especially at night. Still, you could chance upon the odd love struck couple, frat boys, or budding graffiti artists. As far as I could tell, I was alone.

Eventually a Land Rover pulled up. I drew out my pistol and held it down beside my leg as I watched it approach. The driver appeared unhurried. He parked ahead of me, nose towards the hill. Ernie Trani stepped out, frowned a bit at the surroundings and walked over, extending a hand. As I shook it, the passenger door opened and the noodle-headed kid emerged.

He wore a “world’s against me” scowl and a long leather coat. He bore more than a passing resemblance to the vampire Spike in the old Buffy TV show.

“You and your shadow,” I remarked.

“Don’t start,” Ernie replied.

Another car pulled joined the party, this time a Beamer Competition Coupe. It bore New York plates. “Nice,” Ernie observed. A man I didn’t know stepped out. He wore an expensive suit which did nothing to hide the shoulder rig he wore beneath it. He walked over and nodded a greeting to Ernie.

“Whaddy say, Al?” Ernie asked.

“Too damn late and too damn cold for this shit.”

Ernie shrugged. “Nice ride.”

“Can’t wait to get back in it headin’ home.”

Feeling like a third wheel, I stuck my hand out and said to the newcomer: “Hi, Roscoe X. Pound.”

“Yeah,” the man said. He put way too much pressure into his grip. He seemed slightly impressed when I matched it.

“Roscoe, this is Alfred Giambatti. Not a bit social, but he’s OK.”

“And you represent?” I prompted.

“I work for my boss.”

“Al’s sort of an underworld ambassador with a particular affection for Bobby Patrice and family,” Ernie explained.

“Gentlemen. How good of you to come.” The accented voice came out of the shadows. The form therein resolved itself into Enver Kaleko. “I just wanted to let you know that even though organized crime in the Greater New York area is now under new ownership, the existing management structure shall remain the same, at least to the extent that they can adopt to my new business plan.”

“What means what?” Giambetti asked.

“Which means they will do what I tell them when I tell them. Oh, and also I get 25% off the top monthly.”

“How are you going to know that?” Ernie asked.

Kaleko smiled. “Same way I gained enough knowledge to know which banks and pawnbrokers I needed to hit for greatest effect.”

“Suppose we just whack you now?” Ernie’s young companion asked.

Kaleko looked at him. His eyes narrowed and his smile vanished. “I don’t know. Suppose the IRA lads catering Mr. Sgro’s eldest son’s silver anniversary decide to open fire or detonate their car bomb?”
Young Lawyers Division Chair Randy Gordon presented the Liberty Bell Award to Hailey Nazinitsky, a volunteer with Palomar.

OCBA President Cody Cooper, 2023 Journal Record Award Winner Judge Kenneth Stoner, and Journal Record Deputy Editor Jennifer Sharpe.

OCBA President Cody Cooper with the Howard K. Berry Sr. Award recipient Sharon Byers, Executive Director of the Oklahoma Guardian Ad Litem Institute, and Oklahoma County Bar Foundation member Laura McConnell-Corby.

Collin Walke was the featured speaker for the 2023 OCBA Law Day Luncheon.
RYAN WHALEY ANNOUNCES ADDITION OF ENVIRONMENTAL LAW ATTORNEY

Ryan Whaley is pleased to announce the addition of Madison B. Miller to our firm.

With over twelve years of practice experience from the Oklahoma Department of Environmental Quality as a Staff and Supervising Attorney for the Air Quality Division and most recently, as Deputy General Counsel, Madison is a great addition to Ryan Whaley’s nationally-respected environmental law practice. In addition to her work experience, she has authored and co-authored various articles and texts, including the Enforcement Section of the Air Chapter in Environmental Law Institute's Spring 2022 Edition of the “Law of Environmental Protection.” Madison has broad knowledge and experience across many environmental programs, but her central focus will be advising clients on air compliance issues.

Madison was born and raised in Muskogee, Oklahoma. She received her undergraduate degree from the University of Oklahoma and is a 2010 graduate of the University of Oklahoma College of Law.

DURBIN LARIMORE & BIALICK ANNOUNCE TWO NEW ASSOCIATE ATTORNEYS

Durbin Larimore & Bialick is pleased to welcome D. Bryan Goodpasture and Samantha T. Lemke to the Oklahoma City law firm.

Mr. Goodpasture’s practice focuses on all areas of civil litigation, insurance law, and personal injury. He graduated with a B.S. in Economics from Oklahoma State University before going on to graduate with his J.D. from The University of Oklahoma College of Law in 2019.

Ms. Lemke will primarily practice in the areas of insurance law, products liability, employment law, and personal injury. She graduated with a B.A. in Political Science from the University of Georgia School of Public and International Affairs, where she also minored in Spanish, before going on to graduate with her J.D. from Oklahoma City University School of Law in 2022.

The Board met in the Bar office on 1/18/79 with Robert J. Turner presiding. Directors present were: Thomas, Travis, McDivitt, Bulla, Cook, K. Turner, Webster, Bullis, Lees, Pendell, Rucks, Burkett, Corbyn, Dobson, Murrah, and Naifeh. Absent were: Hamilton, Rakestraw, Howland, Berry, Conner, Tomerlin, McColland, and McKinney. Others present were: John Berry, Joe Biscone, Steve Friot, and Harry Woods.

