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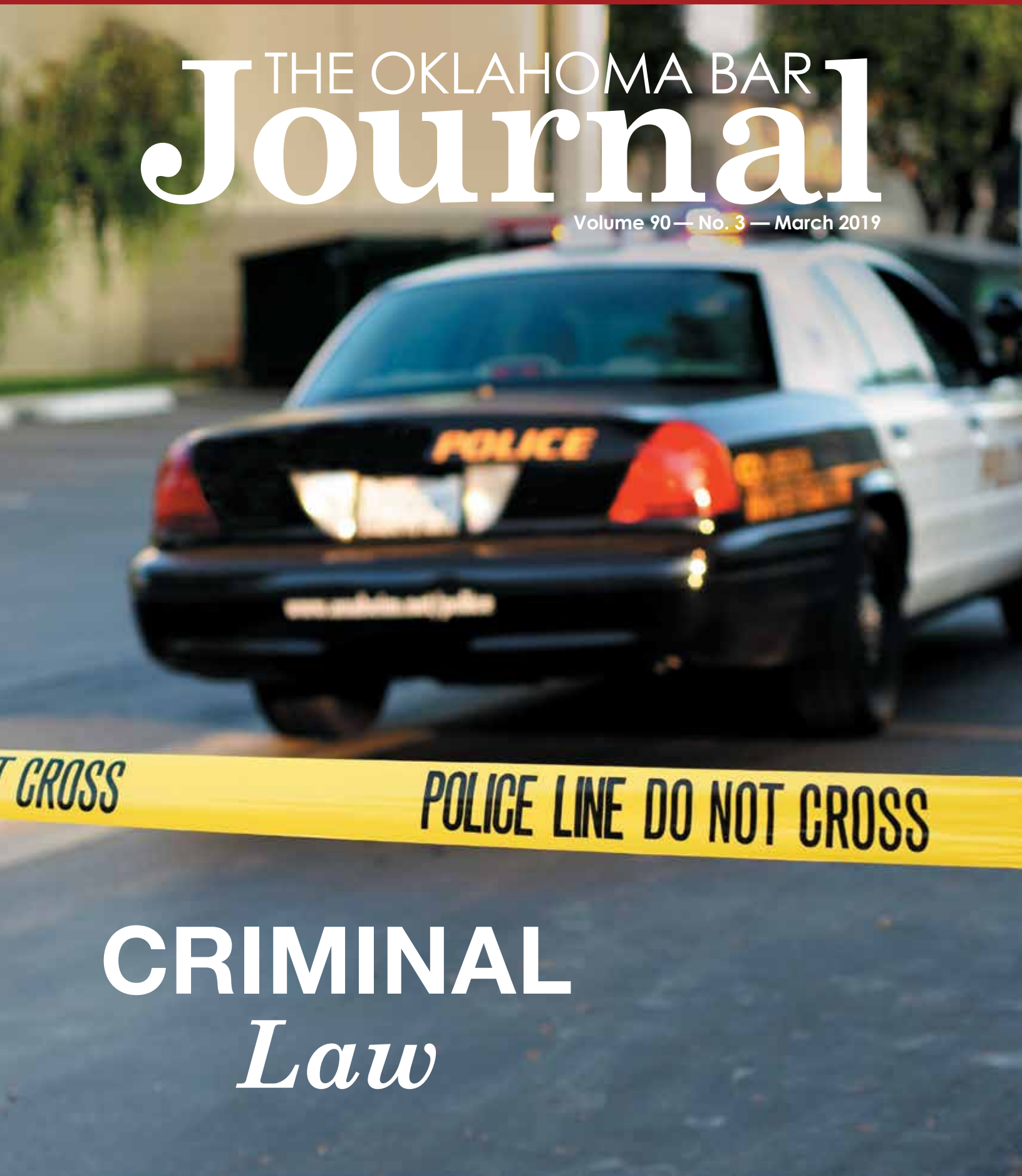

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THE OKLAHOMA BAR Journal

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It's a Matter of Attitude

By Charles W. Chesnut

RECENTLY, I CALLED MY ELECTRICIAN'S SHOP. I wanted to ask him to come and fix a lighting problem I was having at the office. It was a bitterly cold day – one of those days where the low was about 14 degrees. His mother, one of my clients, answered the telephone. She is 93 years old. "Marie," I said, "you're up and at 'em early on this cold morning." "It's a matter of attitude," she responded. "The way I look at it, I'm lucky at this age to be able to get up and go to work."

Pretty amazing, really. Ninety-three years old. Fourteen degrees outside, and she's lucky to be able to get up and go to work.

I've been reading some of the Stoic philosophers lately. I'm not sure exactly how I got started on them. I think I've enjoyed many of the writings of Marcus Aurelius. I went on from there to read some of the works of other Stoics.

According to the Stoics, the path to happiness for humans, as social beings, is found in accepting the moment as it presents itself, by not allowing oneself to be controlled by the desire for pleasure or fear of pain, by using one's mind to understand the world and to do one's part in nature's plan and by working together and treating others fairly and justly.

One of the many things that Marcus Aurelius writes is, "To change your experience, change your opinion. Stop telling yourself that you're a victim and the pain goes away." "Everything is opinion."

President Chesnut practices in Miami.
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918-542-1845

So how does this relate to us as attorneys?

I think we are extremely fortunate to be able to practice law. We have the right to choose the type of law we practice, the clients we represent and the opportunity to help people solve very difficult problems in their lives that they are not able to solve for themselves. Most of us have the right to choose whether to take a case or not.

And yet it's a tough business. Long hours. Difficult problems. Difficult people. Lots of stress from deadlines and work crowding in on us. And so how do we cope? We feel we have to voice the problem to get it out of us, to expose it to air, so we complain.

We complain about having too much work, not enough work, the demands placed upon us, the way we are treated by judges in the courtroom or by other attorneys, too many telephone calls, not enough telephone calls, the overhead we are faced with, the deadlines imposed upon us, the volume of emails we receive. You name it, we complain about it. It's as if we take a certain amount of pride in complaining about our circumstances in life – even though much of it we have created ourselves through decisions we have made, especially if we didn't have to take the case to begin with.

And yet much of these complaints are just opinions about it. That's it. Just opinions – and probably not very considered ones at that. To change your experience, change your opinion. Change the way you look at it. It may take some work on your part to be creative enough to find another way of looking at it – to change your opinion of it. But when you are able to do that, it is liberating.

Wayne Dyer, a famous writer and motivational speaker, said, "When you change the way you look at things, the things you look at change." So try to change the way you look at something, and see how it changes your life.

You could be 93, it's 14 degrees outside and feel lucky to be able to get up and go to work. That's her opinion. It could be ours too.

Two suggestions for books to read: *Meditations* by Marcus Aurelius and *10% Happier* by ABC newscaster Dan Harris.

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45 Words: Criminal Regulation of Marijuana Possession in Oklahoma After SQ 788

By Brian Ted Jones

BEFORE THE PASSAGE OF INITIATIVE PETITION 412, State Question 788 (788), the regulation of marijuana in Oklahoma was confined almost exclusively to the criminal courts. Possession by a marijuana user was illegal and prosecuted as a misdemeanor.[1] Possession with intent to distribute by a marijuana seller was illegal and prosecuted as a felony.[2] Production and trafficking in marijuana by a large-scale marijuana provider distributing in bulk to retail marijuana sellers was likewise illegal and prosecuted as a major felony.[3] In fact, the only non-criminal form of marijuana regulation under Oklahoma law prior to 788 was the state's implementation of federal authorities for possession of marijuana as a Schedule I narcotic.[4]

In the years immediately preceding the passage of 788, Oklahoma law enforcement agencies were regularly involved in the investigation, apprehension and prosecution of marijuana users, sellers and traffickers. In 2016, the Oklahoma State Bureau of Investigation (OSBI) received 22,995 lab submittals from prosecuting agencies and 6,561 of those submittals requested lab testing for marijuana: 29 percent of the total.[5] In that same year, 41.1 percent of all adult and juvenile drug-related arrests in Oklahoma were for possession of marijuana, representing 1,048 juveniles and 9,128 adults.[6] In 2017, OSBI marijuana lab submittals increased by 22.8 percent and interdiction agents with the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBN) seized 2,132 pounds of marijuana from vehicles traveling through the state.[7]

The passage of 788 turns this on its head. Under 788, possession of marijuana by a user is no longer a misdemeanor but a privilege held by patient licensees.[8] Under 788, possession by a distributor is no longer a felony but a licensed and regulated commercial activity.[9] Under 788, manufacturing marijuana by a grower is no longer a major felony but another licensed and regulated commercial activity[10] with no limits on production[11] and an immunity from taxation on wholesale sales,[12] while trafficking in marijuana is governed by a transportation license available to all commercial licensees.[13] In 2017, OBN seized over 2,000 pounds of marijuana through drug interdiction operations.[14] As of Feb. 4, 2019, the Oklahoma Medical Marijuana Authority (OMMA) had granted 38,592 patient licenses,[15] authorizing each licensee to possess up to 3 ounces of marijuana on their person.[16] In less than eight months of granting patient licenses,[17] OMMA has approved the legal possession of over three times as much marijuana as OBN seized in all of 2017.

788 ended a system where regulation of an agricultural commodity was the exclusive domain of the criminal code and transferred jurisdiction over that commodity to authorities in the state's civil law. The simplicity of this transfer belies the revolutionary nature of its effect, in spite of this massive alteration to Oklahoma law, the text of 788 is almost entirely silent on the changes this measure will produce in Oklahoma criminal law. There are 3,177 words in the text of 788, and only 45 of them relate to criminal matters at all.

63 O.S. §420A (A) AND (B) V. 63 O.S. §2-402 (B)(2)

788 included the following two provisions. First, 63 O.S. §420A (A), which says:

> A person in possession of a state issued medical marijuana license shall be able to … [c]onsume marijuana legally [and l]egally possess up to three (3) ounces on their person[.]

Second, 63 O.S. §420 (B), which says:

> Possession of up to one and one-half (1.5) ounces of marijuana by persons who can state a medical condition, but not in possession of a state issued medical marijuana license, shall constitute a misdemeanor offense with a fine not to exceed Four Hundred Dollars ($400.00).[18]

These two provisions contain significant overlap with a separate, earlier statute, 63 O.S. §2-402 (A)(1), which says:

> It shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance[19] unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice, or except as otherwise authorized by this act.

The penalty for violation of this statute by possession of marijuana is contained at 63 O.S. §2-402(B)(2), and categorizes the offense as a misdemeanor with a maximum carceral punishment of one year and a maximum fine of $1,000.

A few questions that might be raised under these circumstances can quickly be answered by existing points of Oklahoma criminal law. First, the passage of 788 does not operate retrospectively because Oklahoma criminal statutes never operate retrospectively unless the legislative authority specifically says they do.[20] Second, the passage of 788 does not implicitly repeal the marijuana prohibitions of 63 O.S. §2-402 (A)(1) because the Oklahoma law contains a strong presumption against implied repeals, and only where "an irreconcilable conflict" exists between two statutes will the Court of Criminal Appeals find implied repeal and apply the latter statute.[21] Third, there is no force of legislative authority under the Oklahoma Constitution that can limit prosecutorial discretion to charge whatever offenses are available under the criminal law of the state: as the Court of Criminal Appeals noted in *State v. Haworth*, "in our criminal justice system, the executive branch of the government retains broad discretion as to whether, when, and how to prosecute crime."[22] Moreover, although "[q]uestions may arise when two statutes, however plainly worded, appear to cover the same or similar conduct," the Court of Criminal Appeals has also said "there simply is no rule of statutory construction requiring that a particular pattern of criminal conduct shall only be addressed by one particular criminal provision."[23]

Where a conflict could arise would be a scenario where a law enforcement agent arrested, or a prosecutor prosecuted, a patient licensee for possessing 3 ounces or less on their person.[24] A prosecutor could theoretically cite *Haworth* for the ground that both 63 O.S. §2-402 (A)(1) and 63 O.S. §420A (A) exist independently of one another, and where the prior law, without being repealed, authorized arrest and prosecution for one form of conduct, the subsequent law cannot prevent arrest and prosecution for the same form of conduct simply by being later in time.[25]

This would be an especially treacherous route for a prosecutor to embark upon, however, given the ease with which 63 O.S. §2-402 (A)(1) and 63 O.S. §420A (A) may coexist with one another, so long as law enforcement authorities perform the plain legal duty of recognizing the validity of OMMA patient licenses.[26]

Indeed, a strong argument can be made that no conflict whatsoever exists between 63 O.S. §2-402 (A)(1) and 63 O.S. §420A (A), since the former statute only prohibits possession of marijuana "unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice[.]" 788 specifically authorizes possession of marijuana pursuant to a state-issued license obtainable only on the recommendation of a board-certified physician "according to the accepted standards a reasonable and prudent physician would follow when recommending or approving any medication."[27] In other words, the same general species of immunity from arrest or prosecution provided to patient licensees under 788 was already specifically recognized by 63 O.S. §2-402 (A)(1).

One can subtract, therefore, all the marijuana possession covered by 63 O.S. §420A (A) from Oklahoma criminal law because the passage of 788 added that activity to Oklahoma civil law. One is left, then, with the full scope of criminal liability for simple possession of marijuana divided between two statutes: the activity still covered in 63 O.S. §2-402 (A)(1) and the activity now covered by 63 O.S. §420A (B).

63 O.S. §2-402 (B)(2) V. 63 O.S. §420A (B).

Both 63 O.S. §2-402 (B)(2) (pre-788 statute) and 63 O.S. §420A (B) (post-788 statute) attach criminal liability to the same act

The question of whether the pre-788 statute or the post-788 statute applies would be raised when a police officer encounters a nonlicensee in possession of 1.5 ounces or less, and the underlying question at that point would become, "Can the arrestee state a medical condition?"

(possessing marijuana without legal authority) with the same *mens rea* ("knowledge and control" under *Staples v. State*).[28] The major difference between the pre-788 statute and the post-788 statute lies in the criminal penalty provided for this conduct: the pre-788 statute authorizes a year in jail and a maximum fine of $1000,[29] while the post-788 statute does not authorize any jail time and only authorizes a maximum fine of $400.[30] Where a police officer encounters a patient licensee in possession of 3 ounces or less on their person, the person is not exposed to criminal liability at all because this activity is authorized by 63 O.S. §420A: neither the pre-788 statute or the post-788 statute come into play. Where a police officer encounters a nonlicensee in possession of more than 1.5 ounces, there is likewise no question whether the activity is authorized by 63 O.S. §420A (it is not) and likewise no question about whether the activity is governed by the pre-788 statute or the post-788 statute. Since the post-788 statute only affects the rights of persons in possession of 1.5 ounces or less, the pre-788 statute continues to apply.[31]

The question of whether the pre-788 statute or the post-788 statute applies would be raised when a police officer encounters a nonlicensee in possession of 1.5 ounces or less, and the underlying question at that point would become, "Can the arrestee state a medical condition?"[32]

Under the pre-788 statute, everyone in possession of marijuana is guilty of a misdemeanor and can potentially be jailed for a year as well as potentially fined $1,000.[33] Under the post-788 statute, anyone who is not a patient licensee in possession of 1.5 ounces or less of marijuana is likewise guilty of a misdemeanor but cannot receive a jail sentence and can only be fined $400 if they "can state a medical condition."[34] The post-788 statute plainly provides for a more lenient penalty, therefore arrestees would, naturally, prefer the penalty of the post-788 statute over the pre-788 statute. Courts and litigators should then have a ready sense for what constitutes "stat[ing] a medical condition" under the post-788 statute.

THE DECLARATION UNDER 63 O.S. §420A (B)

Note the post-788 statute does not require an arrestee to "prove a medical condition," merely to "state" a medical condition.[35] Note as well that the post-788 statute does not require an arrestee to state a "specific" medical condition.[36] Under the "plain and ordinary meaning" of the post-788 statute, a person is immune from the higher penalty range under the pre-788 statute and must receive the lower penalty range under the post-788 statute if they "can state a medical condition." They do not have to prove they have a medical condition, nor do they have to say what medical condition they have.[37]

Suppose, though, an arresting agency decided not to honor the plain meaning of the post-788 statute, and arrested persons under the pre-788 statute who could "state a medical condition," but did not possess proof of that condition nor were willing to state to the arresting officer the underlying medical condition they possessed.[38] Suppose further that a prosecuting agency decided to prosecute a person under the pre-788 statute instead of the

post-788 statute even though the person made it clear to the prosecutor that they could "state a medical condition" but did not provide proof of the condition nor identify that condition.[39] A defendant facing this predicament could feel reasonable confidence in litigating the matter. First, the "plain and ordinary meaning" of the statute supports their position.[40] Second, any attempt by a police officer or prosecutor to deploy compulsory process to secure medical documents to confirm or disprove the defendant's assertion would meet obstacles contained in federal law under the Health Insurance Portability and Accountability Act (HIPPA), which generally requires a court order prior to the production of patient records to a law enforcement agency or a court.[41] Third, a key piece of evidence for this reading of the post-788 statute can be found in the substitute ballot title for 788 provided by then-Attorney General E. Scott Pruitt to the Oklahoma secretary of state on Aug. 25, 2016, which described the effect of the post-788 statute this way: "Unlicensed possession by an individual who *claims* to have a medical condition is punishable by a fine not exceeding $400."[42]

CONCLUSION

In Oklahoma, 788 fundamentally transformed the law of marijuana possession. Oklahoma criminal courts no longer have sole authority over the production, distribution and possession of this commodity. Instead, civil law, civil courts and agencies of the civil power will share authority, with the criminal courts retaining a small, uncertain portion. Indeed, the future of marijuana policy in Oklahoma will almost certainly be driven far more by the 3,132 in 788 that are concerned with the licensing, governance and taxation of marijuana than it will be by the 45 words in 788 concerned with its continuing criminal prohibition.

ABOUT THE AUTHOR

Brian Ted Jones is a solo practitioner in the firm Brian Ted Jones PC. He is a graduate of St. John's College and holds a law degree from the OU College of Law.

ENDNOTES

1. 63 O.S. §2-402(B)(2) (carrying a maximum carceral sentence of one year a maximum fine of $1,000).
2. 63 O.S. §2-401 (B)(2) (carrying a carceral range of two years to life, probation allowed and a maximum fine of $20,000).
3. 63 O.S. §2-415(D)(2) (carrying a carceral range of four years to life, with no possibility of probation and a fine range of $100,000 to $500,000).
4. *See* 63 O.S. §2-101 *et seq* and OKLA. ADMIN. CODE §475:10-1-1 *et seq*.
5. Oklahoma State Bureau of Narcotics and Dangerous Drugs, *2017 Oklahoma Drug Threat Assessment*, June 19, 2017 *at* p.3.
6. *Id. at* p.9.
7. Oklahoma State Bureau of Narcotics and Dangerous Drugs, *2018 Oklahoma Drug Threat Assessment*, Sept. 12, 2018, *at* p.8.
8. 63 O.S. §420A (A).
9. 63 O.S. §421A.
10. 63 O.S. §422A.
11. *Id. at* 422A (D).
12. *Id. at* 422A (C).
13. 63 O.S. §§424A (A) and (B).
14. Oklahoma State Bureau of Narcotics and Dangerous Drugs, *2018 Oklahoma Drug Threat Assessment*, Sept. 12, 2018, *at* p.8.
15. Oklahoma Medical Marijuana Authority (@OMMAOK), Sept. 24, 2018, 9:11 a.m., www.twitter.com/OMMAOK/status/1044227934167465984.
16. 63 O.S. §420A (A)(2).
17. Press Release, Oklahoma Medical Marijuana Authority, *Oklahoma Medical Marijuana License Applications to Open Saturday* (Aug. 24, 2018) *available at* omma.ok.gov/oklahoma-medical-marijuana-license-applications-to-open-saturday.
18. 63 O.S. §420A (B).
19. *See* 63 O.S. §2-101 (8), defining a "controlled dangerous substance" as a "drug, substance, or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act". *See also* 63 O.S. §2-204 (C)(12), defining "marijuana" as a Schedule I "hallucinogenic substance[.]"
20. *Witherow v. State*, 2017 OK CR 17, ¶9.
21. *State v. Stice*, 2012 OK CR 14, ¶12 (citing *City of Sand Springs v. Dep't of Pub. Welfare*, 1980 OK 36, ¶28.
22. *State v. Haworth*, 2012 OK CR 12, ¶13. *See also* Okla. const. art. 4, §1: "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."
23. *Haworth at* ¶12.
24. 63 O.S. §420A (A)(2).
25. *Haworth at* ¶¶11-12.
26. *Cf.* Rule 10.6 (A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2003).
27. 63 O.S. §420A (M).
28. 1974 OK CR 208, ¶8-9.
29. 63 O.S. §2-402 (B)(2).
30. 63 O.S. §420A (B).
31. *Id.*
32. *Id.*
33. 63 O.S. §2-402 (B)(2).
34. 63 O.S. §420A (B).
35. *Id.*
36. *Id.*
37. *State v. Stice,* 2012 OK CR 14, ¶11 (citing *Wallace v. State*, 1997 OK CR 18, ¶4).
38. 63 O.S. §420A (B).
39. *Id.*
40. *State v. Stice,* 2012 OK CR 14, ¶11 (citing *Wallace v. State*, 1997 OK CR 18, ¶4).
41. Codified at 42 U.S.C. §300gg, 29 U.S.C. §1181 *et seq*, and 42 U.S.C. §1320d *et seq*.
42. Letter from E. Scott Pruitt, Oklahoma attorney general, to Chris Benge, Oklahoma secretary of state, RE: Ballot Title for State Question No. 788, Initiative Petition No. 412 (Aug. 25, 2016) (on file with the Office of the Secretary of State)(emphasis added).

Facets of Expungement of Criminal Records in Oklahoma

By Orval Edwin Jones

PROCEDURES AND QUALIFICATIONS FOR EXPUNGEMENT of criminal records in Oklahoma should be well understood by any criminal defense lawyer.[1] There are two types of expungements: general expungement of criminal records arising from a special civil proceeding prescribed in 22 O.S. §19; and special expungement provisions pertaining to individual cases, in which the statutory authority to seal records is limited to the court records generated in the particular case.[2]

The Court of Criminal Appeals has held that a district court in a criminal case has no jurisdiction to seal arrest records and other law enforcement records pursuant to 22 O.S. §991c.[3] Although a general expungement is directed to the sealing of criminal investigation and prosecution records, it is understood to be a civil case. The Oklahoma Supreme Court recently stated:

> Generally speaking, the demarcation line between civil and criminal subject matter is well-defined and obvious, but that is not always the case. Examples of legal proceedings which have both criminal and civil components include … expungement proceedings …
>
> Contrary to the State's assertion, we do not believe that the mere placement of [a statute] within Title 22 renders the provision, *ipso facto*, a criminal enactment. Title 22 contains multiple provisions which are unquestionably matters of civil law.[4]

Title 22 for a short period of time required general expungement appeals to be filed in the Court of Criminal Appeals, but the Legislature revised the appeals process to place appellate jurisdiction in the Oklahoma Supreme Court, where it remains.[5]

HISTORY OF EXPUNGEMENT IN OKLAHOMA

Before adoption of the general expungement statute in 1987,[6] Oklahoma had no history of judicial expungement of law enforcement records. It has been noted, "Traditionally, courts have been of the view that the matter of expunging an arrest record where the arrestee has been acquitted was inappropriate for judicial action, and that the entire matter was more appropriate for legislative action."[7] In 1975, after a well-known Oklahoma City attorney was acquitted of criminal charges in federal court, the United States Court of Appeals upheld the district court's decision not to expunge arrest records pursuant to its equitable power.[8] The court said that the power to expunge arrest records should be reserved for cases "where the arrest itself was an unlawful one, or where the arrest represented harassing action by the police, or where the statute under which the arrestee was prosecuted was itself unconstitutional."[9]

A study on the effects of arrest records on the residents of the District of Columbia found that "the use of arrest records by prospective employers was widespread, and the consequences of a person having been arrested, even if the charges were subsequently dismissed, were severe."[10] It was noted in 1975 that "only a few states have statutes providing for the expungement, sealing, or returning of the record when there is no conviction, and often these involve a long and laborious procedure."[11] It was also noted that state laws "vary considerably in the relief given."[12]

The Oklahoma Legislature enacted the general expungement statute in 1987, making acquittal the first ground for statutory expungement.[13] The other original grounds for expungement were:

no charges were filed or charges were dismissed within one year of the arrest; no charges were filed and the statute of limitations had expired; or the person was under 18 when the offense was committed and also had received a full pardon for the offense.[14] In 1997, the Legislature added a new ground: conviction was reversed by appellate court with instructions to dismiss; or the district attorney dismissed charges after a reversal of conviction.[15]

STATUTORY EXPUNGEMENT FRAMEWORK IN THE 21ST CENTURY

The procedures for general expungement are found in the Oklahoma Criminal Code[16] and have remained essentially unchanged since enactment. The grounds to qualify for expungement, however, have been expanded by amendment more than 10 times since the year 2000.[17] As of November 2018, the following are the qualifications for an expungement of criminal records:[18]

- Acquitted;
- Conviction reversed and charge dismissed;
- Factual innocence based on DNA evidence subsequent to conviction;
- Full pardon based on actual innocence;
- No charges of any type were filed and limitations period has run or prosecutor has declined all charges including charges of a different type;
- Juvenile offense with full pardon;
- Charges filed, then dismissed and will not be refiled (does not include dismissals after deferred judgment or delayed sentence, and does not include defendants with felony conviction or pending felony or misdemeanor charge);
- Misdemeanor charge filed, then dismissed following successful completion of deferred judgment or delayed sentence, no felony convictions, no charges pending, passage of one year since charge dismissed;
- Nonviolent felony charge filed, then dismissed following successful completion of deferred judgment or delayed sentence, no felony convictions, no charges pending, passage of five years since charge dismissed;
- Misdemeanor conviction, sentenced to a paid fine of $500 or less, no felony convictions, no charges pending (there is no waiting period);
- Misdemeanor conviction, penalty exceeds $500 fine, no felony convictions, no charges pending, passage of five years since end of last misdemeanor sentence;
- Nonviolent felony conviction, no conviction for another felony or separate misdemeanor in past seven years, no charges pending, passage of five years since completion of sentence for felony conviction;
- Conviction of not more than two nonviolent felonies, full pardon for both offenses, no charges pending, passage of 20 years since the last criminal conviction;
- Person charged, arrested or arrest warrant issued for a crime committed by another person who misappropriated the person's name or identity.

The most far-reaching of these newer grounds is found in paragraph 10, which as of November 2016 has permitted a defendant to take a conviction and then immediately seek an expungement of arrest and court records if the penalty was only a fine in an amount less than $501.[19]

A review of just over 500 expungement cases filed pursuant to Section 18 seeking expungement of Oklahoma City Police Department arrest records from Nov. 1, 2016, through June 30, 2018,[20] showed that expungement on grounds of actual or presumed innocence was sought in less than 1 percent of these cases for all grounds in paragraphs 1, 2, 3, 4, 6

and 14 of Section 18(A) of Title 22. The other grounds based on actual or presumed innocence, paragraphs 5 and 7, were presented, respectively, in 11 and 13 percent of the cases, less than one-fourth of the cases. On the other hand, more than three-fourths of the expungement cases were based on grounds that did not exist until after the year 2000: paragraph 8 was invoked in 31 percent of the cases; paragraph 9 in 15 percent; paragraph 10 in 16 percent; and paragraph 11 in 10 percent. Paragraphs 12 and 13 combined were invoked in fewer than 5 percent of the cases.

GENERAL EXPUNGEMENT PROCEDURE

An expungement proceeding is commenced by filing a petition in the district court sitting in the district in which the arrest records in question are located.[21] The arresting agency, prosecuting agency and Oklahoma State Bureau of Investigation (OSBI) are entitled to notice of 30 days before a hearing is conducted.[22] Any agency or aggrieved party can file an appeal to the Oklahoma Supreme Court and OSBI is a necessary party to any appeal.[23]

Expungement of law enforcement records comes in two main varieties. Section 18(D) provides in general that grounds based on actual or presumed innocence[24] give rise to expungements that seal an arrest record from the public as well as law enforcement agencies. Expungements based on grounds that allow for guilty pleas, deferred sentencing, probation and even convictions, are to be "sealed to the public but not to law enforcement agencies for law enforcement purposes."[25] Thus it is important in seeking relief to understand and to specify the underlying statutory basis for the expungement. Regardless of which type of expungement order is entered, to make an exception to the expungement order thereafter requires a new petition to be filed by the attorney general, the prosecuting agency or "by the person in interest who is the subject of such records."[26] The court may allow inspection of the expunged record "only to those persons and for such purposes named in such petition."[27]

Once an expungement order is entered, then "the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person."[28] An expungement order can be vacated or modified, after notice and hearing, only for change of conditions or for "a compelling reason to unseal the records."[29]

A case for expungement is a case in essence against the records themselves. The court explained in *State v. McMahon*:[30]

> The procedure prescribed for obtaining or opposing expungement is almost summary in nature and the issues are very narrow in scope. The procedure includes (1) the filing of a motion or petition; (2) notice to the district attorney, the arresting agency, the Oklahoma State Bureau of Investigation, and any other interested person or agency; and, (3) hearing of the petition and objections from the agencies notified. No response to an objection is provided. The focus of the petition, objections, and hearing is on *records* kept by authority of law.

