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Front Pages

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OKLAHOMA LAW REVIEW

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A Tribute to Professor Leo Howard Whinery

ARTICLE

Managing Assets: The Oklahoma Uniform Principal and Income Act

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Katheleen R. Guzman*

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Oklahoma Shareholder and Director Inspection Rights: Useful Discovery Tools?

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- Leo Howard Whinery, A.B., LL.B., LL.M., *Alfred P. Murrah Professor of Law Emeritus.*

LAW SCHOOL NEWS

Faculty: Professor Steven Gensler was recently named a 2003-2004 Supreme Court Fellow. The Supreme Court fellowship program allows fellows to study firsthand both the administrative functions of the federal judiciary and the dynamics of relations between governmental branches. Professor Gensler is one of only four Fellows appointed and will be based at the Administrative Office of the United States Courts in Washington, D.C. The Administrative Office of the Courts provides program management, legal counsel, legislative services, and administrative support to the federal courts. The Administrative Office also serves as the judiciary's liaison to the Congress and the executive branch on appropriations and legislative affairs. Professor Gensler will take a leave of absence from the College of Law during the 2003-2004 school year.

After more than a decade of distinguished service to the College of Law, Professor Ruth Okediji has accepted a position as a professor at the University of Minnesota College of Law. Both her colleagues and students will miss her warm, friendly smile and her significant contribution to the intellectual vitality of the College of Law.

Oklahoma Law Review: The *Oklahoma Law Review* would like to congratulate the following newly elected members of the 2003-2004 editorial board: Heather Brumley, Editor-in-Chief; Sarah Smith, Managing Editor; Dan Nickel, Natalie McNeal, Blake Sonne, Notes Editors; Kencade Babb and Greg Blackwell, Articles Editors. We would also like to congratulate the newly appointed members of the 2003-2004 editorial staff: Belynn Whatley and Melody Wirz, Assistant Managing Editors; Cassandra Wilkinson, Online Editor; Thomas Wright, Indexing Editor; and Emily Short, Marketing Editor. In addition, Liz Mazzarella and Nick Merkley will fill the newly created positions of Writing Competition Editor and Recent Developments Editor, respectively. Similarly, the following members have been appointed to serve as Editorial Assistants: Abbey Baker and Lincoln McElroy, Articles; Abbey Baker, Lincoln McElroy, and Spencer Haines, Notes; and David Treadwell and Spencer Haines, OLR Administration.

The annual *Oklahoma Law Review* Honors Banquet was held on Wednesday, April 9, at the University of Oklahoma Student Union Ballroom. The Honorable Robin J. Cauthron, Chief Judge of the Western District of Oklahoma, delivered the keynote address.

At the banquet, the following members received awards for their outstanding work on the *Oklahoma Law Review*: Heather Brumley, First Place, Summer Write-on Competition; Natalie McNeal, Harry Alley-Leroy Allen Prize for Outstanding Case Note; Daniel Nickel, Sharp Award for Outstanding Comment; Robyn Funk, Sharp Award for Outstanding Note Editor; Emily Short, Sharp Award for Outstanding 2L Member; and Adam Marshall, Sharp Award for Outstanding 3L Member.

We would like to thank the following law firms, businesses, and individuals for their generous donations, which helped fund the honors banquet: Britton, Gray, Ramsey & McCutcheon; Brumley & Bishop; Charles E. Daniels; Conoco Phillips — Legal Division; Gibson, Ochsner & Adkins; Kelly & Kelly; Lester, Loving & Davies; McAfee & Taft.