1. The minutes of the meeting of 12/21/78 were approved as submitted.
2. The Treasurer’s report reflected new income of $5,445.92 as of 11/30/78 and was approved as submitted.
3. Medical-Legal Report: Chairman Harry Woods reported that the committee had voted to request that the Board create a new committee to be called the Inter-Professional Relations Committee, within which the existing Medical-Legal Committee would become a sub-committee. The function of the new committee would be to improve relations and liaison between the bar and other professions in addition to the healing arts. The Board moved in accordance with section VII of the by-laws and abolished the Medical-Legal Committee and created the Inter-Professional Relations Committee which would include Medical-Legal as primary sub-committee.
4. Worker’s Compensation Committee Report: Chairman Joe Biscone presented a request for $200.00 to be used to video tape a mock Worker’s Comp trial which would be utilized in CLE efforts. Mr. Biscone expressed hope that the video tape could be rented to other bars and in that fashion become income producing. The Board approved the request.
5. Bar Foundation Law Clerk Project: Steve Friot reported that he had advised Judge Cook that the funds remaining in the project budget would be utilized to hire a clerk or clerks to consume these funds and provide the service to the District Judges into the spring months. The Board moved to express to the foundation the Board’s support of the ongoing Program and that the Foundation consider all ways and means of funding and implementing the Program on a permanent basis.
6. Vice President’s Report: Rex Tavis reported that Justice Opala would be featured speaker at the January meeting and that retired Justices Davison and Berry would be honored at the meeting.
7. Executive Director’s Report – John Berry reported that:
   a. Current membership totaled 1,287, and the membership committee had recently begun its drive.
   b. The Sheraton had requested a price increase from $4.50 to $5.00 per meal for the monthly luncheons. The Board directed Vice President Turner to negotiate with the Sheraton and any other hotels or clubs to determine what would be most advantageous for the bar.
8. President’s Report: - Robert J. Turner reported that:
   a. Response to the Board’s position supporting the Bohanan corrections order had been overwhelmingly positive.
   b. The Judicial Screening Committee, in response to a request from Mr. Alfred Pence, chairman of the 10th Circuit nominating commission, had met on 12/13/78 and submitted some names for the consideration of the commission with regard to the judgeship position on the 10th Circuit. Time requirements necessitated that the committee act prior to the Board meeting in December.
9. New Business / Old Business
   a. D.C. Thomas, a member of the OCU Law School advisory committee, urged the Board to pass a resolution asking the ABA to defer any action on the accreditation of the OCU Law School for one year. After discussion the Director’s voted 15 to 1 to support such resolution.
   b. President Turner suggested that the Bar might want to commend Senator Henry Bellmon for his outstanding service, and the Directors moved unanimously to direct a letter of commendation to Senator Henry Bellmon with copies of the same to the press.
10. Meeting adjourned
The U.S. emissary ultimately was successful, and the prisoner was released to the lawyer. However, the lawyer had been unlucky in the timing of his mission, and the enemy was that very night set to attack an American garrison. The lawyers and his freed POW had seen too much and were required to delay their travels back to American lines while the onslaught was carried out, and the lawyer had to watch the attack.

The next morning, when the cannons ceased their roar and the smoke began to clear, the lawyer was able to see that the small garrison had indeed survived the Goliath attack. Against all odds, it had been beaten and bloodied but, as the lawyer saw, it was still standing.

The lawyer was a poet. And he wrote feverishly, words flowing from his heart, through his pen and onto paper. Thankfully he was not an essayist, for if he had been, his thoughts would have disappeared within days or a week. But he was indeed a poet, and we are the better for it. His words recounted what he felt and what he had seen in ways that cannot be done with a simple prosaic recounting of the event. And, he gave those words to us.

His recounting of David standing up to Goliath reads:

O say, can you see, by the dawn's early light, What so proudly we hailed at the twilight's last gleaming? Whose broad stripes and bright stars through the perilous fight, O'er the ramparts we watched were so gallantly streaming; And the rocket's red glare, the bombs bursting in air, Gave proof through the night that our flag was still there; O say, does that star-spangled banner yet wave O'er the land of the free, and the home of the brave? On the shore dimly seen through the mists of the deep, Where the foe's haughty host in dread silence reposes, What is that which the breeze, o'er the towering steep, As it fitfully blows, now conceals, now discloses? Now it catches the gleam of the morning's first beam, In full glory reflected now shines on the stream; 'Tis the star-spangled banner; O long may it wave O'er the land of the free, and the home of the brave! And where is that band who so vauntingly swore That the havoc of war and the battle's confusion A home and a country should leave us no more? Their blood has washed out their foul footsteps' pollution. No refuge could save the hireling and slave, From the terror of flight and the gloom of the grave; And the star-spangled banner in triumph doth wave O'er the land of the free, and the home of the brave! And where is that band who so vauntingly swore That the havoc of war and the battle's confusion A home and a country should leave us no more? Their blood has washed out their foul footsteps' pollution. No refuge could save the hireling and slave, From the terror of flight and the gloom of the grave; And the star-spangled banner in triumph doth wave O'er the land of the free, and the home of the brave! And where is that band who so vauntingly swore That the havoc of war and the battle's confusion A home and a country should leave us no more? Their blood has washed out their foul footsteps' pollution. No refuge could save the hireling and slave, From the terror of flight and the gloom of the grave; And the star-spangled banner in triumph doth wave O'er the land of the free, and the home of the brave!

—Francis Scott Key

POET

continued from page 1
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