Moreover, the plaintiff in an expungement case need not prove any harm to make a *prima facie* case – the existence of an arrest record, and qualification under any of the statutory grounds for expungement, is sufficient to shift the burden to the government to show that the public interest in keeping the records open to the public is greater than the plaintiff's interest in sealing the records.[31]

After the hearing has been conducted (or an order approved by all

Once an expungement order is entered, then "the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person."

affected agencies has been collected by the plaintiff), the court may enter an order sealing all or any part of the records in question, or may enter an order limiting access to such records.[32] Expungement orders do not authorize a destruction of records.[33] "For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document."[34] Any sealed document can be destroyed after 10 years.[35]

When an expungement order is in place, the plaintiff cannot be required by employers, educational institutions, state or local government agencies or officials to "disclose any information contained in sealed records" in an interview or job application.[36] However, sealed material can be used at any hearing or trial for impeachment purposes or as evidence of character.[37]

CONCLUSION

The past three decades have seen a dramatic shift in the legislative policy related to public access to arrest records. Prior to 1987, expungement of criminal records was nearly nonexistent in Oklahoma. From 1987 until 2000, statutory expungement has allowed the sealing of arrest records in cases in which the guilt of the defendant was never admitted or proved. Since 2000, quite a variety of grounds for a limited expungement – sealing records to the public but leaving them open to law enforcement agencies – have been enacted to allow a defendant to deny that he or she has ever been arrested, even after admitting guilt or even taking a conviction.

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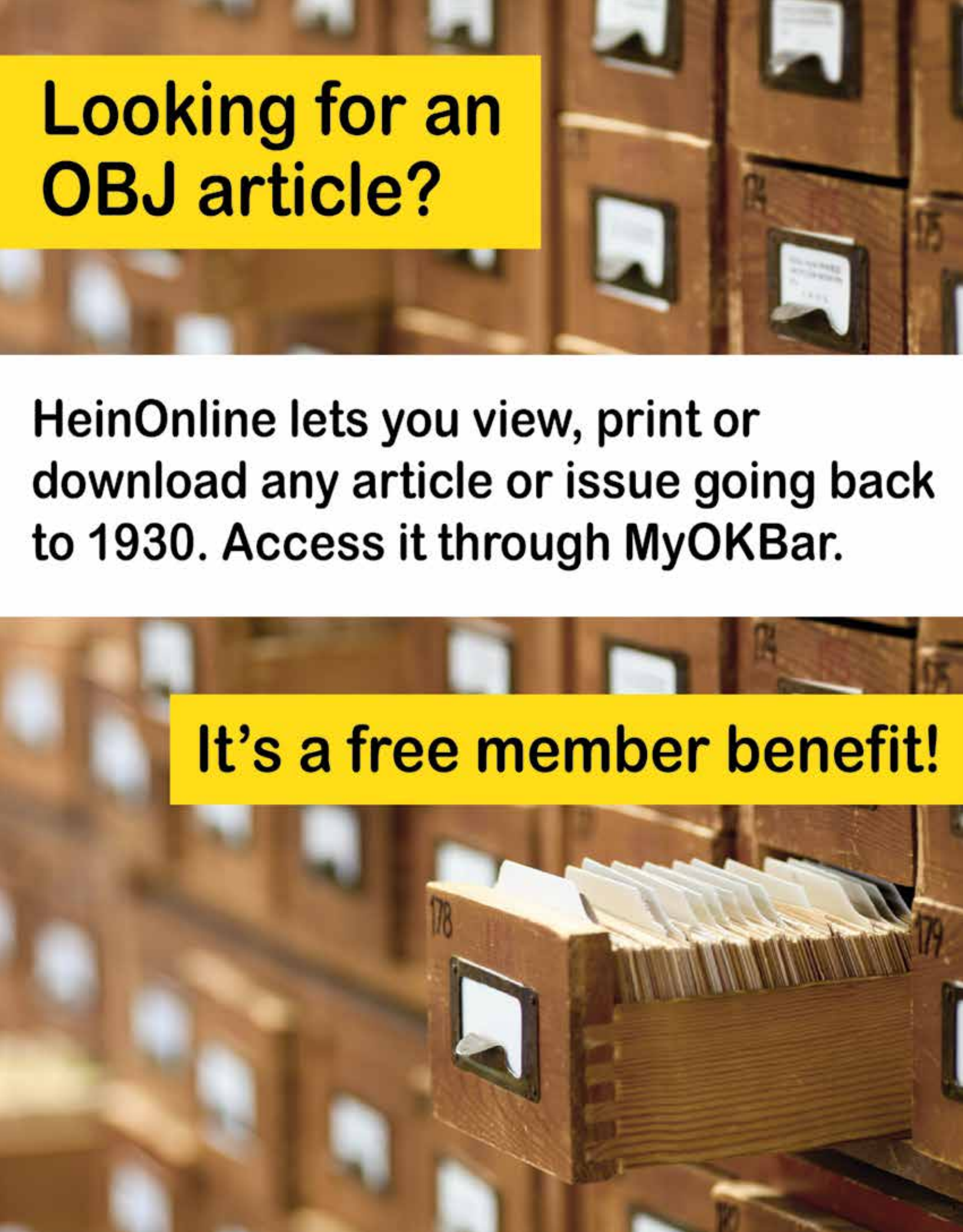
ENDNOTES

1. This article is the personal work product of the author and does not necessarily reflect the policies or positions of the Oklahoma City Office of Municipal Counselor or the City of Oklahoma City.
2. Examples of special expungement statutes include: 22 O.S. §991c (expungement of court records after deferred sentence in district court); 11 O.S. §28-123 (expungement of court records after deferred sentence or successful probation in municipal courts of record); 22 O.S. §60.18 (sealing of certain victim protective order court records from public inspection); 10A O.S. §2-6-109 (expungement of juvenile records not otherwise confidential).
3. *State ex rel. Hicks v. Freeman*, 1990 OK CR 45, 795 P.2d 110. *See also City of Lawton v. Moore*, 1993 OK 168, 868 P.2d 690 (criminal court expungement does not include law enforcement records).
4. *Parsons v. District Court*, 2017 OK 97, ¶¶17, 20, 408 P.3d 586 (citation omitted).
5. *In re Adoption of Supreme Court Rules for Expungement of Records*, 2005 OK 32, 120 P.3d 861.
6. Okla. Laws 1987, c. 87.
7. *United States v. Linn*, 513 F.2d 925, 927 (10th Cir. 1975), *citing United States v. Dooley*, 364 F. Supp. 75 (E.D. Pa. 1973).
8. *Id*. at 928.
9. *Id*. at 927.
10. *Morrow v. District of Columbia*, 417 F.2d 728, 731 (D.C. Cir. 1969).
11. Note, "Criminal Procedure: Expunging the Arrest Record When There Is No Conviction," 28 *Okla. L. Rev.* 377, 386 (footnotes omitted).
12. *Id*. at 386.
13. Okla. Laws 1987, c. 87, §1.
14. *Id*.
15. Okla. Laws 1997, c. 387, §1.
16. 22 O.S. §19.
17. *See Historical Data annotating* 22 O.S. §18, *most recently* Okla. Laws 2017, c 127.
18. 22 O.S. §18(A) (2018 Supp.)
19. Okla. Laws 2016, c. 348, §1.
20. The data set consisted of 518 cases in which the author entered a special or general appearance.
21. 22 O.S. §19(A).
22. *Id.,* §19(B).
23. *Id.*, §19(C).
24. Paragraphs 1-7 and 14 of 22 O.S. §18(A).
25. 22 O.S. §18(D).
26. *Id.*, §19(E).
27. *Id.*
28. *Id.*, §19(D).
29. *Id.*, §19(L).
30. 1998 OK CIV APP 103, ¶4, 959 P.2d 607 (original emphasis, citation omitted).
31. *Hoover v. State,* 2001 OK CR 16, 29 P.3d 591. An article, written before these "presumed harm" cases shaped the substantive content of most general expungement orders, contains excellent comments regarding the practical aspects of expungement practice. *See* Edward D. Hasbrook, "Expungement: The Second-Chance Statutes," 66 *O.B.J.* 2503 (July 29, 1995).
32. 22 O.S. §19(C).
33. *Id.*, §19(H).
34. *Id.*, §19(I).
35. *Id.*, §19(K).
36. *Id.*, §19(F).
37. *Id.*, §19(N).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Managing Expectations in Criminal Tax Defense – Yours and Your Client's

By John D. Russell and Andrew J. Hofland

AS A CRIMINAL DEFENSE ATTORNEY, the prospect of squaring off with the Internal Revenue Service and the Department of Justice may seem daunting. An accounting-heavy case is outside your bailiwick, or at least the cases you usually defend. The opposition is formidable. The imbalance of litigation resources is especially pronounced. After all, in this world nothing can be said to be certain, except death and taxes. Despite those concerns, a criminal tax case is, at its core, just another criminal case – albeit with a few distinctive facets. It has a familiar plaintiff with a familiar burden to provide evidence in accordance with familiar rules. Taking the time to learn the unfamiliar particularities of criminal tax enforcement cases can give you the confidence to competently and tactfully represent future taxpayer clients.

For the sake of background, the IRS Criminal Investigation Division conducted over 3,000 investigations and brought indictments in about 2,300 federal criminal cases in fiscal year 2017.[1] Those numbers, which include tax evasion cases, represent a meteoric fall from 2012's 5,125 investigations and 3,390 indictments,[2] largely due to continuing budgetary shortfalls and reduced manpower. Because of the decreases, the IRS prioritizes certain types of cases. Amidst more high-profile offenses, including abusive return preparation and offshore tax evasion, the IRS remains focused on bread-and-butter violations more likely to confront Oklahomans: 1) for individuals, failure to report legitimately earned income; and 2) for business associations, employment tax evasion. Becoming familiar with these common forms of tax fraud will give you a base to operate with in advance of your next criminal tax enforcement case.

UNDERSTAND THE CIVIL-CRIMINAL DIVIDE

Unlike other criminal cases, many criminal tax enforcement cases spin off from parallel civil proceedings. Parallel proceedings or parallel investigations can involve either the same agency or cooperating agencies, and most commonly occur with matters involving the SEC, EPA and IRS. In many tax cases, the IRS simultaneously conducts a civil audit and criminal investigation. While the investigations are technically separate, civil and criminal agents, consistent with IRS policy, coordinate their efforts and share information.[3] It is unsurprising then that the IRS makes the civil nature of an investigation apparent and the criminal aspect less so. With the possibility of parallel proceedings, taxpayers can find themselves faced with a difficult decision in an audit – 1) generously cooperate, potentially incriminating themselves, in the hopes they satisfy the auditor's concerns; or 2) refuse to cooperate, receive unfavorable adjustments stemming from "lack of substantiation" and face an uphill battle on appeal based on adverse inferences drawn from the refusal to cooperate. Thus it is exceedingly important to evaluate the likelihood of whether a criminal investigation will follow or has already begun.

Although the taxpayer may not know what signs to look for, there are telltale indications that a criminal investigation is underway. First, it's important to note a revenue agent cannot mislead a taxpayer about the exclusively civil nature of an investigation.[4] If a revenue agent states no other agencies are involved in the case or the agent is unaware of a criminal investigation, the taxpayer can take those statements at face value. Unfortunately, it's usually not that easy. To avoid any suppression issues related to the misinformation of a taxpayer, IRS policy now states, "[u]nder no circumstances should the revenue officer inform the taxpayer that the case has been referred to CI."[5] Regardless, interactions with auditors have been known to provide both overt and subtle indications that there's a hidden criminal investigation under the surface.

Second, the players involved in the process can provide a dead giveaway. During a strictly civil matter, a taxpayer will encounter revenue officers and revenue agents. Revenue officers are tasked with collection. They deal with tax already assessed and may work to file notices of tax liens and levy wages or bank

A retained accountant will help you interpret your client's financial records and figure out the potential tax liability based upon nuances within the Internal Revenue Code.

accounts. Revenue agents conduct audits. They investigate unreported income and scrutinize the propriety of deductions, credits and exemptions claimed on tax returns. Because of the coordination of efforts discussed above, the fact that the taxpayer and the taxpayer's accountant are solely interacting with these IRS representatives does not guarantee the absence of a criminal investigation. However, the involvement of an IRS special agent guarantees the existence of one. Special agents are the criminal investigators of the IRS, typically assigned to a separate division known as the Internal Revenue Service Criminal Investigation Division (IRS CI).

Third, and in a similar vein, revenue agents and revenue officers do not read taxpayers their rights. As a matter of policy, special agents do.[6] If the taxpayer is read his or her rights or gets wind that an IRS special agent is involved with the audit – whether in-person, on a telephone conference or carbon-copied on correspondence – begin planning and preparing for a criminal case.

GET A *KOVEL* FORENSIC ACCOUNTANT ON BOARD EARLY

Once a criminal investigation is imminent, the first thing the taxpayer should do is engage a qualified criminal defense attorney. In turn, the first thing the attorney should do is engage an accountant. Criminal tax enforcement cases boil down to numbers. For the reasons stated in the section below, those numbers will drive your client's sentencing exposure; and therefore, the case. To exert maximal influence on the outcome of the case and shape it along the way, you and your client need to understand those numbers as early as possible. You can't do it alone. As the 2nd Circuit put it in *United States v. Kovel*, "[a]ccounting concepts are a foreign language to some lawyers in almost all cases, and to almost all lawyers in some cases."[7] A retained accountant will help you interpret your client's financial records and figure out the potential tax liability based upon nuances within the Internal Revenue Code.

To get the full and confidential benefit of your accountant's services, you, as the criminal defense attorney, should be the party to retain the accountant and should do so through a *Kovel* agreement. A *Kovel* agreement between the attorney and accountant extends the attorney-client privilege to the accountant as "outside help" to promote "effective communication between the client and the lawyer."[8] Further, the agreement can establish the accountant is being retained to help the taxpayer client in anticipation of, or during, litigation, thereby protecting the accountant's assistance under the work-product doctrine.

Resist the temptation to use your client's existing accountants. You want a bright line between the individual's or business' regular financial advice and advice necessary for the provision of legal services. When an accountant has performed both, the court may more closely scrutinize the distinction between roles and require you to put on additional evidence to avoid an order compelling disclosure of the accountant's communications and work product. While 12 O.S. §2502.1 provides a level of protection for accountant-client communications, you're better off hiring a previously uninvolved independent consultant without fear of unwanted disclosure. Further, a *Kovel* accountant will provide you not only with an unvarnished opinion of the taxpayer's conduct, but also of the existing accountant's work.

You may find your client relied on faulty accounting when the challenged return was prepared, and the existing accountant may not be willing to accept responsibility for errors on the return. For these reasons, you need an independent examination of the existing record to advise your client.[9]

MASTER THE RELEVANT SENTENCING ISSUES

It's all about the money. Calculations of tax loss and restitution will determine the outcome of your case, most prominently at sentencing. The unfortunate reality for your client is that there is often no defense to the merits of the government's charge. Either income was reported and taxes were paid, or they weren't. While there are exceptions,[10] it is uncommon for there to be an absolute defense or for the IRS to flat out get it wrong. More likely, the open questions relate to how much should have been paid and how much is currently owed. This is where your independent *Kovel* accountant becomes an indispensable part of the defense team.

As early as possible, once the client engages you and your accountant, you need to conduct a deep dive into tax loss and restitution, along with other ancillary factors that determine advisory sentencing ranges under the United States Sentencing Commission's Sentencing Guidelines.[11] In federal court, nearly half of all sentences fall squarely within the range established by the guidelines.[12] The sentencing range for tax crimes is driven primarily by the dollar amount involved, or the "tax loss." The guidelines manual defines "tax loss" as the "total amount of loss that was the object of the offense."[13] For instance, in terms of failure to report legitimate earned income, the tax loss corresponds to the amount of tax the individual failed to pay on the unreported income; for employment tax evasion, the amount of evaded employment taxes the business entity failed to pay to the IRS.

As a criminal defense attorney, the greatest impact you can have on your client's case is to closely examine the government's tax loss calculation. Unabashedly, the government calculates tax loss in the light most favorable to the government with little consideration of the credits, deductions and exemptions that went unasserted by the taxpayer. Often the IRS's numbers are based on gross receipts and the total amount deposited into bank accounts without regard for expenses and other figures that would reduce your client's tax liability for the relevant periods. Working closely with your *Kovel* accountant, you can contest the IRS's calculations and even counter with credits, deductions and exemptions 1) that relate to the tax offense and could have been claimed at the time of the offense, 2) that are reasonably and practicable ascertainable and 3) that are sufficiently supported by information in advance of sentencing to support their probable accuracy.[14] In an ideal world, the client would have perfect records covering the entire relevant period and proving unclaimed credits, deductions and exemptions would be as simple as filing a record-supported amended return, but rarely is it that simple. More likely, you and your *Kovel* accountant will have to don a green eyeshade and investigate how your client's business operated on a granular level to create an effective defense strategy. The key takeaway is: there are several ways to calculate tax loss – do not take the government's calculation as a given.

In federal court, you can't lose sight of potential sources of relevant conduct. Relevant conduct permits the court to consider the defendant's actions outside the counts of conviction, if proven merely by a preponderance of the evidence, to increase the tax loss calculation. For example, the court may add to the loss amount based on uncharged state and federal tax offenses, conduct outside the statute of limitations and even charged conduct of which the defendant was acquitted. When the alleged conduct of the taxpayer reveals

a common pattern or scheme, you can anticipate the sentencing calculation, regardless of the counts of conviction, will include the aggregate amount of each instance of the scheme. The additional loss from the relevant conduct can cause the overall tax loss to jump into a greater loss category, increasing the defendant's base offense level and yielding a higher advisory sentencing guidelines range.

In addition to tax loss, you need to focus on restitution; your client certainly will. Restitution is the harm to the victim of the crime, which in tax cases is the IRS. Restitution is not the same as the tax loss amount. While ultimately the figures may be closely related, tax loss reflects the intended loss when the offense was committed, whereas restitution reflects, and is limited to, the IRS's actual losses suffered as a result of the defendant's conduct. For instance, previous payments on the tax liability would decrease the harm to the victim at the time of sentencing, but interest can serve to increase the restitution amount as the tax loss calculation remains static. Also, unclaimed deductions and credits affect the real amount the taxpayer owes to the IRS and therefore restitution.

Your grasp of the concepts of tax loss and restitution will determine your sentencing strategy and whether your client pleads with a written plea agreement or without. Typically, in a plea agreement, the government will require your client to waive a panoply of rights in exchange for some certainty as to sentence, tax loss calculations and restitution amounts. Your evaluation of the facts and how good the deal is relative to those facts will determine, as with other plea negotiations, whether to plead pursuant to an agreement. Be forewarned, however, that tax crime idiosyncrasies affect the value of certain plea agreement terms, including, for example, the potential to charge bargain, the form of restitution and presentencing advocacy.

You should not anticipate you'll be able to meaningfully charge bargain with government counsel due to the DOJ Tax Division's major count policy. The policy, promulgated in DOJ's Justice Manual (formerly known as the United States Attorneys' Manual or USAM), authorizes the prosecuting attorney to accept a plea only if it includes the charge designated by the Tax Division as "the major count," unless the prosecutor obtains exceptional approval from the Tax Division.[15] The major count is typically the tax evasion count that carries the most severe penalties involving the greatest financial loss to the United States.[16] As a result, your ability to drastically improve your client's position through charge bargaining is limited.

For offenses under Title 26 of the United States code, the government can only achieve a restitution order through a plea agreement. Title 26 does not contain the same restitution provisions as Title 18, but if the defendant agrees to restitution as a bargained-for provision of a plea agreement, the court is permitted to order restitution as an independent part of the sentence.[17] Otherwise, in the absence of a plea agreement, a court desiring to award restitution must make payment of restitution a condition of supervised release or probation.[18] What's the difference between an agreed-up restitution order and a condition to make restitution on supervised release or probation? A restitution order is a money judgment that will last 20 years, whereas a requirement to pay taxes owed under Title 26 is limited to a 10-year statute of limitations and confined to collection by the IRS. Restitution orders are subject to the government's broader collection tools.

Finally, as may be self-evident, once you agree on the appropriate amount of tax loss and restitution, you forfeit the ability during the presentencing phase to challenge those amounts. In the absence of a plea agreement, you retain the ability to present evidence in support of a reduced tax loss, which, if successful, will reduce the sentencing guideline and the restitution amount. One danger of agreeing on tax loss and restitution amounts is that your client can be locked in at those amounts, even if it is subsequently shown they are in excess of what the taxpayer was obligated to pay.[19] In the absence of an agreement, you retain plenary rights to prove the accuracy of contested figures, appeal tax loss determinations and restitution awards and receive a *de facto* restitution cap of the amount lost *for the count of conviction* as opposed to an amount that includes relevant conduct.

It's not over when the taxpayer receives his or her sentence. The IRS may have follow-on action since criminal restitution and civil tax liability are separate and distinct. In 2010, Congress amended the tax code to include a provision for assessing restitution. Section 6201 of Title 26 authorizes the IRS to assess as a tax the amount awarded as restitution in a criminal tax case.[20] Prior to the enactment of Section 6201, the IRS couldn't assess or take administrative action to collect an assessed or assessable amount of restitution. The IRS can also assess interest from the date the return was or should have been filed, not the date the IRS assessed the restitution. In the case of a tax return preparer convicted of aiding and assisting the preparation of false or fraudulent returns under 26 U.S.C. §7206(2), your client could be assessed the amounts owed by every client for which the preparer

prepared a false return. The return preparer would never have been individually liable for the client's taxes, but with a restitution assessment, it is possible, including interest that wouldn't be recoverable under the restitution order. You should become familiar with each facet of the potential financial impact of a tax conviction and sentence on your client.

CONCLUSION

Criminal tax cases are different from a criminal defense attorney's average case, but getting involved early – hopefully long before the case is ever charged – and spending the requisite time to get familiar with the nuances of defending tax cases is essential to effectively representing your client. Practitioners need to educate themselves with the indispensable outside help of a *Kovel* accountant, regarding tax-specific defenses, charging alternatives favorable to the client and the case in mitigation. There is often no viable defense to a criminal tax charge; IRS special agents are good at what they do.[21] The key to effectively defending your client is to stay outcome-focused and lay the groundwork to reduce the consequences of your client's conduct. Armed with a little understanding of the criminal tax landscape and a thoughtful approach, you can begin to generate favorable outcomes for taxpayers in these cases.

ABOUT THE AUTHORS

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ENDNOTES

1. IRS-CI Fiscal Year 2017 Annual Report, www.irs.gov/pub/foia/ig/ci/2017_criminal_investigation_annual_report.pdf.
2. IRS-CI Fiscal Year 2012 Annual Report, www.irs.gov/pub/foia/ig/ci/REPORT-fy2012-ci-annual-report-05-09-2013.pdf
3. Internal Revenue Manual §5.1.5.5.
4. *United States v. Tweel*, 550 F.2d 297 (5th Cir. 1977).
5. IRM §5.1.5.7.
6. IRM §9.4.5.11.3.1.
7. *United States v. Kovel*, 296 F.2d 918, 922 (2d Cir. 1961).
8. *Id.*
9. The relevant defenses to a criminal tax case are beyond the scope of this article, but practitioners should note that good faith reliance upon a professional or return preparer is a defense to a charge under 26 U.S.C. §7206(1).
10. The most common defense is lack of scienter. The government must prove beyond a reasonable doubt that the taxpayer willfully committed the offense. *Cheek v. United States*, 498 U.S. 192, 201 (1991).
11. United States Sentencing Commission, *Guidelines Manual* (November 2016).
12. U.S. Sentencing Comm'n, Interactive Sourcebook, Fiscal Year 2017, Table N, isb.ussc.gov.
13. USSG §2T1.1(c).
14. USSG §2T1.1(c), comment. (n.3).
15. U.S. Dep't of Justice, Justice Manual 6-4.310 (2018), www.justice.com/jm/jm-6-4000-criminal-tax-case-procedures#6-4.310.
16. *Id.*
17. 18 U.S.C. §3663(a)(3); *see United States v. Anderson*, 545 F.3d 1072, 1077-78 (D.C. Cir. 2008); *United States v. Firth*, 461 F.3d 914, 920 (7th Cir. 2006); *see also United States v. Gottesman*, 122 F.3d 150, 151-52 (2d Cir. 1997) (for the district court to order restitution pursuant to a plea agreement, the plea agreement must clearly contemplate such an order).
18. *See* 18 U.S.C. §3583(d); 18 U.S.C. §3563(b); 18 U.S.C. §3556; *see also* USSG §5E1.1(a)(2); *Gall v. United States*, 21 F.3d 107, 109-10 (6th Cir. 1994) (recognizing the propriety of plea agreement-based restitution orders in the sentencing guidelines and case law).
19. *See e.g. Choi v. United States*, 2018 WL 620454 (D. Md. 2018) (argument that restitution amount in plea agreement was more than what was owed was unavailing, in part, due to defendant's agreement).
20. This does not affect the restitution order, upon which the government can seek collection.
21. We leave for another day a discussion of the best way to defend a criminal tax trial, primarily because they're nearly as extinct as the black-footed ferret.

The iPhone, the Speaker and Us

Constitutional Expectations in the Smart Age

By Mbilike Mwafulirwa

"ALEXA, WHAT TIME IS IT?" That's normal to ask these days. We have come to expect answers to such questions, especially in *this* age of Alexa, Siri, smartphones and devices.[1] What about, for example, this question: "Alexa, who killed Victor?" Too far-fetched? Actually not.

That very question was the subject of a murder prosecution in Arkansas.[2] A victim died in a home that had the Amazon Echo speaker (Alexa) installed and operational.[3] Alexa is a wireless computer speaker that works by constantly *listening* for its "wake word" – trigger words like "Alexa" or "Amazon" – that cause the equipment to record voice commands and transmit them to a processor that analyzes them in order to fulfill a request.[4] So, it is possible, the police suggested, that in the process of recording a user's voice commands that Alexa can also capture other background sounds – even possibly the critical moments of a crime. Amazon stores Alexa's recordings remotely.[5] The police demanded that Amazon produce the defendant's Alexa's remote recordings.[6]

Not long ago, another prominent criminal prosecution also rested on the contents of a smart device – think the FBI and the locked iPhone in California.[7] The FBI wanted to access the iPhone, and it asked a federal court to force Apple to create software to unlock the smartphone.[8]

The two cases raised common questions, summed up this way: Can the government compel disclosure of the user's data in those smart devices? If so, under what circumstances? Before courts could answer those questions in both cases, the issues became moot. However, given the importance of the constitutional questions raised and the high likelihood of recurrence, this article attempts a more searching analysis of those issues.

ALEXA, HOW DID VICTOR DIE?