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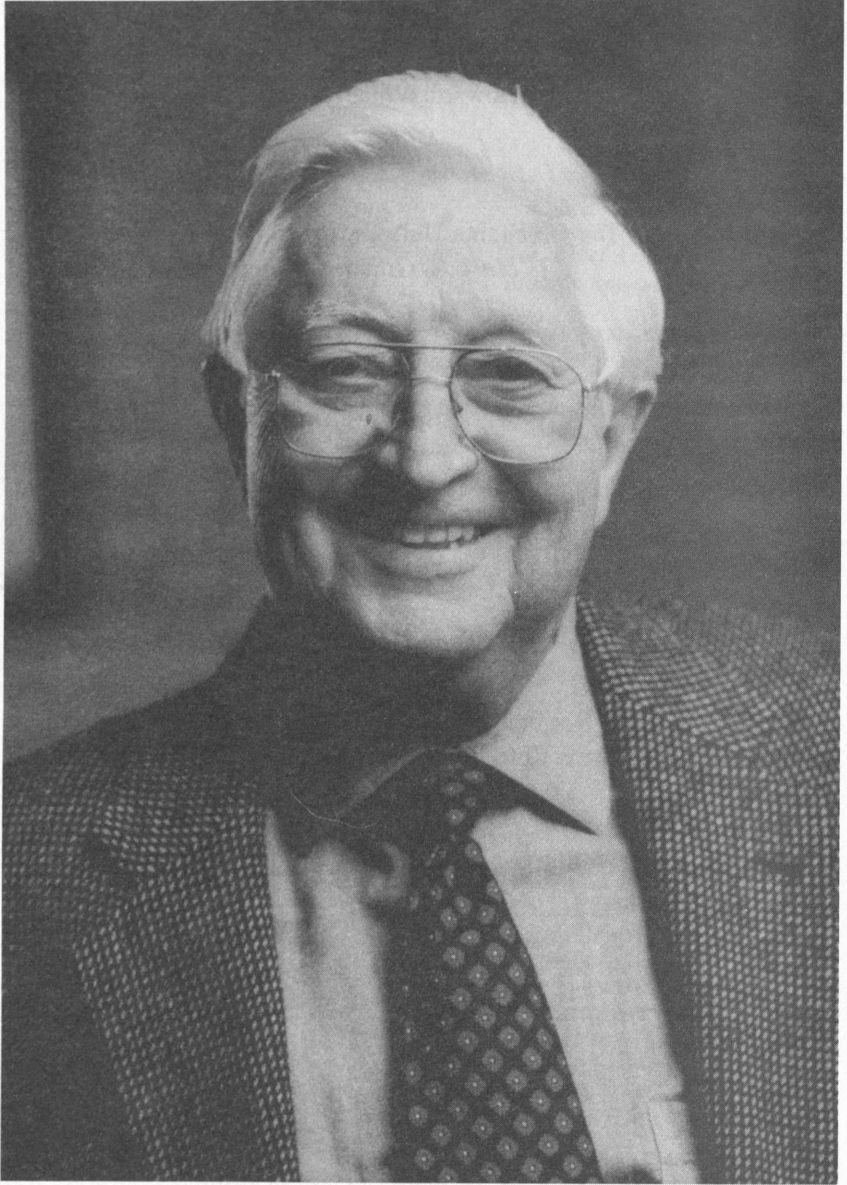
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LEO HOWARD WHINERY

Leo H. Whinery will retire from the University of Oklahoma College of Law in May 2003, after forty-four years of distinguished service. Professor Whinery earned his B.A. in 1949, and his J.D. in 1951, both from the University of Missouri at Kansas City. During law school, he served as Editor-in-Chief of the *University of Missouri at Kansas City Law Review* and was elected to Order of the Coif. In 1955, Professor Whinery earned his LL.M. from Columbia University School of Law, where he served as the Edwin H. Armstrong Fellow. Professor Whinery is a member of the American, Oklahoma, and Missouri Bar Associations and the American Law Institute and is an Oklahoma Commissioner to the National Conference of Commissioners on Uniform State Laws.

Before arriving in Norman, Professor Whinery served as both the director of the Law Research and Extension Center and instructor at the University of Missouri at Kansas City from 1951 to 1954. Between 1955 and 1959, he served as professor of law at the University of North Dakota. Professor Whinery then joined the faculty at the University of Oklahoma College of Law in 1959, leaving to serve as a visiting professor at the University of Nebraska in 1978, and at the University of South Carolina in 1979. Initially serving as a visiting associate professor of law, Professor Whinery gained his associate professorship in 1959, and his full professorship in 1962. In 1990, the College of Law named him the Alfred P. Murrah Professor of Law.