Nov. 22, 2015, was anything but a typical day. James A. Bates, a homeowner in Bentonville, Arkansas, called 911 to report that one of his overnight guests, Victor Collins, was found dead, facedown, in the hot tub in his backyard. When the police responded to Bates' call that Sunday morning, they indeed found Collins' body as had been described on the call; but in addition, they found that the victim's left eye and lips were dark and bruised. The police also found blood spots around the tub, as well as broken bottles and knobs. The police suspected foul play. The chief medical examiner ruled that Collins' death was a homicide.[9]

Bates' home was no ordinary home – it was an impressive tech-filled fortress. The home was filled with a wide-array of "smart home" devices – a smart thermostat, a smart alarm system, Amazon Echo digital assistant and so on.[10] Typical warrant-sanctioned home searches focus on the interior, but when particularity requirements are met, computers and like devices are fair game.[11]

In the Arkansas case, the police took particular interest in the defendant's Alexa. The police believed that Alexa is *always recording* what happens around it.[12] In truth, as noted, Alexa is *always listening* for its "wake word" – trigger words like "Alexa" or "Amazon" – and only starts to record when the system picks up those trigger words.[13] That, in turn, triggers the system to analyze and attempt to process the user's command that follows the trigger word. The police believed that in the process of recording, Alexa could also have captured other background sounds or information

that might shed some light on what happened to Collins.[14]

After Bates declined a voluntary search of his Alexa data, Amazon filed a motion to quash the search warrant. Amazon argued that given the important First Amendment and user privacy interests at stake, a general broad search warrant was insufficient – the state needed to meet a heightened burden for disclosure.[15] The gist of Amazon's First Amendment argument was that the user's requests to Alexa encompass traditionally protected requests for information and the right to seek and engage in commercial transactions. Alexa's responses back to the user are also protected speech because internet searches are generally considered protected speech. To allow the government to read, review and listen to all of its user's data was censorship; moreover, Amazon argued that level of government intrusion would have a chilling effect on expressive activity.[16]

Amazon also made a secondary privacy argument. Citing Supreme Court precedent, Amazon argued that Alexa, like a cellphone, contained sensitive personal data that was "[t]he sum of an individual's private life."[17] That argument, however, was not extensively developed, probably with good reason. At the time, Supreme Court precedent made clear that Americans had no expectation of privacy in information voluntarily shared with third parties.[18]

WHAT'S ON THAT IPHONE?

In the locked iPhone case, the FBI moved under the All Writs Act,[19] and asked the federal court in California to order Apple to develop software to assist the government to unlock an iPhone of interest in a criminal investigation.[20] The All Writs Act is a federal statute that empowers federal courts to issue "all writs necessary or appropriate" to parties and to nonparties alike in civil and criminal cases in aid of their jurisdiction.[21] The range of orders under the act vary greatly.[22] As relevant here, in the iPhone case, Apple, like Amazon in Arkansas, raised First and Fourth Amendment objections among others.[23]

THE GREAT LEGAL BATTLES THAT NEVER WERE

Ultimately, the two cases faced a similar fate; before the courts could rule on the weighty questions, the issues became moot. Bates released the requested information and the charges were dropped, while in the iPhone case, the government accessed the phone without Apple's assistance.[24]

THE LEGAL BACKGROUND ON THE ISSUES RAISED

Carpenter v. United States – A Great Call for 'We the People'

In *Carpenter*,[25] the Supreme Court had to decide whether the government's access of historical cellphone records that chronicled in vivid detail a person's movements implicated the Fourth Amendment. Timothy Carpenter and an accomplice were convicted of several counts of armed robberies based in large part on historical cellphone records that chronicled their movements. The 6th Circuit affirmed the convictions because although a defendant's private communications are protected, routing information like historical cell-site data is not.[26]

The Supreme Court reversed. The court held that the government's collection of the historical cell-site data was a search that required a warrant.[27] The fact that the data were business records did not change the analysis. As the court explained, the Fourth Amendment protects not only people's rights in property but also their reasonable expectations of privacy.[28] Thus, so long as a person intends to keep information private and the expectation of privacy asserted is one that society is willing to accept and protect, then Fourth Amendment protections attach.[29] The case, the court reasoned, implicated Carpenter's historically protected interests in his physical location and movements; prior cases had already recognized these as protectable interests.[30] Carpenter's phone data revealed detailed information about his exact location and movements. The court acknowledged, however, that its decisions in *United States v. Miller* and *Smith v. Maryland* held that there is no reasonable expectation of privacy in information freely shared with third parties.[31] The court noted, however, that *Miller* and *Smith* did not rest only on the fact information was shared; rather, those cases also turned on the nature of the information sought and any legitimate expectation of privacy in their contents.[32] In a word, there is a world of difference between the limited personal information at issue in *Miller* and *Smith* and the treasure trove of personal information that tracked Carpenter and his associates' movements in vivid detail for a number of years.[33] A mechanical application of *Miller* and *Smith* was unwarranted; the expectation of privacy was still intact, so a warrant was needed to collect the data.[34]

Four justices entertained the idea of a property-based solution to the Fourth Amendment melee in *Carpenter*.[35] According to those justices, under certain circumstances, user data can be considered property. Based on that assumption, under settled legal principles, a user's entrustment of his property (for example emails) to a third party does not always result in loss of ownership rights since the user still owns his property; the Fourth Amendment requires a warrant before a search is performed on that property.[36] Three justices found that Carpenter did not own his cellphone data, while Justice Gorsuch found that argument forfeited.[37]

The Internet, Software, Criminal Law and the First Amendment

Under longstanding First Amendment principles, the people have the right to speak and receive information and ideas.[38] The First Amendment also encompasses a privacy element – the right to engage in protected speech or associate anonymously without government interference.[39] The Supreme Court has extended First Amendment protections to internet speech.[40] As the court has made clear, the "vast democratic forums of the internet" are now the new public squares where core First Amendment activity takes place.[41] That is why when law enforcement wants to intrude upon core expressive materials and data, they must initially show a meaningful and particular nexus between the requested information and the investigatory efforts.[42] The nexus between First Amendment protected information and a criminal investigation is bridged by a search warrant "particularly describe[d]" supported by probable cause.[43]

The interplay between third-party subpoenas and the First Amendment is complex. A subpoena, unlike a search warrant, has no threshold probable cause requirement – it is policed by

In *Carpenter*, the Supreme Court had to decide whether the government's access of historical cellphone records that chronicled in vivid detail a person's movements implicated the Fourth Amendment.

reasonableness and burdensomeness standards.[44] In fact, the only modicum of judicial review comes into the picture after the subpoena has already been sent and received by the subject.[45] Even then, courts have, at times, imposed some additional controls – like heighted need requirements – on subpoenas when important First Amendment interests are at stake.[46]

CONSTITUTIONAL ISSUES IN THE ALEXA AND IPHONE CASES

The constitutional questions in the Alexa and iPhone cases were quite similar. In both cases, the Fourth Amendment was overshadowed by the *Miller/Smith* third-party doctrine. *Carpenter* has changed that. As we explain, even in the wake of *Carpenter*, the First Amendment might still play some role in third-party compelled disclosure access cases.

Reasonable Expectation of Privacy in User Data in Smart Devices

Internal Cellphone User Data. The Supreme Court in *Riley v. California*[47] already held that the government needs a warrant to access a user's internal user data on cellphones.[48] The court stated that a warrant requirement was reasonable because cellphones, due to their widespread use, contain the privacies of life.[49]

Internal Smart Assistant Data. Smart assistants are usually located in the home.[50] That fact alone necessitates a somewhat different analysis because in Fourth Amendment parlance, "the home is first among equals."[51] In his home, a man may retreat into peace and be free from government intrusions on his papers, property and effects.[52] In the home, "privacy expectations are most heightened."[53] Such that, as a threshold matter, a search warrant for the home is required.[54] Smart

assistants like Alexa are computers that receive user voice commands and connect to the internet in order to comply with the user's request.[55] Users use smart assistants, like other devices of similar import (cellphones, computers, etc.) for varied uses – commercial, familial, recreational, relational, political, professional, sexual and so on.[56] Understood in this light, smart assistants, like cellphones or other forms of personal computers, truly encompass the great "privacies of life."[57] Thus, for those smart assistants whose user data can be accessed within the home, a warrant that specifies the specific data to be searched in relation to clearly articulated crimes would likely be needed.[58]

External Data on Cellphones and Smart Assistants. *Carpenter's* effect is most robust in this area. Cellphones transmit historical data and communications through air waves.[59] Similarly, Alexa transmits commands and search data to Amazon, which stores it remotely.[60] In the past, a mechanical application of *Miller* and *Smith* would have categorically negated any expectation of privacy because this information is shared with third-party service providers.[61] *Carpenter* repudiated that approach.[62] First, as noted, the court noted that *Miller* and *Smith* do not categorically remove all expectation of privacy in the wake of third-party disclosure.[63] Second, the expectation of privacy calculus greatly factors in the nature and quality of the sensitive data at issue; the more personal and revealing the information is, the likelihood that the expectation of privacy remains. It is possible that external data could also implicate the very privacies of life if the requested information revealed a person's exact location, personal communications, services and goods procured and intimate, anonymous or political affiliations and views, among others.[64] Third, for that class of sensitive data, the user is forced to "share" the information with the service providers as a precondition to use; *Carpenter* refused to read those arrangements as being voluntary, which is what *Miller* and *Smith* require for the third-party doctrine to apply.[65] Altogether, a warrant would be needed. Moreover, as *Carpenter*

made clear, when a warrant is required, the government cannot circumvent Fourth Amendment protections with use of a subpoena or generalized court order.[66]

External Data Could Also Have Property-Oriented Constitutional Protections

In the 2017 term, the court decided *Byrd v. United States,*[67] a case that affirmed that under established property law principles, a person who owns or has lawful possession of property has a right of privacy, by virtue of the inherent power to exclude.[68] Taking cue from *Byrd* and other longstanding precedents, four justices, Justice Gorsuch chiefly, were open to the idea that a property-based solution could have resolved the external data problem encountered in *Carpenter.*[69] The premise of the argument was straightforward: the defendant must have lawful possession or interest in the property.[70] Taking this as a starting point, Justice Gorsuch argued in *Carpenter* that contemporary statutory and common law appeared to recognize that electronic data generated by a user is his property despite being entrusted to a third party, but he found the argument forfeited in *Carpenter.*[71] If Justice Gorsuch's property-based premise is accepted, then *Byrd* and other settled precedents could also provide additional Fourth Amendment protections in external user data cases.[72]

The First Amendment Could Still Play a Role in an iPhone Break-in Sort of Case

Carpenter and possibly *Byrd* (to the extent Justice Gorsuch's view carries sway) will probably significantly reign in the reach of the *Miller/Smith* third-party disclosure doctrine in most situations involving sensitive data shared with service vendors.[73] The iPhone case, however, presented a slightly different twist – the government arguably wanted to compel an innocent third party *to create* software to break into a device. Software, some courts have found, is a form of speech.[74] Thus, forcing a company to engage in speech it objects to, is probably contrary to the First Amendment unless narrowly tailored to further a compelling state interest.[75] Because the government does not act as an economic regulator in those situations, the commercial speech doctrine, which has a greater tolerance for compelled speech, is inapplicable.[76]

In fact, outside the commercial speech context, the government generally crosses an impermissible line when it forces a person to accommodate or incorporate other speech that affects the speaker's original message.[77] In the iPhone case and many others like it, the service provider gives assurances to its users that the software on the phone secures their data from unauthorized third parties. Forcing those service providers to create a software that permits a backdoor entry to their equipment for the government and other unauthorized third parties arguably sends an entirely different message to the users. The new software, it could be argued, takes up space the device company could have used for other information or software it desires.[78]

The counter-argument is, however, equally compelling: the legal system routinely compels witnesses through deposition or trial subpoena to testify and generate speech they otherwise would not.[79] That power, which is essential to a proper exercise of the judicial function, predates the First Amendment.[80] However, unlike compelling a witness to testify in court, which is generally limited to *pre-existing* facts and documents within the person's knowledge or control, creation of software arguably requires generation of *new* speech.[81] In an appropriate case, depending on the competing interests at stake, the issue will require greater clarity from the U.S. Supreme Court.

CONCLUSION

Conventional First and Fourth Amendment tests do not fully answer questions posed by the internet, smartphones and devices of today. Data is increasingly electronic and expressed on the great fora of the internet. Thus, the scope of privacy expectations will likely continue to shift and challenge traditional modes of criminal investigation and settled conceptions of liberty.

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Holt v. Hobbs

Prisoner Religious Freedom Versus Prison Safety

By John P. Cannon and Leann Farha

RELIGIOUS LIBERTIES ARE ONE OF ONLY A FEW constitutional rights prisoners retain upon entering confinement. However, even these rights are limited. American prisons have systemic safety and tracking issues which must be considered in analyzing prisoner requests for accommodations for religion. Courts across the country have struggled with this issue for decades and, unfortunately for prisoners, nearly absolute deference has been afforded to prisons to deny religious accommodations – until recently.

The United States Supreme Court's long-standing precedent on prisoner religious accommodations was that prison officials, rather than courts, are best equipped to "deal with the increasingly urgent problems of prison administration,"[1] and determine what is a compelling state interest in order to "maintain good order, security and discipline."[2] Thus, the Supreme Court has afforded prison officials great deference concerning issues of prison safety and security. However, courts have allowed this deference to serve as a substitute for evidence.[3] In many scenarios, prisoners have not been afforded the "expansive protection for religious liberty" provided by the Religious Land Use and Institutionalized Person Act (RLUIPA).[4]

However, the future may be brighter for inmates faced with restrictions that conflict with their religious practices. In 2015, the Supreme Court decided *Holt v. Hobbs*, which has charted a new course for balancing religious accommodations for inmates and prison security concerns, in addition to providing further explanation for the requirements for prison officials to receive deference within the RLUIPA framework.

RELIGIOUS FREEDOM AND PRISON SAFETY BEFORE *HOLT*

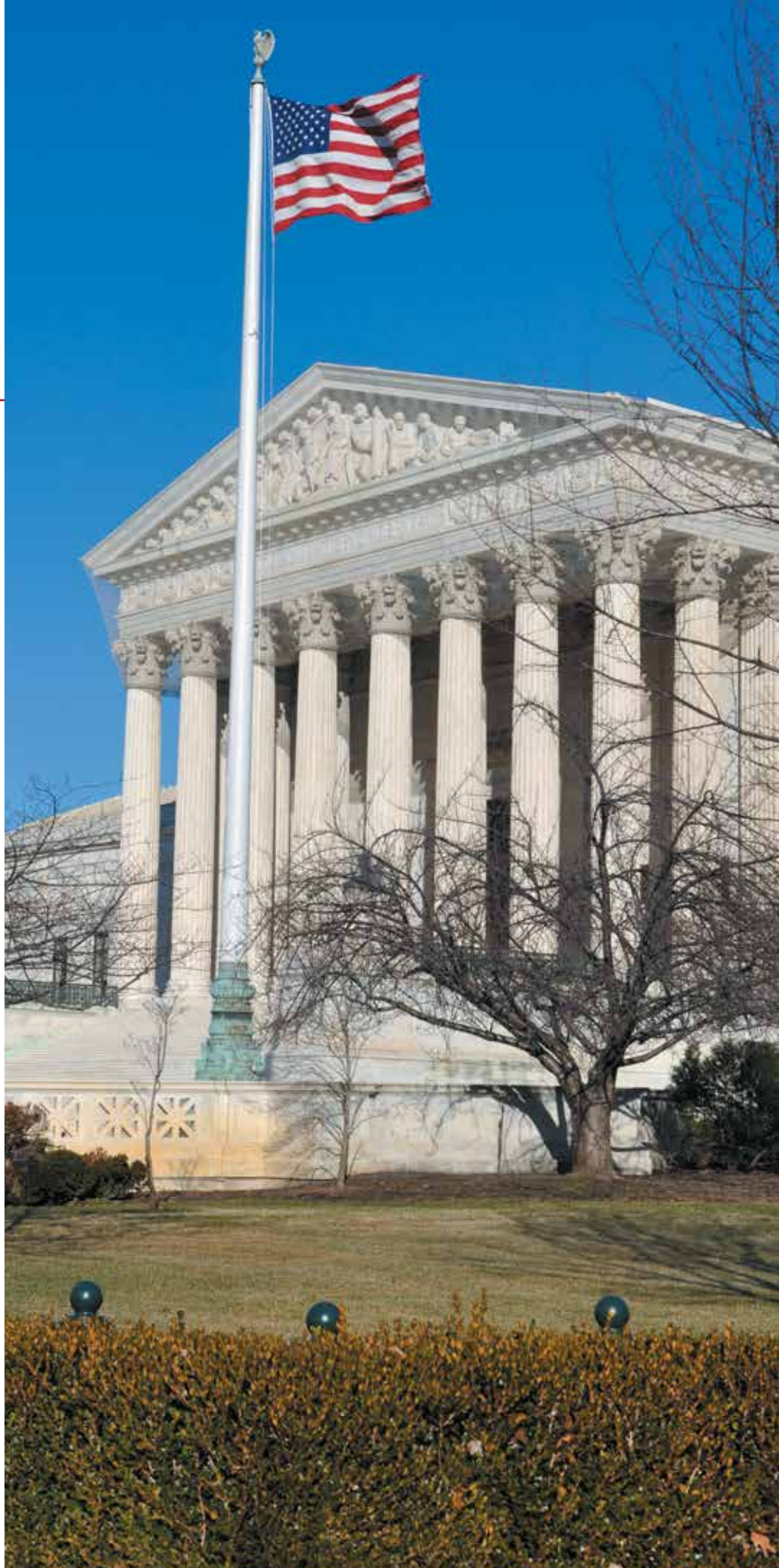
Discussions regarding the relationship between prison safety and the religious freedom of prisoners became particularly relevant in the wake of *Employment Division, Department of Human Resources of Oregon v. Smith*, when the court abandoned the Sherbert Test, which considered whether "some compelling state interest…justifie[d] the substantial infringement of [an individual's] First Amendment right,"[5] for a narrower test which held "neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment."[6] Congress responded by enacting the Religious Freedom Restoration Act (RFRA) of 1993 to extend statutory rights that expanded the religious liberties previously provided under the Sherbert Test. In addition to nullifying *Smith's* "generally applicable law" caveat, the RFRA added to the Sherbert Test by requiring the government to demonstrate "application of the burden to the person … is the least restrictive means of furthering that compelling governmental interest."[7] Congress depended on Section 5 of the 14th Amendment to impose the RFRA's requirements on the states. However, in *City of Boerne v. Flores*, the court held the RFRA "exceed[s] Congress's powers under that provision."[8]

In response, Congress enacted the RLUIPA in order to "preserve the right of prisoners to raise religious liberty claims."[9] Passed under Congress' commerce and spending powers, this statute "imposes the same general test as the RFRA but on a more limited category of governmental actions."[10] The RLUIPA applies

"only to land use regulations and religious exercise of inmates."[11] Additionally, in an effort to branch off from First Amendment case law, RLUIPA broadened the RFRA's definition of the "exercise of religion." While the RFRA "defin[ed] 'exercise of religion' as 'the exercise of religion under the First Amendment,'…Congress deleted [this] reference…and defined the 'exercise of religion' to include 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'"[12] Despite several few differences, RLUIPA utilizes the same standard of review as the RFRA:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution…even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.[13]

While the court does "not doubt that cost may be an important factor in the least-restrictive means analysis,"[14] it acknowledges RLUIPA "may require a



government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise."[15]

Case law has provided further interpretation of RLUIPA's application to prisoners. In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court held the RLUIPA "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person' – the particular claimant whose sincere exercise of religion is being substantially burdened."[16] The *Burwell* court emphasized a prisoner's request for an accommodation "must be sincerely based on a religious belief and not some other motivation." Under RLUIPA, the petitioner not only bears the burden of showing "the relevant exercise of religion is grounded in a sincerely held religious belief," but also, "the burden of proving that [the government's policy] substantially burdened that exercise of religion."[17] Once a plaintiff meets his burden, "the onus shifts to the government to show that the burden furthers a compelling governmental interest and that the burden is the least restrictive means of achieving that compelling interest."[18] The court stressed in *Cutter v. Wilkinson* that due deference should be afforded to "the experience and expertise of prison and jail administrators."[19] This deference, however, is limited, and "policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet the act's requirements."[20] Since *Cutter,* courts have struggled to determine the level of deference that should be afforded to prison officials. However, the court's opinion in *Holt v. Hobbs* has shed much needed light on the issue.

BACKGROUND OF *HOLT*

Gregory Holt, also known as Abdul Malik Muhammad, was incarcerated at the Arkansas Department of Corrections (department).[21] The department's grooming policy did not allow inmates to grow beards, but contained an exception for inmates with a specific dermatological condition who were allowed to grow beards up to one-quarter inch.[22] As a devout Muslim, Holt sought an exemption from this policy for religious reasons.[23] Even though his faith prohibited him from trimming his beard, Holt was willing to compromise and grow his beard only to one-half inch.[24] Prison officials refused his proposal and warned Holt, "if [he] chose to disobey, [he would] suffer the consequences."[25] Holt filed suit in federal district court.

The magistrate judge recommended to the district court that Holt's complaint should be dismissed on the basis prison officials are accorded deference on security matters.[26] The district judge adopted this recommendation and dismissed Holt's complaint and the Court of Appeals for the 8th Circuit affirmed the decision.[27] Holt appealed to the U.S. Supreme Court and the court granted *certiorari* to decide whether the lower courts placed too much emphasis on the deference owed to prison officials and erred in dismissing the case.[28]

SUPREME COURT'S DECISION IN *HOLT*

The Supreme Court began its analysis by determining whether Holt satisfied his burden of proof by showing his desire to leave his beard untrimmed "[was] grounded in a sincerely held religious belief that was substantially burdened by Department's grooming policy."[29] The department did not deny the sincerity of Holt's belief.[30] The Supreme Court has defined a "substantial burden" as "either compelling an individual to do that which violates his or her religious beliefs or prohibiting an individual from that which is mandated by his or her religious beliefs."[31] The Supreme Court held the department's grooming policy substantially burdened Holt's religious exercise by requiring him to choose between shaving his beard and facing punishment. After Holt met his burden of proof, the burden shifted to the department to prove prohibiting Holt from growing a one-half inch beard was the least restrictive means of furthering the department's stated interests to prevent the flow of contraband into their facilities and prevent prisoners from disguising their identities.[32]

Even though the court agreed prisons have a compelling interest in preventing the flow of contraband into prisons and in quickly identifying prisoners by not allowing facial hair, they were not convinced that the department's grooming policy was the least compelling means by which to further this interest.[33] At an evidentiary hearing, the department provided two witnesses who testified inmates could hide contraband in a one-half inch beard.[34] Neither witness, however, could recall an incident where this had occurred in any prison, including their own.[35] Despite overseeing the beard lengths of those inmates permitted to have one-fourth inch beards, the department worried it would "be unable to monitor the length of [Holt's] beard to ensure that it did not exceed one-half inch."[36] The court was unconvinced by this argument, stating the department "offered no sound reason why hair, clothing, and ¼-inch beards can be searched but ½-inch beards cannot."[37] The department also argued prison guards could be harmed if a razor was concealed in a beard during a search.[38] This scenario still did not explain how this risk was unique to the search of one-half

The Supreme Court emphasized proof was essential in granting prison officials deference, finding "mere say-so that they could not accommodate petitioner's request" insufficient.

inch beards. Further, the department failed to prove a less restrictive means did not exist, such as requiring Holt to comb through his beard to find hidden contraband.[39]

Witnesses also expressed fear inmates could alter their appearance by shaving their beards, thus hindering officers' ability to quickly and reliably identify prisoners.[40] Since its prisoners work in fields and live in barracks, the department stressed that, compared to other prisons, its "identification concern is particularly acute."[41] The department feared a prisoner might shave his beard, switch identification cards with a fellow inmate while working in the field and then gain access to a restricted area.[42] Yet, as with the hidden contraband concern, neither witness could offer a reasonable explanation as to why this problem could not be solved with a dual photo approach – photographing an inmate with and without a beard – a method utilized in many other prisons.[43]

The court unanimously reversed the 8th Circuit's decision, holding that the department's policy, as applied to Holt, violated RLUIPA because it 1) substantially burdened his religious freedom by prohibiting him from wearing the one-half inch beard his faith required and 2) was not the least restrictive means to furthering the department's compelling interest in prison safety and security.[44]

ANALYSIS OF THE *HOLT* DECISION

The *Holt* decision is significant as it provides three guidelines in applying the least restrictive means requirement of RLUIPA: 1) deference to prison officials should not be granted unless they can prove that denying the exemption is the least restrictive means of furthering a compelling governmental interest; 2) when other prisons offer an accommodation, a prison must adequately explain why it cannot adopt the accommodation as a less restrictive means; and 3) a prison may not bar a religious practice if it permits that same practice for nonreligious reasons.[45]

While the court offered guidance on when prison officials should be afforded deference within the RLUIPA analysis, it still did not provide a straightforward rule applicable to all scenarios. To be granted deference, prison officials cannot "merely explain why [they] denied the exemption but [must] *prove* that denying the exemption is the least restrictive means of furthering a compelling governmental interest."[46] Since the compelling interest test is applicable "to the person" whose religious exercise is being substantially burdened, the specific facts of the case determine whether the burden is the "least restrictive means."[47] For instance, it would have been insufficient for the department to prove some inmates with one-half inch beards pose a security risk; rather, they had to prove the grooming policy applied to Holt was the least restrictive means of furthering its interest in prison safety. The Supreme Court may have ruled differently had the department offered evidence that Holt was a violent offender. The Supreme Court emphasized proof was essential in granting prison officials deference, finding "mere say-so that they could not accommodate petitioner's request" insufficient.[48]

In addition to raising the standard for applying deference, the court stressed the relevance of analogous prison policies in an RLUIPA analysis. The court explained, "when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course."[49] The fact so many other prisons allow the same accommodation while simultaneously ensuring prison safety and security suggests the department could handle its problems through a less restrictive avenue than burdening Holt's religious freedom. The court stressed "if a less restrictive means is available for the government to achieve its goals, the government must use it."[50] Since the department was unable to explain why its concerns could not be handled by requiring prisoners to comb through their beards and through utilizing a dual-photo

method, the court appropriately found the department's grooming policy failed RLUIPA's least-restrictive means requirement.

Lastly, the court found when a policy is inconsistent in its application to analogous nonreligious conduct, the proposed compelling interests can likely be achieved in a way that is less burdensome to religion. Here, the department allowed prisoners with dermatological conditions to grow one-fourth inch beards but denied Holt permission to grow a one-half inch beard. To make sense of this exemption that seemingly undermines the purpose of the grooming policy, the court requested the department explain why its grooming policy was underinclusive.[51] The department responded by noting not only are one-half inch beards longer than one-fourth inch beards but also that more prisoners request beards for religious rather than medical reasons. The court was not swayed by the department's reasoning, finding a one-fourth inch difference in beard length and more requests unsubstantial in "pos[ing] a meaningful increase in security risk."[52]

The court concluded by praising the balance the RLUIPA provides in weighing the "religious exercise of institutionalized persons," with prison officials' need to maintain safety and security.[53] First, courts are urged not to overlook "the fact that the analysis is conducted in the prison setting."[54] Second, prisons are allowed to question the sincerity behind a prisoner's requested religious accommodation if they suspect that an ulterior motive exists.[55] Finally, even if a prisoner's belief is sincere, the prison can take away the accommodation if "the claimant abuses the exemption in a manner that undermines the prison's compelling interests."[56] *Holt's* application of RLUIPA requires a reassessment of prison grooming policies that may burden prisoners' exercise of religion.

Holt has already made an impact on other cases. The court granted the plaintiff's petition for *certiorari* in *Knight v. Thompson,* vacating the U.S. Court of Appeals for the 11th Circuit's opinion and remanded it for further consideration in light of *Holt.* After reviewing its decision, the 11th Circuit rejected petitioner's three arguments for why *Holt* should change the outcome. The 11th Circuit's decision suggests federal courts may have a tendency to avoid the full effect of *Holt* and instead rely primarily on *Cutter* to continue to extend a high level of deference to prison officials making policy decisions.

CONCLUSION

The court's decision in *Holt* advances inmates' right by raising the threshold a prison official must satisfy before legally restricting a prisoner's religious expression. Additionally, by clearing confusion associated with RULIPA's burden of proof, the Supreme Court has paved the way for more consistent decisions among lower courts. Few basic civilities exist behind prison walls. However, the future looks brighter for prisoners desiring to participate in their religion's practices and expressions.