Throughout his tenure at the College of Law, Professor Whinery focused his scholarship and teaching on the area of Evidence. He has taught various courses, including Agency, Partnerships, Evidence, Evidence Seminar, Forensic Evidence, Federal Income Taxation, Federal Tax Practice and Procedure, Federal Estate and Gift Tax, Juvenile Law, Criminal Law, and Domestic Relations. His numerous publications have focused especially on evidentiary topics, sentencing, limited court jurisdiction, and court reform.

During his distinguished career, Professor Whinery has volunteered his time and wisdom in various capacities. He served as Director of the Empirical Studies in Law Program, and has lectured for university organizations, judicial conference meetings, and bar associations throughout the United States, including the American Academy of Judicial Education and State Judicial Conferences. He also served as Chair to numerous College of Law committees, including the Foreign Studies Committee, the Dean's Performance Evaluation Committee, the Calvert, Holloman, Norris, and Pierson Professorship and Chair Search Committees, the Earl Sneed and McAfee Professorship Search Committees, the Faculty Appeals Board, Published by University of Oklahoma College of Law Digital Commons, 2003
Publication Review Committee, Faculty Evaluations Committee, Academic

Appeals Board, and the *Oklahoma Law Review's* Faculty Advisory Committee. Additionally, Professor Whinery served as Chair to the University of Oklahoma's Advisory Committee to Campus Security Department, Legal Consultant to the University's Constitution Drafting Committee, and member of the Campus Disciplinary Council, Associates Council, and Faculty Appeals Board for Retention and Tenure.

Throughout the 1960s and '70s, Professor Whinery served in various judicial capacities, including presiding judge, for the Municipal Criminal Court in Norman. He has also served the Oklahoma Bar Association in various positions, including Reporter for the Subcommittee on Evidence, Chair of the Evidence Code Committee, and member of the Uniform Laws Committee. In addition, Professor Whinery has lectured on a wide range of evidence law subjects, including extension programs sponsored by the National Judicial College in Reno, Nevada. Recently, Professor Whinery played an integral role in the *Oklahoma Law Review's* symposium on the Uniform Rules of Evidence. He not only compiled contents, but also secured authors and assisted in the editing process for that special edition.

A partial listing of Professor Whinery's publications follows:

Books

- 1 OKLAHOMA EVIDENCE, COURTROOM GUIDE TO THE OKLAHOMA EVIDENCE CODE (2000).
- 2-3A OKLAHOMA EVIDENCE, COMMENTARY ON THE LAW OF EVIDENCE (2000).
- THE NATIONAL JUDICIAL COLLEGE, EVIDENCE REFERENCE BOOK (1983) (co-authored by Professor James R. Adams, et al.).
- SELECTED READINGS IN EVIDENCE: A FEDERAL PERSPECTIVE (1982) (Continuing Legal Education, University of Oklahoma Law Center).
- SELECTED READINGS IN JUVENILE LAW (1982) (Continuing Legal Education, University of Oklahoma Law Center).
- CASES AND MATERIALS ON TAX PRACTICE AND PROCEDURE (3d ed. 1981) (Continuing Legal Education, University of Oklahoma Law Center) (co-authored by Nancy I. Kenderdine).
- MANUAL ON EVIDENCE, OKLAHOMA TRAFFIC COURTS (1973) (published for Oklahoma trial judges by the Administrator's Office of Oklahoma Courts, under the auspices of the Governor's Coordinator, Oklahoma Highway Safety Program).
- PROJECT MANUAL, PROBATION PROGRAM ON PREDICTIVE SENTENCING OF 16-18 YEAR OLD MALE TRAFFIC OFFENDERS IN THE MUNICIPAL CRIMINAL COURT OF NORMAN, OKLAHOMA (1969).
- PREDICTIVE SENTENCING: AN EMPIRICAL EVALUATION (1976) (co-authored by Thomas J. Nagy, et al.).
- SENATE COMM. ON THE JUDICIARY, 85TH CONG., THE ROLE OF THE COURT EXPERT IN PATENT LITIGATION, STUDY NO. 8 (Comm. Print

1958) (prepared for the Subcommittee on Patents, Trademarks, and Copyrights, Committee on the Judiciary).

Articles

- Reporter's Notes for the Drafting Committee for Revising the Uniform Rules of Evidence of 1974, as Amended
- Comments to the Uniform Rules of Evidence (1999) (adopted by the National Conference of Commissioners on Uniform State Laws)
- Reporter's Notes for the Drafting Committee on the Uniform Child Witness Testimony by Alternative Methods Act
- Comments to the Uniform Child Witness Testimony by Alternative Methods Act (adopted by the National Conference of Commissioners on Uniform State Laws, 2002)
- The Uniform Rules of Evidence (1999), 54 OKLA. L. REV. 449 (2001) (co-authored by C. Arlen Beam).
- *Presumptions and Their Effect*, 54 OKLA. L. REV. 553 (2001).
- *The American Version of the Rules of Evidence – Can They Be Improved?* 195 F.R.D. 57 (2000) (originally prepared for the Second World Conference on New Trends in Criminal Investigation and Evidence, Amsterdam, The Netherlands, Dec. 15, 1999).
- *The 1993 Amendments to the Oklahoma Evidence Code*, 63 OKLA. B.J. 2777 (1992).
- *Rural Courts in America – What We Can Learn From Them: An Overview*, 30 JUDGES J. 2 (1991).
- *The Oklahoma Evidence Code: Ten Years of Judicial Review*, 43 OKLA. L. REV. 193 (1990).
- *Evidence: Oklahoma Evidence Code § 2704: Opinions on the Ultimate Issue and the Gabus Case – An Unfortunate Judicial Gloss*, 37 OKLA. L. REV. 209 (1984).
- *The Oklahoma Evidence Code –The Background, an Overview, and the General Provisions of Article I*, 32 OKLA. L. REV. 259 (1979).
- *Oklahoma's Proposed Code of Evidence*, 48 OKLA. B.J. 817 (1977).
- *Recent Developments: Evidence: The New Federal Rules of Evidence*, 26 OKLA. L. REV. 312 (1973).
- *Organizing Municipal Courts in Oklahoma*, 39 OKLA. B.J. 2511 (1968).
- *Policy, Legislation, and Organization of Municipal Courts in Oklahoma*, 18 OKLA. L. REV. 1 (1965).
- *Tax and Non-Tax Negotiations in Alimony and Support After the Lester Case*, 15 OKLA. L. REV. 1 (1962).
- *The Uniform Rules of Evidence and the North Dakota Law of Evidence (Presumptions)*, 37 N.D. L. REV. 11 (1961).
- *Joseph Story: A Collection of Writings By and About an Eminent American Jurist*, 36 N.D. L. REV. 152 (1960).

N.D. L. REV. 131 (1959) (co-authored by Dean O.H. Thormodsgard).

- *Court Experts and the Proof of Scientific Fact – An Experiment in Law Reform*, 23 F.R.D. 418 (1959).
- *Second Hand Judgments: Reciprocal Use of Judgements in Civil and Criminal Matrimonial Cases*, 15 WASH. & LEE L. REV. 44 (1958) (co-authored by Gerhard O.W. Mueller).
- *The Uniform Rules of Evidence and the North Dakota Law of Evidence (Burden of Proof)*, 34 N.D. L. REV. 203 (1958).
- *The North Dakota “Dead Man’s Statute” – Waiver By Taking Depositions?*, 34 N.D. L. REV. 315 (1958).
- *The Uniform Rules of Evidence and the North Dakota Law of Evidence (Judicial Notice)*, 33 N.D. L. REV. 5 (1957).
- *Procedures and Practices in the Administrative and Judicial Settlement of Federal Tax Disputes*, 33 N.D. L. REV. 147 (1957) (co-authored by Robert Vaaler).
- *The Uniform Rules of Evidence and the North Dakota Law of Evidence (Introduction and General Provisions)*, 32 N.D. L. REV. 205 (1956).
- *The Problem Methods in Legal Education*, 58 W. VA. L. REV. 144 (1956).
- *Audio-Visual Experimentation at the University of Kansas City School of Law*, 7 J. LEGAL ED. 217 (1955) (co-authored by Alice Tanner Boyer).
- *A Step Toward the Improvement of the Administration of Justice*, 20 U. KAN. CITY L. REV. 63 (1951).
- *Tort Liability for Interference with Testamentary Expectancies in Decedents’ Estates*, 19 U. KAN. CITY L. REV. 78 (1951).
- *Book Reviews*, 20 U. KAN. CITY L. REV. 97 (1951) (reviewing BARNARD C. GAVIT, INTRODUCTION TO THE STUDY OF LAW (1951)).
- *Charitable Trusts — Impracticability of Carrying Out the Terms — Remedies Available*, 18 U. KAN. CITY L. REV. 78 (1950).