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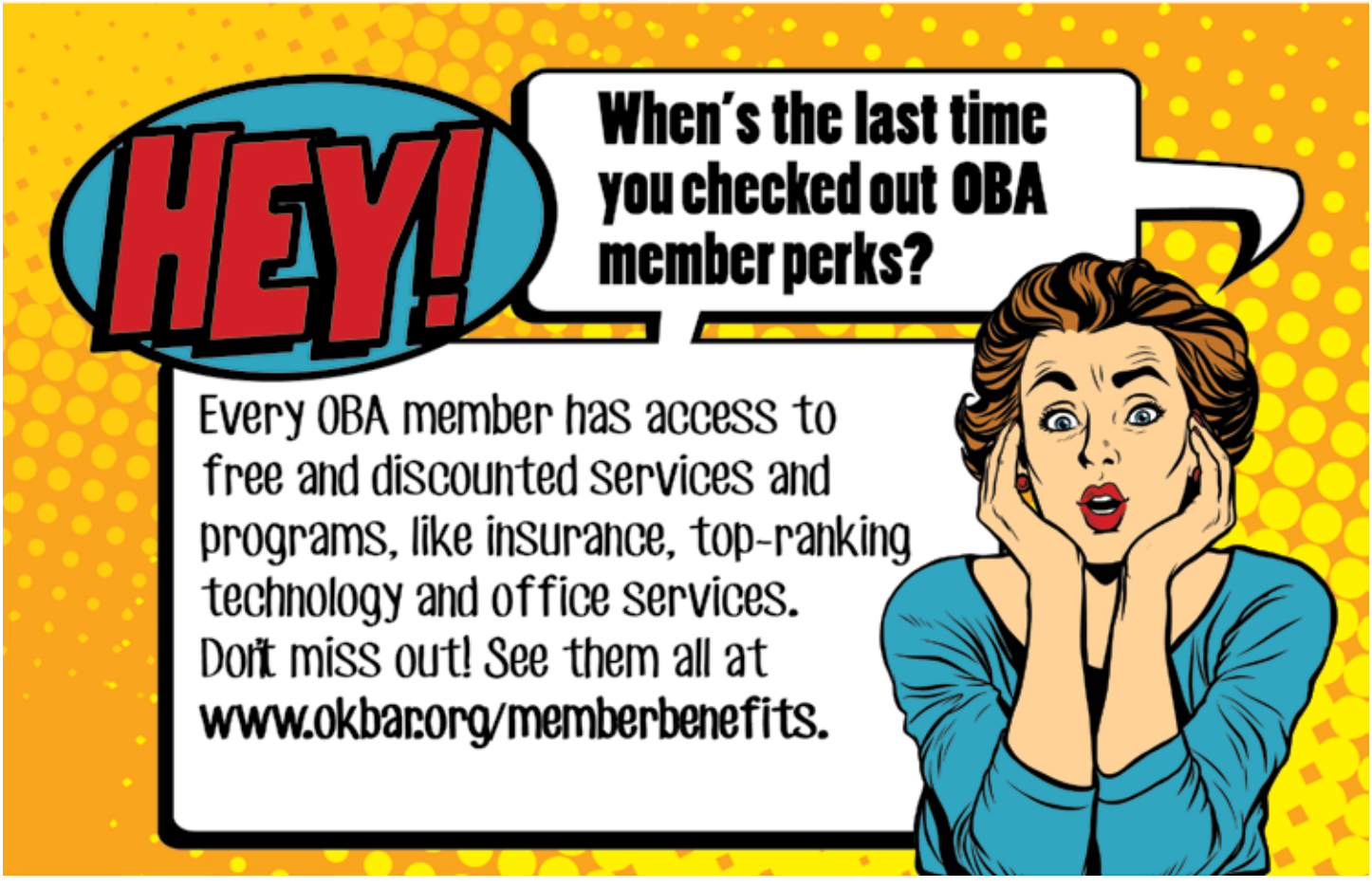

Not So Hypothetical After All: Addressing the Remaining Unanswered Questions About Self-Driving Cars

By Spencer C. Pittman and Mbilike Mwafulirwa

The machines are here, but the law isn't.[1]

Ed Walters, Fastcase CEO

THE LAST TIME WE WROTE ABOUT SELF-DRIVING CARS, we presented a hypothetical in which one of those cars killed a person.[2] At the time, industry experts imagined it would be at least 2020 before self-driving cars would flood the streets, and as a corollary, it would probably take that long, if not longer, until the worst possible scenarios came to pass.[3]

We were all wrong. Recently, a self-driving car killed a pedestrian in Arizona.[4] Other than permitting self-driving cars to be tested on its public roads, Arizona, like Oklahoma, has no comprehensive legislation regulating these cars. With more of these cars being manufactured and permitted on American roads, the need for comprehensive legislation regulating self-driving cars and their operators could not be more pressing. Before, we discussed the need for civil legislation to address the advent of self-driving cars.[5] Now, this article discusses the other side of the coin – the criminal and traffic law implications of self-driving cars in the state of Oklahoma.

Our state's formidable arsenal of existing criminal and traffic laws have one glaring shortfall when it comes to self-driving cars – they are all enforced on the assumption that a human driver operated the vehicle. That is a problem because while the newest models of self-driving vehicles still rely on a human to initially engage the autonomous feature, they can subsequently operate without further human input. Once the autonomous feature is engaged, do the state and local traffic codes still apply to the driver? Can a driver be cited for reckless or inattentive driving, or driving under the influence, if the self-driving feature is engaged for the duration of a trip? We tackle these very difficult questions in this article.

How have self-driving car manufacturers addressed this legal loophole? They still require drivers of self-driving cars to remain attentive to the road despite a self-driving vehicle's autonomous feature being fully engaged. Tesla, a forerunner of the self-driving vehicle community, announced a recent update to its system requiring drivers not to take their hands from the wheel for extended periods.[6] Nissan's "ProPilot" system, another self-driving concept, displays a warning on the dashboard when the driver removes his or her hands from the steering wheel.[7] General Motors' 2018 CT6 Cadillac sedan, a car that self-drives on limited highways for at least 350 miles, utilizes eye-tracking software to ensure the driver's eyes remain on the roadway.[8] The 2018 CT6 Cadillac

marketing website notes in the boilerplate, "Some state and local laws may require hands to be kept on the steering wheel at all times. Only remove your hands from the steering wheel if ... permitted by state and local laws."[9]

AUTOMOBILE REGULATION THROUGH THE TAPESTRY OF TIME

The self-driving car presents a regulatory enigma – in large measure because the current laws presume a human driver *actually* operating the vehicle. The law should address this new driverless challenge, but in order to properly do so, the law in this area should be considered *as it was*, and *as it currently is*, so as to better appreciate *how it should be*.

Automobile Regulation – As It Was

Throughout American history, the subject of new modes of road transportation has animated the public. As early as 1906, legal commentators of the day were ecstatic about a new form of conveyance – "the horseless carriage," also known as the "automobile" – that had started roaming public streets and highways.[10] Before the 20th century, there was apparently no single reported legal case in the United States dealing with motorcars.[11] The proliferation of the motorcar had a spellbinding effect on the 20th century and its people, such that it was considered a matter beyond "prophesy" to predict where its growing influence might end.[12]

Even in the motorcar's euphoric era, minimal regulation was ultimately necessary. For example, early vehicles tended to frighten horses, which often resulted in injury to the animal or the occupants of its carriage,[13] and of course, there were eventually collisions between vehicles.[14] At the time, judicial decisions required motorcars to accommodate horses and buggies, and as between cars, the governing law was referred to as the rule of the road, imported from England.[15] The rule was simple: if two cars met on the road, each was required to keep to the right – the goal was simply to prevent collisions.[16] Beyond that, it was every man for himself.

By about 1908, it was clear more needed to be done. There were more cars on American roads and with that development came increased vehicle collisions, personal injuries and traffic jams.[17] Detroit and New York City led the way in adopting stop signs, traffic signals, lane markings, one-way streets, dedicated forces of traffic officers and traffic courts.[18] By the mid-1920s, uniform street and highway safety rules were developed, and driver education and licensing soon followed in almost every state.[19] This was the birth of the comprehensive traffic code and motor vehicle and driver regulation.[20] Oklahoma joined these ranks in 1937, when it passed traffic laws, and simultaneously, established a Department of Public Safety.[21]

Automobile Regulation – As It Is Now

Through the years, the concern for motor vehicle safety has spawned thousands of sections of Oklahoma legislation and agency regulations.[22] Nonetheless, out of the universe of contemporary motor vehicle laws and regulation, this article will only focus on four specific areas: 1) the regulatory basics of contemporary motor vehicles; 2) inattentive driving; 3) reckless driving; and 4) the relation of the self-driving car to existing law.

Regulatory basics of motor vehicle regulation in Oklahoma. Under existing Oklahoma law, a "vehicle" is defined as "any device in, upon or by which any person or property is or may be transported or drawn upon a" public roadway.[23] A motor vehicle is, in turn, defined as "[a]ny vehicle which is *self-propelled*."[24] Oklahoma law does not define "self-propelled."[25] Nonetheless, like here, when a statute fails to give a specific meaning to its words, the Oklahoma Court of Criminal Appeals (OCCA) construes the language used in that provision in its ordinary everyday sense.[26] Applying that rule to "self-propelled" would require the word "self" – which is employed in a combining form – to be taken to mean "by yourself or itself" [27] while propel means "to drive, or cause to move."[28] Altogether, that phrase suggests that motor vehicles are conveyances that *self-drive*[29] without reliance on "human or animal power."[30]

Oklahoma has very nebulous definitions for "driver" and "operator." Under extant Oklahoma law, a driver is "any person who drives, operates or is in actual physical control of a vehicle."[31] Title 47 defines a "person" to include "every natural person" but also inanimate objects like corporations, associations and the like.[32]

As relevant to this discussion, however, an "operator" is "[e]very person," without qualification, "who operates, drives or is in actual physical control of a motor vehicle ... "[33] The statute does not define "operate," "drives" or "actual physical control."[34] Turning first to the everyday meaning of the word "drive;" within the specific context of cars, it means "to operate a vehicle."[35] To "operate," on the other hand, means to "work, perform, or function, as a machine does" or "to work or use a machine, apparatus, or the like," or simply to "produce an effect."[36] Taking cue from those meanings, some courts have found, for example, that to operate a motor vehicle usually does not require the vehicle be in motion. All that must be shown is that the driver engaged the machinery or made use of any mechanical or electrical device of the vehicle.[37] Not so in

Oklahoma. Under Title 47, "drive" and "operate" have been held to be synonymous – both require the vehicle to be in motion.[38]

Lastly, we look at the concept of actual physical control, which is critical to many of the offenses in Title 47. So often, the OCCA has encountered and construed the meaning of these terms under Title 47, in cases of driving under the influence.[39] In *Parker v. State*, for example, the OCCA held that being in actual physical control while under the influence requires no motion.[40] Case law has since clarified that actual control of a vehicle can exist when a driver is sleeping in the driver's seat,[41] even when he is unconscious behind the wheel.[42] As the OCCA has explained, the mere fact that a driver "placed himself behind the wheel of the vehicle and *could have* at any time started the automobile and driven away" is enough to render him in actual physical control of a motor vehicle.[43] Another formulation indicates that any act of "directing influence, domination or regulation" of a motor vehicle is sufficient actual physical control.[44]

Inattentive driving. Both state and municipal law occupy the field of inattentive driving. The state of Oklahoma, followed by several municipalities, requires motorists to devote their full attention to the road and to exercise care toward other road users.[45] What exactly is inattentive driving? Oklahoma statutes do not precisely say.[46] The statutes only expressly require "full attention,"[47] which like many provisions in Title 47, is not defined.[48] Drawing on everyday usage, as we should,[49] the phrase "full attention" ordinarily means complete "concentration on what someone is doing or saying."[50] The National Highway Traffic Safety Administration (NHTSA), on the other hand, recognizes inattentive driving (seen more like distracted driving) to encompass:

- Visual distraction: Tasks that require the driver to look away from the roadway to visually obtain information;
- Manual distraction: Tasks that require the driver to take a hand or hands off the steering wheel and manipulate an object or device;
- Cognitive distraction: Tasks that are defined as the mental workload associated with a task that involves thinking about something other than the driving task.[51]

In short, inattentive/distracted results in reduced driver situational awareness, decision-making and performance that can result in accidents or harm to other road users.[52]

Reckless driving. Under Title 47, reckless driving encompasses a "careless or wanton" operation of a motor vehicle "without regard for the safety of persons or property."[53] Careless or wanton under this statute is understood to mean culpable negligence.[54] Culpable negligence, has in turn, been defined to mean more than the "slight negligence" applicable in civil cases.[55] Instead, it is the kind of neglectful conduct that evidences "disregard of the consequences which may ensue from the act, and indifference to the rights of others."[56] The last prong of the test requires the defendant be shown to have conducted himself "without regard to the safety of persons or property," which generally requires a determination whether, as judged by the standards of a reasonable prudent person in the same circumstances, the defendant created danger for the safety of people or property.[57]

Relation of the self-driving car to existing law. We begin by addressing the seemingly (but maybe not so) obvious – what do we mean by self-driving car? The NHTSA recognizes five levels of automation in motor vehicles: level 0 – no automation;[58] level 1 – driver assistance (driver controls vehicle but has assist feature like blind spot detection);[59] level 2 – partial automation (driver controls vehicle but car has automated functions like automatic emergency braking);[60] level 3 – car can drive itself some, but driver must be ready to re-take control (like self-park);[61] level 4 – car is able to fully drive itself under *certain conditions* (like highway autopilot);[62] and level 5 – car is able to drive itself *under all conditions*.[63] We will

focus on level 3 through 5 cars – *i.e.,* advanced automation.

Under Limited Circumstances, Existing Oklahoma Law Could Permit Self-Driving Cars

Oklahoma law requires a human operator in the driver's seat of a motor vehicle for it to be lawfully driven or operated. Multiple provisions of Title 47 confirm that a human driver is required to be in the driver's seat to lawfully drive a car in Oklahoma. To begin with, no motor vehicle can be operated in this state unless the person operating it has, among others, a valid driver's license, wears a seat belt, is positioned to be able to use a horn, has an unobstructed view of the highway through the windshield and rearview glass, is positioned to ably see the reflection of the highway on the left side of the mirror on the driver's side and able to perform hand traffic signals, as needed.[64] Recall, a driver or an operator of a car under Title 47 is simply a "person," without qualification, who "drives" or "operates" a motor vehicle.[65] The Highway Code expressly limits the definition of person to natural people and a limited class of inanimate objects – corporations, firms, associations and co-ops.[66] In fact, in case of doubt, application of the statutory construction maxim "*expression unius est exclusion alterius*" – "the mention of one thing in a statute implies exclusion of another"[67] – leads to the inescapable conclusion that other classes of inanimate objects, like self-driving car systems, are excluded from the definition of person.[68] Crucially, Title 47's reference to inanimate objects, corporations and the like, in no way negates the requirement that there must be a natural person driving or operating the vehicle on Oklahoma roads;[69] after all, corporations (and the like) "'*separate and apart from*' the *human beings* who own, run, and are employed by them, *cannot do anything at all*."[70]

In sum, the law requires a human driver or operator to be present in the vehicle in order to lawfully drive or operate a motor vehicle.

A motor vehicle with autonomous functions and a ready-driver/operator in the driver's seat could be operated in Oklahoma. Oklahoma law's definition of motor vehicle encompasses a self-drive/self-propelled car – a car that moves without reliance on animal or human power.[71] As noted, a motor vehicle requires a human operator, while a vehicle, like a trailer, does not.[72]

Depending on the level of control required under Oklahoma law to drive/operate a motor vehicle, cars with advanced automation features could be legal. To begin with, under Title 47, drive and operate are synonymous – they both require the driver/operator to cause a moving effect on the motor vehicle.[73] As such, if a driver/operator of a vehicle with advanced autonomous functions were to activate those capabilities producing movement, he or she could be considered, as a matter of law, to be driving/operating the vehicle.[74] Under those circumstances, to borrow Judge Cardozo's wording, albeit from a different context, the driver/operator would be considered "still the director of the [driving] enterprise ... [and] still the master of the ship."[75]

Under existing laws, the threat of DUI prosecutions could still linger over intoxicated drivers/operators of autonomous cars. With such a low-level of involvement required for a person to be considered driving/operating a vehicle under existing law, *supra*, it is possible the threat of a DUI prosecution might still hang over intoxicated drivers/operators of self-driving cars unless the law is amended significantly. Suppose a driver/operator is intoxicated above the legal limit and puts him or herself in a position in the vehicle where he or she could operate/command its functionality, even if there was no actual movement of the vehicle, that could arguably suffice to show actual physical control of a vehicle while intoxicated under Title 47.[76] After all, under existing law, actual control of a vehicle exists when, for example, a driver is sleeping in the driver's seat,[77] or when he or she is unconscious behind the wheel.[78] Likewise, if the driver/operator's actions resulted in movement of the vehicle, that could possibly serve still as a basis for a charge of driving/operating a vehicle while intoxicated.[79]

Depending on the level of control required under Oklahoma law to drive/operate a motor vehicle, cars with advanced automation features could be legal.

An inattentive or reckless driving charge for a driver/operator of a self-driving car, without more, would raise very complicated questions. As noted, Oklahoma lacks precise definitions for inattentive and reckless driving. Oklahoma law requires "full attention," which ordinarily means complete "concentration on what someone is doing,"[80] while driving means "to operate a vehicle" causing motion.[81] Ordinarily, to operate means "to work or use a machine, apparatus, or the like."[82] Put together, to attentively operate a vehicle means to exercise care and attention while engaging the functionality of a vehicle, which results in motion. Reckless driving, in contrast, is the negligent operation of a car that evidences a disregard for the safety of others.[83] All this confirms that the overriding concern with both offenses is the safe operation of a given vehicle.[84] If, in fact, safe operation of a vehicle is indeed the primary concern, then the NHTSA's studies on self-driving cars are telling: having examined the available data, the NTHSA has previously concluded that self-driving car operating systems are safer options *than a human driver*.[85] Indeed, self-driving cars are expected to be safer and to reduce many accidents (that are caused by human error), leading to greater road user safety all round.[86]

Against this background, it is difficult to envision that operating/or driving a vehicle, while having engaged an NHTSA compliant self-driving feature, supervised in close proximity by an able, licensed and capacitated driver is anything but inattentive or reckless driving. As noted, both those offenses require a driver/operator engage in conduct that endangers him or herself or others.[87] Yet, the NHTSA's evidence and studies cut the other way – the safety features and benefits of self-operated cars is greater than that afforded by humans exercising their best driving skills.[88] Under those circumstances and existing law, prosecutions for these two offenses will prove problematic and difficult to sustain unless there are other operative factors that clearly show the driver was incapacitated or indisposed long enough that he or she could not effectively supervise the driving enterprise. Without these additional operative risk factors in a given case, and should the NHTSA develop standards and regulations unequivocally approving advanced self-driving car systems as being safe and usable on American roads, very complex federal/state law pre-emption issues might arise.[89]

The Need for Regulation for a Driverless Future – The Law As It Should Be

Recently, the NHTSA published a much-awaited guidance on self-driving cars in which it admonished states to 1) pass legislation addressing the current scope of self-driving cars and 2) to remain vigilant as to developments, updates or advances in the self-driving car industry and amend state law accordingly.[90] To the states, the guidance provides as follows:

> States should review their vehicle codes, applicable traffic laws, and similar items to determine if there are unnecessary regulatory barriers that would prevent the testing and deployment of [autonomous vehicles] on public roads. For example, some States require a human operator to have one hand on the steering wheel at all times – a law that would pose a barrier to Level 3 through Level 5 [autonomous vehicles].[91]

The NHTSA has taken the lead revising its own understanding of its regulations and vehicle operations generally to accommodate self-driving cars. Most notably, in response to Google's request to the NHTSA to revisit its established interpretation of driver in its regulations to accommodate self-driving cars, the agency agreed.[92] The NHTSA has re-interpreted "driver" –under its regulations implementing the Federal Motor Vehicle Safety Standards Act (FMVSSA) – to include a self-driving operating system.[93] So, under the FMVSSA, and regulations promulgated under it, a driver of a motor vehicle can be human or the car's operating system.[94]

If Oklahoma is inclined to properly regulate self-driving cars, it can follow the NHTSA's lead. Oklahoma can, similarly, expand its definition of "driver" or "operator" in Title 47 to include other forms of inanimate things beyond corporations (and the like), so as to embrace a self-driving car's computer system, as the NHTSA has done. If that were done, lawmakers could choose to subject to safe-driving cars *to the same obligations in the Highway Code that are imposed on humans*.[95] That would eradicate most of the uncertainties identified in this paper.

CONCLUSION

Oklahoma should heed the NHTSA's call and pass legislation governing self-driving cars. Comprehensive legislative action can remove most of the uncertainty posed by self-driving cars and provide much needed clarity to all road users. The Legislature could start by formally authorizing NHTSA compliant self-driving cars and providing additional regulatory safeguards, including but not limited to, license endorsements, minimum insurance coverage and mandatory compliance with traffic rules to ensure the safe operation of self-driving vehicles in the state.

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17. Bill Loomis, "1900-1930: The years of driving dangerously," *The Detroit News* (April 26, 2015, 12:00 a.m. ET), www.detroitnews.com/story/news/local/michigan-history/2015/04/26/auto-traffic-history-detroit/26312107/ (last seen Feb. 5, 2019).
18. *Id.*
19. *Id.*
20. *See generally id.*
21. Don Gammill "Trip back in time reveals history of state's driver's licenses, laws," *NewsOK*, (Nov. 6, 2006), newsok.com/article/2967304 (last seen Feb. 5, 2019).
22. *See, e.g.,* Okla. Stat. Tit. 47 §§1-101, *et seq.*
23. Okla. Stat. Tit. 47 §1-186.
24. *Id.* §1-134(A)(1) (emphasis added).
25. *See generally* Okla. Stat. Tit. 47, ch. 1.
26. *Parker v. State*, 1967 OK CR 7, ¶12, 424 P.2d 997, 1000; *see also* Okla. Stat. Tit. 47 §1-101.
27. *Oxford Advanced American Dictionary*, "Self–combining form," www.oxfordlearnersdictionaries.com/definition/american_english/self_2 (last seen Feb. 5, 2019).
28. *Dictionary.com*, "Propel," www.dictionary.com/browse/propelled (last seen Feb. 5, 2019).
29. *See* Okla. Stat. Tit. 47 §1-134(A)(1).
30. *See id.* §1-134(B)(4).
31. *Id.* §1-114(a).
32. Okla. Stat. Tit. 47 §1-144.
33. *Id.* §1-140. A caveat is in order here: we have excluded portions of the definition relating to those who exercise control or steer a vehicle that is being towed because that portion of the statute is beyond the scope of this article.
34. *Id.*
35. *The Free Dictionary*, "drive," www.thefreedictionary.com/drive (last seen Feb. 5, 2019).
36. *The Random House Dictionary of the English Language* 1357 (2d ed. Unabridged 1987).
37. *See* 61 Am. Jur. Proof of Facts 3d 115 (citing Kwasnoski, John B., Stephen, John, & Partridge, Gerald, Officer's DUI Handbook 1, 2 (Lexis Pub. 1998)).
38. *See Bearden v. State*, 1967 OK CR 133, ¶4, 430 P.2d 844, 847; *accord Parker v. State*, 1967 OK CR 7, ¶16, 461 P.2d 997, 1000.
39. *See, e.g., Parker*, 1967 OK CR 7, 424 P.2d 997; *Bearden*, 1967 OK CR 133, 430 P.2d 844; *Crane v. State*, 1969 OK CR 267, 461 P.2d 986; *Hughes v. State*, 1975 OK CR 83, 535 P.2d 1023; *Mason v. State,* 1979 OK CR 132, 603 P.2d 1146.
40. *Parker,* 1967 OK CR 7, ¶16, 424 P.2d at 1000.
41. *Wofford v. State*, 1987 OK CR 148, ¶¶2,4, 739 P.2d 543, 543-544.
42. *Hughes*, 1975 OK CR 83, ¶8, 535 P.2d at 1024-1025.
43. *Id.* (emphasis added).
44. *Bearden*, 1967 OK CR 133, ¶4, 430 P.2d at 847.
45. *See* Okla. Stat. Tit. 47 §11-901b ("The operator of every vehicle, while driving, shall devote their full time and attention to such driving"); Okla. Stat. Tit. 47 §11-504 ("[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway."); *accord* Tulsa City Ordinances, Tit. 37 §645; Oklahoma City Mun. Code Tit. 37 §32-10 (same).
46. *See, e.g.*, Okla. Stat. Tit. 47 §11-901b.
47. *Id.*
48. *See id.*
49. *Parker*, 1967 OK CR 7, ¶12, 424 P.2d at 1000; *see also* Okla. Stat. Tit. 47 §1-101.
50. *Merriam Webster*, "Full attention," www.merriam-webster.com/dictionary/undivided/full/complete%20attention (last seen Feb. 5, 2019).
51. NHTSA, *Understanding the Effects of Distracted Driving and Developing Strategies to Reduce Resulting Deaths and Injuries: Report to Congress (DOT HS 812053)* 2 (December 2013), *available at* www.nhtsa.gov/sites/nhtsa.dot.gov/files/812053-understandingeffectsdistracteddrivingreporttocongress.pdf (last seen Feb. 5, 2019).
52. NHTSA, *Driver Distraction: A Review of the Current State-of-Knowledge (DOT HS 810 787)*, 3 (April 2008), *available at* www.nhtsa.gov/sites/nhtsa.dot.gov/files/810787_0.pdf (last seen Feb. 5, 2019).
53. Okla. Stat. Tit. 47 §11-901(A).
54. *Chappell v. State*, 1969 OK CR 305, ¶2, 462 P.2d 325, 326.
55. *Freeman v. State*, 1940 OK CR 44, 101 P.2d 653, 663 (citations omitted).
56. *Id.*
57. *See* OUJI-CR 6-32 Reckless Driving (citing *Lamb v. State*, 1940 OK CR 113, 105 P.2d 799).
58. NHTSA, *Automated Driving Systems 2.0: A Vision for Safety* 4, *available at* www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0_090617_v9a_tag.pdf (last seen Feb. 5, 2019).
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *See, e.g.*, Okla. Stat. Tit. 47 §§11-605-6 (hand signals); 11-905 (driver's license), 12-401(A) (horn); 12-403 (mirrors); 12-404 (B-D) (windshield view, etc.); 12-417(A)(1-2) (seat belt).
65. *See* Okla. Stat. Tit. 47 §§1-114(a), §1-140.
66. *Id.* §1-144.
67. *McCullick v. State*, 1984 OK CR 68, 7, 682 P.2d 235, 236.
68. *See generally id.*
69. *See generally* Okla. Stat. Tit. 47 §1-144.
70. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768 (2014).
71. *See* Okla. Stat. Tit. 47 §§§1-134(A)(1), §1-134 (B)(4).
72. *See* text accompanying note 64, *compare* Okla. Stat. Tit. 47 §1-186 (no human required).
73. *See* Okla. Stat. Tit. 47 §1-140; *see also Bearden,* 1967 OK CR 133, ¶4, 430 P.2d at 847; *Parker*, 1967 OK CR 7, ¶16, 461 P.2d at 1000.
74. *Supra* text accompanying notes 36-38, 40, and 77.
75. *Grant v. Knepper*, 156 N.E. 650, 652 (N.Y. 1927).
76. *See* Okla. Stat. Tit. 47 §11-902.
77. *Wofford*, 1987 OK CR 148, ¶¶2,4, 739 P.2d at 543-544.
78. *Hughes*, 1975 OK CR 83, ¶8, 535 P.2d at 1024-1025.
79. *See* Okla. Stat. Tit. 47 §11-902; *see generally Parker*, 1967 OK CR 7, ¶16, 461 P.2d at 1000.
80. *Supra* text accompanying note 50.
81. *Supra* text accompanying note 35; *see also Bearden*, 1967 OK CR 133, ¶4, 430 P.2d at 847; *Parker*, 1967 OK CR 7, ¶16, 461 P.2d at 1000.
82. *Supra* text accompanying note 36.
83. Supra text accompanying notes 53-57.
84. *Supra* text accompanying notes 45 and 53; Okla. Stat. Tit. 47 §11-901 & 901b; *see also Kane v. State*, 1996 OK CR 14, ¶15, 915 P.2d 932, 937 (Oklahoma regulates driving to promote public safety).
85. *See, e.g.,* NHTSA, *Federal Automated Vehicles Policy: Accelerating the Next Revolution in Roadway Safety* at 5 (September 2016), *available at,* www.transportation.gov/sites/dot.gov/files/docs/AV%20policy%20guidance%20PDF.pdf (last seen Feb. 5, 2019).
86. *Id.*
87. *Supra* text accompanying notes 45 and 53; *see also, e.g.*, Okla. Stat. Tit. 47 §11-901b.
88. *See, e.g.*, NHTSA, *Federal Automated Vehicles Policy* at 5.
89. 49 U.S.C. §30102(b)(1); *see Geir v. Am. Honda Motor Co.*, 529 U.S. 861, 869-872 (2000) (state law can be pre-empted if it obstructs NHTSA standards and rules).
90. NHTSA, *Automated Driving Systems 2:0* at 15.
91. *Id.* at 21.
92. *See* Paul A. Hemmersbaugh, Chief Counsel NHTSA, *Letter in Response to Google's Request for Interpretation on Self-Driving Cars* (Feb. 4, 2016), *available at*, isearch.nhtsa.gov/files/Google%20--%20compiled%20response%20to%2012%20Nov%20%2015%20interp%20request%20--%204%20Feb%2016%20final.htm (last seen Feb 5, 2019).
93. *Id.* Under established administrative law principles, that interpretation, if reasonable, is worthy of judicial deference. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997).
94. *Supra* text accompanying notes 89 and 91.
95. *See* Pittman & Mwafulirwa, *supra* note 2, at 1723.

Don't let distance keep you from getting involved

Attend section and committee meetings remotely via BlueJeans. Use a mobile device, phone or computer. Visit www.okbar.org/bluejeans.

Reading Day Recap, Day at the Capitol March 12

By Angela Ailles Bahm

FIRST AND FOREMOST, a reminder that Day at the Capitol is Tuesday, March 12. We invite everyone to attend. The activities will follow the usual format. Registration will begin at approximately 9:30 a.m. with presentations starting at 10 a.m. Lunch will be served at noon; and thereafter, everyone will be invited to visit their legislator, or any legislator for that matter. We will have several speakers including Chief Justice Noma Gurich, Attorney General Mike Hunter and Administrator of the Courts Jari Askins.

On Feb. 2, the Legislative Monitoring Committee hosted the annual Reading Day. We had an excellent turnout; approximately 86 lawyers attended. With this article you will find a list of the bills that were identified by each of the speakers. Again, I cannot thank the speakers enough for their time and devotion to this project. As you can see by the list, there were a lot of bills to review and discuss. Because of the number of freshman legislators and a new governor, there was in fact a huge number of bills.

Thank you again to Molly Sullivan, Ed Blau, Judge Janice Loyd, Richard Mildren, Matt Wade, Kaylee Davis Maddy, Haley Drusen, Rhonda McLean, Miles Pringle and Sen. Michael Brooks Jimenez. You all did an outstanding job presenting the material, especially given the 10-minute limitation!

In addition to the bill presenters, Administrator of the Courts Jari Askins presented an all too brief review of how the judiciary is funded. Unfortunately, we were running late and her very pertinent topic was cut all too short. Thank you again to Ms. Askins.

Finally, we had a legislative panel to discuss what they anticipate the session will include. My thanks to Sen. Michael Brooks Jimenez (Oklahoma City), Sen. Brent Howard (Altus), Rep. Collin Walke (Edmond) and Rep. Mike Osborn (Edmond). The panel was introduced and moderated by OBA Legislative Liaison Clay Taylor. The overwhelming message delivered by these members of the Legislature was that they want your input. Rep. Walke passionately talked about a bill he introduced last year. Then at the conclusion of the session, he received a number of phone calls advising him (all too late) of all the problems with the bill.

They also issued an urgent plea to any member of the bar considering a run for the Legislature to contact them. MORE LAWYERS ARE NEEDED! The Senate this year has only four lawyer members, and the House has 10.

We also invited *all members* of the Legislature. I was delighted that we had about five nonlawyer members attend. I was able to personally speak with some of them at the conclusion. They were delighted at the opportunity and very thankful for the information. Again, they urged lawyers' assistance and participation in the process.

I will look forward to seeing you at Day at the Capitol on March 12! Don't forget about the free service on the legislative website at oklegislature.gov that allows you to look up and track bills. And, you can easily find your legislator for the purpose of contacting them.

Here is the list of bills that were addressed during Reading Day. I tried to be as brief as possible with this extensive list but at the same time give an idea of what the bill addresses. As always if you have any suggestions on how to improve the Legislative Monitoring Committee, please let me know.

BILLS PRESENTED ON READING DAY

Family Law

Presented by Molly Sullivan

HB 2235 Title 28 Recording marriage certificates; eliminates "opposite sex" language

HB 1276 Title 43 Child custody; provides court shall provide equal shared parenting time

HB 2013 Title 25 New law creates Persons with Disabilities Right to Parent Act

HB 2616 Title 43 Creates child support guidelines review committee

Attendees of Legislative Reading Day enjoyed spirited and informational presentations.

HB 2270 Title 10 Relates to uniform parentage act and limitations of paternity actions
HB 1272 Title 10A Changes reasonable suspicion to "probable cause" to take child in custody without court order
HB 1274 Title 10A Defines and addresses situational neglect
HB 2329 Title 10A Pertains to reporting of child abuse or neglect
HB 2604 Title 10A Pertains to perpetrator registry
HB 2189 Title 12 New law allows for alternative methods of providing testimony in criminal cases
HB 2091 Title 22 Increases number of members on Domestic Violence Fatality Review Board

Speaker also listed by reference HB 1061, SB 833, HB 1022, HB 1222, SB 742 and SB 300.

Criminal Law
Presented by Ed Blau
Title 22, unless otherwise noted:
HB 1001 Removes weapons prohibition for felons as passenger in vehicle
HB 1019 Oklahoma criminal discovery code – access to discovery
HB 1030 Title 37A New law; alcoholic beverages; allows certain felons to possess an employee's license
HB 1037 Pertains to bail reform
HB 1145 Pertains to expungements
HB 2019 New law broadens judicial discretion for pregnant women or caregivers
HB 2589 Amends sentencing procedures after guilty verdicts
SB 276 Creates mechanism for retroactivity of SQ 780
SB 282 Title 26 New law; voting rights of individuals with felony convictions
SB 983 Amend; drug courts; those eligible

Estate Planning/Banking/ General Business
Presented by Judge Janice Loyd
HB 2383 Title 15 Discretion of AG and DA to use funds recovered under the CPA
SB 123 Title 46 Extends time to 6 months mortgagor can cure default
SB 838 Title 18 New law pertaining to limited liability companies
SB 69 Title 18 Includes appraisal rights relating to limited liability companies
SB 847 Title 18 New law pertaining to corporations and shareholders
SB 105 Title 18 Includes appraisers in the Professional Entity Act
SB 737 Title 18 Similar to above
SB 204 Title 18 Includes a "natural person" as a "charitable organization"
SB 102 Title 40 Increases minimum wage to $10.50
SB 788 Title 40 Pertains to minimum wage and provides gradual increase up to $10 per hour

Government Law
Presented by Richard Mildren
JR = Joint Resolution
- JR 1019 Change to Constitution; creating Independent Redistricting Commission
- JR 1020 Change to Constitution regarding legislative term limits
- HB 1131 Title 40 Shell bill; relates to labor, minimum wage and benefits
- HB 1391 Title 74 Pertaining to fingerprinting and background checks
- HB 1430 Title 74 New law providing for preconditions for writing and consideration of joint resolutions or bill
- HB 1536 New law; shell bill; Congressional and Legislative Districts Act of 2019
- HB 1921 Title 62 New law; Oklahomans Virtually Everywhere Act
- SB 179 Title 62 Provides for training employees as financial managers
- SB 198 Title 74 New law; guidelines for social media
- SB 350 Title 75 New law; Red Tape Repealer Act
- SB 501 Title 43A New law; Dept. of Mental Health create notice on substance abuse services
- SB 688 Title 74 New law creating Entrepreneurs-in-Residence Program as part of Office of Management and Enterprise Services
- SB 736 Title 74 New law creating the OK Board of Commerce

Civil Procedure/Courts
Presented by Matthew Wade
Title 12, unless otherwise noted:
- HB 1092 Provides for collection of attorney's fees in small claims cases
- HB 2409 Pertains to 3009.1 (paid v. incurred); amounts billed and amounts paid is admissible if an expert testifies the billed amount was reasonable for necessary medical care
- SB 779 Pertains to 3009.1 Eliminates need to obtain provider's sworn testimony in addition to evidence of payment
- HB 2413 Title 47 Increases minimum coverage to $50,000
- HB 2416 Title 47 Provides proof of insurance to be filed with insurance department
- SB 300 Limits production of documents to 30
- SB 120 Title 47 Requires traffic enforcement vehicles be marked
- SB 533 New law pertaining to censorship of social media and private right of action
- SB 256 Title 47 Limits towing and storage fees under certain circumstances
- HB 1332 Title 47 Allows ATVs to be driven on certain municipal and county roadways

Environmental/Natural Resources
Presented by Kaylee Davis-Maddy
- SB 354 Title 52 New law creating the Frack Sand Mining Advisory Group
- SB 353 Title 15 New law addressing "design professional services agreement"
- SB 542 Title 29 New law relating to Wildlife Conservation

Lawyer and nonlawyer legislators who attended this year's Legislative Reading Day pose after the event.

Legislative Monitoring Committee Chair Angela Ailles Bahm and President Chuck Chesnut after the event.

Code, requiring education program
SB 702 Title 27A New law requiring DEQ and Oklahoma Water Resources Board to share information in certain circumstances
HB 1204 Title 82 Directs certain instream water studies be conducted
HB 1403 Title 82 New law pertaining to "treasured stream"
HB 2474 Title 82 Disclosure and website of applications to Oklahoma Water Resources Board
SB 568 Title 82 Creates phase 2 Arbuckle-Simpson Hydrology Study Revolving Fund
HB 1824 Shell bill; new law creating Oklahoma Waters and Water Rights Modernization Act of 2019
HB 1610 Shell bill; new law creating Environment and Natural Resources Modernization Act

Schools
Presented by Haley A. Drusen
Title 70, unless otherwise noted:
HB 1065 Modifies definition of threatening behavior
HB 1946 Prohibits specific existing organization from continuing to represent employees
HB 2120 Relates to standards of accreditation
HB 2214 Prohibits strikes/shutdowns
HB 2370 Teacher Due Process Act; adds teachers with emergency certificates
SB 15 Pertains to Charter School sponsorship
SB 60 New law pertaining to superintendents, salary, fringe benefits
SB 239 Requires teachers to remain employed while certain proceedings are pending
SB 441 Pertains to length of school year
SB 698 Title 61 Public Facilities Act; eliminate certain criteria

Indian/Real Estate Law
Presented by Rhonda McLean
HB 1916 Title 60 New law prohibiting transfers of certain items of tangible personal property to public trust
HB 1220 Title 16 False affidavit shall result in award of costs and attorneys fees
HB 1222 Title 16 Provides for effective conveyances by married grantors
HB 1223 Title 16 Pertains to claims and purchases of mineral interests
HB 1231 Title 60 Pertains to for-profit entities transferring tangible personal property to a public trust
HB 2121 Title 60 Provides for notice relating to Uniform Unclaimed Property Act
HB 2209 Title 60 Requires certain owners association to publish financial statements
SB 915 Title 16 Relates to remote online notarial acts
Also provided an update to the Stigler Act amendments in the lawsuit, *Carpenter v. Murphy*

Marijuana Law
Presented by Miles Pringle and Sen. Michael Brooks-Jimenez
Title 63, unless otherwise noted:
HB 1100 Modifies certain prohibited acts; relates to Uniform Controlled Dangerous Substances Act; also HB 2309 and SB 421
SB 213 Modifies SQ 788; physicians who may sign application must be licensed and in good standing with medical licensure board and board of osteopathic examiners
SB 305 Pertains to discrimination against medical marijuana license holders
SB 307 Relates to tax on retail medical marijuana sales
SB 325 Relates to discrimination against marijuana license holder and counties to hold certain elections pertaining to restrictions
SB 755 New law pertaining to advertising
SB 756 Relates to packaging and providing restrictions and requirements
SB 759 Provides for limitations to physicians and prohibitions for taking certain actions
SB 763 Pertains to allowing physicians to set certain limits
SB 765 Title 21 Relates to prohibitions on smoking and adding marijuana
SB 898 Pertains to dispensaries checking certain information at point of sale
SB 882 New law directs Bureau of Narcotics to develop and implement program for disposal of medical marijuana waste
SB 532 Title 12 Relates to foreclosure of medical marijuana businesses

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Ms. Ailles Bahm is the managing attorney of State Farm's in-house office and serves as the Legislative Monitoring Committee chairperson. She can be contacted through Communities or angela.ailles-bahm.ga2e@statefarm.com.

New Laws, New Tools – 2019 Conference Coming June 20-22

By Jim Calloway

IT WILL SOON BE SUMMERTIME when, according to composer George Gershwin, "the livin' is easy," but for Oklahoma lawyers, summertime means it is time for the OBA Solo & Small Firm Conference, which will be held June 20-22 at the River Spirit Casino Resort in Tulsa. "New Laws, New Tools" is the theme of this year's conference, held in conjunction with the Young Lawyers Division Midyear Meeting.

CONFERENCE TOPICS AND SPEAKERS

New Laws

Among the most-discussed new laws are Oklahoma's cannabis law changes, so we will have an update on the latest developments on that front from Miles Pringle. We will also welcome Robert Spector who will present his ever-popular "Recent Developments in Family Law" to keep you up to date on changes in the law in that area. He will also do a presentation on property division, joint tenancy and the increase in value of separate property.

Hands-On Office 365 Training

Office 365 is a tool many lawyers are using today, but many are unaware of everything Office 365 can do. The best bargain in legal technology is getting the most use of the tools you already own. Microsoft Teams is a nice project management tool that can be included in your Office 365 subscription and Yammer is a collaboration tool that allows for quick instant message-type communications within a firm of any size. Kenton S. Brice, director of technology innovation for the OU College of Law, will teach us about the hidden tools of Office 365 and will also provide a deep dive into Microsoft Word.

Many have asked for hands-on training opportunities, so we will provide some training time. Kenton Brice will team with Donna Brown of Beyond Square One, a long-time supporter of our conference, to provide hands-on training on Office 365 and Microsoft Word. We will have some laptops available, but if you bring your laptop and your Office 365 login credentials, you will be able to keep any customizations you make.

Automated Document Assembly

Another new tool is Oklahoma Bar Intellidrafts, our new automated legal document assembly tool. We will have presentations from Gabe Bass, creator of Intellidrafts,

on how to use this powerful tool and the importance of automated document assembly for solo and small firm lawyers. Automated document assembly for routine matters, combined with fixed-fee pricing, will be important for the success of many small firms in the future.

Text Message Client Communication and Virtual Resources

While text messaging is no longer a new tool, lawyers often have challenges dealing with it for client communication. We welcome back Chelsey Lambert, the technology guru behind *Lex Tech Review*, to join me for a program on everything you need to know about text messaging for client communication and potential new client communication. You will learn about some interesting texting tools and techniques. Chelsey will also do a presentation covering "How to Scale Your Practice with Virtual Resources." This is a subject of increasing importance to solo and small firm lawyers.

Lawyer Wellness and Ethics

"The Personal Challenges of a Lawyer's Life" is a featured plenary presentation that will examine lawyer wellness and stress. We all are aware of the impact of stress on our profession and this program will share tips for coping with the challenges we all face. We have a great panel of experts and a short, but impactful, video will be screened.

Our ethics presentation this year will feature OBA General Counsel Gina Hendryx, Gary Rife and me with an audience participation interactive ethics discussion. Attendees will have an opportunity for anonymous voting via mobile phone on different ethics scenarios.

Trials and Tribulations

Judge Jane Wiseman of the Oklahoma Court of Civil Appeals will enlighten us and entertain us as our Saturday luncheon speaker with her program "Trials and Tribulations."

Taxes, Estate Planning, Consumer Law, Voir Dire and More

Other great programs include Rachel Pappy's "Taxes – Strategies for Improving the Bottom Line for You and Your Clients," OBA President-Elect Susan Shields will share estate planning tips, OBA Practice Management Advisor Julie Bays will cover consumer law practice in Oklahoma and also join me for an update on limited scope legal services, David T. McKenzie will cover "*Voir Dire* and Cross-Examination – The Art of Weaving a Coherent Defense," "Drug Courts: A Smart Approach to Ensuring Justice for All" will be led by Cleveland County District Judge Michael D. Tupper as well as other educational offerings. Consult the conference schedule for all our programming.

DON'T MISS OUT!

In addition to great educational programs, we have some fun social events planned this year including our opening Black and White Party Thursday evening and the General Practice/Solo and Small Firm Section Pool Party Friday afternoon.

Get the details and register now at www.okbar.org/solo. The OBA Solo & Small Firm Conference is always a fun event with nationally known presenters, unique educational offerings and a chance to win door prizes. It is a great value for your CLE dollar.

Mr. Calloway is OBA Management Assistance Program director and staff liaison to the Solo and Small Firm Conference Planning Committee, chaired by Charles R. Hogshead.

RIVER SPIRIT CASINO RESORT | TULSA

June 20 - 22

"New Laws, New Tools" will be the theme for this year's conference. Topics will include new laws, family law updates, taxes, estate planning, consumer law, trials and defense, lawyer wellness, as well as hands-on training of tools like Office 365, Microsoft Word and Intellidrafts. In addition to great educational programs, this year's conference offers fun social events like the Black and White Party and the General Practice/Solo and Small Firm Section Pool Party.

ONLINE REGISTRATION
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Email: _____

Name and city as it should appear on badge if different from above:

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GUEST INFORMATION

Adult guest name: _____

Child guest name : _____

Child guest name : _____

Child guest name : _____

Child guest name : _____

FORM CONTINUED ON NEXT PAGE – INCLUDE BOTH PAGES WHEN FAXING/MAILING

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admitted before Jan. 1, 2017

	CIRCLE ONE
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PAYMENT INFORMATION

Make check payable to the Oklahoma Bar Association and mail registration form to CLE REGISTRAR, P.O. Box 53036, Oklahoma City, OK 73152; or fax registration form to 405-416-7092.

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REGISTRATION AND POLICIES

CANCELLATION POLICY
Cancellations will be accepted at any time on or before June 6 for a full refund; a $50 fee will be charged for cancellations made on or after June 7. **No refunds after June 12.**

REGISTRATION, ETC.
Registration fee includes 12 hours CLE credit, including one hour of ethics. Includes all meals: evening Thursday and Friday, breakfast Friday and Saturday, lunch Friday and Saturday.

HOTEL RESERVATIONS
Visit www.okbar.org/solo or call 888-748-3731 for hotel reservations. Refer to Oklahoma Bar Association Solo & Small Firm Conference for a discount. Discount rooms available until May 30.

2019 Solo & Small Firm Conference Schedule

THURSDAY I JUNE 20			
3 – 6:30 p.m.	**Conference Registration**		
6:30 p.m.	**Black and White Party**		
FRIDAY I JUNE 21			
7–9 a.m.	**Breakfast**		
8:25–8:35 a.m.	**Welcome** *OBA President Charles W. Chesnut*		
8:35–9:35 a.m.	**60 Tips in 60 Minutes** *Chelsey Lambert, Kenton Brice and Jim Calloway*		
9:35–9:45 a.m.	**Break**		
9:45–10:45 a.m.	**Office 365 – What Every Lawyer Should Know** *Kenton Brice*	**Taxes – Strategies for Improving the Bottom Line for You and Your Clients** *Rachel Pappy*	**Estate Planning Tips** *Susan Shields*
10:45–10:55 a.m.	**Break**		
10:55–noon	**The Personal Challenges of a Lawyer's Life – Includes partial screening of the documentary *Killing Pain*** *Reggie Whitten, O. Clifton Gooding, Jeanie Snider, Peggy Stockwell and Deanna Harris*		
Noon–1 p.m.	**Lunch**		
1–2 p.m.	**Automating Document Creation with Oklahoma Bar Intellidrafts** *Gabe Bass*	**Tenant Rights Law – Defending Eviction Cases** *Eric Hallett*	**Recent Developments in Family Law** *Robert Spector*
2–2:10 p.m.	**Break**		
2:10–3 p.m.	**Drug Courts: A Smart Approach to Ensuring Justice for All** *Michael D. Tupper*	**Text Messaging for Lawyers** *Chelsey Lambert and Jim Calloway*	**Cannabis Laws in Oklahoma** *Miles Pringle*
3:30–6:30 p.m.	**General Practice/Solo & Small Firm Section Pool Party**		
6:30 p.m.	**Dinner**		
SATURDAY I JUNE 22			
7–9 a.m.	**Breakfast**		
8:25–8:30 a.m.	**Welcome** *OBA Executive Director John Morris Williams*		
8:30–9:30 a.m.	**An Interactive Session on Legal Ethics** *Gina Hendryx, Gary Rife and Jim Calloway*		
9:30–9:40 a.m.	**Break**		
9:40–10:30 a.m.	**A Deep Dive Into Microsoft Word** *Kenton Brice*	**Defense of a Grievance** *Gary Rife*	**Property Division, Joint Tenancy and the Increase in Value of Separate Property** *Robert Spector*
10:30–10:55 a.m.	**Break**		
10:55–11:55 a.m.	**Current Issues in Bankruptcy Law** *Brian Huckabee*	**Limited Scope Legal Services** *Jim Calloway and Julie Bays*	***Voir Dire* and Cross-Examination – The Art of Weaving a Coherent Defense** *David T. McKenzie*
11:55 a.m. – 12:45 p.m.	**Lunch** **Trials and Tribulations** *Judge Jane Wiseman*		
12:45 –1:35 p.m.	**Automating Document Creation with Oklahoma Bar Intellidrafts (encore of Friday session)** *Gabe Bass*	**How to Scale Your Practice with Virtual Resources** *Chelsey Lambert*	**Consumer Law Practice in Oklahoma** *Julie Bays*
1:35–1:40 p.m.	**Break**		
1:40–2:30 p.m.	**What's Hot and What's Not in Law Office Management and Technology** *Kenton Brice, Chelsey Lambert, Jim Calloway, Julie Bays and Charles Hogshead*		

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE *OKLAHOMA INDIGENT DEFENSE SYSTEM* BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract ("Offers") to provide non-capital trial level defense representation during Fiscal Year 2020 pursuant to 22 O.S. 2001, '1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2020 (July 1, 2019 through June 30, 2020) in the following counties: **100% of the Oklahoma Indigent Defense System caseloads in THE FOLLOWING COUNTIES:**

ADAIR, ATOKA, BLAINE, CANADIAN, CARTER, CHEROKEE, COAL, CRAIG, DELAWARE, HASKELL, HUGHES, JOHNSTON, KINGFISHER, LATIMER, LOGAN, LOVE, MARSHALL, MAYES, MURRAY, MUSKOGEE, NOWATA, OSAGE, PITTSBURG, PAWNEE, PAYNE, PONTOTOC, ROGERS, SEMINOLE, SEQUOYAH, WAGONER

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board's consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor, traffic, youthful offender and wildlife cases in the above counties during FY-2020 (July 1, 2019 through June 30, 2020). Offers may be submitted for complete coverage (100%) of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m.

The deadline for submitting sealed Offers is 5:00 PM, Thursday, March 21, 2019.

Each Offer must be submitted separately in a sealed envelope or box containing one (1) complete original Offer and two (2) complete copies. The sealed envelope or box must be clearly marked as follows:

FY-2020 OFFER TO CONTRACT **TIME RECEIVED:**
_____ COUNTY / COUNTIES **DATE RECEIVED:**

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to OIDS, FY-2020 OFFER TO CONTRACT, P.O. Box 926, Norman, OK 73070-0926. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at 111 North Peters, Suite 500, Norman, OK 73069. **Please note that the Peters Avenue address is NOT a mailing address; it is a parcel delivery address only.** Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 PM, THURSDAY, March 21, 2019 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 22, 2019, beginning at 9:30 AM, and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Non-conforming Offers will be rejected on Friday, March 22, 2019, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 29th, 2019, at a *place to be announced***.

With each Offer, the attorney must include a résumé and affirm under oath his or her compliance with the following statutory qualifications: presently a member in good standing of the Oklahoma Bar Association; the existence of, or eligibility for, professional liability insurance during the term of the contract; and affirmation of the accuracy of the information provided regarding other factors to be considered by the Board. These factors, as addressed in the provided forms, will include an agreement to maintain or obtain professional liability insurance coverage; level of prior representation experience, including experience in criminal and juvenile delinquency proceedings; location of offices; staff size; number of independent and affiliated attorneys involved in the Offer; professional affiliations; familiarity with substantive and procedural law; willingness to pursue continuing legal education focused on criminal defense representation, including any training required by OIDS or state statute; willingness to place such restrictions on one's law practice outside the contract as are reasonable and necessary to perform the required contract services, and other relevant information provided by attorney in the Offer.

The Board may accept or reject any or all Offers submitted, make counter-offers, and/or provide for representation in any manner permitted by the Indigent Defense Act to meet the State's obligation to indigent criminal defendants entitled to the appointment of competent counsel.

FY-2020 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2015, FY-2016, FY-2017, FY-2018 and FY-2019 together with a 5-year contract history for each county listed above. The request form below may be mailed to **OIDS OFFER-TO-CONTRACT PACKET REQUEST, P.O. Box 926, Norman, OK 73070-0926, or hand delivered to OIDS at 111 North Peters, Suite 500, Norman, OK 73069 or submitted by facsimile to OIDS at (405) 801-2661 or by email to brandon.pointer@oids.ok.gov**.

REQUEST FOR OIDS FY-2020 OFFER-TO-CONTRACT PACKET

Name: _____ OBA #: _____

Street Address: _____ Phone: _____

City, State, Zip: _____ Fax: _____

County / Counties of Interest: _____

_____

Professional Responsibility Commission Annual Report

As Compiled by the Office of the General Counsel of the Oklahoma Bar Association Jan. 1, 2018 – Dec. 31, 2018 | SCBD 6744

INTRODUCTION

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011, ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2018 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION

The Commission is composed of seven persons – five attorney and two non-lawyer members. The attorney members are nominated for rotating three-year terms by the President of the Association subject to the approval of the Board of Governors. The two non-lawyer members are appointed by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, respectively. Terms expire on December 31st at the conclusion of the three-year term.

Attorney members serving on the Professional Responsibility Commission during 2018 were R. Richard Sitzman, Oklahoma City; David Swank, Norman; Heather Burrage, Durant; Phillip J. Tucker, Edmond; and Sidney K. Swinson, Tulsa. The Non-Lawyer member was John Thompson, Oklahoma City. One Non-Lawyer position was vacant during 2018. R. Richard Sitzman served as Chairperson. Commission members serve without compensation but are reimbursed for actual travel expenses.

RESPONSIBILITIES

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any attorney called to its attention, or upon its own motion, and takes such action as deemed appropriate to effectuate the purposes of the Rules Governing Disciplinary Proceedings. Under the supervision of the Professional Responsibility Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any attorney called to the attention of the General Counsel by grievance or otherwise, and reports to the Professional Responsibility Commission the results of investigations conducted by the General Counsel. The Professional Responsibility Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged misconduct or personal incapacity of an attorney. The attorneys in the Office of the General Counsel prosecute all proceedings under the Rules Governing Disciplinary Proceedings, supervise the investigative process, and represent the Oklahoma Bar Association at all reinstatement proceedings.

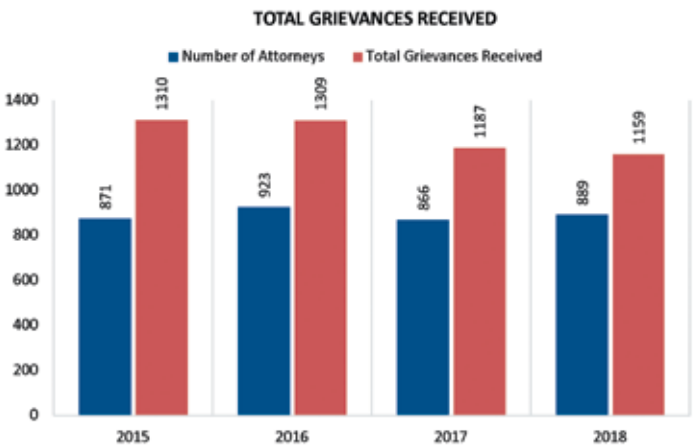
VOLUME OF GRIEVANCES

During 2018, the Office of the General Counsel received 242 formal grievances involving 176 attorneys and 917 informal grievances involving 713 attorneys. In total, 1,159 grievances were received against 889 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 213 items of general correspondence, which is mail not considered to be a grievance against an attorney.[1]

On January 1, 2018, 141 formal grievances were carried over from the previous year. During 2018, 242 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 383 formal investigations pending throughout 2018. Of

those grievances, 236 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 147 investigations were pending on December 31, 2018.