Professor Whinery is currently drafting THE JUDGE'S EVIDENCE BENCHBOOK, to be published by West Group later this year.

LEARNING FROM LEO

*David L. Boren**

When we first met each other, my wife Molly and I discovered that we had shared a common experience. Both of us had been students of Professor Leo Whinery at the OU College of Law. We've often talked about that experience. We've smiled as we remembered his occasional outbursts of impatience when a student was unprepared. Above all we have thought about how fortunate we have both been to have studied under him and to have shared a very special friendship for over thirty-five years with Leo and his wife Doris.

Leo Whinery's course on evidence was one of the best and most stimulating courses that I have ever taken in my life, including courses that I took at Yale and Oxford. He set high standards. He constantly challenged his students to be analytical and to think critically. It was impossible to have a class with him without growing intellectually. He was demanding but he was fair. He was constantly there for students and always willing to continue discussions outside of the classroom.

In his forty-four years of teaching, Leo Whinery has taught all of us about the importance of being loyal stewards of those institutions which are of great importance to our society. No one has ever cared more about the University of Oklahoma College of Law or given more back to it than Leo. As an internationally recognized leader in the field of evidence, Leo Whinery could have pursued many other opportunities. Instead, he chose to invest his life in our College of Law.

When I returned to OU as President, twenty-six years after graduating, I found a law school that faced many challenges and a serious threat to its reputation for excellence. It was of great help to me to be able to seek candid and constructive advice from my former teachers. No one was more helpful than Leo Whinery. Their advice helped us to chart a new course for the law school toward a strong and outstanding future.

He and Doris have also generously given back to the entire university. They host a picnic each year at their farm for hundreds of international students and OU students from our own country who have adopted the students from other countries as their honorary cousins.

I've learned a great deal from Leo Whinery. I learned about the rules of evidence. I learned how to think more critically. I learned about the importance of insisting upon high standards. I also learned by watching him about the importance of stewardship and mentorship. From Molly and from me and from all your former students, "Thank you Leo for teaching us so much."

* President, University of Oklahoma. J.D., 1968, University of Oklahoma College of Law; M.A., 1965, Oxford University; B.A., 1963, Yale University.

MY GOOD FRIEND LEO

Honorable C. Arlen Beam*

It is both a pleasure and an honor to author this short tribute to my good friend and Uniform Laws Conference colleague, Professor Leo Whinery. It is more than fitting that this outstanding writer, scholar, educator and all around good citizen be lauded as he retires from active teaching.

While Leo is truly a "man for all seasons," a matter to be explored more completely in a moment, I want to immediately note, for proper emphasis, his contributions to the understanding, development and codification of the law of evidence.

It was my good fortune to become acquainted with Leo in 1992 when he first became a Uniform Laws Commissioner representing the State of Oklahoma. Then, in 1995, he was selected as the reporter for the Conference's drafting committee assigned to amend and update the Uniform Rules of Evidence. We worked together on this project through the year 2000 when the Conference adopted the committee's work product. The recent symposium issue of the *Oklahoma Law Review* highlights a small portion of the committee's efforts.