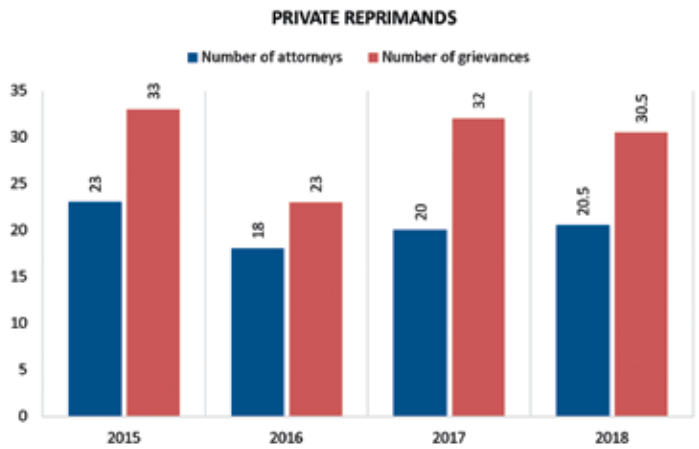
The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Professional Responsibility Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Professional Responsibility Commission.



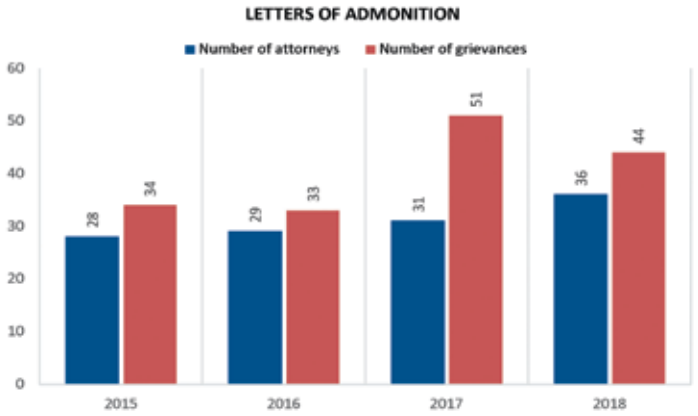
DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION

Formal Charges. During 2018, the Commission voted the filing of formal disciplinary charges against 14 attorneys involving 23 grievances. In addition, the Commission also oversaw the investigation of 11 Rule 7, RGDP matters filed with the Chief Justice of the Oklahoma Supreme Court.

Private Reprimands. Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of the attorney, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2018, the Commission issued private reprimands to 20 attorneys involving 30 grievances.



Letters of Admonition. During 2018, the Commission issued letters of admonition to 36 attorneys involving 44 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule which the Commission believed warranted a warning rather than discipline.



Dismissals. The Commission dismissed five grievances due to the loss of jurisdiction after the resignation pending disciplinary proceedings or disbarment of the respondent attorney. Furthermore, the Commission dismissed 19 grievances upon successful completion of a diversion program by the attorney. The remainder were dismissed where the investigation did not substantiate the allegations by clear and convincing evidence.

Diversion Program. The Commission may also refer respondent attorneys to the Discipline Diversion Program where remedial measures are taken to ensure that any deficiency in the representation of a client is not repeated in the future. During 2018, the Commission referred 46 attorneys to the Diversion Program for conduct involving 67 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating attorney and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program Director involved in programming. Program options include: Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills, Professionalism in the Practice of Law, and referral to the Lawyers Helping Lawyers program. In 2018, instructional courses were taught by OBA Ethics Counsel Joe Balkenbush, OBA General Counsel Gina L. Hendryx, OBA First Assistant General Counsel Loraine Dillinder Farabow, OBA Assistant General Counsel Katherine M. Ogden, OBA Management Assistance Program Director Jim Calloway, and OBA Practice Management Advisor Darla Jackson.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is now able to monitor when attorneys encounter difficulty with management of their IOLTA accounts. Upon recommendation of the Office of the General Counsel, the Professional Responsibility Commission may place those individuals in a tailored program designed to instruct on basic trust accounting procedures. In 2018, the OBA Management Assistance Program opened its trust account diversion classes to all OBA members.

2018 Diversion Program Curriculum	Number of Lawyers
Law Office Management Training	13
Communication and Client Relationship Skills	18
Professionalism in the Practice of Law	6
Professional Responsibility / Ethics School	20
Client Trust Account School	15
Law Office Consultations	9
Lawyers Helping Lawyers Referral	4

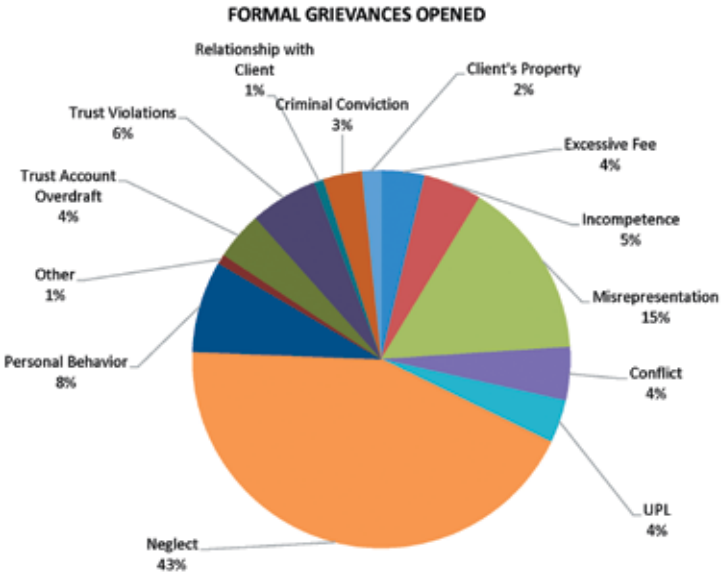
SURVEY OF GRIEVANCES

In order to better inform the Oklahoma Supreme Court, the bar, and the public of the nature of the grievances received, the number of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

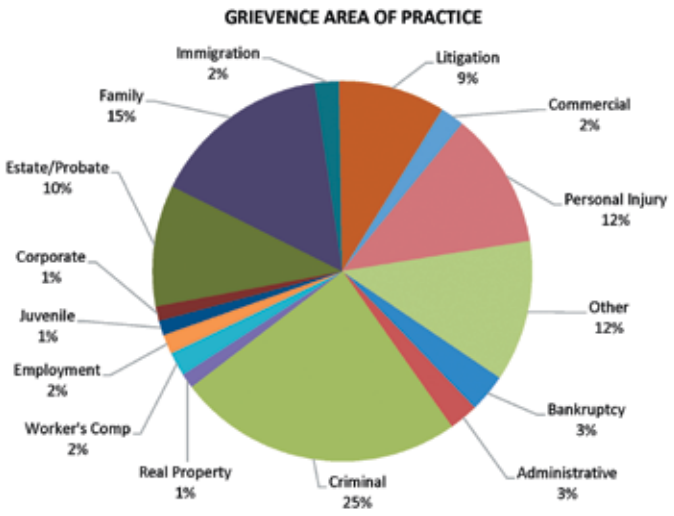
Total membership of the Oklahoma Bar Association as of December 31, 2018, was 18,033 attorneys. The total number of members included 11,986 males and 6,047 females.

Formal and informal grievances were submitted against 889 attorneys. Therefore, approximately five percent of the attorneys licensed to practice law in Oklahoma received a grievance in 2018.

A breakdown of the type of attorney misconduct alleged in the 242 formal grievances opened by the Office of the General Counsel in 2018 is as follows:



Of the 242 formal grievances, the area of practice is as follows:



The number of years in practice of the 176 attorneys receiving formal grievances is as follows:

The largest number of grievances received were against attorneys who have been in practice for 26 years or more. The age of attorneys with formal charges filed and discipline imposed in 2018 is as follows:

Type of Complaint Filed-2018	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
Number of Attorneys Involved	6	13	1	4
Age of Attorney				
21-29 years old	0	1	0	0
30-49 years old	3	5	0	0
50-74 years old	3	6	0	3
75 or more years old	0	1	10	1

Type of Discipline Imposed	Dismissals	Public Censure	Disciplinary Suspension	Confidential Suspension	Resignation Pending Disciplinary Proceedings	Disbarment
Number of Attorneys Involved	6	2	5	1	6	5
Age of Attorney						
21-29 years old	0	0	1	0	0	0
30-49 years old	3	1	1	0	1	2
50-74 years old	3	1	3	0	4	2
75 or more years old	0	0	0	1	1	1

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2018, discipline was imposed by the Oklahoma Supreme Court in 24 disciplinary cases. The sanctions are as follow:

Disbarment.

Respondent	Order Date
Kleinsmith, Philip M.	1/17/2018
Knight, David W.	6/19/2018
Kruger, Joel L.	6/19/2018
Gaines, Shanita D.	11/20/2018
Minks, Steven P.	12/3/2018

Resignations Pending Disciplinary Proceedings Approved by Court.

(Tantamount to Disbarment)

Respondent	Order Date
Menzer, James L.	6/4/2018
Bedford, Ernie	9/10/2018
Curthoys, Brian A.	9/10/2018
Dalton, John E.	10/29/2018
Merrill, Stephen J.	12/10/2018
Oliver, J. Edward	12/11/2018

Disciplinary Suspensions.

Respondent	Length	Order Date
Brooking, Meagan E.	60 days	1/30/2018
Bounds, John K.	2 years + 1 day	3/6/2018
Barrett, Colin R.	6 months	9/11/2018
Smalley, Richard E.	6 months	12/11/2018
Dunivan, John D.	1 year	12/18/2018
Rule 10 Confidential	Indefinite	9/10/2018

Public Censure.

Respondent	Order Date
Black, Shawnnessy M.	10/30/2018
Smalley, Richard E.	12/11/2018

Dismissals.

Respondent	Order Date
Tom, Paul R. (Dismissed due to death of Respondent)	1/16/2018
Straily, Kristen D. (Misdemeanor Conviction; Rule 7, RGDP)	3/26/2018
Ruding, Jill N. (Misdemeanor Conviction; Rule 7, RGDP)	5/7/2018
Hooper, Michael R. (Reciprocal Discipline; Rule 7, RGDP)	5/14/2018
Andrews, Joe S. (Misdemeanor Conviction; Rule 7, RGDP)	5/29/2018
Bryant, G. David Misdemeanor Conviction; Rule 7, RGDP)	6/11/2018

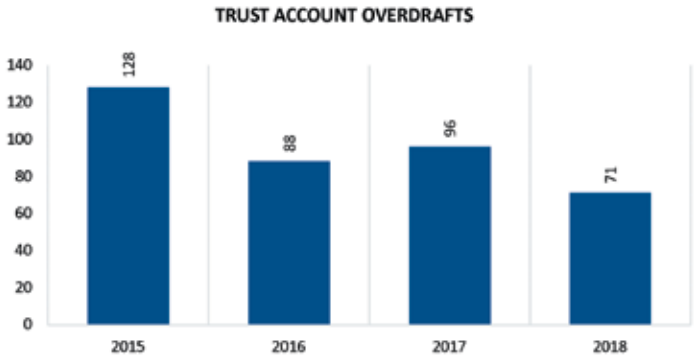
There were 16 discipline cases filed with the Supreme Court as of January 1, 2018. During 2018, 24 new formal complaints were filed for a total of 40 cases pending with the Supreme Court during 2018. On December 31, 2018, 16 cases remain filed and pending before the Oklahoma Supreme Court.

REINSTATEMENTS

There were six petitions fo2r reinstatement pending before the Professional Responsibility Tribunal and three petitions for reinstatement pending with the Supreme Court as of January 1, 2018. There were eight new petitions for reinstatement filed in 2018. In 2018, the Supreme Court granted seven reinstatements, denied two reinstatements, and three were withdrawn by the Petitioner. On December 31, 2018, there were three petitions for reinstatement pending before the Professional Responsibility Tribunal and two petitions for reinstatement pending before the Oklahoma Supreme Court.

TRUST ACCOUNT OVERDRAFT REPORTING

The Office of the General Counsel, under the supervision of the Professional Responsibility Commission, has implemented the Trust Account Overdraft Reporting requirements of Rule 1.15(j), Oklahoma Rules of Professional Conduct, 5 O.S. 2011, ch. 1, app. 3-A (ORPC). Trust Account Overdraft Reporting Agreements are submitted by depository institutions. In 2018, 71 notices of overdraft of a client trust account were received by the Office of the General Counsel. Notification triggers a general inquiry to the attorney requesting an explanation and supporting bank documents for the deficient account. Based upon the response, an investigation may be commenced. Repeated overdrafts due to negligent accounting practices may result in referral to the Discipline Diversion Program for instruction in proper trust accounting procedures.

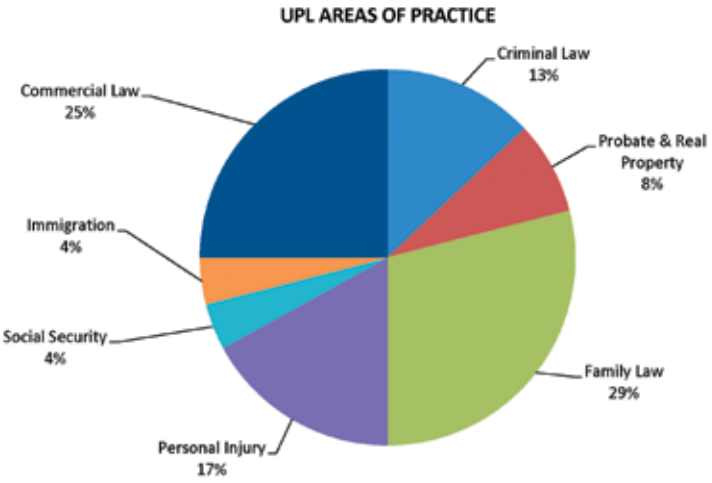


UNAUTHORIZED PRACTICE OF LAW

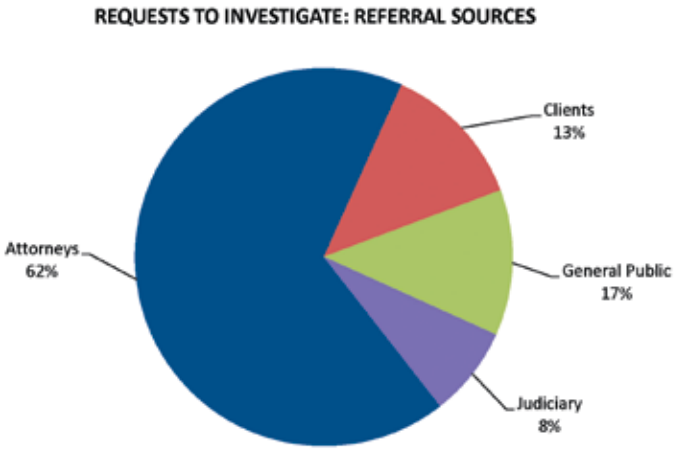
Rule 5.1(b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-attorneys, suspended attorneys and disbarred attorneys. Rule 5.5, ORPC, regulates the unauthorized practice of law by attorneys and prohibits attorneys from assisting others in doing so.

Requests for Investigation. In 2018, the Office of the General Counsel received 24 complaints for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

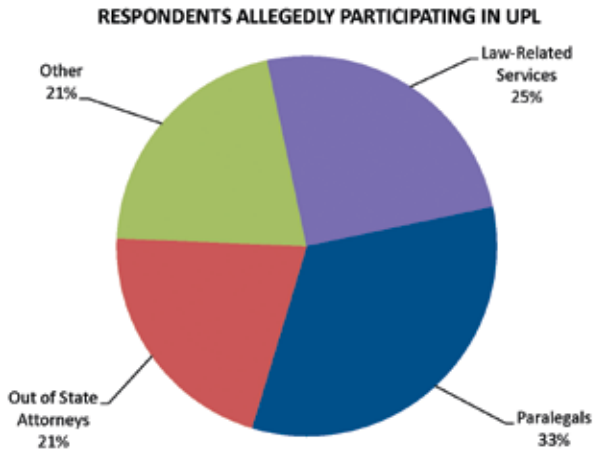
Practice Areas. Allegations of the unauthorized practice of law encompass various areas of law. In previous years, most unauthorized practice of law complaints involved non-lawyers or paralegals handling divorce matters but that trend had declined over the last few years. However, in 2018, a significant number of UPL complaints again involved family law matters.



Referral Sources. Requests for investigations of the unauthorized practice of law stem from multiple sources. In 2018, the Office of the General Counsel received the most complaints from attorneys.



Respondents. For 2018, most requests for investigation into allegations of the unauthorized practice of law related to paralegals.



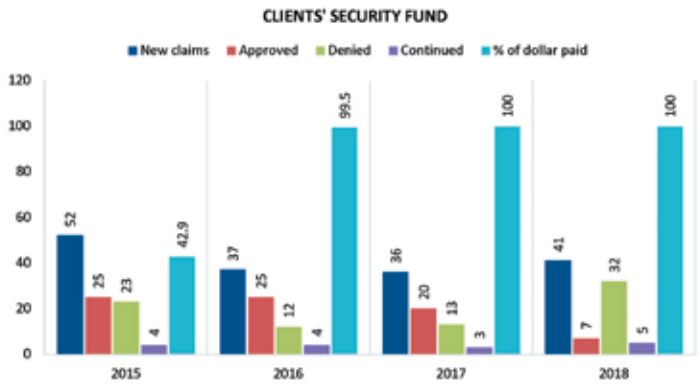
For purposes of this summary, the category "paralegal" refers to an individual who advertises as a paralegal and performs various legal tasks for their customers, including legal document preparation.

Enforcement. In 2018, of the 24 cases opened, the Office of the General Counsel took formal action in four matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, referring a case to an appropriate state and/or federal enforcement agency, or filing the appropriate district court action. Thirteen cases were closed for no finding of the unauthorized practice of law. The remainder of the cases continue under investigation.

CLIENTS' SECURITY FUND

The Clients' Security Fund was established in 1965 by Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee which is comprised of 17 members, 14 attorney members and 3 non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2018, the Committee was chaired by attorney member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients for financial losses occasioned by dishonest acts of attorneys. It is also intended to protect the reputation of attorneys in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates $175,000.00 each year to the Clients' Security Fund for payment of approved claims.

In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a prorata basis until the total amount paid for all claims in that year is $175,000.00. The Office of the General Counsel reviews, investigates, and presents the claims to the committee. In 2018, the Office of the General Counsel presented 41



new claims to the Committee. The Committee approved 7 claims, denied 32 claims, and continued 5 claims into the following year for further investigation. In 2018, the Clients' Security Fund paid a total of $120,350.41 on 7 approved claims.

CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA

The Office of the General Counsel represented the Oklahoma Bar Association in several civil (non-discipline) matters during 2018. One case carried forward into 2018. The following is a summary of all 2018 civil actions against or involving the Oklahoma Bar Association:

Alexander Bednar v. Farabow, Willis, Blasier and Oklahoma Bar Association, Oklahoma County Case No. CJ-2017-1192. Bednar filed suit against the OBA Defendants on February 28, 2017, alleging, among other things, that Defendants exhibited a pattern of harassment and attacks against him and requested the district court declare that his prior attorney discipline was not based on ethical violations and enjoin the OBA from further investigating his actions. Bednar also filed a Motion for Special Master to Investigate, Motion to Quash Administrative Subpoenas and for Protective Order, Motion to Seal Confidential Information and a Supplemental Petition. The OBA moved to dismiss the matter and, after argument, an Order of Dismissal with Prejudice was entered by Judge Dixon and filed August 4, 2017. Bednar filed a Motion to Set Aside for Good Cause on September 5, 2017. After the OBA response and argument, the Court allowed Bednar to supplement his filing with a transcript from the motion to dismiss hearing. At the hearing on January 19, 2018, Judge Davis reconsidered Judge Dixon's order and dismissed Bednar's suit *without* prejudice to refiling. At the hearing, Bednar indicated he filed another lawsuit that morning against Defendants (see below). Thereafter, Bednar filed a Supplemental Petition, Application for Emergency Orders and other documents. After response and argument, Bednar's motions were overruled, and the case was transferred to another county.

Alexander Bednar v. Hammond, et al., Oklahoma County Case No. CJ-2018-373 (before the Honorable Paul Hesse, Canadian County). Bednar filed suit against OBA Defendants Farabow, Hendryx, Blasier and Willis on January 19, 2018, alleging, among other things, that the court must stop Defendants from discussing private bar investigation matters with judges, attorney and attorneys and that one OBA defendant acted outside the scope of employment while investigating him. Bednar also filed an Application for Emergency Orders, Application to Consolidate and/or Reassign Case to Judge Davis, and an Application for Discovery Master. Less than a month later, Bednar filed a Supplemental Application for Emergency Orders and to Transfer and/or Reassign Case to Judge Davis. The OBA filed a Motion to Dismiss. After argument, the court dismissed Bednar's Motion for Discovery Master and for an injunction against employees of the OBA. Bednar filed or caused to be filed two Applications to Intervene in Support of a Motion for Special Master. The OBA responded to said applications and filed a supplemental motion to dismiss. After argument, the applications were denied and the motions to dismiss were granted. Thereafter, Bednar filed a First Amended Petition and other motions. The OBA again responded to Bednar's filings and filed another Motion to Dismiss. In the interim, Bednar unsuccessfully attempted to have Judge Hesse recuse. Bednar then filed a Motion to Set Aside the Order Denying Recusal to which the OBA responded. This case was then transferred to Oklahoma County and back to Canadian County. At this time, the OBA Defendants' Motion to Dismiss is pending and is set to be heard on February 1, 2019, by Judge Hesse.

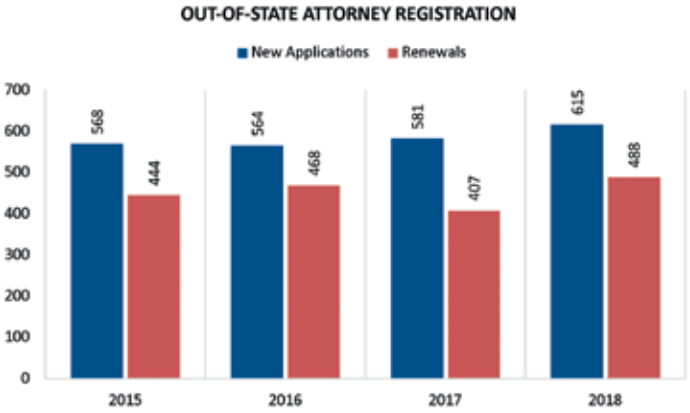
Vance-1 Properties, LLC. v. Energy Production Services, LLC., Oklahoma County Case No. CJ-2017-4737. On June 25, 2018, "Plaintiff, Compulsory Cross Claimant" Kris Agrawal filed a Petition for Damages in Fraud by Chris Holland and Lawyers Upon Courts to Steal Money of a Non-Judgment Debtor-Energy Production Services, LLC. Agrawal requested that "Nominal Defendant Oklahoma Bar Association" make rules to "punish Lawyers who abuse Court Procedures, who are thieves, and enforce the current Rules of Professional Conduct." The OBA filed a Motion to Dismiss based on lack of subject matter jurisdiction. On September 6, 2018, the court granted the OBA's Motion to Dismiss with Prejudice.

Vance - Properties, LLC, v. Energy Production Services, LLC., v. Kris K. Agrawal v. Daniel Delluomo, Chris Holland, et al., and Oklahoma County Court Clerk, Michael T. Bridwell, Jerry Parent, Sunoco Partners Marketing and Terminals, Jerry Kite, and Oklahoma Bar Association, Supreme Court Case Nos. 117553, 117554, 117555, 117556, 117557, 117558. On November 26, 2018, Agrawal initiated six appeals. The Oklahoma Bar Association responded to the Petitions in Error. The cases were consolidated to Case No. 117554. This case is pending.

ATTORNEY SUPPORT SERVICES

Out-of-State Attorney Registration. In 2018, the Office of the General Counsel processed 633 new applications and 488 renewal applications submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-state attorneys appearing pro bono to represent criminal indigent defendants, or on behalf of persons who otherwise would qualify for representation under the guidelines of the Legal Services Corporation

due to their incomes, may request a waiver of the application fee from the Oklahoma Bar Association. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in his/her licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or Tribunal as an exhibit to a "Motion to Admit."



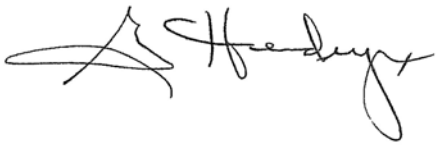
Certificates of Good Standing. In 2018, the Office of the General Counsel prepared 849 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.

ETHICS AND EDUCATION

During 2018, the General Counsel, Assistant General Counsels, and the Professional Responsibility Commission members presented more than 80 hours of continuing legal education programs to county bar association meetings, attorney practice groups, OBA programs, law school classes, and various legal and civic organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. These efforts direct attorneys to a better understanding of their ethical requirements, the disciplinary process, and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. In addition, the General Counsel was a regular contributor to *The Oklahoma Bar Journal*.

The attorneys, investigators, and support staff for the General Counsel's office also attended continuing education programs in an effort to increase their own skills and training in attorney discipline. These included trainings by the Oklahoma Bar Association (OBA), National Organization of Bar Counsel (NOBC), and the Organization of Bar Investigators (OBI).

RESPECTFULLY SUBMITTED this 31st day of January, 2019, on behalf of the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.



Gina L. Hendryx, General Counsel
Oklahoma Bar Association

ENDNOTES

1. The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to an informal or formal grievance after investigation.

2. Four cases were stayed by the Court and are still considered pending by the Office of the General Counsel: SCBD 6318, Rule 7, RGDP; SCBD 6354, Rule 7, RGDP; SCBD 6512, Rule 7, RGDP; and SCBD 6553, Rule 7, RGDP.

Ides of March

By John Morris Williams

IN THE ROMAN CALENDAR, the Ides of a month is the middle of the month. March is one of the four months it is on the 15th. The other eight months it is on the 13th. The Ides of March is probably most famous for its use in Shakespeare's famous play, *Julius Caesar*. Only two years before Caesar's death he changed the beginning of the new year from March 15 to January. Thus, we are warned of the Ides of March and celebrate the new year in January without apprehension.

This is one bit of trivia about how some change long ago still affects our lives to this day. Imagine the Rose Bowl Parade in March. Never! We build our culture and our rituals around events that many of us have no idea of how they came about. I suspect that most have no idea that the Ides of March was also a day to settle debts. Since it had been the beginning of the year, that seemed logical. As lawyers we can certainly understand the concept of the beginning of the year as a good place to begin or end a contract term. Imagine if someone arbitrarily changed New Year's back to March how that would throw things off a bit. Terms of public office might have to be changed. Football season? Accounting year?

In any event, we think of March as the beginning of spring, college basketball plays off (Final Four) and, of course, the cursed Ides. Not as a time to start a new year or to settle debts. That's all for January when it is too cold to do anything else except watch football and basketball. In Caesar's time, before he changed the date, March 15th was a day of celebration. History tells us the Romans could do some celebrating, even at the cost of a few Christians and lions. But, I digress.

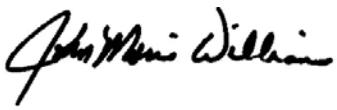
OBA Day at the Capitol is a good way to stay current on pending legislation.

The real point here is that change of one thing can have significant effect on others. We live in a world where so many things are connected. For example, the governance of the Oklahoma Bar Association is tied to the geographical boundaries of the nine Supreme Court districts. Currently, there is a bill in the Legislature to change from nine distinct geographical districts to five geographical districts mirroring the U.S. congressional districts and four at-large districts. Should the current districts be changed, then the Rules Creating and Controlling the Oklahoma Bar Association would become a bit nonsensical if there were only five geographical districts and four at-large Supreme Court districts. Currently, the OBA has no position on this matter, and the Oklahoma Constitution provides that the Legislature can change the districts. I suspect we would adjust accordingly; however, it would take a lot more time and energy than many might suspect.

This is but one of the many things in this legislative session that can affect the OBA, your practice or your clients. OBA Day at the Capitol is a good way to stay current on pending legislation. Since lawyers are in the business of law, it is good to know what changes are on the horizon. This is not a day of advocacy, but members are free to express their opinions to lawmakers on their own. The real goal of the day is to establish relationships with legislators so they know we are available to help if we can be of service. The

OBA does not advocate on social issues, public spending issues or anything that is not within the very narrow confines of those things that have an impact on the administration of justice. Through the years we have been the subject of criticism otherwise. I was there. I have been there for the last 16 sessions, and we have always been very narrow in our legislative activities.

Come join us this year for Day at the Capitol on March 12. We will have a great line up of speakers, lunch and time to connect with legislators. It's a very safe day – it's three days before the Ides!



To contact Executive Director Williams, email him at johnw@okbar.org.

OBA Day at the Capitol Agenda

Time	Topic/Event	Speaker/Location
9:30 a.m.	Registration	Oklahoma Bar Center, Emerson Hall, 1901 N. Lincoln Blvd.
10:00 a.m.	Introduction and Welcome	John Morris Williams, *OBA Executive Director* Charles Chesnut, *OBA President*
10:05 a.m.	This Session from the Perspective of the Attorney General	Mike Hunter, *Attorney General*
10:30 a.m.	Bills of Interest to the Judiciary	Chief Justice Noma Gurich, *Oklahoma Supreme Court*
10:50 a.m.	Break	
11:00 a.m.	Funding of the Judiciary	Jari Askins, *Administrator of the Courts*
11:30 a.m.	Discussion of the Governor's Agenda and Supporting Bills	Mark Burget, *General Counsel, Office of Gov. J. Kevin Stitt*
11:55 a.m.	Information and Questions	John Morris Williams
12:00 p.m.	Lunch and How to Talk to Legislators	Glenn Coffee, *Former President Pro Tempore* Randy Grau, *Former Representative District 81*
1 – 3 p.m	Visit with Legislators	Oklahoma State Capitol

Two-Factor Authentication is Critical Today

By Jim Calloway

TECHNOLOGY TOOLS for lawyers is a regular topic in this Law Practice Tips column.

Any advice columnist knows the readers will often treat their column like a buffet, taking what they like and ignoring some items that may be good for them, but don't strike their fancy today.

Password managers are like that. Most people who read about password managers appreciate that using them would be a good thing, but it takes quite an investment of time to select and set up the password manager and then reset the passwords for all the services and sites you frequent. Like the kale flakes or quinoa on the buffet, one may recognize the benefit, but it may not strike your fancy that day.

Two-factor authentication is relatively quick and easy to set up – but it adds a few seconds to the time it takes to log into the services and sites you use.

Using two-factor authentication is such a critical tool to protect yourself and others, so understanding how it works is an important part of lawyer technological competency. Not only should you be using it, but you should be advising your clients and others you care about to be using it as well.

The widespread adoption of Office 365 makes this even more important.

Our inspiration today comes from a blog post earlier this year by Russell Gilmore on the International Legal Technology Association (ILTA) blog titled "Two-Factor Authentication: A Resolution That Works."[1] (If you have never heard of ILTA, it is probably because its members tend to work for very large law firms and other organizations, but I can assure the group has serious credibility.)

Gilmore notes he has investigated several wire fraud transactions over the past year relating to unauthorized access to Office365 Outlook Webmail accounts.

He outlines the typical scenario:

> It starts when the victim receives a simple email with an attachment. The attachment will be an invoice, a legal document, or a letter from a distant relative. Because it appears to come from a trusted source, the victim opens the email. To open the attachment, usually a Word document, the victim will be instructed to click on a link and enter their Microsoft OneDrive user ID and password.
>
> This phishing email tricks the victim into providing their login credentials to a criminal enterprise. This criminal enterprise may sell the credential or use them to access the victim's account.
>
> Once the criminal has the login credentials, they log into the Office 365 account and access the victim's Outlook account. Now they sit and wait, monitoring all activity in the account. That's right; they monitor ALL email being received and sent. They also search all emails for words like deposit, wire transfer, or account information. Then they wait.
>
> They wait for the victim to send an email with wiring instructions. Once this occurs, the criminal manipulates the Outlook account so the criminal intercepts the email. Finally, the criminal sends a new email with new, fraudulent, wiring instructions.

Having some criminal monitoring and searching all your emails should be a chilling thought for anyone, but especially for a lawyer.

This shouldn't be thought of as a particular Office 365 weakness. We are going to be doing lots of education on Office 365 this year at the OBA Solo & Small Firm Conference. Lawyers will be using this for its many benefits. This is just a different version of a phishing scam, empowered by the fact that new Office 365 users are getting used to seeing Office 365 login screens, while most of us have learned about other types of common phishing schemes.

Compromising your email account also allows the criminal to use your email address to attack

your family, friends and clients. Gilmore adds, "What is often overlooked is that the phishing email you receive most likely will come from the legitimate account of a coworker, contractor, business associate, friend, or family member whose email account was compromised. Therefore, you received the phishing email from someone you currently work with or know, not a stranger. So these phishing attempts are often not blocked by email protection systems and software."

All of this can be prevented by activating two-factor authentication on the account.

The most common way people use two-factor authentication is receiving a code on their phone via text message after logging into an account. You must enter the code to log into the account. So as long as the criminal doesn't have access to your mobile phone, they cannot receive the code to complete the login to your account. You win.

Certainly, this is one more thing to do and adds a few seconds to every login, so maybe you are not willing to do this for every account you use.

I have a retirement account that has online access. I do not access it frequently enough for two-factor authentication to be a bother. Yet every time I log in, it helpfully suggests that I can tell the account to trust this computer, which would bypass two-factor authentication. Every time I tell it "No." If you have not set up two-factor authentication on your retirement account, your stock brokerage account or your checking accounts, I would strongly suggest you do it *today*.

For your Office 365 account or any other account that holds confidential client information, the same rule would apply. Right?

Right?

Mr. Calloway is OBA Management Assistance Program director. Need a quick answer to a tech problem or help solving a management dilemma? Contact him at 405-416-7008, 800-522-8060, jimc@okbar.org. It's a free member benefit!

ENDNOTE

1. www.iltanet.org/blogs/russell-gilmore/2019/02/01/two-factor-authentication-a-resolution-that-works.

6

WAYS TO SUPPORT THE OKLAHOMA BAR FOUNDATION

Fellows Program

An annual giving program for individuals

Community Fellows Program

An annual giving program for law firms, businesses and organizations

Memorials & Tributes

Make a gift in honor of someone — OBF will send a handwritten card to the honoree or their family

Unclaimed Trust Funds

Direct funds to the OBF by mailing a check with the following information on company letterhead: client name, case number and any other important information

Cy Pres Awards

Leftover monies from class action cases and other proceedings can be designated to the OBF's Court Grant Fund or General Fund as specified

Interest on Lawyer Trust Accounts

Prime Partner Banks give higher interest rates creating more funding for OBF Grantees. Choose from the following Prime Partners for your IOLTA:

BancFirst • Bank of Oklahoma • Bank of Cherokee County • Blue Sky Citizens Bank of Ada • City National • First Oklahoma Bank • First State Anadarko First State Noble • Grand Savings Bank • Great Plains Bank • Herring Bank Altus McClain Bank • McCurtain County National Bank • Security Bank Stockmans Bank • The First State Bank • Valliance

OKLAHOMA BAR FOUNDATION
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www.okbarfoundation.org • foundation@okbar.org

OBF Celebrates at First 2019 Meeting

THE OKLAHOMA BAR Foundation celebrated three highpoints at its first 2019 Board of Trustees meeting.

Since inception in 1946, the OBF's goal has been to provide and perform law-related charitable services and good works throughout the state. In 2018, the OBF surpassed $15 million in grants awarded to fund law-related nonprofits, court improvements and scholarships to Oklahoma law students. In 2019, the Board of Trustees celebrates this great milestone and the foresight of its founders.

Each year at the first board meeting, the passing of the gavel from the former board president to the incoming board president takes place, signifying a change in leadership. The OBF sincerely thanks Past President Alan Souter for his outstanding service as 2018 president and warmly welcomes Jennifer Castillo, who is serving as the new 2019 president.

The year 2019 started on a high note for the OBF, with the news of a *cy pres* award of $250,000 from residual funds in a class action settlement in Cimarron County. As with previous *cy pres* awards received by the OBF, this money was deposited into the OBF Court Grant Fund and is earmarked for future awards to improve the administration of justice in Oklahoma courts.

Past President Alan Souter passes the gavel to President Jennifer Castillo.

OBF board members celebrate with attorneys who worked on the Cimarron County case and ensured these funds were awarded to the OBF Court Grant Fund. Front row from left Terry Stowers, Robert Barnes and Doug Burns. Special thanks to these attorneys and to Judge Ronald L. Kincannon and James Kee, who are not pictured.

Right: *The OBF Board of Trustees celebrates $15 million in grant funding to law-related nonprofits, court improvements and law school scholarships.*

Fellows Scholarship Recipient

Clint Summers

Hometown:	Dallas, Texas
Law School:	University of Tulsa
Graduation Date:	2019
What field of law are you studying:	Federal courts, constitutional law, federal Indian law, criminal law, administrative law
Undergraduate:	University of Oklahoma
Undergrad Major:	Finance and international business with an Arabic minor
Graduation Date:	2010

What are your short-term and long-term goals?

I will clerk for Judge Claire V. Eagan in the Northern District of Oklahoma for one year and then will clerk for Judge Jacques L. Wiener in the 5th Circuit for one year. Eventually, I would like to practice criminal law and Native American law. Personally, I look forward to starting a family with my fiancé and trying out a new city in New Orleans. I also hope to run a marathon soon.

What made you decide to attend law school?

My dad is an attorney. He has always been an inspiration to me and so becoming an attorney has always been a thought I've had. I worked in oil and gas after undergrad, and when the industry took a downturn, I thought it was a good time to go back to school. I have also been interested in criminal justice since before law school.

Are there any laws or social rules that completely baffle you?

The federal criminal jurisdiction Indian status test

What historical figure inspires you and why?

The Apostle Paul, because although he was the most talented intellectual of his time, he lived in poverty and gave up all that he had for what he believed in.

What is the most important thing you have learned in law school or undergrad?

In law school, I learned that the learning never stops.

YLD Busy With Activities

By Brandi Nowakowski

IT'S HARD TO BELIEVE it's March already! Time flies when you're having fun and hard at work. This is especially true in the legal profession and for our volunteers in the Young Lawyers Division. With 2019 in full swing, the YLD has been busy with many activities and planning for the coming year. In particular, Feb. 2 was Legislative Reading Day at the Oklahoma Bar Center. On this day, the OBA reviewed and discussed proposed legislation for the upcoming legislative session. The purpose is to make OBA members aware of potential changes in the law, especially those that could affect the administration of justice, court practice and procedure.

BAR EXAM SURIVIAL KITS

Additionally, the YLD Board of Directors met Feb. 23 to conduct its regular monthly meeting. More importantly, however, at this meeting the YLD assembled Bar Exam Survival Kits for the February 2019 bar exam takers. Over the years, Bar Exam Survival Kits have become a trademark of the YLD. I'm sure many of you recall receiving these handy little goody bags before your own bar exam; I know I do.

In keeping with tradition, YLD members gather together the Saturday before every Oklahoma bar exam to assemble these kits containing items such as pencils, pens, ear plugs, snacks, gum, aspirin, antacids and stress balls. Then, YLD members meet at the bar exam test sites in Oklahoma City and Tulsa on the first day of the exam to hand them out, just as they did on Feb. 26. This is just one small act of service and kindness to encourage and support everyone taking the exam. To all of those who sat for the bar – good luck! We look forward to celebrating with and welcoming all of the new members of our association this spring!

From left Caroline Marie Shaffer, Dylan Erwin, YLD Immediate Past Chair Nathan Richter and 2019 Chair Brandi Nowakowski at the state Capitol to speak to their representatives, senators and other government leaders during 2018 OBA Day at the Capitol.

UPCOMING EVENTS YOU WON'T WANT TO MISS

As we quickly move through the year, I wanted to take a moment to highlight two upcoming events and encourage all young lawyers to participate. The first is OBA Day at the Capitol, which will be March 12. On this day, OBA members meet at the Oklahoma Bar Center to discuss pertinent pending legislation and legislative issues before heading to the Capitol *en masse* to meet with our representatives, senators and other government leaders. It's an excellent opportunity to get involved and actively participate on behalf of your bar association and the legal profession. I highly recommend all young lawyers make an effort to attend!

The second is the YLD Midyear Meeting held in conjunction with the OBA Solo & Small Firm Conference (SSF) June 20-22. Once again, the event will be hosted at the River Spirit Casino Resort in Tulsa. There are several reasons why all lawyers, but especially young lawyers, should head

out to Tulsa for this event. First, it's a chance to meet lawyers from across the state and catch up with those you already know but rarely get to see! Lawyers come to SSF from all over, so it's a great opportunity to expand your network and make friends in the legal field. Second, you can get all of your CLE for the entire year. Yes, you read that right … the entire year! The bar association works hard to not only provide quite a bit of CLE, but to provide education you can and will actually use! The CLE comes in different tracks so you can pick and choose what will be helpful and applicable to you in your particular practice. The best part is, it's a great deal! See details in this issue of the *Oklahoma Bar Journal* or to the website at www.okbar.org/solo. Third, SSF is fun! From planned events and hospitality suites, to live music, to just lounging by the pool, a good time is practically guaranteed! You can use it as a great excuse to relax away from the office or bring your spouse and/or children for a quick family getaway. Either way, all young lawyers should mark their calendars now! We would love to see you there!

Ms. Nowakowski practice in Shawnee and serves as the YLD chairperson. She may be contacted at brandi@stuartclover.com. Keep up with the YLD at www.facebook.com/yld.

The pool and cabana area at River Spirit Casino Resort in Tulsa are one of the many fun activities coming up at the YLD Midyear Meeting.

For Your Information

LHL DISCUSSION GROUP HOSTS APRIL MEETING

"Keeping Things in Perspective: Wins vs. Losses" will be the topic of the April 4 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to onelife@plexisgroupe.com are encouraged to ensure there is food for all.

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

Have you checked out the OBA Facebook page? It's a great way to get updates and information about upcoming events and the Oklahoma legal community. Like our page at www.facebook.com/OKBarAssociation and be sure to follow @OklahomaBar on Twitter and @OKBarAssociation on Instagram.

ASPIRING WRITERS TAKE NOTE

We want to feature your work on "The Back Page." Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry is an option too. Send submissions of about 500 words to OBA Communications Director Carol Manning, carolm@okbar.org.

OBA MEMBER RESIGNATIONS

The following members have resigned as members of the association and notice is hereby given of such resignation:

Sookyung Ahn
OBA No. 19631
602-55 E. Cordova St.
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CANADA V6A0A5

Terry Alvin Baulch
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Ada, OK 74820

Elaina S. Carpenter
OBA No. 20039
1403 Cindy
Frederick, OK 73542

Larry Brent Click
OBA No. 15205
2005 Oaklawn Drive
Midland, TX 79705

Margaret Luchi Hannan
OBA No. 32952
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Midwest City, OK 73110-5562

Stephanie Anne Hansen
OBA No. 32415
P.O. Box 190974
Boise, ID 83719

Gregory Thomas Harris
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Chesapeake, VA 23322

Richard A. Kear
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Robin Rubrecht Zegen
OBA No. 15375
4304 Lee Hutson Drive
Sachse, TX 75048

Bench and Bar Briefs

ON THE MOVE

Elizabeth Bowersox, **Philip R. Bruce**, **Danae V. Grace**, **Sean S. Hunt**, **Richard D. Johnson**, **Zachary A.P. Oubre** and **Patrick L. Stein** were elected shareholders at the Oklahoma City office of McAfee & Taft. **Julia A. Palmer** was elected shareholder in the firm's Tulsa office. **Joe Lewallen Jr.** was elected to the firm's Board of Directors in the firm's Oklahoma City office. Ms. Bowersox practices employment law. Mr. Bruce is a trial lawyer practicing labor and employment law. Ms. Grace is a transactional lawyer handling commercial and business matters. Mr. Hunt practices business and commercial law. Mr. Johnson practices transactional and tax law. Mr. Oubre practices intellectual property and commercial litigation. Ms. Palmer and Mr. Stein both practice state and federal litigation. Mr. Lewallen practices real estate and business law.

Travis Smith joined the Oklahoma City-based firm of Holmes, Holmes & Neisent PLLC. Mr. Smith's practice will focus on issues involving Medicaid eligibility, estate planning and special needs trusts.

Zachary K. Bradt of Edmond was promoted to director and shareholder of Phillips Murrah. Mr. Bradt focuses his practice on oil and gas law.

Sara Dupree joined the Norman-based firm of Mary Westman Law as of counsel. Ms. Dupree will practice equine and general animal law, business and contract law and general practice.

John M. Krattiger, **Lewis T. LeNaire**, **Craig M. Regens**, **Tina N. Soin** and **Paula M. Williams** were promoted to shareholders of GableGotwals. Mr. Krattiger and Mr. LeNaire practice complex commercial litigation in the firm's Oklahoma City office. Mr. Regens practices bankruptcy and business litigation in the firm's Oklahoma City office. Ms. Soin practices transactional law in the firm's Tulsa office. Ms. Williams practices labor and employment law in the firm's Oklahoma City office. The firm has also selected officers and directors for 2019. The team consists of **John D. Dale** of Tulsa, chairman and CEO; **Amy M. Stipe** of Oklahoma City, president; **Amy A. Fogleman** of Tulsa, VP of talent and development; **John D. Russell** of Tulsa, secretary; **Jeff D. Hassell** of Tulsa, VP of marketing and business development; **Terry D. Ragsdale** of Tulsa, VP of finance; **Rob F. Robertson** of Tulsa, VP of growth; and **Dale E. Cottingham** of Tulsa, director.

Clifford Hudson joined Crowe & Dunlevy as of counsel in the firm's Oklahoma City office where he serves as a member of the Corporate & Securities Practice Group.

Peter L. Scimeca and **Ryan J. Duffy** were elected as shareholders of Oklahoma City-based firm Fellers Snider. Mr. Scimeca practices criminal defense and commercial litigation along with state and federal forfeiture. Mr. Duffy practices taxation and business law.

Conner & Winters LLP began the year with a new leadership team. **Jared D. Giddens**, from Oklahoma City, serves as chairman, **J. Ryan Sacra**, of Tulsa, serves as secretary and COO, and **Robert J. Melgaard**, also of Tulsa, as CFO. **Mark D. Berman** and **Melodie Freeman-Burney**, both of Tulsa, serve on the Executive Committee.

Drew Edmondson of Oklahoma City joined Riggs Abney as of counsel in the firm's Litigation Practice Group. He will provide counsel on administrative law and government relations.

KUDOS

Stanley L. Evans of Norman, **Robert H. Henry** of Wylie, Texas, and **Susan L. Lees** of Deerfield, Illinois, were honored with the Order of the Owl by the OU College of Law. The honor celebrates alumni who demonstrate leadership and service through outstanding accomplishments in their legal careers.

The OBA Indian Law Section honored two law school students with the G. William Rice Memorial Scholarship. Rhylee Sanford, a second year at the TU College of Law and Brian Candelaria, a third year at the OCU School of Law each received $1,500 to defray the costs of bar examination preparation courses.

Miles L. Halcomb of Enid made the Oklahoma Best Sellers List for his science fiction novel, *A Perfect World*. The novel was the only piece on the list by an independent author.

In Memoriam

Mary Dolores Bedingfield of Tulsa died Dec. 19, 2018. She was born Sept. 27, 1937, in Renews, Newfoundland. She graduated from Memorial University with her bachelor's and master's degrees. After being awarded her degrees in Newfoundland, Ms. Bedingfield enrolled in the University of California, Los Angeles and earned her second master's degree and ultimately her Ph.D. in 1973. In 1983, she graduated from the TU college of Law with a J.D. After retiring from law, Ms. Bedingfield wrote and published a book based in her beloved Newfoundland. She was an avid traveler, gardener, oil painter and stained-glass artist. Memorial donations can be made to Planned Parenthood.

Hegel Branch Jr. of Duncan died Jan. 4. He was born Dec. 24, 1940, in Duncan. He earned a Bachelor of Science degree from Tulane University, after which he worked as administrator of Plato Manor, then he received his J.D. from the OU College of Law. Mr. Branch opened a private practice in Duncan. He was appointed as the first special district judge in Oklahoma's 5th District in 1969. In 1970, he was elected district judge. He was appointed as trial authority and served on the Oklahoma Court on the Judiciary. Mr. Branch served as president of Stephens County Bar Association and Duncan Optimist Club. He was a chairman of the Bluestem Chapter of Quail Unlimited and past Southwest district director of Quails Unlimited of Oklahoma. He was involved with the Boy Scouts of America, serving on the board and on the Camp George Thomas staff. He enjoyed camping and being in nature.

Daniel S. Buford of Tulsa died Dec. 22, 2018. He was born May 22, 1937, in Bowlegs. He attended Oklahoma A&M College. He then enrolled at the TU College of Law, graduating with a J.D. in 1961. During law school, Mr. Buford worked for Sun Oil Co. as a land man. **He served in the United States Air Force, receiving an honorable discharge in 1963.** While practicing law through the early '80s, he bought the Beacon and Pythian buildings on South Boulder Ave. in downtown Tulsa. In the late '70s and early '80s, he owned nursing homes and assisted living centers. He steadily grew his health care business interests over the next two decades and began yet another new phase in his life in the local banking industry in the mid-'90s. At the time of his death, he was owner and director of Security Bank in Tulsa. In addition to banking, he built a luxury hotel and resort in Sarasota, Florida. He also worked to help grow Buford Ranches LLC.

David Edward Burja of Oklahoma City died Dec. 14, 2018. He was born Oct. 25, 1952, in Bryan, Texas. He graduated from OU. He was involved with the Oklahoma City Police Athletic League as well as the Oklahoma City Festival of the Arts.

Jack Dabner of Pasadena, California, died Jan. 10. He was born Aug. 9, 1926, in Falls City, Nebraska. **He served as a radar man in the U.S. Navy, including active wartime duty in the Pacific.** Following his tour of duty, he enrolled in Northwestern University in Evanston, Illinois, and received his B.S. degree in history. Mr. Dabner then received his J.D. from the TU College of Law. His professional career included work in Tulsa as an insurance underwriter at Alexander and Alexander Insurance Co. and as claims manager at Marsh McLennan Insurance Co. He participated in Optimist Club activities, coached boys' and girls' elementary school baseball and softball, as well as American Legion senior high school baseball.

Robert Hayden Downie of Tulsa died Jan. 4. He was born June 28, 1941, in Topeka, Kansas. He received his J.D. from Washburn University. He worked at Texaco and served as assistant district attorney. In 1970, Mr. Downie served as a municipal judge in Tulsa's criminal court. He led the creation of Night Court and participated in development of the Driving While Intoxicated School. Following his service to the public, he practiced with Sneed, Lang, Adams, Hamilton, Downie, & Barnett and Main & Downie. Mr. Downie concluded his career by returning to public service as assistant city attorney for Broken Arrow. He was a member of the Tulsa County Bar Association, serving as president from 1986 to 1987. He served as chairman of the board for Legal Aid Services of Eastern Oklahoma in 1982. He was passionate about the Memorial High School basketball team for which he served as statistician for 20 years.

John J. Gardner II of Ponca City died Jan. 13. He was born Oct. 9, 1946, in Ponca city. He graduated from OSU in 1968 with a Bachelor of Science degree. He received his J.D. from the OU College of Law in 1971. **He then served in the U.S. Army Signal Corps attaining the rank of 1st lieutenant.** Mr. Gardener began his career as an attorney, practicing with the Northcutt Law Firm in Ponca City. He served on the Professional Responsibility Tribunal from 2003 to 2009 and on the board of The Opportunity Center for many years. He was also the longest standing board member of Bridgeway, serving since 1972. Mr. Gardener belonged to the Kay County

Bar Association and was a member of the Elks, Masons and Guthrie Scottish Rite. Memorial contributions may be made to Bridgeway Inc., 612 W. Grand Ave., Ponca City, 74601.

William Christopher Jackson of Tulsa died Jan. 6. He was born July 19, 1939, in Tulsa. He received an undergraduate degree in engineering from OSU, MBA from UCLA and J.D. from the TU College of Law. **He served in the Air National Guard including two years of active duty.** Mr. Jackson practiced law in Tulsa and managed the family businesses. He was committed to public service. For 22 years, he was a voluntary tax preparer through the Volunteer Income Tax Assistance program. He provided pro bono legal assistance to many individuals. For many years, Mr. Jackson was a dedicated volunteer at Mayfest, the Bluegrass and Chili Festival and the Greenwood Jazz Festival. Memorial donations can be made to the Oklahoma Mothers' Milk Bank, 901 N. Lincoln Ave., Suite 330, Oklahoma City, 73104, or to the charity of your choice.

Dave A. Jacobs of Ponca City died Jan. 4. He was born Aug. 15, 1941, in Pauls Valley. He received two undergraduate degrees from OU. He graduated from the OU College of Law in 1966. **Mr. Jacobs joined the U.S. Navy in 1966. He was assigned to the USS Forrestal and served in the Bay of Tonkin during the Vietnam War. He remained in the Navy Reserves until retirement in 1995 obtaining a rank of lieutenant commander.** From 1970 to 1975, he worked as an assistant district attorney in Comanche County. In 1975, Mr. Jacobs opened a private practice, worked as a public defender and in October of that same year he began working for the Kay County District Attorney's Office. He worked there until his retirement in 1995. He enjoyed hunting, golf and traveling. Memorial donations may be made to the National Kidney Foundation at 6405 Metcalf Ave. Suite 204, Overland, Kansas, 66202.

Paul John Johanning of Oklahoma City died Oct. 23, 2018. He was born Aug. 26, 1934, in Manchester. He graduated from OSU with a degree in political science. He received a J.D. from the OU College of Law in 1958. Mr. Johanning was a member of The International Legal Honor Society Phi Delta Phi. He practiced law in Oklahoma City for over 60 years. He loved to travel, solve crossword puzzles and to read. He knew how to fix just about anything and loved to discuss politics. To honor Mr. Johanning, read a book, donate a book or give someone a book.

Richard Laquer of Oklahoma City died Jan. 2. He was born Feb. 2, 1947, in Richmond, Virginia. He grew up near the shore in Cape May County, New Jersey, and attended Swarthmore and Temple Universities. He received a joint J.D. and MBA from OU in 1977. Mr. Laquer practiced law in Oklahoma City for almost 40 years, as both a prosecutor and defense attorney. He had a love of travel and good design.

James William Stevenson of Norman died Jan. 5. He was born Dec. 30, 1941, in Ponca City. He was an all-state football player for the Muskogee Roughers and then went on to play for OU under the direction of Bud Wilkinson. He received his J.D. from the OU College of Law in 1976.

Howard L. Wisdom of Sarasota, Florida, died Dec. 14, 2018. He was born Nov. 11, 1940. **He served in the U.S. Army in the 82nd Airborne.** Mr. Wisdom earned a J.D. from the OU College of Law in 1970. He loved to travel. He also enjoyed planes, boats and cars.

Carl L. Yeary of Oklahoma City died Dec. 10, 2018. He was born April 19, 1956, in Oklahoma City. He graduated from OU in 1979 with a B.A. in psychology. He obtained a J.D. from the OU College of Law in 1987. Mr. Yeary practiced at the Oklahoma Department of Securities for more than 28 years following his time in private practice at Holliman, Langholz, Runnels & Dorwart PC in Tulsa. He was a survivor of the Oklahoma City bombing and was instrumental in helping his fellow co-workers out of the building and getting aid for them. Memorial donations may be made to Southeast High School, 5401 S. Shields Blvd., Oklahoma City, 73129, to be used for food baskets for children during holiday breaks.

HOW TO PLACE AN ANNOUNCEMENT:

The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (*e.g., Super Lawyers, Best Lawyers, etc.*) will not be accepted as announcements. (Oklahoma based publications are the exception.) Information selected for publication is printed at no cost, subject to editing and printed as space permits.

Submit news items to:

Mackenzie Scheer
Communications Dept.
Oklahoma Bar Association
405-416-7084
barbriefs@okbar.org

Articles for the May issue must be received by April 1.