At the outset, for the drafting committee's use, Professor Whinery prepared a complete and thorough analysis of existing precedent as adopted by the highest court of the fifty states and by the federal circuits as each tribunal reviewed trial court use of the rules codified in both the Federal and the Uniform Rules of Evidence. This was, in my view, the most comprehensive and understandable assembly of applicable case law, jurisdiction by jurisdiction, ever prepared. It was an invaluable resource for our working group of lawyers, academics and judges from around the United States.

In addition to his teaching and committee work, Professor Whinery has found time to lecture annually at the National Judicial College at Reno, Nevada, at federal court evidence seminars, as well as at numerous international conferences on procedure and evidence. He is a prolific author on the law of evidence and has recently completed a "Bench Book" covering both the Uniform and Federal Rules for use by judges and lawyers at trial.

But Leo is not one dimensional. He is one of the country's best known breeders and showers of Trakehner riding horses, serving as its association's founding president in 1974. And, until a few years ago, he was an active concert violinist.

Leo and his wife and partner Doris are wonderful traveling companions, gracious hosts at Cedar Crest Farm and caring friends. My wife, Betty, and

* Judge, United States Court of Appeals for the Eighth Circuit. J.D., 1965, University of Nebraska.
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I treasure every association we have with them and we wish them a happy and an eventful retirement with many more routes to travel and projects to pursue.

MY TEACHER — MY FRIEND

Honorable Rodney S. Webb*

I am personally privileged and deeply honored to participate in this tribute to Professor Leo H. Whinery. It is my understanding that the *Oklahoma Law Review* will be honoring Professor Whinery with a special tribute on his retirement from the law school staff.

Professor Whinery was my Law School teacher and mentor at the University of North Dakota Law School during the late 1950s. At the time of my graduation from Law School, Professor Whinery was a young fellow, probably not yet 30. He was recognized by his smart bow tie, big shock of dark hair, and wide smile.

Since graduation in 1959, our paths separated. Recently, a colleague of mine, Circuit Judge Arlen Beam, mentioned that Professor Whinery and he worked on a national committee charged with updating and modernizing the Uniform Rules of Evidence. This was my first knowledge of Professor Whinery's position at the College of Law for the University of Oklahoma. Coincidentally, as President of the Eighth Circuit Federal District Judges' Committee, I was charged with putting together an educational program for our 2002 Judicial Conference. This conference was to be held at Duluth, Minnesota, during the month of August. I called Professor Whinery and asked that he participate in our conference as a guest presenter. Following our cordial telephone visit, Professor Whinery kindly agreed to make a presentation to the Eighth Circuit Federal Judges. Professor Whinery did a wonderful job as a presenter. I was so proud to introduce him as my former law school teacher, and I was personally delighted with the reception he received from the judges. Professor Whinery kindly remained through the entire conference and enjoyed other professional presentations and social activities. He and his beautiful wife, Doris, also participated in social activities of the conference. My wife, Betty, and I enjoyed their company, along with other couples, on a lake cruise during which we were able to dance, visit, and generally have a merry, old time.

I was, and am, indebted to Professor Whinery for his kind acceptance of my invitation and his delivery of a timely and well-received legal lecture. This meeting has allowed us to re-establish our acquaintanceship and develop a new friendship.

The law school experience at UND during the late 1950s was quite different than students are now exposed to. Though I was one of the younger students, most were older and veterans of either of the two recently concluded wars. Many of the students were also much older than Professor

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Whinery. Virtually all of the law students had jobs outside of the law school which were necessary since most students were self-supporting and many were also married and supporting families. Classes were scheduled from 8:00 a.m. until noon, five days a week. I was lucky enough to have a law clerk/insurance investigator job at which I worked 35 hours each week for a local law firm during the last two years in school. The varied maturity levels of these law students and extra-curricular work placed special demands upon our teachers. I remember Professor Whinery as adapting easily to this teaching challenge. He was "one of the boys." He was close to most students in age and in matters of personal interest. As I recall, Professor Whinery taught Taxation, Equity and Judicial Remedies. He was very well received as an instructor. My own recollection of his abilities certainly is reinforced by subsequent accolades he has received which are directed to Professor Whinery's professional competence and personal integrity.