Oklahoma Bar Journal Editorial Calendar

2019 ISSUES

APRIL
Law Day
Editor: Carol Manning

MAY
Technology
Editor: C. Scott Jones

AUGUST
Access to Justice
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: May 1, 2019

SEPTEMBER
Bar Convention
Editor: Carol Manning

OCTOBER
Appellate Law
Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2019

NOVEMBER
Indian Law
Editor: Leslie Taylor
leslietaylorlaw@gmail.com
Deadline: Aug. 1, 2019

DECEMBER
Starting a Law Practice
Editor: Patricia Flanagan
patriciaaflanaganlawoffice@cox.net
Deadline: Aug. 1, 2019

2020 ISSUES

JAUNARY
Meet Your Bar Association
Editor: Carol Manning

FEBRUARY
Family Law
Editor: Virginia Henson
virginia@phmlaw.net
Deadline: Oct. 1, 2019

MARCH
Constitutional Law
Editor: Clayton Baker
clayton@davisandthompson.net
Deadline: Oct. 1, 2019

APRIL
Law Day
Editor: Carol Manning

MAY
Diversity and the Law
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Jan. 1, 2020

AUGUST
Children and the Law
Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2020

SEPTEMBER
Bar Convention
Editor: Carol Manning

OCTOBER
Mental Health
Editor: C. Scott Jones
sjones@piercecouch.com
Deadline: May 1, 2020

NOVEMBER
Alternative Dispute Resolution
Editor: Aaron Bundy
aaron@bundylawoffice.com
Deadline: Aug. 1, 2020

DECEMBER
Ethics & Professional Responsibility
Editor: Amanda Grant
amanda@spiro-law.com
Deadline: Aug. 1, 2020

If you would like to write an article on these topics, contact the editor.

follow the oba

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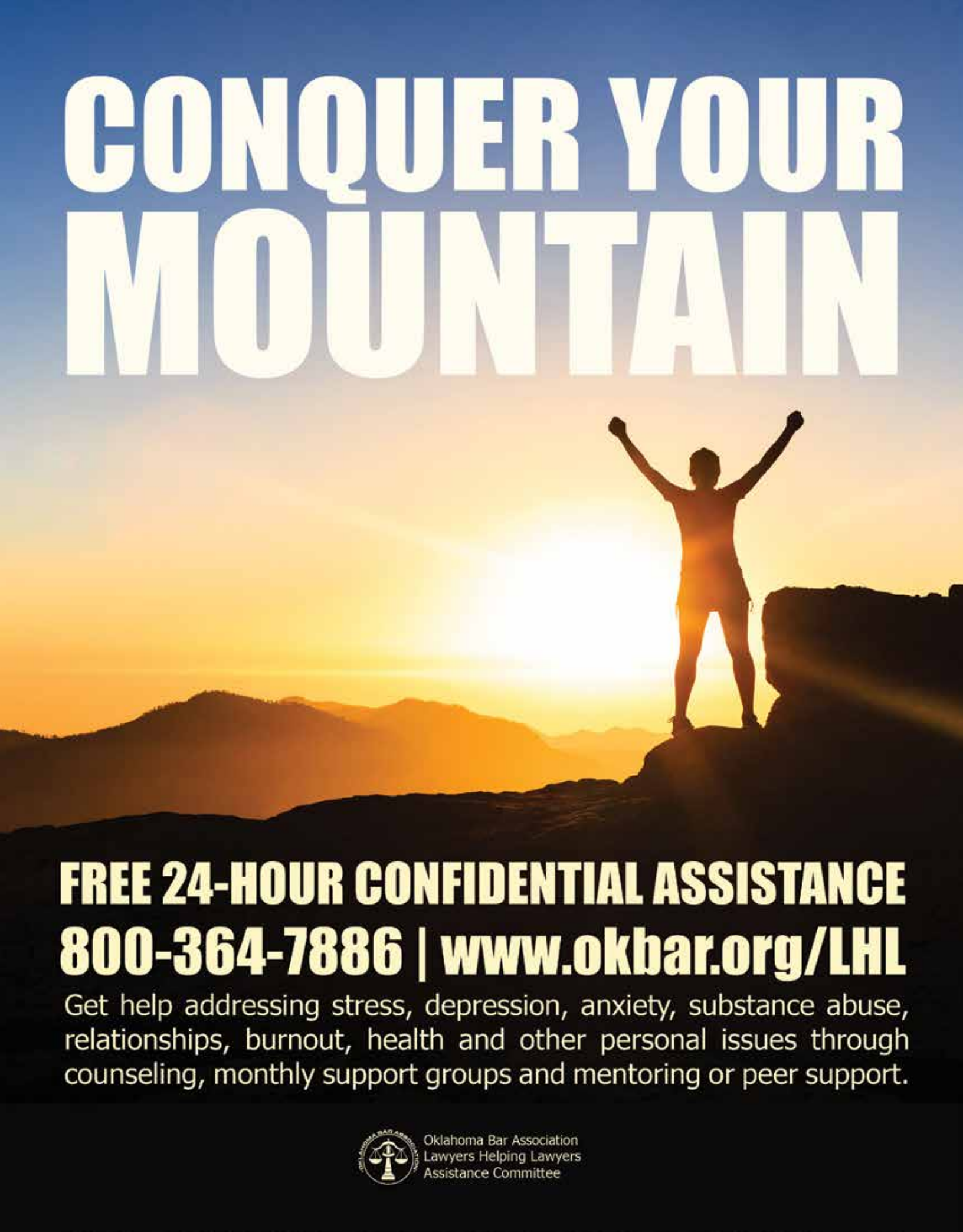
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Get help addressing stress, depression, anxiety, substance abuse, relationships, burnout, health and other personal issues through counseling, monthly support groups and mentoring or peer support.
Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Committee

What's Online

10 Things to Stop Doing in 2019

There are many things you can and should be doing to become a more successful lawyer. However, there are even more things you should stop doing. The key to being successful is identifying the most important tasks that drive success and working to eliminate the rest.

Goo.gl/op8prZ

Checklist Guides for Spring Cleaning

March 20 is the first day of spring, but does your house still feel like it's stuck in the winter blues? Here are a variety of checklists to help you freshen up your home and get a head start on the hectic seasons of spring and summer.

Goo.gl/uDUfyX

How to Decrease Phone Screen Time

Americans love their smartphones. We spend about three and a half to five hours a day on our phones – that's almost 76 days a year! Read how Jason Tashea was able to cut his phone screen time by 80 percent.

Goo.gl/PpJj1w

Seven Privacy Protections for Your Law Firm

Does your law firm need to increase its privacy protection? Are you not sure where to start? Check out these seven protections you should consider implementing today.

Goo.gl/dM7TFB

Classified Ads

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OF COUNSEL LEGAL RESOURCES – SINCE 1992 – Exclusive research and writing. Highest quality: trial and appellate, state and federal, admitted and practiced U.S. Supreme Court. Over 25 published opinions with numerous reversals on certiorari. **MaryGaye LeBoeuf 405-728-9925, marygayelaw@cox.net.**

INTERESTED IN PURCHASING PRODUCING AND NONPRODUCING MINERALS; ORRi. Please contact Greg Winneke, CSW Corporation, P.O. Box 23087, Oklahoma City, OK 73123; 210-860-5325; email gregwinne@aol.com.

WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to P.O. Box 13557, Denver, CO 80201.

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POLYGRAPH EXAMINATIONS

Board Certified	State & Federal Courts
Diplomate - ABFE	Former OSBI Agent
Fellow - ACFEI	FBI National Academy

Arthur Linville 405-736-1925

DOTTER LEGAL INVESTIGATIONS LLC. Witness location; witness statements; scene investigations; background checks; law enforcement & first responder interviews; court record searches; surveillance. Contact Stephen at 405-227- 0454. Email: stephenadotter@gmail.com.

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SERVICES

DO YOU NEED YOUR LITIGATION RESCUED? Seasoned trial attorney, with many successful jury trials, court arguments and 1000s of depositions, can handle these matters for you – even at the last minute. Contact me to get your litigation back on track. Licensed in Oklahoma and Texas. 405-850-5843 or LitigationRescued.gmail.com.

OKC ATTORNEY HAS CLIENT INTERESTED IN PURCHASING producing or nonproducing, large or small, mineral interests. For information, contact Tim Dowd, 211 N. Robinson, Suite 1300, OKC, OK 73102, 405-232-3722, 405-232-3746 (fax), tdowd@eliasbooks.com.

OFFICE SPACE

LUXURY OFFICE SPACE AVAILABLE - One fully furnished office available for lease in the Esperanza Office Park near NW 150th and May Avenue. The Renegar Building offers a beautiful reception area, conference room, full kitchen, fax, high-speed internet, security, janitorial services, free parking and assistance of our receptionist to greet clients and answer telephone. No deposit required, $955/month. To view, please contact Gregg Renegar at 405-488-4543 or 405-285-8118.

POSITIONS AVAILABLE

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

TULSA LAW FIRM SEEKING PATENT ATTORNEY. Will train. Experience a plus. Send replies to Oklahoma Bar Association, "Box O," P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

OKLAHOMA BAR ASSOCIATION HEROES program is looking for several volunteer attorneys. The need for FAMILY LAW ATTORNEYS is critical, but attorneys from all practice areas are needed. All ages, all counties. Gain invaluable experience, or mentor a young attorney, while helping someone in need. For more information or to sign up, contact Margaret Travis, 405-416-7086 or heroes@okbar.org.

FRANDEN, FARRIS, QUILLIN, GOODNIGHT & ROBERTS, a mid-size, Tulsa AV, primarily defense litigation firm seeks lawyer with 5-10 years of experience with emphasis on litigation. If interested, please send confidential resume, references and writing sample to kanderson@tulsalawyer.com.

ATTORNEY: JENNINGS |TEAGUE, an AV rated downtown OKC litigation firm, whose primary areas of practice are insurance defense, products liability and transportation defense, has a position available for an attorney with 2+ years' experience. The job duties will encompass all phases of litigation including, pleading and motion practice, research, analysis and discovery. Salary is commensurate with experience. Please send resume to bwillis@jenningsteague.com.

ESTABLISHED, AV-RATED TULSA INSURANCE DEFENSE FIRM WHICH REGULARLY TAKES CASES TO TRIAL seeks motivated associate attorney to perform all aspects of litigation including motion practice, discovery and trial. Two to 5 years of experience preferred. Candidate will immediately begin taking depositions and serving as second chair at jury trials and can expect to handle cases as first chair after establishing ability to do so. Great opportunity to gain litigation experience in a firm that delivers consistent, positive results for clients. Submit CV and cover letter to Oklahoma Bar Association, "Box CC," P.O. Box 53036, Oklahoma City, OK 73152.

ASSOCIATE ATTORNEY – PARMELE LAW FIRM. Parmele Law Firm is seeking a licensed attorney for administrative law in our Oklahoma City and Tulsa offices. No experience required. Excellent compensation and benefits package. Some day travel required. If you are interested in this exciting opportunity, please apply at parmelelawfirm.apscareerportal.com/j/0bi3zh. EOE.

POSITIONS AVAILABLE

FAMILY LAW LITIGATION ASSOCIATE. Growing Oklahoma City AV rated family law firm is seeking an associate attorney in family law. Candidate should have experience or acumen in family law or litigation, be capable of immediately assisting in the day-to-day management of high-conflict divorce and custody cases and be willing to work directly with assigned practice group. Compensation commensurate with experience. The right candidate will present well and carry themselves with confidence. Submissions should be made to alicia@smithsimmons.com.

MAKE A DIFFERENCE AS THE ATTORNEY FOR A MEDICAL/LEGAL PARTNERSHIP OR STAFF ATTORNEY. Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of underserved, LASO is the place for you, offering opportunities to make a difference in the lives of Oklahomans and to be part of a dedicated team. LASO has 20 law offices across Oklahoma, and LASO has openings for passionate attorneys in our Muskogee law offices. The medical/legal partnership attorney is an embedded position with Kids Space. It is an opportunity for an attorney to assist opioid-effected kids in their legal challenges. Additionally, there is a staff attorney position that will assist the Muskogee service area. The successful candidate will provide legal services depending on client needs – a "generalist" position. LASO offers a competitive salary and a very generous benefits package, including health, dental, life, pension, liberal paid time off and loan repayment assistance. Additionally, LASO offers a great work environment and educational/career opportunities. The online application can be found at legalaidokemployment.wufoo.com/forms/z7x4z5/. Website: www.legalaidok.org. Legal Aid is an Equal Opportunity/Affirmative Action Employer.

EXPERIENCED TULSA TITLE ATTORNEY WANTED. Job description: reading abstracts, issuing title opinions and title commitments, reviewing surveys, reviewing closing documents, issuing title insurance policies and preparing curative documents in the Tulsa market. Salary commensurate with experience. Send resumes to "Box GG," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

APPLICATIONS MUST BE RECEIVED AT DHS BY 11:59 PM OF THE CLOSING DATE OF THIS JOB ANNOUNCEMENT. Apply online at www.jobs.ok.gov. Basic purpose of position: The DHS Child Support Services – Midwest City CSS Office has an opening for a full-time attorney (CSS Attorney IV, $5,044.91 monthly) with experience in child support enforcement. This position will be located at 9901 SE 29th Street, Midwest City, OK 73130. Typical functions: The position involves preparation and filing of pleadings and trial of cases in child support related hearings in district and administrative courts. Duties will also include consultation and negotiation with other attorneys and customers of Oklahoma Child Support Services, and interpretation of laws, regulations, opinions of the court and policy. Position will train and assist staff with preparation of legal documents and ensure their compliance with ethical considerations. Knowledge, skills and abilities (KSA's): Knowledge of legal principles and their applications; of legal research methods; of the scope of Oklahoma statutory law and the provisions of the Oklahoma Constitution; of the principles of administrative and constitutional law; of trial and administrative hearing procedures; and of the rules of evidence; and skill in performing research, analyzing, appraising and applying legal principles, facts and precedents to legal problems; presenting explanation of legal matters, statements of facts, law and argument clearly and logically in written and oral form; and in drafting legal instruments and documents. Minimum qualifications: Preference may be given to candidates with experience in child support and/or family law. This position may be filled at an alternate hiring level as a Child Support Services attorney III (beginning salary $4,405 monthly), Child Support Services attorney II (beginning salary $4,067.91 monthly), or as a Child Support Services attorney I (beginning salary $3,689.25 monthly), dependent on child support or family law experience and minimum qualifications as per state policy. Notes: A conditional offer of employment to final candidate will be contingent upon a favorable background check and a substance abuse screening. Veteran's preference points do not apply to this position. If you need assistance in applying for this position contact Oklahoma Department of Human Services, Talent Acquisitions at 405-521-3613 or email STO.HRM.TA@okdhs.org. Benefits: This is a full-time unclassified state position with full state retirement and insurance benefits, including paid health, dental, life and disability insurance. Annual leave of 10 hours per month and sick leave of 10 hours per month begin accruing immediately.

POSITIONS AVAILABLE

ASSISTANT CITY ATTORNEY. Salary: $57,601.44-$94,177.82 annually dependent upon qualifications and experience. This full-time position will defend and prosecute high-profile and complex civil law suits; draft legal documents; advise city officials as to legal rights, obligations, practices and other phases of applicable local, state and federal law; draft resolutions, ordinances and contracts and prepare legal opinions. See job announcement for additional requirements. Applicants for the position must have graduated from an accredited law school, be a member in good standing in the Oklahoma Bar Association and admitted to or eligible for immediate admission to practice in the U.S. District Court for the Western District of Oklahoma and the 10th Circuit Court of Appeals. Applicants must possess a valid Oklahoma driver's license. Interested applicants should submit an application, resume, law school transcript and two samples of legal writing filed in legal proceedings to the City of Lawton Human Resources Department, 212 SW 9th Street, Lawton, OK 73501, 580-581-3392, Fax 580-581-3530. See job announcement at www.lawtonok.gov/departments/human.

SEEKING GENERAL COUNSEL FOR OKLAHOMA CITY HOME OFFICE OF BANKERS BANCORP, a distinctive financial holding company, and its subsidiaries. Position requires a minimum of 8–10 years' experience in banking or general corporate law with a law firm or financial institution. Bank or other regulatory experience is strongly preferred. Excellent written and oral communication skills (law review editor a plus), solid interpersonal skills and adherence to highest financial and legal ethical standards. Duties include but are not limited to: vendor and customer contract negotiation/preparation/review; loan documentation; IP SaaS licensing; consultation on internal employment matters; transactional and regulatory risk analysis and advice to executive management; and supervision of outside counsel. Competitive compensation, rich benefits package presently including: employer-paid health, dental, vision, life and disability; employer-paid licensure maintenance and MCLE; and 401k profit sharing and retirement savings plan with employer match. Please submit resume, writing sample and cover letter with salary expectations in confidence to careers@TBB.bank.

OKLAHOMA OSTEOPATHIC BOARD, A STATE AGENCY, SEEKS EXECUTIVE DIRECTOR. Application and information available at www.osboe.ok.gov. Application deadline is March 14, 2019, at 4 p.m.

POSITIONS AVAILABLE

CORPORATE PARALEGAL. EXCELLENT PAY AND BENEFITS! W.C. Bradley Co., a 130+ year old international consumer products company seeks a qualified paralegal for its Tulsa, Oklahoma, office to replace a retiring paralegal who has been with the company for a decade. Reporting directly to the general counsel, this position will perform critical legal functions on behalf of its family of world class companies who compete in the global marketplace. Requirements include a self-motivated team player with 5+ years' experience; completion of an ABA-accredited paralegal program is preferred. Candidates must have strong legal research and writing skills. Excellent computer, organizational, attention-to-detail, project management, written/verbal communication and prioritization skills are musts. The ability to meet deadlines is critical. Candidate should be flexible to work overtime, as needed, and have flexibility to travel. The General Counsel's Office is a fast-paced environment that addresses many areas of the law. Please apply if you have experience in any of the following areas: consumer transactional contracts, corporate governance, merger and acquisitions, regulatory, intellectual property including trademarks and patents, risk management, litigation and international. Experience in any of these areas is a plus. Proficiency with Microsoft Word, Outlook, Excel, PowerPoint, Windows-based software and Westlaw is a plus. Your expertise will be rewarded with an attractive salary/benefits package along with a casual dress code environment. To apply: https://goo.gl/3TFRMz. No phone calls please. The W.C. Bradley Co. is an Affirmative Action and Equal Opportunity Employer. The W.C. Bradley Co. uses E-Verify to confirm the employment eligibility of all new team members. To learn more about E-Verify, including your rights and responsibilities, please visit the U.S. Citizen and Immigration Service at www.uscis.gov/e-verify. E-Verify® is a registered trademark of the U.S. Department of Homeland Security.

THE OKLAHOMA TAX COMMISSION is accepting applications for the position of general counsel. This position oversees legal services provided by attorneys employed by the agency. Applicants must be licensed to practice law in Oklahoma. The ideal candidate should have at least 5 years of relevant experience and strong communication skills. Submit cover letter, resume and writing sample to applicants@tax.ok.gov. The OTC is an equal opportunity employer.

POSITIONS AVAILABLE

THE OKLAHOMA TAX COMMISSION, LEGAL DIVISION is seeking several attorneys for openings in its OKC office, Protests/Litigation Section. Applicants must be licensed to practice law in Oklahoma. Preference will be given to candidates with administrative hearing and/or litigation experience, but all applicants will be considered. Submit cover letter, resume and writing sample to applicants@tax.ok.gov. The OTC is an equal opportunity employer.

BUSY BUSINESS DEFENSE LAW FIRM LOCATED IN EDMOND/NW OKC is accepting resumes for multiple attorney positions. Offering a competitive salary with excellent benefits and location. Please send resume, writing sample and salary requirements to "Box A," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

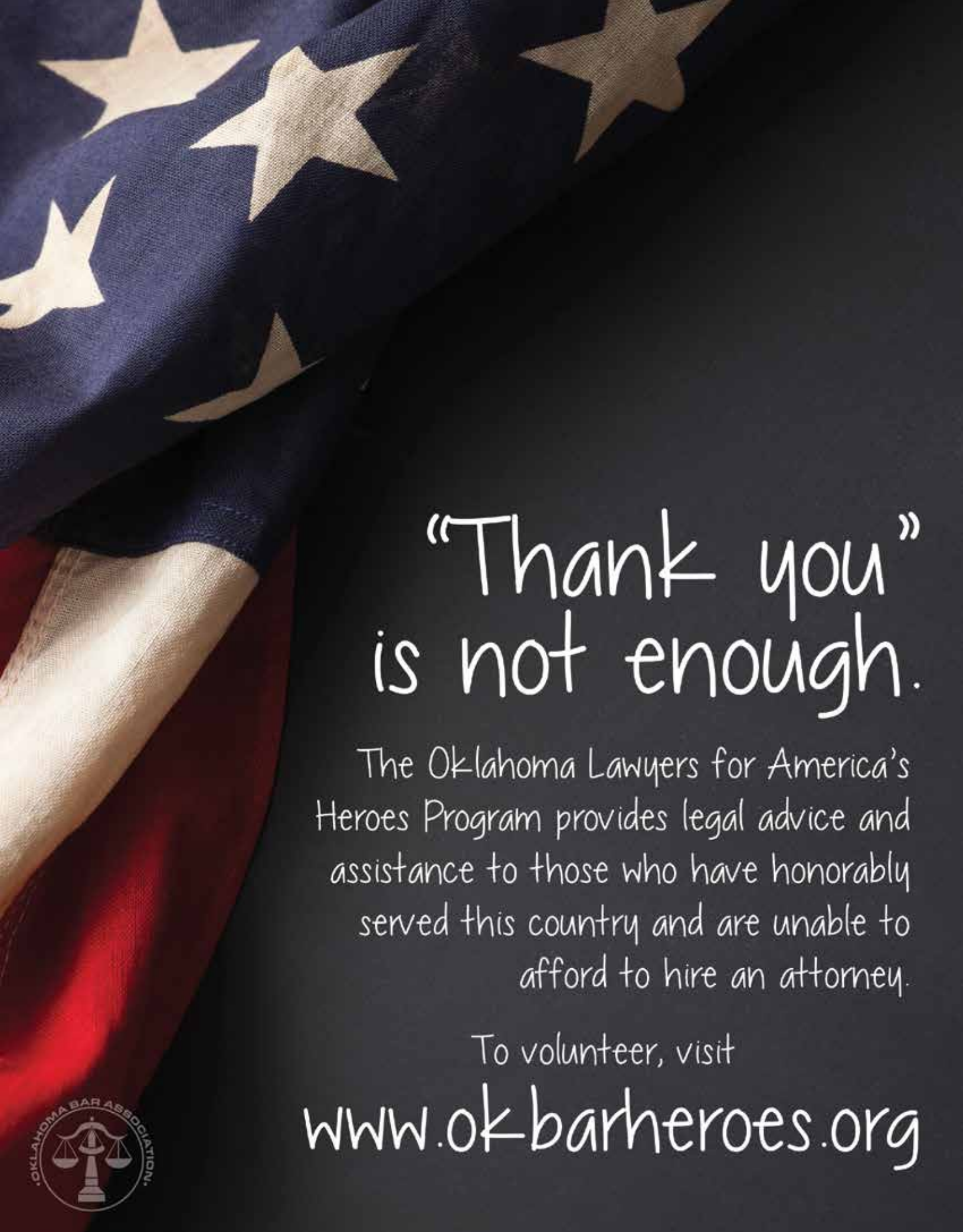
THE UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA is seeking an experienced, self-motivated attorney to serve as an assistant United States attorney (AUSA) in our Civil Division. The selected applicant will primarily focus on prosecuting affirmative civil enforcement (ACE) cases in which the United States and its taxpayers are the victims of fraud, waste and abuse. ACE cases often stem from violations of the False Claims Act involving health care, government contracts and federal benefits. Claims are pursued through the courts and money judgments sought against individuals and corporations defrauding the government. Effective handling of these cases requires the AUSA to possess excellent communication and organizational skills and the ability to work closely with federal investigative agencies. The AUSA will lead the investigations and participate in all stages of the resulting litigation, including discovery, depositions and court appearances. Candidate must have a J.D. degree, be duly licensed and authorized to practice as an attorney under the laws of any state, territory of the United States, or the District of Columbia, and have at least 3 years trial attorney experience. Applicants must be active members in good standing of the bar. Applicants should have superior research, writing and oral advocacy abilities, strong academic credentials and good judgment. United States citizenship is required, as is a successful pre-employment background investigation. Announcement will open on or about March 8, 2019, and closes on March 22, 2019. To view and apply for this vacancy announcement visit http://www.usajobs.gov. The U.S. Department of Justice is an Equal Employment Opportunity Reasonable Accommodation Employer.

POSITIONS AVAILABLE

APPLICATIONS MUST BE RECEIVED AT DHS BY 11:59 PM OF THE CLOSING DATE OF THIS JOB ANNOUNCEMENT. Apply online at www.jobs.ok.gov. Basic purpose of position: The DHS Child Support Services – North OKC CSS Office has an opening for a full-time attorney (CSS Attorney IV, $5,044.91 monthly) with experience in child support enforcement. This position will be located at 2409 N. Kelley Ave, Room 103, OKC, OK 73111. Typical functions: The position involves preparation and filing of pleadings and trial of cases in child support related hearings in district and administrative courts. Duties will also include consultation and negotiation with other attorneys and customers of Oklahoma Child Support Services, and interpretation of laws, regulations, opinions of the court and policy. Position will train and assist staff with preparation of legal documents and ensure their compliance with ethical considerations. Knowledge, skills and abilities (KSA's): Knowledge of legal principles and their applications; of legal research methods; of the scope of Oklahoma statutory law and the provisions of the Oklahoma Constitution; of the principles of administrative and constitutional law; of trial and administrative hearing procedures; and of the rules of evidence; and skill in performing research, analyzing, appraising and applying legal principles, facts and precedents to legal problems; presenting explanation of legal matters, statements of facts, law and argument clearly and logically in written and oral form; and in drafting legal instruments and documents. Minimum qualifications: Preference may be given to candidates with experience in child support and/or family law. This position may be filled at an alternate hiring level as a Child Support Services attorney III (beginning salary $4,405 monthly), Child Support Services attorney II (beginning salary $4,067.91 monthly), or as a Child Support Services attorney I (beginning salary $3,689.25 monthly), dependent on child support or family law experience and minimum qualifications as per state policy. Notes: A conditional offer of employment to final candidate will be contingent upon a favorable background check and a substance abuse screening. Veteran's preference points do not apply to this position. If you need assistance in applying for this position contact Oklahoma Department of Human Services, Talent Acquisitions at 405-521-3613 or email STO.HRM.TA@okdhs.org. Benefits: This is a full-time unclassified state position with full state retirement and insurance benefits, including paid health, dental, life and disability insurance. Annual leave of 10 hours per month and sick leave of 10 hours per month begin accruing immediately.

POSITIONS AVAILABLE

ANGELA D. AILLES & ASSOCIATES, in-house counsel for State Farm Insurance Companies, has an opening for a paralegal. Candidates must have prior experience in personal injury or insurance defense litigation; must be able to work effectively and efficiently in an electronic environment; and must be highly proficient in Outlook, Word, Adobe and use of the internet as a resource. Candidates should have experience handling cases for multiple attorneys at one time; be knowledgeable with state rules regarding discovery and pleading practice; have experience collecting and analyzing medical records; and be capable of legal research, drafting motions and assisting at trial with trial presentation software. State Farm offers an excellent salary and benefits package. If interested, please go to www.statefarm.com/careers - Become a State Farm Employee, search under "req6545", and submit your online application. EOE.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The Oklahoma Lawyers for America's Heroes Program provides legal advice and assistance to those who have honorably served this country and are unable to afford to hire an attorney.
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www.okbarheroes.org
OKLAHOMA BAR ASSOCIATION

The Tao of the Courthouse Shoeshine

By R. Steven Haught

AS A TRIAL LAWYER for 40 years, I have prepared countless witnesses to testify at trials or depositions. Each witness is unique, requiring preparation specific to the personality and skill set of the witness as well as the type of case involved. With some witnesses, the naturals, I merely engage in a general discussion of the subject matter of the testimony, while others require intensive preparation with a mock trial with direct examination and cross-examination.

Some witnesses need to be videotaped and coached with regard to gestures and facial expressions. Some witnesses are so nervous that I have taken them to the courthouse to watch other trials or to sit in the witness chair in an empty courtroom. I thought I had seen it all, but then I witnessed a new technique employed by veteran Oklahoma City trial lawyer John Vitali.

I saw Mr. Vitali with a client at the courthouse. They were in the lobby, and his client looked nervous and somewhat despondent. He was well-dressed in a suit and tie with nice shoes. He looked ill at ease. Mr. Vitali was upbeat and chatty, but he noticed his client's demeanor as well.

Suddenly he made a suggestion to his client, "What about a shoeshine?" The client declined, pointing to his shoes that were not in particular need of a shine. Mr. Vitali persisted, directing his client to climb on the chair while engaging in friendly banter with the shoeshine man, a seasoned courthouse veteran who served as a counselor and courthouse guide and could tell you what verdicts were rendered that week and what kind of mood your judge was in that day.

Reluctantly the client obeyed. As Mr. Vitali and I visited, I saw the client's demeanor begin to change. The transformation was gradual at first but then the improvement was quite dramatic. As the shoes became shinier, so did the client's disposition. He sat up in the chair. He began to smile and joke around.

I departed to go to my courtroom, but as I saw Mr. Vitali and his client walk down the hall with confidence and a sense of purpose, I realized that I had witnessed a new form of witness preparation – the transcendental power of the courthouse shoeshine.

Mr. Haught practices in Oklahoma City.

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