I am proud to join others who know Professor Whinery in wishing he and his wife, Doris, a long and pleasant retirement. As one of Professor Whinery's former students, now a Federal District Judge, I join in all honors now directed to Professor Leo H. Whinery. Leo, you have earned this tribute; you will now have the time to ride horses.

LEO WHINERY — A DEDICATED TEACHER

*Ed Abel**

My first contact with Leo Whinery was as a law student at the University of Oklahoma School of Law. I was enrolled in a legal accounting course and Leo was the Professor. This was a course I was required to take in law school because I had not had the requisite accounting courses in undergraduate school. During the middle of the semester, I asked a question about something I did not understand. I remember that Professor Whinery became very angry and I was afraid to ask any other questions in that class or any other class that I had from him. Little did I know at that time, Leo Whinery would become a very close friend, a beloved instructor, a learned colleague and a cherished associate.

Although I had other courses from Professor Whinery during law school, my relationship with him blossomed in 1973 when I was asked to serve as Chairman of a Subcommittee of the Oklahoma Bar Association Civil Code Procedure Committee. This Subcommittee was to study and propose written rules of evidence for the State of Oklahoma. Leo Whinery was chosen as the faculty representative on the Committee from the University of Oklahoma School of Law and as the research professor for this project. Over the next five years I spent many hours in meetings with Leo Whinery studying evidence, drafting and debating proposed drafts of the future Oklahoma Evidence Code.

After completing the proposed code, it was then our task to present the code to the Oklahoma Bar Association and obtain its approval so that it could become an official part of the Bar legislative package. Once this was done, we monitored the code through the State Legislature and finally realized its adoption into law in 1978.

The drafting and passage of this code would not have been possible but for the research, guidance and teaching of Leo Whinery. Although many of the committee members, such as Ken McKinney and Tom Wallace of Oklahoma City, spent several hours working on the code, Leo Whinery served as the guiding light for this committee. Without Leo Whinery's tireless effort, the code would never have been completed nor adopted into law.

After we had completed our work on the Oklahoma Evidence Code, I was very impressed by Leo's request that he be allowed to work in my law office and participate in some trials. When I talked with Leo, he indicated that he wanted to be a complete law professor and although he had spent many years teaching the law, he felt that it would give him a greater perspective,

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and thus make him a much better professor, if he actually was involved in the trial of some cases at the district court level. Thereafter, Leo and I began a different relationship in that we worked together as a team to represent clients at the courthouse. I admired Leo's effort because here was a well-established professor who was highly thought of, and no one felt that he needed this additional experience. However, he felt that it would make him a better teacher of the law and that his students would benefit from his additional experience. He was willing to give the time and effort to accomplish this goal. For this I greatly admired him. For several years, Leo participated in many different cases involving many different areas of the law, and I feel he learned a great deal from this experience.

Following his stint as a trial lawyer, Leo published *Oklahoma Evidence – Commentary on the Law of Evidence* and *Courtroom Guide to the Oklahoma Evidence Code* and continued to serve on Bar Association committees to strengthen and improve the Code. To Leo Whinery's credit, the Oklahoma Evidence Code has been amended very little since its initial inception and passage.

Leo has lectured at many Bar Association seminars and taught many judges around the country at judicial conferences. He has continued to teach full time at the University of Oklahoma School of Law and now is preparing for his retirement. While sitting in his classroom as a student, I would never have dreamed that I would have the relationship that I have had with Leo Whinery, nor would I have ever dreamed that he and I would have become such good friends. I value his friendship and I respect him for his hard work, intelligence and dedication to the profession and to the law. His work has affected countless numbers of people — not only the lawyers who practice in the courtroom and use the Evidence Code on a daily basis, but also those clients whose rights are affected by the code. His work has truly made a difference in the lives of millions of people, and I believe that we owe a great deal of gratitude to him for his service and dedication. I feel it a privilege to count him as my teacher, colleague and friend.